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The state, the academy and Indigenous justice: a counter-colonial critique

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**Indigenous Australians are advised
that this article may include
images or names of people now deceased.**

Continue

The State, the Academy and Indigenous Justice: A Counter-Colonial Critique

A thesis submitted in fulfilment of the requirements for the award of the degree of

Doctor of Philosophy

from

University of Wollongong

by

Juan Marcellus Tauri BA (Hons), MPhil

Faculty of Law, Humanities and the Arts

Indigenous Studies Unit

2016

CERTIFICATION

I, Juan Marcellus Tauri, declare that this thesis, submitted in fulfilment of the requirements for the award of Doctor of Philosophy, in the Faculty of Law, Humanities and the Arts, University of Wollongong, is wholly my own work unless otherwise referenced or acknowledged. The document has not been submitted for qualifications at any other academic institution.

Juan Marcellus Tauri (Candidate)

22 April 2016

VERIFICATION

This statement verifies that the greater part of the work in the below-named manuscripts is attributed to the candidate. Juan Marcellus Tauri contributed to the research concept and design, undertook data collection and analysis, and prepared the first draft of each manuscript. He then responded to editorial suggestions of co-authors (where applicable), and prepared the articles for submission to the relevant journals. Details of the contributions of co-authors can be found on page 7.

Associate Professor Evan Poata-Smith (Principal Supervisor)

Juan Marcellus Tauri (Candidate)

22 April 2016

Acknowledgements

There are many people who deserve thanks for their support during the years spent working on this thesis. In no particular order I wish to thank Evan Poata-Smith, Bronwyn Carlson, Wenona Victor, Biko Agozino and Antje Deckert, without whom this thesis would not have been possible. Although he had no direct input into my research I would also like to acknowledge Moana Jackson, Māori activist, jurist and philosopher, whose pioneering work on Māori engagement with the criminal justice system in New Zealand laid the methodological and theoretical foundations of the work I have done over the past twenty years.

On a personal level I would like to thank my partner Christina and my sister Angele for their love and support.

This thesis is dedicated to my beautiful children, Isabella and Ruben.

Abstract

The focus of this thesis by publication is the response of the settler-colonial state, criminology and the wider academy, to two inter-related *wicked problems* confronting the policy sector, firstly the over-representation of Indigenous peoples in the formal criminal justice system and second, Indigenous peoples' critique of the response of the state and the Academy to the issue of continued Indigenous over-representation in the criminal justice system.

The author was motivated to undertake this thesis due to the following:

- that the over-representation of Indigenous peoples in the formal criminal justice system has been a statistical fact in settler-colonial societies (e.g. New Zealand, Australia, Canada and the U.S) for close to thirty years;
- the persistence of this situation despite significant political, media, academic and policy attention to this issue over that time period;
- a significant amount of the material produced on the issue of Indigenous over-representation has been completed without direct input from Indigenous peoples; and
- the Indigenous voice has been particularly silent (or silenced) in the work produced by criminologists working in settler-colonial contexts.

The thesis is made up of eight published articles that have been placed in three inter-related three sections. Section one is made up entirely of one published work. This paper (Paper 1) offers a broad theoretical discussion of the *colonial projects*, the policy levers and interventions developed and utilised by state functionaries in response to the

two broad wicked problems discussed above. Section two contains Papers 2, 3, 4 and 5. The papers in this section provide an empirically-informed critique of the various ways through which the discipline of criminology has contributed to the state's colonial and neo-colonial processes. The original contribution of this material lies in the fact that Paper 4 provides one of the first empirically informed analyses of the impact of increasing globalisation of crime control policy on Indigenous peoples, while Papers 2, 3, 4 and 5 combine with Paper 1 to expose the range of projects through which the discipline has, to paraphrase Agozino (2003), continued to support the settler-colonial state's criminalisation of Indigenous peoples.

In Section three the focus moves to the role of the state and is made up of Papers 6, 7 and 8. Each of the papers offers a case study that highlight way(s) in which the settler-colonial states nullifies Indigenous input into the development of crime control policies for issues of concern to Indigenous communities. The intent of this section is to identify and analyse the range of strategies deployed by the state to placate Indigenous dissent, and maintain its hegemony over responses to social harm.

Keywords

Authoritarian criminology, colonial projects, colonialism, counter-colonial criminology, criminology, evidence-based policy, Indigenous peoples, Indigenous emancipatory methodology, Indigenous standpoint, informal justice, Māori, myth, policy industry, research ethics boards, ritual, settler-colonialism, Waitangi Tribunal, youth gangs.

Publications Constituting the Thesis

Published

Tauri, J and Webb, R (2011) The Waitangi Tribunal and the Regulation of Māori Protest, *New Zealand Sociology*, 26: 21-41 **(Paper 7)**.

Roguski, M and Tauri, J (2012) The Politics of Gang Research in New Zealand, in *Crime, Justice and Social Democracy Proceedings of the 1st International Conference* (vol. 2). Brisbane: Queensland University of Technology, School of Justice: 26-44 **(Paper 8)**.

Tauri, J and Webb, R (2012) A Critical Appraisal of Responses to Māori Offending, *International Indigenous Policy Journal*, 3(4): Article 5 (online) **(Paper 3)**.

Tauri, J (2013) Indigenous Critique of Authoritarian Criminology, in K. Carrington, M. Ball, E. O'Brien and Juan Tauri (Eds.), *Crime, Justice and Social Democracy: International Perspectives*. London: Palgrave Macmillan: 217-233 **(Paper 2)**.

Tauri, J (2014a) An Indigenous, Critical Commentary on the Globalisation of Restorative Justice, *British Journal of Community Justice*, 12(2): 35-55 **(Paper 4)**.

Tauri, J (2014b) Resisting Condescending Research Ethics in Aotearoa New Zealand, *AlterNative*, 10(2) online **(Paper 5)**.

Tauri, J (2014c) Criminal Justice as a Colonial Project in Contemporary Settler-Colonialism, *African Journal of Criminology and Justice Studies*, 8(1): 20-37 **(Paper 1)**.

Reviewed and awaiting publication

Tauri, J (2016) Ritual and the Social Dynamics of Policy Making in New Zealand, P. Howland (Ed.), *Ritual Aotearoa New Zealand: An Effusive Introduction*. Wellington: CANZ (in print) **(Paper 6)**.

Statement on the Contribution of Co-Authors

The following statement provides details of the contribution of the candidate and contributing authors' in relation to the following three papers included in the thesis:

Tauri, J and Webb, R (2011) The Waitangi Tribunal and the Regulation of Māori Protest, *New Zealand Sociology*, 26: 21-41.

Roguski, M and Tauri, J (2012) The Politics of Gang Research in New Zealand, in *Crime, Justice and Social Democracy Proceedings of the 1st International Conference* (vol. 2). Brisbane: Queensland University of Technology, School of Justice: 26-44.

Tauri, J and Webb, R (2012) A Critical Appraisal of Responses to Māori Offending, *International Indigenous Policy Journal*, 3(4): Article 5 (online).

The contributing authors' were Dr Robert Webb, University of Auckland, and Dr Michael Roguski, Kaitiaki Research and Evaluation. Authorship of the papers was split evenly (50/50) on each of the papers listed above. Signed documents by Dr Webb and Dr Roguski confirming the status of their contribution are included in the Appendices.

Presentations Arising from the Thesis

1. 2nd New Zealand Criminology Symposium, AUT University, Auckland, 9 February 2015: *Breaking the Criminal Justice-Criminology Nexus – Empowering Indigenous Peoples.*
2. Māori Association of Social Science Conference, Massey University, Palmerston North, 19-21 November 2014: *Academia as a Site of Neo-Colonial Practice in Settler-Colonial Societies.*
3. Māori Association of Social Science Conference, Massey University, Palmerston North, 19-21 November 2014: *Globalising Restorative Justice - Disempowering Indigenous Peoples?*
4. International Indigenous Legal Conference, Queensland University of Technology, Brisbane, 24-27 June 2014: *Criminal Justice as a Colonial Project in Settler-Colonialism.*
5. European Criminology Conference, Budapest, 4-7 September 2013: *Globalisation of Restorative Justice and Indigenous Justice.*
6. Crime, Justice and Social Democracy, 2nd International Conference, Brisbane 8-11 July 2013: *Criminological Research and Institutional Ethics Protocols: Empowering the Indigenous Other or the Academy?*
7. Australasian Youth Justice Conference: Changing Trajectories of Offending and Reoffending, Australian Institute of Criminology, Canberra, 20-22 May 2013: *Crime Control, Politics and Policy Production – Critical Reflections on the Demonisation of Indigenous Youth.*

8. Australian New Zealand Society of Criminology Conference, University of Auckland, Auckland, 27-29 November 2012: *'If You're So Good, Why is Your Policy so Bad'? A Māori Critique of Crime Control in New Zealand.*
9. American Society of Criminology Conference, Chicago, 14-17 November 2012: *Empowering Indigenous Justice in the Neocolonial Context.*
10. Australian Critical Race and Whiteness Studies Association: Directions and Intersections Conference, Surfers Paradise, 7-9 December 2011: *A Critical Commentary on Australasian Criminology's Engagement with Indigenous peoples and their Criminal Justice Issues.*
11. Restorative Practices International: Third International Conference, Wellington, 23-28 November 2011: *Imagining a Future for Indigenous Transformative Justice in Settler Societies.*
12. Crime, Justice and Social Democracy: An International Conference, Queensland University of Technology, Brisbane, 25-28 September 2011: *Criminology and the Disempowerment of First Nations in Settler Societies.*
13. Crime, Justice and Social Democracy: An International Conference, Queensland University of Technology, Brisbane, 25-28 September 2011: *The Politics of Youth Gang Research in New Zealand* (joint presentation with Dr Mike Roguski, Victoria University of Wellington).
14. A Symposium on Indigenous Sentencing, Punishment and Healing, James Cook University, Cairns, 5-6 July 2011: *A Critical Commentary on Criminological Research and Indigenous Peoples.*
15. Aboriginal Justice Conference, Penticton, British Columbia, 8-10 March 2011: *Crime Control Policy and First Nations – A Critical Commentary on Current Trends and Issues in Settler Societies.*

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Every colonised people – in other words, every people in whose soul an inferiority complex has been created by the death and burial of its local cultural originality – finds itself face to face with the language of the civilising nation: that is, with the culture of the mother country. The colonised is elevated above the jungle status in proportion to his adoption of the mother country's cultural standards. He becomes whiter as he renounces his blackness, his jungle.

Franz Fanon (1968: 18).

PART I

Overview of the Research

Motivations

The principal motivation for this thesis is the author's concern at the lack of attention given by state policy makers and administrative (authoritarian) criminologists, to indigenous experiences of crime control as practised in settler-colonial contexts (see Tauri, 2013c; 2015). Although growing steadily, the academic lexicon that privileges the Indigenous experience is relatively small, especially when compared with the material generated by western criminology over the past century (Agozino, 2004). Unfortunately, as Agozino (2003; 2004) and Tauri (2013c; 2015) demonstrate, much of what is published *about* us has rarely been created *with* us, and meeting the needs is designed to meet the needs of the state and the non-Indigenous members of the academy. In many instances the data used to inform criminological commentary on Indigenous peoples is gathered 'from afar' through the use of statistical analysis and other forms of non-engaging methods (see Deckert, 2014; 2015). In contrast, a majority of the material included in this thesis was generated from direct engagement with the experiences and views of Māori and other Indigenous peoples. Some of the contributors work in the Academy, others for government agencies, and still others work directly with their communities as social service providers. It is hoped that in privileging the experiences and perspectives of Indigenous peoples, this thesis will assist the development of a critical Indigenous justice scholarship that offers an empowering alternative to the hegemony the settler-colonial state, aided by western criminology, currently holds over the development of 'legitimate knowledge' about Indigenous peoples' experiences of crime control.

The lack of Indigenous voices within the cacophony of noise that emanates ceaselessly from the discipline of criminology, is made obvious in the contemporary moment by the frequent neglect by administrative and/or authoritarian criminologists to investigate the impact that the globalisation of crime control is having on Indigenous peoples (Tauri, 2013c; Tauri, 2014a). As demonstrated in Paper 4 (see Tauri, 2014a), the critical study of the globalisation of crime control is especially important to Indigenous peoples because of its close association with the recent, rapid expansion of the restorative justice industry. Of particular concern to Indigenous is the industry's marketing of boutique products such as youth conferencing and sentencing circles as Indigenous-inspired products; a strategy that has facilitated the successful cross-jurisdictional transfer of these products, while also negatively impacting moves by Indigenous peoples to develop their own justice processes (ibid).

Another neglected issue is the role the Academy itself plays in disempowering Indigenous peoples, especially in the realm of knowledge construction. In response, the thesis includes material produced to challenge the hegemony the academy holds over institutional research ethics processes, and frameworks for determining what is/is not appropriate knowledge in relation to Indigenous experiences of crime control (Tauri, 2013c; 2014b).

Any thesis that claims to offer a critical analysis of the impact of crime control on Indigenous peoples cannot do so without engaging with the processes utilised by the settler-colonial state to formulate policy. For this reason, the thesis contains three papers designed to address the politics of settler-colonial policy construction (Tauri,

2013c; 2015; Tauri and Webb, 2012). Collectively, the papers demonstrate that far from being an 'evidence-based' process, the crime control policy process utilised in settler-colonial contexts like New Zealand is heavily impacted by the *politics of necessity*, including silencing (or redirecting) critical voices, especially those emanating from the Indigenous perspective (Tauri, 2009b).

Before launching into a thorough overview of the key themes of the papers contained in the thesis, it is important to set out the epistemological and methodological frameworks that underpin the authors approach to research.

The Epistemological Stance of the Researcher

In his ground breaking work 'Counter-Colonial Criminology: A Critique of Imperialist Reason', the Nigerian scholar Biko Agozino (2003) entered the criminological knowledge wars that developed during the 1970s and 1980s about what did/did not constitute valid criminological knowledge. Employing a rather crude binary, the debate occurred between the hard scientists of administrative criminology - those who follow the precepts of scientific research (marked by adherence to specific 'scientific' research principles such as objectivity, distance from research subjects, etc) and who tend to "believe that commitment is undesirable in social sciences" - and on the other side, 'standpoint' researchers who argued that "objectivity is impossible or undesirable" when pursuing knowledge through social research (Agozino, 2003: 157). Agozino offers a slightly different formulation of the researcher/participant relationship to these two positions, one that exhorts the researcher to move from "[the] false dichotomy between objectivity and commitment". Instead Agozino (ibid: 157) endorses *committed*

objectivity as a position that “capture[s] the inextricability of the articulation of the processes of commitment and objectivity” that are key to meaningful social inquiry.

In one of his last significant works, ‘The Criminological Imagination’, the late Jock Young (2011) provided a potent critique of both the power of the scientific discourse to dominate social inquiry and its many shortcomings when confronted with the often messy arena Schoen (1973) refers to as the ‘social context’. Young (2011: 62) argues “how can it be, in a hyper-pluralistic world where creativity and self-invention is a priority, where the solidity of the world is increasingly shaky, and where reflexivity is the order of the day, that such a mechanistic ideology [such as the ‘scientific method’ in social inquiry] can flourish”? More pointedly, Young charts the rise of a fundamentalist positivism within social inquiry “which attempt[s] to generate fake objectivity by postulating a yawning gap between the observer and the observed” (ibid: 65). Young (ibid: 65) further argues that the creation of the tyranny of distance between the knowledgeable, distant (scientific) observer and the ‘othered’ (the observed, analysed, critiqued and controlled research population) is “unique in the annals of othering”. While at face value this position offers a powerful statement of the link between the scientific method and the process of othering, it is a highly contestable statement when considered against the extensive literature exposing the othering practices deployed by colonial (and now, neo-colonial) states during the colonising processes; many of which are arguably being deployed extensively in the settler-colonial moment (Agozino, 2003; Fanon, 1967; Smith, 1999). Putting this important point aside for now, we are able to accept that Young’s critique of the distancing techniques favoured in administrative criminology’s preference for external observations and numerical analysis is profound.

It was also highly impactful for the methodological framework employed in this thesis – a rejection of non-engaging methodologies (in particular quantitative approaches devoid of any engagement with Indigenous peoples with regards design, data gathering, analysis and dissemination) that mirrors the sentiments expressed in the following quote, in which Young (ibid: 66) states that:

It is usually – although not always – underpinned by the notion of deficit – but as it aspires to a scientific rendering of reality, it conceives of such an othering in a numerical fashion. Notably it attempts to project onto human reality an underlay of numbers, a quantifiable frame on which human action can be seen to hang. Further it claims that such a depiction in number and equation, in graph and in Greek symbolism gets down to the heart of the matter – portrays the true nature of what is actually going on in human conduct.

Importantly, for the construction of the Indigenous emancipatory methodology employed by the author (as discussed in detail below), Young's critique involves the recognition of difference as key to critiquing the *researcher as outsider* basis to positivistic notions of researcher objectivity, in particular his argument (ibid: 66) that "[s]ociological investigation occurs in a world which is stratified by class, gender, age, race and ethnicity. At the very least it involves relations of class. The poor are not some inhabitants of a distant island, they are an integral part of our (middle class) material existence".

If a fundamental rationale for the importance of objectivity in social inquiry is the need to accurately describe social experience and social context, then one can argue that our methodology must be such that it privileges the perspectives and experiences of the (Indigenous) Other (Cohen 1988; Smith, 1999). It should strive to be emancipatory; supportive of those groups marginalised and/or subjugated within the settler-colonial context (Agozino, 2003). For this reason the empirical research that informed the thesis was based on a set of epistemological principles designed to enable me to undertake an *Indigenous emancipatory methodology*, the key principles of which are set out in the following section:

The Underlying Principles of an Indigenous Emancipatory Methodology

Objectivity is the process of taking a position

Nagel (1986: 7) argues that “[t]he limit of objectivity... is one that follows directly from the process of gradual detachment by which objectivity is achieved”. In comparison, Agozino argues that to ensure objectivity within social inquiry presupposes *positionality*, which Agozino (2003: 163) described as “the procedure of taking a position without concealing or distorting oppositions to the position taken”. Thus, within Agozino’s schema, the concepts of objectivity and subjectivity, in terms of how one positions themselves in the research context, are not necessarily mutually exclusive. As Deutscher (1983: 2) explains, “[e]very detachment is another kind of involvement – the idea of complete objectivity as complete detachment is a complete fraud”. Rather than seeking gradual or even total detachment (if that is indeed possible) from the social context within which my research took place, instead I sought to speak with empirical authority about the life-world of Indigenous peoples by *purposely*

standing within the social context of their lived experience. Objectivity was ‘achieved’ by the fact that I, as a criminologist and social researcher, was an ‘outsider’ through the fact that I was not Stolo, was not a practitioner or Stolo justice, or indeed was not of the same Iwi (tribe) of the majority of Maori interviewed, or worked for the social service organisations to which they belonged. ‘Positionality’ came from choosing to engage directly with my participants in the design phase, the engagement phase and the data collection phases of the research. The position taken was of a researcher politically committed to the cause of enhancing Indigenous peoples’ self-determined practice within the realm of justice (see below).

Objectivity does not preclude advocacy or politics

As Agozino (2003: 166) states “[i]t is always good for those who have a voice to speak up for the silenced rather than hide behind the mask of scientific objectivity to speak only about silences”. He further indicates that the process of advocacy must involve engagement with the Other because “... it will be even more commendable for scholars to speak in solidarity *with* the oppressed rather than simply speak *for* them as their silence implies voicelessness” (ibid: 166, emphasis Agozino’s).

All research is political

The committed objectivity upon which this thesis is based recognises the political bases of all research. As Agozino (2003: 167) argues “[s]ocial scientists may pretend that they are studying race relations... with point-of-viewlessness, but their findings eventually inform political practices of different tendencies”. The empirical material contained in this thesis is *political* in that it 1) derives from my own preconceived bias, namely as a

Indigenous political activist and as an Indigenous scholar who rejects the notion that social inquiry must derive from a 'pure objectivity', 2) privileges the perspectives, experiences and issues of Indigenous peoples, 3) critically analyses the activities of the powerful, such as policy makers, criminologists, and criminal justice institutions; and 4) offers solutions to criminological and policy praxis that empowers Indigenous peoples in their struggle for self-determination.

The Focus of the Research

The methodology discussed in the following section was designed to enable the researcher to explore the following broad questions:

1. What techniques of neutralisation and control if any, are employed by the policy sector in its attempts to deal with the wicked problems of Indigenous over-representation and resistance?
2. What part does criminology/the academy play, if any, in the settler-colonial state's war of manoeuvre against Indigenous self-determination in the realm of justice?
3. How has the settler-colonial state responded to Indigenous challenges to, and resistance of, its hegemony over justice?
4. What effect, if any, is the expansion of a globalised crime control market having on indigenous peoples in neo-colonial jurisdictions?

Methodology and Methods

The process of engagement

A number of methods were employed to support the development of the thesis. In line with the principles of an *Indigenous Emancipatory Methodology* outlined previously, the

methods employed were designed to facilitate in-depth engagement with Indigenous justice practitioners, researchers, scholars and programme providers. The material is also informed by significant correspondence (via phone, email and skype, as well as face-to-face meetings) with a number of non-Indigenous, critical scholars from various countries, colleagues with long histories of researching *with* Indigenous peoples. As such, much of the work contained in the thesis was informed by participants' first-hand experiences of the workings of the criminal justice systems deployed in settler-colonial societies. Their views and experiences were also sought on the Academy's response to Indigenous justice activism, knowledge production, and of Indigenous justice processes, both 'traditional' and/or imported from external, globalised sources.

It was not the purpose of the research to focus on the performance of state functionaries in developing Indigenous-specific crime control policies or interventions. The focus instead was on general issues that arise from the politics of crime control, namely the impact of the globalisation of crime control interventions on Indigenous peoples residing in settler-colonial societies; and the role of criminology and the wider academy, in the continued subjugation of Indigenes through their ongoing support for authoritative criminal justice (Tauri, 2014a).

The engagement setting

The participants

The views and experiences of research participants from Canada (specifically, the Stó:lō First Nation of the Fraser Valley, British Columbia), New Zealand, Australia and the US informed the eight papers included in the thesis. Research participants were selected

either by the researcher or a relevant organisation, such as an Elders' Council. The selection criteria was based on their knowledge of and/or involvement in Indigenous justice practice, Indigenous political activism, and/or the state's policy development and implementation process. Overall, up to 60 participants took part in the study.

Participants were drawn from three principle 'justice communities', namely:

- Members of Indigenous communities/Iwi (tribes) especially those involved in responding to social harm in indigenous communities, including practitioners, providers and activist/academics (32 individuals in total). For example, the paper on the globalisation of restorative justice was directly informed by the experiences of members of the Stó:lo First Nation, in particular the impact of the inter-jurisdictional transfer of the Family Group Conferencing (FGC) forum on their justice aspirations and practices as they sought to resurrect their own traditional processes. Similarly, the experiences of Indigenous and critical, non-Indigenous academics and researchers from New Zealand and Canada were canvassed to inform development of the critical analysis of the impact of the academy's ethics processes on the development, ownership and dissemination of Indigenous knowledge.
- Members of the academic community and researchers from Canada and New Zealand whose research and activism focuses on state delivery of criminal justice services to Indigenous communities, and state responses to Indigenous justice activism and scholarship (18 individuals in total). Engagement with this community focused on their experiences of the development of crime control policies and interventions and transfer between jurisdictions and the impact of

this activity on Indigenous; and the impact of academic research ethics processes on the development and dissemination of Indigenous knowledge.

- Government officials: involved in the development of policies and interventions focused on Indigenous offending and victimisation were interviewed to inform the papers on authoritarian criminology and the globalisation of crime control products, such as the FGC (10 individuals in total). Interviews were carried out with policy workers in New Zealand and Canada. Engagement with this group focused on:
 - the rationale behind the development of crime control policies and interventions, particularly those aimed at Indigenous peoples; and
 - their views on, and/or experiences of the transfer and importation of crime control products across jurisdictions.

Research methods

A number of research techniques will be utilised to enable information related to the key questions/themes of the project:

Individual, unstructured qualitative interviews: Were used to record the experiences of key informants who preferred to be engaged with as individuals (as opposed to participating in hui/focus groups). The interviews were conducted using a narrative style based on a semi-structured schedule built upon key themes, rather than a list of closed, restrictive questions. This technique is considered more appropriate for engaging with Indigenous elders, academics and practitioners (see Smith, 1999),

although altered slightly for interviews with non-indigenous public servants. In total 26 individual interviews were carried out during the research from 2010 to 2013.

Focus group/hui: Were employed where necessary and appropriate. Engagement with Indigenous participants combined individual interviews (in the case of academics, researchers and political commentators) and hui (for engagement with providers, practitioners, Elders' Councils, etc). The engagement with the Stó:lo First Nation followed the tikanga (values or rules) set by elders/elder councils and, therefore, privileged a hui-type form for gathering data (see Haig-Brown and Archibald (1996); Rigney (1999) for discussion of the development of appropriate, empowerment-focused research engagement techniques with Canadian and other Indigenous peoples). In all, twelve focus groups/hui were held with Indigenous Elders', practitioners and community members. Some of the focus groups were purposely arranged for the study, while others were arranged for other reasons (Indigenous business, conferencing related to social harm, etc), and to which the researcher was invited to participate.

Structure of the Thesis

The thesis is made up of three parts that contain the substantive materials (Parts II, III and IV), and an appendices (Part V):

Part II – Conceptual and theoretical discussion

This section provides an introduction to the primary conceptual and theoretical framework for the thesis. It brings together the key arguments and findings into a coherent whole and analyses in detail the colonial projects formulated and utilised in

settler-colonial societies that impede the ability of Indigenous peoples to achieve a measure of self-determination in the justice sphere.

Part III – Published papers

This section presents the eight published papers that make up the thesis; including:

Paper 1: Criminal Justice as a Colonial Project in Contemporary Settler-Colonialism

This paper offers an Indigenous-centred, critical perspective on the colonial projects (Thomas, 1994) employed in settler-colonial contexts to negate, or at the very least nullify, the negative impact of two inter-related wicked problems that are deemed peculiar to these jurisdictions: the high levels of Indigenous over-representation in the criminal justice system, and the impact of Indigenous resistance to the hegemony of the imposed, criminal justice systems deployed by settler-colonial states. The paper is comprised of three inter-related parts; the first two outline the construction and deployment of colonial projects in the colonial and neo-colonial contexts, wherein it is argued that the matrix of criminal justice was foundational to the state's attempted eradication of, and eventual socio-economic marginalisation of Indigenous peoples. The final part offers an argument that the continued success of criminal justice as a (neo)colonial project, stems from its parasitic relationship with the discipline of criminology. Together, these supportive colonial projects deployment against Indigenous peoples demonstrate that *structural violence* continues to be a significant component of social control in the neo-liberal, neo-colonial context.

Paper 2: Indigenous Critique of Authoritarian Criminology

Biko Agozino (2010: i) has described the discipline of criminology as “a ‘control-freak’”; one whose imperialist reasoning is most evident when supporting “the [contemporary states] exercise of internal colonialism and neo-colonialism” within settler-colonial societies. In recent times the development of supposed evidence-based crime control policy throughout Western jurisdictions appears to have reinvigorated administrative criminological formations to the extent that they once again dominate policy discourse relating to the issues of Indigenous over-representation and critique of the operations of criminal justice. This paper seeks to explore this state of affairs by firstly, providing a critical examination of the role criminology plays in the continued neo-colonial subjugation of Indigenous peoples and secondly, the role that myth construction and maintenance plays in the hegemonic activities of a particularly authoritarian form of the discipline. A critical analysis of two articles from a recent Australian and New Zealand Journal of Criminology special edition on Aboriginal violence (2010) highlights the core features and, arguably, the key failings of this authoritarian criminology in relation to its response to Indigenous justice issues: namely a preference for undertaking research *on* instead of *with* Indigenous peoples, the privileging non-engaging research methodologies and the potent use of myth to promote practitioners’ views of the world and silence the Indigenous voice.

Paper 3: A Critical Appraisal of Responses to Māori Offending

This article critically analyses the role that criminological theory and specific policy formulations of culture play in the New Zealand state’s response to the over-representation of Māori in the criminal justice system. Part one provides an overview of

the changing criminological explanations of and responses to, Māori offending in New Zealand from the 1980s onwards and how these understandings continued colonialist approaches to Māori and crime, into the neo-colonial context. In particular we chart the shift in policy development from theorising Māori offending as attributable to loss of cultural identity, to a focus on socio-economic and institutional antecedents and finally through the risk factors, assessment and criminogenic needs approaches that have gained prominence in the current policy context. In part two the focus moves to the strategies employed by members of the academy to elevate their own epistemological constructions of Māori social reality within the policy development process. In particular, the critique scrutinises recent attempts to portray Indigenous responses to social harm as unscientific and in part responsible for the continuing over-representation of Māori in New Zealand's criminal justice system. The purpose of this analysis is to focus the critical, criminological gaze firmly on the activities of policy makers and administrative criminologists in relation to Māori as Indigenous peoples

Paper 4: An Indigenous, Critical Commentary on the Globalisation of Restorative Justice

The study and impact of the globalisation of crime control policies and interventions has recently begun to receive significant attention from critical indigenous scholars. Reasons for the increased focus on this issue include the restorative justice industry's increasing utilisation of so-called indigenous philosophies and practices in the design of its various products; the pervasive use of indigenousness imagery, and emphasis on the supposed 'indigenousness' of the industry's products, as displayed in much of its marketing material. A further motivation is the increasing popularity of supposedly indigenous-inspired restorative justice initiatives, in settler-colonial societies and

increasingly throughout Western jurisdictions experiencing significant over-representation of minorities in their criminal justice systems. The purpose of this paper is to provide an Indigenous critique of the globalisation of restorative justice and the industry's utilisation of indigenous practices, symbols and philosophies. The paper focuses on the impact that the international transfer of restorative products is having on relationships between Indigenous peoples and central governments in neo-colonial jurisdictions, particularly New Zealand and Canada, especially Indigenous peoples drive for greater self-determination in these jurisdictions.

Paper 5: Resisting Condescending Research Ethics in Aotearoa New Zealand

Indigenous commentators have long expressed concerns with the impact upon them and their communities, of the research-related activities of government agencies and academic institutions. More recently, the critical Indigenous gaze has focused upon the activities of Research Ethics Board's (REB) and their members. Specific concerns include the preference of REBs for Eurocentric conceptualisations of what does/does not constitute ethical research conduct, and the privilege accorded liberal notions of the autonomous individual participant at the expense of communitarian approaches to ethical conduct and knowledge construction. Informed by the author's reflections on the REB process, those of Indigenous Canadian and New Zealand research participants, and the extant literature, this paper begins by critiquing the processes employed by New Zealand REBs to assess Indigenous-focused or Indigenous-led research in the criminological realm, before ending with a call for Indigenous peoples to resist the condescending ethos of the Academy's ethics processes, by developing REBs that work for the self-determination for their peoples.

Paper 6: Ritual and the Social Dynamics of Policy Making in New Zealand

This paper focuses on the activities of the Policy Industry for the following reasons; i) the industry has the ability to significantly impact on our lives through its close relationship with Cabinet, the development of legislation and access to extensive budgets for policy development and implementation; and ii) to demystify the mythological world policy makers encapsulate themselves within. I attempt to do this by referring to specific case studies based on inter-agency projects I participated in over the past decade in the crime control policy sector.

Paper 7: The Waitangi Tribunal and the Regulation of Māori Protest

Much of the current academic and political discourse related to the development and operations of the Waitangi Tribunal over its first twenty years portray it as a forum that provided Māori with a meaningful avenue for settling Treaty grievances compared to the formal legal systems performance in the preceding 100 years. In contrast, we argue that from its inception and throughout much of the 1980s, the Waitangi Tribunal functioned primarily as an informal justice forum that assisted the New Zealand state's regulation of Māori Treaty activism during the transition from a Fordist to a Post-Fordist mode of capital accumulation.

Paper 8: The Politics of Gang Research in New Zealand

Like many other Western jurisdictions over the past sixty years, New Zealand has had to contend with episodes of moral panic regarding the activities of youth gangs. The most recent episode occurred in 2005-2007 and was spurred by a perceived escalation in inter-gang conflict and violence in the Counties Manukau areas within greater Auckland,

New Zealand. This particular episode was unique in the New Zealand context for the level of attention given to youth gangs by the government and policy makers. This paper reports on the authors' experiences of carrying out research on the youth gang situation in Counties Manukau as part of an inter-agency project to develop a response to gang-related violence. Particular attention is paid to the ways in which government officials attempted to mould the research process and findings to suit an already emerging policy framework, predicated on supporting 'business as usual', at the expense of research participants' stated desire for great autonomy to develop and delivery appropriate youth services to their communities.

Part IV – Discussion

This section provides an overview of the linkages between the eight papers and how, collectively they meet the aims of the thesis.

Part V – Appendices

This part provides evidence of permission to include published papers, of peer review, and statements from co-authors.

Significance of the Thesis

The significance of this thesis can be summarised as follows: First, the thesis examines topics that were previously unexplored, underdeveloped, or analysed using research that did not involve direct engagement with Indigenous peoples and their experiences. For example, to date, little of the criminological literature on globalisation explores the Indigenous experience. As such, this thesis offers one of the first empirically informed

works on two interrelated issues with the contemporary globalisation of crime control policy, and the increasing development of markets for crime control products. Employing an Indigenous Emancipatory Methodology the paper utilises the real world experiences of Indigenous peoples to demonstrate the *nefarious* impacts of the globalisation of crime control policies and products, especially those emanating from the expanding restorative justice market. Despite the fact that most of those involved in this industry and plying their policies and franchised programmes on the globalised market are not Indigenous, nevertheless they regularly use Indigenous cultural artefacts in the design and, most importantly, to market their products (Tauri, 2009b; 2014c).

Second, another original feature of this thesis is its attention to the intersection of the criminal justice sector and academic criminology, and the impact this relationship has on Indigenous peoples residing in settler-colonial jurisdictions. Again, little literature has been developed, especially from within the discipline, that focuses critically on this important policy intersection. As one of the few criminologists to write on this subject, Biko Agozino (2003; 2004) has demonstrated that not only is the relationship parasitic and self-serving but also rarely is it of value to Indigenous peoples. And perhaps more importantly, the discipline has a significant historical blind spot, namely its lack of acknowledgement of the role it played in the colonial subjugation of Indigenous peoples.

The papers contained in this thesis titled 'Indigenous Critique of Authoritarian Criminology' and 'Criminal Justice as a Colonial Project in Contemporary Settler-Colonialism', carry on the key theme of the intersection of the justice system and the

human sciences in developing what Thomas (1994) called colonial projects; technologies of social control deployed by the state that facilitate the ongoing subjugation and criminalisation of Indigenous peoples in the settler-colonial context. The papers further demonstrate that the discipline itself has an important, and potentially damaging contemporary blind spot, namely the role many of its practitioners play in silencing the Indigenous experience of criminal justice, through the privileging of Eurocentric theories, and control of academic institutions of the research context, especially what does/does not constitute appropriate research ethics.

And thirdly, a further significance of the thesis might at first glance appear to be more of a weakness, namely the seemingly eclectic range of issues covered in the eight papers. In fact the eclectic range of issues covered throughout the papers is purposeful, for it demonstrates the array of colonial projects, technologies of control, policies, strategies and so forth, that are arraigned against Indigenous peoples in the settler-colonial context, and especially within the grand colonial project of criminal justice.

The papers are grouped into three interrelated sections: the first, represented by Paper 1, provides a theoretical and conceptual argument that the criminal justice system, in partnership with the discipline of criminology produces a range of colonial projects that further the settler-colonial states subjugation of Indigenous peoples. Section two is made of Papers 2, 3, 4 and 5. The common conceptual thread linking them is a critical focus on the strategies of disempowerment deployed against Indigenous peoples and their knowledge by the academy, ranging from criminology's silencing of the Indigenous voice by restricting access to the policy making process, through to attempts to

delegitimise Indigenous knowledge by controlling definitions of *right and ethical conduct* through institutional (western) research ethics processes that sideline communitarian approaches to determining ethical conduct and informed consent, and finally to the use of Indigenous cultural artefacts to sell Eurocentric crime control products on globalised crime control markets. Lastly, section three offers papers 6, 7 and 8, all of which provide case studies that demonstrate how the state sector subjugates Indigenous peoples through the process of policy development; whether through the construction of judicial processes that corral Indigenous critique within informal justice mechanisms, or deploying ritual and myth to control policy development for social issues of significance to Indigenous peoples, such as youth justice and gang-related crime. The criticism of eclecticism, if made, has some validity. In response we argue that they appear eclectic because of the very fact the state and the academy deploy a range of colonial projects to ensure their domination of the definition of and response to, the social issues facing Indigenous peoples.

PART II

Conceptual and Theoretical Discussion

Criminal Justice and the Academy's Response to Indigenous Peoples: A Counter-Colonial Critique

Introduction

Security? Culture? The rule of law? In the meantime, I look around and wherever there are colonisers' and colonised face to face, I see force, brutality, cruelty, sadism, conflict, and, in parody of education, the hasty manufacture of a few thousand subordinate functionaries.

Caesaire (1972: 21).

It has been argued that law and justice in contemporary western societies reflect the subjectivity and epistemology of the dominant culture, or more specifically of white, wealthy men (Ramsley and Marchetti, 200). This dominant subjectivity has also been presented as both the object and the subject of the law/justice nexus. It is the *object* in that it is *he* whose behaviour and sensibilities that *the* law has in mind when it assembles its proscriptions and remedies. It is *his* perception of what constitutes a just response to a social harm that dominates the development of policies, legislation and 'effective' interventions. And, perhaps most importantly, it is this subject who constructs *the* law itself (Fitzpatrick, 1992; Hudson, 2006). Some have argued that through its discourse, practices and mythologies, criminal justice in Western, settler-colonial contexts continually invokes and reproduces white, masculine subjectivity of both 'the law' and the proper maintenance of social order (Agozino, 2004; Fitzpatrick, 1992; Naffine, 1990).

The case that western criminal justice is white man's justice (or at least the white, middle class male perception of 'it') is sufficiently well established in criminology and

legal scholarship that it need not to be re-litigated in detail here. Suffice to say that the general charges brought against conventional western criminal justice systems with regards responses to the issue of difference, (be it related to cultural practices, ethnicity and so on) is that they all too often fail to protect members of minority ethnic groups and Indigenous from harms they experience by virtue *of their ethnicity* and/or *their colonised status* (Cunneen, 2005; Jackson, 1992; Tauri, 2011b). Furthermore, considerable evidence exists that demonstrates that settler-colonial justice systems are significant players in the ongoing subjugation of Indigenous peoples, minorities, immigrants, and other groups defined by the state as sufficiently 'Other', or potentially menacing to the social fabric, to warrant significant surveillance from the institutions of crime control (Anthony, 2013; Tauri, 2013c; Wacquant, 2009). It is further argued that minorities, immigrants and Indigenous peoples are discriminated against because they are often over-penalised for indiscretions compared to non-Indigenous groups (Cunneen, 2006; Harris, 1999; Kitossa, 2014). A primary cause of this discriminatory practice are the influence of historical, but still powerful perceptions that Indigenous lack the core characteristics of white, middle class masculinity (Cunneen, 2005) in much the same way that feminist theorists have argued that women are (see Drucilla, 1991; Smart, 1990).

Critics of western criminal justice systems point out that law treats Indigenous peoples in the same way that dominant society treats them: law cannot be expected to remedy injustices legally before they are recognised as injustices socially (Jackson, 1992). We might view this process at work in the length of time it has taken for racialised or ethnicised harms to be taken seriously by law. More often than not, legal/criminal

justice progress occurs in response to demands from Indigenous social movements, and the commentaries and actions of Indigenous organic intellectuals, those individuals who straddle the academic and political contexts and seek to provide empirical gravitas to Indigenous radicalism (Poata-Smith, 1996). While law/justice can be on the side of progressive social movements, and while one could point to some instances where law/justice has achieved some success in bringing about progressive change, the law/justice processes applied in settler-colonial contexts have rarely *led* progressive movements, but simply *acted* upon or *reacted* to them (Fitzpatrick, 1992).

Moving from documenting injustices to looking at the roots of these injustices in the constructions of law/justice and the liberal philosophies on which western law is based, reveals the closures of law/justice and the limits of justice that can be expected. With regard to the situation of women, MacKinnon (1991) has argued that liberal justice only provides redress for women who can demonstrate that they are 'the same' as men, or at least the same as white, middle class men. Women who are 'like men' will be treated equally with men by law when it is asked to redress harms or claim rights to those aspects in which they have established themselves as the same. For example, professional women doing the same work as male colleagues have a reasonable chance of success in bringing complaints against unequal pay. On the other hand, aspects of their lives and personalities in which they are not perceived as the same as men will not receive equal treatment or redress for harms. Thus, it has been more difficult for women to gain rights relating to their bodies rather than to property or life in the public sphere. Abortion rights, fertility rights, maternity rights, and rights that provide redress

for sexual and other forms of gendered violence, remain contested and only partially available (Lacey, 1998, Savell, 2002).

The response of law/justice systems to Indigenous peoples residing in settler-colonial contexts is comparable in many ways to the treatment of (white, western and other) women in this regard: in order to gain the rights and remedies for wrongdoing they have to demonstrate that they are 'the same' as white men. And, in recognition of the class-based foundations of capitalist law, they must be the same (or near enough) to white, middle class men in attitude, conduct and 'breeding' (Barak et al, 2001; Mann, 1993). Again, professionals or property-owners who suffer harms or injustices in relation to these attributes (for example, discrimination in the work place, burglary and robbery) will find themselves supported by the law (at least in principle). However, when Indigenous demands for justice concern acts or omissions directly related to their indigeneity and status as Indigenous peoples, these demands are more often than not contested, marginalised or ignored (Fitzpatrick, 1992; Tauri and Webb, 2011). Justice is, therefore, too often confined to issues or episodes in which Indigenous claimants are 'like white men' in their mode of being in the world.

For Indigenous peoples and other ethnic minorities residing in Western jurisdictions such as the United States, this means that there were no rights extended to slavery because the conditions of slavery were unlike the conditions of white male free citizens (Agozino, 2003). Law specified and regulated the rights of slave-owners, but as Patricia Williams (1991: 154) remarked, "the legal system did not provide blacks, even freed blacks, with structured expectations, promises or reasonable reliance's of any sort". In

the colonial context, the laws protecting the land rights of free white men were not extended to Indigenous peoples whose customary land ownership practices were undermined by an economic system designed to finance individuals. Disregard for Indigenous peoples' beliefs and practices relating to land tenure was the norm, and laws enabling settlers to take land at will were passed with regularity in the colonial contexts of New Zealand, Australia, Canada and the US (see, Belich, 1995; Churchill, 1997 and Pratt, 1992).

As demonstrated in Papers 2 and 6 of this thesis (Tauri, 2013c and Tauri, 2015), as western societies supposedly became more responsive to Indigenous demands for self-determination, attempts to remedy these have further demonstrated the whiteness of law and criminal justice, and therefore the importance of this sphere of policy for the continued hegemony of settler-colonial government. These responses further highlight the limits of the justice that can be obtained by subordinated social groupings in the settler-colonial context. Criminal justice responses to sexual and domestic violence, for example, reveal the dependence of law on stereotypes of male and female sexual roles (rape/consensual sex); and dependence on the idea of the behaviour of 'the reasonable man' (provocation/self-defence) further illustrates the (white)maleness of criminal law (O'Donovan, 1993). Similarly, wavering over definitions of racial crimes and differences in sentencing attributable to the ethnicity of victims further demonstrate the entrenched whiteness of criminal law in settler-colonial (and most other western) jurisdictions (Cunneen, 2006). Critical race theorists have demonstrated that the racialisation of crime, the criminalisation of, and the discriminatory sentencing and lack of serious legal response to attacks on the persons

and property of minorities, are, at base, structural. In other words the racialised practices of crime control agencies do not emanate from individual jurists' racist beliefs or the actions of 'a few bad apples' within the police, but primarily from the ideological constructs that drive institutional culture and practice (Hall 1980; Jackson, 1988; 1992; Schur, 2002).

In the following section we discuss the processes through which white man's law was imposed upon Indigenous peoples in the colonial context and seek to uncover the various colonial projects utilised by policy makers - and criminologists - to impose the colonial will upon the Indigenous context. In turn this section lays the foundation for identifying the colonial projects that form the basis of the role played by contemporary criminal justice in the continued subjugation of Indigenous peoples residing in settler-colonial societies.

The Imposition of Criminal Justice and Settler-Colonial Subjugation

Colonisation is always lethal to the colonised.

Oliver (1995: 19).

Prior to colonialism and the insertion of a capitalist mode of production within Indigenous contexts, the unification of social production and social cohesion was achieved within relatively small, localised communities (Fitzpatrick, 1992). During the growth of capitalism this organic unity was dissolved through the destruction of pre-capitalist production units and relations of dependence. In time they were replaced by

the laws of the market and the phantom objectivity of the capitalist state and western modes of law (Spitzer, 1982). It was this centralised form of legality and mode of production that was forced upon Indigenous peoples during the colonisation process (Agozino, 2004). The part played by the imposition of European law and criminal justice on the process of colonial subjugation of Indigenes cannot be overstated. By the end of the nineteenth century Indigenous control of traditional justice processes had all but ceased across all colonial contexts (Griffiths, 1993; Pratt, 1992; Rogers, 1987; Ward, 1995). During the European and American imperialism of the eighteenth and nineteenth centuries, Eurocentric legal systems were superimposed on large regions of Africa (Abel, 1979; Chanock, 1978; Okoth-Ogenda, 1979), the Americas (La Prairie, 1992) and the Pacific region (Brennan, 1993; Cunneen, 2005; Fitzpatrick, 1980; Hazelhurst, 1995; Pospisil, 1979 and Ward, 1995). We might refer to this era as the first wave of the globalisation of Western crime control. The second, which is taking place now, provides the focus for the fourth paper included in this thesis (see Tauri, 2014a).

The imposition of European law and institutions of crime control played a significant part in the colonisation process, especially as they were often deployed to “civilise and enlighten colonised peoples; to reshape their family lives, work habits, land ownership practices, and ways of handling conflicts” (Merry, 1992). European law and criminal justice were, therefore, important projects in the colonialist drive for hegemony over the settler context (see Tauri, 2014c; and discussion below). Later, they provided significant support for the attempted eradication of cultural and social differences as various settler societies moved into the assimilationist era of ‘late colonialism’ (Gadacz, 1987).

While each colonising power inevitably wants its form of governance, its hegemony, to prevail, there was no one colonial response to existing indigenous processes for dealing with social harm. Responses varied according to time, location, and the people who were driving colonisation and those being colonised. As some exponents of post-colonialism contend, the colonial process is not a fixed one. It is a process is by necessity, malleable; able to be altered or redirected to suit the prevailing socio-political and geographical conditions. Indeed colonialism, and its successor neo-colonialism, is best described as “a structure[s], not an event” (Wolfe, 1999: 163), one that is made up of hegemonic projects that arise from the ensuing conflict between the forces of colonisation and Indigenous peoples resistance to it (Proulx, 2001; Tauri, 2014c; see discussion below).

The negative other - the colonialist construction of Indigenous criminality

One of the significant features of the colonialist the imposition of supposedly ‘liberal’ western crime control systems, was the degree to which Indigenous peoples and their justice processes were excluded. Critics of liberalism point out that the exclusions and closures of liberal justice are not accidental oversights, but are inevitable *because* of the impact of liberal political philosophy. Said (1978, 1993) and Gilroy (1993) point out that liberalism needs the irrational, uncivilised, black, oriental and Indigenous Other who is delineated by their lack of everything that supposedly distinguishes the reasonable ‘man’ of Western socio-legal mythology. The Other is defined by their lack of democratic governance, their religious, custom-centred rather than rational legal systems, their lack of adherence to Western notions of human rights and their lack of

scientific achievement: in other words, they are distinguished by their lack of *enlightenment* (Smith, 1999). The narratives which construct this Otherness, these 'natives without rational law' were crucial for justifying hegemonic planned acts of subjugation, such as colonialism and slavery (Fitzpatrick, 1992). They were also important for the constitution of the Western subject's idea (ideal) of (his/her) self-identity. As argued earlier, liberalism recognises claims to justice made by those who demonstrate their possession of the qualities of the liberal (white, middle class male) subject. Each subject must suppress his/her inherent traits of Otherness (the child and/or the savage within) to demonstrate that he/she is one of the civilised, and not a 'native' (Ververde, 1996).

Arguably, the creation of the Other, he/she who sits outside the constituency of justice because of his/her supposed racialised deficiencies, is a linguistic necessity. The binary structure of our language means that we tend to recognise or define one thing by contrast with its supposed opposite. The imperative of the negative (Indigenous) Other demonstrates that liberal societies are constantly producing and reproducing divisions; between the rational and irrational, the deserving and undeserving (welfare recipient, victim, etc), the civilised and the uncivilised¹. As settler-colonial societies move, theoretically at least, towards more equal citizenship in broad notions of ethnic, gender and sexual *difference*, new distinctions may open up between groups within populations residing in the nation-state. Immigrants or refugees who accept the Australian,

¹ Durkheim (1985) makes a similar argument when he talks of the necessity of crime for the positive functioning of modern society. According to Durkheim, crime is a sign of a healthy society, one based on mutual obligation and recognition of a set framework of norms. Legitimation of these norms is aided by the construction of outsiders; deviants who, through society's negative response to their rule breaking, highlights for all, the negative ramifications of breaking social norms.

Canadian, New Zealand, or more broadly the Western, civilised way of life are distinguished in positive terms from those who do not: followers of non-Christian religions are divided into the moderate and the fanatical and, in the post-9/11 era, foreign nations are divided into the democratic and the anti-democratic ('for US', or 'against US'). To move beyond white man's justice, new models must be able to dissolve the logic of identity; the logic by which justice will only be possible if claims are based on being the same as the mythological white, male, reasonable person of law. To begin this process, we must start by critiquing white man's law and related Eurocentric conceptualisations of what is/is not social harm and how best to/not to respond to 'it'. And, as criminal justice is a fundamental ingredient in the construction of the social Other (see Becker, 1963 and Dotter, 2004) in the colonial context, any critical analysis of settler-colonialism must be informed by an *Indigenous critical standpoint* that injects the Indigenous perspective into the process.

Until now, much of the critique of liberalism, and the law, has come from critical schools of (Western) theory; radical criminology, left realism, Marxist criminology and various forms of feminist criminology. To date there has been little concentrated critique of liberalism, or law and of criminal justice based on a critical Indigenous perspective. Because of this, other, mostly non-indigenous voices have spoken on our behalf about 'our' experiences and perspectives (see Tauri, 2013c for a thorough discussion of this issue)². Some, including Chris Cunneen, Thalia Anthony and Harry Blagg in the Australian context, have produced exemplary work that demonstrates the power of

² Tauri (2013c, 2015) contends that much of the criminological literature on indigenous/ethnic minority issues originates from government sponsored research. More often than not indigenous participants have had little input into the development of the methodology, analysis and dissemination, and rarely do they have direct input into policies and interventions that result from said research.

emancipatory research, especially when our experiences form the basis of the work. Unfortunately, more often than not the work of non-Indigenous scholars is created without our input, with the resulting material reflecting the views of the white middle class academics and the policy sector of the supposed Indigenous problem (see Deckert, 2014; Tauri, 2013c). Sometimes the approach and resulting publications take what Tauri (2013c) and Tauri and Webb (2012) call an *authoritarian criminological* stance, an epistemological and methodological position seemingly driven by a colonialist, paternalistic sense of duty to protect the native, mostly from ourselves. Unfortunately, while practitioners are willing to uncover the psycho-social determinants of Indigenous crime (especially of the violent kind), they too often ignore the structural, violent, disempowering actions of the settler-colonial state to which they often lend their expertise. To counter the white maleness of so much criminological musings on the Indigenous problem, we must construct our own theory of colonialism and analysis of the colonial projects that make the hegemony of white law possible in this, the settler-colonial context.

Constructing a Theory of Social Control in Settler-Colonial Contexts

The dominant discourse on globalisation is the history of the winners, told by the winners.

de Sousa Santos (2006: 395).

In support of the Indigenous emancipatory methodology that drove this thesis, theory must be made to work for the Other, and utilised in such a way as to give authority to

the experiences of those too often silenced. Such an approach sits in contrast to the grand theorising of the European academy where:

The Other is cited, quoted, framed, illuminated, encased in the shot/reverse shot strategy of serial enlightenment. Narrative and the cultural politics of difference become the closed circle of interpretation. The Other loses its power to signify, to negate, to initiate its own historic desire, to establish its own institutional and oppositional discourse. However impeccably the content of an 'other' culture may be known, however anti-ethnocentrically it is represented, it is its location as the closure of grand theories, the demand that, in analytical terms, it be always the good object of knowledge, the docile body of difference, that reproduces a relation of domination and is the most serious indictment of the institutional powers of critical [Eurocentric] theory (Bhabha, 1994: 46).

Building on Bhabha's argument, the purpose of this section is to provide the theoretical foundations through which contemporary Indigenous experiences of the imported criminal justice 'systems' that dominate settler-colonialism can be fully expressed.

Colonialism or neo-colonialism?

Throughout a number of the papers that make up this thesis, the author refers to the current relationship between Indigenous peoples and settler-colonial states as one that reflects a *settler-colonial context*. In order to preface descriptions/definitions of this term, we must first untangle it from the on-going debate within colonial studies and

critical race theory with regards the relevance of the term 'post-colonial', as opposed to 'neo-colonial', to describe the current socio-political status of settler-colonial societies.

Despite limitation with the term itself, the body of work emanating from the Postcolonial School has had a significant impact on Indigenous scholarship. As Paolini (1999: 50) writes:

... one of the principle moves of postcolonialism has been to deconstruct the Eurocentrism of Western scholarship... in the process, postcolonialism has empowered the so-called subaltern or postcolonial subject in a reinscribed narrative of imperialism and colonialism in which [Indigenous] identity is recovered.

Osterhammel (1997: 16-17) presents colonialism as a process through which a foreign power rules or seeks to rule over a particular, demographic majority, which entails:

... a relationship of domination between an indigenous (or forcibly imported) majority and a minority of foreign invaders. The fundamental decisions affecting the lives of the colonised people are made and implemented by the colonial rulers in pursuit of interests that are often defined in a distant metropolis. Rejecting cultural compromises with the colonised population, the colonisers are convinced of their own superiority and of their ordained mandate to rule.

However, not all colonial contexts evolved in the same manner. Recent scholarship demonstrates significant variations in the formulation of the socio-economic domination of Indigenous peoples (see Hopkins, 1999; Osterhammel, 1997; Veracini, 2010).

For example, Hopkins (1999: 215) differentiates between colonialism and control *from afar* (post-colonialism) compared to *colonisation from within* (neo or settler-colonialism) when he writes that “... where white settlers became numerically predominant, colonial rule made peoples out of new states; where indigenous societies remained the basis of government, the state was fashioned from existing peoples”. The settler-colonial phenomenon is predicated upon the *domination of the Indigenous Other from within*. In this situation the colonisers cease being colonisers from afar and become ‘indigenous’ at the point that demographic majority is achieved and control of government and governance is attained (Veracini, 2010: 5). Hence we have the *colonialism at a distance* model prevalent in the sub-continent and Africa (minority rule, Home Office policy interspersed with native social control mechanisms, administration via Subaltern’s) versus the settler-colonial model where colonial rule is facilitated in part through imported institutions of social control such as courts, law, the legislative process and institutionalised policing (Wolfe, 1999). The importation of these institutions is supported through the developing capitalist mode of resource extraction and economic regulation, and the systematic eradication of indigenous life-worlds and their core institutions (Braudel, 1986; Venn, 2006). The contention here is that the way(s) in which social order is achieved and maintained reveals that there are clear distinctions between jurisdictions resulting from the form of colonialism they were

subjected to. Differences are also present in the overall attitude towards Indigenous peoples, with colonialism at a distance characterised by an *indispensability* of indigenous bodies, in particular their labour – a master-servant relationship - compared to an attitude of *dispensability* within the settler-colonial domain emphasised in the following quote by Wolfe (1999: 163):

The primary object of settler-colonisation is the land itself rather than the surplus value to be derived from mixing native labour with it. Though, in practice, Indigenous labour was indispensable to Europeans, settler-colonisation is at base a winner-takes-all project *whose dominant feature is not exploitation but replacement*. The logic of this project, a sustained institutional tendency to eliminate the Indigenous population, informs a range of historical practices that might otherwise appear distinct – invasion [and domination] is a structure not an event [emphasis added].

From the moment of first contact between Indigenous peoples and colonisers, various *technologies of power* were deployed to expedite European control of the Indigenous context. During the initial phases of colonialism, military action and religion were the dominant strategies in the pursuit of colonial domination (de Silva, 2001). Through religious conversion Indigenous peoples could be transformed from innocent but savage beings into “knowledgeable (proper) subjects” (ibid: 427) made ready for participation in a European dominated post-colonial, capitalist society (see also Tauri, 2014b). Moving into the latter stages of colonialism, the impact of the Enlightenment saw science, or more accurately the racialised application of scientific knowledge,

displace religion as a key strategy of colonial subjugation. Evoking Foucault, de Silva asserts that power over the colonial social context requires the manipulation, classification and identification of bodies, and as such “.... a whole new field of science emerged within the ‘empty souls’ of slaves, the Indigenous, the ‘oriental’ were transformed into ‘racial bodies’” (ibid: 427). It is through these technologies of power that the ideological authority of the coloniser over the colonised moved from emphasising differences in the soul to Darwinist-inspired ‘natural’ differences in biology, genetics and intellect. While the technologies of power resulted in the development of different strategies of control (the church, moral-related laws, vs. anti-association laws and the like – see discussion below of colonial projects), their socio-political aims were similar: to provide the ideological justification for the subjugation, and in some instances the physical genocide, of Indigenous peoples (Tauri, 2013c; 2014c).

Colonial and settler-colonial attempts at dominating the Indigenous Other rely on a range of technologies, or what Thomas (1994) refers to as colonising projects (see Tauri, 2014c). According to Bhabha (1994: 94-120) one such technology or project is *stereotype*, which entails the use of language and signifiers (linguistic or symbolic) that denote a fixity in the ideological construction and (re)presentation of the Indigenous Other (or indeed, of any identified ‘problem population’): “it connotes rigidity and the unchanging order as well as disorder, degeneracy and daemonic repetition... [it is] a form of knowledge and identification that vacillates between what is always ‘in place’, already known, and something that must be anxiously repeated...”. Thus we read of various stereotypes of Indigenous peoples that primordialise them; representing them

as having unalterable *states of being*, whether of mind, physicality and/or social mores. These stereotypes are exemplified in ideological constructs such as ‘the savage Red Indian’, the ‘drunk Aboriginal’, the ‘sexually insatiable Black slave’, the ‘happy (but dim, guitar strumming) Māori’, and so on (Kidd, 1997). The colonial project of *stereotype* transcends the physicality and intellectual boundaries of the Indigenous Other, and provides fixity of their supposed uncivilised beliefs, social behaviour and institutions, exemplified in the child-like nature of our nativistic and/or pan-theist religious systems (Fitzpatrick, 1992), or the quant, myth-based processes we use for responding to social harm (Jackson, 1992). The part that colonial projects like stereotype play in the negative Othering of Indigenous peoples cannot be overestimated, for as Bhabha (1994: 100) maintains:

... colonial discourse [is] an apparatus of power and its predominant strategic function is the creation of a space for a ‘subject peoples’ through the production of knowledges in terms of which surveillance is exercised whilst seeking authorisation for its strategies by the production of knowledges of coloniser and colonised which are stereotypical but antiethically evaluated. *The objective of colonial discourse is to construe the colonised as a population of degenerate types on the basis of racial origin, in order to justify conquest and to establish systems of administration and instruction* (emphasis added).

The localised and partial nature of colonial projects allows for the different impacts of colonialism on Indigenous peoples in settler-colonial societies, where the impacts may vary relating to different projects, whilst allowing for the overall impact – social and

cultural dislocation – to manifest (Proulx, 2003; see also Tauri, 2014c for full discussion of the concept of colonial projects).

Historical examples of colonial projects

As reported in Paper 1 (Tauri, 2014c), a significant project in the colonial context was the ‘civilising mission’, a key driver of which was the purposeful destruction of the native residing within the Indigenous person, and his/her replacement by the civilised, ‘westernised’ Christian (Cunneen, 2011: 5). The civilising mission in colonial contexts like New Zealand and Australia involved an ideological and policy-based pincer movement involving education and religious institutions. Over time, colonial education policies forbade the teaching of Indigenous culture and language, policies given particular potency with the advent of Mission Schools and the forced removal of Indigenous children to these establishments (Cunneen, 2011; Milroy, 1999). In the Canadian context the residential school system began in the 1870s and lasted as an official component of Federal education policy until the 1980s. The policy involved a network of schools nationwide, run by Catholic, Anglican, Presbyterian and United Churches. Many thousands of Indigenous children were removed and spent their formative years in these schools. Milroy (1999) relates how the system was a church-state partnership, with the Department of Indian Affairs providing the funding, setting of standards and practices and exercising direct legal control over the Indigenous children who were considered wards of the state.

Similarly, Cunneen (2011) relates that in the Australian context, Australia Aboriginal children were forcibly removed from their families and communities in a purposeful

policy of assimilation that lasted sixty years or more. In some states and territories of Australia, Aboriginal children were placed in church-run establishments, while in others, such as New South Wales, the institutions were the responsibility of the colonial state. However, regardless of the source of authority, church or state, the focus of pedagogy and curriculum was the same – to kill the ‘native within’ (NISATSIC, 1997), as Cunneen (2011: 5-6) relates when he writes that:

Both the Canadian and Australia authorities saw the removal process as part of a civilising mission and spiritual duty to uplift the ‘natives’. By today’s standards the assimilationist ‘civilising’ process would be condemned as ethnocide or cultural genocide and properly considered as a state crime.

Combined with criminal justice policy and practice, modes of domination such as residential schools and forced removal of children provide further examples of how colonial discourse and practice “organised social existence and social reproduction” in the colonial context (Proulx, 2002: 42; see also Foucault, 1977). And, as demonstrated in papers included in this thesis (Tauri, 2013c; Tauri, 2014c), they also provide concrete processes for the continued subjugation of Indigenous peoples within the settler-colonial context.

Contemporary (settler) colonial projects

Proulx (2003: 43-51) describes how some of the key colonial projects of the assimilationist phase of colonisation, such as the residential school program in Canada, have either ceased to be used or had their form and delivery significantly altered.

Albeit, while the education and child care and protection processes remain important social control institutions, it can be argued that the form in which these colonial projects are delivered has altered (see later discussion). In both the New Zealand and Canadian context we can measure the cessation of specific colonial projects such as residential schools in Canada, and the legal assault on Māori cultural transmission, with the move from assimilationist discourse and policies towards integrative, then multicultural, and of late, self-determination/reconciliation rhetoric and policy (Tauri, 1999).

The fact that specific colonising projects and strategies went *out of style* or were refashioned is to be expected: every colonial epoch produces projects designed to shore colonialist hegemony in order to contain and control Indigenous peoples. However, what is more permanent is the interconnected nature of colonial (and neo-colonial) governance; a highly sophisticated, layered process involving interrelationships between the state (made up of the legislature, Cabinet, the policy-making and service delivery institutions), and civil society. Within the state edifice Woolford imagines the process of colonial government as a highly sophisticated mesh made up of inter-locking levels, from the outer meta-level, to meso and micro levels, each containing colonial projects of varying complexity and interconnectedness. The former are key edifices of the colonial context and provide the superstructure upon which settler-colonialism survives. At this level we find the institutions of social control, including education, child care and protection, and health services. It is also the level at which we find a colonial project of particular potency, the criminal justice system. The potency of this macro-level colonial project comes from the authority it derives from being the site of

the contemporary, neo-liberal states deployment of legitimised violence to facilitate social order within the body politic (Haleh Davis, 2011).

The implementation of a Western European legal jurisdiction and criminal justice system, were central platforms for the subjugation of Indigenous peoples in all colonial contexts. These edifices were especially important for supporting the civilising mission that was foundational to colonial policy (Merry, 2000; Proulx, 2003; Tauri, 1998). As a sub-component of *the law*, criminal justice was a powerful (civilising) colonial project in two specific ways: 1) it ensured that the definitions of what constitutes crime and social harm were based on Eurocentric definitions of those terms; and 2) it provided a ready platform for the deployment of structural violence by the state against Indigenous peoples who did not adhere to Western standards of behaviour - those who dared challenge the hegemony of the colonial state, or who were simply residing on good pastoral and mining land (Tauri, 2013c; 2014c).

Other powerful colonial projects intersect, feed off and support one another in this manner. For example, Fridieres (2000: 215-219) describes the intersections between government and economic policies supportive of corporations, as well as the activities that created and maintain welfare dependency on Indigenous reserves. These activities provided significant stimuli for the urban migration that occurred amongst many Indigenous communities from the 1950s onwards. In turn, this phenomenon brought with it the social, cultural and economic dislocation of Indigenous communities, the results of which are summarised by Proulx (2003; 53; see also Sinclair, 1997) who writes that:

The colonial and postcolonial colonial context... has destroyed Aboriginal social orders, stability and cultural integration leading to a disjunction between ends and means within Aboriginal cultures resulting in crime and social disorder. Assimilationist social policy and laws, coupled with culturally different judicial philosophies and practices, are central to this process.

The Settler-Colonial State/Criminology Nexus

[W]e live in an era of postmodern imperialism and manipulations by shape-shifting colonial powers; the instruments of domination are evolving and inventing new methods to erase Indigenous histories and senses of place. Therefore, 'globalisation' in Indigenous eyes reflects a deepening, hastening and stretching of an already-existing empire.

Alfred and Corntassel (2005: 601).

The rise of the industrial revolution in 19th century Western Europe saw the parallel development of the human sciences based on empiricist methodology. The human sciences placed in the hands of the propertied, moralising classes, the tools to identify, name and (arguably) combat the moral sewage that continuously threatened to spill out from the geographic space of the damned (see Christie, 2000). One key science of morality was, and remains, criminology, the conception of which can be pinpointed during this historical, intellectual epoch (Agozino, 2003; Foucault, 1977). Traditional criminology, a discipline joined at birth to the developing Western, capitalist state,

continues to thrive through its sustained focus on the behaviours and attitudes that fuelled its conception – emotionality, incontinence and contamination (Guarino-Ghezzi, 2002; Messerschmidt, 1986). Referring to the intellectual and moral foundations of ‘traditional’ criminology, the Italian theorist Ruggiero (2000:1) states that:

“[t]here are imaginary geographies which place imperfect minorities in marginalised locations: in a social elsewhere. These locations consist of protected zones which ensure the reproduction of those who inhabit them, who are separated from the majorities living outside. These geographies of exclusion associate *elsewhere* with that which is contaminated, filthy, offensive to morality and olfaction” (emphasis Ruggiero’s).

Furthermore, Ruggiero (ibid: 1) argues that traditional criminology “makes filth, sewers, and excrement, in brief that ‘inferno’ delimited by imaginary geographies, its main terrain of analysis and development”. Ruggiero is locating the theoretical development of criminology and *reason de jure*, in a specific historical context, namely the rise of the state as arbiter of social control in the developing capitalist context. He argues that criminology has always been a keen supporter of state dominated social control and a significant contributor to the maintenance of capitalist social order (Agozino, 2003; Becker, 1963). Indeed, we might argue that from conception criminology was an intellectually bankrupt discipline, one that was (and still is) focused on the geographical space inhabited by the socially damned. At the same time its adherents, at least those of the administrative and authoritative varieties, too often avert their gaze from the corruption and immorality of the propertied and political

elites of western, neo-liberal societies. Of course Sutherland (1949), Merton (1938) and others eventually turned the critical gaze of the discipline toward these social factions. And it must be recognised that the rise of critical, Marxist, feminist theorists, and of late counter-colonial criminologists has further problematised the behaviour and morality of 'God's chosen' (see Agozino, 2003; Simpson, 1989; Spitzer, 1974; Taylor, Walton and Young, 1973).

However, despite these critical developments, much of the discipline of criminology's energy is still focused on the social elsewhere, the sewers, the damned, and their offspring. This is the case despite the fact that, as Ruggiero so eloquently argues, we can no longer definitively pinpoint the boundaries that mark the social geography of the damned, or indeed of the saved. Nor is the perimeter able to be measured and mapped as conclusively as was once theorised by western criminologists³. And so, eventually the gaze of the discipline moved exclusively from the sewers, the social spaces supposedly marked by impurity and contamination, and discovered that not all was well in those spaces long thought moral, just and socially cohesive.

This may be the case, but I, along with other critical commentators argue that the discipline is still heavily wedded to its wet nurse, the state, and much of its activity serves the state's criminal justice apparatus. While we might agree with Ruggiero that the boundaries of the damned may not be so clear cut geographically, if indeed they ever were, the discipline continues to create symbolic boundaries through its

³ One might argue that the new technologies of the developing crime science, such as data mapping, represents another chapter in illuminating the borders of social deviance (see Leipnik and Albert, 2003).

theoretical and foundational precepts: offender/victim, exclusion/inclusion and punishment/reintegration. Furthermore, criminologists sometimes advance Indigenous subjugation through the physical act of *being a criminologist*; particularly when they choose to *job for the state* by accepting contracts to carry out research on Indigenous peoples, or on Indigenous issues that are formulated without the meaningful involvement of Indigenous peoples. This issue is compounded when they choose to proselytise from afar on the state of hell through surveys and statistical analysis of the social context, while rarely moving the manhole cover and descending into the sewer to observe what is going on (Tauri, 2013c; Young, 2011).

There are specific communities and groups of individuals who continue to be privileged with the gaze of traditional criminology. In many respects they are the same folk devils that have dominated the historical development of social and criminal justice policy, namely those living in the social elsewhere and who threaten to pollute society with their immorality, emotions and lust. These reformulated, contemporary folk devils who, arguably, brought about the neo-liberal 'risk society' (Garland, 2001), include the unemployed, the indigent, travellers, women of low moral character, religious fundamentalists (of all faiths), working class youth, and ethnic minorities. In the colonial/neo-colonial context, one such group has always been, and remain, the Indigenous peoples (Cunneen, 2008; Palys, 1993 and Tauri, 2009).

Criminology and the Colonial Enterprise

As if to show the totalitarian character of colonial exploitation the settler paints the native as a sort of quintessence of evil. Native society is not simply described as a society lacking in values, but also the negation of values... the enemy of values... the absolute evil... corrosive... destroying... disfiguring...

Fanon (1968: 31-32).

This thesis is focused as much on exploring the discipline of criminology's role in the settler-colonial states continued subjugation of Indigenous peoples, as it is about the role of the criminal justice system and its policy functionaries in this process (see Papers 1, 5, 7 and 8 in this thesis). The reason for this is that the two entities, the policy industry and the academy, are heavily interlinked, with the academy often providing the intellectual silage that nourishes the development of crime control policy and legislation. In the meantime, the policy industry exerts philosophical and analytical control over the academy through heavily prescribed research contracts and ideological exhortations that we strive to be 'of utility' to the state and its policy functionaries by producing knowledge that equates with their understanding of the social context (Brickey, 1989; Tauri, 2009; Walters, 2003). Given the depth of this symbiotic, parasitic relationship, one cannot analyse the policy sector's role in the continued subjugation of Indigenous peoples in settler-colonial contexts, without analysing the role of supportive disciplines such as criminology (Tauri, 2013c). The work of Lynch (2000), Beirne (1993) and Foucault (1977), the humanist-psychologist, Seymour Halleck (1967) and

Agozino (2003; 2004), is instructive for analysing the historical and contemporary role of criminology in the settler-colonial subjugation of Indigenous peoples.

In his influential work on the development of criminology, Piers Beirne (1993: 5), talking of the intent of one of criminology's founding fathers, Beccaria, writes that:

Beccaria's chief objective in [*On Crimes and Punishment*] was the application to crime and penal strategies of the 'science of man', deterministic discourse implicitly at odds with conventional assumptions about the exclusively humanist and volitional bases of 'classical criminology'.

Beirne's assessment of Beccaria's intentions countered what had been a long trend in criminological reflection on the discipline's historical roots, where much of the focus was on the conception and birth of the discipline within the wider context of humanist and Enlightenment thinking. A standard creation myth of the discipline is that Beccaria and his contemporaries were driven to develop criminology through their adherence to humanist ideals borne of the Enlightenment movement. Through the development of the discipline its early practitioners sought to relieve society from the suffering caused by crime, and reconstruct western systems of justice to reflect the enlightenment ideals of rationality, scientific method and objectivity (Carrabine, Cox, Lee, Plummer and South, 2009). In contrast, Agozino, Beirne and Lynch challenge the established origin myths by presenting the critical determination that criminology is largely an *oppressive construct*; or as Lynch (2000: 146) contends "... up to this point the history of

criminology has been the story of humanly created methods of oppression told from the oppressor perspective”.

According to Lynch (2000: 147), from its inception criminology has been defined by two characteristics: to generate scientific knowledge about crimes and criminals that would enable society to control crime; and concern for humanity and humanitarian issues, “especially those associated with rectifying the brutal, inhumane and arbitrary conditions of punishment”. In contrast, Beirne et al contend that criminology is not just, nor ever solely concerned with ‘curing crime’ or advancing humanitarian causes. Yes, criminologists have written about these issues, but the focus is about much more than providing the discipline with methodological rigour; it is also useful for insulating the discipline from external criticism of its Eurocentric orientations. Instead, they build on the work of Foucault and Halleck and argue that during the rise of capitalism, criminology emerged as a part of the apparatus of the *science of oppression* established by Enlightenment philosophy.

Of course, this is not usually the way the Enlightenment movement and its intellectual endeavours are depicted. More often it is presented as a revolutionary rupture from past theorising on the human condition; an intellectual paradigm that generated an enlightened view of human beings and human social organisation that in turn, produced a positive progression in human social and intellectual development (Dupre, 2004; Rabinow, 1984). However, Lynch (2000: 148-149) contends that there is a *dark side* to the Enlightenment, from which criminology was born. This element of the Enlightenment, especially the move from theory (of crime causation) to practice

(developing scientific responses to crime and testing policies and interventions), is where we expose the connection between criminology, crime control policy and the ongoing subjugation of Indigenous peoples in the settler-colonial context described in Papers 1 and 2 (Tauri, 2013c and 2014c).

The Enlightenment and the darkness of the (colonial) criminological enterprise

In their critique of Enlightenment, Agozino, Beirne, Foucault and Lynch argue that it is no accident of history that Enlightenment scholarship arose along with capitalist systems of production. Indeed, Enlightenment theorising of the social context can be regarded as a mechanism that supported and legitimised capitalist social relationships; in particular the uneven distribution of political authority and access to resources (Bratton and Denham, 2014; Meiksis Woods, 2002). From a social control perspective, the Enlightenment can be viewed as driven in part by two contradictory, albeit inter-related concerns revealed by Lynch (2000: 148: Lynch's emphasis) in the following quote: "[o]n the one hand, Enlightenment scholarship concerns the conditions of human freedom. On the other hand, and quite ironically, it is also about *those conditions of control necessary to maintain freedom*". According to this perspective, controls on human behaviour are a necessary component for establishing and maintaining freedom, based on the utilitarian precept of the greatest good for the greatest number. Individual freedom, in other words, is subservient to the conditions for the broadest degree of social freedom of the majority (Gaus, 1999).

From a critical Indigenous perspective, what is at issue here is the meaning of the ideal (or idea) of social freedom and how this freedom is to be defined and attained *and by*

whom. The marriage of Enlightenment perspectives and capitalism provides insight into the historical emphasis of criminology on the geographies of disadvantage so eloquently expressed by Ruggiero. The subservience of individual freedom to social freedom (to the greater good) was a key foundational precept of Enlightenment scholarship, and it was later to become a (if not *the*) principle philosophical construct of the discipline of criminology (Ferri, 1901). What constitutes social freedom is defined by and based on rules, largely rules of law, which contained a definition of rights. The definition of rights these rules contained presupposed an array of social, economic and political relationships that “privileged the rights of property holders over others” (Lynch, 2000: 148). Consequently, the specific rules and rights that criminologists since the classical theorists have endorsed, have advantaged property holders over others – or perhaps more accurately in the colonial context, European settler communities seeking to strip land from Indigenes and maintain their right over that land and the resources it held (Jackson, 1992).

Lynch (2000: 148-149) argues that given its roots in Enlightenment philosophy, it should come as no surprise that the history of western criminology has focused on efforts to:

- i) legitimise control of the dangerous classes that had spread rapidly throughout Europe during the 17th, 18th and 19th centuries, and in the U.S. in the late 19th and 20th centuries. In the contemporary era, criminology continues to focus its efforts on controlling the dangerous classes. Over time, there has also been “*a tendency to expand the idea of the marginal classes to include racial and ethnic minorities*” [emphasis added];

- ii) spread conditions conducive to inculcating discipline and related work habits, or, as Foucault suggest, methods for rendering the body (politic) docile. These practices, which show up in a variety of criminal apparatus, target the dangerous classes and problem populations like Indigenous peoples, migrants, the unemployed, and so forth; and
- iii) regain control over the penal process and power structure that had gradually begun to be eroded by mass-responses toward public corporal punishments during the Middle Ages (Foucault, 1977). In the contemporary period, the problem is somewhat reversed, as crime control has come to cater to the desires of the public who, over time, have internalised the ideology of capitalism.

There were many and varied mechanisms constructed from Enlightenment philosophy to facilitate social control and uphold the rights of propertied classes. Criminology developed as one (although perhaps the most important) of those intellectual paradigms concerned with controlling the free and unfettered creativity of the criminal (read dangerous) class (Halleck, 1967). According to Lynch (2000), criminology can be viewed as a method of legitimising mechanisms of oppression that target the dangerous class, which I argue, includes Indigenous peoples residing in contemporary settler-colonial contexts:

In short, criminology is one of the disciplines that establishes the conditions necessary for maintenance of the status quo of power. It can only do so by oppressing those who would undermine the status quo. In this sense, criminology must be viewed as a '*science of oppression*' (ibid: 149; emphasis added).

Criminology as a science of oppression

The Enlightenment and the rise of the capitalist mode of production can be understood only through reference to each other. Enlightenment scholarship emphasised the principles of rationality, objectivity, individualism, efficiency (of production and maintenance of social order) and the sanctity of property rights. Each in itself is a key principle driving the expansion of capitalist modes of production in Western Europe, and later in the colonising contexts of the third and fourth worlds (Agozino, 2003; Lynch, 2000). Viewed this way, the Enlightenment was not the distinct fissure from a past intellectual, economic and social epoch that it is sometimes described, but “[r]ather, it was more simply a means of stating and organising the materialist groundings now propelling society following the Middle Ages” (ibid: 149). A key set of intellectual systems provided the impetus for the propulsion of capitalism, in the first instance the ‘body sciences’, including biology, chemistry, dietetics and others.

According to Foucaultian analysis, the human sciences, with their focus on classification, division and ordering, provided invaluable knowledge of the (potential labouring) population essential for the continued expansion of the capitalist mode of production (Foucault, 1970; 1977). These sciences of *counting, classifying and knowing* populations consciously adopted the methods of the hard sciences, thus conceptualising the social context as a subject appropriate for scientific analysis. This process of adaptation helped spread scientific rationalisation through the developing human (social) sciences and in turn expanded throughout the new discipline a propensity for treating human subjects, and their social contexts as mathematical abstractions. According to Young

(2011), this development came at a cost, in that the more human behaviour was quantified and abstracted from *the social*, the more we became dehumanised, stripped of our subjectivity, and turned into objects of investigation that could then be better manipulated and controlled.

We might ask 'what specific role did criminology play in this process'? Lynch (2000: 150) begins to answer this question by arguing that:

Criminology is a device – as both a structure and a discourse – which has enacted a very powerful mechanism not only for repressing/oppressing the deviant (criminal justice apparatus), but also for turning people into deviants to be controlled and feared.

The sciences of the Enlightenment established the intellectual conditions that legitimised the criminological focus on the dangerous classes when the discipline began its intellectual evolution from the mid-19th century onwards (Agozino, 2004). The importance of criminology for the development of capitalism comes from the key role it played in identifying, classifying and, ultimately developing responses to individuals and groups considered a threat to the hegemony of the capitalist mode of production. Lynch identifies the importance of criminology, and criminal justice, for capitalism, thus:

These attacks centred on the populations that most threatened those who Enlightenment philosophy benefited: the newly emergent property classes. It was

during the late 1700s that criminology, guided by the glow of Enlightenment scholarship, most fully emerged as the science of oppressing the marginalised.

Criminology and the 'Othering' of the Indigenous

In his inaugural Professorial lecture at Queen's University, Belfast in 2005, Phil Scraton (page 3) wrote "[n]o group conceives itself as the One, the *essential*, the absolute, without conceiving and defining the *Other*. The Other is the *stranger*, the *outsider*, the *alien*, the *suspect community*: Otherness *begets* fear, *begets* hostility, *begets* denial" (emphasis Scraton's). There have been many 'others' throughout the relatively short histories of what are now referred to as social democracies, such as African-Americans in the USA, proletarians residing in capitalist economies, travellers throughout western Europe, and women and girls throughout patriarchies (Scraton: 2005: 3-4). To this list we can add Indigenous peoples in the settler-colonial societies of Canada, the US, Australia and New Zealand (Tauri, 1996).

The process of othering is well and truly established in criminology, linked as it is to the process of defining what and who is criminal and/or deviant. Criminalisation as a process does not occur in a vacuum but derives from and sustained within a climate of historical and contemporary politics, economic conditions and dominant ideologies, evolving within the determining contexts of social class, gender, sexuality and race (Cunneen, 2011). As a process, criminalisation is consistent with a politics of otherness, of economic marginalisation, social exclusion (Wacquant, 2009), and, in the case of Indigenous peoples, socio-cultural genocide (Churchill, 1990). To gain legitimacy as a process supportive of exploitation and marginalisation, criminalisation requires

ideological sustenance. As Cohen (1972) and Hall et al (1978) have demonstrated, the ideological framework supporting the process of criminalisation centres on identifiable individuals and groups, folk devils were constructed and represented as a threat to the maintenance of social order. The criminalisation of an identified problem population is in part fuelled by moral panic, an overreaction to perceived criminality or social danger that sustains the economic and political hegemony of specific ethnic groups and/or classes (Goode, 1994).

However, it is short sighted to think of moral panics and the process of criminalisation as simply *ideological constructs*: for the individuals and communities at the centre of their construction and deployment, they result in real, tangible experiences. They often result in concrete responses and actions from the agencies of social control such as targeted policing and increased surveillance (Goode and Ben-Yehuda, 1994). The process of criminalisation, therefore, produces social, political and material consequences for individuals and communities on the receiving end of the attentions of the agents of crime control. And we can state with certainty that one of the groups consistently targeted for such attention in settler-colonial contexts, are Indigenous peoples (Tauri, 2014c).

Criminology, Settler-Colonialism and Indigenous Peoples

If criminology ever is to decrease inequalities in justice, the field must first come to grips with whether criminology itself contributes to discrimination, social inequalities and crime.

Jacques and Wright (2010: 384).

In this section, it will be argued that criminology has played a significant role in the colonial and neo-colonial subjugation of Indigenous peoples. The foundations for this argument are laid by identifying the role the discipline has played, and continues to play in the process of social control.

Black (1976: 105) defines social control as “the normative aspect of social life. It defines and responds to deviant behaviour, specifying what ought to be: What is right and wrong... Law is social control”, and furthers this argument by stating that as the law is regulated via the state, therefore law is “government social control” (ibid: 2). If we take this proposition as a truth statement then we can posit that much of criminology, especially of the Authoritarian form discussed in Tauri (2013c) where many of its practitioners define and respond to crime as those terms are constituted by functionaries of the state, is itself *a key functionary of social control*. As Jacques and Wright (2010: 390, emphasis added) argue “[t]o the degree that criminology is applied science, it is social control”.

Jacques and Wright (2010) employ the pure sociology of Black (1976; 1983) to expand their argument that criminology is a form of social control, and to fully encompass the role it plays in propagating social inequalities. In pure sociological terms the reproduction of social inequalities refers to social processes which maintain or decrease the low social status⁴ of certain actors in specific social contexts. In Black, Jacques and Wright's schema, the more an individual or group becomes subjected to the application of state law/justice the more that individual or group's social status is decreased. As criminological research shows, the application of law occurs more often when individuals are low in social status. And because the subjection of law leads to lower social status (or simply compounds it), the discriminatory behaviour of law against low status individuals and groups results in the reproduction of social inequalities because subjection to law further reduces those actors' (already relatively low) social status (Jacques and Wright, 2010).

So, how does criminology figure in this process? Quite simply, if, as happens more often than not, criminology follows the policy predilections of state functionaries by focusing its attention on the acts and actors that governments define as criminal and seeks to apply its 'science of crime' to the measurement and analysis of these groups (the socially damned), then criminologists have the potential to be *significant contributors to the reproduction of social inequalities* (see Tauri, 2013c). For example, referring to the

⁴ In the language of pure sociology, social structure is defined by *the relative social status of every actor* (person or group) involved in a social situation, and also by the relative social distance between every actor involved in that situation. According to Black (1998) there are at least five kinds of social status and three kinds of social distance. The five kinds of social status are vertical status, radial status, corporate status, symbolic status, and normative status.

process of the selection of participants in criminological research, Jacques and Wright (2010: 392) state:

If... lower status offenders are more likely to be recruited for offender-based research, and greater recruitment to criminological research leads to lower levels of social status, then the argument can be made that offender-based research is involved in the reproduction of social inequalities.

As many critical criminologists (and even some conservative commentators) have demonstrated the justice system can and does, discriminate. It responds differentially to crime and to offenders depending on a range of innate or ideologically-derived factors or measures, such as the socio-economic status (class), race (ethnicity), sexual orientation, age, and so on (see Greenberg, 1993; Tombs and Whyte, 2003). In the following section I discuss the way(s) in which the discipline has assisted in framing Indigenous peoples as a problem population in the settler-colonial context.

Elsewhere I have analysed various strategies, or technologies of control formulated by the settler-colonial state response to the wicked problems wrought by Indigenous over-representation in criminal justice, and Indigenous resistance to the imposed justice processes (see Tauri, 1999; 2005). One of the key drivers for the author's choice of subject matter for the eight papers that make up the thesis, was the inter-related issues of the lack of critical commentary on the settler-colonial states response to Indigenous crime and Indigenous resistance to the imposed justice ordering, and the historical lack of attention paid by the discipline to Indigenous *experiences of criminal justice and crime*

control policy. The following section provides an overview of the Indigenous experience of the activities of the state and criminology in the ‘justice space’, and highlights some of the main findings presented in the eight papers contained therein.

Criminal Justice and Indigenous Peoples

There can be no doubt that the Indigenous experience of criminal justice should be profound concern to all, as on all four settler-colonial contexts (New Zealand, Australia, Canada and the US) Indigenous peoples are significantly over-represented in all statistical indices related to that sector⁵. However, the contemporary settler-colonial state’s concern for Indigenous overrepresentation is not simply predicated on the statistical and risk profiles associated with Indigenes. In all settler-colonial jurisdictions the criminal justice system and its agents have been the focus of significant criticism and political agitation by Indigenous activists (Jackson, 1992; Poata-Smith, 1996; Victor, 2005). Some Indigenous and non-Indigenous critical scholars have advanced the argument that the enhanced policing of Indigenes emanates in part from our *resistance* to the imposition of colonialism and neo-colonialism (see Jackson, 1988; McNamara,

⁵ From the statistics presented below it is immediately apparent that Māori representation in crime statistics is disproportionately higher on a population basis than for other ethnic groups in New Zealand. In 2009, for example, the total police apprehensions were 235,684. Out of this total:

- Māori accounted for 98,893 apprehensions or 41.9 percent of the total;
- Pacific peoples accounted for 21,563 or 9.1 percent of the total; and
- New Zealand Europeans accounted for 105,778 or 44.8 percent of the total (Statistics New Zealand (2010).

Finally, Māori imprisonment rates are also disproportionately high. The latest updated figures from the Department of Corrections (December 2009) show that out of a total of prison population of 8244 (inclusive of inmates on remand):

- Māori accounted for 50.8 percent of all inmates;
- those identifying themselves as Pacific Peoples accounted 11.9 percent; and
- those identifying themselves as New Zealand European or Pakeha accounted for 33.5 percent of the total.

1995; Palys, 1993), and, in particular, towards the imposed Eurocentric justice systems (Monture-Angus, 1995; Quince, 2011; Tauri, 1996; Tauri and Webb, 2011; Victor, 2005).

The contemporary state's response to the dual issues of over-representation and counter-hegemonic activity of Indigenous peoples, have elicited a range of policy responses, beginning with integrationist policies and interventions, such as borstals in New Zealand, to corrective training and residential schools in Canada (see Tauri, 2013a; 2014c). The rise of Indigenous activism against the legitimacy of the formal justice system saw the advent of a range of interventions aimed at alleviating the Indigenous over-representation problem and our critique of the imposed justice ordering (Tauri, 2005).

The following section provides a brief overview of some of the colonial projects deployed by settler-colonial states, heavily supported by members of the academy, in response to the wicked problems associated with their Indigenous peoples. We can summarise these projects as falling under the headings of *indigenisation*, *culturalisation* and *globalisation*:

Indigenisation

Indigenisation has been described as the purposeful (targeted) involvement of indigenous peoples and organisations in the delivery of existing socio-legal services and programmes (Havemann, 1988). For example, indigenisation initiatives became a popular policy response in Canada during the 1980s; and involved the development of programmes for providing policing services to Indian Reserves and communities; the

use of native court workers to provide assistance to indigenous defendants in court; and increasing attempts to develop community-based sentencing and correctional alternative for Indigenous offenders (Griffiths, 1988; Harding, 1991). The focus of this form of indigenisation is the *incorporation of Indigenous human capital* within the justice system; a process that takes place without, or in lieu of, alterations being made to the structure of criminal justice that exists in settler-colonial contexts.

The underlying practice-related principle of the indigenisation process is that involving more indigenous people in the criminal justice system will enable the institutions to deliver more culturally responsive programmes (Morse, 1988). However, in contrast McNamara (1995: 3-4) highlights the tokenistic basis to this strategy when he argues that:

The dominant element of the majority of aboriginal justice reforms that have been implemented since the 1970s [in Canada] have been committed to the assumption that ensuring justice for aboriginal peoples need not involve questioning the legitimacy of the criminal justice system, nor the endorsement of autonomous aboriginal justice values and dispute resolution processes.

Morse (1988: 12) further highlights this argument when he contends that “... these [indigenisation] initiatives can very easily be directed toward assimilating and pacifying the indigenous population rather than respecting their unique legal position within the nation as a whole”. Lastly, Tauri (1998; 2005) argues that rather than leading to enhanced, positive engagement with the criminal justice system, indigenised initiatives

have largely increased the process of pacification and recolonisation of Indigenous peoples.

The culturalisation of criminal justice

From the late 1980s onwards the response of settler-colonial states to the Indigenous problem took a new, arguably more sophisticated turn, gradually moving from a focus on increasing the number of Indigenous officials, to a process of policy and practice-related *culturalisation*. This process entailed the planned strategy of co-opting/incorporating select elements of indigenous life-worlds into the justice system, and more particularly, on to interventions implemented by criminal justice officials (Tauri, 2005). In relation to the new, sophisticated strain of indigenisation, Havemann (1988: 83) argued that:

Despite its appearance as more benign than the model of pure imposition the integrated or indigenised model is one in which the coloniser preserves aspects of the indigenous social control system, primarily in order to utilise its authority to support new patterns for domination.

The culturalisation process involves the incorporation of indigenous philosophies or practices within the formal system by adding indigenous ingredients in the form of specific terms, phrases and cultural practices that government officials consider to be *acceptable elements of indigenous cultural practice* (Webb, 2004). Examples from the New Zealand context include allowing for the recitation of karakia (pray) at the beginning of restorative justice programmes like Family Group Conferencing (Tauri,

1999), and blending Māori language and custom within primarily psych-based therapy programmes (see Department of Corrections, 2007). The co-option strategy therefore, involves the pre-selection and utilisation of *acceptable* elements of indigenous culture – as defined by the policy sector – within justice policies and interventions, in order to make the formal justice system (appear) more culturally appropriate, and, it is hoped, engender generic programmes and services more likely to ‘work’ for indigenous peoples (Tauri, 2005).

By the late 1980’s and early 1990s, the culturalisation of the policy sector had become a key aspect the New Zealand government’s Māori policy. The importance of this process in terms of government response to Māori counter-hegemonic politics is especially highlighted in the following quote from Poata-Smith (1997: 176) who argues that:

the fourth Labour Government (1984-1990) attempted to appease the rising level of Māori protest in two major ways. The first involved extending the jurisdiction of the Waitangi Tribunal retrospectively to 1840 and the second involved adopting the policy of ‘biculturalism’, which was based on the *selective incorporation of Māori cultural symbolism within the institutions of the state* (emphasis added).

The use of the strategy of culturalisation was perhaps most pronounced within the sphere of criminal justice. Programmes and policies that fell in this category in the New Zealand context include the Department of Correction’s *tikanga* (definition) and *responsivity programmes*, the Department for Courts *District Court Restorative Justice Pilot Projects*, and the youth justice-focused *Family Group Conferencing* forum. A key

feature of all three interventions is the fact that they are based on Western theories, concepts and practices of effectively responding to offending behaviour. However, they were made distinguishable from other programmes because of the fact that elements of indigenous (Māori) cultural philosophy and practice were ‘added-on’ (Tauri, 1999).

Perhaps the most well-known case study in the art of culturalisation is the Family Group Conferencing initiative New Zealand introduced to the world in the late 1980s. The FGC process was introduced to overcome a number of the shortcomings identified with a youth justice system dominated at the time by what criminologists described as a *welfare approach*⁶ (Morris and Maxwell, 1993). Undoubtedly, a key focus of the legislation that gave birth to the FGC was concerned with addressing the disproportionate number of Māori youth being processed through the system. Becroft (2002) argues that two specific components were included to promote participation by young Māori offenders and increase the likelihood of positive outcomes for the Māori community, namely:

- the inclusion of whanau (family), hapu (sub-tribe) and iwi (tribe) in repairing the harm caused by offending behaviour; and
- the opportunity to have the conference in familiar, culturally appropriate surroundings, including the marae (meeting house).

⁶ The welfare approach considered offending to be caused by remedial family or individual dysfunction. Young people were considered to be a symptom of such dysfunction. Decisions concerning a young person’s offending behaviour and future were made by professionals who largely had no previous relationship with the young person. The response to the offending was proportionate to the perceived cause of the offending, rather than the nature of the offending itself (O’Connor, 1997).

Advocates of the FGC make a number of claims about the relationship between the conferencing format, Māori justice practices, and the role the forum has played in satisfying Māori concerns with the criminal justice system. For example, it is often claimed that:

- i) because the conferencing process and Māori justice practice have restorative elements, the conferencing process therefore provides Māori with a culturally appropriate avenue for addressing their justice needs (Olsen et al, 1995); and
- ii) the conferencing process is an example of the system's ability to culturally sensitise itself, and empowers Māori to deal with their youth offenders in culturally appropriate ways (Maxwell and Morris, 1993).

Unfortunately the results of empirical research on the FGC forum do not support these claims. For example, in relation to i) above, Maxwell and Morris (1993) found that the majority of FGC's involving Māori were held in the offices of government agencies; only five percent were actually held on marae. A similar review processed a decade later found the situation had not substantially changed (see Maxwell, Kingi, Robertson, Morris and Cunningham, 2004) despite the continued importance of marae to contemporary urban and rural Māori communities, the lack of significant impact of the Act and the forum to reduce Māori youth engagement with the system, and continued criticisms of the precedence given to government dominated sites for dealing with Māori youth offending (see Nga Kaiwhakamarama I Nga Ture (1998) and Tauri, 2004).

For some Māori, initiatives that fall into the co-option category, including the FGC forum, are inadequate for addressing the problem of Māori over-representation. Māori

criticisms of the co-option strategy centre on two key issues: The first is that the initiatives represent a piece-meal approach to the recognition of the validity of Māori justice practice, and are formulated on the continuing assumption that the present system of criminal justice, whilst flawed, is ‘the best we have’, or, more accurately, the *best we will ever get*. Therefore, given the Eurocentric system is the only legitimate institutionalised approach to social harm, the best we can manage is minor tinkering in order to enhance its cultural appropriateness for Māori (Tauri, 1998). The second issue is that the recent trend for allowing Māori limited authority to deal with the offending of their own, represents a continuation of the historical strategy of co-opting Māori justice for the purpose of legitimising the imposed criminal justice system, and has little to do with Indigenous empowerment and self-determination (Jackson, 1995; Tauri, 1996b). Jackson (1995:34) summarises Māori criticisms when he argues that:

[j]ustice for Māori does not mean the attempted grafting of Māori processes upon a system that retains the authority to determine the extent, applicability, and validity of the processes. No matter how well intentioned and sincere such efforts, it is respectfully suggested that they will merely maintain the co-option and redefinition of Māori values and authority which underpins so much of the colonial will to control. A ‘cultural justice system’ controlled by the Crown is another colonising artefact (emphasis added).

Contemporary responses

Since the early 2000s there has been a considerable amount of strategic activity across New Zealand’s criminal justice sector aimed at enhancing the effectiveness of crime

control activity. Significant policy initiatives have included the *Effective Interventions* work-stream (2006-07), which involved the *Programme of Action for Māori* (PoAfM), and most recently, the *Drivers of Crime Strategy* (2009/10 and ongoing). The motivations for these high level, inter-agency projects were issues commonly found in contemporary settler-colonial jurisdictions, namely a) the lack of impact from past and current policies on rates of offending and imprisonment, b) increasing fiscal crises resulting from exponential rise in prison musters, c) repetitive crises of legitimisation with the general public arising from a and b; and d) continuing high levels of indigenous over-representation and critique (Tauri, 2009b). The strategies and the PoAfM contain references to Māori over-representation and a range of activities that agencies claim are designed to respond to this issue. However, overall the majority of initiatives fall under the culturalisation strategy while others provide the *impression of activity* but are designed to ensure that the status quo remains.

The PoAfM provides a recent example of the latter. Created through joint effort between the Ministry of Justice and Te Puni Kokiri and signed off by Cabinet in 2007, it contained a range of initiatives including:

- an engagement process with Māori providers and offenders to gauge their views and experiences of the criminal justice system;
- selection of a suite of initiatives (originally six and later expanded to up to twelve) focused on Māori offending that would receive cross-agency funding and then be evaluated to demonstrate the effectiveness of 'Māori approaches';
- assessment of the effectiveness of the criminal justice sectors spend on Māori; and
- an inter-agency fund for supporting practical Māori initiatives.

While the PoAfM was a joint effort between the Ministry of Justice and Te Puni Kokiri, in reality it was sidelined from the beginning by the lead agency in collaboration with other justice sector agencies. Altogether the PoAfM contained up to twelve inter-related projects, including the four outlined above. Only a handful were completed, including the engagement process (although the final report has still be officially released and is now seven years overdue) and the selection and funding of a select group of *by Māori, for Māori* initiatives. Those that were completed were carried out by Te Puni Kokiri, the junior partner. The majority of the significant tasks sat with the Ministry of Justice and apart from a research project on the subject of bias, were never fully initiated, let alone completed. From the beginning it was clear to Te Puni Kokiri officials that the Ministry of Justice was reluctant to carry out any activities that would require critical scrutiny of the criminal justice sector. For this reason the critical review of the sector's spend on Māori was never completed and the development of a funding mechanism specific to Māori initiatives failed to progress past low level discussions with sector agencies (Tauri, 2010).

Why the reluctance of the Ministry of Justice (specifically) and the wider justice sector, to respond seriously to the issue of Māori over-representation and Māori critique of their activities? There are a number of reasons we can draw from, but the following are the most likely:

- an historical lack of capability within the criminal justice sector to develop Māori policy and engage meaningfully with the range of Māori communities, in particular

‘problem populations’ like Māori inmates, ex-inmates, and gang members (Tauri and Roguski, 2012);

- an over-zealous commitment to Eurocentric theories on the causes of, and responses to, crime, such as the Psychology of Criminal Conduct (Department of Corrections) and Crime Prevention through Environmental Design (Ministry of Justice), which in turn block officials’ ability to seriously consider alternatives to Eurocentric approaches, including Indigenous theories and justice practices (Tauri, 2013c);
- the justice sector’s historical reluctance to allow internal (by other government agencies) and especially external scrutiny of the effectiveness of its initiatives or the resources it spends on crime control (Tauri, 2013c; Tauri and Webb, 2012); and
- a paternalistic attitude to Māori organisations and Māori communities in particular, and the community sector overall (see Tauri, 2009b; 2010).

Taken together, all the above provide us with some understanding as to why it has proven extremely difficult for Indigenous outsiders to influence change in the justice systems of settler-colonial jurisdictions (Tauri, 2009b).

What is pertinent to the arguments presented in this thesis, is the extent to which criminology, or more accurately, criminologists, have been involved in the settler-colonial state’s continued utilisation of culturalisation to develop ‘Indigenous’ policy and intervention (e.g., Maxwell and Morris, 1993). As disclosed in specific papers in the thesis (Tauri, 2013c; Tauri, 2014a; Tauri and Webb, 2012), restorative justice provides

one of the key areas where the strategy of culturalisation and the parasitic relationship between members of the Academy and the state, is most evident. The reliance of the state on members of the Academy to provide policy-relevant knowledge, and of the Academy for symbolic legitimation and funding via the state, has created a situation where the grafting of the Indigenous life-world on to imported, western crime control initiatives remains the norm. At the same time, meaningful critique of the suitability of said initiatives for Indigenous peoples is largely absent from the research and analytical activities of state officials and their criminological advisors (Tauri, 2014a). And, to complete this overview of Indigenous perspectives, it is the increasingly globalised nature of crime control that has added a new and potentially virulent problematic to the relationship between Indigenous peoples and the settler-colonial state.

The globalisation of Indigenous justice

It is... important that traditional decision-making processes are not repackaged by white professionals and presented to families as an innovative new practice, only serving to reinforce experiences of colonial superiority.

Steve Jackson (1998).

It is not only the policy and legislative activities of settler-colonial governments that is impacting Indigenous peoples' determination to attain some form of jurisdictional autonomy. We have to also be mindful that we are living in an increasingly globalised world and, as related in Paper 4 (Tauri, 2014a), the policy and justice sectors are not immune to their phenomena. One of the defining features of the growing globalisation

of restorative justice has been the popularity of FGC-style initiatives in the settler-colonial jurisdictions of Canada, the United States and Australia.

The exportation of the FGC forum to these jurisdictions has been heavily influenced by the arguments and representations from advocates of the FGC that were discussed earlier: namely, that the FGC provides a forum that empowers Māori (an indigenous people) and enhances the ability of the criminal justice system to culturally sensitise itself and effectively utilise indigenous justice philosophies and practices (see Olsen et al, 1995; Maxwell and Morris, 1993; LaPrairie, 1996). In response to these arguments we have countered that the forum represents the co-option of Māori cultural practices into New Zealand's youth justice system. The forum signifies the continued willingness of the State to disempower Māori by employing their justice processes while denying them a significant measure of jurisdictional autonomy. What is now of concern to some Māori is that our justice philosophies and practices are now being used to disempower other Indigenous peoples (see Tauri, 2004 and 2009).

Arguably, this situation is particularly noticeable in the Canadian context (Victor, 2011). For example, in 1997 Gloria Lee, a member of the Cree First Nation in Canada, published an article titled *The Newest Old Gem: Family Group Conferencing*. In this paper, Lee expressed strong concerns for the fact that the imported FGC forum was being forced upon Canada's Indigenous peoples at the expense of their own justice mechanisms and practices. Lee (1997: 1) argued that "... First Nation communities are vigorously encouraged to adopt and implement the Māori process and to make alterations to fit the specific community needs, customs and traditions of people who will make use of the

new process". Lee's statement of concern is both powerful and, as the fullness of time has shown, accurate. It has been a number of years since the publication of that article and many Canadian Indigenous are struggling to gain support for the implementation of their own interventions and systems while having to implement culturally alien and inappropriate interventions (Victor, 2007). Having faced a sustained period of colonisation, during which every effort was made to destroy their systems of justice, indigenous are now facing a new threat in the form of the increasing globalisation of crime control products (see Jones and Newburn, 2002a and 2002b; Karstedt, 2002) and in particular, the exportation of the FGC from New Zealand and Australia to the North American continent (Tauri, 2009b).

What the above discussion signals is that any analysis of the Indigenous experience of settler-colonial state justice requires a multi-pronged approach cognisant of at least three truisms, namely 1) that state-related policy making *ala* Indigenous peoples is rarely about 'us', and especially not about our empowerment, but rather the state's ability to respond in ways that silence the hegemonic potentialities of our policy/political activism and shore up the status quo; 2) that the state is assisted in this task by the Academy, and in particular by the 'human sciences' such as criminology; and 3) that our ability to achieve a measure of self-determination in the realm of justice is being severely hindered by the increasing globalisation of crime control, a process that in turn is increasing the impact of the parasitic relationship between the state and members of the Academy, on Indigenous peoples (Tauri, 2014c).

PART III

Published Papers

The following section presents the eight papers that constitute the thesis in consistent format. This required changes to the formatting of some of the papers from that used when they were published. In most cases the changes are minimal, involving alterations to font, footnoting and referencing. For example, in a published paper a reference might appear as Tauri: forthcoming, but appears here as Tauri, 2014c as it was published after the original citation.

Paper 1

Criminal Justice as a Colonial Project in Settler-Colonialism

Juan Marcellus Tauri

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Introduction

The challenge of 'being Indigenous', in a psychic and cultural sense, forms the crucial question facing Indigenous peoples today in the era of contemporary colonialism – a form of post-modern imperialism in which domination is still the Settler imperative but where colonisers have designed and practiced more subtle means (in contrast to the earlier forms of missionary and militaristic colonial enterprises) of accomplishing their objectives.

Alfred and Corntassel (2005: 297-289).

The quote from Alfred and Corntassel that starts this paper marks out the problem-field in which the notes assembled in the following pages are to be inserted. What follows are 'notes' inasmuch as they represent the tentative explorations of a working paper on

a criminological question that has only recently been explored seriously by ‘western’ criminology: what role, if any, does criminal justice play in the settler-colonial states subjugation of Indigenous peoples (for recent Indigenous-informed examples see Agozino, 2003; Blagg, 2000b; 2008; Cunneen, 2006; Tauri, 2013c)?

This paper offers an Indigenous-centred, critical perspective on the colonial projects (Thomas, 1994) employed in settler-colonial contexts to negate, or at the very least nullify, the negative impact of two inter-related ‘wicked problems’ that are deemed peculiar to these jurisdictions: the high levels of Indigenous subjugation within and by the criminal justice system, and the impact of Indigenous resistance to the hegemony of the imposed, criminal justice systems deployed by settler-colonial states. The paper is comprised of three inter-related parts; the first two outline the construction and deployment of colonial projects in the colonial and neo-colonial contexts, wherein it is argued that the matrix of criminal justice was foundational to the state’s attempted eradication of, and eventual socio-economic marginalisation of Indigenous peoples. The final section offers the argument that the continued success of criminal justice as a (neo)colonial project, stems from its parasitic relationship with the discipline of criminology. Together, the continued deployment of these mutually supportive colonial projects against Indigenous peoples demonstrates that *structural violence* (Galtung, 1969) continues to be a significant component of social control in the neo-liberal, settler-colonial context.

Colonial Projects and Settler-Colonialism

The civilising process is not about the uprooting, but about the redistribution of violence.

Baumann (1995: 141).

In his critical commentary on the role of the discipline of Anthropology in the subjugation of Indigenous peoples, Nicholas Thomas identified a set of processes of social control, which he refers to as colonial projects that were fundamental to the successful establishment of a settler colony, and subjugation of the Indigenous inhabitants. Thomas (1994: 105) describes these projects as “socially transformative endeavour(s) that [are] localised, politicised and partial, yet also engendered by longer historical developments and ways of narrating them”. Furthermore, they are:

often projected rather than realised; because of their confrontations with indigenous interests, alternating civilising missions and their internal inconsistencies, colonial [and neo-colonial] intentions are frequently deflected, or enacted farcically and incompletely (Thomas, 1994: 106).

Thomas argues that from the moment of first contact European colonisers utilised colonial projects to expedite the eradication, or failing this, the subjugation of the Indigenous peoples they encountered in new territories. During the initial phases of colonisation, mutual benefit from trade in goods and religion were key projects for advancing the ‘civilising’ mission of colonialism (Cassidy, 2003). Religious conversion

in particular, was considered vital for transforming Indigenous peoples from savage beings into 'proper Christian subjects' (Kidd, 1997) and better enable them to participate in the post-colonial society to come. Later, the impact of Enlightenment thinking saw science and education displace religion as key colonial projects in the colonising endeavour (Lynch, 2000). Through these projects the ideological and practical focus of settler-colonial strategy changed from *saving our souls*, toward policies and interventions that facilitated our removal from our lands, and preparing us to participate in the emerging capitalist economy. Underpinning these policies was the development of ideological rationales, inspired by Social Darwinism that constructed Indigenous as inherently inferior - biologically, genetically and intellectually - to Europeans. Malik (1996) and Wolfe (2010) refer to this change in ideological construction of Aboriginality as the *racialisation of colonialism*.

A key colonial project that arose from the racialisation of colonial ideology, were *identity categories* (Maddison, 2013). These included the introduction of *measurements of indigeneity* based on blood quantum (for example 'full', '3/4', 'half-Māori' and so forth: see Meredith, 2006). Relatedly, a raft of projects arose aimed specifically at 'breeding out' the Indigenous, exemplified in a range of eugenics programmes, such as forced sterilisation, that were deployed across Canada, Australia and the U.S in the latter half of the 19th, and early part of the 20th centuries (Grekul et al, 2004; Lawrence, 2000). The eugenics programmes were in turn supported by a range of projects focused on eradicating Indigenous peoples ability to practice their culture, most notably in the form of child removal programmes and residential/native schools, especially in the Canadian, U.S and Australian contexts (see Bartrop, 2001; Trocme, Knoke and Blackstock, 2004;

Woolford, 2013). The eradication of Indigenous culture through education policy was supported by the introduction of legislation in all settler-colonial jurisdictions aimed specifically at banning or criminalising the practice of Indigenous ritual and culture. Notable examples include legislation banning the potlatch ceremony in Canada (Jonaitis, 1991), the Sun Dance in the U.S (Jorgensen, 1972), and Māori religious practice in New Zealand (Stephens, 2001). And lastly, there are the colonial projects that can be collectivised under the heading of ‘structural violence’, exemplified by direct military action, forced removal of children, and the policies and actions emanating from the developing criminal justice system, much of which was imported intact from the jurisdictions of the European colonisers (Merry, 2000; see discussion below on structural violence).

The numerous colonial projects that littered the settler-colonial landscape formed a complex ‘web’ of subjugating strategies across a range of social and economic policy platforms. Underpinning these were colonial states’ ~~judicious~~ deployment of structural violence (Churchill, 1997). It was a web from which a single colonial project could be deployed discretely to overcome ‘wicked problems’ that evolve from state-Indigenous interactions; wicked problems being those social issues that arise, at least in the eyes of the state, as exclusive to problem populations and, as a result, define them as such. Or, as often happened, the state combined projects in co-ordinated *campaigns of subjugation*, such as the combined strategies of police deployment, child removals and reservations schools deployed in the American, Canadian and Australian jurisdictions throughout the late nineteenth and early twentieth centuries. The sophistication of the

web and in particular, its co-ordination, is beautifully captured by Strakosch and Macoun (2012: 45) who write that:

There are a number of ways to eliminate Indigenous political difference: by physically eliminating Indigenous peoples; by severing their physical connections to lands that lie at the heart of their political systems; by breaking down families and communities; by drawing Indigenous polities into the state and reforming them; and by entering into explicit, contractual exchanges (such as treaties) which publicly erase the political distinctions between coloniser and colonised.

Furthermore, the centrality of structural violence to the pursuit of 'colonialist' justice (or perhaps more accurately, social control), and the interconnected nature of its deployment is exemplified in Fanon's (1963: 38) statement that:

The colonial world is a world cut in two. The dividing line, the frontiers are shown by barracks and police stations. In the colonies it is the policeman and the soldier who are the official, instituted go-betweens, the spokesmen of the settler and his rule of oppression... [i]n the colonial countries... the policeman and the soldier, by their immediate presence and their frequent and direct action maintain contact with the native and advise him by means of rifle-butts and napalm not to budge. It is obvious here that the agents of government speak the language of pure force (Fanon, 1963: 38).

Colonial Projects in the Neo-Colonial Context

Our respective geographical locations are framed by nation states such as the USA, Canada, Australia and New Zealand where colonisation has not ceased to exist; it has only changed in form from that which our ancestors encountered.

Moreton-Robinson (2009b: 11).

How are we to contextualise the ground upon which the neo-colonial marginalisation of Indigenous peoples within settler-colonialism is constructed and maintained? Some perceive it as a *figuration* (see Powell, 2011) or, as discussed previously, a *structure* (Galtung, 1969; Strakosch and Macoun, 2012) that is supported by both real and symbolic violence against Indigenous peoples that has, over time, become ‘cultural’; evolving from a *process* to a *permanence* within the body politic of settler-colonial societies (Galtung, 1990). As postulated recently by Woolford (2013: 172-173; 174, see further discussion below), these various *modes of epistemic violence* (Kitossa, 2014) exist within an overarching web that facilitates the colonial subjugation of Indigenous peoples, via a “mesh that stretches itself across the content, operating through various nodes or sites that change, or take different shape, across time and space”.

Structurally, settler-colonialism is visualised by Woolford (2013: 172) as a “series of nets that operate to constrain [Indigenous] agency”, and are inter-linked at the macro, meso and micro levels. The first (macro)-level net spreads across the entire socio-cultural realm of a settler-colonial society and involves the dominant subjugating processes of social activity, including the economy, government (including the

development of laws and subscription of the right to use violence) and religion. Woolford (2013: 172) contends that “[i]t is at this broad level that dominant visions of the colonial order are negotiated: for example, the formulation of the so-called Indian problem in Canada”, and by extension the ‘Aboriginal problem’ in Australia, the ‘Indian problem’ in the U.S, and the ‘Māori problem’ in New Zealand. In the context of criminal justice, we have the wicked problem of Māori /Indigenous over-representation, represented in governmental discourse as a ‘fact of (criminal justice) life’ that poses a significant social problem and threat to social order requiring meaningful intervention. The ‘Māori problem’ is described in governmental and media discourse as being so significant that New Zealand’s crime problem would likely disappear if not for the high level and ongoing nature of Māori offending, because we are ‘full of crime’ (Otago Daily Times, 2012). At this level of netting significant ideological and policy-related resource is concentrated at the ‘Māori problem’. This comes in various forms, including high rates of surveillance of Māori by the institutions of social control, and political attention to the vote winning potentialities of addressing the wicked problem of Indigenous crime.

Supporting the macro-level is what Woolford (2013: 172) described as the *upper-meso level*, namely the bureaucratic field of government, where “one finds the institutional netting that brings together various state and state-sponsored agencies that are essential to the operations of contemporary settler-colonialism, namely policing, the legal system, the military and health, education and welfare policy sectors. Supporting the upper-meso institutions is a layer that features the service delivery mechanisms

that enable the practice of settler-colonialism to be facilitated. In the education sphere this includes:

a variety of schools (e.g., reservation and non-reservation; federal and mission, day and boarding) form a network of interactions, as they cooperate and compete with one another, depending on various circumstances (ibid: 172).

At the upper-meso level of criminal justice we observe the strategic deployment of militaristic-style policing of Indigenous protest, the significant focusing of policing resources and power against Indigenous individuals and communities in the form of stop-and-search powers and 3-strikes legislation (Cunneen, 2006). Policing, corrections, child care and protection services, the policy industry and the courts all provide avenues through which Indigenous peoples are governed 'differently' in terms of the depth, form and effects of policing. Arguably, this represents a contemporary manifestation of the racialised policies of policing developed during the colonial context (Auger, Doob, Auger and Driben, 1992; Cunneen, 2006; Harding, 1991; Moyle, 2013; Tauri, 2009; 2014c).

Finally we arrive at the micro-level layer of netting where the structural violence of settler-colonialism is operationalised and delivered on the ground. In the education sphere this occurs via the implementation of repressive policies by specific schools (Woolford, 2013: 172):

[W]hich connects parents, children, teachers, principals, and communities in interactions defined by regionally-adapted techniques of governance and control, and a local actor-network that involved not just humans, but also non-human actors like disease, poverty, animals, and territory in local experiences of assimilative schooling.

Within the criminal justice sector the micro-level net is operationalised through, amongst many possible examples, the targeted stratagem's of police district commanders against problem populations, the purposeful targeting of Indigenous individuals and communities by racist (or poorly trained) police officers, and the uneven application of discretionary powers. Other practices include individual departments choosing to ignore existing Indigenous practices and programmes in preference to imported western crime control initiatives (see Tauri, 2011b and further discussion later in this paper).

We contend that similar to Woolford's education-focused case study, the criminal justice system is a key colonial project within the armoury of the settler-colonial state. It is a project built around a sophisticated web across the macro, meso and micro levels of settler-colonial society or more particularly, settler-colonial 'government'. Furthermore, we argue that the criminal justice system's importance as a colonial project has intensified in the last century because of the supposed diminished ability of the contemporary neo-liberal state to legitimately deploy *direct violence* (for example, military operations), or *hard-line assimilatory policies* that characterised previous colonialist attempts to subjugate Indigenous peoples. In other words, the killing times

are over, but epistemic and structural violence are still essential colonial projects in the on-going, contested process of settler colonisation, and its form, more often than not, manifests through the application of crime control policies, legislation and practices (Churchill, 1997; Cribben, 1984).

Following the post-war internationalisation of human rights, the strategic, purposeful use of violence as a social policy tool for controlling problem populations, was deemed unacceptable (Bauman, 1995). Similarly, the racist assimilatory policies that had sought the eradication of our Indigenous souls, rather than the destruction of our physical bodies, were also challenged and, rhetorically at least, replaced with more acceptable policy discourses such as ‘integration’ and ‘reconciliation’. In the context of contemporary settler-colonialism, structural violence is expressed much differently in practice when compared to its deployment during the colonial era. Today the structural violence of the colonising project is perpetrated against Indigenous in the form of militaristic-style policing strategies, the biased application of public disorder offences and discretionary powers, and the criminal justice-led large-scale removal of Indigenous children and youth to detention centres, and Indigenous adults to the prison system (Blagg, 2008; Cunneen, 2006; Kitossa, 2014)⁷. The colonial projects that enable the deployment of structural violence by the developing colonial state, supported by the ideology of (genocidal) eradication, have become, at least at the surface of practice rather than intent, *bio-political* inasmuch as the state now seeks to govern and contain

⁷ Clear exceptions to the new form(s) of supposed *humane colonialism* arise from time to time, demonstrating that the ideals and practices of *old colonialism* never fully vanish from use. Instead, they change shape and form in response to re-configured versions of the wicked problems that arise from time-to-time in neo-colonial contexts. The most recent significant example was the Australian Federal government’s implementation in 2007 of the Northern Territory Emergency Response in relation to a perceived rise in Aboriginal sexual and physical child abuse (Altman and Hinkson (eds.), 2007; Altman and Russell, 2012).

Indigenous peoples through ever more sophisticated projects that focus on administering life, rather than eradicating it, in order to “[R]ationalise problems posed to governmental practice by phenomena characteristic of a set of living beings forming a population: health, hygiene, birth rate, life expectancy, race” (Dean, 2010: 118-119).

Doing Imperialism Quietly? Criminal Justice and Structural Violence and Settler-Colonialism

Around the turn of the century there emerges a mythic, masterful silence in the narratives of empire, what Sir Alfred Lyall called ‘*doing our Imperialism quietly*’.

Bhabha (1994: 177 – emphasis added).

Importantly, for the arguments made in this paper, settler-colonialism is not defined or constructed through a “moment of transformative restructuring” that leads to the context moving to a decolonising moment, or for that matter, ‘post’ the subjugation of resident First Nations. As Strakosch and Macoun (2012: 43) contend:

[This] has not occurred in settler colonies such as Australia, Canada and New Zealand. This [post-colonialism] locates ‘real’ colonialism in the past, and assumes that now policy must deal with the ‘legacies’, ‘heritage’ or ‘reverberating aftermath’ of colonialism in today’s world.

In all settler-colonial societies crises are regularly projected 'out from' Indigenous communities, on to the state, whose task it is to fix whatever is ailing its Indigenes at a particular socio-historical moment. As Moreton-Robinson (2009a: 61) describes it, these crises are "constructed as something extraordinary and aberrant requiring new governmental measures" (such as the Australian Federal governments Northern Territory Emergency Response, see Altman, and Hinkson, 2007). This process, which Moreton-Robinson describes as the 'state-of-exception thesis' and Boulden and Morton (2007: 163) as 'emergencies', are managed as events that have "... a political style, one that we have become increasingly use to since September 11". It is an alarming world, alerting people to immediate dangers to life, health and property. Sometimes the dangers are real, sometimes they are imagined; and sometimes they are a complete red herring. These (often contrived) emergencies are employed in part to rationalise the state's *exceptional interference in the lives of Indigenous peoples*. They serve both an ideological and functional role in colonial and neo-colonial contexts, including rationalising the use of structural violence to support the ongoing subjugation of Indigenous peoples.

Nowhere is this more evident than in the structural violence of the criminal justice systems of the settler-colonial state, especially its key role of *sequestering Indigenous peoples within state-controlled, closed institutions*. The role of criminal justice system in the modern European state is well established as reflective of the desire for internal control of populations and of their labouring capacity (Wacquant, 2009), characterised by the workings of the sequestering institutions so powerfully identified by Foucault (2000) - most notably prisons, asylums and workhouses. In the settler society context

we might add to this list of closed institutions youth borstals, residential schools and the penal reserves and reservations of North America and Australia (such as Palm Island, see Anthony, 2009. See also Churchill, 1997; Harris, 2004 and van Krieken, 1999), which were used as ‘camps’ for concentrating large groups of Indigenous individuals, and sometimes entire Indigenous communities who were deemed surplus to the developing capitalist mode of production (Rombough and Keithly, 2005). More recently, the significant, and consistent over-representation of Indigenous peoples in youth detention centres and adult prisons, has been referred to by O’Connor (1994) as the ‘new removals’ and by Cunneen (1997: 2) as the ‘new stolen generations’ where “[t]he high levels of criminalisation and subsequent incarceration of Indigenous young people in Australia effectively amounts to a new practice of forced separation of Aboriginal and Torres Strait Islander children and young people from their families”.

When taken together these examples of sequestration correspond with what Harris (2004) calls the *management of dispossession*, a slowly evolving set of colonial projects located principally at the meso-level of Woolford’s schema due to their primary purpose - the removal of the Indigenous individual from his or her cultural context. These projects evolved within the settler-colonial contexts as primary sites for disciplining Indigenous at the point where “physical power moved into the background (while remaining crucial), and the disciplinary strategies associated with the management of people, nature, and space, came to the fore” (Harris, 2004: 174).

Arguably the settler-colonial state has become much more subtle and manoeuvrable in terms of the development and employment of colonial projects. No longer able to

maintain legitimacy by deploying racist, assimilationist strategies, such as the forced removal of our children under targeted policies⁸, or specific legislation banning language and cultural practices, or indeed replicating the physical genocide of the Indian Wars carried out in the U.S, or the killing times in Australia (Barkan, 2003; Neu, 2000; Riethmuller, 2006), the neo-liberal settler state nonetheless deploys structural/epistemic violence as a colonial project against Indigenous communities. In the guise of youth detention, prison and child care and protection processes (O'Connor, 1994), the colonial projects of removal and sequestration remain significant structurally violent strategies deployed by the settler-colonial state in its ongoing 'war of manoeuvre' against Indigenous resistance to assimilation, and at times, annihilation.

The Interconnectivity of the Criminal Justice Web

Colonial projects intertwine and overlap, continuously morphing into new 'technologies of control' that enable the settler-colonial state to control populations that are deemed a 'problem'. Thus in the Canadian context, we can trace the residential school morphing into the prison industrial complex, which is arguably now a primary site through which the colonial policies of integration and assimilation are perpetuated in the neo(liberal)colonial context (Proulx, 2002). In relation to criminal justice, we see the

⁸ The strategy of child removal as a colonial project is no longer characterised by direct violence, such as the Australian policy of using police and armed forces to enter Aboriginal communities to make forced removals that was prevalent from the late 1900s to the mid-twentieth century (Cunneen, 1997). It can be argued that the process has been replaced with one akin to Bauman's (1989) rationalised process of modern bureaucracy and the rise of risk-based systems for analysing populations. In this context, the direct violence of old-style removals has been replaced with risk-based evaluation that aids to identify high-risk individuals, families and communities in need of surveillance and intervention. In all settler colonial contexts, Indigenous communities are judged high-risk in relation to child care and protection matters (Moyle, 2013). This results in high levels of surveillance, high rates of reporting, investigation and of child removals.

silent yet nonetheless 'violent' imperialism of settler-colonialism present in Mallea's (2000: 27) description of service delivery in Canadian prisons where:

European culture dominates in the prison system and there is racism among the staff... Prisons provide the same extreme form of isolation which was the experience by children in the residential schools... One program called Teen Challenge is now operating within some Manitoba prisons. Teen Challenge is a drug rehabilitation program based on fundamentalist Christianity. It bans the practice of Native spirituality within the program and preaches that such spirituality... is the occult.

Mallea's description of authorised in-prison programmes in Manitoba relates to the argument made here that criminal justice is a key project for the dissemination of structural violence, through the fact that the site of isolation from one's cultural context and pseudo-religious/scientific-programming - the prison - becomes a primary venue for the continued subjugation of the Indigenous life-world. Arguably, this attempt is no less violent than projects utilised during the colonial context; if one accepts that the forced imposition of non-Indigenous religious belief and practice is 'violent', coupled with the 'violence' of the imposition of psycho-therapeutic service mechanism of a Eurocentric drug rehabilitation programme, and removal and isolation from one's Indigenous community in a decidedly 'non-Indigenous' institution. By banning Indigenous spirituality from the context of rehabilitative service delivery, the violence of isolation that occurs through the act of incarceration, is exponentially enhanced

through the concomitant violence generated by denigration of the Indigenous life-world.

The (Ordinary) Structural Violence of Settler-Colonial Criminal Justice

The etiological myth deeply entrenched in the self-consciousness of our Western society is the morally elevating story of humanity emerging from pre-social barbarity.

Bauman (1989: 12).

We can anticipate significant disagreement from some with the argument that criminal justice represents as a key site through which the settler-colonial state manifests the colonial project of structural violence against Indigenes. An early example of this view is espoused by Anthony Giddens (1985) who, during his critique of Foucault's perspective on power and the state, argued that the French theorist's emphasis on coercive, closed institutions was too constricted to enable a sophisticated analysis of power and social control in contemporary Western societies. Giddens (quoted in Gledhill, 2000: 17; emphasis Gledhill) preferred instead "a more general shift in the sanctioning capacities of the state from the *manifest use of violence* to the *pervasive use of administrative power*". This change in modes of social control from violence (or at least the threat of it) to the use of administrative, disciplinary technologies to elicit internal pacification of the population, is evidenced by contemporary police forces and the *science of policing* replacing *violent policing*, such as the deployment of military troops and military action, as fundamental to the practice of social regulation. It also

signals the compartmentalisation of policing within the sophisticated, bureaucratic mechanisms of codified law, incarceration, parole and probation. Giddens gives much weight in his analysis of contemporary social regulation to the supposed diminution of violence resulting from the contemporary state's steady movement towards facilitating internal pacification of the 'population' through administrative power. As such, he argued that a distinguishing feature of this mode of regulation of a population is the withdrawal of the military from direct participation in the internal affairs of the state. Within Giddens' schema, criminal justice, including policing, when compared to the violence deployed in support of the colonial enterprise, represents a form of 'quiet imperialism'.

Indigenous and critical sociological scholarship exposes the Eurocentric bases of this type of theorising of the 'pacifist' exercise of power by the contemporary settler state. For example, an extensive literature demonstrates the explicit violence of policing in neo-colonial jurisdictions, both historically and contemporarily (see Churchill, 1997; Wilson, 1998 for the North American context, Watson, 2009 for the Australian, and Jackson, 1988; Pratt, 1992 for New Zealand). Violence as a coercive tool of social control is fundamental to the formation and *enduring hegemony* of the modern (neoliberal) capitalist state. Indeed, as Bauman (1989) succinctly demonstrates in his sociological study of the holocaust, violence as a project for controlling a population is not only possible in a 'rationally'-derived polity, but is in fact the end point of the development of this so-called science of state craft:

Once the hope to contain the Holocaust experience in the theoretical framework of malfunction (modernity incapable of suppressing the essentially alien factors of irrationality, civilising pressures failing to subdue emotional and violent drives, socialisation going awry and hence unable to produce the needed volume of moral motivations) has been dashed, one can be easily tempted to try the 'obvious' exit from the theoretical impasse; to proclaim the Holocaust a 'paradigm' of modern civilisation, its 'natural', 'normal' (who knows – perhaps also *common*) product, its 'historical tendency' (Bauman, 1989: 5-6: emphasis Bauman's).

Bauman (ibid: 6: emphasis Bauman's) further argues that "[i]n this version, the Holocaust would be promoted to the status of a *truth* of modernity (rather than recognised as a possibility that modernity contains)". In effect, Bauman counters Giddens' (mis)representation of modern state-craft characterised by the diminution of violence as a biopolitical strategy of control or as something that, when it does arise, represents an aberration, the rending of evil through the fabric of civility that cloaks 'western civilisation'. Instead, as Bauman (1989: 18) contends, there is nothing inherent in the instrumental rationality of contemporary state-craft that makes it singularly incapable of deploying structural violence, in fact:

The bureaucratic culture which prompts us to view society as an object of administration, as a collection of so many 'problems' to be solved.... as a legitimate target for 'social engineering'... was the very atmosphere in which the idea of the Holocaust could be conceived, slowly yet consistently developed, and brought to its conclusion.

To consider contemporary settler-colonial policing as part of the diminution of violence as a key colonial project within the settler-colonial context, is to gloss over the fact that structural violence continues to be a significant strategy in the state's ongoing pacification of their Indigenous peoples and other dispossessed populations. The evidence of the continued importance of this particular colonial project to the settler-colonial state is extensive: we see it used in its commonly described 'direct' form as a response to Indigenous activism, such as at Bastion Point and Wounded Knee in the 1970s (D'Arcus, 2001; The Waitangi Tribunal, 1987), Oka in the 1990's (Kalant, 2004) and most recently against the Mi'kmak First Nations resistance to gas mining in the Canadian province of Nova Scotia (2013). The violence deployed in these contexts was strategic, planned, and purposeful. As such, it stands in stark contrast to the supposed benign use of administrative power that Giddens' and others present as characteristic of western, (neo)liberal government (Hayek, 1944; for critical discussion of this perspective see Oksala, 2011 and Springer, 2011). Second, we can observe in the structural violence of contemporary criminal justice systems the pervasive, militaristic-style over-policing of people of colour in Western jurisdictions, evidence of bias and racism in the way police use their discretionary powers, courts their discretion in terms of prison sentences or community sentences, and correctional services through the denial of the legitimacy of the Indigenous cultural context as a source of rehabilitative practices (Aboriginal Justice and Advisory Committee, 2000; Cunneen, 2006; Harding, 1991; Perry, 2006; Webb, 2004).

Recently, a number of commentators have begun theorising the contribution of law and justice institutions in the "historical and ongoing contested subjugation of Indigenous

peoples”, most notably Smandych (2013: 92), Veracini (2007) and Wolfe (1999). The work of all three demonstrates that a key logic of settler-colonialism is the elimination of the Indigenous peoples. Cited in Smandych (ibid: 93), Wolfe conceptualises the settler-colonial logic of elimination as more than just the liquidation of Indigenous peoples, but also:

In common with genocide as Raphael Lemkin characterised it, settler-colonialism has both negative and positive dimensions. Negatively, it strives for the dissolution of native societies. Positively, it erects a new colonial society on the expropriated land base... In its positive aspect, elimination is an organising principal of settler-colonial society rather than a one-off (and superseded) occurrence. The positive outcomes of the logic of elimination can include officially encouraged miscegenation, the breaking-down of native title into alienable individual freeholds, native citizenship, child abduction, religious conversion, resocialisation in total institutions such as missions or boarding schools, and whole range of cognate biocultural assimilations.

Why, might we ask, does Wolfe represent native schools, child removal and other similar colonial projects, as ‘positive’ manifestations of the colonialist logic of elimination? Smandych (2013) attempts to address this issue by arguing that when compared to physical genocide via warfare, these strategies are ‘positive’ in that they do not seek to *replace* Indigenous societies in their entirety, but to control and corral; Paradoxically, by (forcibly) bringing Indigenous people together in these institutional settings, resistance and socio-cultural regeneration is enabled. As Smandych (2013)

relates, resistance and counter-resistance by both settler-colonialists and Indigenous peoples, continues to structure and reframe settler-colonial societies, and ensures that the 'end point' of the logic of elimination remains elusive. And importantly, as Smandych (2013: 93) further argues, the logic of elimination "continues into the present" in the guise of the supposedly 'quiet imperialist' projects discussed previously. But as we have discussed here, the centrality of the criminal justice system to the ongoing colonialist agenda, demonstrates the continued importance of 'old colonial projects' - most especially of structural violence, to the settler-colonial context.

Closing Comments

Aboriginal people were modernity's 'waste': the criminal justice system became one of a number of sites of waste management for those stigmatised as belonging to a doomed race, and a warehouse for those who resisted the process.

Blagg (2008: 21).

How is it then, that supposedly 'liberal', democratic, Western nations such as New Zealand, Australia, Canada and the U.S are portrayed in this paper as anything but 'liberal' when it comes to their use of the structural violence to effect the (continued) marginalisation of their Indigenous peoples? For an answer we might refer to Foucault's conceptualisation of the 'illiberality of liberal government', where supposed liberal governments act in ways that mirror authoritarian regimes by implementing policies with prejudice, and sometimes with violence, against targeted sections of the population:

[A]s was evident in recent revelations about the way in which liberal-democratic states (like those in Scandinavia) have, in the course of the twentieth century, practised forced sterilisation in the name of a eugenic Utopia on certain of their populations. Even more pervasive has been the tendency within certain states (Australia, Canada), having ceased to attempt actual genocide, to commit forms of cultural genocide upon indigenous people within their borders in the name of their own well-being, such as in the case of the removal of children from their parents and families. While the bio-political imperative does not account for all that bedevils liberal-democratic states, it is remarkable how much of what is done of an illiberal character is done with the best of bio-political intentions (Dean, 2010: 156).

Perhaps it is simply a continuation of the overwhelming 'will to control' that was so crucial to the original pioneering endeavours of the early colonialists. Or is it because we Indigenous peoples are what might be called an unfinished project that impedes the neo-colonial (and neoliberal) state from announcing the end of colonialism? It should be remembered that we were meant to accept the gift of civilisation, but instead had the temerity to resist, seeing colonisation for what it really meant – the eradication of ourselves and our culture. We were also meant to die out; unable to cope with the ravages of western disease and the superiority of 'western civilisation', but instead we reproduced at much higher rates than the colonialists. When these events failed to transpire it was believed that policy, and the march of the capitalist free market economy – the end points of social evolution - would bring about our assimilation or

integration and see us forever discard our archaic cultural practices and languages. Instead, we revitalised our cultures, exerted our rights to self-determination and began actively challenging the hegemony of many of the institutions, policies and interventions supposedly implemented to 'reduce our risk to society', including the criminal justice system (Tauri, 2005).

As unfinished business we are an embarrassment to the settler-colonial state, because our very existence calls into question the legitimacy *of* settler-colonialism and the effectiveness of the supposedly benign, enlightened types of colonial projects now in vogue. Unfortunately, the criminal justice system makes a lie of claims that the settler-colonial state no longer has need of structural violence to control its problematic Indigenous populations, or that settler-colonialism represents a quieter (meaning less assimilatory) process of subjugation. Instead, the policies and actions of the agents and agencies of crime control demonstrate that structural violence remains a significant tool of subjugation of Indigenous peoples in contemporary settler-colonialism.

Paper 2

Indigenous Critique of Authoritarian Criminology

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Introduction

Biko Agozino (2010: i) has described the discipline of criminology as “a ‘control-freak’; one whose “imperialist reasoning” is most evident when supporting “the [contemporary state’s] exercise of internal colonialism and neo-colonialism” within settler societies. In recent times the development of supposed evidence-based crime control policy throughout Western jurisdictions appears to have reinvigorated administrative criminological formations to the extent that they once again dominate policy discourse relating to the issues of Indigenous over-representation and critique of the operations of criminal justice. This chapter seeks to explore this state of affairs by firstly, providing a critical examination of the role criminology plays in the continued neo-colonial subjugation of First Nations and secondly, the role that myth construction and maintenance plays in the hegemonic activities of a particularly authoritarian form of the discipline. A critical analysis of two articles from a recent *Australian and New Zealand Journal of Criminology* (2010) special edition on ‘Aboriginal violence’ highlights the core

features and, arguably, the key failings of this authoritarian criminology in relation to its response to Indigenous justice issues: namely a preference for undertaking research *on* instead of *with* Indigenous peoples, the privileging non-engaging research methodologies and the potent use of myth to promote practitioners views of the world and silence the Indigenous voice.

A Brief Outline of Australasian Criminology

What is criminology? A control-freak discipline!

Agozino (2010: i).

The assumption that those who read this chapter will be familiar with the broad history of the discipline of criminology is no doubt justified. Therefore, this allows me to make a sweeping glance over this history as it pertains to the formation of the discipline in Australasia⁹. Of course we all know that the power of positivistic, administrative or Eurocentric criminology, call it what you will, was seriously challenged in the 1960s onwards by the advent of various ‘critical’ criminologies. These critical perspectives shared in common a rejection of (amongst other things) servicing the needs of the state and the overwhelming focus on ‘individual antecedents’ of criminality. What distinguished these approaches from administrative formulations was their focused, critical gaze *on the institutions of social control*, and the *impact of divisive, disempowering social structures* (Scruton and Chadwick, 1991; see also Carrington and Hogg, 2012: 47-48).

⁹ The term Australasia is used as a collective term for the separate, neo-colonial jurisdictions of Australia and New Zealand.

Muncie (2000) argues that the radical critique was so vociferous that some on 'the left' anticipated the demise of criminology itself or at the very least a 'retrenchment' of the administrative and positivistic varieties. This supposition seriously overestimated the power of the radical perspective while underestimating the resilience of positivist, Eurocentric forms of criminology. It ignored the fact that even if the individualised, Eurocentric focus of administrative criminology for a time lost its shine in terms of dominating journal and book publications, academic awards and the like (a highly debatable supposition), its tendency for *theoretical imperialism* and its sycophantic relationship with the state ensured it continued to receive the attentions of policy makers (Kitossa, 2012; Tauri, 2009).

By the end of the 1980s the rejuvenation of law and order politics in the United States under Reagan, and Great Britain under Thatcher, brought with it the resurrection of an administrative criminology revived after the suffocation of the 'nothing works' paradigm of the 1970s. Once again, positivistic criminologies were invited back into the governmental fold as Western jurisdictions turned increasingly to 'tough on crime' approaches to social harm (Shichor, 2000; Walters, 2006). The resurrection of administrative, embedded criminologies¹⁰ entered its end game in the mid-1990s when policy industry's in various Western jurisdictions implemented so-called evidence based policy (EBP) processes that the likes of Tony Blair and his New Labour

¹⁰ Elsewhere, Carlen (2010) and Carrington and Hogg (2012) have advised against imagining criminologies to the point of creating monolithic constructs and intellectual dichotomies such 'critical' vs. 'administrative' approaches and such like. Carrington and Hogg (2012: 46-47) argue that "[s]uch exercises in distancing.... have borne little intellectual fruit over the years, let alone in the present when critical work in criminology has become unmistakably 'mainstream' in Australia... as elsewhere. While acknowledging the validity of this critique in terms of the eclectic nature of the discipline and the fact that all criminologies can ask critical questions, the historical and contemporary role of the discipline in subjugating Indigenous is readily identifiable via critical analysis via an Indigenous Standpoint; as will be demonstrated in this chapter.

government predicted would bring about the end of *ideological policy making* (Marston and Watts, 2003)¹¹. Instead, we had entered a new world in which evidence derived from scientific research, would dominate policy development (Walters, 2008). The rise of EBP meant that that once again, positivistic, administrative criminological approaches became the acceptable face of the academy for policy makers (see Parsons, 2002). The situation was the same in various neo-colonial contexts, except for the preference of New Zealand and Australian administrative criminology practitioners and policy makers to look to Europe and North America for theoretical and empirical inspiration (Carrington and Hogg, 2012: 48; Tauri, 2009; Webb, 2003).

To infer that criminology, or at least particular derivatives of the discipline are 'Eurocentric' is not to ignore variations in epistemological, methodological preference and theoretical nuances that exist in our eclectic discipline. However, from an *Indigenous Standpoint* the term encapsulates the cultural, social and economic roots of the European academy's intellectual evolution. As Agozino (2003; 2010) and Cohen (1988) contend, the colonial enterprise that took place from the 16th to the 19th and early 20th centuries¹² was central to the theoretical and empirical evolution of the

¹¹ Much like the radical perspectives' predictions of the demise of administrative criminology or Fukuyama's (1992) 'end of history', Blair et al's announcement that EBP would facilitate the end of ideology and politics in policy making has been shown to be wishful thinking (for example, see Tauri, 2009 and Walters, 2009).

¹² It is beyond the scope of this paper to provide a thorough overview of both the intellectual development of the discipline of criminology, or of its grounding in the imperialist policies of Western colonisation of Indigenous peoples. The former point has been made in detail elsewhere, although unsurprisingly critical analysis of the role of the discipline in the cultural and physical genocide by colonising powers of Indigenous peoples is sparse (although see for examples Cohen, 1988, Jackson, 1988; Pfohl, 1994). The following quote from Agozino (2010: i) is suffice at this point to position criminology firmly as a *key technology of social control in the colonial era*: "[c]ontrol-freak criminology was there from the beginning of imperialism when the attempt to pacify the rebellious natives and stabilise foreign domination of finance capital was politely referred to as the 'native question'... to which the answer was a pattern of pacification that has been identified as gun-boat criminology".

discipline of criminology. The imperialist underpinnings of contemporary criminology is eloquently captured in Agozino's (2010: vii) observation that:

It was at the height of the slave trade that classicism emerged to challenge the arbitrary nature of punishment in medieval Europe but this insight was not extended to enslaved Africans who were arbitrarily victimised even when they did nothing wrong. However, it was not until the height of colonialism in African and Asia that Europe discovered the new 'science' of criminology as a tool to aid the control of the other – a supposed advancement on classical philosophies of justice.

The Hegemony of Authoritarian Criminology in Australasia

The issue of Indigenous over-representation in the criminal justice system has been a significant focus of criminological work in Australasia for the past quarter century. Until the advent of the 'golden age' of Indigenous-informed, Australian criminology in the 1980s and 1990s, much of the initial academic material was generated by those working within the administrative criminological vein. During this period a group of mainly European criminologists published extensive material that privileged the Aboriginal experience of crime control policy and gave voice to *their* issues, much of it without the requisite filtering processes of the policy industry¹³ (see Clifford, 1982;

¹³ The situation is significantly different in that very little material that privileges the Māori experience of criminal justice processes was produced during this era. Criminologists and policy makers tended to offer a steady diet of Eurocentrically-centred, uncritical policy statements, exemplified by the Reoffending by Māori (RoBM) project led by the Ministry of Justice and Ministry of Māori Development (see Williams, 2001). An exception is Moana Jackson's ground breaking 1988 report *He Whaaipanga Hou (Māori and the Criminal Justice System)*, Jackson 1990; 1992, 1995a; 1995b and in terms of historical work, chapter two of John Pratt's (1992) *Punishment in a Perfect Society*, and Alan Ward's (1995) *A Show of Justice: Racial Amalgamation in Nineteenth Century New Zealand*. What little criminological material was being produced on Indigenous issues, for example components of Newbold's 2000 publication *Crime in New Zealand*, were based on the privileging of Eurocentrically

Cunneen, 1992; 1994; 1997; 1999; Blagg, 1997; 1998; 2000b; Dodson, 1994). This body of work represented a significant change from the diet of government funded material that masqueraded for 'objective', 'value-free' research we had been subjected to in the past¹⁴. The period from the late 1990s onwards has seen a re-empowerment of neo-conservative, state-centred criminological perspectives on the Blackfella/Māori 'problem'. Unfortunately, as will be discussed later in the chapter, much of the material emanating from this perspective adds to the discipline's sad history of abetting the subjugation of First Nations, proving that the Eurocentric, embedded components of the discipline are failing to learn from the discipline's abusive past.

Contrary to the claims of adherents such as Weatherburn (2010), the majority of criminological material that is influencing public policy and media discourse on the 'Indigenous question', emanates from approaches that are predominantly quantitative in method, and largely 'Aboriginal free' in terms of data gathering and engagement with the research population. The body of work that is considered of value to the policy sector and mainstream media, is predominantly statistically-focused and government-funded (see Bond and Jeffries, 2010; Jeffries and Bond, 2010, Marie, 2010; Newbold and Jeffries, 2010; Snowball and Weatherburn, 2006 and 2007; Weatherburn and Fitzgerald, 2006; Weatherburn, Fitzgerald and Hua, 2003; Weatherburn, Snowball and Hunter,

derived material and not on meaningful engagement (or indeed empirical inquiry) with Māori; a stance replicated in a recently published chapter on 'race and crime' (Newbold and Jeffries, 2010).

¹⁴ One significant exception to the rule that government funded material is non-critical, comes in the form of the 1992 report released by the Royal Commission of Inquiry into Aboriginal Deaths in Custody (RCIADIC).

2006 for exemplars of the type of material produced by embedded Australasian criminologists)¹⁵.

There are a number of reasons why the material produced by embedded criminological approaches is proving popular with both policy makers and mainstream media. One forceful explanation is that the body of work this paradigm produces largely avoids critical analysis of the policy-making process. It avoids or sidelines complicated, messy 'structural determinants' such as racist policing, racist court processes, racist Government policy and legislation (most recently demonstrated in the Australasian context by the introduction in 2006 of the Federal Government's Northern Territory Emergency Response: see Altman, 2007). These supposedly 'too hard to measure' determinants of Indigenous marginalisation are often dismissed through flippant and empirically weak contentions that institutional bias and structural determination have dominated (and negatively impacted) Aboriginal policy making (see Marie, 2010; Weatherburn, 2010 and discussion below). This argument and many others form the great myths through which administrative, embedded criminologies seek to maintain hegemony in the race to be 'of utility' to the state (see below for in-depth discussion of the importance of myth for administrative, embedded criminologies).

I argue that the resurrection of administrative criminologies has seen the development of a form that is particular to settler societies, including Australasia. To this peculiar form I give the name *Authoritarian Criminology*. This 'new' form of criminological

¹⁵ A body of work exists that privileges the Indigenous perspective, but thus far is less likely to impact policy development and media discourse. For example, see Altman (2007), Bull, (2004; 2009), Cunneen (2008 and 2009), Tauri (2004; 2009; 2011c); Vivian and Schokman (2009) and Webb (2003; 2004; 2012).

formulation appears to serve the interests of the neo-colonial state, Eurocentric academic institutions, and the career aspirations of practitioners. Of lesser concern are the needs of Indigenous peoples who serve simply as the providers of empirical data for analysis. As such the practice of Authoritarian Criminology represents a contemporary exemplar of Agozino's 'control freak discipline'. It is *the* contemporary form of embedded criminology that continues the discipline's history of collusion with the state and the continued, neo-colonial subjugation of Indigenous populations (as illustrated in the work of Agozino, 2003; Cohen, 1988).

The pursuit of Authoritarian Criminology is readily identified by the following core practices of its exponents, including that they:

- focus their research and social inquiry on the definition and conceptualisation of crime as defined by the state;
- confine their critical criminological gaze to issues relating to state-defined problem populations, more often than not *people of colour* and working class youth, without significant engagement with individuals or communities from these populations;
- confine their uncritical criminological gaze to state-run justice processes, policies, legislation and problems and questions that the state deems important for which they receive remuneration via the establishment of contractual relations;
- limit their 'critical analysis' of state systems and policies to programme effectiveness and evaluation largely devoid of historical context and wider political economy of the state's dominance of 'justice' in the neo-liberal moment;

- empower themselves through the *veil of scientism*, an ideological construct that privileges their approach to measuring the Indigenous life-world, whilst denigrating Indigenous (and other) forms of knowledge that seek to explain the social world from the perspective of the Other (see, for example, Marie, 2010); and
- utilise the process of *myth construction and maintenance* in a hegemonic exercise aimed at privileging its 'way of knowing' in the policy making process, over that of potential competitors.

The Mythological Foundations of Authoritarian Criminology

The critique of postmodern thought notwithstanding, it is a fact that many criminological theorists make extensive use of analogy, *myths* and literary allusions in their construction of reality (emphasis added).

Agozino (2003: 110-111).

As Agozino observes, myth construction and maintenance is an essential element in the development of the discipline of criminology, and its construction of reality. I argue that as Authoritarian Criminology is geared toward supporting the neo-colonial state and, either by osmosis or intent, a significant player in the continued subjugating Indigenous peoples, its myth construction and maintenance activities warrant closer consideration (Tauri, 2004; 2009).

Myth, criminology and policy making

For a discipline that is populated by empiricists driven to identify the 'laws of crime' through scientific investigation, the claim that it relies on myth for its legitimacy might appear strange. To understand this claim we need to push aside the veil of scientism that practitioners surround their practice with and accept that *ideological artefacts* such as these are central to the business of 'doing Authoritarian Criminology' (or, indeed, *any form* of the discipline). I accept that exponents of Authoritarian Criminology are genuinely committed to producing 'scientific' data on the social world in order to inform an evidence-based, politically neutral, policy-making process. Unfortunately, those aims are difficult to achieve when policy making and academic social inquiry *are both* highly ideological and political activities. And as they are ideologically and politically driven they are by their very nature highly dependent on an "alternative dimension of myth" (Herzog and Abel 2009: 4) to support their hegemonic activities; hence the parasitic relationship between the two entities. I argue that the myth-making of Authoritarian Criminology is reflective of the gap and tension between the 'ought' and 'is' characteristic of institutional, knowledge development practices in the academy and the public service. Accordingly, the academy's knowledge construction and policy development are duplicitous activities where "... the *ought* provides a fantasised or glamorised ideal that the *is* of practices should be achieving" (ibid: 4, emphasis added).

The creation and maintenance of myth is fundamental to Authoritarian Criminology's hegemonic endeavours because of the important part it plays in mediating opposition and "justifying decisions regarding major issues" such as policy, legislation and funding of both research and interventions (ibid: 5). Myth construction and maintenance is

particularly helpful for taming *internal* coordination problems (i.e., competition within and between various criminologies and, in particular the lived experience of problem populations, for the attention of the policy makers and their finite resources) and *external* one's (i.e., nullifying the potentially politically damaging impact of independent scrutiny by Indigenous commentators and more critically inclined criminologists) "because myths, by their very nature, disguise and manage the emotional impact of the stories they tell" (ibid: 5). Therefore, myths play a useful role in hiding the 'real story' behind the intent and likely impact of Eurocentric knowledge construction.

Myth creation and substantiation run deep through Authoritarian Criminology, and two recent papers (one substantive and one, while comparatively short, nonetheless instructive for this discussion) appeared in the Australian and New Zealand Journal of Criminology (2010 - volume 43(2)) that provide contemporary exemplars of this process. These are Danette Marie's *Māori and Offending: A Critical Appraisal*, and Don Weatherburn's *Guest Editorial: Indigenous Violence*.

The myths that underpin Authoritarian Criminology are clearly identifiable in the work of Weatherburn and Marie in particular and other similar work (see references bottom of page 118). Analysis of this body of work identifies four key myths central to the hegemonic activities of Authoritarian Criminology:

- the myth of Eurocentric objectivity and the veil of scientism;
- the myth of the dominance of Indigenous/communitarian perspectives;
- the myth of the Indigenous dominance of evaluation and research on 'Indigenous policies'; and

- the myth of the Indigenous dominance of policy making, intervention design and research is the primary reason for the failure to reduce over-representation.

For the purposes of this chapter, the rest of this section will analyse the use of the first two myths as exemplified in the Marie and Weatherburn articles.

The myth of objectivity and the veil of scientism

The key to this myth is discourse that presents Authoritarian criminological knowledge as *the valid form* for informing policy making because it is derived from scientific observation of the social context, and its practitioners are both ‘objective’ and ‘value-neutral’. In contrast, other forms of knowledge construction are unscientific, ideological, value-laden and therefore biased. And in this category practitioners place Indigenous techniques for knowledge construction and dissemination.

Marie’s paper provides a solid example of the type of mythology-driven knowledge destruction at work. For example, in her paper she makes two significant, albeit poorly evidenced claims common to the practice of Authoritarian Criminology: firstly, Māori (Indigenous) formulations of knowledge are ‘unscientific’ and should therefore play no part in crime control policy development; and secondly, Māori policies and interventions are ‘unscientific’ because there is no evidence to prove either the theories upon which they are based or the efficacy of the programmes that emanate from them.

I need to begin my response to these mythological constructs by acknowledging that Marie’s point about the lack of evidence for Indigenous theories and interventions has some validity. However, in making her claims Marie appears unaware of the *politics of*

crime control policy in the New Zealand context, especially as it relates to the development of Māori-specific policy. Her apparent ignorance of the ‘politics’ of Māori policy construction explains her exaggeration of the amount of influence Māori theory and practices actually has on crime control policy. If she were aware of the politics and the vast array of documents regarding policy construction across the criminal justice sector, then she might have chosen to temper her comments on the failure of Māori approaches by acknowledging the following, fundamental truth about the criminal justice sector in New Zealand: that it has an extremely poor history of carrying out (or contracting) ‘scientific’, outcome-focused research/evaluation into the efficacy of its policies and interventions. This lack of empirical analysis of the crime control in New Zealand pertains to the entire suite of policies and interventions whether they are informed by Tikanga Māori, Crime Control Through Environmental Design (CPTED) or some other theory (see Tauri, 2004; Te Puni Kokiri, 2002).

Marie’s mythological construction of Māori approaches is weakened by a sustained, critical analysis of the efficacy of her preferred ‘scientifically’-derived interventions. Nowhere in her paper does Marie provide significant evidence that these category of programmes (for example, Multi-Systemic Therapy, corrections-delivered criminogenic programmes, CPTED, etc) are working in any substantial (or empirically verifiable) way to reduce Māori offending/reoffending. And yet, as will be discussed later, New Zealand offenders are far more likely to receive the kind of scientifically-derived treatment Marie supports. In comparison, they are much less likely to take part in Tikanga-inspired interventions that Marie contends are having a negative effect on Indigenous

recidivism rates (see offenders' comments in Te Puni Kokiri, 2007 and especially Department of Corrections 2009b).

The myth of the dominance of Indigenous/communitarian perspectives

The purpose of this mythical construct would have us believe that the development of effective solutions to the 'Indigenous problem' has been hampered in neo-colonial jurisdictions by a) the rise of Indigenous cultural 'theory', b) the biculturalisation of state policy, which led to c) the policy sector in Australasia 'turning away from science' and embracing cultural perspectives on crime control for First Nations. For the likes of Weatherburn (2010) this explains the predominance of policies and interventions geared to conferencing processes, circle sentencing and enhancing the 'cultural practice' of agents and agencies and a focus on 'bias' and 'structure' rather than individual antecedents of crime. Marie (2010: 283) makes a similar claim when she writes that Māori 'theory' dominates crime control policy development in the New Zealand context. She goes on to present a misleading summation of Māori theory by erroneously presenting it as primarily focused on cultural loss as *the key determinant* of Māori offending and overrepresentation:

A major assumption of this theory is that the contemporary overrepresentation of Māori... is best understood as the outcome of Māori experiencing impairments to cultural identity resulting from colonisation. Central to this theory... is also the assumption that ethnicity is a reliable construct by which distinctions can be made between offenders regarding what factors precipitated their offending, as well as best practices for their rehabilitation... rehabilitation efforts largely pivot on the

idea that restoring cultural identity will lead to a subsequent number of Māori in prison.

To support her argument Marie cites Newbold's (2007) summary of the types of programmes currently en vogue in corrections. Yet inexplicably, Marie overlooks preceding chapters of Newbold's book which demonstrate that within the Department's theoretical paradigm, culture and cultural identity *are not given causal power*: in other words, culture neither causes crime, nor is a significant player in reducing it. In fact, culture (specifically 'Māori culture') is confined to the responsivity trance of the Department's theoretical and practice framework, where 'restoring cultural awareness' is viewed as a helpful process for preparing individual Māori offenders for 'treatment' (see Coebergh et al, 2001, especially pps. 15-16; Webb, 2012).

Marie appears to be unaware of the fact that the so-called 'Māori theory' she is critiquing, is in fact a construct of government officials and contractors; a governmental interpretation of Māori knowledge and cultural practice. What she presents as 'Māori theory' is in fact a policy framework employed by state institutions to indigenise (and colour) the programmatic requirements of the institutions (see Tauri, 2004; 2009; 2011d; Webb, 2003; 2012). It is difficult to comprehend how Marie could miss this situation given the documentation she cites are entirely constructed by crime control agencies and not from external, independent Māori (or indeed, non-Māori) sources. Marie fails to contemplate that she is not dealing with 'Māori theory', or 'tikanga-based interventions', but neo-colonial artefacts of government officials, criminologists and psychologists 'jobbing' for the Crown's coin and utilised to satisfy the needs of

agencies, and not Māori (see McIntosh, forthcoming and Tauri, 2004; 2009 regarding the duplicitous nature of government institutions use of Māori symbols, Tikanga (theory) and responses to social harm). The dominance of positivistic theory in Corrections policy programme, and the subjugation of Indigenous perspectives are evident in all relevant departmental documents, as demonstrated in the following text from a Department of Corrections (2009b: 42) review of the effectiveness of rehabilitation programmes:

It is now generally accepted that treatment programmes should be adapted to cater for the cultural needs of offenders who participate. As such, *culture represents an important responsivity issue within offender rehabilitation. Incorporating culturally-based concepts, imagery and activities into programme content* is regarded as a way of both *attracting minority-group participants into programmes*, and *ensuring that the programme engages and retains them* (emphasis added).

Weatherburn (2010: 198) accentuates this particular myth of the dominance of Indigenous perspectives and a focus on 'structure' (i.e., 'bias) in policy responses when he argues that:

... debate about how to respond to Indigenous violence have focussed less on the question of how to reduce it than how to reduce the effect of Indigenous violence on Indigenous contact with the criminal justice system. The general consensus on this issue seems to be that the best way to reduce Indigenous contact with the

criminal justice system is to create some tribunal or process that gives Indigenous community members a voice in how to respond to crime by Indigenous defendants.

Both Marie and Weatherburn's positions can be described as *mythological constructs*. Neither author appears to have engaged thoroughly with the vast amount of material generated by administrative criminological and government institutions that demonstrate the wide array of official responses to Indigenous crime, of which conferencing processes and liaison officers, etc, form only a small component of an extensive intervention strategy. Nor have they engaged with the sophisticated material Indigenous and non-Indigenous have produced examining Indigenous over-representation in Australasia or any of settler society jurisdictions. If they had they would find that Indigenous and critical scholars in New Zealand (including Jackson, 1988; Tauri, 2009; Webb, 2003), Australia (including Blagg 2000a, Cunneen, 2009; Dodson, 1994 and others), in Canada (Palys, 1993 and Palys and Victor, 2005) provide sophisticated, multifaceted explanations of the Indigenous experience. This material also reveals the wide range of interventions, such as habilitation centres, and culturally and socially specific therapeutic approaches to a wide range of 'risk factors', to use the preferred terminology of Authoritarian Criminology, that Indigenous scholars and practitioners have designed.

It is accurate to state that issues like bias, institutional racism, colonisation, and militaristic-style policing strategies are key foci of counter-colonial, Indigenous criminologies. However, it is duplicitous to argue that they are the *only* or *the most*

predominant factors that Indigenous (and non-Indigenous), critical scholars identify as key explanations for Indigenous over-representation. The key issue that Marie and Weatherburn miss is that *it is the state* that has demonstrated a preference for ‘culturally sensitive processing’ of Indigenous crime, exemplified by agency controlled programmes such as group conferences, sentencing circles, Indigenous sentencing courts, Indigenous liaison officers, ‘Memorandum of Understanding’, Aboriginal Justice Strategies and such like (Tauri, 2011b). These types of state-centred responses invariably lack jurisdictional autonomy (for First Nations), legislative weight and receive significantly less funding in comparison to mainstream policies and interventions. In reality, a significant proportion of settler state responses to the Indigenous problem are simply orientalist artefacts that enable the state to be ‘seen to do something’ while avoiding independent (Indigenous) analysis of the failure of its crime control processes to provide meaningful justice ‘outcomes’ for subjugated populations (Palys and Victor, 2005; Tauri, 2011a).

A thorough engagement with crime control texts produced by Government agents (such as Cabinet papers, key strategies, research documents, etc) demonstrates that the overarching theoretical paradigms that dominate the sector derive from Eurocentric theories. Furthermore, the vast majority of interventions that Indigenous offenders receive emanate from positivistic criminological and psychological paradigms. The predominant form of ‘therapy’ and crime prevention programmes Māori offenders participate in are and not, as Marie claims, based on Tikanga Māori. The literature shows that Marie’s argument that Māori dominate the design of correctional

interventions and the evaluation and research process¹⁶ is nothing more than a mythological construct. For example, a review of key documents demonstrates that the dominant theory of the Department of Corrections is the *Psychology of Criminal Conduct* imported wholesale in the mid-1990s from Canada (see Newbold 2007; Webb, 2003 and the majority of the department's policy documents since 1996 including the Department of Corrections, 2001a; 2001b, 2002 2009a and 2009b. All this material is available either online and through an Official Information Act request) and life course/developmental theory (see Department of Corrections, 2007). Likewise, the Ministry of Justice (2005; 2007) policy programme is dominated by CPTED and Rationale Choice Theory in relation to its crime prevention work programme and life-course and other 'developmental' approaches inform youth justice (Becroft and Thompson, 2006; McLaren, 2000; Ministry of Justice, 2002).

Contrary to the mythic claims of Authoritarian Criminologists such as Marie and Weatherburn, a thorough review of available research and government texts demonstrates that:

¹⁶ One of Marie's more contentious claims is that Kaupapa Māori research (KMR) methodology dominates the evaluative processes of government agencies in New Zealand like the Department of Corrections. She also argues that the dominance of KRM is blocking the ability of agencies to gather 'scientific' evidence of the effectiveness of crime control policies and interventions. In making this claim, Marie ignores a number of research and policy-related documents that demonstrate that the vast majority of evaluations carried out by criminal justice agencies in New Zealand utilise standard evaluation and research methods. If used at all, KMR is usually little more than a sub-component of the entire evaluative process (see Tauri, 2009: 7). The Department of Corrections 2009 evaluation of Māori Focus Units and Māori 'therapeutic programmes' demonstrates this point clearly. While the contractors engaged on the projects utilised KMR protocols to ensure ethical engagement with Māori research subjects, they chose to employ a standard range of evaluative/research methods, including semi-structured interviews, psychometric questionnaires and a rehabilitation quotient, for the data gathering phase of the project.

1. Māori theory (Tikanga, kaupapa) does not dominate policy making in any of the New Zealand's crime control agencies (see Waitangi Tribunal (2005) for outline of the dominance of Eurocentric theory);
2. the vast majority of policy, legislation, intervention design and funding decisions are informed by Eurocentric, imported 'theories' and interventions (for example, see the Ministry of Justice generated material on the recent Drivers of Crime project in New Zealand(2009a, 2009b, 2009c; 2009d); and
3. the vast majority of government spend in New Zealand's criminal justice system goes to Eurocentrically-derived crime control programmes¹⁷.

Concluding Comments

I have no doubt that some criminologists working in Australasia and within the identified authoritarian criminological paradigm, will find this chapter challenging. I am just as certain that my text will be dismissed by some as aggressive and emotional. These are terms that Indigenous scholars hear too often when members of the academy chose to avoid engaging with the Indigenous critique. Soynika (1994: xiii-xiv, quoted in Agozino, 2007: 2) aptly justifies the decision to 'speak to power' in such uncompromising terms when he states that:

[w]hen power is placed in the service of vicious reaction, a language must be called into being which does its best to appropriate such obscenity of power and fling its excesses back in its face", and that "... language must communicate its

¹⁷ During the now defunct Effective Interventions initiative (2006-2007) officials from the Ministry of Māori Development were informed by crime control agencies that Māori initiatives, including 'counselling' programmes that derive from non-Māori theoretical sources, received less than 10% of the sectors spend on therapeutic and other forms of intervention (Tauri, 2011b).

illegitimacy in a forceful, uncompromising language of rejection, seeking always to make it ridiculous and contemptible, deflating its pretensions to the core.

Given the mythological nature of so much of Authoritarian Criminology's work and the influence it has on policy, the time clearly has come for Indigenous scholars to challenge the hegemony of criminological practitioners who empower themselves to speak for us, while employing mythological constructs to silence our voices. This call to arms can be justified through a number of rationales, although just two will suffice here. The first is that we have the right to speak for ourselves, which involves critical scrutiny of what others say and write about us. The second rationale comes in the form of an empirical question: for all its 'science', 'objectivity' and generous government support, what tangible outcomes has Authoritarian Criminology (or more widely, Positivistic Criminology) delivered to Indigenous peoples? An empirically informed answer to the question must surely be 'not much'. Unless of course we measure effectiveness in terms of more Indigenous peoples in prison, ever increasing police resources employed to target Indigenous communities, more orientalist, state-centred conferencing models and more meaningless Indigenous justice strategies.

A peculiar irony of Western criminology is that its administrative formulations and so much its theories of crime and interventions are constructed in *high crime societies* (Agozino, 2010; Cohen, 1988). A further irony is that many Western criminologists seem to believe it is their duty to 'teach the coloured folk' about how to solve their crime problems by exporting failed policies and theories to 'Third World' nations (Agozino, 2004). Worse still is the fact that Authoritarian Criminologists residing in the Third

World and settler societies (such as Australia and New Zealand) continuously support the importation of failed, 'scientific' interventions, whilst utilising the veil of scientism to shield their activities from the critical gaze of the Indigenous Other. When challenged for foisting on our communities *alien processes*, criminological experts respond by regurgitating ideological statements about 'evidence-based policy', 'international best practice' and the efficacy of 'acultural interventions'¹⁸ (Tauri, 2011c). Like so many First Nation scholars and justice practitioners I have heard this self-serving rhetoric time and again. And yet I never fail to be surprised by the silence that emanates from Authoritarian Criminology to our simple refrain: 'why is so much of this criminological work carried out on our behalf, but without the necessary engagement with our communities'?

¹⁸ An example of this occurred while the author was working in New Zealand's public service in the early 2000s. An American Professor of Criminology had been invited speak by a core justice agency about Multi Systemic Therapy (MST). During question time the Professor was informed that Māori and Pacifica practitioners had long utilised multi-systemic approaches to social harm. He was then asked what was different about MST, and how it would benefit Indigenous peoples who lived in a very different social context than North America. The Professor responded that MST had been scientifically tested, and results showed the programme that reduced crime amongst Afro-Americans and Hispanics. The Professor's comparison of the social and cultural contexts of Māori and Pacifica peoples with that of Afro-American and Hispanic populations in North America highlights a fundamental Authoritarian Criminological approach to the creation of interventions and to people of colour. Too often practitioners, like the American Professor, employ orientalisng discourses that in one stroke eliminate perspective-destroying factors, such as the significant variation in strategies of subjugation employed in different colonial contexts, and the unique cultural, social and political experiences and formation of Indigenous populations and other ethnic minorities (see Blagg, 1997; Tauri, 1998).

Paper 3

A Critical Appraisal of Responses to Māori Offending

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and

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Introduction

This article critically analyses the role that criminological theory and specific policy formulations of culture play in the New Zealand state's response to the over-representation of Māori in the criminal justice system. Part one provides an overview of the changing criminological explanations of and responses to, Māori offending in New Zealand from the 1980s onwards and how these understandings continued colonialist approaches to Māori and crime, into the neo-colonial context. In particular we chart the shift in policy development from theorising Māori offending as attributable to loss of cultural identity, to a focus on socio-economic and institutional antecedents and finally through the risk factors, assessment and criminogenic needs approaches that have gained prominence in the current policy context.

In part two the focus moves to the strategies employed by members of the academy to elevate their own epistemological constructions of Māori social reality within the policy development process. In particular, the critique scrutinises recent attempts to portray Indigenous responses to social harm as ‘unscientific’ and in part responsible for the continuing over-representation of Māori in New Zealand’s criminal justice system. The purpose of this analysis is to focus the critical, criminological gaze firmly on the activities of policy makers and administrative criminologists in relation to Māori as an Indigenous peoples¹⁹.

Responding to Māori Offending: An Overview

By the early 1980s the level of Māori over-representation in the criminal justice system had reached a level that commentators equated to ‘considerable and ongoing over-representation’ based upon population (Quince, 2007; McIntosh and Radojkovic, 2012). This ‘social fact’ prompted a small number of dedicated, inter-agency policy projects²⁰ and the implementation of so-called Māori-specific interventions (see discussion below). Despite all this policy attention, the level and nature of Māori over-representation has remained high ever since. It is because Māori over-representation became a recognisable statistical issue and received considerable attention from policy makers from the 1980s through to the 2000s that we have chosen this period as the

¹⁹ The term administrative criminology is used to denote criminological research and theorising that is aimed at enhancing state knowledge of the social context (see Galliher, 1999; Hirschi, 1993). Tauri (2014c) argues that administrative criminological musings on Indigenous populations can be readily identified through key characteristics, including confining the focus of criminological inquiry to issues the state deems important, and state definitions of what constitutes crime, and a preference for using methodologies that restrict contact with marginalised social groups.

²⁰ Since the mid-1990s government agencies have instigated a number of inter-agency policy projects of which the issue of Māori over-representation has been a key focus. These include the *Reoffending by Māori* (RoBM) project (1996-1999), *Effective Interventions* (2006-2008) and most recently, *Drivers of Crime* (2008-ongoing).

focus of our analysis. It is, after all, the period in New Zealand's criminal justice history that concerted efforts by policy makers to solve the so-called 'Māori problem' were finally made (Tauri, 2011a).

Explanations and responses through the 1980s

Generally, responses by policy-makers and academics to Māori offending in the 1980s reflected the growing popularity of community-centred responses to offending in Western jurisdictions grappling with rising levels of crime amongst 'lower class', new migrant and First Nation populations, (Tauri, 1996). A similar response was followed in the New Zealand context, although policy makers quickly came under criticism for excluding Māori values, practices and philosophies (*tikanga*) during the development of ostensibly Māori-focused interventions (see Jackson, 1988). The 1980s saw Māori increasingly campaign for significant control of crime control interventions targeted at Māori offenders and victims. For example, the Ministerial Advisory Committee's (1986) review of the Department of Social Welfare, *Puao-Te-Ata-Tu*, criticised the state's delivery of programmes for Māori as ineffective and culturally inappropriate. One supposed community-centred initiative was the Departments of Māori Affairs, Social Welfare and then Justice-led *Mātua Whangai* initiative, which promoted developing community-led responses to offenders based upon *iwi* (tribe), *hapū* (sub-tribe), and *whānau* (family) practices (Department of Justice, 1985). However, Williams (2001) notes that *Mātua Whangai* underwent a number of changes from 1985, and by the late 1990s it had moved away from the original intent of developing Māori-community centred approaches, to a limited service provision model that implemented Departmental aims with programme contractors. These types of community crime

prevention programmes incorporate features of what might loosely be called Māori responses to social harm, but the reality was the design and delivery of state-centred initiatives that ‘added’ Māori cultural elements to existing intervention logic (see discussion below and Tauri, 1999).

While traditional Māori approaches to social harm were given some attention after the Department of Social Welfare review, Māori dissatisfaction with the state system failed to abate, as evidenced by the release in 1988 of Moana Jackson’s report *Māori and the Criminal Justice System: He Whaipānga Hou*. Jackson’s report examined Māori interaction with the New Zealand criminal justice system through a three year study involving interviews, focus groups and *hui* (focus groups/community meetings) with a range of Māori, including police, correctional officers, policy workers, inmates, community workers and academics. In his analysis, Jackson argued that Māori justice practices had been marginalised through colonial practices that imposed British law. He observed that Māori practices and philosophies were denigrated to the point where they no longer operated in many Māori communities to a meaningful extent. Jackson and his participants’ analyses of crime were directed toward a range of antecedents, including a detailed examination of the marginalisation of Māori by government institutions, most notably from the social welfare and justice systems.

Māori who participated in Jackson’s research argued that the criminal justice system reflects a *Pākehā* (European) theoretical and practice bias, and that this bias was evident in research into Māori criminal behaviour. It was suggested that policy makers and members of the academy did not consider Māori experiences of colonisation to a

degree necessary for informing the development of effective policy. Policy makers were criticised for their tendency to assume that criminal behaviour by Māori could be dealt with in the same way as offending by other population groups. Furthermore, participants observed that Māori offenders in the criminal justice system had experienced poor education, difficulties in family upbringing, long periods of unemployment and other factors which increased the likelihood of offending behaviour. However, unlike other groups of offenders, for Māori these issues were impacted by a history of marginalisation from New Zealand society through the process of colonisation. Participants argued that Māori social deprivations were the result of state policies that had negatively impacted on Māori social structures, through the active suppression of Māori culture, and their economic and political autonomy (see Walker, 1990). To understand Māori offending, Jackson (1988) argued that theoretical explanations and policy responses had to contextualise Māori experiences in relation to a history of colonisation:

The monocultural basis of Pākehā research into Māori offending has prevented recognition of these socio-cultural dynamics and the appropriate mechanisms needed to understand them. This has resulted in a raft of “explanations” of Māori crime which reflect considerable monocultural and theoretical bias, but little effective explanation. Thus the Māori offender has merely been defined as an urban misfit, a cultural maladept, an educational retard, or the victim of behavioural labelling, while the socio-cultural forces underlying such descriptions have been largely unrecognised (p. 26).

This emphasises the importance of understanding how colonisation shapes contemporary social relations and contexts, rather than seeking to limit analyses to that of individual pathology, and decontextualised from the wider social relations in New Zealand society. Jackson believed Māori philosophies were relevant to understanding offending, and he argued that *tikanga Māori* would “... provide some insight into the complex questions of why some Māori men become criminal offenders and how the criminal justice process responds to them. It approaches the topic from within a Māori conceptual framework and seeks to explain Māori perception of the causes and consequences of criminal offending” (1988: 17). Jackson hypothesised that a Māori system based upon Māori values and authority to hear and respond, would be able to better address the Māori offending problem.

Overall, Government Ministers and policy makers have largely ignored Jackson and his research participants’ argument for increased Māori jurisdictional autonomy. Instead, the primary policy response largely revolved around the controlled integration of ‘acceptable’ Māori concepts and cultural practices into confined areas of the justice system (see Tauri, 2011b). For example, in reviewing *He Whaipānga Hou*, the Courts’ Consultative Committee (1991) (comprised from the judiciary, lawyers and community representatives) recommended to the then Minister of Justice that culturally appropriate responses to Māori offending were achievable through existing state mechanisms. The Committee expressly recommended against transferring criminal justice-centred processes into distinctly Māori settings. The Committee especially argued against *marae* (meeting houses) being used for court cases (thus ignoring evidence that historically Māori utilised *marae* as a site for dealing with social harm –

see Jackson, 1988). It was argued that court trials could not be easily transposed to the marae setting while ensuring the integrity of the state process remained 'intact'. However, officials did express the view that marae could play a minor role in the formal justice system through the delivery of community diversion and rehabilitative programmes designed by the state for the benefit of Māori offenders sometime in the future²¹.

In contrast to the position taken by Jackson and his research participants, state officials made it clear that the only acceptable response to Māori concerns was for offending to be addressed through the *purposeful incorporation of Māori justice and cultural concepts into the justice system*, rather than a separate justice system or any meaningful form of jurisdictional autonomy (Tauri, 1999). For example, since the early 1990s government agencies within the justice sector have followed the firm policy of *enhancing the responsiveness of state processes to Māori*. The responsiveness strategy was based around incorporating more Māori values into the justice system. The stated aims of the responsiveness strategy were to:

- identify how to reduce Māori offending and victimisation;
- focus on ways to be more effective in service delivery to Māori, and to actively encourage the positive participation by Māori in such delivery;

²¹ The government's perspective changed recently with the introduction of Rangatahi (Youth) Courts in May 2008. The Rangatahi Court is, in all essence a Youth Court held on a marae with *te reo* (Māori language) and Māori protocols incorporated into the process. The purpose of the hearing is to monitor the young person's completion of his or her Family Group Conference Plan (Ministry of Justice, 2012). While the Rangatahi Court process signals a willingness on behalf of the New Zealand state to involve marae in the formal process, the extent to which it results in meaningful jurisdictional autonomy for Māori remains to be seen.

- explore the scope for greater diversity in dealing with Māori offenders (Justice Sector Policy Group, 1998: 6).

To achieving the goals of the strategy were various Māori programme and provider developments funded and controlled by policy makers. These initiatives were considered essential to enhancing relationships between the policy sector and Māori providers and communities. By the late 1990s programmes with a specific Māori focus being supported or considered by the Ministry of Justice and Department of Corrections (via the Justice Sector Policy Group, 1998: 79) and set firmly in the responsiveness framework, included:

- iwi based safer community councils;
- community panel pilot diversion projects, such as *Te Whānau Āwhina*, that focused on offending by urban Māori offenders;
- Māori focus units in prisons;
- habilitation centres specifically focusing on Māori;
- a cultural perspectives unit within the Department focused on developing Māori policy; and
- a bicultural therapy programme.

Through the responsiveness strategy developed during the 1990s, government officials drew a clear distinction between the Māori justice system advocated by Jackson and his participants, and the preferred strategy of integrating ‘acceptable’ elements of Māori culture into the state-dominated system. The strategy further sought to enhance the goals and status of the formal system through recruitment of more Māori into the

justice sector. Officials also strove to achieve the goals of the strategy through enhancing officials' awareness of Māori culture, while purposefully avoiding significant alterations in either the structure or power dynamics of the formal system (Tauri, 1999). The New Zealand Police, for example, actively recruited more Māori officers and developed cultural awareness programmes as part of its responsiveness policy (Te Puni Kōkiri, 2002a). The Department of Corrections responsiveness policy was dominated throughout the 1990s (and early 2000s), by the introduction of supposed Māori therapeutic programmes, the development of a Treaty of Waitangi Strategy and the signing of a small number of Memorandum of Understandings (MOU's) with specific Iwi designed to enhance relationships with Māori communities (see Lomax, 1994; Department of Corrections, 2001a, 2002).

The 1990s and onwards

The 1990s onwards witnessed the development of more sophisticated, supposedly scientific approaches to the Māori problem, at least from a Eurocentric theoretical and practice-based position. For example, in 1998 the Department of Corrections Psychological Services introduced a rehabilitation initiative for Māori called the *Bi-cultural Therapy Model*. This model aimed to deliver psychological treatments to Māori offenders through incorporating elements of tikanga into (or more accurately, onto) therapeutic interventions. In describing the initiative, the Department of Corrections (2001: 10) noted that:

Māori therapeutic programmes have been developed as 'blended' programmes that incorporate tikanga Māori concepts alongside Western psychological

concepts. These programmes provide a more focused analysis of how Māori tikanga and concepts relate to specific offending behaviour.

This development, however, does not alter the basic premise of attributing offending to individualistic pathologies. In reality, the treatment response has been adapted through the utilisation of Māori culture and tikanga within the rehabilitation process (McFarlane-Nathan, 1994, 1999; Nathan, Wilson and Hillman, 2003).

The development of Māori Focus Units can be attributed to this blended approach, with the first being in place by 1997 (Department of Corrections, 2001a). These units offer Māori inmates cultural instruction and *te reo* (Māori language) courses. The rationale from the Department of Corrections (2002, p. 21) for developing these units was described as “... use Māori language and culture to create a change in the understanding, attitude and behaviour of Māori offenders” with a related “... commitment from participants to address the discrepancies between Māori tikanga and their current offending and lifestyle”. Within Māori focus units, Māori therapeutic programmes have also developed into a cognitive group therapy intervention with Māori cultural components added on (Webb, 2012). In evaluating the programmes, the Department of Corrections (2009a: 6-7) states that:

The Māori Therapeutic Programme (MTP) is a group-based offender rehabilitation programme. The main purpose is to both encourage and enable the avoidance of new offending amongst participants. Currently, MTPs are delivered only within the MFUs. Led by experienced group facilitators, the MTP group meets several

times each week over ten weeks to work through prescribed programme content. This content is similar to that used in existing mainstream rehabilitative programmes, centering on understanding the patterns of behaviour, emotion and interaction that lead up to “relapse” into new offending. Participants are taught social, cognitive and practical skills necessary to avoid such relapses. In exploring such issues, the MTP uses Māori cultural language, values and narratives to assist participants’ learning and change²².

It is observable that through the 1990s, psychological-based therapeutic treatments became ever more entrenched in New Zealand’s policy response. The apex of this policy approach came with the development of the *Integrated Offender Management* (IOM) framework by the Department of Corrections in the second half of the 1990s. Based on correctional policies imported from Canada and implemented in the early 2000s, the IOM process sought to identify the particular criminogenic needs of all offenders, including Māori, through applying diagnostic tools like the criminogenic needs index (CNI) (Newbold, 2007). The importance of the risk and criminogenic needs paradigm to understanding and framing responses to individuals’ offending behaviour is demonstrated in the Department’s (2001a) report *About Time - Turning People Away from a Life of Crime and Reducing Reoffending*, where it is argued Māori offenders are more likely to be at risk of offending from criminogenic needs.

²² There are new developments for Māori offenders in prison, with *Whare Oranga Ake* Units, or Kaupapa Māori Rehabilitation Units being opened in 2011 and piloted on a limited basis. Designed for inmates in the final stages of sentences as targeted pre-release rehabilitation initiatives, it will be interesting in the future to consider the effectiveness of these initiatives for Māori inmates.

Despite the fact that Corrections' documentation made it clear that criminogenic needs are observable in a range of offenders regardless of ethnicity (and regardless of social, familial or historical context), officials went about designing features to enhance service delivery specific to Māori. The most notable examples forged under IOM were the *Framework for Reducing Māori Offending* (FReMO) and *Māori Culture Related Needs* (MaCRNs). In Maynard, Coebergh, Anstiss, Bakker and Huriwai's (1999) discussion of the MaCRNs assessment tool for Māori offenders, several cultural-related needs are identified, including cultural tension, whānau and whakawhānaunga (kinship relations). Maynard et al (1999: 50) suggest that:

Contemporary New Zealand society has developed primarily from Western/European- based norms, despite the fact that Māori are recognised as the *tangata whenua* [First peoples] of this country. Māori culture has been generally compromised and discouraged in the process of colonisation and it is likely that a number of stressors and/or tensions have developed in connection with differences in cultural values and beliefs both between Māori and non-Māori, and amongst Māori. Further, the lack of positive coping skills for dealing with such tension is likely to promote maladaptive responses which could include cognitions and behavioural patterns that increase the individual's risk of re-offending.

Although these officials argue that specific Māori needs exist, Māori offending is framed within a theoretical focus on individual thinking as explanatory of maladaptive behaviour. Thus, in the IOM policy context we see components of Māori cultural practice grafted on to a process based on individualistic theories of human behaviour,

which has already explained offending as generated in negative emotions and anti-social thoughts (Webb, 2003). It is clear from the description of the MaCRNs they were primarily developed to increase Māori responsiveness to psychological treatment interventions, and this is evident when Maynard et al. (1999: 44) write that, “[t]he responsivity principle states that offenders will be most affected by interventions that are matched to their particular learning style...”.

A 2005 Waitangi Tribunal²³ report into Māori cultural assessments provides insights into the development and limitations of the MaCRNs model. The Tribunal report identified that only a limited pilot study occurred prior to MaCRNs assessment being implemented nationally. That the assessment tool for Māori ‘needs’ was developed from a small sample before implementation, illustrates the limitations inherent in the policy sectors strategy of integrating Māori knowledge frameworks in an ostensibly individualistic approach like the CNI: in this instance the lack of wider engagement with Māori as stipulated in the Treaty contract, and through a breach of the ‘rules’ of positivistic social science in relation to validity and reporting of findings. Three years after implementation, the Department of Corrections could “neither verify their soundness nor point to any quantifiable benefits that flow to Māori offenders who are assessed with MaCRNs” (Waitangi Tribunal, 2005: 151). Morrison (2009: 82) notes that following the release of the Tribunal report, the Department of Corrections carried out

²³ The Waitangi Tribunal was established by the third Labour Government (1972-1975) with the passing of the Treaty of Waitangi Act in 1975. The initial purpose of the Tribunal was to inquire into and make recommendations to the Crown (represented by the Government of the day) relating to Māori claims against government actions that they believed contravened their rights under the Treaty of Waitangi from the date of the forum’s inception (Catalinac, 2004; Gibbs, 2006). Later, in the mid-1980s, the Tribunal jurisdiction was extended to receiving Māori claims going back to the signing of the Treaty of Waitangi in 1840.

an evaluation of the MaCRN's. The evaluation found that the MaCRNs assessment tool was underused by Correction's staff. Furthermore, even when used, less than 20% of offenders assessed with MaCRNs then took up a culture-related activity as part of their offender management plan. Morrison observes that soon after this evaluation, the MaCRNs assessment process was discontinued. Similarly, in a (2002b) review of the criminal justice sectors responsiveness to Māori, Te Puni Kōkiri officials identified that the much publicised FReMO process was rarely used by policy workers in the Department of Corrections as designed. More often than not, FReMO was utilised *after* policy and interventions had been designed by policy workers. Taking both case studies into consideration, it is difficult to comprehend how some commentators have recently argued that these little used risk and needs assessment processes, and 'Māori/Indigenous theories of, and response to, criminality', have come to dominate criminal justice policy making in the New Zealand context. It is to particular this issue that we now turn.

Critiquing Responses to the 'Māori Problem'

So far this paper has charted the explanations of and responses to Māori offending from two related phases in the development of crime control policy in New Zealand. The distinctly Māori perspectives from the 1980s, culminating in the production of Jackson's 1988 report identified a framework for addressing Māori offending through Māori centred and controlled responses. The idea of rebuilding and instituting Māori social control over offenders goes far beyond the implementation of rehabilitation programmes for Māori within the system. The period covered by the 1990s-2000s, however, demonstrate that the state was much more comfortable with a strategy of incorporating elements of Māori

cultural belief and practice into the existing system; a process that Tauri (1999) describes as the symbolic and physical *indigenisation* of New Zealand's criminal justice system. The responsiveness policy saw the recruitment of more Māori into the criminal justice system, and the development of blended (psychology-based) interventions. This response clearly represented a rejection of Jackson's notion of a parallel Māori criminal justice system, and the furtherance of the co-ordinated strategy of indigenisation through increasing the integration of Māori concepts into existing state processes.

Despite clear evidence to the contrary, some contemporary authors from the administrative criminological perspective argue that the period from the 1980s to the 2000s marked the transition in the Department of Corrections, and other crime control agencies, to adopting Jackson's ideas and those of other Māori practitioners and academics (for example see Marie, 2010 in New Zealand; and for similar arguments in Australia, Weatherburn, 2010; Weatherburn and Fitzgerald, 2006). Given the available literature, these commentators make the surprising assertion that the rehabilitation programmes received by Māori offenders are predominantly informed by this supposed new orthodoxy and focus mainly upon the concept of cultural identity deficit. Furthermore, it is argued that the dominance of so-called 'Māori theory and interventions' presents a forceful explanation for the New Zealand states' failure to arrest Māori over-representation in the criminal justice system. In this last section we wish to refute these claims and focus the critical gaze firmly on the dominance of Western theories and interventions in state responses to Māori over-representation.

Does Tikanga Māori dominate the development of crime control policy in New Zealand?

The argument that tikanga dominates the development of crime control policy greatly exaggerates the authority given to Māori approaches to offending within the system, whether measured by legislative empowerment or the amount of resource targeted to so-called Māori initiatives. The purpose of this mythical construct appears to be to convince us that the development of effective solutions to the Indigenous problem has been hampered in neo-colonial jurisdictions by a) the rise of Indigenous cultural theory, b) the biculturalisation of state policy, which led to c) the policy sector in New Zealand 'turning away from science' and embracing cultural perspectives to develop crime control policies for First Nations (see Marie, 2010, and also Weatherburn, 2010 in relation to the Australian context). For some practitioners of administrative criminology, this explains the predominance of policies and interventions geared to conferencing processes, circle sentencing, enhancing the cultural awareness of agents and agencies and a focus on bias and institutional practice. Amongst these, Marie (2010: 283) makes the specious claim that Māori theory dominates correctional policy development in the New Zealand context. To bolster this position, administrative criminologists offer misleading summations of Māori theories of social harm, by arguing that cultural loss is presented in such theoretical frameworks as *the* key determinant of Māori overrepresentation in the justice system:

A major assumption of this theory is that the contemporary overrepresentation of Māori in offending, incarceration, and recidivism rates is best understood as the outcome of Māori experiencing impairments to cultural identity resulting from colonisation. Central to this theory, therefore, is also the assumption that ethnicity

is a reliable construct by which distinctions can be made between offenders regarding what factors precipitated their offending, as well as best practices for their rehabilitation. Considering a thwarted cultural identity is seen to have given rise to a higher proportion of offenders who are Māori, rehabilitation efforts largely pivot on the idea that restoring cultural identity will lead to a subsequent reduction of the number of Māori in prison.

To support the argument Newbold's (2007) summary of the types of programmes currently en vogue in corrections is cited. Yet inexplicably overlooked are the preceding chapters of Newbold's book which reveal that within the Department's theoretical paradigm, culture and cultural identity *are not given causal power*: in other words culture neither causes crime nor factors significantly in its reduction. In fact, culture (specifically Māori culture) is confined to the responsivity tranche of the Department's theoretical and intervention framework. In this tranche 'restoring cultural awareness' is considered helpful for preparing individual Māori offenders to receive therapeutic treatment (see Coebergh, Bakker, Anstiss, Maynard and Percy, 2001, especially p. 15-16; Webb, 2012). Administrative criminological practitioners who take this view appear to be unaware that the so-called Māori/Indigenous theory they are critiquing, is in fact an invention of government officials and contractors (Tauri, 2013c). In other words the 'Indigenous theory' that informs policy making is best described as a *governmental interpretation of Indigenous knowledge and cultural practice* employed by institutions to enhance the indigenisation of their strategies and interventions (see Tauri, 2011a; Webb, 2003, 2012).

It is difficult to comprehend how commentators could depict the current policy situation in New Zealand this way, given that the available documentation is almost entirely constructed by crime control agencies, including external 'experts' contracted to deliver a proscribed project on behalf of government officials. The majority of sources utilised by crime control policy makers are not generated by external, independent Māori (or indeed critical, non-Māori) commentators (Tauri, 2009). We are not, as administrative criminological practitioners argue in relation to the Australasian context, experiencing the dominance of Indigenous theory in the design of policy and interventions. What are presented as culturally derived items are more accurately described as neo-colonial artefacts developed by policy makers and member of the academy 'jobbing' on behalf of the state, which are then utilised primarily to satisfy the policy requirements of Ministers' and their agencies (see Tauri, 2011a regarding government institutions purposeful use of Māori symbols and Tikanga to indigenise policies and interventions). The dominance of positivistic theory in Corrections policy programme, and the subjugation of Indigenous perspectives are evident in all relevant departmental documents, as demonstrated in the following text from a Department of Corrections (2009b: 42) review of the effectiveness of rehabilitation programmes:

It is now generally accepted that treatment programmes should be adapted to cater for the cultural needs of offenders who participate. As such, *culture represents an important responsivity issue within offender rehabilitation. Incorporating culturally-based concepts, imagery and activities into programme content* is regarded as a way of both *attracting minority-group participants into*

programmes, and ensuring that the programme engages and retains them (emphasis added).

This imagery is ignored in administrative accounts that accentuate the myth of the dominance of Indigenous perspectives and a focus on structure (i.e., bias in policing or the courts) in policy responses. For example, one account from that perspective argues that:

... debate about how to respond to Indigenous violence have focussed less on the question of how to reduce it than how to reduce the effect of Indigenous violence on Indigenous contact with the criminal justice system. The general consensus on this issue seems to be that the best way to reduce Indigenous contact with the criminal justice system is to create some tribunal or process that gives Indigenous community members a voice in how to respond to crime by Indigenous defendants (Weatherburn 2010: 198).

In promoting the view that Indigenous theories dominate the development of crime control policy, administrative criminological exponents appear to resist engaging with the extensive material Indigenous and non-Indigenous scholars have produced in examining Indigenous peoples and over-representation in New Zealand and other settler societies. If they did they would find that Indigenous and critical scholars in New Zealand (Jackson, 1988; Tauri, 2009; Webb, 2003), Australia (Blagg 2000b, Cunneen, 2009; Dodson, 1994) and Canada (Gosse, Henderson and Carter (eds), 1994; Monture, 1999; Turpel, 1994; Victor, 2007) provide sophisticated explanations of the causes of

Indigenous social harm and victimisation. This material also reveals the wide range of interventions, such as habilitation centres, and culturally and socially specific therapeutic approaches to a wide range of risk factors, to use the preferred terminology of administrative criminology that Indigenous scholars and practitioners have designed (see Tauri, 2013c).

Undoubtedly, issues like colonialism, institutional bias and militaristic policing strategies are all key foci of Indigenous criminological analysis. However, it is duplicitous to argue that they are the *only* or *the* most predominant factors that Indigenous (and critical, non-Indigenous) scholars utilise to theorise the over-representation issue. The key issue that administrative criminology in New Zealand and other neo-colonial societies neglect is that it is the settler state that has demonstrated a preference for culturally sensitive processing of Indigenous offenders, exemplified by agency designed and controlled programmes such as group conferences, sentencing circles, Indigenous sentencing courts, Indigenous liaison officers, Aboriginal justice strategies and such like (Tauri, 2011a). These types of state-centred responses invariably lack jurisdictional autonomy, legislative weight and receive significantly less funding compared to mainstream policies and interventions. A considerable proportion of settler state responses to the Indigenous problem can be described as orientalist artefacts that enable the state to be *seen to do something* while attempting to silence independent (Indigenous) commentary on the failure of its crime control processes to provide meaningful justice outcomes for Indigenes (see Palys and Victor, 2005; Tauri, 2011b). Policies to increase Māori participation within corrections through communications, community relations, employment, service delivery, and community

partnerships, should not be confused with *control over correctional philosophy and policy development*. Indeed, there have only been recent developments of two standalone pre-release units for Māori prisoners in 2011, the *Whare Oranga Ake* units. With thousands of Māori incarcerated on a yearly basis, the size of these 16 beds units, confirm that Māori-informed correctional programmes are limited within the current system.

The dominant orthodoxies that inform penal practice and wider criminal justice processes are ignored by administrative criminologists, who instead present the erroneous assumption that rehabilitation programmes for Māori are based solely upon cultural identity deficits and dominate programme delivery to this group²⁴. Critical scrutiny of processes should involve an objective and systematic evaluation of the broader IOM and the criminogenic suite of programmes, and the failure of these to achieve stated aims, namely the significant reduction of recidivism amongst the prison population. This has been thoroughly documented by Greg Newbold in his 2009 publication *Another One Bites the Dust: Recent Initiatives in Correctional Reform in New Zealand*. In summary, contrary to the mythic claims of some administrative criminology accounts in the Australasian context, a thorough review of available research and government texts demonstrates that:

1. Māori theory does not dominate policy making in any of New Zealand's crime control agencies;

²⁴ See for example, Marie's (2010) assertion that the greater majority of Māori offenders receive tikanga-based treatment, while the extant literature clearly shows this not to be the case. Unfortunately, Marie presents the MaCRNs process as having a meaningful impact on policy design and the delivery of correctional interventions to Māori offenders, when in fact it was only ever intended to supplement the much broader, psychology-dominated IOM approach (Webb, 2012).

2. the vast majority of policy, legislation, intervention design and funding decisions are informed by imported 'theories' and interventions (for example, see the Ministry of Justice generated material on the recent Drivers of Crime project in New Zealand (2009a, 2009b); and
3. the vast majority of government spend in New Zealand's criminal justice system goes to fund the orthodox 'Western' derived crime control programmes.

Conclusion

We wish to conclude our critique of the mythological constructs of administrative criminology by acknowledging the lack of evidence for the efficacy of Indigenous theories and interventions. However, while making these claims commentators appear unaware of the politics of Māori crime control policy in the New Zealand context. It is our contention that ignorance of the politics surrounding Māori policy construction, leads to exaggerated claims regarding the amount of influence Māori theory and practices actually have on the development of crime control policy. Even a rudimentary awareness of the politics involved, as evidenced by a vast array of policy documents, would undoubtedly curb exaggerated claims about the supposed failure of Māori theory and programmes. This is because such knowledge would invariably lead commentators to acknowledge a fundamental truth about the criminal justice sector in New Zealand, namely that it has a poor history of undertaking scientific, outcome-focused research/evaluation on its policies and interventions (Tauri, 2011a). The lack of empirical analysis of the crime control in New Zealand pertains to the entire suite of policies and interventions whether they are informed by *tikanga*, or Crime Prevention

through Environmental Design (CPTED) or some other theory (see Tauri, 2013c; Te Puni Kōkiri, 2002b).

The mythological construction of Māori approaches offered by administrative criminologists is further weakened by a sustained, critical analysis of the efficacy of their preferred scientifically-derived interventions. In particular, commentators fail to provide significant evidence that the preferred programmes of the state and administrative criminologists are reducing Māori rates of offending and reoffending in any empirically verifiably way. Further to this is the fact that offenders in the New Zealand context are much more likely to experience the individual-focused therapeutic programmes that many administrative criminologists prefer, than they are to participate in *tikanga*-inspired interventions that are supposedly having such a negative effect on Indigenous recidivism rates (see offenders' comments in Department of Corrections 2009b and Te Puni Kōkiri, 2007). On this basis, any claim that Māori theory and/or culture dominates crime control policy construction in New Zealand, or that we are to blame for the contemporary failure of the overall crime control policy response to the Māori problem, should be considered little more than a mythological artefact that lacks empirical validity.

Over the past thirty years, Indigenous commentators have produced a significant amount of critical material on the response of crime control agents to the 'Indigenous problem'. Less prominent has been critical analysis of the role played by the Academy in supporting the state's historical and contemporary marginalisation of First Nations through crime control policy. Evidence for the need for Indigenous scholars to turn our

critical gaze to the symbiotic relationship between the discipline of criminology and policy-makers is indisputable. As Biko Agozino (2003) has demonstrated, the social sciences born of the 19th century (in particular criminology), played a significant role in the colonial project, with the First Nations of Africa and North American serving as guinea pig populations for the development and refinement of Western crime-control strategies. In more recent times we have observed the resurrection and re-empowerment of administrative forms of criminology in the policy making process, and with it a governmental preference for individualised, therapeutic interventions and policy development strategies largely devoid of direct engagement with First Nation peoples. On these issues alone, the need for a sustained critique is justified. But this critique must serve a greater purpose, namely the empowerment of First Nations in the realm of justice, resulting in meaningful reductions in contacts with 'the system'. In the area of crime control, this necessitates a multi-dimensional, strategic approach involving (amongst other things) a critical focus on the policy and legislation-making functions of the state, the continued resurrection of First Nation responses to social harm as alternatives to the formal system, and the development of an Indigenous, counter-colonial criminology dedicated to contesting the hegemony of administrative criminological approaches in the development of crime control policy.

Paper 4

An Indigenous, Critical Commentary on the Globalisation of Restorative Justice

Juan Marcellus Tauri

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Introduction

This paper is intended as a small offering in response to the challenge posed by Muncie (2005), O'Malley (2002) and Stenson (2005) for criminological analysis of the globalisation of crime control to move from obsessive macro-theorising about 'its' *shape and depth*, and instead begin analysing the micro-level impact of all this globalised, criminological activity. The manuscript also serves as a response to Aas' call for our discipline to:

... take up an old debt of omission and explore more systematically connections between globalisation and colonisation [which is] essential if we are to address the imbalances of power and the dynamics of othering and social exclusion in the present world order (2009: 413).

A further motivation for this paper is my wish to privilege the experiences Indigenous peoples of contemporary manifestations of globalised European Justice²⁵, for as Fenelon and Muguia (2008: 1657) rightly argue:

In the telling of man's [sic] global project, the story of indigenous peoples has been woven into the fabric of globality, yet the leading experts on globalisation have either ignored the role of indigenous peoples or reduced their existence to pre-packaged terms such as the 'fourth world' or as ethnics in 'developing nations' or even hidden in the broader 'periphery'.

It is the modest intention of the author that through this paper Indigenous peoples' 'real world' experiences of the globalisation of restorative justice will draw the discipline's attention to the meso and micro-level impacts of the inter-jurisdictional travels of their theories, crime control products, and legislation. Arguably, privileging Indigenous peoples' experiences of the globalisation of crime control is important for the development of criminological analysis of the phenomenon. After all, the Indigenous peoples of Africa, the Americas and the South Pacific have experienced an almost continuous process of cross-border transfer of crime control products throughout the last 200 years or more. Furthermore, imported criminal justice systems were a significant

²⁵ Further rationale for privileging the experience(s) of Indigenous peoples residing in settler-colonial societies include the significant, over-representation of Indigenous peoples in all Settler Society criminal justice systems (Cunneen; 2006; Tauri, 2004); the vast amount of evidence of bias, racism perpetrated against Indigenous peoples by the agents of crime control, not to mention the part played by them in the genocidal phases of colonisation that Indigenes refers to as the 'killing times'; the historical lack of focus by Eurocentric criminology on research with Indigenous peoples, that enables their experiences to be reflected through the research generated by the discipline; and finally the right of Indigenous peoples *to speak for themselves about issues that concern them*, a right recently confirmed through the United Nations Declaration on the Rights of Indigenous Peoples (United Nations, 2008).

tool in the colonialists' attempts to eradicate Indigenous life-worlds, strategies that manifest in the contemporary moment in the form of violent policing strategies, and our significant over-representation in criminal justice statistics. And yet despite all this, the Indigenous voice is often silenced in the vast lexicon produced by the Western Academy (Tauri, 2013c). Therefore, the time has come for us to speak for ourselves; to challenge the often negative impact of the products generated by the Academy and the restorative justice industry, upon our communities, and dispersed amongst us as though they are *offerings from the criminological gods* for the benefit of the less fortunate (Agozino, 2003; Tauri and Webb, 2012).

The paper begins with a brief overview of the globalisation of crime control products; followed by a critical discussion of the processes through which the Indigenous life-world has come to play a significant part in the developing globalised RJ Industry, elements of which rely heavily on Indigenous culture for the marketing of their products. I argue that the increasing inter-jurisdictional transfer of specific crime control products is having a profound impact on Indigenous peoples residing in settler-colonial societies, firstly, through the purposeful, and often exaggerated and inappropriate use of elements of Indigenous life-worlds in the construction and subsequent marketing of crime control products; and secondly, through the impact this activity is having on the ongoing struggle of First Nation peoples to resurrect our traditional justice processes and/or achieve some measure of jurisdictional autonomy (Tauri, 2011c).

A Brief Comment on the Globalisation of Crime Control Products

Criminologists are, together with other criminal justice professionals, becoming increasingly eager exporters of knowledge.

Aas (2009: 409).

During the past twenty years globalisation has become established as a legitimate area of criminological inquiry, albeit one that is responded to in equal measures of admiration and suspicion (Hopkins, 2002; Newburn and Sparks, 2004; Robertson, 1990; Scholte, 2005). For some, the prevalent image of globalisation as ever-increasing flows of capital, people, data and *cultural artefacts* is a welcome development that presents new opportunities for breaking down perceived barriers related to ethnicity, class, language and culture (see Watson, 2004), overcoming poverty and inequality, and for the development of effective responses to universal issues such as crime and (in)security (Jones and Newburn, 2002a; Newburn, 2010). For others, globalisation represents an unfolding tyrannical rule of peoples by a global economic regime that works exclusively for the benefit of Capital, reflected in an ever-increasing exploitation of cultural context for the benefit of policy entrepreneurs and the state (Hay and Watson, 1999; Held and McGrew, 2000; Odora Hoppers, 2000; Teeple, 1995).

According to authors such as Friman (2009: 1-2) and Nelken (2004: 373), crime has 'gone global'. This statement signals that the scale and scope of the contemporary epoch of globalisation is unprecedented and unmatched in its degree of globality. The evidence of this phenomena is apparently everywhere, including the transfer of a range of

criminological strategies, technologies, policies and interventions including Zero Tolerance (Newburn 2010; Wacquant, 2009), and Broken Windows (Shichor, 2004) policing strategies, and Mandatory Sentencing (Lynch and Sabol, 1997), and related '3-strikes and you are out'-style legislation (Jones, 2003; Schiraldi, Colburn and Lotke, 2004). All of these artefacts are accompanied by sophisticated marketing rhetoric and media friendly sound-bites that betray (or perhaps more accurately, reflect) their conservative birth-right: 'tough on crime', 'sensible sentencing', 'life means life', 'holding offenders accountable', and so on. However, it is important to note that the growing international market in crime control artefacts is not solely dominated by 'tough on crime' conservatives and their (supposedly) punitive policies and interventions. Arguably one of the most significant players on the international market – to use perhaps a rather inaccurate collective term for what is a broad, often disparate movement – is the *Restorative Justice Industry* (Cunneen and Hoyle, 2010; Daley and Immarigeon, 1998).

The Globalisation of Restorative Justice

According to popular origin myths, the antecedents of contemporary RJ began in Canada in the late 1970s when a parole officer from Kitchener, Ontario introduced a process that enabled victims and offenders to meet face-to-face (Peachey, 1989). From there it steadily grew, with the development of community boards in San Francisco in the 1980s; the proliferation of justice boards throughout North America through the 1980s/1990s; Family Group Conferencing (FGC) in New Zealand in the early 1990s, and Sentencing Circles in Canada. All this activity has since been followed by an explosion of RJ-related activity across North America, Western Europe, and of late throughout parts of Asia and South America. That RJ is now a full-blown *industry* that plays an increasingly important

role in the globalised crime control market is undisputable. For example, Miers (2007: 447) writes that “viewed globally, informed observers estimate that, by 2000, there were some 1,300 (RJ) programmes across 20 countries directed at young offenders”.

The contemporary development of the RJ Industry has played a significant part in both the Academy’s commodification of Indigenous life-worlds and the global spread of RJ products. For example, Deukmedjian (2008: 122-123) recounts the introduction by the Royal Canadian Mounted Police of RJ into its practices via community justice forums that were based heavily on the police-centred, Australian formulated ‘Wagga Wagga’ model. The global trajectory of this model of RJ, based on the so-called ‘Māori’ approach to justice, can be traced from its successful insertion into the U.S in 1994 in Anoka, Minnesota (McDonald, Moore, O’Connell and Thorsborne, 1995). As Deukmedjian (2008: 122) recounts, this successful foray into the U.S “inspired McDonald and O’Connell [two of the architects of the Wagga Wagga model] to form the Transformative Justice Australian advocacy and consultancy group” that subsequently travelled throughout North America in the mid-1990s marketing a standardised form of FGC to both practitioners and policy makers. Their travels included meetings with Indigenous elder’s councils in Ottawa and other Canadian jurisdictions (Rudin, 2013, personal communication). Eventually the Wagga Wagga model became the standard for RJ-related service delivery by the RCMP throughout Canada (Chatterjee, 2000). Further highlighting the rapid globalisation of the FGC as part of the developing market in RJ products, both Chatterjee (1999) and Richards (2000) recounting that RCMP officials visiting New Zealand and Australia in 1996 to see first-hand the FGC model in action, after which they negotiated a cost-sharing agreement with the Department of Justice (Canada) for 3.75 million each, for roll-out in 1997 of the

RJ initiative known as *Community Justice Forums* (Deukmedjian, 2008). Subsequently, the RCMP contracted Transformative Justice Australia to train members to run the new RJ programme, which was very much a derivative of the New Zealand FGC and Australian Wagga Wagga conferencing models.

Restorative Justice and the Commodification of Indigenous Life-Worlds

Family group conferencing was a gift from the Aboriginal people of New Zealand, the Māori

Ross (2009: 5).

The appropriation of components of Indigenous life-worlds by state functionaries and criminologists for the purpose of indigenising crime control products and culturally sensitising systems and products, is well documented in the extant literature (see Havemann, 1988; Tauri, 1998; Victor, 2007). Arguably, the most influential *colonising project* of this kind in contemporary times came with the passing of the *Children, Young Persons, and Their Families Act* 1989 (the Act) by the New Zealand Government, and with it the introduction to the world of the FGC forum. Advocates of the FGC process make a number of claims about the relationship between the format of the process, traditional Māori justice practices, and the role the forum has played in responding to Māori concerns with the formal criminal justice system (see Jackson, 1988). For example, it is often claimed in Australasian-focused literature that:

1. the Act was influenced by Māori concerns for the prevalence of institutionally racist and culturally inappropriate practices within the New Zealand criminal justice system (Fulcher, 1999; Goodyer, 2003; Ministerial Advisory Committee, 1988);
2. because the conferencing process and Māori justice practice have 'restorative elements', it provides the state with a culturally appropriate forum for addressing the justice needs of Māori (Hassell, 1996; McElrea, 1994; Olsen, Maxwell and Morris, 1995); and
3. the conferencing process provides evidence of the system's ability to culturally sensitise itself, and also empower Māori to deal with their youth offenders in culturally appropriate ways (Doolan, 2005; Morris and Maxwell, 1993).

Over the past two decades the oft-made claims of the Māori/Indigenous origin of the FGC forum and its ability to culturally sensitive New Zealand (and other settler-colonial society) youth justice systems, has largely been uncritically replicated in the international restorative justice and wider criminological literature (see Braithwaite, 1995; Carey, 2000; Griffiths and Bazemore, 1999; Leung, 1999; Lupton and Nixon, 1999; McCold, 1997; Roach, 2000; Strang, 2000; Umbreit, 2001; Weitekamp, 1999; Zehr, 1990). Specific examples of the way in which, to use Daly's (2002) expression, the 'origin myth' of this particular RJ forum, especially the constant refrain to its supposed 'Māoriness', are reflected in the following statements from well-known advocates of the FGC forum, and of the RJ movement:

The river [of 'restorative justice'] is also being fed by a variety of indigenous traditions and current adaptations which draw upon those traditions: family group

conferences adapted from Māori traditions in New Zealand, for example... (Zehr, 2002: 62).

And

[T]he principles of restorative justice are particularly consistent with those of many indigenous traditions... including... Māori people in Australia and New Zealand and the practice of]... family group conferencing by Māori people in Australia... (Umbreit, reported in Richards, 2007: 385).

Perhaps the most startling elements of the origin myth of the New Zealand FGC, from a critical Indigenous perspective, is the claim that the forum was designed in part to *enable Māori families to manage the offending of Māori juveniles* (see, in particular, Morris and Maxwell, 1993 and Serventy, 1996).

The constant reiteration of the origin myth within the restorative justice literature of (mostly) Western European criminologists and practitioners, has resulted in it acquiring the status of a seemingly uncontested, taken-for-granted 'truth' (see Pavlich, 2005), one that RJ advocates refer to constantly in their accounts of the emergence of restorative justice practice in the contemporary moment. And yet somehow, while focusing on the 'Māoriness' and the 'restorativeness' of the FGC forum, these same authors consistently overlook readily available evidence that problematises almost all aspects of the origin myth (see discussion below), including, for example, the following 'confession' by Doolan (2005: 1), one of the primary architects of the 1989 legislation, that "those of us who were

involved in the policy development process leading up to the new law had never heard of restorative justice”. He further states that empowering Māori families to have any form of ‘control’ over responses to the offending of their youth was not a major consideration of policy makers. Instead, Doolan goes on to affirm that the primary goal of the new forum was making young people responsible for their offending behaviour and decreasing the use of the Youth Court.

In comparison to the grand mythologising of many RJ exponents, there is the growing literature from critical Indigenous and non-Indigenous commentators that directly contests the monolithic origin myths of restorative processes such as the FGC. These commentators provide evidence of high levels of dissatisfaction amongst indigenous communities with the introduction of restorative justice interventions more broadly, and of the FGC forum in particular (see Blagg, 1998; Cunneen, 1997, 2002; Moyle, 2013; Tauri, 1998; 2004; Zellerer and Cunneen, 2001). These critics also take advocates of RJ to task for making “selective and ahistorical claims... about indigenous social control conforming with the principles of restorative justice, while conveniently ignoring others” (Cunneen, 2002: 43; see also Pratt, 2006 for discussion of the tendency in RJ literature to romanticise Indigenous justice by ignoring evidence of the use of non-RJ type punishment practices by Indigenous communities).

In her ground breaking critique of the philosophical foundations of the modern RJ Industry, Richards (2007) provides a succinct analysis of the ways in which the Industry formulates and sustains origin myths of forums like the FGC. Richards achieves this by demonstrating the extent to which the *Daybreak* Report, authored by the Ministerial

Advisory Committee for the New Zealand Department of Social Welfare (Ministerial Advisory Committee, 1988) is continuously, and erroneously portrayed by members of the RJ movement as both the impetus for the introduction of restorative justice in New Zealand, and as providing evidence of extensive Māori input into the development of the FGC (for examples of this perspective, see Braithwaite, 1995; Doolan, 2002; Fulcher, 1999 and Lupton and Nixon, 1999). Richards analysis of the *Daybreak* report shows that the oft-repeated notion that Māori communities ‘mobilised against Pakeha’, were successful in pressuring the New Zealand government into adopting a more culturally suitable criminal justice system, in the form of a ‘Māori inspired’ FGC, is a significantly romanticised and exaggerated version of what took place. In summary, Richards’ (2007) demonstrates that:

- the initial working party appointed to consider what changes were necessary in New Zealand’s youth justice/child welfare system was formed without Māori representation; and
- no specific recommendation was ever made by the Ministerial Advisory Committee that the Department implement family group conferencing.

Undoubtedly, suggestions made by the Committee for reconfiguration of New Zealand’s youth justice system clearly resonate with the core philosophies and practices associated with RJ. It is also true that we are able to make broad comparisons between the governmental forum (FGC), and certain aspects of Māori customary justice practice. The Committee recommended, for example, that the *Children and Young Persons Act* (1974) be amended to include greater consideration of the role of the family when dealing with Māori children, and the increased participation of Māori families in matters relating to

child welfare and juvenile justice (Ministerial Advisory Committee, 1988). Later in the report, the Committee (1988: 29) returns to these issues, claiming that a “substantial ideological change” would be necessary in order to amend the *Children’s and Young Persons Act* (1974) to cater to Māori needs. However, as Richards demonstrates, the Committee *did not* make any specific recommendations, preferring instead to present a range of principles that they believed should shape changes to the legislation. Furthermore, the original *Children and Young Persons Bill*, precursor to the CYPF Act 1989 made no reference the Committee’s proposals. Finally, Richards relates that Annex 2 of the report focuses specifically on what the Committee believe should be done in regards to child welfare and youth justice practices. In this section, the Committee (1988: 54), rather than advocating significant empowerment of Māori to practice their own justice, or ‘control’ responses to their families and youth offenders, clearly stated that “[f]urther, we believe that the establishment of new Courts and special Judges would be unnecessary”. By rejecting any significant changes to status quo, and advocating for ‘cultural sensitivity training’ for court officials, and the construction of a state-centred forum, the Committee was following a strategy with a long history in the colonial context; namely the utilisation of components of Māori cultural practice through a process of indigenisation to provide the appearance of cultural sensitivity (see discussion below and Havemann, 1988; Tauri, 1998).

When considering all the above, it is evident that both the focus of the Committee and the contents of the *Daybreak* report is thus “less romantically - and more prosaically-oriented than ‘restorative justice’ advocates often imply” (Richards, 2007: 109). Furthermore, the notion that the FGC forum emerged in New Zealand in response to an *uprising of*

indigenous communities keen to implement traditional justice processes,” is not endorsed by the very report that is often cited within the RJ literature to support this contention. It is, therefore, an exaggeration to declare that the *Daybreak* report is responsible for the implementation of the FGC forum in New Zealand as supporters of restorative justice often claim. And with this realisation, comes the collapse of the origin myth of one of the most significant forums behind the contemporary globalisation of crime control, especially of restorative policies and interventions.

Indigenous Response to the Grand Mythologising of Restorative Justice

Over the past 15 years the origin myth of the FGC forum has been heavily critiqued by critical Indigenous and non-Indigenous scholars alike, including Blagg (1997) and Cunneen (1997) in the Australian context; Lee (1997), Rudin (2005) and Victor (2007) presenting Indigenous Canadian perspectives²⁶, and Love (2002) and Tauri (1998; 2004) from a critical Māori perspective. These authors expose a number of significant issues including much of the empirical research on Indigenous satisfaction is exaggerated, and that Indigenous experiences of this type of forum do not match the glowing reports of their cultural appropriateness and ability to meet Indigenous aspirations for jurisdictional empowerment reported in the academic literature and through the pronouncement of RJ advocates (for example, see Love, 2002; Tauri, 1998; 2004 and Walker, 1996 for detailed discussion of the exaggerated claims of ‘cultural sensitivity’ in

²⁶ In relation to Canada, Rudin (2005: 97) demonstrates that much the same myth-making is happening in relation to Eurocentrically-derived ‘indigenised’ programmes developed there, as is happening with the FGC forum, when he argues that:

The belief that sentencing circles are a form of Aboriginal justice displays a serious misunderstanding of the hallmarks of an Aboriginal justice programme... the use of circles was pioneered by judges in the Yukon, particularly Judge Barry Stuart”, and “... it must always be kept in mind that sentencing circles are not an Aboriginal justice initiative or programme; they are judge-made and judge-led initiatives.

the Māori context). Schmidt and Pollak (2004: 133) underline Māori criticisms of both the origin myth and the 'myth of empowerment' so prevalent in RJ literature on the FGC forum, when they write that:

Māori writers such as Love (2002), Tauri (1999) and Walker (1996) have challenged the popular notion that the adoption of conferencing was a victory. Rather, they argue that FGC has co-opted and incorporated Māori perspectives, leaving intact the structural power relationships within child welfare.

Much of the government-sponsored research underscores the co-optive nature of the FGC process and the marginalisation of whanau (family) members and 'cultural experts' (for example, in the New Zealand context re: FGC practice, compare Morris and Maxwell, 1993 and Tauri, 1998 and Maxwell et al, 2004 and Tauri, 2004). Alternatively, it has been argued that both the 1989 Act and the FGC process were influenced by Governments' need to be seen to be 'doing something constructive' in the face of a perceived rise in juvenile offending, particularly amongst Māori youth, and continued criticism of the operations of the formal system (Richard, 2007; Tauri, 1998; 1999).

Despite the contested nature of the findings of research on the FGC process and its empowerment (or not) of Māori, what is evident is that over the past decade the FGC has become an increasingly popular commodity on the international crime control market. This is particularly evident in the settler-colonial jurisdictions of Canada, Australia and the United States of America. It should be noted that all these jurisdictions have significant over-representation of Indigenous peoples in their criminal justice systems. As

related earlier, evidence exists that New Zealand's FGC forum and its Australian derivative were purposely and at times aggressively marketed in other settler-colonial jurisdictions. The marketing of these products was aided significantly by the fact that much of the academic literature uncritically promoting the origin myth discussed previously (see Consedine, 1995; LaPrairie, 1996; Morris and Maxwell, 1993; Olsen et al, 1995 and Umbreit and Stacey, 1996. For more contemporary manifestations of the reiteration of the myths see Maxwell, 2008; Ross, 2009 and Waites, MacGowan, Pennell, Carlton-LaNey and Weil, 2004). The Indigenous origin myth has recently featured in commentaries on the spread of RJ forums across Great Britain and Western Europe (Barnsdale and Walker, 2007), and central and South America (Scuro, 2013). The transfer process appears to be taking place in an organised manner, involving a range of policy workers, franchise companies and RJ advocates. These 'activists' are heavily involved in creating viable markets for crime control products through the commodification of 'culture', in particular Indigenous cultural practices (see Lee, 1997; Takagi and Shank, 2004; Tauri, 2004; 2013b for analysis of these practices).

Undoubtedly, the exportation of the FGC forum to various Western jurisdictions has been heavily influenced by the arguments discussed earlier. Particularly important is the fiction that the FGC product provides a forum that empowers Māori /the Indigenous Other, and signals the ability of the imposed criminal justice ordering to culturally sensitise itself. This process is driven by the *co-option* (intentional or otherwise) of Indigenous/Māori cultural practices and the purposeful *utilisation* of these selected cultural elements (such as 'circles') as a key marketing tool for marketing this type of

product across Western European crime control markets, and more recently across Asia and Latin America (Tauri, 2013b).

Indigenous Justice and the Fictions of the Restorative Justice Industry

The final belief is to believe in a fiction, which you know to be a fiction, there being nothing else, the exquisite truth is to know that it is a fiction and that you believe it willingly.

Shanley (1997: 685).

Given the previous discussion, what are we to make of the following comment from Gabrielle Maxwell, one of New Zealand's staunchest advocates, both nationally and internationally, of the FGC forum?

In New Zealand there has been criticism that family group conferences have not been managed in ways that conform to traditional practice of Māori or those from other cultural backgrounds. It has been suggested that the high proportion of Māori staff managing the process and the inclusion of Māori greetings and blessing is little more than tokenism and can rarely be described as a truly Māori process. This is despite the undisputed origins of many aspects of the conference process in traditional Māori procedures (Consedine, 1995). On the other hand, on occasion, the management of the conference process is sometimes passed over to a Māori social service group (Maxwell, 2008: 87).

In this quote we observe many of the issues Māori and other critical Indigenous/non-Indigenous commentators have identified with much of the Academy and RJ advocates' writing on the FGC forum. Firstly, the most obvious issue is the claim that the FGC's Māori foundations are undisputable. The previous discussion, especially the work of Richards exposes that this claim is an exaggeration. In reiterating the origin myth and presenting it as 'undisputable', Maxwell ignores a significant amount of literature exposing this fallacy that has been published since Consedine's book was released. This fact highlights another of the criticisms levelled by Indigenous scholars at some members of the RJ Industry, namely the lack of engagement with the critical Indigenous/non-Indigenous literature (see Tauri, 2013c; Tauri and Webb, 2011). Secondly, Maxwell's own published research on the FGC process contained criticisms by Māori FGC participants with the tokenistic way in which Māori culture was afforded space in the process by state officials, usually confined to allowing elders to recite karakia (prayer) at the beginning and end of the process (see Morris and Maxwell, 1993; Maxwell et al, 2004). This situation is far removed from the claims by advocates that the process provides a meaningful forum for the empowerment of Māori (for example, see Maxwell, 2008). Thirdly, in the above quote Maxwell is replicating a fundamental weakness in the FGC/Māori justice scholarship; namely ignoring the lack of direct Māori input into the design of the Act and the FGC forum. Also overlooked is the fact that officials involved in the developing the process, most notably the chief policy architect, Doolan, have acknowledged that the focus of work on the 1989 Act was never on developing a Māori justice process, or indeed a restorative one.

Restorative justice advocates are constantly, and erroneously equating Māori requests for a 'traditional forum' (more especially in Moana Jackson's 1988 report *He Whaipaanga Hou* than in *Daybreak*), with Māori justice philosophies being *foundational to the formulation of the forum itself*. To do so is to ignore the reality of policy making in the New Zealand context, in particular the historical tendency for the criminal justice sector to Indigenise Eurocentric crime control processes (see Jackson, 1995; Tauri, 1998; 2009; Tauri and Webb, 2011; Williams, 2000). It also ignores the fact that the supposed Māori and restorative elements were identified long after the formulation and implementation of both the Act and the forum (Tauri, 2004). As Daly (2002: 63) effectively argues "the devising of a (white, bureaucratic) justice practice that is *flexible and accommodating* towards cultural differences does not mean that conferencing *is* an indigenous justice practice". Daly (2002: 4) then goes further, revealing that Maxwell herself is aware of this distinction when she includes the following quote from Maxwell and Morris' original 1993 study:

A distinction must be drawn between a system, which attempts to re-establish the indigenous model of pre-European times, and a system of justice, which is culturally appropriate. The New Zealand system is an attempt to establish the latter, not to replicate the former. As such, it seeks to incorporate many of the features apparent in whanau [extended family] decision-making processes and seen in meetings on marae today, but it also contains elements quite alien to indigenous models.

The Canadian scholar Stephanie Vieille (2012: 174) highlights a fundamental flaw in this perspective when she writes that:

Even though both FGCs and tikanga appear to adopt similar approaches to doing justice, for instance, by putting emphasis on active participation of victims, offenders, and the community, their underlying values differ significantly. This is illustrative of a wider and problematic tendency to equate Indigenous approaches and mechanisms of justice with the all-encompassing restorative justice approach.

How do we begin to explain the ongoing recitation of the origin myth by RJ proponents, when significant evidence that contradicts it is ignored? In part, understanding the situation requires recognition of how important the origin myth is to the marketability of RJ products like the FGC.

Marketing the Indigenous

In much the same way as Kathryn Shanley in her 1997 (p. 676; emphasis included) article *The Indians America Loves to Love and Read*, I argue that:

... we *can* identify neo-colonial cultural appropriations, thefts of ‘cultural property’ [and that] such cultural appropriations inextricably belong to overall totalisation efforts – the political and ideological domination of indigenous... peoples...

The appropriation of Indigenous life-worlds is carried out in many different ways, sometimes in a blatant, unapologetic ‘stealing’ of Indigenous artefacts, such as when sports teams utilise Indigenous names and symbols (see recent debates regarding the Washington Redskins, especially in *The Huffington Post*, 2013), and at other times through sleight of hand, as in the case of the New Zealand state, non-Indigenous

academics and, eventually, restorative justice corporations marketing of the FGC process. The sleight of hand terminology is purposeful as it denotes the *magic* that often forms the basis of criminological musings, and the constructions of crime control policy.

As an Indigenous person I find it easy to understand why Western criminologists, policy makers, academics and private RJ companies seek to appropriate elements of the Indigenous culture context to bolster the marketability of their products. After all, one of the fundamental rules of modern marketing is 'sex sells', and indeed the Indigenous life-world can be very sexy and *erotic*. This process - the Western criminological enterprise utilising Indigenous motifs, phrases, practices to Indigenise and market their products, should be presented for what it really is, *the eroticisation of Western crime control* (see Acorn (2004) for discussion of the eroticisation of justice, specifically in relation to RJ).

It is evident that many RJ practitioners and advocates are driven by a desire to do good, but what is also driving this process is the desire to strengthen the marketing potential of products on the competitive international crime control market. But let's be clear what it is *not* about, at least in the first instance, the empowerment of Indigenous peoples. Nor is all this activity about returning to Indigenous peoples the 'gift' of once again being able to practice our traditional responses to social harm (Tauri, 2013a). It is within this understanding of the development of products that are marketable in settler-colonial crime control markets that enables us to begin to answer the criminological question, so what? Why is this issue important both for Indigenous peoples and critical criminological inquiry?

So What?

[G]lobalisation' in Indigenous eyes reflects a deepening, hastening and stretching of an already-existing empire.

Alfred and Corntassel (2005: 601).

There is growing anecdotal evidence that the global transfer of crime control policy is negatively impacting Indigenous peoples (see Tauri, 2004 on New Zealand and Victor, 2007 on Canada). This is particularly evident in the restorative and youth justice contexts. From a distance it appears that the process is impacting Indigenous peoples in a number of ways, including:

- containment of Indigenous critique of neo-colonial state formal justice systems through the production of state-centred indigenised policies and programmes (Tauri, 2013b); and
- blocking Indigenous activities aimed at enhancing their jurisdictional autonomy and ability to develop their own responses to social harm, via the importation of 'culturally appropriate' crime control products (Victor, 2007).

In 1997 Gloria Lee, a member of the Cree First Nation in Canada, published an article titled *The Newest Old Gem: Family Group Conferencing*. Lee expressed concerns about the recently imported family group conferencing forum being forced upon Canadian Indigenous peoples at the expense of their own justice mechanisms and practices. In particular she argued that "First Nation communities are vigorously encouraged to adopt and implement the Māori process and to make alterations to fit the specific community

needs, customs and traditions of people who will make use of the new process” (Lee, 1997: 1). Lee’s concerns with the nature of the importation of the FGC/conferencing process into the Canadian jurisdiction, and the impact it might have on Indigenous peoples justice aspirations in that country have been shown to be valid.

The importation of the FGC forum into the North American context provides a neat case study on the impact of the globalising activities of policy entrepreneurs and RJ advocates. Almost twelve years since the publication of Lee’s article many Canadian Indigenous peoples are still struggling to gain state support for the implementation of their own justice processes. The increasing employment of Indigenous life-worlds in the marketing of RJ products should be considered a significant component of the neo-colonisation of Indigenous peoples: having faced a sustained period of colonisation, during which their systems of justice were all but destroyed, Indigenes now have to deal with a *new colonising project*. This particular project involves the purposeful exportation of restorative products from Australasia to the North American continent. The marketing of this product and others like it, such as sentencing circles, is heavily reliant on exaggerating the indigenous foundations of the products themselves.

We can demonstrate the potential negative impact of this process by citing just one case study, that of the Stó:lo First Nation of British Columbia and their experience of the importation of the ‘Māori justice process, FGC’ by the RCMP in the mid 1990’s. Katz and Bonham (2006: 190) relate that in 1997, the Royal Canadian Mounted Police adopted a policy which gave the police the discretion to utilise restorative justice. Based on family group conferences used in Australia and New Zealand, as presented around Canada by

'Real Justice' advocates such as Moore and O'Connell (Rudin, private communication, 2012), the RCMP subsequently developed guidelines for community justice forums (Chatterjee & Elliott, 2003). The forum that was marketed around North America at the time was based on the police-oriented 'Wagga Wagga model' developed by Terry O'Connell (see O'Connell, 1993).

Dr Wenona Victor, a criminologist and activist from the Stó:lo Nation of the Fraser Valley in British Columbia, underlines the impact the transfer of FGC's to Canada had on First Nation justice aspirations in that jurisdiction, thus demonstrating not only the effectiveness of the marketing process, but also the concerns Lee expressed in the late 1990s. Dr Victor describes receiving training on implementing FGC within Stó:lo territory, a process that had been sold to them as "developed by the Māori, the indigenous people of New Zealand":

On the first day [of FGC-related training] we all eagerly awaited her [the trainer's] arrival. We were somewhat surprised to see an extremely "White" looking lady enter the room; however, we have blonde blue-eyed, even red-headed Stó:lo among us, and so, too, we presumed, must the Māori. However, it did not take us long to come to realise this lady was not Māori and was in fact Xwelitem [European]. Ah, the Māori had sent a Xwelitem; okay, we do that too, on occasion. It is one of the many ironies of colonisation whereby Xwelitem often become our teachers..... [t]here are times when it is an Xwelitem who is recognised as the Stó:lo 'expert' and therefore, is the one talking even when there are Elders present. But by the end of the three day training course I was convinced the Māori had lost their minds! There

was absolutely nothing Indigenous about this [FGC] model of justice whatsoever! (in Palys and Victor, 2007: 6)

Through the experiences of Māori and the Stó:lo, we might view restorative justice products such as these in terms of Tsing's (2005) "packages of political subjectivity", meaning that they are:

[C]reated in a process of unmooring in which powerful carriers reformulate the stories they spread transnationally... These packages carry the inequalities of global geo-politics even as they promote the rhetoric of equality. Those who adopt and adapt them do not escape the colonial heritage, even as they explore its possibilities.

The exports in question, including the FGC, are seen by some Indigenous peoples, as a welcome and overdue extension of formal state justice processes beyond the Eurocentric bias of its response to social harm, and of enabling 'other' ways of doing justice (Hakiaha, 1999; Māori Council, 1999; Quince, 2007). However, we must be careful not to oversell the homogenising impact of these supposedly Indigenous-derived products. We must always be mindful of what Aas (2009: 412) refers to as the "geo-political imbalances of power between 'exporters' and 'importers' of penal policies and interventions". We need to be wary of the parasitic relationship between some importers (government/think-tank/administrative criminologist/private security company, etc.), exporters (another nation state/government agency) and the 'customer', who is all too often a community or an individual who has been given little choice in receiving these cultural appropriated 'gifts'. As Tsing (2005: 76) argues, we should always keep in mind "the particularity of

globalist projects”; critically analysing who constructs them, and for whose (primary) benefit they are subsequently exported and implanted on the globalised crime control market.

Final Comments

This paper was intended to contribute to ongoing Indigenous resistance to the homogenising impact of much of the Western crime control industry’s activity. Hopefully it will also serve as a wake-up call to criminologists and RJ advocates to ‘get real’ about the often negative impact of their marketing of their products is having on Indigenous peoples residing in settler-colonial contexts (Tauri, 2014c).

The business of crime control is complex, multi-dimensional, global and profitable. Like any business enterprise, participants seek to market their products in ways that distinguish them from those of their competitors, be they franchise companies or policy entrepreneurs from other jurisdictions. As exposed in this paper, one key selling point for the RJ Industry is the supposed Indigenous foundations of key products such as FGC, and sentencing circles. As the saying goes, “sex sells” and the Indigenous world is ‘different’ and erotic, and therefore considered extremely effective for marketing policies and initiatives in jurisdictions dealing with an Indigenous over-representation problem. The techniques utilised by the Industry has been well identified in the extant literature; be it the appropriation of Indigenous terms and language, or specific, boutique cultural practices. Or, as often happens, providing restricted space for Indigenous cultural practice within Eurocentric, standardised programmes. From an Indigenous standpoint,

all this activity amounts to the continued subjugation of our life-worlds, in this case, for the benefit of policy makers, and RJ entrepreneurs.

The impact the globalised crime control market on Indigenous peoples is very real, and at times negative and subjugating. Those making money selling their biculturalised products to state and Federal governments should consider the consequences of the continued appropriation of the Indigenous life-world for the benefit of themselves and the Industry they participate in. Perhaps it is time for all these non-Indigenous profiteers to begin looking to their own cultural contexts for the next 'big thing' in restorative practice. After all, we are often told by the demi-God's of RJ about the lost restorative practices of Western European culture (Weitekamp, 1999), so why the need to plunder our cultural context? Given the contents of this paper, and the growing critical Indigenous literature, they can be sure that the critical Indigenous gaze is now firmly turned towards them.

Paper 5

Resisting Condensing Research Ethics in Aotearoa New Zealand

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Introduction

Indigenous peoples residing in Settler Societies have long expressed concern at the impact on their communities, of social research activity carried out by government agencies and academic institutions (see Battiste, 2000; Smith, 1999a). More recently, Indigenous commentators have focused their critique of the research context on the ways in which Research Ethics Boards (REBs) impinge on the autonomy of Indigenous researchers and participants to pursue knowledge construction in ways that suit their social and cultural context. It should be noted that the title by which institutional ethics review boards are known can vary depending on geographic location, for example in the United States they are often referred to as Research Ethics Committees (RECs) and Institutional Review Boards (IRBs), while in Canada they are designated Research Ethics Boards (REBs) or General Research Ethics Boards (GREBs). The term REB is used here to refer to all committees of this kind. Informed by the personal experiences of the author and Indigenous Canadian and New Zealand research participants, as well

as the extant literature, this paper critiques the processes employed by New Zealand REBs to assess Indigenous-focused or Indigenous-led research. In response to a contested decision made by an REB, the author included questions in his study specifically related to issues related to REBs, ethics' processes and Indigenous research so he could enquire of First Nation academics, researchers and service providers their thoughts on the issues that arose from a debate that occurred between the author and the REB. In all, seven individual interviews and two focus groups (with a total of 12 participants) were completed in both jurisdictions between November 2010 and January 2012. The views of some of the participants are included in this paper, and referenced via a 'code' designed to protect their identity. For example, focus groups are coded as CFG1 or CFG2 (Canadian focus group 1 and/or 2) with participants given a random number as an identifier known only to the researcher and the participant (such as **CFG14**). Similarly, individual interviewees were randomly allocated a code based on the jurisdiction the interview took place in, plus ethnicity (for example, a Māori interviewee might be delegated the 'code' **MI13** - Māori, individual interview 3).

One key issue identified is the general lack of experience of REB members in researching with Indigenous peoples and a lack of knowledge of their social context, complex histories and preferred research processes. As a result of this situation, REBs too often privilege the 'liberal', Eurocentric conceptualisation of the autonomous research subject as the focus of their deliberations on 'right research', which leads in turn to an over-reliance on formulaic main-streamed (white-streamed) assessment processes that sideline the importance of the social context within which 'real world' research takes place. Furthermore, these practices potentially marginalise Indigenous researchers' and

their participants by placing them at risk of violating the ‘ethics’ of both the institution to which they have applied for ethical consent, or the Indigenous communities where their research takes place. The institutionalised ethics’ procedures may even be read as a politics of containment that at once renders invisible the importance of relationships in Indigenous research while asserting the right of the institution to determine the ‘correct’ way that research should be played out.

The paper begins with an overview of the author’s experience of the condescending ethics of a New Zealand REB involved in assessing the ethics protocol for his doctoral research. This discussion informs the following section which highlights Indigenous issues with REBs identified in the literature and empirical research carried out by the author. From there, the focus moves to an analysis of reasons for the poor quality of REB processes and decisions regarding Indigenous research, drawing on Butz’s concept of *condescending ethics*. The paper ends with a call for Māori scholars (and communities) to resist the ‘condescending ethics’ of REBs and their related institutions, and develop a Māori-led, national-level ethics review process(es), that supports and protects Māori and non-Māori researchers who want to research with Māori, but are compelled by institutional edict to engage with the ethics protocols of the academy.

The Research Ethics Board Experience

To assume that the Aboriginal past or knowledge can be adequately explained from a totally foreign worldview is *the essence of cognitive imperialism and academic colonisation*.

Henderson (1997: 23, emphasis added).

In late October 2009, the author and his then supervisor submitted the requisite ethics forms to the REB at the institution where he was enrolled to carry out doctoral research. The research focused on Indigenous experiences of the global transfer of crime control policies and interventions, specifically restorative processes like Family Group Conferencing, and the impact this kind of state activity was having, if any, on the development of their own justice processes. The data gathering for the thesis was to be carried out via a combination of individual interviews and focus groups with Indigenous justice practitioners, researchers and academics in New Zealand and Canada (as well as a small group of non-Indigenous policy workers in Canada).

Given the author's previous experience with this and other REBs in the New Zealand, and as an occasional advisor to Māori post-graduates who had experienced issues with REB decisions, resistance was anticipated due to the authors' decision to privilege the ethics protocols favoured by Māori and Canadian Indigenous participants. As directed by Indigenous advisors, the protocols were constructed through direct collaboration with participants, elders' councils and experienced Indigenous researchers in both jurisdictions. As a result of this collaborative process, a research protocol was

developed that privileged collective strategies for eliciting informed consent and gathering data. The strategies devised related to the wish of some participating communities (especially in the Canadian context), for privileging 'communal' expressions of consent, such as a) the fact that the research or meeting is agreed upon by an Elders' council, b) individuals participating at a focus group or hui give their consent through the act of attending, or verbally at the beginning of the meeting, or c) an Elder or designated person provides verbal consent at the beginning of a focus group/hui on behalf of to the group and after discussing the background materials provided by the researcher.

These strategies were included in the research framework as appropriate for eliciting informed consent if the participants rejected the standard, form-based process that is generally employed by social researchers. The author carried out thorough, community-level negotiations to ensure the development of protocols deemed 'ethical' and 'tika' by Māori and Canadian Indigenous participants. The negotiations took place over a sixteen month period via phone, email and during two visits to the region of Canada where part of the research project was to take place. For the New Zealand context, the author was advised on appropriate research ethics by three prominent Māori researchers, and relied in part on extensive research and engagement with Māori communities over the previous 15 years working in the academy and as a government official working directly with Māori communities.

In contrast to the collaboratively constructed, community-centred and contextualised research protocols developed by the authors and his potential participants, the REB in

question followed a heavily standardised, Eurocentric process for assessing the ethicality of both a researcher and specific project. It was evident from even a cursory glance at the relevant background documents issued by the REB, supplemented by communications between the author, his supervisor and members of the committee, that the focus of their ethics deliberations centred on institutionally-defined risk avoidance to researcher and research participant in a way that masked the power differentials at the same time that they were seen as protecting what they perceived as vulnerable research subject. This Western liberal gaze may be seen as the empowerment and privileging of the institutional research norms and values in a universalising framework.

The REB in question had already rejected a previous version of the proposal submitted in August 2009, in which the author had critiqued the REB's privileging of individual-focused protocols for eliciting informed consent. Subsequently, the author and his supervisor carried out further discussions with research advisors and participants before resubmitting the application in late October of that year. The revised submission included a thorough critique of the REB rationale for rejecting the previous submission, while offering a dual-consent process that ensured the researcher would avoid behaving 'unethically', as that term is defined by Indigenous participants. The author and his supervisor also sought to placate the REB by offering to use their preferred, individualised process; as set out in this extract from the second submission:

Discussions between the primary researcher and Indigenous advisors for this project indicate that the consent-related processes preferred by... University are

unethical and culturally inappropriate for research engagement with these First Nations. It would appear then that a compromise is required, and so the following process will be used to satisfy the requirements of... [the ethics board in question] with regards to confirmation of informed consent: All individual participants in the research will be informed of the purpose of the research either verbally, or through receipt of a written copy of the PIS, which will be offered to them prior to primary researcher reading out the document... The process required by... University will be explained to all participants, who will be informed that the requirements of the institution privileges informed consent evidenced through written, signed documents... research participants will be provided an opportunity at this stage of the process to respond to the request for written confirmation. If they assent [sic] to signing the informed consent forms (see appendix 4), then these will be distributed to them for their analysis and signing. If they do not assent [sic] to the [REB] process then the primary researcher will acknowledge this fact in their research notes from that particular session. Individuals who decide not to sign the document will be asked permission by the primary researcher to agree to be contacted at a later date if any queries are made by... University officials because of the lack of signed consent forms. A similar process will be followed during focus groups, during which a request will be made for one person to act as a representative for all participants and who can speak on behalf of that group.

This extract illustrates the way that the ethics proposal submission drew on the consultation and collaboration of Indigenous participants. For example, the strategy of identifying one person to confirm group consent to participation in the research, if the

REB needed to seek confirmation, was suggested by two of the Canadian advisors for the research after consultation with Elders Council members. How this selection would be made was to be determined by the members of the group participating in a hui/focus group, or determined by Elders' prior to engagement. Unsurprisingly, the REB rejected the compromise offered of a dual-consent process to guide engagement with Indigenous participants, and continued to attempt to force its preferred individualised consent and engagement process upon the researcher and his research participants. Many more months were lost attempting to alter the approach taken by the REB, before his supervisor finally received formal sign off for the research to proceed in April 2010. As indicated earlier before embarking on the research the author added questions to the research schedule for individual interviews and focus groups in order to elicit participants views on the REB's ethics review process. The responses of Canadian and Māori research participants to these questions form an important part of the critical analysis offered in this paper. However, before we present this analysis, we must first background the growing Indigenous critique of the institutionalised ethics process.

The Indigenous Critique of Research Ethics Boards

Recently, a number of Indigenous researchers have criticised the role REB's play in stifling Indigenous-led, community-centred research. A common theme of Indigenous critique has been the contribution made by REBs in the colonising project of Western research (Absolon, 2008; Berg, Evans and Fuller, 2007; Bishop, 1998; Denzin, 2008; Ellis and Earley, 2006; Glass and Kaufert, 2007; Marker, 2004; Schnarch, 2004; Smith, 1999a; Tuck and Fine, 2007; Wax, 1991). Indigenous and non-Indigenous academic critique of REB's covers a broad range of issues, including (but by no means exclusively):

- *Individualism* – marked by the privileging of the autonomous research participant, and informed consent processes that force individualised protocols upon collectives (see Ellis and Earley, 2006; Glass and Kaufert, 2007: 32-33; Manson et al, 2004; Piquemal, 2000; Wax, 1991).
- *Lack of expertise* – members of REBs often lack adequate disciplinary, epistemological and methodological expertise in Indigenous research/issues, resulting in a, over-reliance on tick-the-box approaches that ensure the hegemony of institutionally-acceptable protocols (see A. Smith, 1997).
- *Universalism* – the propensity for REBs to utilise processes derived from Eurocentric notions of ‘right’ (research) conduct, and essentialist notions of what does/does not constitute an ethical researcher, all of which eulogise the ‘individual’ research participant and marginalise social groups which prefer collectivist constructs to guide the research process (see Battiste and Henderson, 2000; Bradley, 2007; Ermine, 2000; Menzies, 2004; Wax, 1991; Wilson, 2004).
- *Formulism* – an over-reliance on standardised, formulaic approaches that mask the complexity of the social context within which research takes place (see Hammersley, 2006; Smith, 1999b).

In essence, the author’s recent personal experience of REB conduct and that relayed to him by other Indigenous researchers, strongly aligns with the issues identified in the extant literature, especially issues relating to consent and REB preference for individualistic research protocols. For the sake of brevity, this paper will focus on issue of the dominance and impact of universalism on the Indigenous research context.

Universalism

[T]he white man takes his own mythology, Indo-European mythology, his own logos, that is, the mythos of his idiom, for the universal form that he must still wish to call Reason.

Derrida (1982: 213).

Universalism refers in the research context to ideological presentations that portray Western 'social scientific' research methods and methodologies *as applicable to any and/in all social and cultural contexts*. The philosophical principles underpinning research-related universalism are presented by Battiste and Henderson (2000: 134) as follows:

Eurocentric thought would like to categorise Indigenous knowledge and heritage as being peculiarly local, merely a subset of Eurocentric universal categories... It suggests one main stream and diversity as a mere tributary... [t]ogether mainstreaming and universality create cognitive imperialism, which establishes a dominant group's knowledge, experience, culture, and language as the universal norm.

Minnich (1990: 53) brings Battiste and Henderson's evocation of the culture destroying potentiality of universalism into stark relief when he contends that "one category/kind comes to function almost as it is, were the only kind, because it occupies the defining centre of power... casting all others outside the circle of the 'real'". In this schema,

Eurocentric notions of 'proper research' are represented as *the* acceptable ways to engage in knowledge construction. In comparison, the philosophies and practices of the 'Indigenous Other' are situated outside the institutionally-contrived ethics framework, to be allowed in when necessary to brush the institutional framework in the cloak of 'cultural responsiveness'.

It is argued here that the research-related universalism described above, forms a key operating principle for New Zealand REB's, an argument exemplified in the case study that forms the basis of this paper. Universalism works as a dominant operational principle throughout the country, despite the fact that all REB-related guidelines include text exhorting researchers (and, one presumes, REB's) to 'respect difference' (see guidelines developed by the National Ethics Advisory Committee, 2012 and the Ministry of Social Development, 2002). A number of Māori practitioners and post-graduate students the author discussed these issues with, reported persistent failure on the part of committees to match their actions with the ethics guidelines that appear in institutional documents and websites. This is evident in the REBs response to the author's second ethics proposal and especially the authors' decision to privilege the ethics protocols that were developed in collaboration with Indigenous peoples. The REB responded by stating that "[the REB] has concerns about the researcher's ability to interact ethically with other communities under the auspices of... and about the commitment to obtaining voluntary and informed consent from each participant" (REB written decision, 24 February 2010). Despite a request under the Privacy Act the author received no evidence from the REB members that supported how it came to this determination. In fact, the request raised an issue that further demonstrates the

problematic nature of decision making by some REBs: despite being told the application evinced significant and lengthy debate amongst its members, the committee could not provide thorough notes of the discussion. The only material furnished as evidence by the REB was the final, written decision emailed to his supervisor. This lack of reporting meant it was difficult to rationalise how the REB came to its determinations. Therefore, it proved extremely difficult to contest the REBs formal decision to reject the application, and especially the contention made by the committee that the author was unfit to engage in research with First Nation peoples. In response to this type of closed, non-transparent deliberation by REBs, Katz (2007: 798) argues that:

As they review and adjudicate individual cases, administrators should make themselves reviewable. Minimally, they should make records of what they have considered and decided so that they can take distance from themselves in reviews conducted at a later date. Maximally, they should articulate reasons that can be reviewed publically. The decision, and in particular the determination that the researcher was potentially 'unethical', ignored the fact that significant effort was made to include the standardised informed consent and engagement process preferred by the institutional body.

When presented with the author's ethics submission and the REBs written responses and email correspondence, key Indigenous respondents were overwhelmingly critical of the universalistic tendencies inherent in the bodies ethics review, for example:

The email from the guy, the one who said you had to follow Canadian law – does he know what he means? Does he know we have our ways; that the ‘law’ of research is set by us? I think he means his law, the one government’s make, or the college, the one we have to put right whenever they turn up to research us. (CFG24)

So, you develop ethics after talking with us; to say you are unethical is like saying we are unethical about how we want to be researched! It’s like saying we don’t know how best to talk to each other. Where does this arrogance come from? Surely it doesn’t come from talking to us? (CII5) And

... you talk to us, develop what we want, they ignore it and say you are unethical. We’ve already begun the process of informed consent that ensures ethical conduct in our communities. The fact they don’t recognise that shows they have no idea about research with different Māori and Māori communities. (MII2)

The universalism that appears inherent in institutionalised ethics process is based on a foundational myth of contemporary Western scholarship: that ‘White knowledge’ is *the* only knowledge worthy of consideration and only ‘white approaches’ to gathering knowledge can be considered ‘ethical’. It appears to be, as Best describes it (cited in Ermine, 2000: 62) “... a dictatorship of the fragment, the privileging of Eurocentrically-derived protocols, leading to the potential marginalisation of the ‘Other’. Furthermore, it appears to be founded on an assumption that ethics (as the morals inherent in respectful human engagement) are best met through institutionally-derived, formalised processes. Arguably, this situation exists because of the mistaken assumption that the morals

necessary for governing 'ethical' research activity can be separated from 'real life' and reduced to a standardised list of rules. Similarly, Christians (2007: 438) takes the view that "[e]thics is located in the sociocultural first of all, instead of in rational prescriptions and impartial reflection". From this perspective, ethics occurs at both the site of engagement between researchers and participants; it is organic and socio-culturally centred. In contrast, the ethics process confronted by the author with respect to his doctoral research "assumes that one model of research fits all forms of inquiry... The model also presumes a static, monolithic view of the human subject; that is someone upon whom research is done" (Denzin, 2008: 104).

The author's REB experience demonstrates that the institutionalised process employed in New Zealand, is often beset with *contradiction*. For example, the REB in question states in its web-based ethics documents that its protocols and practices are based on those developed by New Zealand's Health Research Council (HRC). If this is the case then the REBs inability to recognise the authority of an ethics process developed with Indigenous people can be interpreted as a violation of its own guiding principles, as set down by the HRC, in particular:

- Partnership: working together with iwi (tribes), hapu (sub-tribes), whanau (families) and Māori communities to ensure Māori individual and collective rights are respected and protected in order to achieve health gain.
- Participation: involving Māori in the design, governance, management, implementation and analysis of research, particularly research involving Māori.

- Protection: actively protecting Māori *individual and collective rights*, and Māori data, cultural concepts, norms, practices and language in the research process (National Ethics Advisory Committee, 2012; emphasis added).

Furthermore, due consideration needs to be given to the instruction that when conducting observational studies, *investigators should understand, respect and make due allowance for diversity among participants and their communities*. (See also the Code of Rights, Right 1(3): ‘Every consumer has the right to be provided with services that take into account the needs, values, and beliefs of different cultural, religious, social, and ethnic groups, including the needs, values, and beliefs of Māori’).

The process of Universalism and the risk it poses for the Indigenous researcher and participants were repeatedly identified by participants in both individual interviews and focus groups. For example:

The issue seems to me to be about their (the REBs) authority, and not about the best way of going about this business. As Māori we have the right to determine how both insiders and outsiders research with us... reading that document [the REB’s written determination re: the second EA1 application], reads like they didn’t want to understand because it was easier to stick with what they know. That is not a system based on everyone being the same [Universalism], but on everyone being like them. It is condescending to the extreme to tell us our ways are unethical (MII2)

The Condescending Ethics of Research Ethics Boards

‘Condescending ethics’ – positions participants as the ‘Other’, reinforces powerlessness, and further marginalises them with knowledge production processes.

Reid and Brief (2009: 83).

We might begin to explain the current situation by analysing institutionalised ethics processes in New Zealand and other Settler Societies, as a contemporary manifestation of the *condescending ethos* that formed the basis of the role played by the academy and its research activities in the colonisation of Indigenous (Battiste, 2000; Smith, 1999b). The condescension of institutionalised REBs and their processes relates directly to their preference for individualised research ethics, and the categorisation of the ‘subject’ as an autonomous entity to be engaged in meaningful ways *after* the institutionally-focused review process. And it is in this subjugation of the research subject that we find the basis of the institutional form, which according to Eikeland (2006: 42) is coloured by “... a condescending attitude following almost logically from its own point of view, that is, position, and implied in its research techniques, be they observation, experimentation, interviews, or surveys”.

Butzs’ invocation of Habermas’ concept of *communicative action* in relation to his own experiences of REB’s, provides a helpful schema for understanding the condescending ethos of the institutionalised ethics processes discussed here. According to Butz, Habermas distinguishes between two principle forms of ‘action’ in late modernity,

Instrumental and Communicative. Instrumental action is “oriented to technical manipulation and control, and communicative action to the ideal of intersubjective understanding and consensus among individuals” (Butz, 2008: 250). As Butz states (ibid, p. 250, emphasis his)

The former is outcome oriented, the latter process oriented. For Habermas, communicative action *is ethically prior to* instrumental action, in that the justice of an outcome is contingent on the justice of the process that yielded it. In contemporary modernity, he argues, the communicative effort to reach consensus is frequently sacrificed to the imperative of bureaucratic efficiency.

It is easy to view the author’s experience of REB’s in New Zealand (and, according to the extant literature, other Settler societies), in this vein, especially:

[w]hen it is assumed that the problem of voluntary informed consent is solved by asking participants individually to sign written consent agreements regardless of the research context, then a fully communicative appreciation of the adjectives *voluntary* and *informed* are subordinated to the instrumental purposes of the monitoring and controlling attached to the noun *consent* (Butz, 2008: 251 – emphasis his).

Central to our understanding of the condescending nature of REB process and Indigenous research, is the concept of power. In the mythology of the development of contemporary research ethics, REBs arose from concerns of power imbalances between

the researcher - all powerful, and therefore 'potentially dangerous', and the research subject - powerless and in need of protection, provided, of course, by REBs as the independent arbiter of 'righteous research conduct' (Juritzen, Grimen and Heggen, 2011). Juritzen et al argue in favour of expanding the conceptualisation of power in the researcher-research subject relationship to critically encompass "ethics committees as one among several actors that exert power and that act in a relational interplay with researchers and participants" (ibid, p. 640). Given the considerable power REBs wield, they cannot be exempt from critical commentary. In fact their central role in determining what is/is not 'ethical', who can research which communities and on what issues, plus the fact their deliberations occur *prior to research taking place*, makes McIntosh's (2011: 62) statement that "trust and power relations must be examined from the outset of any research endeavour" all the more authoritative.

Undoubtedly power relations and differentials are central to the activities of REB and their individuals members, for let us not forget that all members (except perhaps for those committees that include 'non-accredited' community members) are quite often far removed socially, economically and politically from many of the individuals involved in the research proposals they are assessing, for as Keith-Spiegel and Koocher (1985: 389) write "[r]esearchers usually turn their gaze downwards in the societal power hierarchy, studying people who are poorer, more discriminated against, and in a variety of ways less socially powerful than themselves". Given the ways in which research was used to 'know' Indigenes and its relation to the power of defining what is/is relevant knowledge throughout settler-colonial jurisdictions (Smith, 1999), makes Juritzen et al's call for critically analysis of the power wielded of REBs in the New Zealand context. Let us now

turn to explaining how and why condescending ethics processes manifest themselves through institutionally-derived REBs.

Lack of Expertise, REBs and Condescending Ethics

The reported experiences of Indigenous commentators and researchers points consistently to one key source of discontent with REBs, namely that their members generally lack experience of Indigenous communities, and the core principles and practices related to knowledge construction and dissemination (Smith, 1999a). This brings forth the spectre of committees dominated by non-Indigenous academics and external advisors making decisions about appropriate ethics protocols, without the requisite socio-cultural experience and authority. In the New Zealand context most, if not all, REB's include a Māori member, part of who's role is to advise on the appropriateness of research that involves Māori participants, or touches on 'Māori issues'. However, it should also be noted that they are often *the* only Māori member of such committees which can result in the added burden of being the lone voice on significant issues that may arise with applications, as well as being expected to be the expert.

van den Hoonaard (2006: 269) contends that the issue for many researchers are not ethics codes developed by REB's, as much as way these codes are interpreted and employed by committee members; especially where members clearly have little experience of the context within which research takes place. This position is supported by significant literature (e.g., Anthony, 2004; Bradley, 2007; Haggerty, 2003) and

comments to the author during his recent engagement with Indigenous researchers, including one participant who stated that:

In my dealings with IRBs, I find they will have a standard ethics guidelines; go to the bibliography and all the usual experts are there, Henderson, Smith... they [REBs] say the right things, consult, engage, privilege [the Indigenous], but the practice is different. Mainly white committees, no experience of us, who revert to their ways, to what they understand to be right. (CII3)

Reid and Brief (2009: 83) highlight this failing with respect to their own experience of REB interference in their ethnographic project: "... they did not have the capacity or resources to fully support ethical decision-making in the project, nor did they have the mechanisms in place to hear from the community researchers themselves".

Arguably, in the case of Indigenous-focused research, the lack of knowledge and experience of the research context is of greater risk to both researcher and participants than lack of disciplinary expertise. Hammersley (2006: 4) describes the dangers thus: "Researchers' decisions about how to pursue their inquiries involve weighting ethical and other considerations against one another, and this requires detailed knowledge of the contexts concerned". By drawing conclusions on the ethics of research situations they have little expertise in or knowledge of, and ignoring advice from those with the relevant experience, REBs place Indigenous researchers and their research participants in danger of experiencing 'unethical institutionalised research'. Hammersley (2006: 6) further states that:

What is involved here, to a large extent, is a great pretence: ethics committees are to operate as if making research decisions were a matter of applying a coherent [standardised] set of ethical rules that do not conflict with any other considerations, or that override them, and that good decisions can be made without having much contextual knowledge.

While following and conforming to an institutionalised bureaucratised ethics process means you have 'acted' as ethical researcher in that particular context, the experience of the author, his research participants and the published (critical Indigenous) record, demonstrates that simply following REB processes does not guarantee ethical research 'on the ground' (see Butz, 2008; van den Hoonaard, 2001). It is argued here that conformity to the Academy's bureaucratised processes comes with significant, potentially 'unethical' baggage because, as Knight et al (2004: 397) argue, institutionalised ethics protocols are a set of "cultural norms that [serve] the interests and reflects the values of the IRB and the academy". Arguably, these cultural norms replicated through mandatory engagement with institutional ethics processes, reflects the 'knowledge by mass production' that permeates so much of the Academy today; the dangers of which are pointedly summarised by Lorenz (2012: 606) who states that:

We should not be surprised therefore that universities have been changing in the direction of academic capitalism in the form of entrepreneurial McUniversities. This development boils down to 'a move from elite specialisation with strong professional controls towards a 'Fordist' mass production arrangement'.

The McDonaldisation of the Academy is perhaps most evident when the formalisation of research becomes married with academic institutions reliance on universalistic processes of knowledge construction. This situation, combined with the general lack of expertise of REB members of the Indigenous social context, generates an environment for the Indigenous pursuit of knowledge characterised by contradiction and condescension. Having set out the condescending nature of the Academy's ethics processes, we now turn to our focus to identifying responses that will enable the Indigenous Academy to counter the often disempowering practices of REB's and their tendency to employ universalising, standardised processes.

'Researching Ourselves Back to Life': Resisting Condescending Ethics

If it is true that we been researched to death, *maybe it's time we started researching ourselves back to life* (Comment by Indigenous elder in Brant-Castellano and Reading, 2010: 3, emphasis added).

In a powerful call for decolonising the academic, research edifice, Arthur Smith (1997: 25/26) asserts that:

It is self-evident that Indigenous people now want their voice in research, and they want it to be heard and understood... [t]he right to establish and control the terms and conditions of cultural research is an inalienable right for all peoples of the Earth. The colonial era is dead, if not yet buried.

Given the reported experiences of Indigenous commentators and researchers, of the condescending nature of REB activities, one might argue that colonialism is very much alive in the present, especially in the realm of institutionalised ethics; and thus arguments for the death of the colonial era are perhaps slightly premature: the fight against the imperialistic tendencies of academic research continues.

A strong argument in favour of the need to overhaul institutionalised ethics is the impact it has on us as ethical, respectful Indigenous researchers. In the end, the repeated requests for assurances from the author that he would adhere to the Institutions individualised ethics protocols (particularly relating to informed consent) were given (albeit by his supervisor) in order to gain sign-off from the REB, thus enabling the doctoral research to proceed. This was done with full knowledge that *in all instances* the ethics protocols of Indigenous participants (whether as individuals, groups or communities) would take precedence over the REB's standardised process. Schwandt (2007: 92) refers to this strategy as 'playing the game' in order to receive *the gift of authorisation*. Schwandt reports using this strategy from time-to-time to keep her own students safe (albeit from REBs), as related thus:

We publicly and privately complain about the onerous review process, but when it comes time to file the papers, we simply figure out what it is in terms of language and procedure that IRB's are looking for and then find ways to say it just so... a major problem with such a strategy is that it encourages confusing technical compliance with IRB regulations with careful and sound substantive ethical review

of one's research. Moreover, it creates the impression that ethical matters are dealt with once IRB approval has been granted (ibid: 92).

These sentiments were shared by a number of participants' in the Canadian focus groups, including one who stated that:

Sadly, we play the game, giving ethics committee's what they want, knowing it isn't right... playing the game means they don't learn a thing, change the process, we do ourselves no favour [sic] and certainly not the participants: but what do you do? Go up against them and they'll do everything to crush resistance... (CFG16)

According to the author's focus group participants, personal communications with Indigenous researchers, and the extant literature, 'playing the game' appears to be widespread; indeed it is considered by some as necessary to protect themselves as Indigenous researchers and especially their research participants. While it is easy to understand or validate resistance strategies like 'playing the game', I wish to propose a different strategy, one that requires us to stop playing the 'ethics game' as dictated by institutional REBs. I am advocating that we develop our own REB(s), modelled on our specific socio-cultural and ethical principles and practices (see Brant-Castellano, 2004; Maddocks, 1992; Manson, Garrouette, Goins and Henderson, 2004: 60S for similar arguments in other colonial jurisdictions).

What is being proposed here is neither novel, nor unrealistic: Precedents have already been set by other Indigenous including the Cherokee (Manson et al, 2004: 65S-70S), Nuu

Chah Nulth Indigenous (Wiwchar, 2004) and the Mi'kmaq Grand Council of Mi'kma'ki (also known as Sante Maio'mi within the seven districts of the Mi'kmaq nation, Nova Scotia). Let us consider in detail, the example provided by the eminent leaders of the Mi'kmaq Indigenous who authorised the development of the Mi'kmaw Ethics Watch (*Ethics' Eskinuapink*) "to oversee research processes that involve Mi'kmaw knowledge sought among Mi'Kmaw people, ensuring that researchers conduct research ethically and appropriately within Mi'Kma'ki" (Battiste, 2007: 114). Battiste (2007: 114-115) relates that developing the process was "... a significant step toward ensuring Mi'kmaw peoples' self-determination and the protection of our cultural and intellectual property". The said Ethics Committee oversees the research protocol and ethical research throughout the seven traditional districts of the Grand Council, which includes the provinces of Newfoundland, New Brunswick, Nova Scotia, Prince Edward Island, and Quebec. Members of the original Mi'kmaw Ethics Watch included community elders, leaders and researchers. Indeed, referring to Canada Menzies (2001: 21) writes that:

Many Indigenous communities have now instituted research protocols that researchers must abide by when researching in an Indigenous community. Such protocols, whether community – or researcher initiated, ultimately contribute to the establishment and maintenance of respectful research relations.

This body works in similar ways to institutional REBs: members receive and consider research proposals and assess them against ethics norms and protocols generated by Indigenous themselves. The purpose is similar to that of institutionally-focused REBs', except that the primary goal is to protect Mi'Kmaw peoples and Mi'Kmaw knowledge

(Battiste, 2007: 126-127). The Mi'kmaw Ethics Watch was instigated by the Grand Council of Mi'Kmaq to "assert the responsibility and authority of Mi'kmaw People as guardians and interpreters of their culture and knowledge systems" (Brant-Castellano, 2004, p. 108). Further, the protocol applies to "any research... or inquiry into collective Mi'Kmaq knowledge, culture, arts, or spirituality" (Mi'kmaq College Institute, 1999). While the protocols centralise the review of research applications, primary responsibility for monitoring is allocated to communities that fall under the auspices of the Grand Council (Brant-Castellano, 2004).

Doing Things for Ourselves

The suggestion that we develop a pan-Māori ethics process to support Māori research endeavours is likely to cause discomfort for some REBs and non-Indigenous researchers, for as Glass and Kaufert (2007: 27) write REBs "are accustomed to being the sole arbiters of the ethical acceptability of a project. However, it is worth remembering that "[m]ost conventional boards are not yet well prepared to meet the demand of communities for a more interactive partnership" (ibid). No doubt some, including Māori and other Indigenous researchers, will advocate that we continue to participate in REBs as we have done for the past two decades, so we might impact practice 'from within'. There is some validity to this position because most, if not all New Zealand REBs include Māori academics as members or external advisors. Furthermore, as previously mentioned the guidelines employed by most REBs include a sub-section dedicated to research practice involving Māori and/or Pacifica peoples. And yet, despite all this attention far too many Māori academics and post-graduate researchers continue to report dissatisfaction the REB processes (see Hudson, 2004 and Walsh-Tapiata, 2003).

So, by all means we should continue to engage with the Academy's REBs, if for no other reason than to provide guidance on Indigenous ethics, as well as 'polite censure' and gentle chastisement for unethical, disempowering conduct and decisions when necessary. However, it is also evident that we must be more forceful in our attempts to effect change in the Academy's attitudes and practices. One way of doing so is to develop a Māori- dominated ethics process that is dedicated to supporting Māori post-graduates, established researchers and non-Indigenous scholars wanting our guidance on conducting ethical research with Māori. A process of this kind will focus in part on holding REBs, government agencies and private researchers accountable if their conduct negatively impacts Māori researchers and Māori research participants.

In anticipation of resistance from REBs, especially non-Māori academics and researchers, I offer the following rationale for the proposed Māori-led ethics process:

1. to provide a body that works to operationalise Māori self-determination in the realm of knowledge production;
2. to provide emerging and experienced Māori/non-Māori researchers and the Academy's REBs with an experienced body of experts with whom they can engage with to enhance their ability to carry out ethical research with Māori;
3. to provide a Māori-dominated body to which Māori individuals, organisations, hapu, iwi and communities can turn to for support when issues arise with the conduct of researchers, REBs and academic institutions; and
4. to empower us to send a strong message to the non-Indigenous academy and the institutions they serve, that their perspective on 'how to research' the Indigenous Other is no longer hegemonic.

Any one arguing against this suggestion should consider the recent United Nations Declaration on the Rights of Indigenous Peoples adopted by the General Assembly in 2007 that recognises member states poor treatment of Indigenous peoples and calls for “control by Indigenous peoples over development affecting them and their land”, and the need for Indigenous peoples to give their “[f]ree, prior and informed consent” to any decisions or actions that affect their well-being. Inarguably, the actions of researchers and research bodies, including REBs, fall within the range of institutions, to which this principle of Indigenous empowerment applies, for as Brant-Castellano (2004: 102) rightly reminds us:

[f]undamental to the exercise of self-determination is the right of peoples to construct knowledge in accordance with self-determined definitions of what is real and what is valuable. Just as colonial policies have denied Aboriginal Peoples access to their traditional lands, so also colonial definitions of truth and value have denied Aboriginal Peoples the tools to assert and implement their knowledge. Research under the control of outsiders to the Aboriginal community has been instrumental in rationalising colonialist perceptions of Aboriginal incapacity and the need for paternalistic control.

Furthermore, the development of an indigenous-dominated ethics process will enhance the prospects of the ‘decolonisation of the research project’ (Smith, 1999a) which:

... proffers a (re)centering of indigenous worldviews into research methodologies based on subjectivity (perspective or voice), insider knowledge (authenticity),

reciprocity (giving back) and the non-exploitative design of research that ‘benefits’ the community and not the researcher (Coram, 2011: 41).

The Academy, especially members of REBs, and the general population of researchers, might hesitate at the idea of an Indigenous-led ethics process. No doubt some will view it as just another level of ‘red-tape’. Schnarch (2004: 93) pre-emptes such concerns when he writes that:

Some researchers may balk at the idea of an Indigenous review/approval process, construing it as political interference contrary to academic freedom. They do, however, readily accept the constraints of peer review for funding proposals, journal articles, and so on. As with academic review, an Indigenous review process is generally intended to ensure quality of the work, its relevance, and the appropriateness of interpretation.

Having prompted various counter-arguments, I see no reason why we cannot proceed to develop a Māori-specific ethics body in the social sciences. A vehicle already exists upon which to build the process, namely the Māori Association of Social Sciences, which I believe can easily be turned from a representative/relational body, into one that actively works to support and protect researchers and research communities.

Concluding Remarks

A key motivation for the Indigenous focus on Western modes of knowledge construction was the role this activity played in the colonisation process and its ongoing role in

Indigenous marginalisation in the neo-colonial context (Tauri, 2009). As Battiste and Henderson (2000: 132-133) write “[m]ost existing research on Indigenous peoples is contaminated by Eurocentric prejudice... [thus the development of] ethical research must begin by replacing Eurocentric prejudice with new premises that value diversity over universality”. If we are to achieve self-determination over our own knowledge construction processes, then it is imperative that we challenge the power and authority the academy has over the production process; a power that is centralised in institutionally-centred bodies such as REBs. This call to action should not be interpreted as an attempt to marginalise institutionally-based REBs, but to provide a Māori-dominated processes for protecting our researchers and research participants from the well documented problems Indigenous peoples have been having with institutionalised ethics processes across all Settler Societies. Whether the Māori-focused REB works separately from existing institutional REBs, or as an adjunct body that advises and guides them, are issues that would need to be addressed by Māori scholars (in the first instance), during the development phase.

While we must acknowledge that the stated intentions of REBs and their members are ‘to do good’ and protect the vulnerable, we must always acknowledge that in the first instance they will always be wedded to the institutions from which they derive; for as Bradley (2007: 341) relates:

By controlling the models of research, who gets to speak and how subjects get to represent themselves, IRBs are in a powerful position as part of the institutional structure. In this position they can, and often do, silence the voices of the

marginalised and perpetuate an academic political economy and a traditional top-down research and professional model that quantify and objectify human lives by keeping them nameless, faceless and voiceless.

Paper 6

Ritual and the Social Dynamics of Policy Making in New Zealand

Juan Marcellus Tauri

(2015) P. Howland (Ed.), *Ritual Aotearoa New Zealand: An Effusive Introduction*.
Wellington: CANZ (in print).

Introduction

I wish to begin this paper by positioning myself within the context of the rituals of policy making in New Zealand: I went to University at the age of 26, where I studied Criminology and Sociology and eventually lectured Criminology for three years. In 1999 I left the Academy and spent ten years working in various government agencies including the Ministry of Māori Development (Te Puni Kokiri), Ministry of Social Development and Department of Corrections. The majority of my time was spent working on criminal justice and social sector policy, and interacting with a range of agencies, including the Ministries of Justice, Police, Corrections, Internal Affairs, Housing, and Department for Prime Minister and Cabinet. I participated in a number of inter-agency committees and projects, most notably the *Youth Offending Strategy* (2002), *Crime Reduction Strategy* (2002), *Effective Interventions* (2006) and *Drivers of*

Crime (2009/10). I use this experience to provide a critical discussion of the rituals that underpin policy-making activity in the crime control sector New Zealand government.

I have chosen to focus on the activities of the Policy Industry for the following reasons; firstly, the industry has the ability to significantly impact our lives through its close relationship with Cabinet, the development of legislation and access to extensive budgets for policy development and implementation; and secondly to demystify the mythological and ritualistic world policy makers are encapsulated within. This construct assists in protecting the policy sector from external scrutiny and maintaining hegemony over the way social problems are defined and responded to. I evidence my critique by referring to a specific case study I observed while working in New Zealand's policy sector, namely the *Organised Crime Strategy*.

Policy Development in New Zealand

State? What is that? Well then, open your ears to me, for now I shall speak to you about the death of peoples. State is the name of the coldest of all cold monsters. Coldly it tells lies too: and this lie crawls out of its mouth: "I, the state, am the people". That is a lie!

Nietzsche

Broadly speaking policy development can be understood as an institutionally-derived practice that is contextualised and codified in various written forms. It is the process through which government identifies and puts into play actions they believe will

improve key social and economic indicators (e.g. lift overall youth educational attainment or reduce unemployment) (Althaus, Bridgman and Davis, 2007). The process of policy making is facilitated through various bureaucratic actions including Cabinet papers, budgets, legislation, regulations and other administrative practices that have formed the basis of policy making in Western democracies for most of the last sixty years (Schick, 1996). However, over the past decade the Policy Industry has been significantly impacted by the rise of two inter-related movements, *managerialism* and *evidence-based policy* (EBP) (Reid, 2003).

The (re)construction of contemporary policy development processes

In the mid-1990s, New Zealand's Policy Industry began building on developments in the United Kingdom to conduct a co-ordinated process of modernisation. This involved implementing of a range of techniques that proponents believed would enhance the efficiency of the public service. These ranged from alterations in performance measurement, such as moving from reporting on *outputs* (i.e. the number of clients serviced) to *outcomes* (i.e. quantifiable evidence of the impact of policies, spending and interventions), and enhanced inter-agency co-operation across intersecting portfolios (e.g. criminal justice, welfare and health) (Shick, 1996; see also Cheyne and Belgrave, 2005). In short, New Zealand's public service underwent a process of modernisation that brought its operations into line with the theories and practices of *managerialism*; an approach to policy development that had been gaining popularity in other western, neo-liberal jurisdictions. Trinder (2000: 18) states that the managerialist ethos emphasises value for money and focuses on "effectiveness and efficiency [as] a central driving force behind... policy". Through the managerialist movement government

agencies and providers contracted to deliver services on their behalf, were expected to quantify what they were doing, why they did 'it', and whether or not 'it' was working.

The influence of the managerialist movement on New Zealand's public service was boosted by the attendant development of the evidence-based policy or EBP movement immediately after the Blair government came to power in the United Kingdom in the mid-1990s (Bullock, Mountford and Stanley, 2001). Evidence-based policy has been described as a technical approach to policy making that places empirically-generated evidence at the heart of policy development. The types of evidence privileged in the EBP environment are quantitative, scientific methods, such as randomised clinical trials, statistical meta-analysis and systematic, large-scale reviews. The power of EBP to influence the modern Policy Industry derives from the part it plays in combating one of the key concerns of the modernisers, namely the perception that policy-making until the mid-1990s was dominated by the "untested views of individuals or groups, often inspired by ideological standpoints, prejudices, or speculative conjecture" (Davies, 2004: 3). In contrast, policy modernisers argued for a policy industry based on evidence of what works to produce positive social outcomes, and the only valid knowledge for informing policy is that derived from scientific, objective observations of the social context (Schick, 1996). Thus 21st century New Zealand is supposedly blessed with a 'scientific policy endeavour' that ensures that the tax payer is receiving value for the hundreds of millions allocated every year to the policy industry.

Ritual and Myth-Building and Maintenance in New Zealand

In a chapter on the public service in New Zealand, Shaw (2006) begins by describing a scene from the popular 1980s television series *Yes Minister* in which Sir Humphrey Appleby, a senior public servant, is leading his hapless Minister in circles by obfuscating on a question of whether or not a certain investigation had in fact taken place. Those who remember the series might recall that two of the core premises were that the public service was the real power behind government, and public servants purposely employed a range of (devious) techniques to ensure this situation continued. Upon reflection, Shaw (2006: 273) states that:

At one level *Yes Minister* and its sequel, *Yes Prime Minister*, make for witty, well-crafted viewing. But at another they promoted a jaundiced view of public servants that is not, and perhaps never has been, a fair or accurate depiction of the role of public servants.

I disagree with the substance of Shaw's argument: Yes, while it is inaccurate to present the public service in New Zealand as an entity that is at all times manipulative, nevertheless, in my experience the behaviour depicted in the British television series was more common, and at times far more manipulative, than displayed by Sir Humphrey and his fictional colleagues. The manipulation of Cabinet Ministers, competing agencies and the public, is common practice across New Zealand's public service. Furthermore, the degree and nature of the obfuscation and deceit often correlates to the potential for political damage of a particular issue, or the ability (or more usually the lack thereof) of specific agencies and officials. The motivation,

perhaps even the *necessity* for manipulation and obfuscation, can be easily understood if we recognise that what is at stake is something more important to senior public servants than their significant salaries, *power*. And what is more important to the attainment and maintenance of power, than the intertwined processes of ritual, myth-building and maintenance?

Ritual(s) in organisational culture

Alvesson and Billing (1997: 125; see also Kertzer, 1989) describe three basic formulations through which corporate culture is expressed and reproduced, i) through *artefacts* - physical objects like furniture, logos, and dress that convey meaning within an organisation; and ii) through *metaphors* –“culturally rich verbal expressions”, or verbal symbols, creating” vocabularies to facilitate and guide interpretations” of organisational activity, and lastly, through *rituals*. In Alvesson and Billing’s schema rituals are activities that occur within and between corporate operators, corporations or institutions and ‘outsiders’ (such as the general public as consumers of corporate products) that include certain repetitive patterns which contain symbolic and expressive elements that confirm existing (or newly constituted) power relations, institutional values and attitudes. This type of functionalist analysis of ritual considers institutionalised ritual(s) as activities used to communicate organisational norms and mark those who are part of the institution itself (Jones and Sergot, 1995). However, institutionalised rituals are often as much about who or what is excluded from the ‘club’ and therefore from power (Meyer and Scott, 2009). This argument brings a much needed multi-dimensionality to the analysis of the place and purpose of ritual in bureaucratic institutions.

Suk-Young (2009: 3) contends that ritual(s) is an important feature of organisational culture and corporate activity because of the part it plays in overcoming “coordination problems” and ensuring individuals and agencies agree on the core ethics, principles and goals that drive organisational activity. Further, Suk-Young (ibid: 26) makes the pertinent observation that:

If one calls [a] meeting a “ritual”, then according to our argument, the purpose of a ritual is to form the common knowledge necessary for solving a coordination problem [see also Islam and Zyphur, 2009 and Smircich and Stubbart, 1985].

I do not entirely agree that a meeting per se is ‘ritual’. There may be rituals involved in getting ready to attend the meeting, for example, pre-meeting discussions where officials go over a pre-set plan for marketing their policy position or identifying problems, including particular agencies or individuals, and creating strategies for nullifying these impacts. For example, I recall being told by a friend working at the Ministry of Justice, an agency that the Ministry I worked for, Ministry of Māori Development, was in conflict with on a regular basis, that during the development of the *Crime Reduction Strategy* (Ministry of Justice, 2002) officials would hold pre-meeting meetings to strategise about how best to deal with the anticipated conflict. In a ritual reminiscent of war movies, Ministry officials would gather to discuss their ‘intelligence’, to ruminate on our relative strength and weaknesses, determine their likely plan of attack and create strategies designed to protect their perceived policy ‘high ground’. Various officials would be designated to lead specific attacks (or defences) and would be invited to participate in the conflict by the ‘General’ (in this case the highest ranking

Ministry official) at pre-conceived points during hostilities. The war metaphors are quite apt in this case; I and my colleagues from the Ministry of Māori Development would sit, often bemused as we observed the heavily scripted, ritualised defensive strategies of crime control policy officials. As such, it might be more accurate therefore to think of formal, public service interagency meetings as a platform or theatrical vehicle that enables *the performance of ritual between policy makers* (Lea, 2009). It is an often heavily prescribed, coordinated site of interaction that compels performers to forestall or overcome potential coordination problems, collectivise normally disparate policy and decision-making processes, and to construct supporting myths specific to their industry.

Ritual, myth and power

Building on the previous discussion, in the policy context ritual is enacted in part through micro-political ceremonies involving established/agreed vocabularies, symbolic gestures and codified texts, usually produced in writing in the form of ministerial briefing papers, meeting minutes and cabinet papers. This body of work, borne from ritual, enables policy workers and their disparate institutions to formulate common knowledge of, and approaches to, social problems, and to anticipate 'right conduct' in working together to respond to them. Furthermore, it can be argued that ritual also serves to support the myth of a political neutral public service, mask the power and authority that lies in the hands of a large, unelected body of policy technocrats, and lastly, to assist in insulating the policy industry from the gaze of critical commentators, such as the media and independent members of the academy. In the following section I utilise a case study to demonstrate the role of ritual in developing

and maintaining two of the core myths of the Policy Industry within the New Zealand context, *the myth of political neutrality*, and the *myth of the primacy of evidence*.

Myth and policy development

What have myths to do with policy making? My experience tells me that the Policy Industry is, overall, genuinely committed to the aims of evidence-based, politically neutral, policy-making. Unfortunately, those aims are difficult to achieve and maintain in what is in reality a highly ideological and politically-focused industry, one that is dependent on an “alternative dimension of myth” to mask the reality of its politicised activities (Herzog and Abel, 2009: 4). I argue that myth-making in policy making is reflective of the gap and tension between the ‘ought’ and ‘is’ of institutional, bureaucratic practice. Accordingly, it is a duplicitous activity where “... the ought provides a fantasised or glamorised ideal that the is of practices should be achieving” (ibid: 4).

The creation and maintenance of myth can be said to be foundational to the ‘art’ of policy-making because of the important part it plays in “mediating opposition” and “justifying decisions regarding major issues” (ibid: 5). Therefore, myth-maintenance (supported by ritual) is particularly helpful in policy-making for taming *internal* coordination problems (i.e., competition within and between agencies for finite resources) and *external* one’s (i.e., nullifying the potentially politically damaging impact of independent, public scrutiny) “because myths, by their very nature, disguise and manage the emotional impact of the stories they tell” (ibid: 5), and often play a useful role in hiding the ‘real story’ behind the intent and likely impact of specific policies.

Ritual and the Myths of Political Neutrality and the Primacy of Evidence

Formally, officialdom is at the service of the political executive, its obedient instrument (although we must allow for the odd, rare occasion of the outbreak of juvenile-type resistance) the tool of its will. In actual fact, it is nothing of the kind. Everywhere and inevitably the administration process is also part of the political process, administration is always political as well as executive, at least at the levels where policy-making is relevant, that is to say in the upper layers of administrative life.

Miliband (1969)

One of my all-time favourite movies is *Usual Suspects*, released in 1995. The film contains a number of memorable scenes and splices of dialogue, but the one that has stuck in my mind is probably the most often quoted: “the greatest trick the devil ever played was convincing the world he didn’t exist”. This quote refers to the deceptive practices employed by the ‘Evil One’ to divert attention away from the role he/she plays in the madness and pain of everyday life. A similar deceit on the part of New Zealand’s Policy Industry is its on-going attempts to convince both the public and its political masters that it is politically neutral. In my experience the Policy Industry is much more successful in this endeavour with the public, while most politicians are well aware of the politicised nature of the public service.

I qualify my comments, however, by acknowledging that many members of the public service, in particular those doing the technical work (the ‘policy proletariat’), try their

best to adhere to the public service code of conduct and the theoretical and practice bases of EBP. However, in my experience - apart from the odd exception - policy-making is a fraught process which requires practitioners to continuously compromise these core values. Why? Because in reality, contemporary policy making in New Zealand is not much different from the supposed bad old days of opinion-based policy that existed before the rise of EBP: It is no less ideological than it ever was, and it certainly is far from the objective, politically neutral beast its exponents claim.

There are a number of ways we can evidence the argument that the Policy Industry is political: firstly, it is a given that a number of the public service are members of registered political parties. Some keep their political affiliations to themselves; while others openly declare them as is encouraged under the *Public Service Code of Conduct* (PSCC) (State Services Commission, 2007). The PCSS stipulates that while it is the right of all policy workers to affiliate politically they must be circumspect when carrying out duties on behalf of any political entity. More significantly it is possible to also argue that the public service is wedded to the political system through the fact that officials and institutions are compelled to support the implementation of the policies of the Government of the day. The myth of the political neutrality of the public service is built in part on the fact that the PSCC directs officials to give full and frank advice to government ministers. What this should mean in practice is that if existing evidence does not support the policy directives from Cabinet and indeed may cause harm to the public, then it is the duty of public servants to advise Ministers of this fact. However, in reality this rarely happens, especially in the crime control sector, and when it does it is

often more about protecting the reputation and resources of the agency and their Ministers, than the public²⁷.

The political nature of the Policy Industry is, however, much more insidious and far reaching than these benign examples demonstrate. The Industry can be charged with being political and partisan (as opposed to neutral) via the fact that while directed by Cabinet and beholden to it; it holds extensive power *over the development and implementation of policy itself*. If you live in Wellington, New Zealand and work in the Industry long enough, you will hear politicians and media (and sometimes, but rarely, policy workers) state that policy is not made or dictated by Cabinet, but is controlled by the policy mandarins in the small geographical triangle that takes in the parliamentary precinct, the Terrace and much of Lambton Quay. This point is often made tongue-in-cheek, but my experience is that it holds true in many cases. The myth of political neutrality masks two sub-surface truisms that are not easily observed by external audiences, but are well known within agencies. These are that i) part of the ‘art of politics’ and therefore of policy-making (which is the textual articulation of political theory/ideology) is a theoretical or conceptual framework for explaining the world and how it works; ii) while individual members of agencies will have their own ‘theory of the world’. Agencies utilise specific theoretical paradigms that match their institutional view of how the world works, and form the ideological bases for policy development.

²⁷ One recent exception, whereby criminal justice officials did provide conflicting advice, occurred recently when Ministry of Justice officials provided a written brief to their Minister on proposed ‘Three Strikes’ legislation. Officials pointed out that the proposed changes to sentencing policy could lead to significant violations of individual rights under both the Bill of Rights and human rights-focused legislation. The Minister acknowledged receiving the briefing but not having reading it. This scenario is highly likely, although in all likelihood the Minister would have been advised on the contents of the briefing by one of his advisors. Technically, this enables the Minister the ability to state that he had not read the paper, while all the time knowing of its contents (see Dominion-Post (2010) *Three Strikes Papers Seen but not Signed by Justice Minister*, article published on 3 March.

For example, *neo-liberal economics* has been the dominant political and economic theory/philosophy for the development of economic policy by New Zealand's Treasury agency since the mid-1980s (Treasury, 2001); the *Psychology of Criminal Conduct* is the dominant theoretical paradigm in the development of prison policy by the Department of Corrections from the mid-1990s (Department of Corrections, 2013); and a form of *neo-tribal orthodoxy* underpins policy making in the Ministry of Māori Development (2013); and iii) agencies employ various rituals and associated activities that either mask the theoretical underpinnings of their processes or validate them over others.

Case study: the Organised Crime Strategy

To demonstrate the political nature of policy making and the myth of the primacy of evidence, we need look no further than the highly inflammatory issue of gangs and crime. On 7 May 2007, a two year old girl was murdered in Wanganui, the victim of a gang-related drive-by-shooting. Understandably the incident caused outrage amongst the wider public and politicians. Through the media, public figures, such as the Mayor of Wanganui, Michael Laws, called for 'something to be done' about the perceived violence and general lawlessness of ethnic gangs in the region (Wanganui District Council, 2007). The Government's response was swift: just a few days after the incident, public service officials were called upon by Ministers to brief them on the issues and potentially effective policy options. Up to that point the only meaningful, albeit largely ineffective, policy initiatives in place were the Ministry of Social Development-led inter-agency project called the *Plan of Action: Improving Outcomes for Young People in Counties Manukau* (Ministry of Social Development, 2006) and a joint Ministry of Māori Development/New Zealand Police project which utilised established (adult gang)

leaders to mediate directly with so-called youth gangs in an attempt to dampen down tensions and reduce the potential for further violent confrontation between these groups. The reality was that over the preceding decade or more, the crime control and social policy sectors had an unwritten rule of not working with gangs, meaning no funding for gang members to develop social programmes or support for activities that involved gang members or their associates²⁸.

Officials' response to requests from Ministers about how best to respond to the Wanganui incident, was to revive the then grossly overdue *Organised Crime Strategy* (OCS) (Ministry of Justice, 2002) that was initially part of the larger *Crime Reduction Strategy* signed off by the Labour government in May 2001. The Strategy identified seven priority areas for the wider criminal justice sector, of which organised crime was designated Priority Area 5 (family violence and community violence and sexual violence were priority areas one and two). By the time of the Wanganui gang shooting, priority area five was the least developed, and certainly any formal strategy was by then almost six years overdue.

²⁸ There are a few exceptions to this rule, for example some District Health Boards in New Zealand have funded patched gang members to deliver services, such as information on immunisation programmes, in recognition of the difficulties government agencies often have in accessing 'hard to reach' communities. However, in my experience such enlightened thinking in the Policy Industry is rare, and more often the response is puerile. Take for example the recent situation of Eugene Ryder: Eugene is a former member of the Black Power and is now acknowledged, even by some police officers in Wellington, as an effective youth worker. Eugene works with the hard to reach youth, those either involved in, or moving towards involvement with, gangs. In 2008 Eugene was invited to give a talk at a youth conference scheduled to be held in Wellington. Unfortunately one of the main sponsors of the conference, the Ministry of Social Development, made it known that any future involvement or funding by them would possibly cease if Eugene spoke at the conference. The Ministry made the demand despite the fact that it had, at that time, lead responsibility for developing effective, informed youth gang-related policy.

Work began in earnest on resurrecting the OCS in mid-2007. It involved some of the usual strategies, tactics and rituals officials utilise in order to be seen to be busy when potentially nasty coordination problems arise in the public sector: firstly, lead agencies were empowered (in this case, Ministry of Justice, followed closely by the New Zealand Police); other important players were identified (for example, DPMC, Ministry of Social Development, and to a lesser extent the Ministries of Māori Development and Pacific Island Affairs); an inter-agency group established; a schedule of meetings agreed, along with priority work items (background papers, briefings to Ministers, Cabinet papers, etc) and tasks identified and allocated. Given the political capital inherent in the gang-related incident in Wanganui, work on developing the OCS was given priority by Government, and therefore by participating agencies. The fact that the lead agencies had failed to deliver on the promised organised crime strategy for some two to three years was never discussed at formal meetings and overlooked in official documentation. Regardless, this overdue strategic item provided agencies with a ready vehicle to be seen to respond meaningfully to what Cabinet clearly considered to be a politically-charged, perhaps even electorally damaging issue.

So where does ritual fit into this particular case study? All of the above strategies and activities can be viewed, individually or collectively, as *rituals of (in)activity*. In the event of a highly charged, political issue arising, agencies (individually or collectively) swing into 'action', utilising the well-established rituals of activity outlined above to serve as markers of responsiveness, concern for public safety and expertise. The long overdue OCS became a ready vehicle through which officials and agencies could demonstrate their ability to respond quickly and efficiently. Having no doubt briefed

Minister(s) on the situation, including claiming that the Strategy was an appropriate and effective mechanism for responding to the Wanganui incident, officials then moved to deploy another set of rituals, referred to here as the *rituals of deception*. This set of rituals is commonly used by criminal justice officials who need to retrofit policy to a social issue for which it is unsuited.

Retrofitting in the case of the OCS, refers to the fact that other policy mechanisms and strategies already existed through which to create meaningful policy; the original intent and focus of the proposed OCS did not correlate to the type of social issue that developed in Wanganui, and the lack of evidence that an OCS-style approach would demonstrably alter the social conditions which led to the Wanganui incident. Rituals of deception are common in situations of policy retrofitting: they enable officials and agencies to mask the fact that their activities are more about managing potential coordination problems than about constructing meaningful 'real world' solutions. The coordination problems that were the target of the OCS-related rituals of deception were masking a long-overdue piece of supposedly important strategic work, the historical lack of meaningful policy response to gang-related violence and gangs per se, and the complete failure of the preferred suppression and surveillance policies since the mid-1980s to solve the so-called gang problem. All of these coordination problems carry the potential to negatively impact institutional credibility with Cabinet and the public, and inter-agency relationships.

Why the deceit?

There are a number ways to explain and understand why supposedly neutral policy mandarins become involved in the *politics of policy* and utilise rituals of (in)activity and deception. At base level it has to do with *affinity* and *access*: the higher up the managerial decision-making structure one gets, the closer you are to the political decision-making process and the politicians who ultimately make those decisions. Accordingly, the more one has ready access to political authority the more one pays attention to the political consequences of policy design and implementation. In other words, the higher up the management food chain you move, the less concerned with the technical development of policy you become, and the more you focus on what is referred to in Wellington as the ‘front page of the Dominion-Post test’: namely, how will a particular policy or policy issue look in the news media when it is released? A further issue for consideration is what is the risk of negative media publicity to Cabinet and the policy sector? In other words, senior managers can be viewed as *political commissars* who carry out the dual roles of educating the technocrats on the political expectations of Cabinet and the Ministry, and providing political risk assessment and protection services for Chief Executives, their agencies and Cabinet Ministers.

Of course it can be countered that the argument I present here robs policy workers of their ‘agency’. However this position presupposes that policy workers are empowered to carry out independent articulation of ‘free thought’ in the politically charged environment of a policy shop to begin with. My experience was that this was rare and most definitely discouraged. The reality of the policy environment and the position of the policy proletariat is effectively summarised by legal theorist Stanley Fish (1989:

141) who describes professional analysts not as free agents, but as "embedded practitioners" whose values, canons of evidence, normative measures and theoretical schema are proscribed by his or her professional community. As a result, the potential for professional objectivity or political neutrality are, by definition, curtailed significantly by their personal, and their agencies proximity to, political power.

The policy commissars and their direct line managers, who may be referred to collectively as the Policy Elite, also have the unenviable task of adhering to and implementing the policy platforms of incoming (newly elected) governments, along with new policy initiatives dreamt up by the current government. This can be a nightmare at times, especially if the government's policy goes against the majority or all of the available research evidence, as often occurs in the criminal justice sector (see below). The case study of the OCS and policy response to the Wanganui incident, highlights the myth of the political neutrality of the public service. This example underlines the role of ritual in masking the way(s) in which officials and agencies will bow to political and media pressure and construct policy responses ill-suited to the specific social issue that is dominating front page news at a particular time. When observed from afar, this type of ritualised response to the potential for 'bad publicity' may appear crude, but it can be supported by more sophisticated rituals. In the case study discussed here, it included a set of pre-conceived activities that provided the policy response with a 'veil of scienticism', that effectively maintains the *myth of the primacy of evidence* in the policy-making context.

The OCS and the myth of the primacy of evidence in New Zealand policy making

According to the myth of the primacy of evidence, policy-making in New Zealand is founded on the use of empirical evidence to develop effective solutions to real world problems. There are times when this appears to be an accurate description of the link between research-generated knowledge and policy development, particularly in policy sectors such as education and health. My experience of the EBP process within the crime control context is that while from time-to-time relevant evidence plays a part in policy construction, more often than not rituals of deception are favoured. There is also a tendency towards utilising a preconceived strategy of importing and implementing policies from other western jurisdictions, regardless of the lack of evidence that these interventions would work in the New Zealand context (the recent introduction of boot camps for youth offenders a recent example), a practice that clearly breaches core principles of EBP, including that policies and interventions are clearly suited to the social context to which they are been imported (Tauri, 2009).

Without doubt, *empirically-derived evidence* is important to the development of policy in the New Zealand context. However, it is the point at which evidence is gathered and pre-determined decisions made about *what evidence to use*, that problematises the Industry's claims to be working in a politically neutral, EBP environment. In terms of the OCS, core agencies went to great pains to retrofit the urban/ethnic gang issues onto a policy mechanism focussed (largely) on a fundamentally different gang-related issue altogether, namely the interlinked issues of organised (international) crime cartels and terrorism. Part of this process included a whole set of rituals of deception focused on the use (non-use) of evidence.

Generally, the policy development process in the crime control context is characterised as following a fairly straightforward process: the policy problem identified or received → policy industry formulates 'plan of action' → background/policy papers developed including (if necessary) identifying a range of responses/interventions → review of existing research and *evidence* of the effectiveness of range of intervention options. The last stage in this linear process, the review of evidence, can be considered one of the primary sites for the practice of rituals of deceit. In reality the process often looks like this: framing the policy (research) question → preconception of the acceptable parameters of the research review based on predetermined factors, including agency ideological/theoretical paradigm (the Department of Correction's Psychology of Criminal Conduct), policy commissars assessment of political climate and/or Ministers' policy directives → predetermined decisions/findings → selection of, and privileging, existing evidence in support of pre-determined policy solution.

As a Ministry of Māori Development official, my colleagues and I identified significant weaknesses in background papers produced to resuscitate the OCS. Firstly, the retrofitting process had resulted in weak analysis by core agency officials in terms of 'fitting' the street gang issue within an organised crime strategy. The best example of this was their attempt to create a *continuum of organised crime* that ended with the usual transnational crime conglomerates (international drug cartels, etc), and began with 'youth street gangs', or more accurately what Ministry officials referred to as a 'small group of loosely affiliated youth who hang out in public together' (a touch team perhaps? Maybe youth choir members going home from church?). Officials then attempted to create some solidity around the continuum in order to rationalise the

inclusion of the various organised crime groups. At the 'high end' (links between national drug organisations and international drug cartels) the evidential base was loose, yet the arguments for significant linkages was at least plausible. However, the further down the hierarchy of gang structure we move the more the evidence becomes vague and inconclusive. At this point in the policy process, evidence was replaced by unsupported suppositions, rationalised as 'best guesses' to retrofit the current street gang issue onto a strategy focused on 'organised crime'.

This fact came as no surprise to Ministry of Māori Development officials like myself, who had read the existing New Zealand and international literature on gangs and criminality, and found no firm evidence in New Zealand of major links between 'street gatherings of youth' and organised national/international drug cartels. Furthermore a significant number of studies demonstrated that most 'youth street gatherings' did not fit the poorly constructed definition of a gang that dominated this policy (Ministry of Social Development, 2007). In fact, the greater majority of so-called Māori, Pacifica and Pakeha (European) youth gang members were unlikely to become involved in organised crime or to graduate to adult ethnic gangs (ibid). Through numerous interdepartmental comments to core OCS agencies we repeatedly used the availing evidence to critique the evolving policy position. Furthermore, we implored justice officials to base their policy argument on the available evidence, or, if not, to provide evidence that supported the position they were taking. Of course none was forthcoming as it either did not exist, or what did exist (internationally) did not support their position. Instead, what occurred was the use of selected parts of research, and definitions (of 'gang', 'organised crime', etc) that excluded elements that contradicted their argument, something I and my

colleagues encountered frequently in the Policy Industry and began to call the ‘cherry-picking ritual’.

At one stage we strongly challenged the definitional work on what did (and did not) constitute organised crime, citing numerous international definitions that demonstrated the fallacy they were creating by including youth, and even ethnic gangs, as key components of the OCS. In response, officials countered by citing the United Nations definition and argued that it allowed for such inclusions. In fact, it did no such thing, as our commentary below demonstrates:

Paragraph 12: only part of the United Nations (UN) definition of organised crime is used, what is missing is the second part, which stipulates the types of behaviours and activities that would fall within the purview of ‘organised crime’ (such as illicit traffic in narcotic drugs, traffic in persons, etc). In developing the draft convention for the suppression of transnational organised crime, the United Nations purposely undertook to develop a ‘specific’ definition, in order to avoid having such a broad definition that violations of human rights would occur (e.g., enabling states to utilise organised crime legislation/responses to target non-organised crime ‘organisations’ such as youth/ethnic ‘gangs’) (taken from Ministry of Māori Development inter-agency comment on Ministry of Justice Cabinet paper).

The ritual of cherry-picking of evidence to suit a pre-conceived policy position is driven largely by the policy commissars with one eye on the external political context (meaning media scrutiny), and both ears bent to a Minister’s poll-driven directive. It is

a ritualised process that is most evident when witnessed directly via input into policy development, or indirectly as an external policy commentator who receives the paper/briefing as part of the standard inter-agency or Cabinet consultation process – otherwise it largely remains for the most part hidden from the public and the media. I argue that while policy making is sometimes influenced by relevant evidence, much of the evidence used is carefully (pre)selected to support the policy position of the current government and/or the preferred theoretical paradigm of specific institutions. The rituals of deception thus play a key role of allowing officials and agencies to present, to themselves, to other policy workers, Cabinet and the public the illusion of ‘a ‘scientific’, empirically-informed process informing the development of crime control policy in New Zealand.

Evidence-based policy is perhaps best understood as simply a new technique that has been added to the tool box utilised by the Policy Industry to define/control potentially politically disruptive social issues in line with *their understanding of the social context*. The rituals of deceit serve to ensure that any policy solutions are constructed in line with that understanding and remain within the control of the policy sector to define social problems and the solutions to them. Perhaps we might best understand this deceit by taking a policy-as-discourse approach that “frames policy not as a response to existing conditions and problems, but more as a discourse in which both problems and solutions are created” (Bacchi, 2000: 48). In this schema, policy-making becomes a process through which potentially damaging coordination issues (such as the gang shooting in Wanganui) enable the Policy Industry to control the process of problem definition and problem solving. However, the primary goal of the Policy Industry, at

least in the criminal control sector, is not to *solve* social problems, but to reframe social issues and policy in such a way that the power to define and respond remain in the political sphere. By so doing, the Industry is able to mediate the degree to which crime control agencies and present and former governments, do not become the focus of critical analysis of the causes of significant social problems. If we understand the actions of criminal justice officials in trying to retrofit the ethnic gang and youth congregation issues onto the OCS in this light, then we might readily identify with Edelman's (1988: 16) definition of policy as ".... a set of shifting, diverse, and contradictory responses to a spectrum of political interests".

Conclusion

The Policy Industry and its activities are all about power and the power they have to construct crime control policy can have a profound effect on our daily lives. When we dovetail this fact with the notion that all this 'power' sits with a large group of unelected individuals and the agencies they represent, then we have a duty to expose the processes they use to develop policy, legislation and interventions. Despite the grandiose claims of the Industry regarding the *Public Service Code of Conduct* and their adherence to the overarching principle of political neutrality, it is very much a politically-motivated beast. This point may seem laboured, but it is an important one to make when considering the connections between ritual and policy making. This is because a large amount of the intellectual and rhetorical work that underpins the rituals of the Industry is aimed at supporting the intertwined mythologies of political neutrality, and the primacy of evidence-based policy; while all the time masking

inherent power struggles between bureaucratic agencies over ever-decreasing resources and its parasitic relationship to the political elite.

The case study used in this paper highlights the extent to which ritual forms a key component of the policy-making process. It was selected to demonstrate the support ritual provides to the key myths of New Zealand public service. I have also been purposely critical (or 'negative', if you are a senior public servant), as this reflects my experiences of the policy industry, and to counter the overly positive spin that dominates agency publications, Cabinet papers and self-generated research. Shaw (2006) does have a point: the public service is not always the self-serving, manipulative institution portrayed in *Yes Minister*. However, its use of ritual and myth-maintenance to shore up its authority over policy-making problematises its oft-made claims of political neutrality and the importance of evidence in creating meaningful policies and interventions.

Paper 7

The Waitangi Tribunal and the Regulation of Māori Protest

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and

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Introduction

Despite the political rhetoric of successive governments around partnership and a commitment to the Treaty of Waitangi, Māori Treaty rights remain contested, as represented in the contemporary moment in legislation such as the Foreshore and Seabed Act 2004. In this context, it is useful to reflect on an important period of Crown and Māori relations, a period that marked a shift in recognising longstanding Treaty rights through the development of a specific forum for reviewing Māori Treaty grievances - the Waitangi Tribunal. The paper examines the important formation period of the Tribunal in the early 1970s to mid-1990s to illustrate two interrelated points: firstly the Tribunal's formation poses a contradiction in that while it represented the first meaningful examination of Crown breaches of Māori Treaty rights, it did so utilising an 'informal' review process that initially lacked the authority to impose

binding decisions; and secondly that during this period the Tribunal encouraged the incorporation of Māori political and social activism into a government controlled forum.

The establishment of the Waitangi Tribunal under the Treaty of Waitangi Act 1975 appeared to offer Māori a meaningful process for airing their Treaty grievances. Until the Tribunal's formation, Māori Treaty activism had been largely contained within the formal court processes of the justice system and governmental processes which decade upon decade denied recognition of Māori rights.

The paper focuses on two related questions: 'why did the government develop the Waitangi Tribunal at this juncture in State/Māori relations', and 'what function or purpose did the Tribunal serve at this point in State/Māori relations'? We argue that the processes and mechanisms of the Tribunal constituted a form of regulation resulting from the shift from a Fordist to a Post-Fordist mode of capitalist accumulation in New Zealand from the late 1970s. More precisely, the formation of the Waitangi Tribunal and the first decade of its operation can be understood as a state-centred informal justice forum that assisted the state in regulating the potential hegemonic impact of Māori Treaty activism.

The authors set out to contest claims that the Tribunal and its processes are evidence that the New Zealand state had sought to address Treaty grievances in a meaningful way, by providing Māori with a forum where they could 'tell their stories of dispossession' (Maaka and Fleras 2005; see later discussion on perspectives on the development and role of the Tribunal). In contrast, we argue that although the

regulation of Māori protest and Treaty grievances from the inception of the Tribunal may not have been as overt as those employed during the colonial context²⁹, regulation existed nonetheless; albeit reconstituted to reflect the developing Post-Fordist economic and regulatory environment. We use regulation theory as a theoretical and conceptual framework to describe the underlying socio-political drivers behind the development of the Tribunal at a particular point in State/Māori relations.

The decision to focus on the early period of the operations of the Tribunal (from 1975 to the late 1980s) was influenced firstly, by the fact that the establishment of the Tribunal signalled the first instance in which the state had organised a specific, institutionalised response to Māori activism after a long period of disengagement from Māori and their Treaty issues. Prior to the Tribunal the Government had considered the Treaty a 'nullity', and left it to the courts to mediate (and consistently) repudiate Māori claims. And secondly, much of the material generated by academics and researchers on the Tribunal has focused on claims-making and the way in which the Tribunal dealt with claims and government responses to their deliberations. In comparison, our focus is on the drivers behind the development of the Tribunal at a particular point in State-Māori relations, which we believe is an under-theorised and researched area of the Tribunal's history and operations.

²⁹ The colonial government legislated extensively in the nineteenth century to suppress Māori protests against land sales. For example the Suppression of Rebellion Act 1863 allowed for the arrest of Māori who were defined as rebels, generally defined as those who refused to sell, resulting in the confiscation of their land (Ward, 1995).

The State's Response to Māori Political Dissent

As the historical record shows, Māori have long contested the ways in which the Crown and the New Zealand government have developed policies that directly impact on them and their communities, particularly in relation to land confiscation and breaches of the Treaty of Waitangi. As stated earlier, most of this activity had been dealt with through the state-dominated justice system, as well as numerous petitions made by hapū and iwi to government and the Crown. However, by the late 1960s, the form and nature of Māori Treaty-related activity began to change (Morris, 2003; Ward, 1993). Spurred by the ethnic reorganisation of other colonised indigenes and influenced by the Black civil rights movement of the 1960s, Māori began to more actively express their discontent with assimilationist state policies since the 1880s (Hill and Bonisch-Brednich, 2007: 166-167; Poata-Smith, 1996; 2004). Thus, in 1970 the protest organisation, Ngā Tamatoa (Young Warriors) began its career of confrontational politics against the New Zealand state (Hazlehurst, 1993). In 1975 the then Labour Government was confronted by the famous Hiko (Great March) of numerous Māori from the far north to the steps of Parliament in Wellington (Walker, 1987). And by the mid-1980s organised Māori activist movements had emerged as a potent political force in challenging government's hegemony over State/Māori policy (Spoonley, 1989).

The impact of the rise of Māori protest activism on government policy, cannot be overstated (see Poata-Smith, 1996; 2004). For example, Catalanic (2004) argues that one of the key drivers behind the rise of Māori activism was the policy context that predominated in New Zealand for much of the twentieth century, one based on assimilating Māori into 'mainstream society'. To further this policy, government

actively denied Māori grievances by ignoring Treaty issues, while at the same time upholding the Treaty of Waitangi as the founding document of the nation via the 'joining together as one, the Crown and Māori'. This continued, policy-driven denial of Treaty justice was instrumental in the radicalisation of Māori Treaty politics. In relation to the link between Māori activism and the development of the Tribunal, Catalanic (ibid: 11) states that:

The policy assimilation that characterised New Zealand politics and society acted as a constraint to the definition of Māori socio-economic problems as connected to Crown injustices committed under the Treaty... [therefore]... the New Zealand politico-institutional context... conditioned the way in which Māori sought to draw attention to their problems – protest activism – that was eventually the most successful factor in achieving the desired recognition.

The New Zealand state's response to the hegemonic threat posed by the radicalisation of Māori ethnic politics was swift. From the mid-1970s the state's policy and administrative response moved from being openly assimilationist, to become imbued with the rhetoric of Māori bicultural ideology (Tauri, 1998). Administrative responses included attempts to increase public service responsiveness to Māori values, needs and aspirations; a new distributive ideal based on the bicultural allocation of power and resources; and acceptance of the Treaty of Waitangi as a policy blue print for reuniting 'the founding partners of New Zealand' (Sissons, 1990). However, arguably the most substantive response to the counter-hegemonic activity of Māori was the Waitangi Tribunal.

The Waitangi Tribunal

The Waitangi Tribunal was established by the third Labour Government (1972-1975) with the passing of the Treaty of Waitangi Act in 1975. At this point the Tribunal was given the authority to inquire into and make recommendations to the Crown (represented by the Government of the day) relating to Māori claims against government actions that they believed contravened their rights under the Treaty of Waitangi (Catalinac, 2004; Gibbs, 2006). The government's intentions for the Tribunal in terms of process and jurisdiction are summarised by Ward (1993: 185) who writes that:

[I]n future, 'any Māori' or group of Māori who considered that they were prejudicially affected by any act of the Crown or its agents, in breach of the principles of the Treaty of Waitangi, could bring a claim to a new tribunal, the Waitangi Tribunal. The Tribunal would *act as a commission of enquiry, with power to summon witnesses, investigate widely and make recommendations* (emphasis ours).

However, despite the authority given to the Tribunal to investigate, initially the jurisdiction of the new body was significantly constrained. According to Walker (2005), in order to gain Government support for the Tribunal in the first instance, one of its chief architects, the late Matiu Rata made a number of significant concessions at Cabinet level relating to the powers of the proposed forum. For example, the legislation that established the forum determined that after a hearing was held with Māori complainants, the Tribunal was empowered to only make recommendations to

Government on how it should respond. However, the Government was not bound by the Tribunal's recommendations and could ignore them at will (Sorrenson, 1995; Stokes, 1993). The legislation also restricted the forum to considering claims emanating from violations of the Treaty of Waitangi occurring *after* 1975 and purposely excluded historical claims. These concessions meant that the vast majority of events considered by Māori to represent significant breaches of the Treaty contract, sat outside the jurisdiction developed for the new entity.

The restrictions in jurisdiction caused concern amongst some Māori commentators. Ward (1993) relates that as a result few claims were brought before the Tribunal. However, this situation changed with the advent of a 'bi-cultural tribunal process' instigated by Chief Justice Eddie Durie in the early 1980s, and the content of initial reports that underlined the extensive scope and nature of Māori grievances, and Crown breaches of Māori Treaty rights (see Waitangi Tribunal 1983; 1984). This, along with what Ward (1993: 186) describes as New Zealand middle class desire to 'confront the historic sources of Māori grievance and to offer redress', saw these jurisdictional restrictions partially lifted with passing of the Treaty of Waitangi Amendment Act 1985 by the then recently elected Labour Government. The legislation extended the Tribunal's jurisdiction to enable it to consider Māori claims against violations that took place after the signing of the Treaty in 1840 (Gibbs, 2006).

Despite significant constraints on the initial jurisdiction placed upon the Tribunal, arguably little changed after the alterations provided for in the 1984 legislation, a range of authors (e.g., Robinson, 2002; Ward, 1993) claim that the forum represented a

significant change in the State's response to Māori Treaty grievances. In summing up this perspective, Catalanic (2004: 10) writes that '[i]t (the Tribunal) has been heralded as marking the beginning of a post-colonial era in New Zealand, in which Māori-Pākehā relations were being transformed from Pākehā dominance to negotiation towards greater justice, equity and partnership'. While undoubtedly the Tribunal signalled a change in formal Government process for dealing with Māori grievances, the predominant perspective on the drivers behind its formation have a tendency to overemphasise the notion that it represented a *significant transformation in power relations between the state and Māori* (see for example, Maaka and Fleras, 2009). In comparison, we argue that a critical analysis focused on the wider socio-political context developing in New Zealand at the time, demonstrates that while the Tribunal represented a unique response, the purpose and goals aligned with previous policy: namely continued state control over Māori policy in light of changes in Māori grievance politics (see Byrnes, 2004; Gibbs, 2006 for similar perspectives).

Key questions of the paper

As outlined earlier, this paper focuses on two inter-related questions: 'why did the government develop the Waitangi Tribunal at this juncture in State/Māori relations', and 'what function or purpose did the Tribunal serve at this point in State/Māori relations'? We argue that the answers lie in part in the wider changes in capitalist development in New Zealand from a Fordist to a Post-Fordist regime of accumulation that began in the mid-to-late 1970s and continued throughout the 1980s. In particular, we contend that the formation of the Tribunal can be linked to the growing popularity

of informal justice processes as one mechanism employed by the modern state to regulate social discontent and political protest in Post-Fordist contexts.

Fordist to Post-Fordist Regimes of Accumulation and Regulation

Regulation theory is useful for anchoring our examination of the New Zealand state's response to the increasing radicalisation of Māori political dissent, as it provides a framework to analyse the changes in the forms of regulation of populations and dissent in capitalist economies (Tickell and Peck, 1995). Regulation theory attempts to explain, through an analysis of capitalist development, the paradox between capitalism's inherent tendency towards instability and crisis and the constant drive to stabilise around a set of institutions, norms and rules that support, or attempt to affect economic and social stability (Amin, 1994).

Filion (2001: 86-87) identifies two concepts at the core of regulation theory. *Regime of accumulation* describes the organisation of society that aid economic activity and growth. Included in this domain of activity are the political institutions, culture and systems of production. *Mode of regulation* refers to the nature of mechanisms that bring society in line with the requirements of the sphere of production. Amin (1994: 8) describes the mode of regulation as the 'institutions and conventions which regulate and reproduce a given accumulation regime through application across a wide range of areas, including the law, state policy, political practices, industrial codes, governance philosophies, rules of negotiation and bargaining, cultures of consumption and social expectations'. These components of society can pattern behaviour in ways that support

the prevailing regime of accumulation. They provide the social mores, beliefs and behaviours that support capitalist accumulation (Painter and Goodwin, 1995).

Due to its contradictory and crisis-ridden tendencies, capital requires forms of institutional regulation to support its continued reproduction and legitimacy. Successive phases of capitalist development can be characterised and analysed via the combination of regimes of accumulation and regulation formed to support capital in that particular epoch (Jessop, 1994). Each regime therefore has distinctive regulatory characteristics and regulation theory attempts to explain transformations and differences between phases, such as the movement from a Fordist regime to a Post-Fordist regime of accumulation that occurred in many western capitalist societies from the immediate post-war period onwards³⁰.

Fordism

The Fordist regime of accumulation is generally characterised by mass production and mass consumption, based upon the assembly line production techniques introduced in the United States at the turn of the twentieth century by Henry Ford (Lipietz, 1992). As Wilkes (1993) notes, the concept of assembly line production brings with it notions of universalism, uniformity, repetition and rationality. The regulatory forms commonly ascribed to Fordism include the welfare state³¹; the role of trade unions in raising consumption standards of working class and public servants; the media-inspired

³⁰ See Amin (1994) and Jessop (1995) for discussions about different theoretical explanations on the emergence of Post-Fordism.

³¹ Lipietz (1986a) writes that the Fordist mode of regulation in Western jurisdictions often included a welfare system designed to ensure every wage earner a guaranteed income in times of economic hardship, with social legislation covering minimum wage levels and collective agreements. This tends to institutionalise the class struggle by meeting some of the needs of workers, whilst allowing capitalist accumulation, including the cheap appropriation of labour, to continue.

interest in mass consumption and the replacement of the extended family with the nuclear model as the family formation of modern society (Falion, 2001). The Fordist accumulatory epoch is generally considered to have lasted from the early 20th century until the early 1980s depending on the particular jurisdiction, at which time the supporting regulatory regimes began to lose their effectiveness. Lipietz (1992) contends that crisis developed within Fordism's supposed universal and rational system as real wages continued to increase and the cost of fixed capital in relation to the total work force also rose, resulting in the retraction of profit margins. This brought forth a new accumulative and regulatory regime, Post-Fordism.

Post-Fordism

In contrast to the Fordist epoch, Post-Fordism is characterised by a reduced role in society for trade unions; a sharper division in the working class between core and peripheral workers; and a greater flexibility of work practices, characterised by diversification, rather than universalism. The Post-Fordist mode of production has been described as involving the commodification and privatisation of a range of collective services that were previously organised by the Fordist state (Aglietta, 1979). The market reforms of the 1980s to mid-1990s in New Zealand showed a decisive move towards this type of capital organisation and accumulation, the privatisation of public works a clear example of this process (Kelsey, 1993; 1997).

The move towards a Post-Fordist era of capital accumulation is accompanied by the development of different modes of regulation. As with modes of regulation characteristic of previous forms of capital accumulation, they provide the means of

institutionalising and confining class struggle and potential hegemonic crises within state-controlled processes. These modes of regulation will be different from those which characterise the containment and control of class and ethnic relations in the Fordist era.

Despite the existence of the range of regulatory mechanisms listed above, crises of capital within the Fordist era brought about the need for new and innovative forms of regulation. The state's response to the social disintegration inherent in the crises of accumulation was to penetrate even more deeply into civil society in order to restructure social relations into forms appropriate to the emergence of a new, Post-Fordist regime of accumulation. This statement is perhaps at odds with the common portrayal of the Post-Fordist state as less regulatory and less involved in civil society (see Bonefield and Hollaway, 1991). Arguably, this portrayal is overstated. The rise of Post-Fordism did not see the state withdraw from its regulatory position, but instead re-shape itself and seek to control the regulatory process in different, less obvious ways than were constructed during the Fordist context. One less obvious form of state regulatory control is the informal justice forum, of which the Waitangi Tribunal, during its first decade or more of operation, greatly resembled.

Post-Fordist Regulation and the Rise of Informal Justice

Although the informal justice movement began initially during the latter part of the Fordist epoch, it was during Post-Fordism that its products became key components of the regulatory regime (Hofrichter, 1987). This was due in part to the growing obsolescence and ineffectiveness of Fordist state institutions and technologies of

control that mediated class and social conflict during the earlier epoch (Santos, 1995). These institutions, including the police, courts and child care and protection, while still powerful and coercive, were no longer on their own successful in reproducing what Spitzer (1982) calls *politically docile populations*.

Arguably, the rise of radical socio-political movements, such as feminism and indigenous activism, represented forms of political expression that contested the legitimacy of existing modes of justice, and therefore regulation, in the developing Post-Fordist context. These counter-hegemonic movements were not easily contained within existing institutional processes designed to support a Fordist accumulatory regime, thus prompting the development of alternative modes of regulation (Hofrichter, 1987). We contend that informal justice became a key Post-Fordist regulatory response in the New Zealand context, and that a primary example of this ‘new form’ of regulation was the Waitangi Tribunal.

Informal justice forums operate within Post-Fordism as pacificatory mechanisms, drawing potentially hegemonic activity into state-designed and dominated regimes. The Tribunal, particularly the way it operated throughout much of the 1980s, neutralised conflict that could threaten the state or capital accumulation by responding to legitimate Māori grievances in ways that inhibited their transformation into serious ideological or physical challenges to the authority of the state (Santos, 1982). Abel (1982) notes that informal justice institutions of this kind are generally created and controlled by the respondents, and rarely if ever by the grievant themselves.

In order to neutralise conflict, informal mechanisms must be able to attract disputants to their processes. State-centred informal justice seeks to achieve this goal by appearing to operate as a neutral arbiter between the claimants and the state. Inducing complainants to submit voluntarily to an informal justice regime heightens the chances of their accepting any decisions made and believing that ‘justice has been done’, despite the fact that the process is often designed to limit the possibility of adverse decisions being made against state interests. This has a neutralising effect on class conflict, by denying class antagonisms and appealing to general standards of engagement that are designed to promote capital affirming modes of social cohesion. As Selva and Bohm (1987: 50) note:

[t]he residual is the legitimisation of state intervention and the return to uncontrolled political power, delegitimising social relations by loosening power from formal controls. Thus, under the banner of informalism and the rhetoric of personal justice, state authority and political control has been partially obscured.

From this brief conceptual outline, it becomes possible to explain the emergence of the Waitangi Tribunal during the rise of Post-Fordist phase of capital accumulation in the New Zealand context and to illustrate how regulation of Māori grievances and claims has changed in this transitional period. In the following section, the Waitangi Tribunal is examined as a form of Post-Fordist regulation, to demonstrate how the informal procedures it utilised throughout the 1980s, channelled, then neutralised, the hegemonic potentialities of Māori Treaty activism.

The Waitangi Tribunal as a Post-Fordist Regulatory Body

It could be argued that the Waitangi Tribunal is a belated attempt to extend the hegemony of the rule of law over Māori, at a time when its legitimacy is most directly under attack.

Jane Kelsey (1984)

Chris Wilkes (1993) suggests the Fordist period in New Zealand was broadly located in the period 1935 to 1984, otherwise known as the 'Long Boom' (Nielson 1990: 81). During the 1960s the long boom was also sustained by increasing productivity of labour through mass production techniques and the rapid expansion of agricultural exports to the world economy, while the local economy and the manufacturing sector were protected through a range of state subsidies and tariffs (Roper, 1993). The Fordist phase was brought into crises in the late 1960s and early 1970s due to a falling rate of profit, rising foreign debt and the shifts in the global export markets away from New Zealand produce (ibid).

In the move towards Post-Fordist accumulation and regulation in the 1980s, the Labour government introduced free market policies, collectively referred to as 'Rogernomics', which sought to restructure the New Zealand economy through privatisation of state services and assets³². Ideologically driven by new right economic theory, the process involved the reformation of government control over key assets into separate *State*

³² Rogernomics refers to the plethora of neo-liberal economic and social policies developed by Roger Douglas and the Labour government from 1984-1990. Douglas, the Minister of Finance from 1984-1988, argued that social goals and political considerations should be excluded from economic policy. Douglas and Labour sought to construct a highly deregulated economy in New Zealand, driven by market forces (Kelsey, 1997).

Owned Enterprises that were required to be profit focused. The enterprises could then be privatised and subsequently offered for sale to the private sector. Resistance to these policies came mainly from Māori, who saw the resources under the auspices of the enterprises being further alienated to private control, leading to potential breaches of their rights under the Treaty of Waitangi. Kelsey (1990: 1) offers an insight into this effect on Māori articulation of Treaty grievances when she argues that:

The pace and scope of Rogernomics left a politically naive and economically illiterate population stunned and apathetic. Significant resistance came from just one quarter. Māori movements of the 1970s intensified throughout the 1980s as Māori reasserted their rights under the Treaty of Waitangi to te tino rangatiratanga, or complete authority over themselves and the country's key resources of land, fisheries, waterways and minerals. With determination, and sometimes desperation they challenged the government moves to vest in the hands of private capital the resources guaranteed to te iwi Māori in the Treaty.

Māori concerns focused upon the fact that by privatising resources, the Government - as the Crown's representative - was potentially divesting itself of its Treaty responsibilities and, as result, their Treaty rights. The interests of capital would be supported through legislation, while Māori would remain economically and politically destitute, with little or no resources to exercise sovereignty over (Kelsey, 1990). Rising Māori protests challenged the legitimacy of the government's activities in this sphere, and through court action they were eventually able to curtail the Government's ability to implement the reforms (Kelsey, 1993). In order to allow capitalist accumulation to continue

unimpeded, attempts were made to channel Māori activism into new forms of regulation, the most obvious being the Tribunal.

In the Fordist period, regulation of Māori protests against Treaty breaches was maintained firstly by a formal legal system that denied the validity of the Treaty, while emphasising parliamentary sovereignty as the sole legitimate power in the country. Secondly, a paternalistic welfare state provided rising living standards for both European and Māori. While Māori did not have recognised Treaty rights, they had access to education, health and housing support. However, by the mid-1970s, both the legal and welfare systems were proving insufficient for regulating Māori Treaty grievances and political activism. This situation necessitated the development of alternative forms of regulation, which the state set about constructing throughout the late 1970s and into the 1980s (Kelsey, 1990). It is possible to see that the decline of the Fordist mode provided the conditions for the emergence of the Tribunal in 1975. The Fordist state could not fully contain Māori concerns for Treaty rights through the formal legal or parliamentary systems as it had done up to this point. As Wilkes (1993: 205) argues '[d]emands for the revitalisation of the culture and language, and the return of wrongly appropriated tribal land, now sought a real answer which the old settlements could not produce'.

Kelsey (1993) contends that in the 1980s the state could respond to Māori Treaty activism in two ways. It could use coercion, as had previous governments, with the potential for increasing Māori sense of grievance and, therefore, conflict with the state. Or it could choose the path of *passive revolution*, a term derived from Antonio Gramsci

that denotes the 'inclusion of new social groups under the hegemony of the political order without the expansion of real political control by the mass of population over politics' (ibid: 234). The State chose the latter, inducing and encouraging aggrieved Māori to seek the Tribunal as neutral arbiter between the conflicted parties. Through the Tribunal the State temporarily brought the counter-hegemonic activities of Māori within its ambit until the challenge was defused, through both real (in terms of limited fiscal settlements), and rhetorical concessions (e.g., formal apologies) , and the promise of meaningful 'change' in State-Māori relationships. By drawing Māori protests off the street and national television and into the Waitangi Tribunal (see Gagne, 2009: 42), the State was largely able to regulate actions that could have presented a barrier to the developing Post-Fordist regime of accumulation.

We are not suggesting that the Tribunal was intentionally created as a regulatory body from its inception. Earlier we argued that the Tribunal was created as a forum to hear grievances, a necessary response by the state to the developing radicalisation of Māori activism. Jessop (1991) contends that the emergence and subsequent dynamic of structures of regulation might be endowed with a greater intentionality than is justified. In the case of the Tribunal it would be an exaggeration to *reduce* its origin merely to the formation of a mode of regulation in response to accumulation or ideological crises. However, it *is* possible to view the emergence of the Tribunal as a Post-Fordist mode of regulation as a non-intentional, but nonetheless focussed strategy, aimed at ensuring state-controlled direction of an already emergent structure. Regulation should be viewed as a complex and provisional process mediated through institutions and conducted by social forces. Given these points, the Waitangi Tribunal should be viewed

as a state-formed regulatory body that assisted the state to *institutionalise Māori dissent and political activism* as part of the Post-Fordist regulatory regime that began to emerge and then expand in New Zealand throughout the 1980s.

For the Tribunal to institutionalise Māori protest and dissent, it had to be able to attract Māori claimants to its processes. The Tribunal developed in ways that enabled it to attract claimants by appearing to be more responsive to Māori grievances than the formal court system. The ability of the Tribunal to attract claims enhanced as it proactively moved from replicating the process of the formal justice system to the 'informal' formalism of marae protocol. The changes can be shown by contrasting the reaction to the first hearing by the Tribunal and then subsequent hearings that were altered to attract Māori claimants.

The first hearing of the Tribunal was in Auckland on the 30 May 1977. The claim was made by a Mr Hawke relating to fishing rights of the Ngāti Whātua (Waitangi Tribunal, 1978). Williams (1989) writes that the Tribunal attempted to establish the atmosphere of formal court proceedings, and also tried to narrow the claim to one of legal niceties. Williams (1989) and Sharp (1997) also note the choice of location for the hearing, the Ballroom of the Hotel Intercontinental, and the processes employed, were highly inappropriate for the hearing. No attempt was made to use Māori customs and the chairperson referred to it as a Magistrates Court (Catalinac, 2004). From this it is possible to see that the Tribunal in the beginning had the formality and processes of the formal justice system. However, as Sharp (1997: 77) writes 'the Māori people for whose

benefit it was primarily designed did not like its manner of proceeding according to formal, legal, Pākehā practice’.

The response by claimants to the formality of Tribunal hearings and its restricted jurisdiction was clearly shown by the small number of claims to go before the Tribunal during the initial years of its operation. Just fourteen claims were lodged in the first nine years of its existence to 1984. However, this changed as the processes and operations of the Tribunal were altered, as shown in the Motonui claim. Lodged in 1982, the Te Atiawa tribe argued that the Motonui Synthetic Fuel project would pollute their traditional fishing grounds (Waitangi Tribunal, 1989). Notably, the hearing was held on a marae, without formal legal procedures, instead using marae protocol. Temm (1990) notes that Pākehā legal formality did not seem appropriate on a marae, so it was decided that marae kawa (protocols) would be adopted for each hearing. It was also decided that legal formalities such as paper work would be kept to a minimum in order to ensure the Tribunal worked in an orderly and efficient manner, but also, because it was important that ‘the Waitangi Tribunal be in every sense a people’s court’ (Temm, 1990: 9). After this claim, hearings were held on home marae, replacing the appearance of legal formalism.

In 1985, the amendment to the Treaty of Waitangi Act allowed retrospective claims back to 1840, and increased the membership of the Tribunal to a Chairperson plus six others, four of whom were to be Māori. By using Māori custom, more fully incorporating Māori in its processes, and eventually being able to examine historical grievances, the Tribunal was able to present itself as a body able to address and resolve

Māori claims in an ‘appropriate manner’. By the beginning of 1994, claims lodged with the Tribunal had increased to 400 (Kneebone, 1994). Thus, in the period covering the late 1970s to the late 1980s, the Tribunal arguably transformed itself from a formal body of justice, to that of an informal justice forum that engaged with Māori on their terms; at least as far as protocol was concerned. The Tribunal was able to gain acceptance from Māori by making decisions that not only recognised past injustices, but also produced tangible, albeit unintended, results.

Abel (1982) writes that because the state presents itself as the only legitimate source of legal authority, other processes, for example communitarian justice, require its support to provide the necessary legitimacy for their survival. This was demonstrated in the New Zealand context by the 1987 *New Zealand Māori Council v Attorney General* case. The 1987 court decision gave the Tribunal’s interpretation in favour of Māori claimants the orthodoxy of informed opinion. Renwick (1993) argues that this had three important effects upon Māori and the Tribunal. Firstly, the legitimacy of the Tribunal for Māori was enhanced by the formal recognition of the validity of the forum’s interpretations and deliberations. Secondly, it demonstrated that informalist processes could find in favour of Māori interests, and that going to the Tribunal would not be a waste of time or resources. Thirdly, arguably the decision was instrumental in changing the character of Māori activism by moving protests from the street to the Tribunal process, where many Māori began to believe that justice could now be achieved. Renwick (1993: 11) underlines the counter-hegemonic potentialities of the Tribunal when he contends that during this period in Tribunal history that “Māori advocacy... moved beyond protest marches to hearings of the Waitangi Tribunal, the courts, the

committee rooms of parliament and the offices of Ministers of the Crown... The process has growing legitimacy in Māori minds”.

This development had a demonstrable effect on Māori protests during the late 1980s and early 1990s. Protests that were previously loud and visible moved from being confrontational to conciliatory (Sharp, 1997; see also Gagne, 2009: 42). As a result, grievants (more commonly referred to by media and politicians as ‘radicals’) who did not use the path offered by the Tribunal had their complaints labelled illegitimate. Arguably then, a key outcome of the Tribunal process was State containment of Māori radicalism and the incorporation of Māori political discourse. Kelsey (1992: 601) underlines this argument when she wrote that:

...those who harbour grievances are persuaded to abandon radical measures, such as boycotts or militant action, in favour of orderly and peaceful resolution under the protection of informal state institutions. The conflict is redefined, its manifestation controlled within state-prescribed limits and the demands of the grievants moderated... Continued resort to extra-legal tactics by other grievants can be discredited by reference to those who have accepted the opportunity, which the state has provided, to address their concerns *responsibly* [our emphasis].

In effect, Māori were directed towards a state-sanctioned process which worked as an informal justice body independent of the formal system. However, while the Tribunal may have become the environment where the struggle over Māori claims was

contained, ongoing regulation of socio-political discontent was never absolute. As Jessop (1991: 73) writes 'since there are no institutional guarantees that struggles will always be contained within these forms and/or resolved in ways that reproduce these forms, the stability of an accumulation regime or mode of regulation is always relative, always partial, and always provisional'. So, while Māori gained from the Tribunal process in terms of positive claims decisions and successful court actions to temporarily halt government legislation, these successes were very much *unintended consequences* of the Tribunals regulatory process and, more importantly for our argument, extremely rare.

According to Merry (1992) state controlled informal justice institutions may provide indigenous peoples such as Māori, an opportunity to push the boundaries of the imposed regulatory ordering and mould them to better suit their needs. However, despite the contestability of control over informal processes, in practice the state can employ a number of tactics to maintain or regain control of the regulatory environment, including reconstituted legislation; withdrawal of financial support and/or constructing new processes and strategies that divert focus away from a domain that may threaten state interests begin working in unintended ways. For example, in response to the Tribunal recommending the return of 44 hectares of private land in the Te Roroa claim, the Crown passed legislation in 1992 to prevent any further recommendations on the return of private land, excepting only the *1988 State Enterprises Act* in relation to State Owned Enterprises. One reason for this has been the pressure exerted by the Government upon the Tribunal against employing their powers under this Act (Gibbs, 2006). This was demonstrated in March 1997, when the Tribunal touted the possibility

of this section of the Act being used in relation to the Muriwhenua claim. The State's response was to threaten that such a mandatory ruling would result in the limited settlement fund (set under the Fiscal Envelope, see discussion below) for all claims collapsing, thereby leaving a significant number of claims unresolved. The Tribunal quickly backed down, recommending only that the Crown should enter into direct negotiations with the claimants (see, Barlow, 1997; Hubbard, 1997).

Given this example, it is possible to suggest that the Tribunal formed the initial basis of a Post-Fordist regulation of Māori claims during the late 1970s, throughout most of 1980s. However, the lack of action by both the fourth Labour and the following National Government in acting upon the Tribunal's recommendations throughout this period, resulted in rising dissatisfaction from Māori with the claims processes by the early 1990s (Kneebone, 1994). It is at this point that government policy was reformulated into a claims resolution process based on direct negotiation with iwi. The first major pan-tribal Treaty settlement extinguished Māori fishing rights in exchange for a limited 1989 settlement, and a share in fishing assets in the Sealords company in 1992, known as the Sealords deal³³. Iwi were then encouraged to compete for a limited land claims settlement fund, labelled the Fiscal Envelope. Those iwi who chose to participate would have their outstanding Treaty claims extinguished in exchange for a limited financial settlement, while iwi that refused the envelope process were unlikely to receive compensation. The regulatory environment that had been initiated through the Tribunal and dominated by it, was overtaken by the Fiscal Envelope process, and

³³ Under the terms of this agreement, the government provided Māori with 150 million dollars towards purchasing a half share in the Sealords company, with Brierley Investments as the joint venture partner. By agreeing to this deal, Māori effectively signed away their commercial fishing rights as guaranteed under the various articles of the Treaty of Waitangi (Webb, 1998).

thereafter by the Government favouring the strategy of direct negotiation with iwi claimants. This change in the regulatory environment signalled the beginning of the end of the Tribunal as a significant process in the state's regulation of Māori dissent, in particular those associated with Treaty grievances³⁴.

Conclusion

The emergence of the Waitangi Tribunal can be explained by the development of a Post-Fordist mode of regulation. The historical basis of Māori Treaty grievances emanated largely from the alienation of land that occurred during the colonial context and throughout the 20th century. Legislation supported this acquisition and throughout the pre-Fordist and Fordist eras, the state was able to regulate Māori protests either by ignoring them or channelling them towards formal, legal processes, where grievances were less likely to interrupt the processes of capital accumulation.

The Tribunal emerged during a crumbling Fordist regime of accumulation and the rise of Post-Fordism in the New Zealand context. The establishment of the Tribunal can be understood as a consequence of the transition to the new mode of accumulation and the concomitant need to ensure the continuation of a capital friendly social order. However, the development of the Tribunal should not be viewed as the direct result of planning by certain interest groups to regulate or control Māori claims. The analysis presented here shows the non-intentional development of the Tribunal into a mode of informalist

³⁴ Joseph (2000, p. 61) posits another possible explanation for the eventually sidelining of the Tribunal, and for Government attempts to nullify its powers: '[t]he Tribunal's work evolved in the midst of a collision between two contradictory forces: on the one hand, a genuine political will to improve the situation for Māori; on the other, a new commitment to neo-liberal economic policies that transformed state structures and undermined the capacity to fulfil the promises generated by that political will'. Arguably, the Tribunal's willingness to even signal the possible use of its powers, thereby effecting Crown control over resource allocation, was a potential stumbling block to the neo-liberal idea (see also Kelsey, 1993).

regulation, where strategic conduct by the State may have only been used to impose coherence and direction on an already emergent structure.

The increased use of informal procedures by the Tribunal throughout the 1980s can also be seen as a change in the mode of regulation from Fordist to Post-Fordist regimes, where dissent is channelled into an institution that defines the limits of the justice that can be dispensed. The less formal procedures developed by the Tribunal attracted Māori claimants, which incorporated their activism within the state-controlled apparatus. Thus, the Tribunal functioned as a Post-Fordist mode of regulation by incorporating Māori grievances in ways that nullified their potential to threaten the hegemonic legitimacy of the New Zealand state.

The final chapter in the role of the Waitangi Tribunal as a key component in the Post-Fordist regulation of Māori socio-political dissent is now playing out. Since the mid-1990s, the position of the Tribunal in the regulatory hierarchy was supplanted by the Fiscal Envelope (Robinson, 2002), with its cap on resourcing of Treaty claims, and more contemporarily by the favour shown by all participants to the strategy of direct negotiation. This is not to say the Tribunal is totally irrelevant, as it remains important to some iwi and other Māori organisations for the role it plays in the preparation of Treaty claims. However, its part in the process of regulation and control of Māori activism has been usurped by the recognition by senior politicians of the ideological and fiscal benefits to be had from taking direct control of State-iwi engagement.

Paper 8

The Politics of Gang Research in New Zealand

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and

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(2012) *Justice and Social Democracy Proceedings of the 1st International Conference* (vol. 2). Brisbane: Queensland University of Technology, School of Justice, pp 26-44.

Introduction

This paper and the research it reports on, adds to the growing number of studies that have explored various manifestations of Cohen's (1972) conceptualisation of moral panic as it relates to processes of marginalisation of specific populations and/or communities (for example, Furedi, 1994; Goode and Nachman, 1994; Hall, Critcher, Jefferson and Roberts, 1978; Hood, 2001; Marsh and Melville, 2011; Young, 2009). The issue that prompted our involvement in research on this issue was a perceived spike in youth gang violence in the Counties Manukau region (Great Auckland, New Zealand), a community that subsequently became the focus of a moral panic related to its supposedly 'wayward youth'.

The response to supposed youth gang crime in Counties Manukau can be framed as a moral panic for three reasons. First, despite enormous media attention and claims to the contrary, the research was unable to demonstrate the existence of an extensive youth gang problem. This is an important consideration given the heightened panic that ensued following media and politicians' pronouncements of escalations in youth gang-related crime. For instance, large public meetings were called by the Mayor of Counties Manukau. In attendance were parents, church ministers, community stakeholders and local and central government representatives. The highly emotive issue led to mothers crying, fathers waving angry fists and church ministers proclaiming the need for stricter parenting and an adherence to Biblical principles for child rearing. Next, despite the inordinate amount of attention to the issue and dire predictions of 'youth out of control', no additional government resources were set aside and directed at the issue. Rather, the central government's response occurred within existing budgets. Finally, the extent of the issue was brought into question when the so-called youth gang crime wave in Counties Manukau subsided as quickly as it appeared, as the following report by Police attests:

During the period, Friday the 23 December 2005 to Monday the 9 January 2006 there were no incidents of youth gang violence or notable activity reported to or dealt with by the Police in the Counties Manukau, Auckland City or North Shore Waitakere Police Districts (New Zealand Police, 9 January 2006).

Such a drastic decrease in visibility, crime and apprehension is contrary to the way in which this type of 'social issue' evolves, at least from the view of those involved in developing and enforcing crime control policy.

The paper is made of two parts in order to provide the authors' with the opportunity to discuss their personal involvement in the research and policy response to the youth gang 'issue' that occurred in Counties Manukau. The first voice (the researcher) provides a contextual background to the study. Specifically, a variety of dynamics are highlighted that added to the developing moral panic about youth gangs, silenced community voices and participation in the development of policy responses while furthering the authority of central government stakeholders. The second voice provides a critique of the way in which policy officials responded to the primary researcher's work.

Voice of the researcher

Background

During Labour Weekend October 2005, Iulio Naea, a 38-year-old father of a reported youth gang member was murdered in Otara, Counties Manukau³⁵. Naea's murder was

³⁵ Manukau City is a local authority that consists of the Botany, Clevedon, Howick, Mangere, Otara, Pakaranga, Papatoetoe and Manurewa Wards. Counties Manukau incorporates the three territorial local authorities of Franklin, Manukau City and Papakura District Councils. Historically this area has been known as South Auckland. Analysis of data has been complicated by how the areas within Counties Manukau are configured by various agencies. For instance, the Counties Manukau Police District includes the territorial authority areas of Manukau City, Papakura District, Franklin District and the Auckland City suburban area of Otahuhu. Counties Manukau District Health Board area provides health services to the people of Manukau City, Papakura and Franklin districts.

thought to have been responsible for triggering a series of violence retaliations, and was later categorised as the first youth gang-related homicides in the region (New Zealand Forum, 2010).

Following the murder, the central government came under increasing pressure to provide a solution to the burgeoning youth gang problem. Notably, substantial pressure came from the Counties Manukau Mayor and the New Zealand Police. In response, the Ministry of Social Development (MSD) was directed to undertake research into the issue and coordinate an appropriate, inter-agency policy response. The research component of the research resulted in one of the authors, Michael Roguski, being tasked to carry out a four-month ethnographic study. The aims of the research project were to develop an understanding of youth gangs in Counties Manukau, assess possible factors that have contributed to the emergence of youth gangs, ascertain the extensiveness and impact of youth gangs and identify elements and features of intervention models that could be developed and successfully implemented in the region.

The research methodology was developed to ensure a strong adherence to community participation and ownership of the data and subsequent research findings. This approach was thought necessary to secure community participation as respondents were initially reluctant to engage with the research. A number of reasons were given, but in the main participants felt their communities were over researched, especially by the public service, and they were:

Sick of sharing our experiences only for the government to ignore what we say and do what they wanted to do all along.

Community participant

As the primary researcher I attempted to forge community participation through promises of community hui (meetings) where residents and research participants would be able to review the study's findings and meet to discuss possible community identified solutions.

Locating and defining youth gangs

The research evolved with an amorphous character. It proved exceedingly difficult to marry the media, Cabinet Ministers' and the New Zealand Police's portrayal of an apparent overriding presence of youth gangs in Counties Manukau with the situation as it was reported by community-based participants. In this sense a discursive chasm was evident. On one hand government representatives spoke of the existence of criminal youth gangs while simultaneously stressing that all efforts would be made to quash the problem. In contrast, community participants spoke of normalising the presenting issues; stressing that these were young people and not gang members and pleading that their community should not be judged and labelled as criminal:

Government people say we are socio-economically deprived. Do you realise how insulting and frustrating that is when you live here and you know the community and its beauty. All I see are rich social connections and a vibrant community that is doing exceptionally well on very low incomes. Of course, what the government

sees are a bunch of poor darkies. After all isn't that what socio-economically deprived really means?

Community participant

I attended a number of government meetings about the young gang issue and quickly became aware that the research and the policy response resembled a particularly fast moving locomotive that had lost the ability to apply its brakes. This was particularly troublesome because Counties Manukau has long been marginalised by policy makers and community members repeatedly stated their frustration at being misrepresented by public servants, politicians and the media. Further, it was disturbing to note the growing number of young people (referred to in the report as 'wannabes'), who over a three-week period proudly reported having formed some form of 'gang' membership and adopted clothing styles and physical gestures in response to the elevated media reporting. While I viewed wannabe gang membership as a reflection of normal and expected adolescent grouping behaviour this development was concerning because media attention appeared to elevate gang membership (with the possibility of criminal activity) to an aspirational level. Given these concerns, it was extremely frustrating to be confronted with governmental machinations that refused to divert attention from the *problem* of youth gangs. A combination of media attention and the government's public commitment to action meant that the public service needed to be seen to address the issue, even if the problem did not exist as it was framed by media and politicians. The following extract from my fieldwork diary outlines some of my confusion with the way the issues were being manipulated by officials:

Each of the Ministries met today to discuss the youth gang problem. I gave a presentation on emerging research findings that focused on how difficult it is to define the problem and the shifting sands of prevalence and criminality. Specifically I raised the issue it may be a misnomer to categorise the issue as youth gang and that there is a risk that by using such terms we may exacerbate the issue. After the presentation I was met with blank stares. No one commented. We then had a 15-minute break so X and Y and I went outside for a smoke. It was over the cigarette that X and Y agreed that it is obviously not a youth gang problem and they qualified this by outlining that they live and work in each of the communities in question and therefore were sufficiently informed. We then discussed the need to be careful of the terms we used and then went back upstairs to continue with the meeting. Within five minutes both of my 'informed' smoking buddies had referred to 'youth gangs' and started talking about how terrible the problem is (Researcher's fieldwork diary, January 2006).

Maintaining the Status Quo of Marginalisation

At the heart of the amorphous nature of the moral panic was the divide between the voices of government and those of the community, with the government perspective eclipsing the experiences and needs of people living in the region. To understand why government would marginalise the community in this way, we need to understand more about the people who live there. We argue that the community's historically marginalised status provided a fertile ground for the government's position on youth gangs to hold centre stage while local voices and experiences were relegated to the margins.

The area's marginalised status can be linked to the post World War II economy that created a significant demand for unskilled labourers. This demand was met by Māori who moved in increasing numbers to the cities in search of work where they were generally employed in low-paid manual occupations³⁶, and supplemented in the mid-1950s onwards by substantial increases in migration of unskilled labourers from a variety of Pacific nations³⁷. The new migrants, both Māori and Pacifica, overwhelming settled in a small number of Greater Auckland suburbs – initially Grey Lynn and Ponsonby and then Counties Manukau³⁸. The migrant districts were characterised by substandard housing and crowded tenancy which contributed to negative social effects, becoming visible by the early 1970s.

Key to the ability of policy workers and media to further the marginalisation of the communities of Counties Manukau is a prevalent public perception that the area has high rates of crime. In actuality, an analysis of crime data (aggregated by age) provided no evidence of higher rates of criminal activity in Counties Manukau when compared with national rates. For instance, Figure 1 below shows that in the year ending June 2005, Counties Manukau ranked fifth out of 12 Police districts with regard to recorded

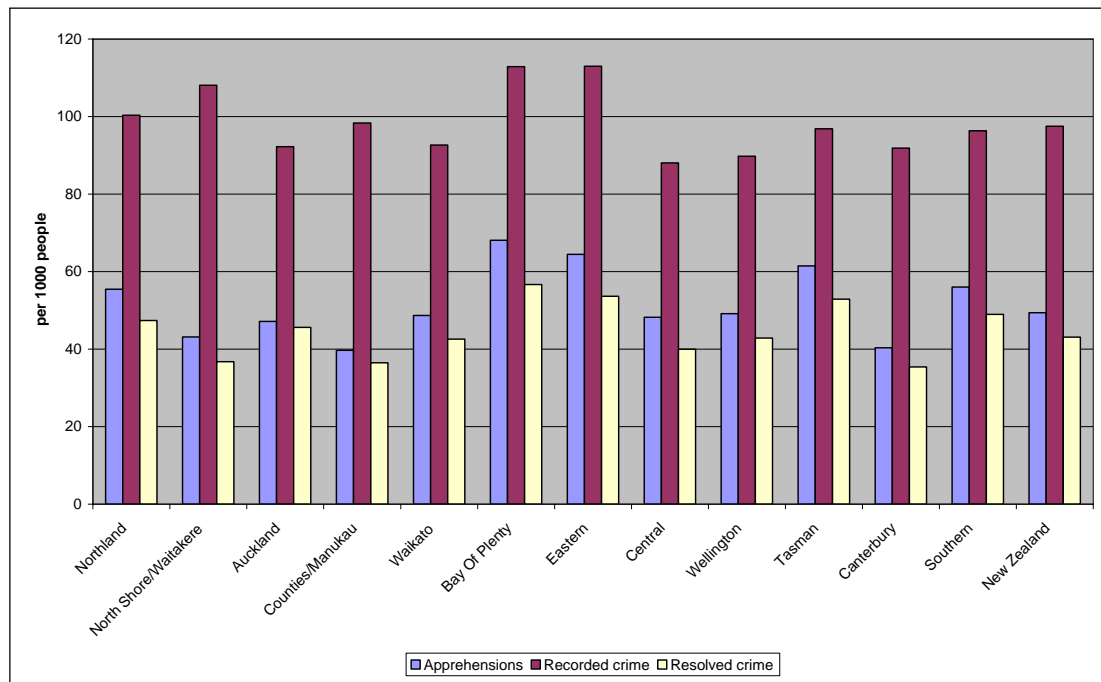
³⁶ The ratio of Māori living in cities and boroughs grew from 17% in 1945 to 44% in 1966, growing from 99,000 in 1945 to over 200,000 in 1966 (Thorns and Sedgwick, 1997)³⁶. Migration continued so that by the 1990s almost 60% of Māori lived in urban areas.

³⁷ As a result, whereas in 1945 fewer than 2,000 Pacifica lived in New Zealand, by 1956 the number had grown to over 8,000 and by 1966 it was over 26,000 (Thorns and Sedgwick, 1997).

³⁸ The two most striking demographic features of the Counties Manukau area are a young age structure and a high proportion of Māori and Pacific people. The latter feature underlies the former as Māori and Pacific ethnic groups have a younger age structure than European/Pākehā. Counties Manukau has a young population with 39% of people under 23 years compared with 34% of the total New Zealand population. In Counties Manukau 22.5% of the population were estimated to be aged 10-to-23 years at June 2005. This compared with a national figure of 20.7%. Counties Manukau has a relatively high proportion of children aged under 10 years (estimated to be 16.7%) compared with nationally (14.3%).

crime and had one of the lowest rates (along with Canterbury and North Shore-Waitakere) of Police apprehensions and resolved crime³⁹ compared with other districts.

Figure 1: Crime Statistics for 12 Police Districts. Year Ended June 2005



Source: Statistics New Zealand website.

A second factor that advanced the moral panic over youth gang crime was a heightened international awareness of youth violence and vandalism associated with French civil unrest that occurred between October 27 2005 and January 4 2006. During that period riots had spread through Paris and a number of other French cities, concentrated in

³⁹ Recorded crime is defined as all reports of incidents, whether from victims, witnesses, third parties or discovered by Police, and whether crime-related or not, will result in the registration of an incident report by Police. The incident is recorded as an offence if a) the circumstances as reported amount to a crime defined by law, b) there is no credible evidence to the contrary, c) an incident was not reported as an offence, but upon investigation Police determine that an offence is likely to have been committed. Resolved crime is defined as recorded crime for which an offender or offenders have been identified and dealt with. Apprehensions are defined by a person having been identified by Police as the offender and, where appropriate, dealt with in some manner, such as warned, prosecuted, referred to youth justice family group conference and/or diverted.

lower socio-economic areas with high percentage of immigrant and/or non-white populations. So strong was concern arising from the riots and the possibility of unrest spreading to New Zealand that media reported the Prime Minister as having:

... watched the television coverage of the riots spreading throughout the suburbs of French cities and saw it as a result of “the frustration and despair of marginalised communities with high levels of unemployment and deprivation” (Toli, 2005).

Further evidence that gang-related issues were foremost in the public psyche is reflected in reports that Wellington hospital’s neurosurgery ward was under lock-down because of fear of inter-gang violence (Dominion Post, 2005a). Further, fear was raised about the incidence of gang-constructed traps and cyanide poisoning surrounding marijuana plots (Dominion Post, 2005b).

Associated with a growing fear of youth gangs was a fear of New Zealand’s cultural decline as influenced by the United States-derived hip hop and gangster rap culture and media associations of this form of music with criminality. These fears arose in media reports and in the various public meetings called by the Mayor of Counties Manukau⁴⁰ during which hip hop music, culture and artistic expression were considered highly influential in youth gang membership and activity.

⁴⁰ Concerns about linkages between music, youth culture and crime have arisen at various times in New Zealand over the past sixty years. The concerns expressed by officials and media about the ‘immorality’ of rap and hip hop closely mirroring the cries of immorality associated with post-war Bodgies and the Widgies (see Manning, 1958; Levett 1959 and Green, 1959).

Finally, the construction of a growing youth gang problem in New Zealand was reinforced by continuous media representations of gang criminality and growing membership (with much of the reporting going uncontested or challenged). Within these media portrayals gangs were associated with firearms (Radio New Zealand Newswire, 2006b), drugs (Dominion Post, 2005b; Radio New Zealand Newswire, 2006d; New Zealand Herald, 2006a), graffiti (New Zealand Herald, 2006b) and violence (Cummings, 2005; New Zealand Herald, 2006b; Timaru Herald, 2006; Radio New Zealand Newswire, 2006f). Further, within a three month period what was a problem in one geographical location had grown to encompass other areas within New Zealand. Suddenly gang problems had erupted in Whangarei (New Zealand Press Association, 2005), Whanganui (Radio New Zealand Newswire, 2006f), Timaru (The Timaru Herald, 2006a and 2006b) and Palmerston North (Cummings, 2005). So common were reports about youth gang activity that it could be argued that public safety justified the government's response.

While these factors created an environment in which the youth gang moral panic flourished it is noteworthy that government representatives actively silenced alternative perspectives by accusing communities of apathy. For instance, in February 2006 a representative from the New Zealand Police criticised the Counties Manukau community for its high levels of apathy about youth violent crime (Radio New Zealand Newswire, 2006a). In this situation, because the community was not perceived to have sufficiently rallied against youth gangs then the community needed to be chastised. Similarly, blame was laid across a variety of local bodies who were accused on minimising the youth gang problem. For instance, The Police Association's President,

Greg O'Connor stated that ". . . many local authorities don't believe they have a gang problem because they don't see active violence on their streets (Radio New Zealand Newswire, 2006c).

We argue that the communities needed to be silenced because of Police agitation for increased resources and the public relations opportunities the youth gang crisis presented to that particular agency, and also to 'tough on crime' politicians, members of the public service and the media. Throughout the youth gang research multiple attempts to increase Police resources were made by representatives of the New Zealand Police and local government (Radio New Zealand Newswire, 2006c) and to increase the amount of Police discretionary power to be able to appropriately and expeditiously deal with the burgeoning problem. Similarly, in his first public address on the issue the Mayor of Counties Manukau, Sir Barry Curtis, stressed that there was a need for more youth workers (New Zealand Herald, 2005). As such, multiple examples were offered where youth gangs were used to underscore the need for increased resourcing of various institutions.

Aside from accusations and blame directed at the various Counties Manukau communities, government agencies made no effort to control the panic through the use of appropriate terminology. Instead, emotive terms were employed and, despite the research providing evidence to the contrary, government representatives continued to use youth gang and gang/crime-related rhetoric when discussing the issue amongst themselves and with media. In this sense, it can be argued that the potential for material gain for government agencies was instrumental in the consistent use of

inappropriate terminology to characterise the situation, and silence the community perspective.

A final means of silencing occurred in the latter stages of the research. Earlier promises of community meetings to address the research's findings and provide an opportunity for public participation in jointly arriving at solution(s) were retracted without apology. As such, the community was once again treated in an unethical manner by public servants (see Tauri, 2009). Further, those who had decided to participate in the research because of the promise of future participation in the policy response had their distrust of government affirmed. Poor community engagement practice was so rife that I was chastised for having distributed copies of the draft research for peer review as "we can't trust them [community representatives] not to give it to the media" (Government official).

Sadly, the emergence of a youth gang problem in Counties Manukau provided central and local government with resourcing and public relations opportunities. As such, the depth or extent of the youth gang issue was irrelevant as pervasive media attention provided government officials with an opportunity to agitate for more resources, or affirm already existing work programmes and funding allocations. The opportunity afforded the Police by this project, to potentially increase resources, and for central agencies to protect current spend and projects and the potential for improved public relations meant that strategies had to be employed to silence opposing voices and perspectives. We argue that these factors, when combined, acted to maintain the political and policy status quo to the detriment of a historically marginalised

community; as maintaining the status quo required the communities in question to be publically constructed as deprived, apathetic and fostering criminality.

Juan's story

Reflections on the Politics of Gang Research in New Zealand

Sir Humphrey: The public doesn't know anything about wasting government money. We are the experts.

Yes Minister - *The Economy Drive*.

The following section is written primarily from the perspective of the official given the task of 'minding' the primary researcher, Dr Michael Roguski, as he proceeded with analysing the data he gathered in the field.

Background on my role in Michael's project

At the time Michael was carrying out field work on the 'youth gang situation' in South Auckland, I was employed as a Regional Policy Advisor in the same agency, the Ministry of Social Development (MSD). It was not long after Michael had returned from fieldwork that I was contacted by a senior advisor in the agency who expressed concerns about the research (especially the analysis) and its implications; intimated that the primary researcher had little idea of what they were doing and asked if I would provide 'quality assurance' as the analysis and finding stage progressed. At this point the official who sought my involvement hinted at 'broad' issues with the researcher's

work, without qualifying their concerns. I readily agreed to assist but made it clear I would base my observations on a thorough reading of the research material and engagement with the primary researcher.

After reviewing the documentation produced to this point I concluded that the researcher's work was methodologically sound and his analysis and representation of data accurate. In fact, some of the analysis was highly innovative and, in the context of previous research on the New Zealand context, ground breaking. For example, he determined that the police, media and political representation of the 'youth gang problem' in Counties Manukau was greatly exaggerated, and that the political elite and policy industry had overreacted to wildly exaggerated and inaccurate media reports⁴¹. This finding was made more auspicious (and worrying, at least from a community level) by the fact that police had to acknowledge that their 'data' on youth gang membership was highly inaccurate, and that violent crime could not be attributed to 'gang members' to the degree that they and media representatives were claiming. Other significant findings included that community members believed that imported government programmes/interventions were failing due to their unsuitability for those communities; that communities preferred to be empowered to develop their own solutions to social issues (such as youth crime and gangs); and that militaristic policing 'styles' had contributed to poor police/community relations. There are many other significant findings from the research, too many to list here, but the ones mentioned

⁴¹ However, it should be noted the media is not entirely at fault in this regard as much of what they reported on the youth gang and crime situation in South Auckland was fuelled in part by exaggerated comments on youth gang crime by policy workers.

here provide clues as to why Michael's work meet with so much resistance at the local, policy and interagency levels of government.

Policy workers' issues with the research and subsequent analysis had little to do with the quality of Michael's work. Michael's sin had been to subvert a number of unwritten conventions that govern policy making in the social and crime control sectors of New Zealand's public service, including (but by no means exclusively):

- try not to ask questions that enable community members to talk about their experiences of government policy or interventions (unless the questions focus on the positive or the answers can easily be presented as such);
- never ask people of their experiences of other agencies policies or interventions, as this may cause 'relationship' difficulties prior to or post-release of the findings (although, if the findings are adverse they are likely to be a) altered, or b) not released); and
- all research and /or evaluation is to be about *the* institution and *not* the community.

So what was the reaction to Roguski's research, and more particularly his analysis and findings? These can be grouped into the various levels of bureaucracy the work past through on the way to becoming 'policy', namely the unit, policy and interagency levels:

The Unit level - 'strategies of resistance' employed within the research unit of MSD included asking me to provide 'quality control' over Michael's researchers analysis and reporting, frequent requests for drafts of various chapters, most of which went without

comment. This resulted in the primary researcher having to continuously backtrack on various chapters which significantly slowed his progress. This 'strategy' can be blamed in part on the lack of sector knowledge and expertise of the senior managers involved, but also the fact they were continuously measuring the likely impact of the analysis and findings on internal, agency relationships, especially with policy workers.

The Policy and Interagency levels - if resistance at the unit level was motivated by a concern for political relationships with internal units, then at the policy level it was about maintaining control of the policy parameters and the political relationships of the agency to other agencies and ultimately to Cabinet. At times the policy response to Roguski's research bordered on the farcical. For example, too often the researcher would send material out as completed (based on the assumption that no response = agreement to content), only for policy workers to insist their input had not been sought and/or received, despite email evidence to the contrary. Furthermore, part way through the analysis and reporting phase, policy representatives had organised an interagency committee that included most of the key social policy and crime control players, including, Police, Ministry of Justice, Ministry of Education and the Ministry of Youth Development. This group had been working on a 'plan of action' (the Plan) to respond to the core issues, except the plan that was eventually released bore little resemblance to a) the key issues identified by the research and b) the solutions identified by the community itself, as well as ignoring participants' criticisms of the prevailing policy and intervention paradigm currently being employed by the Policy Industry in their region (see further discussion below).

Our suspicions that a policy response was being developed without the support of research evidence was confirmed after a senior policy manager enquired of me as to the status of the research was going. On being told we were about half way through she replied:

‘Oh we can’t wait for the research, we have already decided on the policy levers’.

This statement was confirmed when the Plan⁴² was finalised and released.

The Plan

The Plan provides an exemplar of a number of policy-making pitfalls in the New Zealand context. First of all is the issue of *retrofitting of research on to pre-determined policy outcomes* was a significant feature of the interagency development of The Plan (see Tauri, 2009 for a discussion of this process in the crime control sector). To say that Roguski’s research was *retrofitted* on to the final policy response is no exaggeration as the evidence is overwhelming. In this instance Policy and the inter-agency process simply took Michael’s research and glued the ‘acceptable’ elements of his work on to a policy response that further marginalised the community. For example, the version of the Plan released to the public is missing two important chapters written by Michael, 1) analysis of the participants ‘issues’ with current policies and government initiatives and

⁴² Known as *The Plan Action: Improving Outcomes For Young People In Counties Manukau*, 2007: available on the Ministry of Social Development website.

2) the issues the community believes are important and how best to respond to them, namely through community empowerment⁴³.

Explaining the Community-Research-Policy-Intervention Disconnect

To understand the disconnect between Michael's research, the views of participants, and the actions of policy workers, we have to recognise:

- the political nature of policy development and research in the New Zealand public service's social policy sector (especially in relation to youth or adult gang-related issues); and
- that the public service in New Zealand uses ritual to ensure it maintains authority over the policy process.

The Plan and the politics of youth gang policy

As Tauri has discussed elsewhere (2009), New Zealand's policy industry considers itself to be working in an 'evidence-based [policy] environment' (EBP) (see Bullock et al, 2001; Cook, 2001 and Davies, 1999). This belief is supported by a survey of a range of documents produced by the industry including *Statements of Intent*, *Briefings to Incoming Ministers*⁴⁴, annual reports and high-level portfolio-specific strategies where much is made of the evidence-based nature of policy and decision-making by that particular agency. The purpose of these instruments is to enhance the impression that:

⁴³ The extent to which senior policy officials in the Ministry were divorced from the social context has driven home to the researcher when he was asked to explain a) what he meant by a 'community action' approach and b) why he used it in his research, and after he had done so was informed by said official that 'government does not do that, it does government action'.

⁴⁴ Known in Industry parlance as 'BIM's', these documents are generally provide a high level overview of an agency's core business and provided to incoming Ministers immediately after a general election or if a sitting Minister is replaced at any time during the electoral cycle.

The advice and decisions of policy makers are based upon the best available evidence from a wide range of sources; all key stakeholders are involved at an early stage and throughout the policy's development. All relevant evidence, including that from specialists, is available in an accessible and meaningful form to policy makers (Great Britain's Centre for Management and Policy Studies, cited in Reid, 2003: 6).

The response to Michael's research and my observations of the research/policy intersection demonstrate that the policy industry in New Zealand's adherence to the principles of EBP is often driven more by political considerations than with ensuring quality outcomes in the 'real world' (see Packwood, 2002; Parsons, 2002 and Perri 6, 2002 for a discussion of this issue in other jurisdictions). That policy making concerns itself with 'politics' should come as no surprise if we view the process less as an 'objective, scientific, rationale endeavour', and more in line with Edelman's (1988: 16) description of it as "... a set of shifting, diverse, and contradictory responses to a spectrum of political interests" that take place in a social context Schon (1979; 1983) describes as 'messy and unpredictable'. To understand the policy response to Michael's work we first need to suspend belief in the dominance of a 'rational EBP environment' and acknowledge policy development for what it is: an ideologically driven, political process that serves the interests and concerns of policy-making institutions, the political elite and the careers of individual policy workers (see Tauri, 2009), and not, as the senior policy manager mentioned earlier told Michael, to enhance community empowerment.

The policy process as an exercise in ritual and myth-maintenance

Understanding the policy response to Michael's research can be illuminated if we consider the importance of ritual and myth-making/maintenance to the public service. Alvesson and Billing (1997) describe three basic formulations through which corporate culture is expressed and reproduced, i) through *artefacts* - physical objects like furniture, logos, and dress that convey meaning within an organisation; ii) through *metaphors* - "culturally rich verbal expressions" (1997: 125), or verbal symbols, creating "vocabularies to facilitate and guide interpretations" (ibid: 125) of what is going on in an organisation, and lastly, through *rituals*. In this schema rituals are activities that occur within and between corporate operators, corporations or institutions and 'outsiders' that include certain repetitive patterns which contain symbolic and expressive elements that confirm existing (or newly constituted) power relations, institutional values and attitudes. Suk-Young (2009: 3) describes how ritual(s) serve an important function in organisational activity because of the part it can play in enabling officials to overcome "coordination problems" (2009: 3), such as external scrutiny of the policy making process or decisions about resource allocation. Rituals also function to ensure that individuals and agencies represent themselves, to each other and the public, as demonstrating (through actions and rhetoric) the core ethics, principles and goals that drive organisational activity. Therefore, myth-maintenance (supported by ritual) is particularly helpful to organisations, including the public service, for controlling *internal* coordination problems (i.e., competition within and between agencies for finite resources) and *external* one's (i.e., nullifying the potentially politically damaging impact of independent, public scrutiny) "because myths, by their very nature, disguise and manage the emotional impact of the stories

they tell” (ibid: 5), and often play a useful role in hiding the ‘real story’ behind the intent and likely impact of specific policies.

The rituals that form the basis of much of the policy industry’s activity can be grouped into identifiable formations that are linked to shoring up myths that sustain the authority of policy makers. These groupings include:

rituals of deceit - refers to activities such as carrying out research or a literature review that involves purposely ignoring evidence, research, etc, that contradicts the pre-determined political/policy platform of an agency or Ministerial directive;

rituals of inactivity - are employed by agencies facing highly charged, political issues and can include such activities as establishing unnecessarily large interagency committees, overly complicated work programmes, etc, aimed at slowing down political/public scrutiny of previous and current agency (in)activity; and

rituals of deception - commonly used by criminal justice officials who need to retrofit research or policy to a social issue for which it is unsuited, or to a pre-determined policy work-stream (see Tauri, 2011c).

Many of the rituals highlighted were brought into play by policy workers when it became apparent that Michael’s research posed a potential ‘coordination problem’, namely a) a potential loss of ‘control’ over problem definition, b) the possibility of

publication of community criticism of previous policy responses and c) having to engage with participants over the identification of solutions. The *rituals of deceit* are apparent in policy representatives having organised the inter-agency work programme without the research input and ignoring key findings of the research that contradict the pre-established policy position of various agencies. Even more apparent was the blatant use of *rituals of deception* by officials, highlighted in the policy implementation phase where Roguski's research was clipped and retrofitted onto the Plan. Potentially annoying sections were ignored; those sections that demonstrated the 'youth gang' crime wave was little more than a media/politician and police induced moral panic, and demonstrated that the community thought little of government's tendency to hoist upon it imported programmes ill-suited to the social context they lived in. And of course there was the section that gave voice to participant's desires for their communities to be empowered to find solutions to their issues. What they got instead, was business as usual, in the form of a reallocation of existing funding to pre-established programmes for which agencies could offer little evidence of socio-cultural viability, or positive outcomes.

PART IV

Discussion

Introduction

The following section provides an overview of the main arguments and key findings presented in the eight papers that make up the thesis. It also demonstrates how the disparate arguments and foci of the papers combine to offer a critique of the ways – the colonial projects - through which the settler-colonial state, in particular its crime control functionaries, and the discipline of criminology, interact to subjugate Indigenous peoples.

Whether it emanates from the criminal justice sectors of settler-colonial governments or the discipline of criminology, much of the literature and rhetoric about the wicked problems of Indigenous over-representation in the criminal justice system and our aspirations for self-determination and resistance to the imposed justice ordering, has either silenced or marginalised the Indigenous experience. As this thesis is being written significant effort is being made by Indigenous scholars and our critical, non-Indigenous colleagues, to expose Indigenous experiences of settler-colonial crime control. This activity includes the recent publication of a special edition on Indigenous counter-colonial perspective in the *African Journal of Criminology and Justice Studies*, the development of an Indigenous justice journal through the University of Wollongong that will commence publication in 2016, and the expected launch in 2017 of an International Indigenous Justice Congress designed to provide intellectual, financial and peer support to Indigenous justice academics and students. This thesis should be viewed as a minor contribution to this emerging, globalised movement in critical Indigenous justice scholarship.

What the movement will eventually be named is an issue for debate amongst its growing number of adherents. Given the material included in this thesis it would be imprudent to presume that it will be called *Indigenous Criminology*. The reason is straight forward: any focus on the criminal justice system by the Indigenous academy will involve significant critical analysis of the discipline of criminology and its impact on Indigenous peoples. After all, as Biko Agozino (2010) has succinctly argued, the discipline is a *control freak*. As Paper 2 demonstrated, the discipline has not always been particularly supportive of Indigenous peoples and their justice issues. Indeed, it has provided the settler-colonial state with many of the nefarious policies and strategies that have resulted in the perpetuation of colonial violence against Indigenous peoples; the 3-strikes legislation and sentencing structure introduced into Australia's Northern Territory in the 2000s providing a powerful, contemporary example.

With this in mind, the thesis sought to answer to the following broad questions:

1. What techniques of neutralisation and control are employed by the policy sector in its attempts to deal with the wicked problems of Indigenous over-representation and resistance?
2. What part does criminology/the academy play, if any, in the criminal justice industry's war of manoeuvre against Indigenous self-determination in the realm of justice?
3. How has the settler-colonial state responded to Indigenous challenges to, and resistance of, its hegemony over justice?
4. What effect, if any, is the expansion of a globalised crime control market having on indigenous peoples in neo-colonial jurisdictions?

Together, the eight papers offer some significant and original statements about the Indigenous experiences of criminal justice as it is practised in settler-colonial societies, and of the activities of criminologist, and justice entrepreneurs. This section discusses how the papers link together, and how, as a body of work, they fulfil the overall aims of the research as expressed in the key questions.

Linking the Papers to the Key Questions

The following discussion sets out to demonstrate how individually, or collectively, the eight papers enable us to answer the questions that formed the focus of the thesis:

1. *What techniques of neutralisation and control are employed by the policy sector in its attempts to deal with the wicked problems of Indigenous over-representation and resistance?*

The research and papers that structured the thesis identified a range of techniques and strategies deployed by the policy sector in response to the wicked problems of the Indigenous over-representation, and resistance to the state's hegemony over responses to Indigenous crime and Indigenous political activism. Deployed at various levels of the web of social control that includes criminal justice institutions, are a range of colonial projects that simultaneously control Indigenous resistance, and enable a government to be seen to respond to these wicked problems. As identified in Paper 1 (Criminal Justice as a Colonial Project in Contemporary Settler-Colonialism) criminal justice deploys projects across what Woolford (2013) described as the interconnected web of

governance; from the meso-level deployment of strategically targeted (over) policing, to the micro-level development of Indigenous-focused policies and interventions developed without Indigenous input described in Papers 2 (Indigenous Critique of Authoritarian Criminology) and 3 (A Critical Appraisal of Responses to Māori Offending).

Papers 6 (Ritual and the Social Dynamics of Policy Development in New Zealand) and 8 (The Politics of Gang Research in New Zealand) provide case study-informed analysis of the micro-strategies of neutralisation and control deployed by the policy sector. Paper 6 demonstrates the importance of myth and ritual to the policy making process. Whilst these strategies can, and often are deployed against communities other than Indigenous peoples, they are particularly potent in their impact on these communities from their ability to silence the 'other voice', and shore up the policy sector's (and as a result, government) ability to control both the definition of a social problem, and development of political responses to these issues.

It can be strongly argued that mythologies were extremely powerful colonial projects deployed to subjugate Indigenous peoples during the colonial eras of all four settler-colonial jurisdictions (Papers 2 and 3). The mythologies related to ideological policy positions of the inherent superiority of western coloniser and their culture(s) over that of Indigenous peoples were essential to the development of a number of damaging policies, including child removals, the banning of Indigenous cultural practices and technique of knowledge transmission, amongst many others. These mythologies and attendant rituals of disempowerment (as described in detail in Paper 6) were vital to

the establishment of the settler-colonial states control over the policy sector, and the involvement of 'problem populations', such as Indigenous peoples, in that process. In the contemporary context, ritual and myth, as techniques of subjugation have particular resonance for Indigenous peoples. As described in Papers 6 and 8, issues of significant importance for Māori communities, such as youth justice and gang activity, are both heavily impacted by the rituals of deceit, which in turn support the myths of the primacy of evidence and a public-focused policy sector.

2. *What part does criminology/the academy play, if any, in the criminal justice industry's 'war of manoeuvre' against Indigenous self-determination in the realm of justice?*

A significant focus of a number of the papers contained in the thesis was the issue of the role of the discipline of criminology, and the wider academy in supporting the criminal justice sectors endeavours to control the realm of justice. The entirety of Papers 2 and 3 focused on this issue, and concluded that a particularly virulent form of contemporary criminology had arisen in Australasia of late, that brought with it a reinvigoration of administrative criminological evangelising on the 'Indigenous problem' in these jurisdictions. This reinvigoration is built on a strategy of discrediting any/all Indigenous approaches to criminological research and dissemination of our knowledge, as unscientific, and therefore unworthy of serious consideration for the development of contemporary crime control policy. This example of the criminological knowledge wars has at its base similar ideological foundations to the eradication of Indigenous culture

and knowledge that highlighted colonial projects during the initial and intermediary phases of colonisation.

Further to the discussion above, Paper 5 (Resisting Condescending Research Ethics in Aotearoa New Zealand) highlights processes internal to the Academy that demonstrate the difficulties Indigenous peoples face when attempting to privilege their knowledge gathering processes when pursuing social research. Focusing on the hegemony of REB's within western academic institutions, this paper found that in both the New Zealand and Canadian jurisdictions, Indigenous scholars and service providers reported significant difficulties in developing ethics protocols that ensured the Indigenous voice was appropriately 'recorded' during the research process.

Coupled with the findings in Papers 2 and 3 the research demonstrates that the Indigenous Academy is fighting the war on two fronts, the first is in combating the Eurocentric ideological bases and privilege that permeates the western academic institutions in which many of us work. This conflict has the potential to derail our attempts to give authority to Indigenous experiences of crime control in settler-colonial contexts, by channelling us towards research ethics protocols and methodologies unsuited to the Indigenous (social) context. The second conflict arises from attempts by the western academy to 'control' access to the Policy Industry. In part, this leads to the development of strategies designed to silence research undertaken by Indigenous scholars and communities. The result is the exclusion of Indigenous knowledge and experience of the social context of settler-colonialism from the development of meaningful policies and interventions aimed at alleviating the wicked problem of

Indigenous overrepresentation. More pertinent, attempts to silence our experiences of, and approaches to, social harm have the potential to halt our rights to self-determination in the realm of justice.

3. *How has the settler-colonial state responded to Indigenous challenges to, and resistance of, its hegemony over justice?*

The research carried out for this thesis highlights a number of ways in which the settler-colonial state has resisted Indigenous opposition to its hegemony over responses to social harm. The majority of papers in this thesis deal with this issue in some way or other. For example, Papers 1, 2, 3, 6 and 8 all expose various strategies and colonial projects that are formed in response to the wicked problems of Māori offending and resistance; be it the rituals described earlier that insulate the policy makers from the external scrutiny of critics (especially those vulnerable communities against whom policies and interventions are often directed, such as Indigenes), or the structured violence of contemporary policing strategies. However, the paper that most directly deals with this question is Paper 7 (The Waitangi Tribunal and the Regulation of Māori Protest). The extant literature on this forum is unequivocal; it was intended to be an informal justice process, developed in direct response to the radicalisation of Māori politics, and rise of a young, confrontational Māori leadership. But it was not intended to enable Māori a forum through which their political aspirations for self-determination in justice, social policy and economics self-sufficiency could be realised. That it did result in what is now referred to as the treaty settlement process, was in the main unintentional; what Weber referred to as an elective affinity, in this case a powerful

alignment of an effective Māori utilisation of the formal court system, what the state (at least) believed to be a militant judiciary, and the increasing 'Māorification' of the tribunal process.

The Waitangi Tribunal can also be seen as an example of what happens when Māori choose to participate in a state controlled forum. As stated, it was not intended to be a Māori-led process; indeed the first hearing held in the late 1970s, took place in a hotel, with little Māori input into process. By the late 1980s it had, at least in terms of process, become a forum driven by tikanga; Māori laws and protocols of formal negotiation between equal parties. However, we should always remember that while tikanga dominated the rituals and processes of the tribunal (lore), Pakeha (white) law held it at bay as a process that could directly bring self-determination to Māori claimants: the state was, and still is not, beholden to uphold the decisions reached by the tribunal.

4. *What effect, if any, is the expansion of the globalised crime control market having on indigenous peoples in neo-colonial jurisdictions?*

Lastly, a key focus of the research was the impact, if any, of the seeming increasing globalisation of crime control policy and interventions, with a particular focus on the RJ industry. Paper 4 (An Indigenous, Critical Commentary on the Globalisation of Restorative Justice) focuses on this question, and was based on empirical research with Indigenous communities in Canada. The research focused on the impact of the travel of RJ interventions on Indigenous peoples, namely the New Zealand invention, the FGC forum. Re-packaged and franchised by Australian and North American policy

entrepreneurs, the forum has proved popular with jurisdictions in all four settler-colonial societies. The research (and the paper) exposed some of the reasons for this situation, not least of all the successful marketing of the forum as an exemplar of Indigenous dispute resolution, one heavily imbued with Māori justice philosophy and practice. The research revealed this to be little more than marketing rhetoric: Māori had little direct input into the formulation of the forum, which was influenced more by the move across western jurisdictions towards a reinvigoration of the justice model for dealing with youth offending, while retaining some of the social developmental components of the 'failed' welfare approach (see Adler and Wundersitz, 1994).

As the saying goes, 'don't let the truth get in the way of a good story'. Discussions between the author and RJ advocates and practitioners on this issue have often resulted in comments like 'well even if it isn't a truly Indigenous intervention, isn't it a good thing that it allows you to practice your justice'; or 'isn't it better that other Indigenous peoples get to use a programme that is at least partly based on Indigenous approaches'. The research provided answers to both questions is: it depends on whether you are an RJ practitioner, or a franchise company, or an Indigenous peoples looking to reignite your own, traditional-based justice processes. As the example of the Stó:lo First Nation of the Fraser Valley demonstrated, the eroticisation of RJ via the marketing of the FGC as a Māori forum impeded the ability of this Indigenous community as it went about resurrecting traditional justice process. It did not halt their move towards judicial self-determination, but it did mean they had to utilise a process that was in fact no more 'indigenous' than the interventions then prevalent in the formal Canadian justice system.

Issues with the Research

Whilst no significant issues arose from the actual project itself, some did arise from activities that were peripheral to the research that made it difficult for the author to focus attention on the thesis. These issues arose in response to a project the author was involved in, namely the development of a special edition of a journal on the topic of Indigenous, counter-colonial criminologies. Conflict between the authors and senior members of the academy related to administrative issues resulted in the special edition being cancelled. The edition was subsequently moved by the author and the contributors to a new journal, the *African Journal of Criminology and Justice Studies* and published in early 2015. Attempts to take ownership of the project from the author and the contributors to the special edition, plus ongoing breaches of accepted principles of ethical engagement with Indigenous, resulted in the loss of a significant amount of time the author had allocated to completing the thesis over the last ten months. However, the issues that resulted from the conduct of a small group of senior academics, whilst delaying completion of the thesis, did have one positive effect, which was to reveal the ongoing impact of racism and unethical conduct by members of the western academy on Indigenous scholars (and our critical, non-Indigenous collaborators). The Indigenous scholars involved in the special edition began talking to each other about similar experiences of racism and unethical conduct directed against them. As we began sharing our experiences it became clear that this issue, the ongoing subjugation of Indigenous peoples by the academy, was in need of further focus, an issue picked up in the following section.

Future Directions

This thesis was not just the culmination of six years part-time research into the issues contained in the eight papers; it was in effect the end-point of 18 years of research on and activism for, Indigenous peoples and their justice issues. The results reported here reveal a number of avenues for further research. Most urgent of all relate to the difficulties that beset the thesis over the last 12 months, described in detail above. As the Indigenous academy expands in numbers we will as a consequence come into greater contact with the western academy. As mentioned previously, some of our academic colleagues still cling to stereotypes of Indigenous peoples and institutional practices that can only be described as colonialist in orientation. The behaviours experienced by the author, his Indigenous and critical non-Indigenous colleagues, brought home the urgency of research that exposes the depth and nature of this subjugating conduct.

It is imperative that the impact of this behaviour on Indigenous scholars and the wider Indigenous community is empirically investigated, and the racism exposed and challenged. If time had allowed, one more paper would have been added to the eight included here. At the time of writing, the author and a colleague from the University of Auckland, New Zealand, have begun a project on this particular issue. Results and publications are expected to be made public in the second half of 2016.

While the thesis attempted to plug gaps in our knowledge, other related issues still need further exploration. For example, while the paper 'An Indigenous, Critical Commentary on the Globalisation of Restorative Justice' exposed the nefarious impact of the co-

option of Indigenous cultural artefacts by the restorative justice industry, we are yet to document Indigenous responses to the activities of policy entrepreneurs and RJ franchise justice companies to any significant extent. This information is vitally important if Indigenous peoples are to offset the types of disempowering conduct prevalent across the academy, especially within conservative factions such as authoritarian criminology. If we are to challenge the perception that our ways of responding to social harm are little more than quaint, traditional artefacts, then we need to detail in full the theoretical and conceptual bases to our responses. We need to demonstrate that they are working for our communities. We urgently need to gather, control and disseminate this information if we are to challenge western criminology's position as the intellectual font of all relevant knowledge on crime and responses to it.

Related to this issue is the gap in our knowledge of *Indigenous resistance*. Indigenous peoples resist many things, including the bastardisation of our life-worlds by cultural entrepreneurs, franchise companies and the like; or the importation of western, globalised crime control products which we are forced to use in place of our own, more appropriate processes. And of course, we continue to resist the settler-colonial state's ongoing manoeuvres to frustrate our aspirations for self-determination. This is the area most in need of empirical research analysis and theorising. The importance of the issue of Indigenous resistance cannot be over-stated: we need to be mindful of portraying Indigenous peoples as (more often than not) the non-responsive, passive recipients of White Man's Law and the gifts of western crime control.

We Indigenous peoples are not without agency; and we are not always 'as one' in how we deploy it. Sometimes we acquiesce to the activities of policy makers and entrepreneurs by accepting and implementing the imported, Indigenised products discussed in this thesis. Some of us perform significant roles in the construction, dissemination and utilisation of these products. The periphery is not simply the site of unchallenged reception of imported policies and interventions: it is often "a space that defies simplistic perceptions of chaos and social exclusion; it is marked by potential, innovation and creativity, organisation of new social movements and new conceptions of citizenship" (Aas, 2009: 415). This we can see playing out in the *Idle No More* movement in Canada, and the *South American Spring* that emerged in Brazil in late June 2013.

At other times our resistance to state and criminological impositions is forceful, even violent, as occurred at Oka, Wounded Knee and Bastion Point. But more often than not our resistance is subtle and ingenious, such as when we accept the criminological gifts imported from the high-crime western jurisdictions, and begin immediately to chip away the Eurocentric coating in order to apply a more suitable, Indigenous sheen over time. To employ a powerful Foucaultian terms, our *counter-conducts* and *creative strategies of resistance*, are multifarious and sophisticated (Foucault, 2004). This is no different when it comes to the international transfer of crime control products like FGCs, sentencing circles or corrections-based bicultural therapeutic programmes. Counter-conduct abounds and is expressed in a variety of ways, including "flight, deflection, ruse, attempts to overturn the situation of domination, direct confrontation with the dispositifs of power, etc..." (Lazzarato, 2009: 114). However, for there to be

resistance of any kind, there needs to be something for us to resist in the first place. The impacts of the various players on the globalised crime control market on Indigenous peoples is very real, and the criminological players on that team, the restorative justice theorists, practitioners, those making money marketing their products to state and Federal governments, should consider the consequences of their continued use of the Indigenous life-world for the benefit of themselves and the Industry they participate in, because they can be sure that the critical Indigenous gaze is now firmly turned towards them.

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Glossary – Māori Words and Terminology

Aotearoa	land of the long white cloud, Māori name for New Zealand.
Hapu	sub-tribe.
Hui	gathering, meeting.
Iwi	tribe.
Karakia	to recite ritual chants, say grace, pray.
Kaupapa	topic, policy, matter for discussion.
Kawa	marae protocol - customs of the marae.

Marae	courtyard - the open area in front of a meeting house, where formal greetings and discussions take place.
Mihi	speech of greeting, acknowledgement, tribute.
Pakeha	New Zealander of European descent.
Te Puni Kokiri	Ministry of Māori Development.
Tikanga	correct procedure, custom, habit, lore.
Whanau	extended family, family group.

PART V

Appendices

Confirmation of Authorship of Co-Authored Papers

I, Dr Robert Webb, University of Auckland, confirm that authorship of the papers

Tauri, J and Webb, R (2011) The Waitangi Tribunal and the Regulation of Māori Protest, *New Zealand Sociology*, 26: 21-41.

and

Tauri, J and Webb, R (2012) A Critical Appraisal of Responses to Māori Offending, *International Indigenous Policy Journal*, 3(4): Article 5 (online)

was distributed evenly between myself and Juan Marcellus Tauri.

Dr Robert Webb

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I, Dr Mike Roguski, (Kaitiaki Research and Evaluation) confirm that authorship of the paper

Tauri, J and Roguski, M (2012) The Politics of Gang Research in New Zealand, in *Crime, Justice and Social Democracy Proceedings of the 1st International Conference* (vol. 2). Brisbane: Queensland University of Technology, School of Justice: 26-44.

was distributed evenly between myself and Juan Marcellus Tauri.

Dr Mike Roguski

Kaitiaki Research and Evaluation, Wellington New Zealand

Evidence of Right to Include Papers in the Thesis

The following section provides evidence of a) the right of the author to include published materials in this thesis. Evidence of the right to include materials, and peer reviewing includes:

Paper 1: Criminal Justice as a Colonial Project in Contemporary Settler-Colonialism

Email from Biko Agozino, Editor-in-Chief of the African Journal of Criminology and Justice Studies.

Paper 2: Indigenous Critique of Authoritarian Criminology

Email from Claire Smith, Senior Rights Assistant, Palgrave Macmillan. As an established publisher of criminology texts, Palgrave Macmillan follow a strict process for peer review of all published materials.

Paper 3: A Critical Appraisal of Responses to Māori Offending

Letter from Susan Wingert, Managing Editor, International Indigenous Policy Journal.

Paper 4: An Indigenous, Critical Commentary on the Globalisation of Restorative Justice

Letter from Jess Barmonte, Administrator, British Journal of Community Justice.

Paper 5: Resisting Condescending Research Ethics in Aotearoa New Zealand

Letter from Tracey McIntosh, Joint Editor, AlterNative – An International Journal of Indigenous Peoples.

Paper 6: Ritual and the Social Dynamics of Policy Making in New Zealand

Email from Peter Howland, Editor, CANZ.

Paper 7: The Waitangi Tribunal and the Regulation of Māori Protest

Email from Charles Crothers, Editor, New Zealand Sociology.

Paper 8: The Politics of Gang Research in New Zealand

Confirmation page, 2nd edition of conference proceedings, Crime, Justice and Social Democracy: An International Conference (copyright provided to all contributing authors).

Re: Permission to include article in thesis by publication

From: Onwubiko Agozino

) Sent:

Saturday, 11 July 2015

7:19:29 a.m.

To: Juan Tauri

ajcjs

(ajcjs@umes.edu) Dear Mr. Tauri,

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Department of
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London, ON
N6A 3K7
Canada

July 13, 2015

Dear Sir or Madam:

The International Indigenous Policy Journal grants Juan Marcellus Tauri permission to publish the following article as part of his thesis:

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Sincerely,

Susan
Wingert
Managing
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20th July 2015

To whom it may concern,

I can confirm that Juan Tauri has permission from the publisher to include the following article, published in the

British Journal of Community Justice, for the purpose of examination in his thesis by publication.

Tauri, J (2014a) An Indigenous, Critical Commentary on the Globalisation of Restorative Justice, *British Journal of Community Justice*, 12(2): 35-55.

This paper was peer reviewed by two independent reviewers. Please let me know if you require any further information. Yours faithfully,

Jess Bamonte

The British Journal of Community Justice

16, July 2015

Tēnā koe,

I write this letter as the Joint Editor of *AlterNative: An International Journal of Indigenous Peoples*. *AlterNative* is published by Ngā Pae o Te Māramatanga New Zealand's Māori Centre of Research Excellence.

I give permission for the following article published in *AlterNative* to be included in the doctoral thesis of the author Juan Tuari for the purposes of examination:

Tauri, J (2014) Resisting Condescending Research Ethics in Aotearoa New Zealand, *AlterNative*, 10(2)

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Ngā mihi,

Associate Professor Tracey McIntosh

Fw: Permission to include chapter in thesis by publication

From: Juan Tauri

Sent: Tuesday, 14 July 2015 12:20:55 p.m.

To:

From: Howland, Peter <P.J.Howland@massey.ac.nz>

Sent: Tuesday, 14 July 2015 8:03:25 AM

To: Juan Tauri

Subject: RE: Permission to include chapter in thesis by publication

Kia ora Juan

Thank you for email. In my capacity as editor and first publisher of Ritual Aotearoa New Zealand: An Effusive Introduction I am pleased to advise that inclusion of your article - Tauri, J (2015) Ritual and the Social Dynamics of Policy Making in New Zealand, P. Howland (Ed.), Ritual Aotearoa New Zealand: An Effusive Introduction (in print - CANZ, Wellington, New Zealand) - in your PhD thesis for the purposes of examination has been approved. I can also confirm that your article was peer-reviewed and was submitted for publication after your consideration and response to reviewers' comments.

Yours sincerely

Dr Peter Howland

Editor/Director

Critique Aotearoa New Zealand Ltd (CANZ)

'If to err is human, then market capitalism and the muddling classes surely rank among humanity's most significant achievements...'

Dr Peter Howland | Lecturer in Sociology

Room: SST3.20 | Phone: +64 6 3569099 extn. 83108

School of People, Environment & Planning | Massey University

Palmerston North | New Zealand

RE: Permission is this Ok or do u need as attachment on letterhead

From: Charles Crothers
(charles.crothers@aut.ac.nz) Sent:
Friday, 10 July 2015 12:01:50 p.m.
To: Juan Tauri

Dear Juan
Herewith we agree to the inclusion in your thesis as a chapter of the peer-reviewed article: Tauri, J and Webb, R (2011) The Waitangi Tribunal and the Regulation of Māori Protest, *New Zealand Sociology*, 26: 21-41.

Charles Crothers
Editor, New Zealand Sociology

CRIME, JUSTICE AND SOCIAL DEMOCRACY



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Key Words

Human rights, Indigenous justice, penal policy, policing, social justice

This section provides web-based links to published versions of the paper. In the case of Paper 6: Ritual and the Social Dynamics of Policy Making in New Zealand, the email of the editor of the book is provided if confirmation of acceptance for publication and peer review is required:

Paper 1: Criminal Justice as a Colonial Project in Contemporary Settler-Colonialism
<http://www.africaknowledgeproject.org/index.php/ajcjs/article/view/2043>

Paper 2: Indigenous Critique of Authoritarian Criminology
<http://eprints.qut.edu.au/55603/>

Paper 3: A Critical Appraisal of Responses to Māori Offending
<http://ir.lib.uwo.ca/cgi/viewcontent.cgi?article=1103&context=iipj>

Paper 4: An Indigenous, Critical Commentary on the Globalisation of Restorative Justice
[file:///C:/Users/Christina/Downloads/BJCJ-12.2-Tauri%20\(2\).pdf](file:///C:/Users/Christina/Downloads/BJCJ-12.2-Tauri%20(2).pdf)

Paper 5: Resisting Condensing Research Ethics in Aotearoa New Zealand
<http://search.informit.com.au/documentSummary;dn=321894395091270;res=IELIND>

Paper 6: Ritual and the Social Dynamics of Policy Making in New Zealand
Contact Peter Howland, Editor, CANZ, P.J.Howland@massey.ac.nz

Paper 7: The Waitangi Tribunal and the Regulation of Māori Protest
<http://eprints.qut.edu.au/52510/>

Paper 8: The Politics of Gang Research in New Zealand
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