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Whai tikanga: In pursuit of justice.

Māori interactions with the criminal justice system and

experiences of institutional racism

A thesis

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Abstract

The criminal justice system in Aotearoa, New Zealand has a destructive history of interactions with Māori. Considered alongside the broader context of colonisation, this history provides a backdrop against which to understand contemporary Māori experiences of institutional racism. This research project aims to provide a robust understanding of Māori historical, contemporary and lived experiences of institutional racism within the criminal justice system. Participants were five Māori adults who have had personal encounters with the criminal justice system. They were interviewed about their experiences within the criminal justice system, with a focus on their experiences of institutional racism. As Kaupapa Māori research, within the field of discursive psychology, deficit constructions of Māori were rejected and there is an explicit inclination toward a constructive narrative of Māori culture, identity, and history. From the analysis emerged four recurring linguistic resources; blatant racism, Māori and Pākehā identities, Māori as trapped in the criminal justice system, and Māori identity and culture as strength. Participants' perspectives of the criminal justice system reveal that prevailing power relations facilitate the belittling of Māori identity, intrude on Māori rights, and diminish cultural integrity. Institutional racism is constructed as enduring and guided by notions of Māori cultural inferiority. The criminal justice system has persistently operated to disadvantage and marginalise Māori and the discussion extends on arguments for a separate Māori criminal justice system.

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Te wāhanga tuatahi – Introduction

Te tīmatanga kōrero: Opening dialogue

“When indigenous peoples become the researchers and not merely the researched, the activity of research is transformed. Questions are framed differently, priorities are ranked differently, problems are defined differently, and people participate on different terms” (Smith, 2012, p. 313).

It is imperative to firstly acknowledge my position as a Māori researcher and to state the intent of this thesis as firmly embedded in Kaupapa Māori philosophy. This positioning has led me to frame the research as a project in decolonisation, and for this reason the narrative throughout is purposefully pro-Māori. I am acutely aware of my obligation as a Māori researcher to seek answers to questions that are of significance to Māori, in a manner appropriate to Māori, that are empowering rather than disempowering for Māori.

The thesis title ‘Whai tikanga: In pursuit of justice’ acknowledges the existence of law and justice practices in traditional Māori society, as encompassed in tikanga¹ Māori, Māori customs. Tikanga are a part of being Māori, and being Māori entails being responsive to tikanga. The hopes to reclaim and reinstate tikanga relating to law and justice align with Māori aspirations for tino rangatiratanga, self-determination.

Following is a summary of the research aims, which are grounded in the objectives and responsibilities of Kaupapa Māori research. Next is an overview of Kaupapa Māori, to further clarify the influence of the approach on the study, after which the notion of institutional racism will be described. Lastly, there will be an overview of the chapters (wāhanga) that follow.

¹ Māori words will not be italicized in the body of the text. Translations will be provided on first use, thereafter see Appendix A: Glossary.

Research aims

This research project aims to provide a robust understanding of current Māori experiences with the criminal justice system in Aotearoa, New Zealand. It will consider historical and contemporary situations alongside lived experiences to offer a comprehensive interpretation of the relationship between Māori and the criminal justice system. Guided by Kaupapa Māori and discursive psychology the accounts of Māori who have had encounters with the criminal justice system will be explored with particular attention to the constructions of the institutions and processes therein. Specifically the focus will be on the lived experiences of institutional racism, with due consideration to the historical, social, and political factors that have contributed to institutionally racist practices.

Kaupapa Māori

Kaupapa Māori literally means the Māori way or agenda and it is a term that refers to traditional Māori ways of being, thinking, and behaving (Henry & Pene, 2001). Kaupapa Māori research is therefore uniquely Māori and concerned with legitimating Māori culture, Māori knowledge, and Māori aspirations for tino rangatiratanga, self-determination. It is situated within a Māori worldview and offers a valid alternative for conducting research with Māori (Tuhiwai Smith, 2012). Traditionally research has been undertaken *on* Māori, simplifying and reshaping Māori knowledge. Maori lived experiences and ways of knowing have therefore been misrepresented and displaced. The trend of conducting research on Māori has effectively denied Māori authenticity and voice (Bishop, 1998)

The prime intentions of Kaupapa Māori research are to undertake research *with* and *alongside* Māori, to retrieve space for Māori voices and stories to be heard (Tuhiwai Smith, 2012). Kaupapa Māori research also challenges the dominance of traditional, individualistic research, which primarily benefits the researchers and their agenda (Bishop, 1998). This thesis therefore will be a space for Māori perspectives on the

criminal justice system and will have a deliberate focus on benefitting Māori, whilst rejecting the trend of problematizing Māori. This approach will be evident from the outset, in that the narrative begins by considering customary Māori practices of law and justice, and emphasises Māori voices and stories as legitimate throughout.

Institutional racism

Racism comes in varying forms, including interpersonal and institutional. A critical view of racism asserts that it is *not* a particular attribute of a person or their psychology, but rather it is a manifestation of a relationship of dominance and subordination (Cunneen, 2006). Indeed, from a discursive psychology standpoint racism is considered to be fluid and variable, occurring between people in talk and interaction (Tuffin, 2005). Broadly, institutional racism involves the process of systematic discrimination against ethnic minorities by a range of organisations. Within the context of the criminal justice system, it is argued that if the outcomes of laws or practices are racially discriminatory, then institutional racism can be said to have occurred. To appreciate institutional racism in this way emphasises processes and outcomes, rather than personal attributes such as attitudes, and it reflects a failure on the part of institutions to understand the effect of policies and procedures on minority groups (Blagg, 2008).

Blagg (2008) argues that institutional racism is the most insidious form of racism and those who perpetrate it tend to deny its existence. Challenging institutional racism is fundamentally about issues of equality, justice, and human rights. In this way, the study of institutional racism is important as a human rights and public policy issue. Jackson (1988) emphasises that the criminal justice system and the broader social context in which it is situated in Aotearoa, New Zealand, reproduces institutional racism throughout its structures. The foundations of the criminal justice system are argued to be monocultural, impacting on Māori in particular ways, and giving rise to a tradition of bitter experiences within that system. A focus on institutional racism necessitates consideration to the broader political, social, and cultural contexts within which these

issues arise. Therefore this thesis will draw on a breadth of literature to explore institutional racism, its origins, and the mechanisms that sustain it.

Thesis outline

The second chapter begins by focussing on the historical, pre-colonial context, to establish an understanding of traditional Māori law, order, and justice. The primary objectives are to firstly acknowledge the existence of traditional Māori legal and justice practices, which are embedded within tikanga Māori, and to recognise the legitimacy of such systems. Secondly, there is consideration to the colonisation of Aotearoa, New Zealand, particularly focussing on the importation of the British law and justice. Te Tiriti o Waitangi is discussed alongside assimilatory policies and legislative crimes to underline the various mechanisms used by colonial and successive governments to disempower and disenfranchise Māori.

Building on the historical foundations, the third chapter undertakes a literature review of contemporary research from various fields on institutional racism within criminal justice systems, with regard to both the local and international contexts. The construction of the Māori crime rate is reviewed as well as factors influencing offending by Māori. The discussion then focuses on institutional racism, highlighting the perpetual subordination of Māori via re-colonising discourses. Subsequently the international experiences of the colonised Indigenous peoples of Australia and Canada are considered. By reflecting on the breadth of Indigenous experiences of colonialism, there is an appreciation for the shared experiences of Indigene, particularly in regards to colonialism and the devastating impact it has had, and continues to have. The final section of the literature review focuses on critical social psychology research on racism and specifically positions the current research project as drawing from this research area. Studies of race talk in Aotearoa, New Zealand and Australia are surveyed to expose the pervasive patterns of colonialism and oppressive power relations.

The fourth chapter focuses on theoretical orientation, outlining the guiding approaches of Kaupapa Māori research and discursive psychology as well as the pragmatics of ethics, recruitment, conducting interviews, transcription and analysis. There is an overview of the specific principles of Kaupapa Māori research and within the method section details are provided as to how these were woven with discursive psychology practices and techniques. The integration of these two approaches enabled a culturally appropriate and robust method of research.

Following on, the next chapter centres on the analysis. Four recurring linguistic resources were identified; blatant racism, Māori and Pākehā identities, Māori as trapped in the criminal justice system, and Māori identity and culture as strength. Blatant racism was drawn on to construct racism within criminal justice institutions as many, normal, long-standing, unresolved, and manifesting in verbal and physical abuse. The discursive resource of Māori and Pākehā identities was used to build accounts that criminal justice institutions perceive Māori identity as lesser and not worthy of respect. Contrarily Pākehā identity was constructed as better. Māori as trapped in the criminal justice system had the effect of constructing institutional racism as often operating in a covert and crafty manner. The process of being trapped was shaped as intergenerational and initiations occurred at a young age. Finally, the linguistic resource of Māori identity and culture as strength was utilised to recognise the positive aspects within Māori identity and culture.

The final chapter encompasses the discussion and concluding remarks, beginning by relating the research findings to the discursive psychology literature on race talk. The persistence of both blatant and covert forms of racism is emphasised. It is argued that institutionally racist practices are a product of prevailing power structures that maintain Māori social and cultural inferiority. Furthermore, Māori interactions with the criminal justice system are associated with colonialism and a cycle of bias that sees Māori identity in frequent conflict with criminal justice institutions. Arguments for a separate Māori criminal justice system are considered and it is asserted that the continual failing of the criminal justice systems in dealings with Māori is cause for major change. Finally

the conclusion acknowledges the limitations of the research and briefly summarises the research aims and findings.

Te wāhanga tuarua – Historical context

Tikanga Māori: Law, order, and justice

Traditionally there existed a Māori system of law, order, and justice. Tikanga Māori is a broad system of custom, law, and normative prescriptions and it is a framework within which to locate traditional Māori law and justice practices (Quince, 2007). Principles of Māori customary law are embedded in, and therefore require an understanding of, Māori belief systems. What follows is a discussion of both, with the main focus being to recognise the validity of specific customs and practices. Importantly, in so doing it is affirmed that there existed tikanga Māori that facilitated lawfulness, social order, and justice.

Māori interpret wellness and a positive state as being about balance. To be in good health is to have balance between the physical, mental, and spiritual components, as well as maintain harmony with the collective and the natural world (Jackson, 1988). Whakapapa, the genealogy of all living things (Barlow, 1991), is key to understanding the significance of balance and harmony to Māori. Linking people to the natural and spiritual worlds, and all aspects of the environment, whakapapa shapes and organises Māori society. Therefore in traditional society Māori behaved in ways to encourage and strengthen relationships with others and with the natural world (Quince, 2007). Indeed Māori conceived that ill health and a negative state of being occurred when there was disharmony between the physical, mental, spiritual, or social components and imbalances in this way were believed to cause harmful behaviour (Pratt, 1992). An imbalance in an individual's wellbeing requires collective intervention as a restorative and re-integrative means (Quince, 2007).

Māori and Pākehā were culturally disparate. Pākehā settlers failed to recognise there was a system of law, order and justice operating in traditional Māori society and misperceived that a code of law did not exist. It was as if no legal restraints existed for

Māori, and what Māori lawful practices were observed were promptly dismissed as quaint customs and peculiarities (Pratt, 1992). However, for Māori, notions of law, order and justice were handed down orally through generations and were deeply steeped in spiritual beliefs (Frame, 1981). Tikanga Māori practices of law and justice were based on principle, upheld by the community, and accordingly the community decided upon and applied the sanctions (Quince, 2007). The purpose of the Māori justice system primarily concerned the restoration of balance and redress for victims, as victims' rights to justice were of utmost importance. These rights could transcend generations and be pursued against the individual who committed the offence, as well as their wider collective that was the whānau and hapū. Moreover, Māori legal and justice proceedings commonly took place on the marae, a public forum that gives respect to the process (Pratt, 1992; Quince, 2007).

The tikanga of law, order, and justice were fully integrated into Māori social practice; they did not exist in isolation, but were part of everyday life (Pratt, 1992) and the institutions of tapu, utu and muru reigned (Maning, 1863; Walker, 2004). Following is an overview of these three institutions and how they guided Māori law, order, and justice practices.

Te tapu

The concept of tapu is inextricably entwined with Māori spiritual philosophies; in essence tapu comes from the gods and embraces all associated powers and influences (Barlow, 1991). While at a rudimentary level it is often misused and translated as sacred, the depth of the concept of tapu is better understood in terms of restrictions (Pere, 1997). Tapu results from association with the spiritual realm and as such it has restrictive and prohibiting characteristics (Metge, 2010). Māori spirituality honours various gods and this practice is central to tapu, whereby any person, place or object can be devoted to a god (Marsden, 1975). The act of dedicating and setting aside is to make some person, place, or thing tapu, therefore make it restricted or forbidden (Shirres,

1982). Tapu is integral to Māori spiritual practices, in which Māori gods and deities are embodied in the natural world, and whakapapa connects people to the natural and spiritual worlds.

Pere (1997) summarises tapu as; a protective measure, a means of social control, an element of Māori spirituality and its implications, and an appreciation for other people, living things and life in general. To transgress against tapu was to dishonour spiritual beliefs and social norms, therefore tapu was also symbolic of danger. In this way tapu was purposeful in ensuring rights and enforcing obligations (Schwimmer, 1977). To disrespect another was not to be done lightly or without just cause (Frame, 1981). The centrality of tapu to social control is clear when considering its implementation at particular places for meaningful periods of time; rivers while there was fishing and cultivations during planting or reaping (Taylor, 1855). For the inexperienced, such as children, tapu was placed on areas considered hazardous to them, for example cliff faces or dangerous water holes (Pere, 1997). Tapu also extended to restrictions applied to people with contagious illnesses or those handling the dead (Barlow, 1991). Thus tapu systematically governed social norms, rights and obligations while ensuring sustainability for the environment, whānau, hapū and iwi. Tapu enabled traditional Māori communities to have a high level of social control and discipline because accountability was to the gods and disciplines brought about were self-imposed (Pere, 1997).

The concept of noa is also a part of social control for Māori and ensures a reasonable balance to tapu. Noa is understood as ordinary or neutral and it is significant to wellbeing because it is about being free from spiritual restriction (Pere, 1997). Quince (2007) argues that social and legal control for Māori was primarily achieved through the complementary principles of tapu and noa. That noa is complementary to tapu means a person, place, or thing is not restricted or off limits. In this light tapu defined what was not lawful, while noa was designated to what was.

Tapu is closely associated with mana and the terms are often used interchangeably. Mana, like tapu, had a transcendent quality; it set people, places and things apart, subject to spiritual restriction, and demanded respect (Metge, 2010). Barlow (1991) explains that mana is multi-faceted, but like tapu it is related to the power of the gods. Mana is fluid and reflects power, divine right, authority, influence and prestige. Individuals, hapū and iwi each have mana that is always respected, and good deeds can increase their mana. Therefore, within traditional society Māori aspired to increase individual and collective mana by abiding by the principles of tikanga (Pere, 1997; Quince, 2007). As tapu is connected to mana, so too can it be paralleled with power. An additional interpretation of tapu is someone, place, or thing having potential for power (Shirres, 1982). Power is a product of the restrictive nature of tapu and the dire consequences when tapu was not respected. Further the power of tapu when imposed was wholly connected to the mana of the individual who imposed it; the mana and tapu of high-ranking Māori, such as rangatira, were inseparable. Māori in positions of power could impose tapu over anything (Taylor, 1855).

Not only was tapu conceptualised as an external, otherworldly force; it was also internal, residing within each individual, regardless of rank. It was a person's greatest possession, clearly illustrated in the whakataukī (proverbial Māori saying), "ko tōna mea nui he tapu" (Shirres, 1982, p. 34). Certainly tapu was exercised at a spiritual and lawful level, to ensure social order, but the intrinsic possession of tapu undoubtedly contributed to lawful Māori citizens; one would be reluctant to readily surrender their 'greatest possession.' Tapu was viewed by Pākehā as a poor substitute for law and order, inadequate for ensuring any social order (Best, 1924; Taylor, 1855). However, to the contrary tapu instituted social control, self-discipline, conservation and preservation (Pere, 1997).

Te utu

The facilitation of social control via tapu was supplemented by utu, a principle of profound social and political significance (Metge, 2010). Simply put, utu meant to obtain equivalence. Quince (2007) reasons the primary dynamic in tikanga is to maintain equilibrium, which is achieved through the institution of utu. The practice of utu mediated mutual and amicable relationships through gift giving, based on a general principle that for every gift, another of equal or greater value should be reciprocated (Firth, 1929). Gift giving set up an imbalance between the giver and the recipient whereby equivalence was only restored when the recipient returned a gift. Gifts extended beyond objects to marriages, which were argued to be the strongest in creating permanent bonds and cementing relationships, expressed in the whakataukī, “He taura taonga e motu, he taura tangata e kore e motu”, a gift chain may break but not a human link (Mead & Grove, 2001, p. 125).

The principle utu was also concerned with compensation for offences or injuries (Walker, 2004). Often interpreted as revenge, utu in this sense operated in the same equivocal way; for every offence or injury another of at least equal value would be returned. Hostility escalated as revengeful relationships of this sort developed over time (Hanson & Hanson, 1983). Māori enacted utu with great intensity, and the tenacity of utu, as revenge, was infamous (Polack, 1838). Vengeful and tenacious as it was reputed to be, utu also served equally important rehabilitative and retributive purposes for the offended persons or group. Hanson and Hanson (1983) argue that violent acts of revenge enabled Māori to reclaim control. Any harmful influences that affected their lives and compromised the range of control Māori had over their lives likewise threatened their honour, symbolising mate, or weakness. This contributed to a poor state of psychological wellbeing, a melancholic state, and utu via revengeful retribution served to redress this depressive state. To salvage control in this way was restorative spiritually, mentally, and socially.

Utu elevated in seriousness when the greater hapū or iwi were implicated and retribution for past grievances was sought from the wider community. Defeats in battles and disputes over territories were remembered with acuteness, and to make war based on these grounds was a means to regulate relationships between hapū and iwi (Walker, 2004). Fundamentally, utu was about the pursuit of equivalence in relationships, and when equivalence could not be achieved there were deleterious outcomes such as the breakdown of relationships or deterioration in mental health.

Te muru

Traditional Māori systems of justice focussed on reparation, rather than punishment, and the emphasis was on repairing relationships and accountability for wrongdoing (Quince, 2007). The institution of muru, like utu, sought to restore equivalence and return to a norm of balance and harmony. Muru was an established system of exacting compensation via property confiscation as penalty for offences; it was lawful and methodical plundering for reparation (Best, 1924; Maning, 1863). Muru authorised public administration of justice and was instrumental in restorative and social justice (Firth, 1929).

Actions warranting muru varied from violation of tapu, to accidental injury of others, to adultery (Best, 1924). Importantly, muru affected the collective, not solely the individual offender or victim; the wider whānau and hapū of the victim enacted muru upon the wider whānau and hapū of the offender. As the scale of the offence grew, so too did the amount of property seized and the circle of people affected. A muru of an emphatic manner marked an act or event as momentous (Firth, 1929). Quince (2007) highlights that customarily the process of facilitating reparation and the reparation itself were equally important to victims. Therefore, inclusion of the victim and their collective was imperative in this procedure.

Stories of exceptional muru shed light on the extent to which muru was a highly ceremonial institution. When compensation for an offence was not offered voluntarily, taua muru (muru parties) would seek reparation (Walker, 2004). A taua muru was not resisted because the process of muru served to honour those who had been wronged and conferred honour to those who had offended. In significant cases, muru could go on for days, with a number of various taua muru seeking to exact compensation, taking all moveable objects and going so far as burning every house. Even so, those subjected to muru would host taua muru by serving a feast (Maning, 1863; Taranaki Veteran, 1919). Muru served an additional purpose, the redistribution of wealth amongst relatives, and personal property frequently circulated from hand to hand (Maning, 1863).

The implication of muru signalled that the person who committed the offence was of some consequence to their whānau, hapū, or iwi and their actions warrant interest and consequence from the greater community (Firth, 1929). However, at the very least justice tikanga when enacted in such forms as utu and muru involved public shame and humiliation. Indeed that punishment for an offence was met by a person's whānau, hapū, or iwi, warrants shame as an appropriate response (Quince, 2007). This is illustrated in whakataukī, "waiho mā te whakamā e patu", which states that shame is sufficient punishment (Mead & Grove, 2001, p. 418).

Conclusion

The focus of this section has been to recognise the existence of traditional Māori legal and justice practices within tikanga Māori. Harmful behaviour and offending are understood as occurring within the context of an imbalance in health and functioning of the individual, whānau, and community (Pratt, 1992; Quince, 2007). Traditional Māori society was grounded in the principle of whakapapa and this framework of connectivity to the natural and spiritual worlds and the importance of maintaining relationships shaped law, order, and justice practices (Quince, 2007).

Three tikanga, the institutions of tapu, utu and muru, have been outlined as key to social control and justice. Tapu, the foundation for social norms, rights and obligations, is entwined with Māori spiritual beliefs (Schwimmer, 1977) and operates complementarily to noa. Because accountability for transgressing tapu was to the gods tapu facilitated a high level of social control and discipline within Māori society (Pere, 1997). Utu and muru, as specific justice practices, prioritised victims' healing and offenders' reintegration, whilst balancing accountability with moving forward. In effect, Māori justice had a clear focus on the future, aimed at repairing relationships and restoring balance (Quince, 2007).

The following section provides an account of the history of the British legal and justice systems in Aotearoa, New Zealand. The contrasting nature of Pākehā and Māori approaches to social control and justice are considered alongside the intentions and outcomes of Te Tiriti o Waitangi. The historical context of colonisation and the imposition of British law, order, and justice is argued as meaningful to understanding Māori plights with the criminal justice system today.

Colonisation and the introduction of British legal and justice systems

There were vast differences between Māori practices of law and justice and those of the British colonists. The colonisation and simultaneous subjugation of Māori demanded the suppression and exclusion of Māori practices of law, order, and justice (Pratt, 1992). Indeed, Quince (2007) argues the process of colonisation and consequent changes have had a devastating impact on Māori ways of being, including Māori law and ways of doing justice. Current legal and justice practices are based almost exclusively on British philosophies and are inevitably shaped by the same cultural values and ideals (Jackson, 1988; Tauri, 2005). Jackson (1988) argues that the legal truism ‘one law for all’ has embedded institutional racism, as the legal and justice system today are based on imported common law that do not acknowledge Māori forms of law, order, and justice. As such the foundation of current legal and justice practices and the permeation of monocultural ideas impacts negatively on Māori.

Building on the discussion of the history of traditional Māori law and justice, the current section recounts the early hopes for Aotearoa, New Zealand as a British colony, leading up to the intentions and guarantees of Te Tiriti o Waitangi. Particular features within both versions of The Treaty pertinent to law and justice practices are considered recognising that it was not an empowering document for Māori, but rather a tool to disempower and disenfranchise Māori. Further is a review of the period of time following the signing of Te Tiriti o Waitangi, as there was not an immediate displacement of Māori legal and justice systems, but rather a clashing between the British and Māori systems and tentative negotiations over whose law and justice prevailed. Lastly, a brief look at the ascent of British law and governance, marked by institutionally racist legislation aimed at acquiring Māori land and establishing ‘civilisation’.

Early settler hopes and intentions

Aotearoa, New Zealand was idealised by the British, indeed fulfilling its enchanting Māori name ‘The Land of the Long White Cloud.’ Pākehā settlers arrived with the intention to recreate the British way of life free of the social problems they were accustomed to, but with the familiar systems of law and justice. There were high hopes to create a ‘Britain of the South Pacific’, however in order to facilitate this formal colonisation was crucial, and there was not a question of if this was going to happen, but rather when and how. In order for Aotearoa, New Zealand to be settled and colonised it was necessary that land pass from Māori to Pākehā (Pratt, 1992). Certainly, the acquisition of land and resources was a foremost priority for Pākehā, which was often achieved through amoral and illegal means including crooked dealings, warfare and confiscation (Quince, 2007).

Land, or whenua, for Māori provided nourishment and sustenance physically and culturally (Pere, 1997). Therefore land was not only integral to Māori economic survival, but also to cultural survival. The colonial plans to disenfranchise Māori from the land thus undermined Māori ability to sustain themselves and their culture. Without cultural foundations traditional Māori systems of law and justice were confined to fade away (Pratt, 1992). For Māori, to be alienated from the land was detrimental economically, culturally, and spiritually and would be an assured means to stunt Māori development. However, in the eyes of the colonisers, the acquisition by Māori of traits of ‘civilisation’ and their inclusion in the British realm was the foremost priority. It was the frank and widespread view of the colonisers that progress and improvement was only achievable by ‘civilising’ the Māori population (Moon, 2002). Pākehā believed it was advantageous to Māori to adopt the British systems of law and justice not only to sustain Māori survival but also to secure Māori against the assumed superiority of Pākehā (Pratt, 1992).

Te Tiriti o Waitangi

Te Tiriti o Waitangi, is the founding document of New Zealand and a symbol of unity between Māori and Pākehā (Barlow, 1991). Signed on the 6 February 1840, it came as a declaration that Aotearoa, New Zealand was a British colony. There are two versions of The Treaty of Waitangi, the English version and the Māori, Te Tiriti o Waitangi, each comprising of three articles. The versions of The Treaty of Waitangi are not identical translations, for example, in Article Two of Te Tiriti o Waitangi Māori were guaranteed absolute sovereignty over their lands, villages, and all their taonga (prized possessions). Whereas, the English version guaranteed to Māori only “undisturbed possession” of their lands, estates, forests and other properties. What Māori considered taonga, extended beyond mere physical possessions, it included anything prized or valued at cultural and social levels and broadly encompassed resources, phenomenon, ideas and techniques (Moorfield, 2016). In this way, Māori *ideas* and practices regarding law and justice were taonga.

Article Two of Te Tiriti o Waitangi also had the effect of establishing for the government pre-emptive right of purchase of Māori land (Barlow, 1991). This was the gateway through which Pākehā could fulfil their hopes to truly colonise Aotearoa, New Zealand. Furthermore, Article Three promised to Māori citizenship like that of Pākehā settlers, and in this way it offered protection. However, the concept of British citizenship also comprised of certain behaviours, practices, social codes and institutions, which represented the Pākehā way of life. Only when Māori surrendered their own cultural institutions and practices, including traditional legal and justice systems, and assimilated to Pākehā ways of life would Māori attain this promised citizenship. Following the signing of The Treaty of Waitangi, as British citizens Māori were expected to cease Māori ways of life and to begin acting and behaving as Pākehā (Pratt, 1992).

Despite the terms of Te Tiriti o Waitangi, over time Māori were increasingly disenfranchised and denied their rights to uphold traditional Māori law and justice. In time, British law and justice supplanted those of Māori and the reality of colonisation

was that Māori had minimal political power against an increasingly powerful colonial state (Bull, 2004). Pratt (1992) asserts that Te Tiriti o Waitangi founded a formal silencing process not only over Māori law and justice, but also to a greater extent, over Māori ways of being. Had Māori recognised Te Tiriti o Waitangi signed away their sovereignty it would have been highly improbable that any rangatira would have agreed to this (Moon, 2002).

The imposition of British law and the undermining of tikanga Māori

The respective Māori and British systems of law and justice were situated in contrasting societies. The cultures, norms, values and economic situations of traditional Māori society were distinct to those of British society in the late eighteenth and nineteenth centuries. Therefore, within these societies the construction of ‘legal’, or rather more importantly ‘illegal’ acts, what caused them, and responses to them differed drastically. For example, in British law the offender was held responsible and punished accordingly, while Māori exacted muru from an offender’s collective as compensatory means for the victim’s collective. Whereas Māori regarded muru as a legitimate sanction, to Pākehā settlers it represented anarchy (Pratt, 1992).

The notion of self-discipline is fundamental to Māori law and order (Pere, 1997) and (Pratt, 1992) argues that traditionally social control for Māori operated at formal and informal levels to maintain stability and social cohesion. The intensity of this created a crushing conformity fuelled by a fear of deviating from Māori norms and being rejected from the collective. Contrarily British law and justice were administered by the state, which judged how deficient individuals were from normative standards. The individual offender was punished accordingly, and there was a growing expectation for order, certainty and efficiency in this regard. The state assumed responsibility to restore the individual to a normal and acceptable standard of being and the core goals of British legal and justice systems were deterrence and individual retribution (Pratt, 1992). The system of common law imposed by Pākehā brought with it presumptions foreign to Māori. Notions of individual responsibility, the delineation of formal processes from the

community, the distancing of justice proceedings from victims, and the absent focus on reparative measures, are but a few practices that were strikingly different. From a Māori perspective, the systems were rigid and directed toward retribution, which was viewed as damaging individually and collectively. British systems also brought alien punishment in the form of imprisonment (Quince, 2007).

Pratt (1992) highlights the strikingly different principles influencing punishment for Māori and British settlers respectively in the mid nineteenth century. For Māori public sanctions were the norm and punishments inflicting bodily pain or death were viewed as culturally appropriate, whereas prison was the pillar of British punishment practices. However, Māori had a deep-rooted antagonism toward imprisonment, a culturally degrading experience, and for offences such as theft compensation or even death were considered favourable. Indeed, a discerning question posed by Chief Te Heu Heu to a Judge plainly illustrates the conflicting justice practices of Māori and British settlers,

Why do you keep a prisoner for days and days awaiting his trial? If anyone commits a crime here I knock him on the head at once. Then, too, you put people in prison for such small things. Now, Judge, listen to me. If a man were to dare take one of my wives or to take this (a beautiful hatchet made of greenstone and highly polished which he carried in his hand), I should kill him, of course, at once; but if he pilfers little things I take no notice (Martin, 1884 cited in Pratt, 1992, p. 41).

The dissonance between Māori and British legal and justice systems presented problems on such a scale that initially policies were developed to minimise issues where possible, one such policy being that British law applied only to Pākehā settlers. There were various difficulties to introducing and spreading British legal and justice systems. First and foremost, Māori had their own systems of law and justice that had been meeting their needs for around one thousand years, so there was minimal motivation to reject existing systems for those of the colonisers. Secondly, around the period Te Tiriti o Waitangi was signed, Māori outnumbered Pākehā settlers by a ratio of nearly fifty-to-one (Moon, 2002).

Formal colonisation via Te Tiriti o Waitangi did not suddenly dismantle traditional Māori legal and justice systems, to be replaced by British systems. To comply with British law was at Māori discretion, and Māori tended to be highly selective about deferring to British systems. Traditional Māori law and justice systems were gradually displaced and by the end of 1841 British law and justice prevailed in certain areas (Moon, 2002). However, British law and justice was not universally and consistently incorporated and Māori living in iwi areas such as Te Urewera and Whanganui, resisted British law and justice systems in to the twentieth century (Bull, 2004). Indeed while Māori remained rurally based tikanga Māori practices of law and order were maintained until the later decades of the nineteenth century (Quince, 2007). Moves to institute British law and justice tracked slowly and intermittently, and the colonial government possessed limited political autonomy. British sovereignty was only able to advance at a pace that did not aggravate or create adversity from Māori communities (Moon, 2002). There were early attempts toward pluralistic legal and justice systems with the appointment of Māori magistrates to administer justice in Māori communities, as well as recognition of utu as a legitimate means of justice. However, these have been underlined as tokenistic and simple responses to Māori living in communities out of reach to state operations (Quince, 2007).

Greater extension of British legal and justice systems over Māori was in need of a facilitative situation. Moon (2002) contends that this occurred when a Māori committed murder against a settler family, thereby bringing the encounter between the Māori and British legal and justice systems to a head. There was potential for Māori inter-tribal war, in terms of retribution, as the accused, Maketu, was a high-ranking Māori from the iwi Ngā Puhi, and one of the victims was the grandson of a Māori chief. Maketu was apprehended and tried in Auckland, intentionally out of Ngā Puhi iwi area to minimise support from the Māori community. By March 1842 Maketu was convicted and executed and the process of subsuming Māori in to the British legal and justice systems appeared to be occurring smoothly. However, the imposition of British law and justice in this case was only able to proceed because of Māori permissiveness. While there was

some initial protest to the arrest of Maketu, it subsided, and by the outcome of the trial there was some Māori agreement to Maketu's execution. Pratt (1992) notes that the public execution of Maketu was the first such case since colonisation and while there was some resentment to his execution, it was befitting of chiefly demands to have the right to kill in murder cases. It is suggested that had there been determined Māori opposition to the operation of British law and justice in place of respective Māori systems, there was no possibility the trial would have occurred. The trial of Maketu demonstrated that British law and justice could operate successfully with Māori communities, albeit only given Māori consent, but this was an important juncture for the ascent of British sovereignty. Here was a facilitating factor for Māori assimilation to British law and justice (Moon, 2002).

The colonial government moved forward, albeit falteringly so at times, and there was an increasing disdain toward Māori systems and practice of law and justice. British law and justice practices ascended tikanga Māori law and justice and with increasing settler numbers arriving, the threat to Māori sovereignty was intensifying (Moon, 2002). The process of colonisation was well underway; Māori ways of being were steadily silenced and Māori were confined to assimilating to the 'civilised' ways of their colonisers.

Legislative crimes

An important feature of the early administration of British law was that it was undertaken by a locally based Governor, rather than officials in Britain. The Governor was charged with the operation of British law and justice and responsible for not only applying British law, but also for fashioning legislation specifically for local context (Moon, 2002). Perhaps it was the exclusivity of this responsibility within the environment of colonisation that provided the conditions for the development of institutionally racist legislation. Via legislative devices Māori were increasingly criminalised, with the intention of disenfranchising Māori from their land. With the imposition of British law, Māori were arrested and imprisoned in growing numbers as they came in to contact with legislation that had been passed in the interests of the

colonisers. This trait of colonisation criminalised Māori, whilst crimes committed via legislative power went unpunished (Bull, 2004).

The imposition of institutionally racist legislation was viewed as a ‘civilising’ process by the colonisers (Pratt, 1992), but the racist nature of governance launched a systematic assault on Māori wellbeing and identity. Historically, state agencies largely imposed Pākehā means of social control over Māori and Māori experienced a history of assimilation policies that resulted in marginalisation and cultural destruction (Webb, 2009). Māori were subject to racist legislation and assimilatory policies that would have long-standing impacts. Such crimes transpired on the basis of Māori meeting their obligations within Te Tiriti o Waitangi, whilst being denied the rights they were promised. Legislative crimes against Māori not only enabled the government and thus Pākehā to acquire land, they were culturally oppressive and stripped away Māori cultural and economic foundations. Without solid foundations Māori were headed for confinement, marginalisation and cultural destruction, and within these contexts Māori ways of being could not prevail, nor could Māori systems of law and justice.

Conclusion

While this section has only been a brief retelling of some of the initial encounters between Māori law and justice and that of the British, it provides a basis for understanding how contemporary Māori engagement with law and justice has been shaped. The process of colonisation included assimilatory legislation that contributed to the dismissal of Māori systems of law and justice (Bull, 2004). Since the outset, the goals of the British model of law and justice within Aotearoa, New Zealand were embedded in the dominant discourse and sought to perpetuate economic, social and political subordination of Māori (Pratt, 1992).

Successive governments have obstinately rejected Māori contentions that Article Two of Te Tiriti o Waitangi guarantees their rights to administer traditional law and justice. Rather, by privileging their own interpretations of Te Tiriti o Waitangi, the state has

denied Māori rights to uphold traditional systems of law and justice (Tauri, 2005). Indeed, despite assurances in Te Tiriti o Waitangi, colonisation has been vastly destructive to Māori society. The denial of tino rangatiratanga over Māori land, people, and taonga, as guaranteed in Article Two of Te Tiriti o Waitangi has been the most damaging (Quince, 2007). The colonising assault on Māori law and justice, Māori ways of being as well as Māori cultural and economic foundations has been thorough, resulting in frustration, inadequacy and failure within the context of the Pākehā law and justice system (Pratt, 1992). Indeed Jackson (1988) contends that rightful justice for Māori is unattainable within legal and justice systems that are founded primarily on British values and ideals.

With such an extensive history of disenfranchisement and criminalisation at the hands of the state, the current dire situation of Māori experience with the criminal justice system should come as no surprise. The third chapter commences with a section considering the contemporary experiences of Māori with the criminal justice system, and reviews literature from a breadth of disciplines commenting on the topic.

Te wāhanga tuatoru – Literature review

Māori and the criminal justice system: The contemporary experience

Contemporary Māori experience with the criminal justice system in Aotearoa, New Zealand is rooted in Māori histories and experiences; Māori histories of customary law and justice, Māori histories of colonisation, Māori experiences of assimilatory and institutionally racist legislation, and Māori experiences of re-colonising practices via marginalisation and criminalisation. The previous section provides a snapshot of early Māori encounters with Pākehā settlers and colonisation, with particular focus on the annexation of traditional Māori law and justice systems. The intention therein is to recognise moves by the colonisers to silence Māori ways of being and to shackle Māori through discriminatory legislation and policies.

Colonisation and the resulting economic, cultural, and legal marginalisation provide a backdrop against which current Māori experiences with the criminal justice system can be considered. Acknowledging that the contemporary situation is precipitated by historical experiences enables a more rounded account and avoids perpetuating stereotypes about Māori. In this way a constructive forum is established to view and interpret crime statistics while also enabling recognition of what parallels may exist between current criminal justice policies and those espoused during the colonial era (Bull, 2004).

The Māori ‘crime rate’

The literature from various fields examining Māori relationships with the criminal justice system tends toward regurgitating officially recorded statistics. Further, the Māori ‘crime rate’ is often compared to that of Pākehā to illuminate the level of Māori ‘over-representation’. One effect of this is to construct Māori as disproportionately

criminal and suggest Māori are a deficient ethnic group. Jackson (1988) criticises comparative analyses between Māori and Pākehā offending behaviours on the basis that such an approach has fundamental socio-cultural limitations, positioning Māori in isolation from the culture and social conditions that shaped them. Furthermore, Māori offending is frequently referred to as ‘disproportionate’ or alternatively Māori are described as ‘over-represented’ in the criminal justice system. Webb (2009) contends that rarely are such terms applied to males as a group, who indeed make up a ‘disproportionate’ number of offenders, and likewise nor are the terms applied to young people, who are ‘over-represented’ in the criminal justice system. Crime is commonly constructed and understood in terms of ethnicity, particularly in regards to Māori. Ideas about the Māori ‘crime rate’ are taken-for-granted knowledge entrenched in the dominant discourse that create a pattern of re-colonisation. Certainly officially recorded statistics will be reviewed, to give a quantitative picture, but it is important to acknowledge they are not the whole picture, nor are they the only picture that captures Māori experiences with the criminal justice system.

In a review of Māori historical encounters with the criminal justice system Bull (2004) summarises that there has been an increasing trend in the officially recorded offending by Māori since the beginning of the twentieth century. A key turning point was in 1911, which saw a 130 per cent increase in officially recorded offending by Māori. This was partly attributable to cultural conflicts over alcohol consumption, however the main driver aiding the rise in Māori offending was renewed attention by the state to law and order, brought about by political strife. Alongside growing government harassment and the use of legislation to facilitate over-policing of Māori the officially recorded Māori crime rate from 1911 increased drastically.

Current official statistics present Māori as featuring in disproportionately high numbers throughout the criminal justice system, from policing, to conviction, to imprisonment and probation. Māori comprise 15 per cent of the general population, however make up; 42 per cent of all Police apprehensions, 43 per cent of all convictions, 51 per cent of all persons in prison, with Māori women accounting for 60 per cent of the female prison

population. Moreover, high numbers of Māori in offending statistics are paralleled by high numbers of Māori as victims of crime (Department of Corrections, 2007). Adjusting for the different sizes of populations the differences in Māori and Pākehā involvement with the criminal justice system are exceptional; around five times more Māori are apprehended, prosecuted, and convicted, nine times as many Māori are remanded in prison awaiting trial and nearly seven times as many Māori are given a custodial sentence or are serving prison sentences (Burton, 2006).

Fergusson, Horwood, and Lynskey (1993a) studied a Christchurch birth cohort of children at age 15 years, on the basis of self or parent reported offending. Māori children self-reported offending at about 1.7 times the rate of Pākehā children, whereas official police statistics indicated Māori children were 2.9 times more likely to come to police attention than Pākehā children. Māori children, when compared with Pākehā children with an identical self or parent reported history of offending, were 2.4 times more likely to come to official police attention. Official police statistics are herein shown to be subject to bias, overstating the ethnic differences in the rate of offending and provide a misleading view of Māori offending in particular. There was a demonstrable bias in the arrest and conviction rates for Māori and even when allowing for both the frequency and type of offences reported, Māori children were over twice as likely to have police contact as Pākehā children, who had the same history of offending behaviours. Evidently police may tend to officially record offending committed by young Māori, more so than young Pākehā.

It is noted that Fergusson et al. (1993a) found the majority of offences reported to police involved acts of theft, namely shoplifting. Further examination of the records for these offences indicated that in many cases police contact arose because a member of the public detected the offence and reported the offender to the police. Bias in official police contact statistics was shown to reinforce the impression that Māori children offended at a higher rate than Pākehā children, resulting in Māori children coming to official police attention at a higher rate than Pākehā children with similar history of offending. In effect this generates a cyclical pattern whereby bias in official police contact statistics leads to

greater police contact with Māori, in turn influencing public perception of Māori as ‘criminals’ and comes full circle to sustain bias in police contact.

Actual rates of offending appear to be independent of officially recorded offending statistics, as a result of biased processes that lead to higher rates of arrest and conviction among Māori. Further research by Fergusson, Horwood, and Swain-Campbell (2003) with the Christchurch birth cohort of young Māori at age 21 confirmed that rates of criminal conviction were higher for Māori than non-Māori. Again there was a presence of bias and Māori were between 2.1 to 2.6 times more likely to be convicted than non-Māori who had the same self-reported history of offending. Even after adjustment for self-reported offending and socioeconomic factors, Māori were between 1.6 to 1.8 times more likely to be convicted than non-Māori from the same socioeconomic and educational backgrounds and with the same self-reported history of offending. Unlike the research by Fergusson et al. (1993a) ethnic differences in police contact did not explain disparities in conviction rates, so the bias could not be located with the police. However, young Māori were at increased risk of conviction compared to young non-Māori of identical social backgrounds and self-reported history offending, reflecting a bias elsewhere in the criminal justice institutions (Fergusson et al., 2003).

Indeed, Māori have been found to be at higher risk of offending, despite social background and bias (Fergusson et al., 1993a; Fergusson et al., 2003). However, what is important to note is that the officially recorded Māori ‘crime rate’ is exaggerated and this has enduring impacts. What follows is an exploration of some of the unique experiences of Māori that are argued to have contributed to offending by Māori.

Urbanisation and socioeconomic status

Following the Second World War, in the context of successive governments having implemented economic and land use policies to the detriment of Māori, urbanisation saw a huge proportion of the Māori population shift from rural to urban centres. While 75 per cent of Maori lived in rural areas in 1945, this reduced drastically to 18 per cent

by 1991 (Walker, 2004). Social and psychological disruption ensued as Māori were physically and emotionally separated from cultural roots (Jackson, 1988). In urban settings Māori were maintaining a more Pākehā lifestyle and experienced weakened ties to iwi lands and support networks while adjusting to different systems of social organisation (Quince, 2007). Māori were blamed for their inability to adapt to the new, urban environments, despite inevitable difficulties given societal forces at play. The disintegration of Māori social and cultural underpinnings via urbanisation, alongside poverty and high rates of unemployment are reasoned as being pivotal to the rise in offending by Māori (Jackson, 1988). The argument follows that ongoing circumstances for Māori of poor socioeconomic conditions, disconnection from culture and diminishing self-respect all contributed to ‘trapped lifestyles’ of Māori offending and imprisonment (Durie, 2003).

Socioeconomic and cultural factors, and urbanisation, are asserted as influencing patterns of offending by Māori (O'Malley, 1973). There has been consistent debate about the degree of influence socioeconomic factors have on Māori offending and the evidence indicates that even when controlling for social, economic and related factors ethnic differences in offending rates reduce, but are not eliminated (Marie, Fergusson, & Boden, 2009). A bias in conviction rates has been found for young people with low socioeconomic status, who have greater risk of conviction than young people from advantaged backgrounds with the same self-reported offending history (Fergusson et al., 2003). Māori are at greater risk of overexposure to adverse environmental factors, particularly during childhood and adolescence. Marie, Fergusson, and Boden (2014) suggest that improving the socioeconomic status of Māori will help reduce ethnic disparities across negative behavioural indices. However, the effect of improvement in socioeconomic terms will provide greater benefits in areas such as education and welfare, though fewer benefits in other areas, namely criminal offending.

Importantly, ethnicity alone is not a strong predictor of early offending (Fergusson, Horwood, & Lynskey, 1993b). The links between crime rates and ethnicity likely involve multifaceted interactions between ethnicity, adverse socioeconomic conditions

and offending behaviours and these complexities are not effectively explained by ambiguous comparisons of Māori and Pākehā ‘crime rates’ (Marie et al., 2009).

Institutional racism

Prevailing knowledge about the Māori ‘crime rate’ maintains a taken-for-granted status and perceptions of Māori offending are based on stereotypes and media misinformation (Bull, 2009). Māori are characterised as suffering low socioeconomic status, over-criminalisation, poor health, unemployment, and lacking educational achievement. These ideas of not only social and economic, but also ethnic and cultural subordination are sustained by the dominant discourse and instead of further marginalising Māori, there are calls to question and resist the continual privileging of the dominant culture (Quince, 2007; Tauri, 2005).

Early literature on contemporary Māori encounters with the criminal justice system recognises the power of the dominant discourse and suggests that the Māori ‘crime rate’ could be interpreted as a “social barometer of Pākehā priorities” (Jackson, 1988, p. 24). Corresponding research has been undertaken exploring Māori attitudes toward the police and vice versa police attitudes toward Māori. Māori perceptions held that the Police as an institution perpetuated strong anti-Māori attitudes and institutional racism (Te Whaiti & Roguski, 1998). Similarly, in the survey of police attitudes toward Māori, Māori officers believed Māori were more likely to be stopped in a car, asked what they were doing in the small hours, be the recipient of abusive language, be treated roughly, be suspected of an offence, and be monitored when driving an expensive car. Furthermore, discriminatory language and behaviour were accepted as part of the police occupational culture (Maxwell & Smith, 1998). The biases in processes contributing to the higher rates of arrest and conviction among Māori are likely complex however, what can be said is that the culture of practice propagated by police and institutional racism therein likely plays a major role.

Institutional racism within Court processes has also been evidenced. O'Malley (1973) argues that the notion of the Māori 'criminal' impacts on Māori treatment throughout the Court processes, exaggerating differences in criminal behaviour between Māori and Pākehā. The Court system was shown to enable perpetuation of adverse stereotypes of Māori, affecting Māori rates of release on bail and restricting Māori access to legal counsel. There are also claims of both direct and indirect racism in the formation and application of laws and legal processes, whereby Māori are under-represented as legislators, police, Judges, jurors and have less power in terms of input in to the processes of the criminal justice system. Jackson (1988) argues that the criminal justice system is founded on Pākehā philosophies, and the institutions and processes therein are not shaped by or accountable to Māori cultural norms and values. Moreover, historic Māori resistance to the imposition of Pākehā law may have added to an enduring cycle whereby the institutions of the criminal justice system in turn have not responded positively to Māori (Quince, 2007). Therefore there is likely a complex interplay of factors that contribute to Māori subjugation within the criminal justice system.

The issue of institutional racism within the criminal justice system has not gone unmentioned politically. In 2011 the Associate Minister for Corrections and Minister of Māori Affairs Hon Dr Pita Sharples highlighted "structural racism" against Māori throughout the criminal justice system. This was met with much public outcry and collective reluctance on the part of the government to justly explore the issue (Workman, 2011). Subsequently in 2014 a United Nations Working Group on Arbitrary Detention specifically commented on the over-representation of Māori in the criminal justice system. It was reported that systemic bias against Māori at all levels of the criminal justice system was occurring and recommend a review be undertaken (United Nations, 2014).

Conclusion

Unsurprisingly, Māori are dissatisfied with the criminal justice system (Quince, 2007). Māori 'crime rates' have most commonly been regarded as representations of criminal

behaviour, rather than as reflections of a relationship between the institutions of the criminal justice system and certain populations (O'Malley, 1973). The net effects of the substandard relationship between Māori and the criminal justice system mean Māori wellbeing is left wanting and Māori are confined to 'trapped lifestyles' (Durie, 2003).

While research has found biases in police contact and conviction rates for Māori, it has also shown that irrespective of how offending was measured Māori offend at higher rates than Pākehā. There appear to be ethnic differences in offending rates, which cannot be explained by biases in the method used to assess offending (Fergusson et al., 1993a, 1993b; Fergusson et al., 2003). However, the product of the associations between socio-economic factors and ethnicity, coupled with bias within the criminal justice institutions created the impression that Māori offend at much higher rates than Pākehā. Māori likely offend at no greater rate than Pakeha children reared in similar family, social and economic circumstances (Fergusson et al., 1993a).

Quince (2007) asserts that what Māori are experiencing within the criminal justice system is not occurring because of socioeconomic status, nor is it occurring as a product of the seriousness and prevalence of Māori offending. Rather, at a deeper level, Māori experiences are so because they are Māori, and the social, economic, cultural and political positions of Māori have been wholly shaped through the processes of colonisation to such an extent that offending by Māori is connected to ethnic identity. Further, the mechanisms of colonisation alongside the trauma of surviving experiences of violence and illness that decimated entire generations have had severe psychological and spiritual consequences for Māori.

A feature of colonisation is the restriction of movement of the colonised people and a negation of their culture. Māori experiences of confinement extend from the colonial era to contemporary settings. Thus Māori are not free, they are a colonised people seeking to de-colonise themselves. Māori 'over-representation' in the criminal justice system is positioned in the existing power relations of dominance and exploitation. Therefore when the criminal justice system sets out to toughen responses and punishments, it has a

greater impact on Māori, tightening Māori shackles and enabling the reproduction of disadvantage for Māori. There is a failure to engage in a debate about the collective experience of confinement and incarceration for Māori and the effect it has on children, whānau and communities (McIntosh & Radojkovic, 2012). Dismissal of the gravity of the issue of institutional racism serves only to perpetuate re-colonising discourses.

The next section considers experiences of other colonised peoples, the Aboriginal peoples of Australia and Canada. The intention is to explore the pervasive impact of colonisation for Indigenous peoples, especially in terms of their encounters with the criminal justice system. Furthermore, by situating Māori experiences alongside other Indigenous peoples' experiences, the perpetuation of colonising discourses at an international level can be attended to.

Indigenous peoples, the criminal justice system, and institutional racism

Māori experiences of institutional racism within the criminal justice system are not isolated; other Indigenous peoples share similar experiences. While the primary focus of this thesis is the Māori experience, consideration will be given to the broader context of other Indigenous peoples experiences with comparable histories. A comparative approach to Indigenous experiences of colonialism and its effects offers a fuller picture than if consideration were limited to only one society (Fleras & Elliott, 1992). While recognising the inherent differences between Indigenous peoples, there is potential to recognise shared experiences and discourses. The following discussion will briefly explore the histories of the Aboriginal peoples of Australia and Canada, with particular attention to their experiences with respective criminal justice systems.

The international literature on Indigenous peoples' formidable relationships with colonial criminal justice systems is extensive, however what is clear is the recognition of the adverse consequences of colonisation on contemporary Indigenous populations. Along with sharing in histories of colonisation and marginalisation, Aboriginal peoples of Australia and Canada also share in the phenomenon of 'over-representation' in the criminal justice system.

Indigenous peoples of Australia and Canada: Histories of colonialism

Foremost in the considerations of the historical context of Indigenous peoples is the recognition that there existed laws and means to maintain social order, which are embedded in the culture and worldviews of Indigenous peoples. In Canada it is asserted that traditionally Aboriginal peoples maintained systems of governance, laws, and dispute resolution within their communities, and social control rested largely in kinship (Hamilton & Sinclair, 1991). Likewise Aboriginal peoples of Australia describe Aboriginal Law as connecting individuals to kin, to particular domains of land and to spiritual philosophies. This is tied to their heritage and corresponding responsibilities

and obligatory duties, which one must see too if they wish to attain respect, authority, as well as advantages in marriage arrangements and for their children (Royal Commission into Aboriginal Deaths in Custody, 1991, cited in Finnane, 2001). One particular principle in Aboriginal Law is termed payback and it is likened to the Māori principle of *utu*. Similarly, payback is twofold; firstly it is the expectation of compensation for those who have been harmed by the actions of another, and secondly it is violent retaliation resulting in physical harm or death. Importantly, the collective decides how satisfaction for an offence is achieved (Finnane, 2001).

Indigenous peoples of Australia and Canada share comparable experiences of colonisation and subsequent destruction of culture, communities, and ways of being. In Australia, Aboriginal peoples were subject to mass dispossession of land via theft, loss of culture, the taking away of their children, the desecration of Aboriginal sites, and the dismissal of Aboriginal Law by the colonisers (Blagg, 2008). Furthermore, populations of Aboriginal peoples in many areas were decimated by disease and killing. This frequently occurred when Aboriginal peoples were resisting colonisation and making attempts to either contain the invasion or otherwise exact cultural justice by seeking compensation for offences committed by the settlers (Finnane, 2001).

An additional tool of colonialism and subjugation faced by Aboriginal peoples of Canada was the reserve system, whereby they were inducted into marginal geographic, social and economic structures. The establishment of reserves imposed on Aboriginal peoples mainstream social structure disrupting traditional social control practices, roles and obligations. In this way it had profound impacts on traditional family life, relationships within the community, and group authority, thus contributing to a decline in interdependency. The differing stratification of social structures within reserves created new social and economic divisions between individuals and families, not to mention confining and restricting the movement of Aboriginal peoples (LaPrairie, 1997).

As outlined in regards to the Māori experience, a feature of colonisation is marginalisation. Indeed, in Canada colonial endeavours seized Aboriginal peoples' political and cultural autonomy and led to economic marginalisation (Hamilton & Sinclair, 1991). Moreover, Aboriginal marginalisation is reflected in high rates of unemployment, low educational achievement, poverty and poor living conditions (Wood & Griffiths, 2000). The vulnerability of Aboriginal peoples to involvement with the criminal justice system is exacerbated by cultural disenfranchisement, alongside disadvantageous social and economic conditions, where there are limited resources and scarce opportunities (LaPrairie, 1997). Similarly, in Australia the social, economic, and cultural marginalisation of Aboriginal peoples is asserted as being inextricably linked to Aboriginal involvement with the criminal justice system (Royal Commission into Aboriginal Deaths in Custody, 1991, cited in Cunneen, 2006). In this way the high rate of Aboriginal encounters with the criminal justice system is viewed as a symptom of distress, locating the cause of the issue in the systemic disadvantage suffered by Aboriginal peoples in Australia (Cunneen, 2006).

'Over-representation'

In 1991 in Australia The Royal Commission into Aboriginal Deaths in Custody was completed and findings from this have since become integral to any discussion about Aboriginal peoples experiences with the criminal justice system. A key argument was that a number of both historical and contemporary factors interact to contribute to Aboriginal over-representation in the criminal justice system. Alongside recognition of the weight of historical experiences, it emphasised that the patterns of interaction between Aboriginal people and non-Aboriginal society were directly influenced by experiences of colonialism and other adverse events in the recent past (Royal Commission into Aboriginal Deaths in Custody, 1991, cited in Cunneen, 2006).

In consultation with Aboriginal communities The Victorian Aboriginal Justice Agreement (State Government of Victoria, 2010) identified a range of factors contributing to Aboriginal peoples over-representation in the criminal justice system.

These included those already outlined regarding socioeconomic disadvantage as a result of dispossession, particularly from land and culture. In addition it was recognised that there was a lack of confidence in criminal justice institutions as a result of a history of criminalisation of Aboriginal peoples and cultural alienation. Importantly, racism and the exclusion of Aboriginal peoples were also viewed as contributing factors. Overall it was argued that the criminal justice system reinforces social values that are frequently at odds with those of the Aboriginal community. The criminal justice system has played a direct role in imposing an alien set of values on Aboriginal people, then criminalising when they will not, or cannot conform to them. In this way the values, beliefs and practices of Aboriginal peoples are marginalised or treated as forms of anti-social behaviour (State Government of Victoria, 2010).

Aboriginal people in Australia are described as being amongst the most imprisoned people in the world (Blagg, 2008). This has intergenerational effects and Aboriginal children are vulnerable to increased difficulties as they are four times more likely to experience paternal imprisonment, compared to non-Aboriginal children (Dennison, Stewart, & Freiberg, 2013). Not only do Aboriginal peoples in Australia have mass dealings with the criminal justice system as offenders, they are also subject to extreme levels of victimisation and are entangled in a perpetual cycle of inter-generational violence (Blagg, 2008). Furthermore, high victimisation rates have been linked to increasing vulnerability to crime, particularly in the context of family violence (State Government of Victoria, 2010).

Similar to findings for young Māori (Fergusson et al., 1993a), studies have found disparities in Australia between Aboriginal youths' self-reported offending and their involvement with the criminal justice system, relative to non-Aboriginal youths. Aboriginal youths' self-reported offending was about two times that of non-Aboriginal youths, yet Aboriginal youths were found to be 15.6 times more likely to be in juvenile detention centres. Questions have been raised about the treatment of Aboriginal young people by the criminal justice systems, in contrast to non-Aboriginal youths (Cunneen, 2006). It has been reasoned that the police, as gatekeepers to the criminal justice system

are fixated on managing the ‘Aboriginal problem’, so arrest and detention are a first resort in policing when dealing with Aboriginal peoples (Blagg, 2008).

In Canada, there is great diversity in the Aboriginal peoples in terms of cultures, languages and geography, however an attribute they share is high rates of crime and victimisation (Wood & Griffiths, 2000). Research examining trends of incarceration of Aboriginal peoples found little evidence that the issue of over-representation had improved in some 25 years, despite targeted policies (Roberts & Melchers, 2003). Frequently the high rate of imprisonment of Aboriginal peoples is explained in terms of cultural conflict between Aboriginal peoples and non-Aboriginal society and failure of the criminal justice system in its dealings with Aboriginal peoples (LaPrairie, 1997).

Hamilton and Sinclair (1991) additionally assert that discriminatory treatment by the criminal justice institutions contributes to Aboriginal peoples being more likely than non-Aboriginal people to be arrested, found guilty, and sent to a correctional institution. Indeed, a study looking specifically at differences between sentencing outcomes for Aboriginal and non-Aboriginal youths found that while there was no evidence that Aboriginal youths were more likely to receive a custodial sentence, there was evidence that Aboriginal youth were likely to receive a longer custodial sentence than non-Aboriginal youth, regardless of criminal history and offence severity (Latimer & Foss, 2005). A counter-argument to discriminatory practices in the criminal justice system is that studies have indicated individuals in the community, not the police, discover many criminal offences by Aboriginal peoples (Wood & Griffiths, 2000). However, to recall the findings of Fergusson et al. (1993a) in regards to police contact with young Māori, it was argued that there is a cycle of bias in the criminal justice system that in turn influences public perception of Māori as ‘criminals.’ It is suffice to say that public perception of Aboriginal peoples in Canada may also involve a cycle of bias.

Consideration has also been given to general social and economic deprivation, whilst acknowledging too the diversity of Aboriginal experiences and corresponding variation in offending rates. LaPrairie (1997) observed that Canadian regions with the highest

levels of unemployment, the lowest levels of education and income for Aboriginal peoples living both on and off reserves also have the most disproportionate incarceration levels. Furthermore, in research exploring regional variation in over-representation of Aboriginal peoples it was found that what increased vulnerability to involvement in the criminal justice system was social and economic factors, namely the concentration of poor, single parent, and lowly educated Aboriginal peoples in the inner core of large cities (LaPrairie, 2002).

Indigenous peoples vs. colonial discourses

Critical discussion regarding the Australian context argues that colonial discourses have been key in shaping and reinforcing taken-for-granted knowledge about Aboriginal peoples. Historically the criminal justice system has been utilised as an instrument of colonisation, and it was part of a much broader system of control founded to formalise the power and privilege of the colonisers; criminal justice institutions formed part of a range of institutionally racist developments to address the ‘Aboriginal problem’ (Blagg, 2008). These arguments hold true for Aboriginal peoples in Canada, where there has likewise been a history of colonialist domination, involving determined efforts to eliminate the ‘Indian problem’, which in effect has been devastatingly negative for Aboriginal peoples. Indeed the colonialist legacy in Canada has been described as catastrophic (Fleras & Elliott, 1992).

Colonial discourses have framed and represented Aboriginal peoples’ experiences with the criminal justice system as essentially a problem of order (Blagg, 2008). However, to shift away from constructions of the ‘Aboriginal problem’, the ‘problem’ may be more accurately located within the interaction between Aboriginal peoples, culture, and colonialism. In this way Aboriginal peoples of both Australia and Canada have been mutually opposed, with distinctive views of reality, to the colonisers. As follows the dominant culture seeks to elevate its position by compelling its version of reality on society, whereas the subordinate culture reacts by resisting (Fleras & Elliott, 1992).

Thus, the Aboriginal ‘problems’ are much less about order and essentially about power and resistance.

Institutional racism in the Canadian context has contributed to the subordination of Aboriginal peoples through policies and programs that perpetuate the status quo. Specifically, the criminal justice system has been unmasked as racist, culturally insensitive and hypocritical. Inequities for Aboriginal peoples are intensified by the competing cultures. The imposition of an alien political and economic system alongside this cultural conflict has confined Aboriginal peoples to the margins of society (Fleras & Elliott, 1992). Similarly, in Australia the effect of institutional racism maintains the dominance of non-Aboriginal values and principles and marginalises those of Aboriginal peoples. Aboriginal peoples perceive the criminal justice system as an alien institution that historically served to dispossess them of their traditional lands and children (State Government of Victoria, 2010).

Literature exploring social constructions in Canada charge colonial discourses and the project of ‘civilising’ Aboriginal peoples as means to validate violent interventions into Aboriginal families, communities, cultures, and lands. In contrast, non-Aboriginal institutions and colonialist regimes are framed as helping and protecting Aboriginal peoples ‘for their own good’, whilst also enabling colonisers to distance themselves from what were coercive and violent actions and policies. In this way, colonial discourses and associated practices collusively produced poor wellbeing for many Aboriginal peoples and communities (de Leeuw, Greenwood, & Cameron, 2010).

Conclusion

Aboriginal peoples’ involvement as offenders with the criminal justice system and their extraordinary rates of victimisation are a reflection of the many layers and patterns of disadvantage and marginalisation they experience. It is imperative these phenomenon are situated within the historical framework to enable an understanding of processes of colonial dispossession, genocide, and assimilation, as well as forms of resistance to such

processes (Blagg, 2008). Indeed, there is a call for a multifaceted conceptualisation of Aboriginal experiences or ‘over-representation’ within the criminal justice system in Australia. Key to this is concession to historical and structural conditions of colonisation, of social and economic marginalisation, and institutional racism (Cunneen, 2006).

There are substantial arguments that the current situations of Indigenous peoples have been directly influenced by colonialism and that the very foundations of modern western societies are based on “colonial pillage and the oppression of colonised peoples” (Blagg, 2008, p. 12). Histories of assimilatory and integrative government policies have been destructive to Aboriginal interests and colonial systems have served to perpetuate a depressing cycle in which Aboriginal peoples are recurrently incarcerated by an alien and alienating system (Fleras & Elliott, 1992). Without realisation of this there can be little understanding of the depths of Aboriginal peoples’ sense of alienation from, and frustration with, existing systems of justice. The imported criminal justice systems are said to rarely have relevance to Aboriginal communities, for if non-Aboriginal systems were to reduce crime and violence amongst Aboriginal peoples, this would have occurred some time ago (Blagg, 2008).

In the following section the focus moves to critical social psychology research on racism. Having established a solid foundation spanning; traditional Māori legal and justice systems, the historical experiences of colonisation for Māori and Aboriginal peoples of Australia and Canada, the imposition of the colonisers’ law and justice, and the contemporary situation of Māori and other Indigenous peoples’ involvement with the criminal justice system, it is now time to consider specifically the literature exploring the language of racism. Aotearoa, New Zealand has been a hub in terms of discursive research on racism. Literature about race talk in both the local and Australian contexts is reviewed, specifically in regards to Indigenous and non-Indigenous ethnic relations, the construction of ethnic rights, and maintenance of existing power relations.

Critical social psychology and racism

Critical social psychology as a standpoint, considers that the study of racism is best achieved by examining the ways in which racism appears in talk and text. Through language the resources that build understandings of racism can be explored. Thus racism is considered as fluid and variable, occurring between people in talk and interaction, not as a concrete aspect of an individual (Tuffin, 2005). The emphasis of discursive studies of racism is on the ways in which society gives voice to racism and the role of discourse in creating and reproducing social formations (Wetherell & Potter, 1992). Pointedly, the pervasiveness of racism throughout societies and history establishes it as an issue of particular interest to social psychology (Tuffin, 2008).

What follows is an outline of the study of racism from critical and discursive approaches within psychology. Foundational research within the local context is reviewed, much of which explores race talk of Pākehā and the effects of their talk in accounting for and justifying colonialism and existing power relations. Consideration is given to the broadening aims of critical research in terms of surveying alternative and argumentative discourses that can be used to challenge racism. Lastly, studies investigating perspectives of those who are targets of racism, namely Māori and Aboriginal Australians, are summarised.

The study of racism

Critical social psychologists consider that modern forms of racism are subtle, for the delicacy and complexity with which racist talk is deployed enabling it to be socially acceptable. This is contrasting to past forms of racist talk that are referred to as blatant, or old-fashioned, and manifest as direct and explicit in opposing racial equality (Augoustinos, Tuffin, & Rapley, 1999; Tuffin, 2008). Augoustinos et al. (1999) suggest that modern racism draws on ideas of individualism to shape disadvantage experienced by Indigenous peoples and minority groups as resulting from failings on the part of

individuals. As such, modern racism holds that intervention at a societal level, necessitating government involvement, is unwarranted as the hardship experienced by these groups is of their own doing.

Alternative approaches to the study of racism have grown in response to the changing appearance of racism. Whereas traditional views embedded in positivist psychology assumed racism was fixed and consistent, situated within individual attitudes, discursive psychology focuses on the details of talk and text. Importantly, what is said or written in various forums, including but not limited to, conversation, media, and political debates and speeches is highly contextualised therefore local and responsive to the evolving socio-politics of racism (Tuffin, 2008). There are calls to curb positivist assumptions that language is neutral and instead appreciate that language is shaped and shaping in the way it is used to produce particular meanings. Accordingly language is fundamental to the understandings of social relations from interpersonal to political (McCreanor, 1997). Central to critical studies is acknowledgement of the interactions between language and power that reproduce social order (Wetherell & Potter, 1992). Indeed, discursive studies of racism are concerned with the way in which language is organised in certain contexts to legitimate the blaming of Indigenous or minority groups (Potter, 1996).

In discussing race talk in Aotearoa, New Zealand, Tuffin (2008) highlights there is a substantial amount of discursive work documenting oppressive talk that renders Māori rights illegitimate. However, such work had not provided argumentative alternatives (Kirkwood, Liu, & Wetherall, 2005). While early discursive studies, particularly in the local context, were directed toward mapping and understanding the language of racism, there has been a shift in the research agenda in recent years to consider ways to confront dominant oppressive discourse and legitimate Māori rights.

The language of racism: Non-Indigenous discourses

Seminal discursive research on racism in Aotearoa, New Zealand is that of Wetherell and Potter (1992) which focussed on the discourse of Pākehā regarding ethnic relations.

The study was comprehensive with in-depth analyses of the ways Pākehā justified past exploitation and continued disadvantage for Māori. Emphatically, it is argued that racism is a manifestation of the pattern of uneven power relations and is rooted in the social and structural, rather than in the personal and psychological. Points of particular interest to the current discussion centre on the construction of Māori culture as heritage and as therapy. In framing Māori culture as heritage, it is cemented in the past, unchanging, and Māori must preserve rituals, traditions, arts, and crafts. In this way Māori culture is neither suited to the present nor the future. Such constructions served to delineate Māori from modern politics, dissociating activism from ‘true’ Māori culture. Also, culture as heritage was used to substantiate claims that the modern world is distressing for Māori and Māori representation in negative social indices was explained in terms of ‘culture shock’. As therapy Māori culture is shaped as a psychological need and right with a focus on identity, values, roots, and pride. Modern Māori were constructed as lost, disabled through lacking identity, searching for meaning, and as such prone to crime and disorder. This effectively shaped Māori as not simply deficient relative to Pākehā, but as deficient Māori, and the onus for this deficiency is located with Māori. Whereas Māori activists had called for identity revival alongside social and political reform, situating loss of Māori identity as an effect of social disadvantage in Pākehā dominated society, Pākehā used culture as therapy to construct Māori grievances as solely Māori difficulties and weaknesses. Culture discourse highlights naturally occurring differences and is a form of self-sufficient explanation that accounts for Māori ‘fatal flaws’ as within traditional practices, attitudes, and values. Simultaneously through the advocacy of respect and tolerance for difference culture discourse masks colonialism, power relations, and exploitation with a narrative of clashing cultures.

Nairn and McCreanor (1990, 1991) also laid foundations in discursive psychology studies of racism. With a focus on ethnic relations between Māori and Pākehā, they analysed Pākehā submissions regarding a violent confrontation between Auckland University students performing a parody haka and a group of Māori and Pacific Islanders who objected to the parody. Asymmetrical discourses of sensitivity were identified, in terms of Māori hypersensitivity and Pākehā insensitivity (Nairn &

McCreanor, 1990). These functioned in practical ways to account for ethnic tension and attribute blame primarily to Māori reactions. With the discourses focal point being on the hypersensitive or insensitive individual this distracted attention from the wider social issue of power imbalance between Māori and Pākehā. Attributing blame to both sides, though more severely to Māori, appeals to common sense and in so doing maintains and normalises Pākehā position of power.

In subsequent analysis by Nairn and McCreanor (1991) Māori are dichotomised as ‘good’, those who conform with and contribute to mainstream society, and ‘bad’, those who fail to conform and contribute or alternatively resist doing so. The main function of the ‘good’ Māori, ‘bad’ Māori construction is to divide Māori and therefore legitimate questioning as to why all Māori are not ‘good.’ Simultaneously, Pākehā are absolved from blame in terms of their role in power relations, and Māori are set in opposition to each other. Pākehā contribution to problematic ethnic relations is not considered and issues of Māori disadvantage are avoided, as blame is located with certain ‘stirrers’. Indeed it is the ‘stirrers’ who are framed as responsible for racism in their advocacy for Māori rights. Of note is the notion of the standard story in reference to the common sense way of understanding and talking about ethnic relations. The standard story is seen in the splitting of Māori as ‘good’ and ‘bad’ and likewise in the ‘us’ as reasonable and ‘them’ as troublemakers division created by the ‘stirrers’ pattern. By appealing to common sense and what is widely accepted as true to dominant groups, the standard story functions to mask the ethnic and cultural aspects of power structures, maintaining oppressive social relations.

McCreanor (1997) highlights the durable pattern of dividing Māori in to categories of negative and positive, ‘noble’ and ‘savage’, ‘good’ and ‘bad’ (Nairn & McCreanor, 1991). By examining the historical production of dominance in early colonial texts, namely ‘The Colonists Handbook’, it is argued that there was a permeation of deeply rooted notions of European superiority since Pākehā first arrived. Discursive resources were used to construct Māori as at once positive and negative in nature, ‘noble’ and ‘savage’. The construction of the Māori ‘savage’ has been an historical source of Pākehā

rationalisation for colonial processes of dispossession. Further it is asserted that the history of colonisation and early characterisations of Māori provided the foundations for contemporary racism.

Following on from the notion of the standard story Tuffin, Praat, and Frewin (2004) develop an alternative story of Māori and Pākehā relations. Frequently discourses taken up by Pākehā are shown to place blame on Māori for difficulties in ethnic relations. However, by privileging Māori understandings, for example by referring to Te Tiriti o Waitangi (the Māori version rather than the English) as legitimate, traditional power relationships are reversed. Furthermore, the issue of sovereignty is proposed as being important to all peoples of New Zealand, not solely Māori. Recognising sovereignty as a national issue enables questioning of the standard story. By situating misunderstanding and discrimination with the Crown and constructing Māori and Pākehā alike as victims of colonisation, there emerges an alternative discourse to legitimate Māori rights. By exploring the marginalised issue of Māori sovereignty moves are made beyond unveiling the function of discourses in bolstering racist agendas, to focus on discourse that challenges understandings of The Treaty of Waitangi. Thus, there is potential for more positive ethnic relations and an avenue for contemporary politics to be challenged (Tuffin, 2008).

Kirkwood et al. (2005) build on alternatives to the standard story arguing that much of the discursive research on racism shows how Indigenous or minority rights are discredited, however it falls short of proposing argumentative alternatives. The analysis focused on the ways various national, ethnic, and ancestral identities are mobilised to support Māori rights, emphasising the significance of referring to Māori as tangata whenua, people of the land, to legitimate Māori place and rights. A pivotal rebuttal to the standard story is recognition of the continuation of colonisation, that it was not a discrete past event. It is asserted that there are empowering subject positions and argumentative resources, in terms of discrimination and ethnic rights, that can be taken up by Pākehā to endorse Māori rights. Importantly, an argument is built to link social

critique with intervention by exploring alternatives to the standard story and positioning challenges to such as a form of political activism.

Paralleling the foundational study by Wetherell and Potter (1992), Augoustinos et al. (1999) to identify patterns in talk about ethnic relations in Australia, in particular how discourse about Aboriginal peoples and racism was constructed by white Australians. In line with previous research (Nairn & McCreanor, 1991; Wetherell & Potter, 1992) race talk was found to be occasioned, variable, flexibly deployed, and entrenched with a discourse of colonial superiority and domination. Aboriginal peoples were positioned as ‘other’ and constructed as culturally inferior, with the negative constructions and problematizing of Aboriginal peoples permeating through talk. Aboriginal peoples were blamed for their own plight, which enabled rationalisation of existing social relations and inequities. A prevailing feature of modern racism is its denial, specifically at institutional levels, and non-Indigenous Australians were found to employ various denial strategies to discount racism. It is further argued that the creation of a cultural hierarchy is central to the covert and subtle nature of modern racism, and discourses enabling justification and legitimization of oppression were observed as internationally pervasive.

The language of racism: Indigenous discourses

While there is a body of critical literature exploring the language of racism, particularly in Aotearoa, New Zealand, there are few studies that consider Indigenous peoples’ perspectives and the function of their talk in accounting for racism. Indeed Kirkwood et al. (2005) recommend further research in the field analyse the subject positions and arguments taken up by Indigenous peoples when commenting on discrimination and legitimating Indigenous rights. Perspectives of targets of racism remain largely unexplored, producing a narrative of race talk that is detached from the lived experiences of those who are frequently the subjects of racism, namely Indigenous peoples or minority groups (Pack, Tuffin, & Lyons, 2013). Through considering and respecting perspectives other than those of the dominant culture, there is a growing

awareness of the range of racism experienced by Indigenous peoples. In this way, Indigenous peoples' knowledge of racism is accepted as important, and can be incorporated in to theorising about racism (Mellor, 2003).

To redress the apparent imbalance in discursive psychology work Pack et al. (2013) explore the talk of targets of racism, specifically aiming to examine the ways in which Māori and their Pākehā partners account for racism. Of the four discursive patterns that emerged, ignorance, media, superiority, and institutional racism, it is suggested that the discourses of ignorance and superiority provide new areas for understanding racism. Racism toward Māori from Pākehā is constructed as emanating from ignorance, and this ignorance enables racism to perpetuate because it continues unchallenged. The discourse of superiority bluntly attributes racism as stationed within Pākehā assumptions of Māori as inferior intellectually, morally, and culturally. Thus, a situation is constructed in which Pākehā are imbued with an innate sense of their own superiority, and Māori have minimal hope of Pākehā appreciating the historical injustices and contemporary inequalities Māori experience. Pākehā are also positioned as involved in institutional racism, which is used to position Māori below Pākehā in a hierarchy derived from colonialism. However, the linguistic resources used by Māori position Pākehā as unaware, rather than sinister, and Pākehā too are victims of colonialism and associated assumptions of superiority. A point of contrast in the study to previous literature is Māori reports of blatant and offensive racism, which diverges from arguments that modern racism manifests in subtlety, ambivalence, and plausible deniability.

Similarly (Mellor, 2003) sought to focus on the views of the targets of racism in Australia, with Koori, a particular community of Aboriginal peoples. Though the research was not discursive in its approach, meaningful themes emerged in terms of how Koori construct racism. Significantly, daily life for Koori was constructed as tainted by racism, and much of the racism experienced, both verbal and behaviour, was categorically blatant and old-fashioned. Therefore, the idea of modern forms of racism presenting as subtle and delicately deployed are questioned. There were patterns too of overt institutional racism, as harassment, assault, and brutality from police was

commonly reported and accounted for on the basis of their Aboriginality. Aligning with the superiority discourse (Pack et al., 2013) Koori were shaped as having no place in culturally superior mainstream society. The pervasive dominance of white culture and colonialist attitudes was used to account for disruption to the integrity of Koori communities, their life prospects, and it confined Koori capacity to engage with their culture. Indeed, this research illustrates the obligation of critical research to connect with Indigenous perspectives, because evidently the experience of racism for Indigenous peoples is not necessarily subtle.

Te Hiwi (2007) explored lived experiences of racism for Māori and the impact of this in terms of identity. It is argued that racist acts create a sense of inferiority, of ‘other’ for Māori. This experience of ‘othering’ compromises identity when Māori themselves internalise the notion of their identify as inferior and reinforce it. The ongoing distress of earlier generations’ experiences of colonialism and assimilatory policy as well as recurrent devaluing of cultural beliefs are framed as intergenerational wounds. Although racism was seen to dislodge Māori identity, the practice of reclaiming identity was shaped as a space of transformation and potential, to create a positive Māori identity for future generations. It is underlined that those who have been marginalised are acutely aware of their ‘otherness’ in their talk and actions. Whereas being white entails being normal, therefore there is an unawareness of ‘whiteness’ in regards to talk and actions. In effect, ‘whiteness’ as normal constructs efforts by ‘others’ to reclaim space as a demand for special treatment or ‘brown privilege’. Indeed the normality and pervasiveness of ‘whiteness’ is argued as key to maintaining power relations.

Conclusion

There is a solid foundation of discursive psychology research in Aotearoa, New Zealand detailing understandings of the patterns of racist talk and underlying socio-political factors that have constructed and are constructive in Māori and Pākehā ethnic relations. From the early influential work (Nairn & McCreanor, 1990, 1991; Wetherell & Potter, 1992) there is a clear and chronic pattern of colonialism and oppressive power relations

rooted within the language of racism. It is the durability of these patterns that the more recent work (Kirkwood et al., 2005; Tuffin et al., 2004) seeks to dismantle. Supplementary to the project of building on viable alternatives to the standard story is research that considers Indigenous peoples' accounts of racism in order to substantiate and further develop theories of racism (Mellor, 2003; Pack et al., 2013).

For Tuffin (2008) discursive researchers are positioned as responsive, engaged and politically aware. If the aim of the critical study of racism is to understand how the language of racism works, then this certainly necessitates researchers more proactively challenge racist rhetoric by exploring alternatives to the standard story and by seeking out Indigenous discourses. Indeed, in tracking the chronology of literature this appears to be the direction of the discipline.

This concludes the introductory chapters and literature review; following is an overview of the theoretical orientation of the current research project. Discursive psychology and Kaupapa Māori are considered alongside each other and woven together to create a distinctive approach. The pragmatics and applications of these approaches are then detailed in the method.

Te wāhanga tuawhā – Theoretical orientation

Weaving Kaupapa Māori with discursive psychology

Kaupapa Māori research and discursive psychology both align with critical theory and are equally concerned with exposing underlying assumptions that conceal power relations in society. Primarily both approaches seek to uncover the ways in which dominant groups construct taken-for-granted knowledge and attend to how these constructions maintain inequalities. Specifically, Kaupapa Māori research is both a resistance and reconstruction strategy that confronts the continued oppression of Māori. However, discursive psychology too, being similar in its foundations complements Kaupapa Māori aspirations.

The current research asks, how do Māori account for their experiences within the criminal justice system, and explicitly, how do Māori account for institutional racism within the criminal justice system? With these questions in hand the weaving of Kaupapa Māori with discursive psychology enables an approach to the research aims that; is culturally appropriate, challenges the status quo of frequent Māori encounters with the criminal justice system, resists pervasive ideas of Māori as deficient, and considers the role of language in constructing taken-for-granted knowledge. What follows are summaries of Kaupapa Māori research and discursive psychology, locating them within specific epistemologies and broader frameworks. The respective approaches are then woven together and applied to the current research project.

Kaupapa Māori research

Kaupapa Māori is appreciated as the Māori way or agenda. Kaupapa Māori research therefore is founded within an inherently Māori epistemology (Henry & Pene, 2001). Whereas traditional research epistemologies are situated within the cultural practices and preferences of the Western world, a Kaupapa Māori epistemology is firmly founded

in the cultural practices and preferences of Māori. This distinctly Māori epistemology frames the way the Māori research collective, including the researcher and the researched, see the world, the way they organise themselves in it, the questions they ask and the solutions they seek (Tuhiwai Smith, 2012). Kaupapa Māori research therefore challenges the dominance of traditional, individualistic research, which primarily benefits the researchers and their agenda, and in this way operationalizes tino rangatiratanga (Bishop, 1998).

Kaupapa Māori research is characterised as; culturally safe, relevant and appropriate research, guided by kaumātua (elders), and undertaken by Māori (Irwin, 1992). At its core Kaupapa Māori research is about being Māori; it assumes Māori philosophies, Te Reo Māori, and Māori culture are valid and legitimate (Tuhiwai Smith, 2012). Kaupapa Māori research is wholly concerned with the entitlement and privilege of knowledge and resists traditional Western approaches to research involving Māori. While historically research has been undertaken *on* Māori, Kaupapa Māori research undertakes research *with* and *alongside* Māori. Kaupapa Māori research seeks to retrieve space for Māori voices and stories to be heard. As such it is an exercise in the empowerment of Māori to reclaim control of research into Māori experiences.

Māori knowledge and traditional Māori ideas regarding knowledge are distinct. Knowledge for Māori is described as being in the service of the community, as knowledge upholds the interests and mana of the group. Also, Māori have significant oral traditions therefore knowledge was not universally available. Particular knowledge was highly valued and tapu and when entrusted to particular individuals it was transmitted accurately and used appropriately. Thus, the prized status of knowledge calls for respect and protection (Cram, 1997; Walker, Eketone, & Gibbs, 2006). However, colonialism negotiated the undermining of traditional Māori conceptions of knowledge and the legitimacy of Māori ways of doing and practicing knowledge. Traditional Western approaches to research have maintained colonial values, misrepresented Māori understandings of knowledge and in effect belittled Māori knowledge (Bishop, 1998). In effect knowledge production about Māori and the dissemination of such engaged in

processes of re-colonisation. There has been extensive research *on* Māori and Kaupapa Māori research literature points to the exploitative and objectifying nature of this practice (Cram, 1997; Tuhiwai Smith, 1999). Prior to colonisation Māori had a means of accessing, defining, and protecting knowledge, and the Treaty of Waitangi is charged with protecting these culturally significant practices. Kaupapa Māori research is fundamentally related to Māori understandings of knowledge, therefore it not only seeks to take a unique approach to Māori knowledge in an effort to appreciate its status; Kaupapa Māori research is importantly a political practice, to challenge colonising constructions of ‘knowledge’ about Māori.

The importance of *tino rangatiratanga* is a constant theme throughout the literature and *tino rangatiratanga* is viewed as the essential principle of Kaupapa Māori research (Walker et al., 2006). Situated within a wider context of enduring Māori efforts for self-determination, Kaupapa Māori research is fundamentally connected to discourses surrounding The Treaty of Waitangi (Tuhiwai Smith, 1999, 2012). *Tino rangatiratanga* is a contentious and ongoing political issue (Bishop, 1998) and an equally contentious research issue as Māori are regaining empowerment and control over research and asserting their right to determine the investigations into their lives (Tuhiwai Smith, 1999). Connected with *tino rangatiratanga* is the principle of social justice, which centres on the use of Kaupapa Māori research to challenge prevailing inequalities as well as inappropriate power relations and social practices that disadvantage Māori. Social justice relates to the objective of Kaupapa Māori research to bring about benefits for Māori. In line with Māori aspirations to have control over research it is also imperative that research be beneficial by ensuring a greater quality of life for Māori and by fostering the development of Māori research capabilities (Walker et al., 2006).

Five key principles of Kaupapa Māori research have been drawn from the literature, *tino rangatiratanga*, *whānau*, *Te Reo Māori*, *whakapapa* and *tikanga*. The meanings and ways in which they guided the current research project will be outlined in the method.

Discursive psychology

Discursive psychology, as one avenue of work within critical social psychology, is located within a social constructionist epistemology and challenges traditional taken-for-granted approaches in psychology (Tuffin, 2005). Maintaining a polarised position to positivism and empiricism, social constructionism concedes that ways of understanding the world and particular forms of knowledge are not only historically and culturally bound, but also products of cultures and periods of history. The focal argument follows that through daily interactions and social processes, particularly the use of language, common understandings and knowledge of the world are constructed. These versions of knowledge operate to sustain some patterns of social actions, whilst excluding others, therefore constructions of the world have implications for power relations, for what is enabled and what is constrained by particular constructions (Burr, 2003). Therefore, from a social constructionist standpoint psychological knowledge is approached not as something to be located within the interior of the mind but as something to be studied in interactions, conversations, and relations (Tuffin & Howard, 2001).

Discursive psychology is concerned with how talk and texts are used to perform actions with its primary focus being on the analysis of interaction (Potter, 2003). With a dual focus, discursive psychology is both concerned with what people do with their talk, that is their discursive practices, and the resources that are drawn on in the course of those practices. In this way a discursive approach is concerned with how discourse is constructed to perform social actions, and it treats the content of talk as precisely where the action is (Potter & Weatherell, 1995). As follows, a key principle of discursive psychology is the action orientation of talk and text, that discourse is the primary medium of action and interaction amongst people (Potter, 2003). That is to say that talk and writing are constructed with consideration to the facilitation of tasks such as explanations, justifications, blaming, denial, accusations and excuses (Tuffin & Howard, 2001). In this way, discursive psychology focuses on issues concerning stake and accountability, surveying the ways in which people manage issues of blame and responsibility in their talk and text (Potter & Weatherell, 1995).

Discursive psychology assumes that language is central to the construction of identity, which is accordingly thought of as fluid, multiple and constructed. From this position the study of racism is best achieved by examining the ways in which racism appears in talk and text. Language provides means to explore the resources that build understandings of racism, thus racism can be examined as something that occurs between people, in talk and interaction, rather than as something fixed to an individual's identity. Furthermore, the action orientation of discursive psychology proposes that racism is pervasively embedded in language and the categories, groupings, identities and evaluations involved in racism occur in and through language (Tuffin, 2005).

A feature of discursive psychology is the identification of interpretive repertoires as a means to understand the content of discourse and how that content is organised (Potter & Weatherell, 1995). Interpretive repertoires are simply defined as culturally available linguistic resources that people use in building accounts (Burr, 2003). The task for researchers is to distinguish clusters of terms, descriptions, and figures of speech commonly organised around metaphors or imagery. Linguistic resources are available for making evaluations, constructing factual versions, and performing particular actions (Potter & Weatherell, 1995). By examining talk of different people about a topic, patterns emerge in recurring metaphors and images and can be collated and identified as belonging to a particular repertoire (Burr, 2003).

Discursive psychology gives prominence to how ways of speaking about the world are inseparable from ways of understanding it. In terms of studying racism, the spotlight is on the ways in which racism occurs in talk, between people, and the application of discursive psychology in this context is outlined in the method section that follows.

Method

Consultation

Consultation occurred in the early stages of the research project with Dunedin Māori service provider, A3K, a subsidiary of Ōtākou rūnaka, Ōtākou who are manawhenua and have authority over the district. A3K have a close working relationship with the Department of Corrections and facilitate tikanga Māori based programmes to individuals and whānau involved in the criminal justice system. Likewise discussions were had about the project foundations, aims and methods with a kaumātua, Hata Temo, who is esteemed for his work within the local community as well as being familiar with the operations of criminal justice system. It was important to not only consult with key stakeholders in the Dunedin Māori community, so as to hear and respond to their feedback, but also to gain their endorsement for the project, given the research would be taking place with Māori in Dunedin.

The consultation process was informed by Kaupapa Māori research principles of tino rangatiratanga and whānau. Initial research questions were addressed to the local Māori community, to enable Māori cultural aspirations, understandings, and practices to organise and fulfil the research process (Bishop, 1998). The principle of whānau is conceived as a way of organising Kaupapa Māori research and providing a support structure (Tuhiwai Smith, 1999). As part of the research whānau A3K played a role in recruiting participants and enabled whakawhanaungatanga, the building of relationships, between the participants and the researcher. Also, another community counselling service, Mirror HQ, was later brought in to the research whānau, to increase participant recruitment, and they also facilitated whakawhanaungatanga with participants. An important whānau role in Kaupapa Māori research is that of the kaumātua (Walker et al., 2006) and the kaumātua offered meaningful guidance, support, and knowledge. Tuhiwai Smith (2012) summarises that “the whānau provides the intersection where research meets Māori, or Māori meets research, on equalizing terms” (p. 300).

Participants

Criteria for participation in the research project were identifying as Māori and having had some kind of involvement with the criminal justice system. Involvement with the criminal justice system was outlined as having been arrested and, or charged with a criminal offence by the Police, being tried and, or convicted and sentenced in the Courts, or having been imprisoned and, or subject to a community-based sentence.

There were five participants in total, four male and one female, all of whom identified as Māori and had histories of interactions with the criminal justice system. Many of them were currently involved with various criminal justice institutions. Participants were offered anonymity in the project, however four of them (Wayne, Dain, Mickey and Adam) opted to be identified by their first names in the thesis and declined a pseudonym. For the researcher this appeared to be the participants' way of embodying tino rangatiratanga, determining for themselves the representation and ownership of their stories.

Initially it was intended that there would be 12 participants, to provide a robust amount of data for analysis. However, there were difficulties in the recruitment process, which included changes in contracts between A3K and the Department of Corrections, potential participants declining to participate, and potential participants not responding to contact from the researcher. Engagement with the criminal justice system is often a trying and sensitive experience therefore the reluctance of many to participate in the research project is understandable. Add to this that Māori have distinctive experiences with the criminal justice system, which may make experiences increasingly trying and sensitive to discuss, and as such participation in the research may have appeared too daunting.

Interviews

Interviews within discursive psychology have both benefits and pitfalls. The main benefits being; they enable a relatively standard range of issues to be discussed with a range of participants, and they enable control over sampling, alleviating ethical issues in terms of permissions and recording. However, the difficulty with interview talk includes the expectations about the research held by participants, the contrived nature of interviews, and the abstraction of participants from the normal settings of their lives and therefore from the stake and interest they usually have (Potter, 2003; Potter & Weatherell, 1995). Potter (2003) highlights that whereas the aim of traditional survey interviews is to neutrally access information, by contrast the aim in discursive psychology is to encourage conversation in order to observe certain discursive practices and identify the discursive resources drawn on in those practices.

Interviews were undertaken for a number of reasons; firstly, the research topic would have been difficult to locate in naturalistic settings or materials, secondly, sensitivity surrounding experiences with the criminal justice system would have posed various ethical dilemmas in terms of accessing naturalistic talk or text, and thirdly, in order to empower Māori participants and enable a transparent process within a Kaupapa Māori research framework, interviews were considered favourable. Indeed Potter and Weatherell (1995) note the technical and practical complexities of collecting a body of naturalistic material on a topic such as racism.

The Kaupapa Māori research principles of tikanga, whakapapa, whānau and Te Reo Māori were thread throughout the interview process. As Tuhiwai Smith (1999) asserts tikanga is concerned with being able to navigate oneself within a context regulated by Māori values and practices as well as being able to clearly interpret what occurs within such a context. In engaging with Māori communities or individuals, tikanga is at the forefront. Correct behaviour is imperative in such practices and processes as; the way researchers enter a community, their conduct as members of a research project, and engagements with Māori. Recognising and abiding by Māori cultural practices is

essential because there are significant consequences to incorrectness, or rather contravening tikanga. In terms of whakapapa, Māori identity comes from whakapapa, it is a way of tracing lineage but also about how Māori connect to everything else. Whakapapa can be traced to the beginnings of time, and it positions and relates Māori to all other things in existence, other people, the landscape, and more broadly within the universe (Bishop, 1998; Tuhiwai Smith, 1999). Intertwined with whakapapa is the principle of whānau, in the form of whakawhanaungatanga, and introducing oneself in the context of whakapapa is both culturally meaningful and integral to the process of establishing relationships (Bishop, 1998). The principle of Te Reo Māori relates to the appropriate use of Te Reo Māori. It is expected that researchers understand the requirements when interacting in Te Reo Māori and that they are able to participate in interactions (Tuhiwai Smith, 1999).

The researcher's whakapapa was outlined in the Information Sheets (see Appendix C and Appendix D), which all of the participants had received prior to the interviews. This was also revisited prior to commencing each of the interviews to engage in whakawhanaugatanga, and as per tikanga participants were invited to introduce themselves and their whakapapa. Importantly whakawhanaungatanga and the identification or formation of enduring relationships, be they past, present or future, enables in-depth content to be shared and entrusted to Māori researchers (Walker et al., 2006). In further accordance with tikanga, interviews commenced and concluded with a karakia (prayer), though it was first checked with participants that this was agreeable. Participants were invited to offer the karakia, however if they declined the researcher shared karakia appropriate to the setting.

Interviews were loosely structured around a series of open-ended questions (see Appendix G). The questions ranged over experiences within the criminal justice system, including but not limited to, participants' initial and overall experiences, their interpretations of their treatment as a Māori, and their understandings and experiences of institutional racism. Potter and Weatherell (1995) note the tact required in order to balance a natural flow of conversation in interviews with ensuring each topic is

addressed, with each participant. The intent of the interviews was to embody this balance, with the researcher occasionally engaging in conversation and allowing some digression from the format, whilst still encouraging dialogue around each of the planned questions. Interviews were recorded and transcribed using the conventions of standard orthography.

Te Reo Māori featured frequently in participants' talk throughout interviews and Te Reo is fundamental to appreciating Māori philosophies, culture and essentially a Māori worldview (Tuhiwai Smith, 1999; Walker et al., 2006). Some expressions and statements in Te Reo Māori connect with Māori histories and values and Te Reo Māori is vital to truly grasping Māori ways of knowing; it connects language, knowledge and culture (Tuhiwai Smith, 2012). The researcher is capable in Te Reo Māori and was able to suitably engage in conversation with participants when Te Reo was used.

Analysis

The process of analysis commences with a stage of preliminary coding and Tuffin and Howard (2001) propose two methods to do so. The first is utilising computer programme tools to locate particular words and phrases in order to isolate pertinent pieces of participants' talk. The second, which was employed in the current analysis, involves a close reading of the text by the researcher who manually identifies relevant extracts. The advantages to the latter approach are that it engages the researcher in a process of becoming intimately familiar with the text, which is acknowledged as an integral element of discursive research. Additionally, it provides an opportunity for the researcher to reconsider their own understandings of the topic and may reveal characteristics of the topic not before considered. Close reading can begin at the transcribing stage, if the researcher undertakes this task, which is recommended (Tuffin & Howard, 2001). Indeed, in the current project the researcher transcribed the interviews, followed by manual preliminary coding, therefore enabling a thorough engagement with the text from the outset of the analysis.

The second step, coding, is to carefully organise the data into discrete categories, to form the backbone of the analytic process. This process promotes analytic focus and enables recognition of similarities and differences within the talk. It is stressed that categories should emerge from the text, and not be imposed upon it. That is to say that categories should not be pre-determined by the researcher (Tuffin & Howard, 2001). Potter and Weatherell (1995) suggest a cyclical process of coding, explaining that as an understanding of a certain discursive theme develops, a return to the original materials is necessary to distinguish if other instances of text are then relevant. Additionally an inclusive approach is advocated, to include irrelevant extracts, rather than exclude relevant material.

The coding process was undertaken to not only align with discursive psychology but also to embody Kaupapa Māori, particularly focussing on Māori knowledge as distinct and legitimate. With these two approaches in hand, coding was undertaken with an appreciation that categories and discursive themes specific to a Māori worldview would emerge. Coding was painstaking, involving numerous readings and categorisations, followed by re-reading and occasioned re-categorisations. As the process progressed, it certainly became cyclical, but categories became increasingly refined and clear. Notably categories and linguistic resources emerged that stem from unique Māori perspectives. Maintaining an open and flexible mindset also allowed for unexpected understandings to be revealed in participants' talk. For example, the researcher had expected that experiences of racism for participants would have been obvious, however it quickly became apparent that many of the experiences of racism were covert and difficult to pinpoint. As follows, preliminary coding identified overt and covert racism and the subsequent process of coding further dissected and simultaneously developed these themes. The end product of the entirety of the coding process was four discursive themes, which will be named and explored in the next chapter.

The third stage involves doing the analysis and Potter (2003) points out that this does not follow a fixed set of steps, describing it as a "craft skill" (p. 84), that can be developed by reading discursive research studies and working with sets of materials.

The researcher did just that, thoroughly reading discursive psychology research on racism, as a means to guide the analysis, and practicing discourse analysis on naturalistic talk about racism available via social media. Analysis here involves two phases, searching for patterns of similarity and dissimilarity in the data, and identifying the effects and consequences. Within these phases construction, variability and function can be applied (Tuffin & Howard, 2001). Both variability and repetition are points of interest in the analysis, variability within a single interview as participants make use of differing linguistic resources to suit their purposes, and repetition across interviews as the same resources are used by different participants (Burr, 2003). Variability in differing constructions is related to the functions particular constructions may serve, therefore variation is acknowledged as integral to guiding analysis (Tuffin & Howard, 2001). For the researcher this deepening level of analysis occurred in part whilst engaging in a close reading of the talk, but increasingly so as the analysis chapter was written. It was through the process of talking about the talk that variability, constructions, and function could be scrutinized. In this way, linguistic resources were made sense of in terms of the work they did for participants.

Ethical considerations

From the outset the research project, in aligning with a Kaupapa Māori approach, had a key ethical consideration to intend to make some positive difference for Māori. Indeed this is part of the essence of Kaupapa Māori research (Tuhiwai Smith, 2012) and ethically, as a Māori researcher, this was integral. Central to this intention, to do good *with* Māori, is the empowerment of Māori through the course of the research. Empowerment in this context is concerned with attending to social inequities, and one obvious power inequity in traditional research carried out *on* Māori is the relationship between the researcher and the researched. The levelling of power in the relationship between the researcher and participants is crucial and enables greater valuing and recognition of participants' interests in the research (Cram, 1997). For Tuhiwai Smith (2012) respect for people and relationships is a consistent ethical guideline in research with Māori.

When the project began the researcher had been employed by the Department of Corrections, as a probation officer, though had been granted one year of leave to undertake study. Part way through the project the researcher resigned from the Department of Corrections. However, the connection to the Department of Corrections was acknowledged as posing a conflict of interest, given the likelihood participants and the researcher would have prior knowledge of each other. To assure participants privacy and respectful treatment all participants were made fully aware of the researcher's employment with Department of Corrections and a clear distinction was made between the role of researcher and the previous role of probation officer, which was also outlined in the Information Sheets (see Appendix C and Appendix D). Participants for whom the researcher was a probation officer were not excluded from participating, as this was not considered feasible given the indefinite number of individuals the researcher case managed, had contact with, and knowledge about. However, care was taken with those participants whom the researcher was familiar with to emphasise the discrete roles of researcher and probation officer.

The research project was granted Massey University Human Ethics Committee (MUHEC) approval. However, subsequently a resubmission was made to the MUHEC to recruit participants from an additional community counselling service, in order to broaden recruitment and increase participant numbers, and approval was again granted (see Appendix B). This too entailed specific ethical considerations concerning conflicts of interest because the counselling service, Mirror HQ, is a team within the greater organisation of Mirror Services, by whom the researcher is currently employed, though in a separate team to Mirror HQ. In this case it was made clear that any clients the researcher may have worked with in the capacity of a counsellor (as clients can transition between teams to meet their needs) would be excluded from the study. In recruiting through Mirror HQ this did not come up as an issue, but again care was taken to stress the differentiation between the researcher's role within the project and the role at Mirror Counselling, and this was also stated in the revised Information Sheet (see Appendix D).

Consideration was given to the risk of psychological discomfort participants may experience during and following interviews, assuming that involvement with the criminal justice system can be distressing. With this in mind participants were invited to have whānau or relevant support people attend interviews, which ties in with the Kaupapa Māori research principle of whānau as a support mechanism for those involved in research (Walker et al., 2006). Participants were also provided information about free local counselling and support services (see Appendix E). Furthermore, the practice of implementing karakia as part of the interview process was also intended to settle any psychological discomfort.

A final ethical consideration revolves around access to and sharing in Māori knowledge. Accessing Māori knowledge necessitates an understanding and obligation to tikanga Māori. When tapu knowledge (knowledge with restricted access) is shared tikanga prescribes that it be respected and carefully treated, and that those who share it be likewise treated with respect (Tuhiwai Smith, 1999). Tapu is a culturally significant way to consider and define knowledge and the regard for knowledge as tapu ensures it is protected. In this way tikanga, as a principle of Kaupapa Māori research, recognises and endorses Māori ways of understanding and facilitates respectful treatment of Māori knowledge. Respectful research practice was applied by embracing Māori ways of being and engaging as well as levelling the relationship between the researcher and participants. Though the interviews explored troublesome experiences and a confronting topic, the participants were remarkably positive about being a part of the research and sharing their stories. It is thought that what allowed for this was their respectful treatment.

Reflexivity

Kaupapa Māori research is an openly subjective practice; as participants are positioned within their whakapapa, their whānau, hapū and iwi, so too is the Māori researcher explicitly located within their own whakapapa, their own communities, and Māori ways

of being (Milne, 2005). Furthermore, Tuhiwai Smith (1999) emphasises that Māori researchers must be reflexive about how their whakapapa, identity and belonging impact on the way they think about themselves as researchers, about the Māori they are researching, as well as the Māori issues at the heart of the research.

As a Māori researcher embarking on an ambitious research topic armed with questions pertinent to Māori communities I have been acutely aware of my whakapapa, my identity, and my sense of belonging. It is the strength within these facets of my being that compel me to ask hard questions, to challenge social inequities, and to seek social justice. I am open in my objective to re-tell Māori stories and to reject deficit notions about Māori. This is a cause I have clung to from the outset, to create a narrative of Māori experiences in such a way so as to recognise Māori ways of being as legitimate and to locate Māori struggles in the broader social and historical contexts.

The significance of the project and the stories herein however has also meant that this has been a spiritually painful exercise. It is felt deep within my wairua (spirit), the injustices, the sadness, and the struggles. To bear witness to the histories of injustices, and the perpetuation of injustices, has been profound, and I have felt sadness and hurt with the knowledge that these stories are shared by many Māori. However, it is this too that drives me. Though I have been greatly saddened by the stories I have heard, I have been humbled by the trust that has been put in me to voice and reclaim space for these stories to be heard.

Conclusion

The complementary aspirations of Kaupapa Māori research and discursive psychology to challenge dominant discourses has meant that the interweaving of these approaches has occurred with fluidity. The integration of Kaupapa Māori research principles with specific discursive psychology techniques enabled a culturally appropriate and robust method of research. Utilising these methods the next chapter centres on the analysis.

Extracts of participants' talk are included alongside a close examination for each, outlining the emerging patterns, recurring metaphors, and images. Close attention is also paid to the work participants' are performing with their talk including, explanations, blaming, and accusations, in order to appreciate the function of such tasks.

Te wāhangā tuarima – Analysis

Discursive resources

From the analysis emerged four recurring linguistic resources, which framed Māori experiences of institutional racism within the criminal justice system. These were, blatant racism, Māori and Pākehā identities, Māori as trapped in the criminal justice system, and Māori identity and culture as strength. Blatant racism is obvious discriminatory speech or actions that are constructed as stemming from racist ideals. Māori and Pākehā identities involves the opposed notions of Māori identity as lesser and Pākehā identity as better. Māori as trapped in the criminal justice system is comprised of ideas about criminal justice institutions targeting and acting discriminatorily toward Māori. It also includes constructions of the criminal justice system doing little to endorse rehabilitation of Māori. Lastly, Māori identity and culture as strength recognises connection to culture as a source of resilience.

Blatant racism

Blatant racism, also termed old-fashioned racism, draws on notions of racial superiority (Augoustinos et al., 1999). Experiences of blatant racism commonly featured in participants' talk, which is similar to literature documenting Māori and Aboriginal Australians accounts of racism (Mellor, 2003; Pack et al., 2013). Constructions centred on instances when they were subject to, or witnessed, verbal and physical abuse from workers within criminal justice institutions toward Māori. Cases of explicit racism were easily identifiable, illustrated in the following extract.

Dain: Rimutaka's definitely, um, if you're black, get back [...]they punched me up in the toilets, smacked me up, handcuffed me up.

I: Officers?

Dain: Punched me over, yea [...] I've had a, um, he still works in the prison service now, a screw in Dunedin, give me a couple of punches in the head and stuff, when I was like 17.

Dain frames physical abuse from Corrections' officers as traceable to racism and that being "black" is cause to be a target. Indeed the phrase "if you're black, get back" is a warning, one he was familiar with and undoubtedly other Māori were too. By naming specific locations, Rimutaka prison (Wellington) and Dunedin, he strengthens his construction of blatant racism as widespread. Also, in detailing a specific officer (screw) who assaulted him 20 years ago and continues to work in the prison, he builds an account of racism as long-standing and unresolved. In the following extract Dain identifies other examples of racism noting differences across locations.

Dain: Um, [sigh] I didn't really see, down here anyway, in, in Dunedin, much difference than getting treated differently than anybody else, but when you're in Auckland it's a wee bit different, like um, a bit more racist [clears throat], yea.

I: In what ways?

Dain: Oh, they used to call me a black cunt, give ya [sic] a bit of a crack, all the white boys they don't, they just get in, get out.

Dain identifies offensive talk and physical abuse as stemming from racism. He contrasts his experience with those of "white boys" to bolster the construction of discriminatory treatment. Next is a third example of blatant racism from Dain.

Dain: I suppose you get racism all over the place, but it wasn't as um, it wasn't as strong as it was up there as it is down here. I got called a black cunt, nigger a couple of times.

Importantly, in both extracts with offensive language, it was not simply name-calling, but ethnicity-based name-calling, "black" was included in both examples and "nigger"

in the latter. This creates an account that the language and behaviour toward him was indeed guided by notions of racial superiority. Pointedly, that he states “you get racism all over the place” does work in terms of normalising blatant racism within general society.

Similarly, Wayne’s talk frames racism within the criminal justice system as occurring, but as less significant than what is evident in wider society.

Wayne: But yea, I don’t know, like, I know there’s been situations that’s happened in my time in that I was involved in the system, when I’ve run in to racism, aye, but not significant enough to, for me to hold on to it. It’s like um, I run in to more racism out here in the world, you know, particularly in Christchurch. I lived in Christchurch from 81 to 85, and it was like separatism up there, aye, you know, it really was, and the pubs were shocking.

To liken Christchurch to separatism shapes ethnic relations in general society as extreme and constructs the issue of racism as being severe certain times and widespread, not something solely experienced within criminal justice institutions.

In the following account Adam unambiguously constructs racism as accepted within criminal justice institutions. At the same time he illustrates denial by Pākehā of the existence of explicit racism in criminal justice institutions.

Adam: And when I talk to people that I know and Pākehās that I know, they, they can’t understand the stories that I tell them, they, they just don’t believe some of them, you don’t get pulled over for no reason, this doesn’t happen, you must have been doing something, you weren’t there mate, you don’t know. But, you see these things first hand and it exists. And it’s also strange too, it’s not just Pākehā officers having problems against Māori, it’s Māori officers having problems against Māori as well, and

I've seen them acting just as hard, if not harder against them, because maybe from a police officer's perspective they've become engrained, that this is the norm, and if you wanna [sic] fit in to the police office then you better get on board with this. Um, there was the incidence in Rotorua with the, that Inspector Rickard or something, and there was a woman that got raped and all that sort of stuff, you know, do the police themselves become institutionalised in their own behaviour, because that's the only way they can fit in to it. So, and again it just perpetuates the whole thing that Māori bad, Pākehā not bad, and it's been a perspective that has lived with me for a long time.

The discursive work here lays out denial strategies used by Pākehā, that accusations are made of Adam, “you must have been doing something”, to downplay the racism experienced. Adam’s talk demonstrates that accounts of blatant racism are not able to be heard by the majority group who are Pākehā, “they can’t understand” and “don’t believe” there is racism against Māori, and therefore they deny its existence. Indeed, the denial and discounting of racism by dominant groups is a prevailing feature of modern racism, particularly at institutional levels (Augoustinos et al., 1999). However, Adam definitively constructs racism as existing within criminal justice institutions. His account is shaped to show that it is not necessarily Pākehā versus Māori, but the institutions versus Māori, and that this is “engrained” and “the norm.” By building in to his account a high-profile case involving a Māori police officer, he substantiates this construction. Therefore, blatant racism within the criminal justice system is constructed as denied by the Pākehā public, accepted and normal within the institutions, as perpetuating ideas of “Māori bad, Pākehā not bad”, and as long-standing, “it’s been a perspective that has lived with me for a long time.”

The discursive resource of blatant racism was used by participants to build accounts of racism within criminal justice institutions as many, normal, long-standing, unresolved, and manifesting in verbal and physical abuse. It was also linked with prevailing racism within general society. Though these were modern experiences of racism, there was

little subtlety or ambivalence to them, at least from Māori perspectives. Certainly as Adam points out, despite acts being blatantly racist, deniability is still plausible on the part of Pākehā.

Māori and Pākehā identities

A second discursive theme that emerged from participants' talk centred on identities, which manifested in two forms; Māori identity as lesser and Pākehā identity as better, or as Adam put it "Māori bad, Pākehā not bad." This discourse aligns with notions of cultural hierarchy (Augoustinos et al., 1999), a covert facet of modern racism, and the asymmetry positions Māori and Pākehā in opposition to each other.

In the following extract Mickey's account of experiences of institutional racism in prison unveiled a metaphor, 'takahi te mana Māori', trampling on Māori identity. To trample on someone or something is a familiar metaphor in Te Reo Māori to depict disrespect and Mickey constructs disrespect from Corrections' officers as not only belittling to himself, but also to other Māori, Māori programmes in prison, tikanga Māori and Māori identity as a whole.

Mickey: Like even in jail when you go and do tikanga courses in jail, you might be all, oh like, they have no respect for um, like the kaupapa of the programme, you'll be halfway through your programme and you'll have like four or five officers, um, walk in to where you're doing your programme [...] they just have no respect for it, they'll just walk straight in, with their shoes on, um, to do muster checks, but rather than standing at the back of the room and marking people off, if like, when you're in a circle, sitting, doing group and that, they'll just walk straight in to the middle of the circle, to deliberately disrupt what yous [sic] are doing, [...] Um, yea, they just have no respect for, um tikanga or anything in there [...] I used to get real angry when they would do it, because it's just a blatant show of disrespect for, for everyone in that group, you

know, it's a, you know, yea just has no respect for um, for what we're trying to do as Māori men in prison to try and better ourselves, they don't, they just have no respect for it, at all. But when you go and do a European programme, they'll stand outside the room and mark you off, from the windows, and you know [clears throat].

Mickey constructs a version of events outlining significant actions that disregard “tikanga” and “kaupapa” Māori. His use of Te Reo Māori makes clear that the disrespect is upon Māori cultural aspects. The metaphor of ‘takahi te mana Māori’ is evident in the emphasis placed on the act to ‘walk in’ and its integral connection to displaying disrespect and as obstructing tikanga Māori. He underlines the experience of disrespect and shapes it as a stark contrast to conduct of Corrections’ officers with regard to non-Māori programmes in prison. Again this highlights the disrespect as concerning Māori culture and represents cultural hierarchy. Mickey’s talk consistently locates accountability for trampling on Māori identity with the criminal justice institution with the frequent use of “they”, versus himself and others as “Māori men in prison” working toward betterment.

Participants commonly constructed a dichotomy between Māori and Pākehā, and that activities in prison associated with a Māori identity were vetoed. In another account by Mickey, he details that activities embracing a Māori identity are not only prohibited, but punished.

Mickey: Oh, you're treated like shit in jail, by Corrections. Like you can't sit, if you sit around a table and speak Te Reo Māori at a table, then straight away you're instigating something, or planning something, or plotting something. Um, it's real frowned upon to like, can't sing waiatas or, they won't let you do it, but yet you can sit in the wing and play the guitar and, or turn your stereo up and listen to heavy metal, or whatever, but you can't sit around with a guitar and sing waiatas, not even allowed to hakas in the wing, not even allowed to do hakas in your cell, um, so it's

shit. They take, they try and strip any um, any rights of you, um, being Māori full stop, when you go in to, it's their way, or no way. It's their way or you go to a pound, sit down in the pound for being disruptive or, so, it's not good.

Mickey's account constructs Māori identity as inherently connected with illicit activities; to speak Te Reo Māori in prison equates to "instigating", "planning" or "plotting." Key aspects of Māori culture, namely Te Reo Māori, waiata (song) and haka are specifically identified as prohibited, and this is positioned in opposition to similar non-Māori activities that are permissible, such as listening to music and playing the guitar. To speak Te Reo Māori, to sing waiata and to perform haka are each significant expressions of Māori identity. In this way the expression of Māori identity is constructed as crime within prison, and to be Māori in prison means to be belittled and disrespected, "treated like shit", and prohibited from expressing a Māori identity. The image of a cultural hierarchy is reinvoked, though taken one step further as Māori culture is not only situated as lesser than Pākehā culture, it is something to be denied, as they "try and strip" "rights" of being Māori, "it's their way", that is the Pākehā way, or otherwise punishment. Importantly, Mickey constructs expression of Māori culture and identity as "rights", which does substantial discursive work in terms of framing the actions of Corrections' staff as breaching his social and ethical freedoms as a Māori.

Following, Dain considers overall his experiences as a Māori dealing with the criminal justice system and connects this to general negative life experiences.

Dain: Um, it's quite hard to, I suppose, I don't really know, yea. I suppose, if I, yea, if I knew I'd be straight out with it, but um, I reckon there'd be some incidences where I've been to Court and, like I said, you know I had a wrap sheet, that's x amount long and, and they'd just chuck the book at me, and um, I reckon I probably would've had a better life if I was white [laughs] you know, [clears throat] but, you know, who knows, can't really say, I don't think, just off, um, oh yea, na, I reckon I probably have

had a hard deal aye, given to me yea, over the last, over, over a period of time, yea just by certain Judges, seen me as being a Māori, won't change, you know, yea, so probably, yea, yea I do.

This excerpt exemplifies the difficulty in pinpointing institutional racism and experiences of it within the criminal justice system for Māori. Dain repeatedly shifts back and forth from finding institutional racism “hard to” identify, to not knowing, to assuring that if he did know he would be “straight out with it”, to identifying some experiences during Court proceedings where he has been treated with a heavy hand, but then discounts institutional racism in these instances based on his criminal history (wrap sheet). He concludes, “I probably would’ve had a better life if I was white”, and in doing so constructs that not only are experiences within the criminal justice system worse for Māori and better for Pākehā, but that life in general is worse for Māori and better for Pākehā. His builds an account of having a “hard deal” done with the Judiciary and having the Judiciary sentence him harshly, “chuck the book.” This is connected with broader constructions of Māori not being offered options of rehabilitation, as Māori “won’t change”.

In the next extract from Adam the idea of Māori being diverted away from rehabilitation is reiterated. He also emphasises differences in experiences of Māori and Pākehā with criminal justice institutions, explicitly constructing Pākehā treatment as far better than Māori treatment.

Adam: There's a difference. If you're Pākehā and middle-class, you will be treated well and within all aspects of the law, and police will endeavour not to charge you. If you're Māori police will go out of their way to charge you, and they will charge you at a young age, two reasons, one, you don't know how to defend yourself, in a legal sense, and two, from my personal perspective, they want to accumulate the charges against young Māori to make it easier to put them in to jail when they get to an older age, because they assume that once a young Māori starts offending,

rather than trying a rehabilitation process, they go, stuff tryna [sic] fix them, let's just keep slamming charges on them until they hit 18, 19, and they've got four or five criminal appearances against them, boom, now this guy can be thrown in to jail. And that really seems to be my perspective on how they treat young Māori, in particular.

Police treatment of Pākehā is constructed as fair, though partial for the benefit of Pākehā in that there is an avoidance of charging them. In contrast, treatment of Māori is framed as discriminatory. Accusations are launched against police, that they “go out of their way” to charge young Māori in order to provide the necessary conditions for imprisonment when they reach adulthood. Whilst Adam constructs criminal justice institutions as actively targeting Māori, he also blames Māori for their passivity in regards to prejudicial treatment from police. Māori are framed as lacking knowledge around legal processes, which is reasoned as contributing to police over-charging of Māori. However, the blaming of Māori for difficulties with the criminal justice system is a brief anomaly in the midst of strong accusations of institutional racism. Adam proceeds with claims that the criminal justice system is fixed on incarcerating Māori and dismissive of a rehabilitative approach.

Participants overwhelmingly agreed that being Māori equated to being treated differently by the criminal justice system. In another extract from Adam, he further builds on the construction of Māori as targeted by police.

Adam: I've lived in multiple towns across New Zealand, Auckland, um, Christchurch, ah, Queenstown, Dunedin, every single town I've lived in in New Zealand I've been pulled over by the police, not charged, just driving round, pulled over. Who are you? What are you doing here? Now I've talked to this, about, ah, Pākehā associates I've known, and they've said, that never happens, you don't get pulled over for that. Every single town I've lived in I've got pulled over. I moved to Queenstown, within a week, pulled over by the local police. Auckland, just pulled over a couple

of times, just who are you? What are you doing? I remember going to Rotorua with a friend, probably the second time I'd ever been to Rotorua, pulled over, who are you? What are you doing? We were driving his dad's car, and thought, what's two Māori guys doing in a flash car? So, I try and relate this story back to Pākehās that I know, and I ask them, how many times have you ever been pulled over by the police for no good reason? Oh that doesn't happen in New Zealand. Yes it does. So, I've, that's the sort of, where I feel there's kind of a discriminatory element, where the police will sort of look at you, judge you, and think, we're going to stop you cause nine times out of 10, we're going to find something wrong with you. So, I've had these experiences.

I: So, in police contact, there's already some bias there from your experience?

Adam: Yea, and the initial look is, hmm, they look dodgy, they look criminal, they look something-or-other, I'm going to pull them over and question them. Now, um, if I had been well-dressed Pākehā, or even just a normal looking Pākehā, I don't think I would've got pulled over for it, so.

By citing separate instances throughout different locations Adam strengthens his construction of institutional racism occurring within the Police as a universal experience, rather than it being location or person specific. By implicating friends who are Pākehā in to his account, the disparity between the experiences with the criminal justice system for Māori and Pākehā are further highlighted, whilst again demonstrating denial elicited by Pākehā regarding racism toward Māori. Though he is able to identify his own experiences of racism, he constructs a romantic view held by Pākehā who believe “that doesn’t happen in New Zealand.” Adam’s account serves to shape police intentions as “discriminatory” as police actively seek out Māori wrongdoing. Also, similar to the previous account from Mickey, in which he constructs being Māori as a crime, Adam constructs police perception of Māori as “dodgy” and “criminal.” Contrarily, a Pākehā identity is seen as not being subject to such perceptions and discrimination.

The next extract from Mickey is a further example of the construction of Māori as deficient.

Mickey: My last prison sentence when I was being sentenced and then the Judge mentioned that he read in the, ah, sentencing notes that I identify as being a Māori male, and then, um, because of my charges he recommended that I go and take a look at myself because my charges don't fit the lifestyle of being Māori, um, and my charges are sort of like shameful on my iwi and things like that [...]

I: And what was that like for you, to have a Judge tell you, or make judgment on your actions as a Māori?

Mickey: Ah given that the Judge was European I didn't even take any, um, notice of what he was saying anyway. So I didn't, I didn't put any shame on my iwi, I put shame on myself and my family,

In this example, Mickey sets out that the Judiciary framed him as deficient in terms of being Māori. This aligns with the arguments of Wetherell and Potter (1992) that Māori are not just shaped as inadequate relative to Pākehā, but inadequate *as* Māori. In so doing, it works to undermine Mickey's connection with Māori identity and culture because his actions are constructed as not fitting with 'true' Māori identity. Notably, Mickey identifies the Judge as non-Māori and his work constrains the degree of "shame" to an individual and whānau level, but he refuses to allow that to go further and reflect badly on iwi. In this way his talk functions to resist the construction of deficient Māori.

While Adam's accounts imply Māori are targeted and imprisoned by criminal justice institutions for the sake of society, in the following extract Dain makes this clear in his construction of a metaphor of confinement of Māori for the benefit of society.

Dain: Um, I reckon that, um, Māori get put in to a certain, you know, like a wee box over here you know, and, I, I don't think it really matters on um, kind

of like what you done, when you done it, or who you done it to, or what, you know, um, I think they just think, oh we'll just lock them up, get rid of them, they're out of, they're out of everybody's face you know, yea, that's how I reckon it rolls.

I: *Ok, whereas non-Māori are sort of,*

Dain: *Yea, yea we'll give them a chance, they're white, they'll, they'll slip in to the every day ah, role of being white, yea, no one will notice them.*

Dain constructs Māori as being confined to a “wee box”, separate from others and separate from society. His account accuses the criminal justice system, and perhaps even greater society (given the lack of specificity in naming any institution), of disregarding details when it comes to dealing with Māori, that the only important factor is being Māori in terms of determining outcomes. In saying, “we’ll just lock them up, get rid of them” he shapes criminal justice institutions’ treatment of Māori as determined to imprison Māori, similar to an earlier account by Adam. He builds an account that by imprisoning Māori, they are “out of everybody’s face” and therefore not a menace to society. Treatment for Pākehā on the other hand is constructed as being more forgiving, Pākeha are given “a chance” purely because they are Pākehā and able to “slip in to” and go unnoticed in everyday life. The statement that “no one will notice them” in reference to Pākehā is interesting because it infers that Māori *are* noticed in everyday life. Accordingly, this connects to the suggestion that his accusation is directed at greater society, and not solely criminal justice institutions, in terms of who is responsible for the discrimination against Māori.

Māori and Pākehā treatment by the criminal justice system is constructed as having many points of difference. Participants build accounts that Māori identity is perceived by criminal justice institutions as being lesser and not worthy of respect, indeed, Māori identity is trampled upon. Māori identity is also shaped in talk as being linked with deficiencies such as “criminal” and “dodgy” or misbehaviour in the form of “plotting” and “instigating.” In so doing *being* Māori is constructed as criminal. Participants’ talk features constructions of Māori being perceived as incapable of change and

underserving of rehabilitative efforts from the criminal justice system, Māori “won’t change” and “rather than trying a rehabilitation process, they go, stuff tryna fix them.” This in turn is reasoned as leading to the metaphoric ‘throwing of the book’ and “they just keep slamming charges” on Māori. Furthermore, criminal justice institutions are shaped as dogged in their intentions to imprison Māori, “we’ll just lock them up, get rid of them”, for the betterment of society. All this discursive work is occurring whilst Pākehā are constructed as deserving of respect, subject to good and fair treatment from criminal justice institutions, as having better life experiences in general and being given chances where Māori are not. In this way the treatment of Māori by the criminal justice system is shaped as fundamentally linked to Māori identity being devalued and disrespected, whilst Pākehā identity is respected and valued.

Māori as trapped in the criminal justice system

A third recurring linguistic resource used by participants was Māori as trapped in the criminal justice system. The term ‘trapped’ draws on the ideas of Durie (2003) that trapped lifestyles of risk, marginalisation and poor social outcomes are forerunners to Māori offending and imprisonment; for many there is no escape from trapped lifestyles. Māori as trapped in the criminal justice system links in with the earlier constructions of Māori as subject to discriminatory targeting from criminal justice institutions, which are determined to arrest, charge, and imprison Māori, particularly at a young age. Indeed, a similarity shared by participants was that they all had contact with police as children, one as young as four years old, for their own ‘criminal’ behaviour.

Participants built accounts of intergenerational interactions with the criminal justice system, and whilst there were early introductions to criminal justice institutions there was also a construction of being intergenerationally trapped. The following extract from Wayne builds an account of his first interaction with the criminal justice system.

Wayne: Um, my first real recollection of, of being in serious trouble was the school incident where there was some activity going on at school where, we're all, there was a lot of money um in the classroom and I left the window open so I could sneak back in and steal the money, and um, which I did, and subsequently I got caught. Um, the situation that happened after I got caught, with my father, made things really bad for me, it was um, because he told them to lock me up for the night, give him a taste of what it's like, ah, I was, it took me a long time to, well I don't know if I ever forgave him for that one actually, but it took me a long time to get passed it, you know, that was like a really big thing. My father who was pro-crime, he wasn't a hard-out criminal, but he wasn't averse to pinching something, you know? And ah, always gave me some bad advice about how to be a good thief, and I sort of was like, huh, the fuck? You know? Why you taking their side, you should have, be taking my side, you know, and then things got worse from there.

Initially his talk locates responsibility and accountability with himself, that he alone planned to steal, and he alone acted out the theft. However, as he builds his account to involve his father, it is clear he places blame on him, “I don’t know if I ever forgave him for that one actually [...] that was like a really big thing.” He constructs his father’s actions toward him as contradictory to his “pro-crime” attitude and behaviours. His talk implicates his father in the beginnings of him being ‘trapped’ in the criminal justice system, that it was his father who, encouraged police to detain him and gave him “bad advice about how to be a good thief.” In effect, rhetoric is organised to connect his father’s criminal background and behaviour toward him as key to his own initiation in to the criminal justice system, which was a downward spiral for him as, “then things got worse from there.”

Early encounters for participants with criminal justice institutions were not limited to police, they were faced with the breadth of the criminal justice system at young ages.

Grace shapes her experiences with Courts, probation and prison as “frustrating” in the next extract.

Grace: Um, frustrating, very muchly. Um, with probation, I didn't feel like I had a very good probation officer like, they didn't, I, I never got other options, um, when I went to Court as an adult, like District Court, I didn't get a community sentence, and I'd never been on a community sentence, like they didn't give me the opportunity to do PD or anything like that, and being 17 as well, it was just prison straight away, so I didn't, um, I went in while I was on remand. and, um, just the whole, also with the probation officer I had at that time, made a lot of comments about, um, what people say were stereotypes of Māori, like, oh well it's probably best thing you get locked up, cause that's what you guys do, and, oh, it's hard to say what exactly was said at that time, but to me, I know there were comments mentioned and I saw it as stereotype racism sort of thing.

Grace organises her account to situate responsibility with probation, particularly with the probation officer, for aiding her imprisonment. While she initially constructs her treatment as an “adult”, this is disputed by later details of her youth, being a 17 year old at the time. Grace builds an account of injustice, repeating four times the lack of sentencing options made available to her, “I never got other options”, “I didn't get a community sentence”, “I'd never been on a community sentence” and “they didn't give me the opportunity to do PD or anything like that.” Noting her age and constructing prison as imminent then reinforced this sense of injustice. Interesting also that she constructs community-based sentences as an “opportunity”, rather than an alternative punishment it is viewed as a positive alternative, an “opportunity” to counteract being trapped in prison. Graces's detailing of explicitly racist remarks made by the probation officer is in fitting with the linguistic resource of blatant racism. It also builds on accusations that it was always the intention to have her imprisoned, because that was the “best thing” for her and for Māori in general. Again the idea of the criminal justice

system being intent on imprisoning Māori emerges and being trapped in the criminal justice system is constructed as ever-present for Māori.

Being trapped in the criminal justice system was further constructed as inescapable and in the next extract from Adam he shapes Māori as not only being trapped by criminal justice institutions, but also by themselves.

Adam: I met some of Liam's friends that came out as well, and you can just tell, they were a one way ticket back in to jail. Now, Liam came to live with me for a while, so hopefully he learnt that you know, get a job, get your life sorted, and that sort of stuff, you know, was something he needed to do, and he's slowly turning himself around, he's not quite there, but he's trying to get there. Whereas I've seen other friends that he's had, that have come around, and they've ended up back in jail, in, in the time that I've known them, they've gone back in. So, once they get locked in to the system, it's really hard to drag themselves out, and it's, it's not just the police, or the, or the, the um, Corrections establishment in their bias, but it's their own internal bias that they build up amongst themselves. They just think, oh this is the way it is for me, and they just end up in the treadmill. I had a friend who went in to jail when he was 16, didn't get out until his late thirties, and just, he was just on this treadmill where he just couldn't get out of that system, so, yea.

Adam develops the image of the criminal justice system as a ‘trap’ throughout his account. Firstly, by referring to others as “a one way ticket back in to jail”, he constructs their re-imprisonment as pending and unavoidable, whereas he constructs avoiding a return to jail as including a job and getting “life sorted.” Using the metaphor of a journey, “he’s slowly turning himself around, he’s not quite there, but he’s trying to get there”, illustrates that there is some hope to escape being trapped in the criminal justice system. Though, by using extreme case formulations Adam emphasises the difficulties entailed in unshackling from being “locked in to” the criminal justice system, that “it’s

really hard to drag themselves out.” Adam locates accountability with both the criminal justice institutions and Māori for remaining trapped, but also builds an account of Māori as passive, “they just end up on the treadmill.” The metaphor of journeying is continued, though this time it is a stagnant journey on “this treadmill”, and through this discursive work he creates a potent image of movement but not getting anywhere. So for Māori who are trapped in the criminal justice system, they are on the “treadmill” moving, but not making progress.

The discursive resource of Māori as trapped in the criminal justice system was drawn on in many instances by participants and had the effect of constructing institutional racism as often operating in a covert and crafty manner. The process of being trapped was shaped as intergenerational and initiations occurred at a young age. An account was built of injustice and not being offered an alternative “opportunity” to avoid the ‘trap.’ Constructions of being trapped in the criminal justice system also denoted immobility, that Māori are on a “treadmill” and are not making any productive gains.

Māori identity and culture as strength

While a Māori identity is constructed as targeted by criminal justice institutions, within participants’ talk it also frequently emerged that there existed strength within their Māori identity and connection to Māori culture. Identity and culture were shaped as sites from which participants drew resilience. In the following extract, Wayne illustrates the importance of connection to culture, using a Māori proverb.

Wayne: But, I, I, I made that resolution not to, to go back, it's, it's what is it, he kapiti hono, he tātai hono. And there's another one but I can't remember it, but it's like, I have to stay connected, you know, to something.

“He kapiti hono, he tātai hono” translates to, ‘That which is joined together becomes an unbroken line’ and is used to affirm a spiritual joining between the present and ancestral

links (Mead & Grove, 2001). Wayne's use of Te Reo Māori and referencing of a traditional saying does significant discursive work in highlighting the importance of Māori values. His connection to this is constructed as strengthening and key in keeping him from going "back" to prison.

In the next extract Mickey builds an account of connection to a Māori service provider (A3K) as a central site of strength.

Mickey: I don't view, working with A3K, I don't view it as being on parole, or being a chore, you know I don't view it as something I have to do, I, you know I enjoy coming, and working with A3K because you get that whole Māori vibe, you know like, it's good, it's relaxed, it's not, oh yep you have to be here at this time, you gotta [sic] leave at this time cause I've got another appointment, um, and that's probably the only reason why I'm not back in jail now, cause of the support from, and the interventions that A3K do, to ensure that you know, you're doing what you need to do and you've got the support to do what you need to do. Feel comfortable like, cause normally I wouldn't even ask people for, if I'm struggling I'd just keep struggling by myself, but through A3K, you don't, it's good, you don't have to worry about things like that, cause you just feel part of the whānau here, so, it's good.

Here Mickey constructs working with this particular Māori agency as positive, but in the broader picture shapes working within a Māori framework as not only enjoyable, but also facilitative to him staying out of prison. Indeed, he identifies it as "probably the only reason" he hasn't been reimprisoned. The Māori approach, or "whole Māori vibe", is shaped as strikingly different to working with criminal justice institutions, which is "a chore." He builds an account of reciprocal relationships; the Māori service provider is "relaxed" and supportive toward him, so he in turn responds positively and feels "comfortable" with them, whereas probation is time-constrained, rigid and treats him like a task, "you have to be here at this time, you gotta [sic] leave at this time cause I've

got another appointment”, therefore he reciprocates by perceiving it as “a chore.” His account marshals explanations for his relative success as being the result of attaching to Māori culture and feeling “part of the whānau.” Mickey’s talk here is symbolic of the Māori notion whanaugatanga, a relationship that provides people with a sense of belonging and serves as strengthening (Moorfield, 2016).

In the following extract from Grace shapes connection with Māori cultural values and extended whānau as a point of strength.

Grace: My boss, like he, he's really awesome and patient, really patient [laughs] but um, and the rūnaka, they're awesome, and yea just everyone we're around, like family and friends, it affects them, you know if they ask me how things are going and what's happening with this? I'm honest with them, and they, they know what's happening for me and all of that, and they express their frustrations and try and help me any way they can, like giving me um, um, character references, um mahi, things, work to do to concentrate on ah, courses, wānanga to attend, just to help me with whatever.

Grace’s account constructs a Māori support network that includes her immediate family, extended family, partner, friends, employer, and rūnaka (tribal council), which is representative of whānau in its broadest sense. It is important in her account that she acknowledge them separately and she shapes her relationships with the whānau as mutual, they too feel her frustration and want to “help” her in constructive ways.

Participants constructed Māori cultural connection as a strengthening resource. Their connections to culture and identity were variously expressed in the use of Te Reo Māori, relationships with whānau, rūnaka and Māori service providers, and the recognition of the significance of Māori cultural values. Despite difficult experiences that were shaped as associated with their Māori identity, such as blatant racism, inferiority and

discriminatory treatment, these did not hamper their identification as Māori; Māori identity and culture were steadfast for participants regardless.

Conclusion

The discursive resources used by participants were drawn on to account for their experiences as Māori within the criminal justice system and their perspectives on institutional racism therein. Modern racism, from the perspective of Māori as targets of racism, does not always present as subtle or ambivalent. Indeed the linguistic resource of blatant racism was drawn on to demonstrate the sinuousness of explicitly racist acts and talk within the criminal justice system as well as general society. Māori and Pākehā identities exemplified a cultural hierarchy, in which Māori were positioned as lesser and therefore treated as lesser. Similarly, Māori as trapped in the criminal justice system was used to demonstrate the discriminatory treatment and passive positioning of Māori. Optimistically the final linguistic resource, Māori identity and culture as strength, drew attention to the resolute nature of Māori identity and the ways in which Māori culture meaningfully contributed to participants' lives. What follows in the discussion chapter is a thorough consideration of these discursive resources and the functions they serve relative to the broader landscape of literature spanning social, political and historical contexts.

Te wāhanga tuaono – Discussion & conclusion

He whakawhiti kōrero: Discussion

The discussion explores the discursive practices that emerged in the context of race talk literature. The current research, like previous studies of Indigenous peoples' race talk, highlights the persistence of blatant racism. The implicit nature of racism is also prevalent, which across the literature is observed as enabling oppression and discrimination. Attention is drawn to the prevailing power structures that maintain Māori social and cultural inferiority. Within the broader social context Māori involvement with the criminal justice system is discussed as a product of a cycle of bias that sees Māori identity in frequent conflict with criminal justice institutions. Māori offending is linked to experiences of colonialism and related to similar experiences of other Indigenous peoples. Ideas of Māori cultural subordination inherent in colonialist practices are asserted as maintaining institutional racism. Finally, arguments for a separate Māori criminal justice system are considered, reflecting on the history of failings of the imported system in its dealings with Māori. Such a system would embody tino rangatiratanga, necessitating tikanga-based law and justice practices. It is suggested that within a Māori criminal justice system there lies the potential of rightful justice for Māori.

Discursive discussion

Though much of the discursive psychology research on racism considers that modern forms of racist talk are subtle (Augoustinos et al., 1999; Tuffin, 2008) participants used the linguistic resource of blatant racism to shape racist speech and acts as long-standing, normalised, and prevailing in verbal and physical abuse. Pack et al. (2013) similarly concluded that blatant and offensive racism persists for Māori. Both the current research and that of Pack and colleagues departed from the tradition of exploring the language of racism of Pākehā to consider the language of racism of Māori, examining the ways in

which Māori as targets accounted for racism. Likewise, for Aboriginal Australians there were corresponding findings of incessant blatant racism in talk and behaviour (Mellor, 2003). Considered altogether there is sufficient argument to contradict the definitive idea of modern race talk as characteristically subtle and delicate. Modern racism may indeed present as such within Pākehā or non-Indigenous talk, however within Indigenous peoples' talk, constructions of old-fashioned, blatant racism are ever-present. Indeed, the blatant racism discourse served to draw attention to the enduring nature of old-fashioned notions of racial superiority.

While acts of blatant racism were easily identifiable for participants, they also constructed institutional racism as often presenting in a covert manner. The discursive resource of Māori and Pākehā identities was one way that racism operated implicitly. The metaphor of a cultural hierarchy was pervasive and emerged in reference to disrespecting and trampling on Māori identity. Augoustinos et al. (1999) argue that a cultural hierarchy is integral to modern racism and its subtleties, making possible the rationalisation of subjugation. Certainly, this was evident in the subjugation of Māori culture and the rejection of the expression of Māori identity in Te Reo Māori, waiata, and haka. The linking of representations of Māori identity to criminality and illicit behaviour further reinforced the inferior and disadvantaged position of Māori in relation to Pākehā.

Aligning with the notion of cultural hierarchy is the linguistic resource of superiority (Pack et al., 2013) which situates racism as emanating from Pākehā assumptions of Māori inferiority. Views of Māori being incapable of greater change and underserving of rehabilitative efforts are consistent with ideas of Māori inferiority. Accordingly sufficient justification is provided for the discriminatory treatment of Māori and for the determination within criminal justice institutions to imprison Māori. Pack et al. (2013) suggest that Pākehā have an inherent sense of their own superiority, deriving from colonialist hierarchies, and are thus positioned as involved in institutional racism. Certainly Pākehā are involved at an individual level, but more important is Pākehā influence at an institutional level, as the criminal justice system is founded on Pākehā

culture, values, and systems (Jackson, 1988). Māori and Pākehā are therefore set in opposition to each other, a point highlighted by participants. In fitting with having the upper level in the hierarchy, accounts of Pākehā identity were that they were respected, treated in a good, fair, and forgiving manner, and had better overall life experiences. Essentially a cultural hierarchy and the assumed superiority of Pākehā were integral to institutional racism toward Māori.

The effect of racism on Māori identity creates a sense of inferiority, of being ‘other’ (Te Hiwi, 2007). The experience of ‘othering’ was sinuous, displayed in blatant and implicit forms of racism and served as demeaning of Māori identity. Likewise the positioning of cultural inferiority and ‘other’ was apparent for Aboriginal Australians (Augoustinos et al., 1999). Māori as ‘other’ was clear in the dichotomy constructed between Māori and Pākehā identities; “Māori bad, Pākehā not bad” exemplifies the opposing positions. This positioning also contributes to the standard story (Nairn & McCreanor, 1990) and common sense way of understanding Māori and Pākehā relations within the context of the criminal justice system. The standard story of Māori as bad and beyond help is self-sufficient in light of prevailing constructions of Māori as ‘over-represented’ in the criminal justice system. Indeed, such ideas appeal to what is widely accepted as true by the dominant culture and disregards social, historical, and political aspects of power structures that also contribute to Māori offending.

Treatment of Māori within the criminal justice system resonates with culture discourse (Wetherell & Potter, 1992). Culture as heritage emerged in the disrespect for Māori culture and the denial of Māori rights to express identity. There was no permissible space for the embodiment of Māori culture and identity making it apparent that Māori culture was viewed as unsuited to the present or future. Further, culture as heritage dissociates Māori who have offended from ‘true’ Māori and the distress experienced by Māori in the modern world frames Māori as experiencing ‘culture shock’, as they are unable to cope with contemporary social demands. Parallels can also be drawn with the culture as therapy discourse and the construction of contemporary Māori as lost, lacking, and prone to criminal behaviour. The prejudicial treatment from criminal justice

institutions and the dogged interest to arrest, charge, and imprison Māori was observed as essentially motivated by beliefs of Māori as deficient. Like the conclusions of Wetherell and Potter (1992) the sum effect of culture discourse is herein seen to have framed those Māori who are involved with the criminal justice system as both deficient relative to Pākehā and as deficient as Māori.

Trapped lifestyles, including offending and imprisonment, present little hope or opportunity for escape (Durie, 2003). Māori as trapped in the criminal justice system was drawn on to illustrate intergenerational involvement, initiations at a young age, and experiences of injustice. There were minimal opportunities for Māori in terms of alternative sentences or rehabilitation to escape incarceration, or the less visible but equally insidious, trapped lifestyles. Similar to the Koori Aboriginal people of Australia (Mellor, 2003) Māori were framed as having no place in culturally superior society, that the place for Māori was away from general society and in prisons. The potent image of a treadmill was created and denoted movement, yet with little gains and progress for Māori. In effect, Māori as trapped functioned to voice Māori sense of passivity and hopelessness within oppressive power structures.

Frequently Māori identity was constructed as involved in persistent confrontations with dominant Pākehā culture and identity. However, while it was framed as a site of struggle, it was also perceived to be a site of strength and crucially a site of hope. Māori identity and culture as strength was drawn on to appreciate the import of cultural identity and the value derived from this. Connection to Māori culture and identity was viewed as preventative to further criminality. In this way it functioned as a form of resistance to the cultural hierarchy that devalued being Māori and challenged the standard story that equated Māori identity with badness. Alternatives to the standard story that enable empowering subject positions are key to confronting discriminatory practices and in lobbying for Māori rights (Kirkwood et al., 2005). Māori identity and culture as strength was an empowering position used to legitimate Māori cultural values and a Māori identity.

Kirkwood et al. (2005) assert that a fundamental argument against the standard story of Māori and Pākehā relations is acknowledgement of the ongoing nature of colonisation. Colonising practices were evident throughout the criminal justice system; the discriminatory targeting of Māori by police, the inequitable treatment of Māori by the Judiciary and Corrections, the disrespect of Māori identity within prisons, and the general positioning of Māori culture and identity as inferior. In claiming Māori culture and identity as strengths, Māori are positioned as resisting the perpetuation of such colonising practices. Rather than Māori culture and identity being problematized, they were upheld as important and valued.

Māori talk regarding institutional racism within the criminal justice system functioned to construct racism as enduring and guided by notions of Māori as culturally inferior. The framing of Māori as deficient and bad was persistent; it was the standard story that provided ample justification for the continued discriminatory treatment of Māori. Though Māori were positioned as powerless against the might of the oppressive power structures governing the criminal justice system, there were also empowering positions taken up. The construction of Māori culture and identity as aspects of strength and resilience resisted ideas of Māori as deficient and in so doing challenged the standard story of Māori who are involved with the criminal justice system. Māori perspectives of the criminal justice system and institutional racism therein make clear that prevailing power relations facilitate the belittling of Māori identity, intrude on Māori rights, and diminish cultural integrity.

Māori and the criminal justice system: The broader context

Māori are frequently framed as excessively criminal and deficient in discussions of Māori involvement with the criminal justice system. Notions of Māori as ‘over-represented’ in the criminal justice system are taken-for-granted knowledge, accepted by the dominant Pākehā culture and perpetuating colonialist discourse. To spotlight Māori experiences of institutional racism within the criminal justice system is an exercise in resisting such dominant discourses. In so doing attention is drawn to existing power

relations and social factors that contribute to increasing Māori encounters with the criminal justice system and subsequent poor outcomes for Māori.

Māori as targeted and subject to discriminatory treatment by criminal justice institutions is a common finding throughout the literature. The Christchurch birth cohort research (Fergusson et al., 1993a, 1993b; Fergusson et al., 2003) found Māori children were more likely to have police contact than Pākehā children and were more likely to be convicted than non-Māori, even relative to non-Māori with similar socioeconomic, educational, and offending backgrounds. It is suggested that there is a cycle of bias in official police contact statistics, which leads to greater police contact with Māori, influencing public perception of Māori as ‘criminals’, and coming full circle to maintain heightened numbers of police contact with Māori. This cycle is evident in participants’ experiences of early initiations into institutions and constructions of Māori identity as constantly in conflict with the criminal justice system.

Despite bias and social background, Māori have been found to be at higher risk of offending (Fergusson et al., 1993a; Fergusson et al., 2003). The dominant discourse persists in fabricating explanations of Māori predisposition to anti-social behaviour and crime, such as the ‘warrior gene’ hypothesis (Hook, 2009), however Māori rates in offending better reflect the vast and profound impact of a history of colonialism (Quince, 2007). Indeed high rates of offending and incarceration are experiences shared by Aboriginal Australians (Blagg, 2008) and by the Indigenous peoples of Canada (Hamilton & Sinclair, 1991). What these Indigenous peoples also share are histories of colonisation, dispossession from land, and destruction of culture, communities, and ways of being. Contemporary Indigenous experiences with criminal justice systems do not occur in isolation from the histories of deprivation and marginalisation, rather, they are intimately connected.

Māori encounters with the criminal justice system and institutional racism experienced therein are arguably products of colonisation. The positioning of Māori as culturally inferior and the denigration of Māori identity aligns with the ideas of Quince (2007) that

the contemporary social, economic, cultural, and political positions of Māori are related to the processes of colonisation, such that offending by Māori is connected to Māori identity. Ideas of cultural subordination are sustained by the dominant discourse and serve to maintain not only taken-for-granted knowledge of Māori as criminal and deficient, but also aid in the continuation of institutionally racist practices. Durie (2003) observes that trapped lifestyles of risk, marginalisation, and disadvantage are linked to the enduring effects of colonisation and oppressive power relations.

For Māori involved with the criminal justice system, the problematizing of their identity is a familiar experience. Certainly this is evidenced by previous literature documenting targeting of Māori by police (Fergusson et al., 1993a; Maxwell & Smith, 1998) and likewise in participants' accounts of discriminatory experiences. Perpetual colonialist discourses are central to problematizing Māori, and international literature emphasises similar experiences for Aboriginal peoples of Australia and Canada (Blagg, 2008; Fleras & Elliott, 1992). Fleras and Elliott (1992) advocate for a shift away from situating the 'problem' with Indigenous peoples and argue that the issues sit instead in the interactions between Indigenous peoples, culture, and colonialism. Undeniably the tradition has been to interpret Māori offending as solely representative of Māori criminal behaviour. However, as well as being manifestations of colonialism, Māori offending is indicative of the relationships shared with criminal justice institutions (O'Malley, 1973).

Colonialism within the criminal justice system is enduring, entailing lasting adversities for the colonised. For Indigenous peoples criminal justice systems were historically instruments of colonisation, founded with institutionally racist agendas, to enforce the power and privilege of the colonisers (Blagg, 2008; Fleras & Elliott, 1992). Specifically in Aotearoa, New Zealand the criminal justice system operated to increasingly criminalise Māori, with legislation that specifically benefitted the colonisers (Bull, 2004). With these foundations it is unsurprising that institutional racism persists. However, what aids the perpetuation of institutional racism is the denial of its existence and the concurrent continuation of colonial discourses. There are seemingly countless efforts to explain Māori inclination toward criminality in terms of social, economic,

cultural, and even genetic factors, to effectively victim blame. Accordingly, narratives are constructed in which Māori have not worked or tried hard enough to prosper, or that they are ethnically inadequate and therefore destined to fail. By recognising the destructive nature of colonisation and its by-products then there can be a shift away from problematising Māori. Unless such discourse is confronted and challenged then there lies little hope for change.

Toward a Māori criminal justice system?

Tauri (2005) contends that the imposed criminal justice systems for Māori and Indigenous peoples of Australia and Canada alike are inappropriate for dealing with offending by Indigenous peoples and have influenced their high levels of offending, victimisation, and imprisonment. Certainly the alien nature of the colonial criminal justice system has been problematic for Māori since the outset. As Pratt (1992) notes Māori perceived imprisonment to be an exceptionally degrading experience; indeed plunder, physical pain, and death were preferred alternatives. However, imprisonment was imposed upon Māori, and as a colonial device the imported criminal justice system facilitated social, political, and cultural subordination of Māori. The legal and justice systems enforced were not just *non-Māori*, they were *anti-Māori*, and enabled a history of marginalisation. It is upon a history of silencing and shackling Māori that arguments for a separate criminal justice system are founded; it is not Māori who have failed, but rather the criminal justice systems have repeatedly failed Māori.

Justice for Māori is argued as unrealistic in a criminal justice system that is established on non-Māori philosophies, culture, and values and a move toward a Māori criminal justice system embedded within a Māori worldview is seen to be a means to address Māori dissatisfaction with the current system (Jackson, 1988; Tauri, 2005). A separate criminal justice system is a lofty aspiration, though not an impossible one. Within tikanga Māori there already exist traditional systems of law, order, and justice. Moreover the potential for positive outcomes is significant in restoring a justice system founded on the importance of maintaining relationships. Because harmful behaviour and

offending within a Māori worldview are seen to occur in the context of an imbalance in health and functioning of the individual, whānau, and community (Pratt, 1992; Quince, 2007), any reestablishment of traditional practices would necessitate a Kaupapa Māori approach. Accordingly a Māori criminal justice system would not merely entail the involvement of Māori communities; whānau, hapū, and iwi would be the backbone in terms of upholding laws, as well as determining, and carrying out sanctions. A Māori criminal justice system would necessitate a revival of Māori ways of thinking and being, because they are inextricably entwined.

A Māori criminal justice system is befitting of Māori aspirations for tino rangatiratanga, self-determination. Indeed calls for a separate system cite Article Two of Te Tiriti o Waitangi as guaranteeing Māori rights to administer traditional law and justice. Te Tiriti historically was used to formally silence processes of Māori law and justice and Māori ways of being (Pratt, 1992) and the state has consistently denied Māori these rights by privileging their own interpretations of Te Tiriti (Tauri, 2005). In effect, Te Tiriti has been operationalized to colonise Māori. However, despite pervading and dominant colonial discourses, Māori refuse to be silenced, refuse to be shackled, and refuse to be denied Māori rights. As Walker (2004) summarises, ‘ka whawhai tonu mātou’, our struggle and resistance is without end.

Within the education system Kaupapa Māori approaches and institutions are well established. Smith (2002) asserts that Kaupapa Māori theory originated within an educational resistance strategy in the context of ongoing struggles between Māori communities and educational institutions dominated by Pākehā ideas and values. The growth of Kaupapa Māori initiatives in education began in the 1980s and was symbolic of a revolution in Māori education. The process of transformative action within the education system is argued as key to facilitating positive change for Māori. Furthermore, there is recognition of the need for multiple strategies and complex responses to historically colonialist systems and institutions in order for Māori to decolonise themselves.

A separate Māori criminal justice system would necessarily apply Kaupapa Māori philosophy, developed and implemented by Māori to benefit Māori. A similar process has occurred within education therefore it is possible. It would be an expression of decolonisation and would further herald that Māori culture and ways of being are acknowledged by the dominant culture as legitimate. The continual failing of the criminal justice systems in dealings with Māori since the signing of Te Tiriti o Waitangi is cause for a drastic change. Solutions for Māori will not be found in colonial discourses, they will be embedded in the struggle against colonialism.

Te mutunga kōrero: Concluding remarks

The overarching aim of this thesis was to provide a comprehensive understanding of the relationship between Māori and the criminal justice system in Aotearoa, New Zealand. In particular the objective was to explore the lived experiences of institutional racism. To contextualise the research the introductory chapters explored the historical, social, cultural, and political factors that have contributed to institutionally racist practices. Against this backdrop the lived experiences of five Māori who have had personal interactions with the criminal justice system were discursively analysed and discussed.

The aims of this research project need to be considered alongside the limitations. Māori experience of institutional racism within the criminal justice system is an issue of considerable magnitude, and the scale of the study is small relative to the breadth of the topic. A key limitation therefore is the small scale, in particular the small participant numbers. The early intentions of the research were to recruit at least 12 participants, to provide a robust amount of data, however this was not possible and the study proceeded with five. It is acknowledged that various discursive resources and findings may have emerged with greater participant numbers.

Even so the findings of the study are notable and contribute to the body of discursive psychology literature mapping the language of racism. Specifically, this study responds to calls for research that investigate the perspectives of Māori as targets of racism (Pack et al., 2013). Māori perspectives of the criminal justice system and institutional racism underline pervasive power relations that facilitate the belittling of Māori identity, intrude on Māori rights, and diminish cultural integrity. At a broader social level the findings lend weight to arguments that colonialism has enduring effects for colonised peoples. Reform and better outcomes for Māori in dealings with the criminal justice system therefore entail decolonisation and the reclaiming of tikanga Māori pertaining to legal and justice practices; for Māori the pursuit of tikanga is the pursuit of justice.

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Appendices

Appendix A: Glossary

awa	river
haka	cultural / ceremonial dance
hapū	sub-tribe
he whakawhiti kōrero	discussion
iwi	tribe
karakia	prayer / incantation
kaumātua	elder
kaupapa	purpose / theme / agenda
mana	power / prestige / authority
manawhenua	authority over the land
Māori	Indigenous people of New Zealand
mate	weakness
maunga	mountain
mihi	welcome / greet
muru	plunder / ritual compensation
noa	free from tapu / ordinary
Pākehā	New Zealand European
rūnaka	tribal council
takahi	to trample
tangata whenua	people of the land
taonga	treasure / anything prized
tapu	restricted / sacred / prohibited
tauā muru	a muru party
te mutunga kōrero	concluding remarks
Te Reo Māori	the Māori language
te tīmatanga kōrero	opening dialogue
tikanga	custom / protocol

tino rangatiratanga	self-determination
utu	repay / reciprocity / revenge
wāhanga tuatahi	chapter one
wāhanga tuarua	chapter two
wāhanga tuatoru	chapter three
wāhanga tuawhā	chapter four
wāhanga tuarima	chapter five
wāhanga tuaono	chapter six
waiata	song
wairua	spirit / soul
whakapapa	genealogy / connection
whakataukī	proverb / saying
whakawhanaungatanga	establishing relationships
whānau	family
whanaungatanga	relationship / family connection

Appendix B: MUHEC Approval letter



9 November 2015

Dear Eleanor

**Re: HEC: Southern B Application – 15/10
Māori experience of institutionalized racism within the criminal justice system**

Thank you for your letter dated 9 October 2015 outlining the change you wish to make to the above application.

The change, to recruit participants from an additional community counselling service, has been approved and noted.

If the nature, content, location, procedures or personnel of your approved application change, please advise the Secretary of the Committee. If over time, more than one request to change the application is received, the Chair may request a new application.

Yours sincerely

Dr Rochelle Stewart-Withers, Chair
Massey University Human Ethics Committee: Southern B

cc A/Prof Keith Tuffin
School of Psychology
WELLINGTON

Prof James Liu, HoS
c/- HoS Office Manager, School of Psychology
PN320

**Massey University Human Ethics Committee
Accredited by the Health Research Council**

Research Ethics, Research and Enterprise

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Appendix C: Information sheet



Māori experience of the criminal justice system

INFORMATION SHEET

Researcher(s) Introduction

Ko Moumoukai, ko Ī orangi ngā maunga,
Ko Waitirohia ki Nuhaka, ko Te Ewe ngā awa,
Ko Ngai te Ipu te hapū,
Ko Rakaipaaka, ko Ngāti Kahungunu ki Te Wairoa, ko Rongomaiwhahine ngā iwi.
Ko Eleanor Brittain ahau.

My name is Eleanor Brittain and I am doing a research project as a part of a Master of Arts in Psychology. The research will look at what it is like for Māori who have gone through the criminal justice system.

Project Description and Invitation

My project aims to look at what it is like for Māori who have been involved with Police, gone through the Courts and/or been to prison or on probation.

I would like to invite you to take part in this research by participating in an interview.

Participant Identification and Recruitment

To participate in this project you will need to identify as Māori and have had some kind of involvement with the criminal justice system. This includes being arrested and/or charged with a crime by Police, being tried and/or convicted and sentenced for a crime in the Courts, and going to prison and/or being on probation.

A3K, a subsidiary of Otākou Rūnaka and Māori service provider to offenders in the Dunedin area, will talk to potential participants and give out information about the project. Participants will be selected on a first come, first serve basis and there will be a total of 12 participants in the project. It may be uncomfortable to take part in this project as participants will be invited to talk about things that have happened in dealings with the Police, going through the Courts and being managed by the Department of Corrections.

Project Procedures

Participants will participate in one-on-one interviews with myself that will take between 60 and 90 minutes. In the past I have worked as a Probation Officer in Dunedin. My role as a researcher is very different and separate from my previous role with the Department of Corrections. Whānau, relevant support, such as A3K, and other agencies are invited to support participants through the project. Attached is also a list of counselling and other support agencies for participants in the case that the project brings up uncomfortable issues.

Data Management

The data is the content of the interviews. I will listen to the recordings and write them out, word for word. Both the written and recorded data will be kept in a locked personal filing cabinet that only I will have access to. I will provide participants with a summary of the project findings. If you would like to access these or have questions about this, my contact details are on the following page. Participants real names will be kept confidential and they will be asked to come up with an unidentifiable name to be recorded on the written data.

Participant's Rights

You are under no obligation to accept this invitation. If you decide to participate, you have the right to:

- decline to answer any particular question;
- withdraw from the study (at any time);
- ask any questions about the study at any time during participation;

- provide information on the understanding that your name will not be used unless you give permission to the researcher;
- be given access to a summary of the project findings when it is concluded
- ask for the recorder to be turned off at any time during the interview.

Project Contacts

Researcher:

Eleanor Brittain

Phone: 0273049672

Email: ellebrittain@gmail.com

A3K

258 Stuart St

Dunedin

(03) 471 5485

Ask to speak to Michelle Taiaroa-McDonald.

Supervisor

Associate Professor Keith Tuffin

Massey University

Committee Approval Statement

This project has been reviewed and approved by the Massey University Human Ethics Committee: Southern B, Application 15/10. If you have any concerns about the conduct of this research, please contact Prof Julie Boddy, Chair, Massey University Human Ethics Committee: Southern B, telephone 06 350 5799 x 86055, email humanethicsouthb@massey.ac.nz

Appendix D: Revised Information Sheet



Māori experience of the criminal justice system

INFORMATION SHEET

Researcher(s) Introduction

Ko Moumoukai, ko Āorangi ngā maunga,
Ko Waitirohia ki Nuhaka, ko Te Ewe ngā awa,
Ko Ngai te Ipu te hapū,
Ko Rakaipaaka, ko Ngāti Kahungunu ki Te Wairoa, ko Rongomaiwhahine ngā iwi.
Ko Eleanor Brittain ahau.

My name is Eleanor Brittain and I am doing a research project as a part of a Master of Arts in Psychology. The research will look at what it is like for Māori who have gone through the criminal justice system.

Project Description and Invitation

My project aims to look at what it is like for Māori who have been involved with Police, gone through the Courts and/or been to prison or on probation.

I would like to invite you to take part in this research by participating in an interview.

Participant Identification and Recruitment

To participate in this project you will need to identify as Māori and have had some kind of involvement with the criminal justice system. This includes being arrested and/or charged with a crime by Police, being tried and/or convicted and sentenced for a crime in the Courts, and going to prison and/or being on probation.

A3K, a subsidiary of Otākou Rūnaka and Māori service provider to offenders in the Dunedin area, and Mirror HQ, a counseling service for youth with co-existing problems, will talk to potential participants and give out information about the project. Participants will be selected on a first come, first serve basis and there will be a total of 12 participants in the project. It may be uncomfortable to take part in this project as participants will be invited to talk about things that have happened in dealings with the Police, going through the Courts and being managed by the Department of Corrections.

Project Procedures

Participants will participate in one-on-one interviews with myself that will take between 60 and 90 minutes. In the past I have worked as a Probation Officer in Dunedin and I currently work as a counsellor for Mirror Counselling Services, however in a team separate to Mirror HQ. My role as a researcher is very different and separate from my previous role with the Department of Corrections and my current role. Whānau, relevant support, such as A3K, Mirror HQ and other agencies are invited to support participants through the project. Attached is also a list of counselling and other support agencies for participants in the case that the project brings up uncomfortable issues.

Data Management

The data is the content of the interviews. I will listen to the recordings and write them out, word for word. Both the written and recorded data will be kept in a locked personal filing cabinet that only I will have access to. I will provide participants with a summary of the project findings. If you would like to access these or have questions about this, my contact details are on the following page. Participants real names will be kept confidential and they will be asked to come up with an unidentifiable name to be recorded on the written data.

Participant's Rights

You are under no obligation to accept this invitation. If you decide to participate, you have the right to:

- decline to answer any particular question;

- withdraw from the study (at any time);
- ask any questions about the study at any time during participation;
- provide information on the understanding that your name will not be used unless you give permission to the researcher;
- be given access to a summary of the project findings when it is concluded
- ask for the recorder to be turned off at any time during the interview.

Project Contacts

Researcher:

Eleanor Brittain

Phone: 0273049672

Email: ellebrittain@gmail.com

A3K

258 Stuart St

Dunedin

(03) 471 5485

Ask to speak to Michelle Taiaroa-McDonald.

Mirror HQ

4th Floor

Evan Parry House

42 Princes St

Dunedin

(03) 47932970

Supervisor

Associate Professor Keith Tuffin

Massey University

Committee Approval Statement

This project has been reviewed and approved by the Massey University Human Ethics Committee: Southern B, Application 15/10. If you have any concerns about the conduct of this research, please contact Prof Julie Boddy, Chair, Massey University Human Ethics Committee: Southern B, telephone 06 350 5799 x 86055, email humanethicsouthb@massey.ac.nz

Appendix E: Counselling and Support Services List

COUNSELLING AND SUPPORT SERVICES LIST

Youth Services

Mirror Counselling Services
Evan Parry House
43 Princes St
Dunedin
(03) 479 2970

Free counseling for young people up to 21 years of age.

Adventure Development
226 High St
Dunedin
(03) 470 1691

Free counseling for young people up to 19 years of age, particularly for alcohol and other drug and/or mental health issues.

Adult Services

Anglican Family Care
266 Hanover St
Dunedin
(03) 477 0801

Free counseling available. Also have a variety of free support services for families.

Catholic Social Services
42 Macandrew Rd
South Dunedin
Dunedin
(03) 455 3838

Free counseling available and social services.

Kaupapa Māori Services

A3K
258 Stuart St
Dunedin
(03) 471 5485

Free kaupapa Māori programmes for offenders.

Te Rōpū Tautoko ki te Tonga
6 Wolseley St
Dunedin
(03) 477 4670

Free counseling and health services.

Arai te Uru Whare Hou Ora
Trevian House
60-66 Tennyson St
Dunedin
(03) 471 9906

Free health and social services for whānau.

Other Support

Dunedin Community Law Centre
52 Filleul St
Dunedin
(03) 474 1922

Free legal advice and information.

ACC Sensitive Claims
Call Sensitive Claims Unit 0800 735 566
Or see GP

Appendix F: Participant Consent Form



Māori experience within the criminal justice system

PARTICIPANT CONSENT FORM - INDIVIDUAL

I have read the Information Sheet and have had the details of the study explained to me. My questions have been answered to my satisfaction, and I understand that I may ask further questions at any time.

I agree/do not agree to the interview being sound recorded.

I wish/do not wish to have my recordings returned to me.

I agree to participate in this study under the conditions set out in the Information Sheet.

Signature: _____ **Date:** _____

Full Name - printed _____

Appendix G: Interview Schedule

Open with karakia, check this is ok with the participant. Invite participant to do this or if they would like me to.

Introduce myself with my pepeha (detailing my maunga, awa, hapū and iwi) and mihi (formally greet) to the participant and whānau or other support people present. Do this in both Te Reo Māori and English. Invite them to respond in a way they feel comfortable.

Explain how the interview will proceed, my role as researcher and their rights as participant. Gain their consent and confirm they understand and are willing to continue.

Questions:

- Tell me about how you first came to have dealings with the criminal justice system, that is;
 - the Police,
 - the Courts,
 - Corrections.
- As a Māori, what has it been like dealing with;
 - the Police?
 - the Courts?
 - Corrections?
- As a Māori, can you tell me about some of your experiences with;
 - the Police?
 - the Courts?
 - Corrections?
- As a Māori, do you think you have been treated differently by the criminal justice system than someone who is non-Māori?
 - In what ways?
 - What was that like for you, your whānau or other significant people in your life?

- Overall, what do you think about how Māori are treated by the criminal justice system?
- There is talk about there being institutionalised racism against Māori in the criminal justice system;
 - o Is that something you've heard of?
 - o (If yes) What are your thoughts about this?
 - o (If no) Can I share a brief definition of institutionalised racism and then get your thoughts?
- Is there anything further you would like to talk about to do with Māori experience of the criminal justice system that we haven't talked about?

Thank them for participating. Check whether there was any discomfort for them through the interview, offer list of counselling and support agencies. Advise them of the process from here.

Close with a karakia, check this is ok, invite them to do so or offer to do it myself.