Hōkai Rangi:

A Critical Discourse Analysis of the Department of Corrections Five Year Strategy

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Abstract

Hōkai Rangi is a publicly available document that outlines the five-year strategy for the Department of Corrections Aotearoa New Zealand, 2019 to 2024. This thesis uses a Critical Discursive Analysis of the document to identify the power relations that are represented through discourse which will show how Hōkai Rangi is representative of transformative discursive change and how it may become a reifying statement of continued discursive practice. I look at the dominant discourses and knowledges that have shaped correctional practice throughout the history of Western imprisonment and management of human risk. This gives the theoretical, cultural, and historical context for analysis. A subsequent analysis focuses on the clear and obvious, as well as opaque reifying of discursive power relations that trap the Department in its current practices, as well as some of the challenges to discourse that the document proposes. Throughout this work I use the theses on penology and the society of captives, proposed by Arrigo and Milovanovic (2010) to inform potential sites of resistance and spaces for discursive change that could support transformative change for the way in which human risk is conceptualised and managed. I also look to areas of practice that have the potential to enable frontline workers to effect discursive change.

dedication and drive to change things for the better is truly inspiring and I hope that we can look to create spaces into which to 'pour' this worthy ambition.

Thank you, Massey University, for the chance and space to do this work, I will never take this for granted.

"Through this new approach, and working with Māori in our care, their whānau, and all of our partners, we expect to improve wellbeing outcomes. A consequence of this will be a reduction in the current disproportionate recidivism rates." – Hōkai Rangi (Purpose and Context)

Preface

I come to this research positioned in my historical, cultural, and context specific lived experience. As an employee of the Department of Corrections Ara Poutama since 2016 I have experienced the justice system from the unique perspective of a frontline probation officer and practice leader, as well as from the Department's inner running and decision making as a senior advisor to prison director, assistant prison director and now assurance and change lead. I came to the Department from a whānau who has operated at times from the margins through their historical experiences of abuse, violence, and eccentric ways of living life. We were friends and relatives of people considered criminal or antisocial, including gang members, and this was navigated through plenty of love, respect, as well as exuberant enjoyment through partying and adrenalin-based sports and activities. I did not know that this was not reflective of all people's experiences and life; as with most children, I accepted things for what they were and had a full, varied, and exciting childhood with plenty of love and support. It wasn't until I grew through my teenage years that I began to notice differences between my way of life and most of my peers. In my mid to late 20s, I had started questioning a lot of society and its values, especially when it came to equality, equitable beginnings and places certain individuals' could/could not occupy. I also visited a clinical psychologist for the first time; a person who highlighted some the experiences I had taken for granted and their potential for trauma. This series of experiences led me to the decision I wanted to study psychology

and see if there were insights and answers to humanness that are implied to reside in the knowledge of this discipline. This was where things really started to take shape for me ,and I made the decision to apply to work in the justice sector through the Department of Corrections. I also veered from my initial pathway to become a clinical psychologist and moved into the space of critical psychology that truly inspired my curiosity and seemed to speak, in such a richer way, about what humanness could be. I have worked constantly to apply this 'lens' to my work within the Department which, obviously, affects my working relationships and the way in which I am perceived professionally. There are clear conflicts within this as I am often at odds with accepted, ingrained practices; yet there are also many people I have meet through work who value strongly my way of viewing things.

At these times it becomes clear that there are many within Ara Poutama who strongly value doing things differently and working toward spaces that heal as opposed to inflicting more trauma and evaluating individuals through incomplete assessments of human risk based on mainstream psychological knowledge. Given my privileged position as a student of critical psychology as well as an employee of the Department, I am able to give voice to what it is that these other individuals/groups are feeling, valuing and trying hard to influence. It is important to me, given the largely well intentioned and hard-working nature of those involved, that I make clear that this thesis is in no way a reflection on the intent or efforts of any of the individuals that work for Ara Poutama. It is a critique or unpacking of the ways in which systems, apparatus, and knowledges can operate through discourse and discursive practices to undermine or ignore good intentions through subtle power relations and 'making fit' ideas and initiatives that were intended to effect change. From this perspective, mainstream psychological knowledge will be critiqued strongly. Again, this is not to disavow the need or use of clinical psychology as a helpful and

necessary intervention for those under the management of the Department. Rather it is a look at the way in which the knowledge claims from within this discipline transcend the practice through discourse to create, and limit, the conditions of possibility for the individuals in question as well as the way in which the Department, and society as a whole, understands criminality and the criminal other. In undertaking this task, my research engages with a critical textual analysis of Hōkai Rangi, the Department's five-year strategy for change.

The intent is to offer a strategic interrogation of the document itself. The thesis is presented in two parts; part one is a theoretical, epistemological analysis that contextualises Hōkai Rangi within critical criminal justice theory. Discourse is explored as a strategy for change with practical implications for the way in which the Department of Corrections can engage in the management of those who are either in prison or on community sentence. Two options for change are presented with exploration of the discursive changes that could, or need, to happen in order that these have a chance to succeed. Alternative theoretical positions are adopted as being counter to or expansive on the dominant discourses that can work to trap the Department in their current practices. Part two is a selected critical discourse analysis of the text of the document itself, contextualised by part one. Strategic use of discourse to effect change is expanded upon. The analysis is placed within the understanding of critical psychological theory that explores the relationship between discourse, knowledge, and power.

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PART ONE: THEORETICAL ANALYSIS, HŌKAI RANGI IN CONTEXT OF CRITICAL

CRIMINAL JUSTICE THEORY

CHAPTER ONE: INTRODUCTION

Why this research?

The idea for this research comes, in a direct form, from the first six years I have spent working for the Department of Corrections, initially as a frontline Prisoner Release Probation Officer, followed by a stint as a Practice Leader, Senior Advisor to the Prison Director at Auckland Prison, Assistant Prison Director, and now as a 'Change Lead' for Auckland Region Women's Corrections Facility. In a broader sense it has also been informed by my life experience and that of my parents and whānau. I have had (to put it mildly) eclectic experiences with an eclectic range of people, something I was not so aware of until I engaged in the study of psychology through University. Throughout these experiences, and then in a focussed way as an employee of the Department of Corrections (the Department), I have seen how it is that knowledge, analysis, intervention and discourses, based on often unacknowledged assumptions, can build power relations and realities that impact on those who are disempowered to tell their own story. It is fair to say at this point that I was not aware I had been witness to (and active in) these processes as I myself was immersed in and unaware of the discourses that operated to create these 'realities'. It was not until I engaged in the study of psychology that my own self reflections and understanding of critical thought 'allowed' me to see what could be happening.

Although not a strictly auto-ethnographic study, the reader will 'find me' represented throughout this thesis in stories of some relevant experiences I have had working for the

Department. I write in the first person as I acknowledge that this work is a critical reading, which in the concept of Heidegger's "hermeneutic cycle" (Packer & Addison, 1989) is an interaction between reader and text. Interpretation of the discourse within the Hōkai Rangi strategy will be continually informed by the text itself, but also by my practical experience. As a student of critical psychology, as well as an employee of the Department, I cannot separate my ongoing development and analysis of the systems and forces that effect and construct the realities of crime, prison, the criminal, rehabilitation, social harm and so on, from my day-to-day work. Therefore, the reader will see through my lens some of the discursive practices/realities applied throughout Departmental processes. I will of course avoid any identifying details as these are not needed to highlight how discourse is operating through the human agents engaged in "correctional" work.

When the Department announced the new five year strategy, Hōkai Rangi, in 2019, I read it, discussed it with colleagues, and experienced some optimism that there was a potential to adjust some of the more bureaucratic, 'risk averse' practices and create some space to work with people as people. I could see how the strategy could 'liberate' the practitioner to work in those ways that acknowledged the 'human' and their context(s) and take account of some of the oppressive 'knowledges' that are applied through the 'lens' of 'managing human risk'. Hōkai Rangi may 'intend' to be explicitly aimed at reducing Māori representation within the justice system, but it is my view that some of the ways in which this is proposed to be achieved could have similar impacts for almost all. What will need to be achieved is a transitioning of discourse which will need acknowledgement of the current theory, a proposal of 'new' or different theories which work to address the 'problems' created by a reliance on the previous, and a 'piecing together' of these, often competing or mutually exclusive, theories by the practitioners, who are the agents of

change (Arrigo & Milovanovic, 2008). To do this, and this is where I experienced my first sense of scepticism, we must reflect on the discourse and practices that are/have been used to create both the current system of 'Correctional' work as well as the document 'Hōkai Rangi'. The Department's ability to reflect on 'itself' as an institution which moves and creates discursive realities would need to be laid bare and given a 'blueprint' for how to deconstruct and 'rebuild' in a way that at once does not increase the risk of harm to society while helping reduce the harm inflicted on those who come under the oversight of the Department. Upon re-reading the document with this in mind, listening to the discussions and participating in some of the 'actions' that were proposed, I could not see any reflexive languaging nor any critiquing of the discourse(s) that are used to privilege the Department of Corrections as the best placed to address/fix the 'problem' of offending. There was also no 'laying bare' the theoretical underpinnings that 'allow' for the imposition of state power in such obvious and debilitating ways as imprisonment or 'supervision'. The 'bones' were there and the level of engagement with staff was high. However, without 'undoing' or reflecting on current tools, knowledges, or how it is that these create harm there was no way to transform the practice. Thus, there will be no room for 'reimagining' or reconstructing the discourse and practices in a way that shifts the boundaries of possibility for those who encounter the Justice System and are subsequently defined, coded, labelled, and de-liberated by it (Arrigo & Milovanovic, 2010). In discussion with my (now) supervisor Mandy Morgan, as well as Dr Leigh Coombes, I saw that there was benefit in critiquing the discourse used in the Hōkai Rangi document using the theses proposed by Bruce Arrigo and Dragan Milovanovic in their book 'Revolution in Penology: Rethinking the Society of Captives' as a guide/counter approach to current practices and theory.

Importance of Theory

We are not atheoretical; we operate from a theoretical base, but, in Western knowledge construction in particular, we do not tend to acknowledge our theoretical assumptions. These assumptions or presupposed knowledge(s) are what 'chain' us to certain practices or ways of doing and are present in discourse(s) that surround subjects such as criminality. Tarnas (2010) demonstrates the history of intellectual movements that have shaped Western knowledge and epistemological understandings from the classical era through to post modernity. This work identifies three main eras: classical or Greek era, medieval or Christianity era, and the secular modernism (Tarnas, 2010). Tarnas demonstrates that from the classical age, the legacy of Greek thought arises in two apparent veins of philosophical positioning: metaphysical idealism and secular skepticism (Krasevac, 1993). As Krasevac (1993) states, and Tarnas (2010) demonstrates, these two forms of thought consistently recur, in various ways, throughout the history of Western thought.

What becomes apparent in reading Tarnas (2010) is just how liberating the enlightenment was for scientific philosophical thought. As Webb (2005) discusses, Descartes would never have been able to base his entire understanding of "what is" on the concept of rationalism, eschewing all other forms of knowledge creation, ignoring classical philosophy and religion, and aspersing that his knowledge was superior to all without the scientific revolution. Science had radically altered humanity's perception of its relationship to the world. For the first time it was not God that could know us, it was us who knew what God was (Webb, 2005). The seemingly unknowable world of nature, essentially understood as the whimsical outcomes of God's will, had become knowable and predictable (Webb, 2005). Secular science created a world that could be interpreted and

understood to respond in certain ways to certain stimuli, a causality that was previously divine became mundane and tautological. What is then also tautological is that this way of understanding and knowing would become so alluring to philosophy and science that it would be applied to more and more areas of existence. The power of science burgeoning during the enlightenment lifted the veil of ignorance and superstition that had pervaded human academic enquiry for centuries (Webb, 2005).

The rise of empiricism through the initial work of the English philosopher John Locke (1632 – 1704) embraced the Newtonian model of reality in which the world was interpreted as material objects affecting each other mechanically. Locke took this concept and applied it to the realm of the mind, whereby 'real' objects or effects were perceived by the senses and the 'mind' was formed due to the accumulation of these perceptions (Webb, 2005). As Russell (1936) highlights, the definition of empiricism given in the Encyclopaedia Britannica at that time was "the theory that all knowledge is derived from sense experience" (p. 131). Locke's empiricism, therefore, follows a fairly simple 'logic' that the ability to 'sense' the world gives rise to the 'mind' and that nothing 'within' the mind could have started from anywhere else (Webb 2005). As Webb (2005) states, this understanding of how it is that the world works is (and has been challenged by multiple philosophers) philosophically obsolete.

For the Western criminal justice system (and the construct of 'criminal' in Western societies at large) the discipline of psychology has become the leading discipline through which we are able to 'know' about and to address the 'problem' of criminality. Blackburn (2008) details how psychology as a discipline became 'interested'/involved in the study of crime around the time that psychology became an empirical scientific discipline. Given

that this is the time that psychology started to discuss, study, influence, and build an 'authority' on the construct of criminality it is important that we understand how the theory of empiricism will have shaped this 'knowledge' formation and subsequent discourse.

Given that empiricism pervaded the thought and writings of 'science' at the time, it is no real surprise that criminal psychology was formed under this same 'umbrella'. Foucault (1980) would show how it is that the 'desire' of psychology to 'prove' itself as a science comes about through the relations of power that empirical positivist science had over knowledge at this time. Foucault's idea of an 'episteme' shows that of all the statements that are possible (on a subject from within a discipline), the 'dominant' (or relationally powerful) knowledges of the day (empiricism) will determine which are permissible: "The *episteme* is the 'apparatus' which makes possible the separation, not of the true from the false, but of what may from what may not be characterised as scientific" (Foucault, 1980, p. 197). Therefore, the construction of the concepts of criminality would be limited to what psychology, based on empiricism, 'could' say about it. It is then tautological that the discourse created will reflect that the 'problems' are inherent in an individual who committed the crime, based on psychological deficits that were accrued by the individual due to their sensory input and interpretation over their lifetime. These 'deficits' would also be both measurable and predictable through psychological analysis. This would also 'privilege' psychology as the discipline best positioned to 'answer' the problem of criminality. It is also important to understand that there were already well-established apparatus and institutions functioning at the time which were 'addressing' the problem of criminality, namely the Courts, Police, and the prison system. As discussed by Arrigo and Milovanovic (2010), these systems (as well as almost all other parts of society) will work dynamically in a milieu of back-and-forth effects that define, construct, constrict, and reify

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themselves and the other(s). Foucault (1980) comments on this in relation to the 'interest' of psychiatry in the 'criminal'. Though as he sees it there is not an 'interest' as such but more a necessity linked to the very existence of psychiatry which had a 'need' to gain recognition as a component of 'public hygiene' in order to secure a basis for its intervention. Stated simply, if we think about the fact that psychiatry and psychology lay claim to the ability to know about individuals and that that knowledge is based in an epistemological foundation (empirical positivist science) that requires verifiability, prediction, and objectivity they must be able to apply this to the individual who commits crime. Since crime is identified as a social harm these disciplines would also then have a 'moral' obligation to help 'cleanse' the 'problem'. Once the discipline of psychiatry can 'prove' there is a problem in the mentality (an abnormality of the individual, if you will) of the criminal, then that same discipline can develop the 'answers' to that problem. This then creates a 'need' for the established apparatus and institutions as aforementioned to adopt the 'knowledge' offered; keeping in mind that this knowledge must now be made to 'fit' the established apparatus and institutions. This way of seeing the interplay of different apparatus, institutions, and knowledge creation shows how it is that psychology, as a discipline was unable to freely construct its knowledge of crime and the criminal. There were relational powers that worked back-and-forth in a dynamic way to reify each other and their interrelated reliance that defined the parameters of what was and what was not permissible in the identifying, categorising, and 'treating' of the criminal.

Yet, as has been mentioned, the philosophy of empiricism was not up to the task of understanding how the world works, particularly when it came to 'mind'. It is in the philosophy of Hume, who attempted to further the philosophical 'soundness' of empiricism, that empiricism as the basis for understanding 'reality' is shown to be

incapable of the task (Webb, 2005). The problem presented by empiricism is that we can only speak, with certainty, of the perceptions to which we have direct access; that is, despite the objectivist (empiricists and positivists) belief that 'objects' exist outside our minds, there is no way to 'prove' this. This creates a difficult impasse for any 'realist' concept of an objective reality that exists whether we perceive of it or not (Webb, 2005). Hume's rigorous insights into empiricism led him to scepticism of anything beyond our senses and the assumption that things that have been a certain way in the past will continue to be the same in the future (Webb, 2005).

Given the inability of empiricism to account for the objective world beyond senses, and the rigorous work of Hume who showed that empiricism had to accept too many contradictions to be significant, philosophers who did not want to abandon the notion of a 'real' and objective world largely looked to the logic of mathematics under the banner of positivism (Russell, 1950). One of the major proponents of this theory is found in the philosophy of Kant who proposed that mathematics possessed a pattern to which all other knowledge ought to approximate. From this it was purported that 'pure' mathematics could give knowledge as to the 'actual' world (Russell, 1950). Positivism as an epistemology is an acceptance that any question(s) of 'fact' can only be answered by the empirical methods of science (Webb, 2005; Russell, 1950).

In questioning the banner of science as a comprehensible single discipline for a way in which knowledge creation can be engaged, we have the writing of John Dupré whose work on deconstructionism looked at the disunity of science (Ereshefsky, 1995). Dupré understood that the multitude of methodologies that constitute the sciences worked to make the banner of *science* non representative of a single unified methodology that could

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objectively account for the world (Ereshefsky, 1995). Dupré (1993) states that, despite his belief that philosophically empirical, often scientific, enquiry is a worthy way to create knowledge, it is assumptions about the world that are needed to progress scientific enquiry. This is the metaphysical as assumptions that are the drivers of empirical enquiry in an effort to 'prove' the reality of the world. Dupré (1993) shows how it is that the metaphysics of science, and some Western philosophy, assume an orderly universe, yet through the very mechanism of empirical science, the tool used to prove these assumptions, the universe has largely been shown to be anything but. The implication of this thesis is that if the world is in fact disunified, there are many current research programmes that are based on false metaphysics (Ereshefsky, 1995). This then has political and philosophical implications for the way in which an understanding of order and unity has *shaped* the knowledge that has been produced as well as the way that this knowledge is then acted on and used to create systems and comprehension of subjects (Dupré, 1993; Foucault, 1980). Ereshefsky (1995) makes this explicit as he points to the almost fanatical pursuit of the human genome project that looked to determine the alleged genetic underpinnings of human behaviour such as incest and alcoholism. This type of reductionist enquiry has the potential to have dire social consequences for individuals identified by these parameters and ignores the potential social causes of behaviour and the complexities of discourse and discursive practices (Ereshefsky, 1995).

Concepts such as objectivity, expanded on largely by positivist epistemologies, particularly the 'scientific method', allow for a way of engaging with the world in the belief that there is an 'absolute truth' and we simply function from this (Mitova, 2020). The premise of this sovereignty is caught up in the scientific epistemology and constructs such as rationality and logic whereby this epistemology insists they are ideals for how we would

all think were we able to free ourselves of cultural quirks, historical wounds, and other forms of apparent 'bias' (Mitova, 2020). Theory and cultural boundedness are ignored as it is purported that a positivist or post-positivist epistemological position transcends such boundaries. This lack of acknowledgement of theory informed practice means that when trying to change the practice it is very unlikely that we will unpack our theoretical assumptions, reflect on them, and change them. Scientific rigour (under such epistemological assumptions) is assumed to be able to separate the subject from the object in a way that makes the object knowable and predictable to the researcher in their radical absence. That is, scientific research under empirical positivism is not to be seen as coming 'subjectively' from the perspective of the researcher, but rather 'objectively' as though from the perspective of other 'objects' (Webb, 2005). This theoretical understanding is easy enough to accept in the instance of studying rocks or plants, and can be seen in everyday triumphs of technology such as airplanes or smart phones, but becomes far more difficult to accept in the case 'mind(s)'.

The Practical and/of Theory

Transpraxis, which speaks to the necessity of linking theory to practice for any intended change, would imply that without acknowledging and understanding the theory that informs existing practice any change will not be embedded and last (Arrigo & Milovanovic, 2010). An avoidance of engaging with theory and unpacking the embedded Western epistemologies that inform the 'practice' is also an example of epistemological violence that acts, in a very tangible way, on those who are at the core of Correctional work (Teo 2010). Teo (2010) shows how 'scientific' based studies most often ignore the hermeneutics that lead to the formation of 'discussion' sections which are essentially the 'interpretation' that will lead to 'knowledge' and adoption/implementation of practices

based on this knowledge. It is also often the case in scientific epistemology that once a construct has been 'verified' it will go unquestioned in subsequent studies despite that it's very measurement may be contentious for those whom it seeks to define (Teo 2010). Mitova (2020) shows how, despite the global North having 'apparently' receded physically as colonial 'master', they continue to hold legitimacy and sovereignty over the global South's thoughts and epistemic practices through the invocation of the objective and universal nature of their knowledge. This is very obviously seen in the application of Correctional assessment which uses constructs of criminogenic factors to then interpret the otherwise complex intertwined relationships and identities that form a person. Teo (2010) agrees that the interpretation of data is so intimately entwined with theoretical frameworks they cannot be separated from each other. This means not only that the collected data must be interpreted using existing theoretical framework(s), but also that the act of collecting the data was a theory informed 'choice'. Thus, neither the construct (data) nor the interpretation are necessarily binding given that both rely on theory, of which many exist that could change both the interpretation and that which is being measured (Teo, 2010).

When we look to the space of Correctional work the 'what' that is being measured is criminality and/or human risk; and these constructs are measured using risk assessment tools developed in Western positivist empirical psychology. While there is sense in reducing the assessment of criminality to a 'tool' so that engaging in this assessment can be accomplished by multiple individuals (e.g. Probation Officers, Case Managers, Psychologists), it must be acknowledged that it is a single piece of a multifaceted ever moving puzzle (Arrigo & Milovanovic, 2010). Arrigo and Milovanovic (2010) show us that, crime, the criminal, control, and assessment of criminality must be understood in relation

to the other parts, segments, and the social whole in which they exist, but also in relation to the ability for all these parts to experience dynamic change. While the scope of implications generated by ideas of dynamic relationships among key concepts in risks of criminality is beyond the current project, there are theoretical constructs which are crucial, including the concept of holistically interconnected dynamic systems. The fundamental idea in relation to a 'few' 'parts' opens the door to a concept that should run through Hōkai Rangi, being that space can be opened to experience the criminal 'other' in a more holistic way. That space can be rendered through engaging with the 'other' to truly understand and work with them in a relationship that can be reciprocal and hold accountability both ways. What must be understood from Arrigo and Milovanovic (2010) is the relationship/power that 'Correctional' intervention has to 'describe' and 'construct' the individuals who engage in/with it. Those who are identified through the justice system as 'needing' this intervention become subjects of the 'psychology of criminal conduct' which not only acts to describe their reality but also works on (indeed in many ways has created) parts of their identity. In the case of Hōkai Rangi, and a desire to "improve wellbeing outcomes" and reduce disproportionate recidivism rates, there needs to be a way of accounting for this effect that the current system has as these constituted 'parts of self' will be contained in the discursive interactions between frontline staff and 'offenders' (Arrigo & Milovanovic, 2010).

Corrections, in practice, relies on human-to-human interaction and the relationship that is formed during these interactions. This remains true whether you view it from a positivist or constructionist position as well as whether or not you look to the efficacy of 'criminogenic' and 'protective' factors or at the more holistic complexities that may lead to desistance. It is reiterated through the Andrews and Bonta (2010) RNR model and heavily

relied on in psychotherapeutic Motivational Interviewing, both of which the Department of Corrections has committed to to carry out 'correctional' practice. This also highlights the concerns Sundararajan (2020) has around 'weak-ties rationality' psychology, of which moral psychology, such as criminal psychology, is a strong subscriber. Sundararajan (2020) outlines that post industrialist scientific psychology (mainstream psychology) is predominantly the study of relationships between strangers which are dictated through categorisations in order that sense can be made of such large populations. Mainstream psychology, particularly social and moral, contributes to the building of these categorisations as it studies and 'makes sense' of how individuals react/respond to the interactions of complete strangers (Sundararajan 2020). It then holds that the dominant practice of criminal psychology in Aotearoa is constructed through 'weak-ties rationality' which is applied in assessment of the 'other' through risk assessment tools such as the Dynamic Risk Assessment of Offender Re-entry (DRAOR) (Webb, 2005). What this implies is not only that the relationships between the assessed and the assessor are unaccounted for (or at best minimally), but also that the construction of the parameters to assess are in no way reflective of either the individual's strong-ties nor any indigenous psychology. This does not make the assessment incorrect or redundant; rather it requests that the assessment acknowledge and take account of the theoretical and cultural foundations that will/should limit its application. Given that Hōkai Rangi yet again acknowledges the overrepresentation of Māori in the criminal justice sector, it appears paramount that we look to some of the theory in our current assessments and practices. It must by now be apparent that the application of these is certainly not addressing the overrepresentation and may be strongly connected to reifying powers that potentially exacerbated the issue. Thus, the understanding of whether or not Hōkai Rangi is

representative of truly transformational changes will likely best reside within the discourse

that is represented throughout the document itself.

CHAPTER TWO: SETTING THE SCENE

Corrections and Systems of Justice in Aotearoa New Zealand

Blackburn (2008) defines law and laws as something that "facilitates shared goals by regulating the activities of group members" (p. ?). This reliance on shared goals of a community/communities is a fact that Blackburn (2008) goes on to show is increasingly difficult in large multicultural societies. The widely held notion is that laws reflect a community's customs, conventions, traditions and mores which shows how difficult it is to reflect this for multiple cultures living under one Justice System (Blackburn, 2008). In the case of colonised countries where customs, conventions, traditions and more were actively targeted for removal, and or replacement, by those of the colonising culture, a mono-cultural Justice System automatically 'others' an entire people (Mihaere, 2015). Criminal justice institutions in most Western societies have established systems that seemingly target marginalised and minority communities and peoples. This interaction with a system that has the constitutive function to 'rehabilitate' also seems to subsequently condemn both the individual as well as the community(s) and identity(s) they represent (Arrigo & Milovanovic, 2009). This phenomenological set of outcomes are particularly played out in Western colonised countries (Mihaere, 2015). Imposition of a culture and its values onto an entire people will never play out through a passive or benign process irrespective of the intentions of any of the individuals, policies, or institutions. Colonising creates a radical form of 'othering' that will compare the dominant culture's 'norms' as the standard of humanness with the differing ways of being, represented by the indigenous cultures.

Overrepresentation of Māori in Aotearoa New Zealand's prison system and community sentences is a well-known fact that I will not re-present. I won't do so as it is not only

wholly unnecessary but also a potential reifying factor in its own sustainment (McIntosh & Workman, 2017). The statistical figures do make for distressing reading; however, this distress has been acknowledged over and over by academics, politicians, high ranking Police and other agency representatives, iwi and mana whenua representatives and so on, without seemingly making a positive impact. These groups and individuals have engaged in 'solutions' to the 'problem', with the Department of Corrections initiating multiple strategies since 1999 (Mihaere, 2015) relating to addressing this overrepresentation. These 'solutions', presented in the form of strategies, have, tautologically, been based in Western scientific theoretical frameworks with particular focus on the individual's access to Māori identity (Mihaere, 2015). A series of solutions based in the epistemological and ontological assumptions of the system that removed access to identity and imposed a foreign, culturally, and historically bound knowledge for Māori, would seemingly be inextricably linked to the overrepresentation these strategies wish to 'fix'. There are multiple parts to this system that operate from the same or similar discourses to act on the body of individuals and create the realities under which we live. Once again this is particularly the case for Māori in our colonised society when their contact with 'state' will always be subject to the issues that surround othering and these discourses will (and already have) build a reality that has tangible, lifelong impacts of those who become their 'subject' (Arrigo & Milovanovic, 2010).

Correctional work within the Aotearoa New Zealand Justice system is not only enacted through prisons, as with other Westernised systems there is also the imposition of 'supervision' in the community. Largely facilitated through the work of Probation Officers community-based sentences can be either handed down as a sentence in and of themselves or as a post-prison continuation of monitoring, such as parole. Bosker,

Witteman and Hermans (2013) investigate the 'match' between probation-based intervention plans (offender plan) and the assessed 'risk' of the individual. In line with the Aotearoa New Zealand system this analysis is guided by the Risk Needs Responsivity (RNR) model developed by Canadian psychologists Donald Andrews and James Bonta. What becomes apparent through the article is the importance of the relationship between the probation officer and the offender (Bosker, Witteman, & Hermans, 2013). Though the discourse that surrounds and constructs a 'psychology of criminal conduct' places the author in a space of relying on individualised, reduced constructs such as 'social control' or 'antisocial personality', the relationship between probation officer and offender continues to make itself apparent. Bosker, Witteman, and Hermans' (2013) paper focusses in on the concept of 'social capitol' which is constructed as essentially being an accountability, possibly duty, to peers and/or social groups assessed as being pro-social (Bosker, Witteman, & Hermans, 2013). Given the relationship with a probation officer and the need for aligning of 'goals' so that both parties can agree and work toward this outcome it would be seemingly appropriate (potentially unavoidable) that the probation officer become a person the offender feels healthily accountable to. I would purport that I have experienced times where this was the relationship (to an extent) that I have had with those under my supervision. I have also seen this from other Probation Officers who have worked hard to create a relationship of this kind in order that they can get more positive outcomes. I would also add that this was done not through the prescribed 'policies' or 'procedures' that we were both bound by and measured on, but rather through an effort of personal choice to privilege a trusting relationship and shared navigation of the terms of their supervision. This style of working with individuals was not necessarily prohibited by management but there was always a sense that it represented a 'risk' to the Department through a damage to its reputation should anything go wrong. As such it was

my experience that I was not empowered to work in this way without adhering (even if only ostensibly) to the empirical, positivist-based measures of risk and appropriate responses upon which my work and the individual's risk was measured. It also made stark the way in which the justice system as a whole was in control of how and what information was relevant and usable when working with or managing each individual, as well as which disciplines are privileged to assert the 'truth'. In terms of Courts and Parole Boards, this is almost always psychologists and probation officers, with the psychological input being given the highest status as the purveyor of 'truth' (Taylor, 1984).

Since many of the concepts of human risk and practices of risk measurement depend on the RNR model, which attempts a respectful approach to the complexity of individuals lives when 'accounting' for the psychology of criminal conduct, this is reliant on empirical positivist enquiry. This entails the building up/breaking down of silos (e.g. personal attitudes vs dominant neighbourhood attitudes) in order to better assert which has a stronger relationship to criminal conduct. In comparison to Arrigo and Milovanovic (2010), Andrews and Bonta's (2015) attempt to account for the complexities of individual psychologies within complex socio-political, cultural, colonised, societies is an unsophisticated summation that does not look to even account for the author(s) place within these systems. This is not a criticism of the authors themselves as it is more a reflection of the way in which empirical, positivist psychology must be engaged in. Variables (silos) must be defined in order that they be isolated for study and interpretation through mathematical probabilities to 'measure' their relationship with or effect on the dependant variable. Arrigo and Milovanovic (2010) see these 'silos' as interconnected in a way that tries to understand them outside the context of each other, which is an exercise in futility. Arrigo and Milovanovic (2010) demonstrate the extreme complexity of society

through the metaphor of each 'part' of society being a segment, containing parts, containing peices. Ranging from whole institutions to the genes within the individual who goes to make up part of that institution, each piece acts on and interacts with the others to constitute and create the other(s). This interaction makes all the constitutive parts and 'wholes' dynamic and fluid in a way that clearly demonstrates the futility of an empirical positivist account for humanness from a single construct such as Criminal Psychology. Arrigo and Milovanovic (2010) suggest that by understanding how these factors dynamically interact to produce crime (and mental illness), and its associated institutions and their practices, it may be possible to open up a conceptual space for considering alternative ways of dealing with atypical human behaviour (Ward, 2013).

By being consigned to the discourse of criminality, offenders are constituted through the language of 'human risk' that is paramount in all Correctional engagement. Despite an investment in the psychotherapy of Motivational Interviewing (MI) for frontline staff, a psychotherapy that promotes empathy as pivotal to purposeful engagement, large parts of what would be considered salient features of their lives are overlooked or dismissed (Ward, 2013). There is not much space in the discourse and 'risk' analysis to experience the person in a truly empathetic way. Commitment to the RNR model brings with it the defined 'criminogenic needs' that Andrews and Bonta (2015) have constructed based on positivist paradigms of reliability and verification. Thus, the notion of 'rehabilitating' and therefore reducing recidivism is one that seeks to address these areas of deficit. There is not a concern, necessarily, with the morality of how, nor is there a space for the acceptance of these areas to continue but have the individual be able to navigate them. Removal or assessed reduction of a 'criminogenic need' is seen as a positive risk reduction regardless of the overall well-being or agency of the individual to whom the

assessment has been applied (Ward, 2013). An example from my personal experience would be being able to know, associate with, love, respect, and value whānau who are considered (even extremely so) antisocial yet maintain my own integrity and moral plurality that allows space for these relationships without criminal effect or elevation of criminal risk. It is the opinion of Ward (2013) that the strengths-based model allows more for the incorporating of an individual's value system that translates different personal, cultural, religious, and political norms into plans for living.

Ward (2013) makes explicit the concepts represented in Arrigo and Milovanovic (2010), particularly around how the 'subject' (in this case offender) is constituted and produced by the intervention (and discourse) of the agencies involved in the criminal justice system. The ethicality of engaging in practice that comes from a place of 'professional help', especially in regards to the justice system, is a complex landscape that is affected by multiple moralities that connect to norms, codes of conduct, life experiences, and discourses that work to construct identities and realities (Ward, 2013). In discussing an individual's account of their interaction with such agencies Ward (2013) shows how it is that the individual had identities of 'patient' and 'offender' imposed on them. These identities come with preformed notions and understandings that will dictate the way in which an individual is interacted with, and also, limits the way in which they can 'do/express humanness' without being sanctioned (Arrigo & Milovanovic, 2010). In Ward's (2013) work, the individual in question was desiresome of easing their suffering and developing genuine, caring relationships with other people, yet these desires were not 'goals' of those professionals who were there to *help*. The experience of the individual was that the professionals were able to look past them as a whole person and interpret and act upon them in ways that avoided accounting for their humanness and

vulnerabilities. The professionals in this case were able to constitute the individual through the lenses of 'offender' and 'risk' and act in a way that made sense through the related discourses. This should demonstrate an area of real concern for anyone working in the criminal justice sector as it highlights an 'ethical blindness' that can be created without intent and from a position of 'helping' which is constituted through the 'science' of offender rehabilitation (Ward, 2013; Arrigo & Milovanovic, 2010). In my experience as a frontline probation officer, the reality of working as an individual with another person involves the silos of our positions as probation officer and offender constructing and limiting our interactions or understandings of each other. My ability to 'help' is constrained by the systems and knowledge that informs them (namely mainstream psychological), while the 'offender' is constrained by the explicit controls and 'rules' that are imposed through a system that bases its comprehension on abnormality to norms. I become the embodiment of this system and they become the object upon which its acts through me. This seems to highlight the assertion by Fairclough (2005) that any true change to a social system must include or be led by discursive change. The occupying of the above-described spaces by both probation officer and offender is constructed through the discourse(s) that relate to these silos as well as the wider construct of criminality and human risk (Arrigo & Milovanovic, 2010). The carrying out of any tasks, assessments, interactions, or change is therefore discursively constructed through the practice of the human agents within their given silos. A change in the discourse used by Ara Poutama to construct its role in the justice system and to more holistically represent those who come under its supervision would allow a change in the practices of the human agents that are the embodiment of that management (Fairclough, 2005; Arrigo & Milovanovic, 2010).

In an Aotearoa New Zealand specific example, Awatea Mita (2020) outlines some of the horrors of imprisonment that are enacted through *sensible* rules, enabled by discursive statements and language. Awatea spent 22 months in a women's prison and remains disturbed by the stories of the women she met during this time (Mita, 2020). She outlines some simple injustices experienced by women in the prison, such as access to her property, loss or redistribution of her property without her permission, and the rule that those from one space were not allowed to converse with each other through the fences. Though seemingly small injustices, Mita (2020) is able to reflect on the level of feeling this invoked given that all other parts of her existence were under the control of the Department in a way that totally removed her agency as human. Even access to bras, a seemingly simple and obvious need was controlled by a series of rules, including no underwire allowed, in a way that made Awatea entirely reliant on the system to meet her needs (Mita, 2020).

Mita (2020) also highlights the horror that is imprisonment. She recounts how 11 months into her 22-month incarceration, her 13-year-old son accidentally drowned. Mita (2020) places this in context to the experience of another woman whose teenage daughter took her own life while her mother was imprisoned. In this case the experience of the daughter was one where she herself had been subjected to the categorising, risk constructing, outcomes of the state through the institutions that are privileged as child protection within our society. In this case, the young woman had been removed from the care of her father, who was later cleared of any charges and the other children returned to his care, whereby she was placed in foster care. During this time, she was sexually abused by her state selected carers and was missing her mother who was in the *care* of the state as a prisoner. From these series of experiences, Mita (2020) argues strongly that this young

woman's death was preventable. What is also implicit in both these tragedies is the experience of the incarcerated mother, who must endure the devastating loss of a child from a space that restricts their everyday, from movements, acts, what can and cannot be said, and who they are able to have contact with. Prison does not have to act to enable horror; removal from access to society brings enough horror already. Yet it does act, through discursive practices of safety, control, rehabilitation, compliance, and risk management, to constrain and limit the possibilities for the individuals exposed to the discursive practices that are made possible through the related discourses (Arrigo & Milovanovic, 2010).

Psychotherapeutic practice

Despite the constraining and harmful effects that mainstream psychological knowledge can have on individuals who are managed through the justice system, this is not an argument for removing psychological intervention from the Department's practice. As I have stated early on, I am not aiming to attack individuals or intents from within the Department; in fact I am often in awe of the level of passion and care shown by these people. Rather it is an understanding of the distinction between the practice of psychotherapy to help an individual, and the generalisation of knowledge of the 'other' applied through pre-existing systems and apparatus that have been constructed from the same philosophical and theoretical positions (Foucault, 1980; Arrigo & Milovanovic, 2010; Prochaska & Norcross, 2014). Prochaska and Norcross (2014) give a non-exhaustive definition of psychotherapy as:

> "Psychotherapy is the informed and intentional application of clinical
>
> methods and interpersonal stances derived from established

psychological principles for the purpose of assisting people to modify

their behaviors, cognitions, emotions, and/or other personal

characteristics in directions that the participants deem desirable" (p.

2).

This definition is one of practice and speaks to the relational needs of both therapist and the individual receiving this active form of modification. It is non-exhaustive as Prochaska and Norcross (2014) acknowledge that there is no single definition of psychotherapy that has a universal acceptance, and that depending on one's theoretical orientation psychotherapy can be conceptualised in multiple ways.

What is pertinent and important in the definition supplied is that the goals must be mutually accepted as being beneficial to the therapist as well as the individual receiving the intervention. Thus, applying psychotherapy in a correctional setting must take account of the power relations at play to understand if this is possible, and potentially ethical in all cases. When we consider that an individual designated as criminal through the justice system becomes identified as possessing certain psychological characteristics defined as being criminogenic, an intervention of some kind is likely to be considered necessary. These interventions can be, and often are, set out as mandatory by the courts for the individual to complete in order to satisfy the parameters of the court ordered sentence. For those on sentences of imprisonment, the Department uses a series of actuarial measures along with clinical assessments to assert what style of intervention(s) is needed to *rehabilitate* the individual. An early release then becomes largely contingent on the person completing these stipulated necessary interventions. At this point it is arguable

that knowing the level of desirability for engagement from the individual in question is extremely difficult to assess (Blackburn, 2008).

From my position, the use of psychotherapy remains meaningful for the Department as a way to alleviate or ease the trauma and interpersonal harms that a person either has been exposed to or is being exposed to through the pain of imprisonment. Clinical psychological practitioners are therefore necessary to aid in the healing of an individual's harms; though I would argue, not to focus on the concepts of criminogenic parameters that continue to serve as reifying, constraining factors (Arrigo & Milovanovic, 2010). They are also not confined to practicing psychotherapy from only one theoretical vantage, as Prochaska and Norcross (2014) point out. In fact, acknowledging the theory that informs the therapy allows for the practitioner to see and understand which capacities are to be studied and cultivated and which will be ignored and underdeveloped (Prochaska & Norcross, 2014). The implication is that as long as there is a strong link between the theory engaged, the practice of therapy, and an acknowledgement of the discursive choices made, psychotherapy can operate from other, more holistic theoretical accounts of humanness. Arrigo and Milovanovic (2010) conceive of a clinical mindful praxis that would enable this. In this way there is an increased likelihood that the person receiving the intervention will also engage with the goals of the intervention for their own self-healing, as opposed to the meeting of needs that fulfil the desires of parole boards or court orders.

CHAPTER THREE: THE IMPRISONING OF HUMAN

How Did We Get Here, An Historical Account?

Prisons and management of human risk through supervision within the community have not always been the response to 'criminality'. Problems of criminality, what is and what is not criminal, and how to best address those who are found guilty of such activities that we do define as being criminal, is a culturally laden, historically linked process. In Western European societies, both Sykes (2007) and Foucault (1991) discuss the fact that the practice of the public execution and torture was still very much 'in play' only three hundred years ago, as the way in which punishment of a crime was meted out. The barbarity of the level of punishment and the presence of the public as witnesses were purposeful and necessary respectful for maintaining the terrorizing power of the sovereign, and reifying the authority of that sovereign, through the actual or implied support of those gathered. This form of treatment of the 'criminal' was a direct imposition of sovereign power, which at the same time, showed the complex, tenuous, subtlety of power and power relations in a society, as the public comprehension and acceptance of the necessity of the act being witnessed 'allowed' for it to be carried out. That is to say that the purpose of public displays of punishment were not only to instil 'fear' in an attempt to deter, but also that the public who take part as witnesses act as the 'guarantors' that it had indeed happened (Foucault, 1991). Indeed, private executions would often lead to accusations that the punishment had not been carried out to the severity that was expected. The power to use public torture and execution as punishment was therefore not residing solely in the sovereign but rather in the multiple sectors of society, the people who occupy each sector, and the complex relationships that legitimate power. As Foucault (1991) demonstrates, the condemned were also able to affect this layered legitimation and acceptance, as the

spectacle became more about the person at the centre of it (the condemned) and their bravery in the face of the punishment.

The people were at once there to 'aid' or 'endorse' the vengeance taken by the sovereign power on 'their' enemies, while also to allow for that vengeance to be meted out by the state 'employees' and not themselves. Public intervention in any way that was not prescribed (such as being able to throw mud) was itself a criminal act and indeed there were cases where the condemned was escorted to the scaffold in an attempt to keep them 'safe' from the crowd (Foucault, 1991). This demonstrates the function of the punishment as both a condemning of the individual and his/her act, as well as a show of the power of the sovereign who had sole right to decide and carry out the punishment. There was interaction between the 'parts' that make up the societal 'whole' in which this practice took place. These complex and subtle power relations have not diminished over time, and in fact it could be argued that they have expanded and increased in complexity. This is explained by Arrigo and Milovanovic (2010) through their presentation of constitutive penology, where they describe how the interaction of all constituent parts of society work to construct, reify, and maintain the system of prisons and control through complex relations of coproduction and reliance.

Foucault (1991) shows how it is that this 'clash' between the sovereign power to punish, through the executioner or torturer, and the populace to legitimate or accept that punishment, through the body of the condemned man and the witnessing crowd, was one of power at the time of the Enlightenment. When the reformers of this age were positioning the 'man' on the scaffold against the despotism of the scaffold itself, they were in fact constructing the 'man' as a 'man measure' of the power being used to control and

punish. This 'man measure' is represented in the discourse as the idea that a punishment should be more 'humane' or measured as in relation to the crime. How then is this 'measure' and the called-for 'humanity' articulated upon one another in the call for a more lenient penal system? Foucault (1991) presents us with the reality that it is these two constructs that are at the centre of the problem whenever the 'economy of punishment' is posed. The 18th century can be seen as having opened up this crisis of economy with the fundamental law that the measure of punishment be humanity.

The movement from the public torture and execution of the criminal 'body' to the confinement of the body and soul in a prison was a purposeful movement to maintain the power to punish people (Foucault, 1991). The public execution of those who the public felt represented them (rioter or 'political' criminals) was beginning to result in the freeing of the condemned by the crowd. The crowd was needed as part of the legitimising of the power being exercised by the sovereign, yet the crowd was becoming increasingly disillusioned with the punishing of certain types of criminality, particularly as they heard the condemned, who had no 'threat' left to 'motivate', renounce the religion, judges, laws, and government that had led to his bodily punishment (Foucault, 1991). Thus, to maintain the ability to exercise the more politically motivated powers in terms of punishing, the governance needed the ability to do so without invoking the ire of the public, while also removing the individual(s) from a state of influence. Imprisonment met these needs nicely. Initially much of the point of imprisonment was the labour of the criminal; again though, this left the physical imposition of state power visible to the public as they passed by work gangs controlled by mounted and armed guards. So, a movement to imprisonment that held the individual(s) away from the public view was the next logical step (Foucault, 1991). Given the removal of the 'barbarity' of the punishment of torture the state was able to

invoke the inherent 'humanity' that was part of the move to this new system. But how then to treat the incarcerated and avoid the rise again in the public outrage at the use of imprisonment? Enter the empirical based 'human' sciences. Through biological, biomedical, and psychological means of description the 'criminal' could be 'understood' and defined as different (other), and the locus of criminality could be placed in the individual (Foucault, 1991).

At this juncture, the 'man as measure' or level of humanity that could be claimed by the state in cases of imprisonment, increased as the disciplines of psychology and psychiatry laid claim to understanding the human (and therefore criminal) mind in a way that assumed their ability to fix. The barbarity of the conditions of imprisonment were now mostly off limits to the public to witness, and the privileging of the discursive practice implicated by the involvement of psychology as an empirical science, allowed for a discourse of 'helping' the criminal other to reform or rehabilitate (Foucault, 1991; Sykes 2007). Essentially this movement created a change in the perception of what the criminal could be conceived of by society, a move from a *lawbreaker* to a *delinquent other* who was in need of *correction* (Reiman & Leighton, 2017). Accepting that the rise of the imprisonment of individuals was a response to an urgent need identified by a largely mercantile society, we can understand that the burdensome population identified were coming largely from the lower socio-economic positions in society. Reiman and Leighton (2017) quote the Oxford Handbook of Criminological Theory as stating "the idea that structural inequality contributes to community level variations in crime is uncontroversial" (p. 32). As such, the claim that the individuals in question were delinquent others, or abnormal and in need of treatment, licenced a permanent policing of the potentially troublesome classes (Reiman & Leighton, 2017). It can also be presumed that policing

efforts would be focussed on the spaces that this section of the population occupied. This creates the phenomena discussed by Reiman and Leighton (2017) whereby the statistics around criminality, which 'show' that the majority of crime is committed by those in lower socio-economic positions is, in fact, the statistic of who got arrested and convicted of a crime. This is an important distinction or understanding as it tells us not that those who are the target of policing due to where they live are always innocent of crime, but that the likelihood that they will be policed, arrested, and convicted is far higher than those living in higher socio-economic areas (Reiman & Leighton, 2017). What is also incontrovertible is that of those who are arrested for similar crimes, lower socio-economic actors are more likely to be arrested and or convicted, as well as have harsher penalties imposed (Reiman & Leighton, 2017). In Aotearoa New Zealand this is a particularly important factor as our justice system uses a calculation of RoC*RoI (risk of conviction multiplied by risk of imprisonment) to assess an individual's risk. This number is affected by the number of convictions as well as by the level of sanction imposed and will affect the way in which an individual is dealt with throughout the justice sector, including how the Department of Corrections assesses their risk. In a colonised country such as ours it should then be no surprise that the experience of a justice system for indigenous peoples is in no way equal or equitable to the experience of settler peoples from the colonialising nations.

Following on from the heading "How did we get here?", in the Hōkai Rangi document is an 'accounting' of the attempts made by the Department of Corrections, since 1999, to address the 'issue' of Māori over-representation in the Justice System. The 'account' provided takes no 'account' of the implementation of positivist, empirical measures of human risk that have been used/imposed and endorsed by the Department itself throughout this entire time. The implications of 'Māori' over-representation as 'the issue'

avoids the reality that this over-representation occurs across other constructs such as socio-economic positions. That is, if we recognise that 'Māori' as a population silo is not a homogenous group but rather a heterogeneous population of individuals who are distributed through all stratified levels of society, we will see that the overrepresentation is concentrated in places of social deprivations. Is Hōkai Rangi 'about' Māori offenders and prisoners, or is it 'about' the Department's practices that are linked to the ongoing 'othering' and control of those Māori who enter the justice system? Mihaere (2015) makes it clear that the bulk of academic research in Aotearoa New Zealand relating to Māori is by Pākehā academics constructing Māori through the pursuit of academic achievement. Often these academics will use their own cultural stand points as an ethnocentric position from which to analyse and comment on Māori culture. From a decolonialism perspective, the focus should not be on the population that constitute Māori offenders and/or prisoners, but on the Eurocentric systems and discourses that build the very constructs, spaces, and identities for Māori offenders and prisoners (Lang, 2006).

Epistemological Violence

As a person who has gone through deep philosophical and political change in my lifetime to understand the world and its systems in a way that recognises the privileges and assumptions that sustain the oppressive conditions for marginalised people, I am always surprised when academics from within psychology still fervently support the status quo. Yet as Colombo (2020) shows in her critique of Held's 2020 article "*Can knowledge of, from, and for the (othered) people solve the problem?*", there is still a strong push from certain areas of mainstream psychology to privilege the objectivist (positivist) epistemology over all others, even to the point of disclaiming any value in other forms of knowledge creation. Colombo (2020) also argues that, unlike other disciplines, such as

anthropology, psychology has not undergone a deep revision of the foundations and epistemologies that inform(ed) it. What has happened within psychology is a separation by certain minority groups of psychological scholars who have seen the value and epistemological soundness inherent in the interpretive, linguistic, and discursive turns. This engagement in debate of theoretical understandings has resulted in the rise of both indigenous psychology and critical psychology which have seen a clear need for psychology to go beyond its traditional ways of knowledge production (Colombo, 2020).

As has been explored, the rise of the interest in crime and the criminal by psychology as a discipline happened at around the same time that psychology became an empirical discipline. Yet Blackburn (2008) was talking about the very early 20th century, so how is it relevant that this link is now still important and that the status quo for mainstream psychology still has such an empirically dominated discourse? Foucault shows us the way that discourses can be built through the influences apparent/dominant in any certain episteme. For the psychology of criminality then, the discursive construction has been so intrinsically linked to empiricism (and therefore positivism) due to the 'time' at which it began its development (Foucault 1980). In his later movement from episteme (which he redefined as being "specifically discursive" (p. 197) to understanding and defining the more heterogenous 'apparatus', Foucault (1980) recognised that the 'apparatus' is to be found in the relational powers of "discourses, institutions, architectural forms, regulatory decisions, laws, administrative measures, scientific statements, philosophical, moral and philanthropic propositions" (p. 194). He also showed how an apparatus of this nature is formed at a specific historical moment as a response to an "urgent need". In the case of criminality and imprisonment, the apparatus was being formed during the 19th century as a response to the presence in society of a population of individuals who were considered

burdensome to an essentially mercantile economy, so there was an urgent need or strategic imperative to control madness, mental illness or neurosis (Foucault, 1980). The forms of control or subjection were in the form of 'removal' from society into institutions created and administered by the disciplines that were privileged as the 'best' able to understand and 'fix' the problem, most prominently psychiatry and psychology (Foucault, 1980). Given that the targeted population had already been defined as 'burdensome' the intervention of psychiatry and psychology was placed in the position to know how and why the individuals were burdensome as well as to address or fix those who could be. That is to say that the individuals had already been problematised based on normative values and societal needs, to continue as a force of public hygiene, psychiatry and psychology needed to categorise and treat these pre-identified individuals in a way that 'solved' the problem (Foucault, 1980). This is the same format that was followed for those identified as criminal by this same system, and by invoking the need for psychology (which had by now adhered strongly to the positivist empirical notions as a natural science), those who were identified as needing this type of removal or intervention were exposed to the discourse and practices of the discipline (Foucault, 1991).

Teo (2008) presents us with the insight that it was the middle of the 19th century that was the 'site' of the 'battlefield' where the decision of whether psychology should be considered a natural science or follow the lead of philosophy was 'fought'. Psychology did end up following the empirical notion and operate under the 'banner' of a natural science. What is important to understand is that this was done at the exclusion of the notion that 'speculation' as a driving force could create knowledge that better accounted for complex or dialectical relationships that need not be decided as an 'either, or'. German idealists, particularly Hegel, argued that speculation had the potential to lead to

knowledge of the *absolute* (Teo, 2008). Hegel also saw speculation as the highest form of knowledge given its ability to comprehend contradictory moments of a dialectical relationship as a unit (Teo, 2008). At this stage in the development of psychology as a discipline, the exclusion of speculation from an empirical natural science was not seen as necessary; it was argued by some that in fact an empirical natural science of psychology could include true speculation (Teo, 2008).

In writing on hermeneutics, Packer and Addison (1989) discuss how it is that modernity and post modernity have come to highlight just how important interpretation is to our existence. An increase in the awareness that we are social, cultural beings rather than natural creations or biological entities (as claimed by the natural sciences) has made us more aware of translation and interpretation as being a social negotiation and that misunderstanding is as common as understanding (Packer & Addison, 1989). In Packer and Addison's view, for some of us, these realisations represent the failure of the enlightenment project and of modernism, …"of the idea that progress is to be achieved through scientific accumulation of knowledge with which to design and build a utopian world" (1989, p. 2). The philosophical shapers of the enlightenment emphasised the autonomy of the individual, a movement away from church and state that had, up to that point, held the authority to know and administer the societal parameters that concerned ethical and epistemological knowledge. The shapers were confident that reason, exemplified by Galileo's physics, would free us from our passions, our history, and our traditions (Packer & Addison, 1989).

When it came to knowledge of human and humanness, the enlightenment changed the relationship of humanity to knowledge. In separating knowledge from the church

enlightenment discourse shifted the position of knower and object of knowledge from theism, where it is only God who could know us, to secularism whereby it was only humanity who could know God (Tarnas, 2010). For if knowledge of what was could only be achieved through scientific rigour, and if, as Hume proposed, notions of God as unavailable to the senses therefore made God insensible, God's knowledge must be a human construction. And if God's knowledge was truth, though given the parameter of 'mysterious ways' if an answer seemed to allude religious discourse, then man must be capable of knowing truth following this transfer of power to know (Tarnas, 2010). The imbuing of God or Gods in knowledge is not endemic to Christianity, or indeed to monotheism. Tarnas (2010) discusses the philosophy of Plato and his concept of archetypal form which demonstrates the imbuing of Gods in understanding an object's form in the world. Plato's idea of archetypal forms gave concepts of such as beauty a form or nature beyond simple metaphysical concept by stating that these archetypes had dimensions that gave their dimension to the particular things in the world. That is to say that if something were "beautiful" it was not the object that possessed beauty but rather that beauty was being seen. As Tarnas (2010) put it,

"When one falls in love, it is Beauty (or Aphrodite) that one recognises and surrenders to, the beloved object being Beauty's instrument or vessel" (p. 6).

Here the Goddess Aphrodite has given a tangible quality to an object that is immutable, as tangible and concrete as any object or other expression of reality in the world, while at the same time standing outside the world of objects (Tarnas, 2010). In Platonic philosophy, objects were merely expressions of these archetypal forms, therefore the

knowledge gained through sense perceptions (empiricism) was essentially not true knowledge. Plato distrusted knowledge based on sense perception as he understood that this is constantly changing, relative, and private to each individual (Tarnas, 2010). A philosophical view that 'returns' in the enlightenment and modernity debates over the ability of empiricism to account for some form of true representation of the world that can be understood and applied to the normalcy of human, thus creating the parameter for the abnormal other (Teo, 2008; Arrigo & Milovanovic, 2010).

Heidegger (2010) would show that the drastic failure of rationalism through natural science had led to an inability to answer the meaning of being, a question the natural science sought so hard to answer. Heidegger (2010) discussed the ultimate question of being as meaning, becoming so far excepted as a necessity of all following enquiry, that it is considered a superfluous prerequisite for knowledge, not needing further development. Yet he understood that meaning of being had become at once the most universal and the emptiest concept, as such, resisting any attempt at definition (Heidegger, 2010). What is important to take from Heidegger (2010) is that the seeming impossibility of previous philosophical enquiry to define being creates a reality where claims to truth for humanness are based in ancient ontology that can only be interpreted through the guidance of the question of being. Heidegger's (2010) importance in understanding the possibilities of being showed the multitude of comprehensions that were or are available to understand and define being. Heidegger's idea of *Dasein*, or 'being-here' is representative of a being whose Being is disclosed to it in manifold ways (Elpidorou & Freeman, 2015). Elpidorou and Freeman (2015) explain that Dasein is essentially a worldly existence and that "being in the world is a basic constitution of our Being and to exist in the world means to be embedded within a complex web of relations"

(p. 662). In this way, Heidegger rejects a subject/object model of existence as non-sensical given that to be in the world is to be affected and affective in and to the world in a way that makes separation out of this messy complexity, to study it, not possible (Elpidorou and Freeman, 2015).

The reason for engaging these philosophical views and disparate understandings of what *is*, is to show how difficult, insensible if you will, it is to consider one philosophical, theoretical position capable of answering questions of mind and humanness. There is no universal scientific acceptance for how to know, particularly how to know the 'other'. Yet as Teo (2010) shows, this is what we do in Western empirical positivist mainstream psychology. The complexities of knowing are essentially ignored; valid theoretical interpretations of the same data are disavowed as non-scientific. Knowledge is territorialised, discourses are privileged, ontological commitments are invoked, all at the expense of other ways of knowing about ourselves, others, and the possibilities of being and doing humanness differently (Colombo, 2020; Teo, 2008; Arrigo & Milovanovic, 2010; Coombes, Denne, & Rangiwananga, 2016).

Berlyne (1977) also discusses the time at which psychology moved to a natural science and highlights the difference in the meaning of science between Continental European languages. The word for science in French (as well as other European languages, such as the word *Wissenschaft*) is not directly translatable to the meaning of science in English. Science in French is better translated as approximating 'humanistic scholarship' or 'speculative scholarship', which invokes a far broader sense of scientific enquiry; closer, in fact, to encompassing systematic scholarly enquiry (Berlyne, 1977). For the English speaking world, the word science has come to have a far narrower meaning whereby

investigations based on observable phenomena and matter through experimentation and other forms of controlled empirical study as its criterion for validity, are the only form of 'true' science (Berlyne, 1977). As Foucault (1980) states, the argument from the standpoint of this narrower understanding of science is not necessarily one of truth or not but of what can be considered scientific vs what is not. Berlyne (1977) uses the example of the psychology of art to demonstrate how it is that the more speculative science operates to attempt a richer understanding of what a particular art piece, or series of art from a certain artist, means by including cultural and historical placement of the artist in their enquiry. The need for this type of understanding was not a prerequisite for empirical natural science which had followed the philosophy and teachings of Descartes and Newton, whose form of scientific enquiry, which combined rational empirical observation with mathematical manipulation (positivism), had been experiencing scientific triumphs and extending its reach to living organisms and tissues (Berlyne, 1977). During the 18th century, Vico promoted the idea that in order to study human behaviour a 'new science' was needed – one whereby imagination, emotionality, and a study of cultural and historical context was needed (Berlyne, 1977). As Teo (2008) showed and Berlyne (1977) also points out, the *clash* of these two schools of thought came to a head in the 19th century, largely amongst German scholars, who defined two different types of 'science'. While both were considered appropriate to apply to understanding humanness, they were differentiated along discontinuities assumed in all humanise: the natural, and the mental and spiritual. This differentiation was named Windelband as nomothetic and ideographic styles of enquiry; essentially these can be understood as natural science and, loosely translated, mental and spiritual (human) science (Teo, 2008; Berlyne, 1977). At this time, the philosophers who engaged in this work saw both forms as having value, with a bias toward the ideographic as having a better or richer quality in describing or understanding

human behaviour and phenomena, as it was understood how speculation could create deeper comprehension by considering cultural and historical context (Teo, 2008; Berlyne, 1977). It is worthwhile noting that speculation coming from this type of scientific enquiry is strongly informed by theory and rigorous academic application, not merely as an exercise in applying guesses as to the nature of meaning coming from a set of data.

Speculation became an 'enemy' of positivist science, particularly through the work of Kant who is quoted in Teo (2008) as writing: "A theoretical cognition is speculative if it pertains to an object or concepts of an object to which one cannot attain any experience" (p. 48). This statement is invoking positivist empiricism as the 'better' foundational knowledge given the reliance of senses and input in order to be able to 'know' something. Yet, as Teo (2008) discusses, empirical 'data collection' as the input used to create knowledge is reliant on speculation (through discussion or conclusion sections) in order to do the creating. The act of collecting data itself is non-sensical without theoretical notions as to why this data and why this way, and the data itself is unable to 'tell' us anything without the use of theoretically informed interpretation (Teo, 2008). Both the targeted collecting of data and the interpretation of it are reliant on epistemological choices and ontological commitments that the researcher has made to speculate as to the meaning/interpretation of data. All these acts are then contingent on the aspersion of what is and what is not scientific, which will be informed by the researchers cultural and historical context, reflected in the dominant discourses of the time (Foucault, 1980). If we accept this, then the inference for mainstream psychological knowledge creation that positivist empiricism, which is culturally and historically linked, is the theoretical and philosophical foundation for knowledge of the other, becomes difficult to accept.

By declaring speculation an enemy, empirical positivist science of humans, in the form of mainstream psychology, has denounced that it engages in this method, essentially declaring its objectivity and ability to describe what is and what is not *real*. This gives the discipline an authority to declare, from its unacknowledged cultural and historical positioning, knowledge of the 'other' in a way that does not necessitate the input from the effected parties (Teo, 2008). Teo (2010) argues that when assertion of knowledge of the 'other' has implications as to their characterisation and treatment epistemological violence is perpetrated. This can be seen to play out when empirical data is collected and then interpreted through discussion or conclusion sections (speculation), which can be seen as an action taken, particularly when concrete interpretations have negative consequences for groups (Teo, 2010). In a nutshell, empirical data is most often interpreted by the same theoretical framework that led to the collection in the first place. However, this need not be the case as there are multiple theoretical positions to adopt in relation to data, all of which may be relevant. Simply put, data does not determine interpretations – the researcher makes an active choice. This choice is represented in the interpretive sections of discussion or conclusion which become the most important part of the research, as it is this interpretation that is taught, captured in textbooks, conveyed to students, media, and the public presented as fact or knowledge (Coombes, Denne, & Rangiwananga, 2016; Teo, 2010). Van Dijk (2011) would then show how this 'knowledge' becomes discourse as it is handed through the mediums of educational institutions, mass media, and the public to inform the discourse around the subject. At this point, we, as a society, can and will act on or toward the subject in a way that makes discursive sense (discursive practice(s)). When we consider Sundararajan's (2020) arguments that the majority of mainstream psychological knowledge comes from weak ties rationality (the reaction of moral strangers) and that this knowledge is about the 'other', we can see the

looming connection with how Teo (2010) defines epistemological violence as active against certain groups.

Given the rise of imprisonment and community management of human risk can be best understood from a Foucauldian position of a response to an urgent need – identified and problematised with a specific genesis, coming from a particular episteme, and fitting into existing apparatus – it can be seen as an obvious example of epistemological violence (Foucault, 1980; Teo 2010). A knowledge created through empirical measures of a problem that was identified as a burdensome population to a mercantile society was carried out by disciplines that had forgone the obligation to consider historical and cultural context as a measure of, or influence on, their knowledge (Foucault, 1980; Teo, 2008; Berlyne, 1977). This knowledge then informed the discourse of society and was readily and easily adopted by the existing apparatus as a 'solution' to the problem, becoming politicised as a problem for state or governmental intervention. In this way, and over time, prisons have become culturalised and essentialised (even through discussion of abolition) in Western society (Arrigo & Milovanovic, 2010; McIntosh & Workman, 2017). The violence that is prison is reserved for the criminal other, a population that, in colonised countries, is consistently vastly overrepresented by indigenous peoples, about whom knowledge is constructed through culturally and historically linked mechanisms (Schar, Biewenger, & Lombawa, 2020; Arrigo & Milovanovic, 2010). In the specific case of colonised countries, this knowledge comes at the expense of indigenous psychologies that can account for people and data in ways just as (if not more so) valid as the speculation, discussed and concluded, in mainstream positivist accounts (Colombo, 2020; Mihaere, 2015).

CHAPTER FOUR: NEW APPROACHES

A Revolution in Penology

To read Arrigo and Milonvanovic's (2010) work is to open yourself to a 'new world' when it comes to the 'what' criminality and human risk are. Their work operates to challenge the accepted discourses which have 'imprisoned' our societies and reduced the potential of human agency. It is so far assumed that crime is a 'problem' and that this problem represents social harm which must be addressed. It is also assumed, through discursive practices, that those best placed to comment on, solve, and construct the 'problem' are those already deeply involved in the system devised to address it: Police, Corrections, Judges, Psychologists (especially Forensic and Clinical). Yet their adherence to the established discourses often gives them an inability to critique and to re-define. Hence, solutions often simply refocus or redistribute current knowledges, practices, and resources to address problems 'differently' while reifying and legitimising the same 'problem' and institutions. Arrigo and Milovanovic (2010) challenge the very theoretical assumptions that presume to 'know' what a 'problem' is or what can/should be considered 'social harm' within a system. Due to the 'nature' of this work, Arrigo and Milovanovic's text (2010) is extremely difficult to read and grasp – it has taken me years to be able to do this, yet the stirrings of excitement at their 'revolution' were felt the first time I ever attempted to read it. Re-creating or transitioning discourse is an extremely difficult task as it necessitates at once both the critiquing of the current understandings and presupposed 'knowledge' as well as 'offering' a different way of being or doing humanness (Fairclough, 2013). Hence, despite first being published in 2008, Arrigo and Milonvanovic's theses are almost impossible to find in current Correctional practices or knowledges. There are moments, which I have experienced personally, where you can see the pretence or beginnings of intent to practice/work in a way that challenges

dominant practices and knowledges, yet outcomes for action will almost always revert to the accepted discourses.

To produce a 'revolution in penology', as Arrigo and Milovanovic (2010) propose, there must be some fundamental redefining of the assumptions (discourses/discursive practices) upon which the Justice system, particularly correctional institutions, have been built. To that end Arrigo and Milovanovic (2010) propose three assumptions on which they base their thesis. I believe that understanding and accepting these is the most difficult part of their thesis, but also the key to unlocking the meaning(s) and change that is represented in this publication.

Firstly, Arrigo and Milovanovic (2010) describe how it is that "…human agents acting in a socio-political context, shaped by historical forces of the time, are the active coproducers and reproducers of their dynamic worlds" (p. 6). By giving humans the active role of being able to essentially define and redefine their social worlds, we move away from the more neoliberal idea that humans are individual unified selves, operating independently of the discursive mediums through which they act. Instead, we are able to see that it is in the interactions, accepted realities, and relational situations that we find the disciplines and controls that inform the sense of self, all of which can be affected and changed through human-to-human interaction when accepted discourses are challenged and changed. It is our collective creation of the parameters of 'human' and 'other' through our social structures, apparatus, institutions and socio-political measures and ideas that confine human to a normative state represented by the disciplined body of the docile citizen (Foucault, 1991). Yet the acknowledgement of individual and collective agency in defining our dynamic world offers the chance at liberation of the self. As Arrigo and Milovanovic

(2010) put it: "…the possibility of humanity's liberation from its own oppression by the totality of what it produces and by the unity of how it appears" (p 7). What is also highlighted by Arrigo and Milovanovic (2010) is that the role of discourse (or mundane language as they describe it) in a society is used to create distinctions that work to identify social objects as separate from the human agents that produce them. This means that although human agents are active in co-producing and reproducing their dynamic worlds, they are able to remain unaware that this is the case as the discourse surrounding their subjective world separates them from the objects within in a way that assumes their properties and existence as non-contingent on the phenomenon (Arrigo & Milovanovic, 2010). So, at once the liberation of 'human' is offered through the understanding that is an active role played to coarchitect their dynamic worlds, while also being extremely limited by discursive productions that allow for an idea that we stand outside that world in many ways as it has a largely objective nature (Arrigo & Milovanovic, 2010).

Secondly, Arrigo and Milovanovic (2010) have defined society and its whole(s) as segments within segments, with parts within parts, that operate dynamically in back and forth, lateral, horizontal, and cyclical ways to reify, construct, change, or determine each other. So rather than see linear causality as a force that creates outcome(s), it should always be understood as non-linear and complex given the multitude of relational forces that exist to (co)create any one phenomena or construct. Non-linear effect is important as, beyond simply being (co)constituted through the multiple segments and parts, society is also linked through levels or thresholds of each part that will affect the ability of each to affect the other(s) or alter the 'reach' of one particular segment through the societal 'whole' (Arrigo and Milovanovic, 2010). In a continuation of the ideas held in the first assumption, it can be seen that through discursive constructs, say personalities

(especially disordered), that an individual can become a subject of a particular silo or discipline, which will severely limit their ability to 'self-author' (Arrigo & Milovanovic, 2010). Taken in context with ideas of a complex system of segments and parts interacting dynamically, we can see that the concept of dynamic interrelated co-construction places the individual in a position whereby they can have identity imposed, as well as begin to inhabit this identity based on the discursive understanding of both themselves and society at large, influencing not only their self-identity but also the experience of others (Arrigo & Milovanovic, 2010). Identities can then also be subject to radical change should understandings be influenced, changed, or affected that alter the way in which the discipline or silo is conceived and constructed. This second assumption begins to show the difficulty or futility of empirically based knowledge production about 'human(ess)' that operates in the form of a natural science.

Thirdly, the role of reification in society is made explicit as Arrigo & Milovanovic (2010) explain the way in which institutional apparatus of society applies 'control' over individuals. 'Control' is not necessarily enforced through intentional actions toward individuals but rather through a process of discipline as the socially produced institutions seemingly stand apart from and above us disciplining us in line with the prevailing political economy (Arrigo & Milovanovic, 2010). That is to say that the totalising effects of these apparatus or institutions does not result from any inherent quality that resides in the apparatus or institution (Arrigo & Milovanovic, 2010). Here, Arrigo and Milovanovic (2010) refer to the Foucauldian idea of panopticism. Foucault (1991) outlines this idea as the way in which, during the classical age, it was discovered that the body could be an object and target of power. Using the idea of the soldier, who up until the 17th century had been represented by the physical characteristics inherent in the individual that signified ideas

or honour, valour, and strength, Foucault (1991) demonstrates how, in the 19th century, this morphed into the idea of creating a soldier by disciplining the body of the willing/targeted individual in a way that built the soldier. That is to say that the ideas/images that signified soldier could be used to train the body of someone who did not initially embody characteristics of the soldier. Once disciplined in such a way, the new soldier would hold to the image and values that were used to create them in a way that their body carried out the role of soldier irrespective of any active intervention (Foucault, 1991). Applying this in a grander scale to all the institutional structures (especially those of confinement: prisons, schools, factories, hospitals, the family) that operate in society and the reality that human is confined to a certain sense of self that disciplines the individual to avoid abnormality becomes glaringly apparent (Arrigo & Milovanovic, 2010). It is also highlighted that through panoptic-control, the kind of control exercised by self-surveilance, we at once engage and then disengage our own agency to give way to the institutional structures that our creative engagement has produced. In other words, though we have the social cohesion and understanding to produce the discursive parameters that can discipline the body to behave and act in certain ways without direct actions on the body, we also lose sight of the human creative agency that contributed to producing the institutions and apparatus that then administrate and reproduce us as objects of our own subjectivity (Arrigo & Milovanovic, 2010).

These three assumptions upon which Arrigo and Milovanovic (2010) build their revolution in penology allow for a change to the idea of human being to one of human becoming. They allow space for understanding the subject's transformational process and alternative ways in which to define crime as harm (Arrigo & Milovanovic, 2010). By acknowledging and examining the role and interplay of human agency with and within

social structures that produce and reproduce each other they also allow for the conception of the harms that constitute crime (Arrigo & Milovanovic, 2010). Seeing the discourses surrounding and acting on criminality as contributing to the continued definition of crime as 'power to harm others' shows how this harm can be reified by the very institutions that are presented as the 'answer' to crime. The conceptualisation of society as multiple segments, and parts that act dynamically upon and through each other also offers a vision for crime control that works to reconnect the components and parts to the whole in dynamic ways rather than further the analytical and institutional separation that conventional penology prescribes (Arrigo & Milovanovic, 2010).

Arrigo and Milovanovic (2010) also look to reimagine, or redefine, what is harm and or criminal in the sense of criminal harm. This is done in line with the three assumptions they set out in the opening pages of their text. Criminal harm, as currently defined through legislation, can be seen to be but one subset of harm, or expressive form, within society, defined as the "… set of behaviour that has been defined by governmental processes and the politics implied in these as sufficiently offensive to those having the power and occasionally the authority to warrant state sanction" (Arrigo & Milovanovic, 2010, p. 27). In seeing criminal harm as one subset of harm within society, Arrigo and Milovanovic (2010) show how the extent of harm, being the experience of the victims, is the only part of criminal harm (or indeed any other form) that cannot be manipulated or influenced politically. The other part of criminal harm includes severity of official sanctions and consensus about seriousness. In line with Foucault (1991) what is implicated here is that the 'man as measure' is held in the components of the severity of official sanctions as well as the consensus about the seriousness of the offence. Foucault (1991) demonstrates what Arrigo and Milovanovic (2010) are highlighting, in that criminality of

different forms is negotiated through the power relations between the state and all other parts of society at specific times. This makes these parts contingent, once again, on the acceptance of the actors (keepers, kept, watchers) of the authority of the state to pass judgement and punish on behalf of its citizenry. What these power relations cannot negotiate is the experience of harm by the victim(s) of crime (Arrigo & Milovanovic, 2010).

Arrigo and Milovanovic (2010) focus in on the experience of harm given its inability to be manipulated or influenced through political and social negotiation, making it the most salient feature constituting harm. From this perspective it could be strongly argued that any actions or processes that produce harm can be considered as crime. At this point it is then necessary to define harm in order that it can be understood and seen in acts or processes that are not considered crime under current legislature. Here Arrigo and Milovanovic (2010) give us the definition that "… harm is the investment of energy in injury-producing, socially constructed relations of power based on inequalities constructed around difference" (p. 28). Linking their assumptions of what is human being/becoming, Arrigo and Milovanovic (2010) go on to explain that harm can be best seen as actions or processes that either deny or prevent an individual from being or becoming fully human. If humanness includes our agency to affect our dynamic worlds, then it necessitates the ability to act on and interact with each other and our systems in a meaningful way – to negotiate and celebrate difference so that humanness does not become a constraining element on our ability to experience the self and the world around us. Its antithesis is to be constrained and defined in ways that avoid difference by invoking normativity in human behaviour, versus abnormal behaviour that is designated as needing managing and controlling to keep safe the individual as well as others. If the antithesis exists through active, socially constructed relations of power based on

inequalities constructed around difference, then harm is being done on and against specified groups, also meeting the definition of criminal harm (Arrigo & Milovanovic, 2010).

Taking this definition of harm, Arrigo and Milovanovic (2010) look at the way in which justice is carried out through systems of policing, courts, and (particularly) corrections. In the realm of harm as repression, acts and processes that limit the undertakings of a person or group to make a difference, particularly when that person or group endeavours to hinder or restrict the attempts of others to do the same, are not considered harms of repression (Arrigo & Milovanovic, 2010). Where attempts to achieve a desired position are themselves limiting to others, this type of repression is more accurately termed control. Control of this type is a crime of repression, though the manner in which the control is achieved can be more or less harmful, as it can be more or less justified (Arrigo & Milovanovic, 2010). Arrigo and Milovanovic (2010) therefore argue that the difference between change and harm is that to be change it must be co-produced through conscious, active participation by all those affected. This must happen in a way that those who are affected by the change are able to define their own future and their own level of risk as opposed to have this imposed of them by others (Arrigo & Milovanovic, 2010). This speaks not only to the imposition of assessment and categorisation of the criminal other through power relations handed down through discourse of knowledge, but also to the justice that can, or cannot, be achieved through these same mechanisms. Here Arrigo and Milovanovic (2010) discuss the process of restorative justice that allows for parties to jointly reach an agreement rather than a sanction and sentence being unilaterally handed downward by state power. This type of justice makes clear the ability of the people to deal with their own societal hurts and issues without the need for the state to

decide the parameters by which this can/should be done on their behalf (Foucault, 1991). This mode of restoration also has the ability to look at the social connectedness of the people in question and the different constituent parts that have either played a part in the construction of harm or have been impacted by the harm (Arrigo & Milovanovic, 2010).

Ways of Doing Things Differently

In the next few sections I will explore some areas of understanding and practice that represent a challenge to the accepted discourse that surrounds 'correctional' work. These concepts and proposed changes to practice are not solely theoretical in nature and in some cases have been implemented in other areas of social services such as social work or health services (Jansson & Dodd, 2002). The areas I have chosen to explore represent an active choice that I have made based on my knowledge of discourse and how it operates through human agents to construct the practices that a particular institution will employ. It is also based on my experience as a frontline practitioner as well as a member of senior leadership teams for prisons across the Northern region of Aotearoa New Zealand. As such, the particular areas I have chosen to focus on are, to me, a combination of discursive challenge or change to the current system with capability for practical implications for frontline agents of change.

Decolonisation through Decolonialism

Decolonisation as a process worldwide has implications of nations freeing themselves from their imperial overlords by reclaiming their sovereignty through governmentality (Cusicanqui, 2012). However, as Cusicanqui (2012) and Mitova (2020) argue, the veins of imperialist Western colonisation are insidious throughout the systems, institutions, and knowledges that continue to pervade the societies of post-colonial nations. This insidious

pervasion includes mental structures that work through discourses invoking concepts such as common-sense, as well as tacit political and cultural privileges, that make caricatures of the rhetoric of equality and citizenship. It also makes incongruities tolerable and allows for reproductions of the colonial structures of oppression (Cusicanqui, 2012). Cusicanqui (2012) uses the example of a 'post-colonial' Bolivia to show how it is that the new Bolivian elites (made up of both indigenous and colonial families) have become caricatures of the West, emulating practices and espousing discourses that work to maintain a system of conditional inclusion, with a mitigated and second-class citizenship. While Cusicanqui (2012) talks about the lack of indigenous representations and a need for radical decolonisation which would work to reconceive the way in which a nation sees itself, Mitova (2020) discusses the epistemic colonial hangover that puts the global North in a position to tell the world what the world *really* is. A claim to objective knowledge, rational thought, and real science allows for the marginalising and dismissing of indigenous knowledge (Mitova, 2020).

Cusicanqui (2012) discusses an important feature of decolonisation to date whereby in the majority of cases, the process for decolonisation is placed as a burden of reform or creating 'space' carried by the colonised people. This more often than not results in other institutions, especially academic, working with indigenous peoples to 'help' define these 'new' reforms and spaces, which results in producing a palatable form of being indigenous as a minority within a largely imperialist society. In this way indigenous peoples become multicultural adornments for the apparatus or institutions that continue to fuel stereotypes and oppressive forces that have marginalised and subjugated them historically (Cusicanqui, 2012). Mitova (2020) would show us that this phenomenon of continued oppression despite efforts of liberation comes about when the dominant epistemological

assumptions of the West are not 'undone' but instead drive the knowledge of the 'other' and legitimate the means of addressing what has been problematised. It is also a case of using existing institutions and structures, Non-Governmental Organisations (NGOs), Police, Corrections, and so on that continue to privilege epistemologically Western knowledges, especially mainstream psychology, to address a 'problem' that they have not historically been able to solve (Cusicanqui, 2012). In fact, the people at the centre of the efforts of such organisations become subjects of these institutions in a way that simply redefines the 'problem' as one of deficit that needs to be address through neoliberal, mainstream psychological ideas of the self as a whole residing in an individual making choices.

One of the modes for change in Hōkai Rangi is to engage more closely, and with more members of the individual's whānau, as well as with other agencies such as Oranga Tamariki and New Zealand Police. In simple logical terms this makes a sense and would show a commitment to a change of practice that is aimed at benefitting the individual at the centre of correctional strategy. However, if we take in to account the issues with theories and culturally laden epistemologies that have been used to construct criminality, assessment and risks, then it seems to open a potentially damaging space for those individuals as well as their whānau. The application of Western epistemologically based knowledge has been complicit in silencing Indigenous experiences and perspectives in the pursuit of crime control knowledge (McIntosh & Coster 2017). It is also done without an acknowledgement of the culturally and historically laden biases and effects that are inextricably linked to the theories and epistemologies (Arrigo & Milovanovic 2010). McIntosh and Coster (2017) demonstrate how it is that engagement with these systems of assessment render an entire reality for the individual and their whānau that is dictated

by the state. There is an implication then that the increased involvement of Department of Corrections staff, and these 'partner agencies', through this mode of whānau engagement will introduce these assessments to individuals who would not necessarily otherwise be so assessed. McIntosh and Coster (2017), Arrigo and Milovanovic (2010), Mihaere (2015) and Teo (2010) would argue that there are very real dangers involved with doing this that could/will result in damage to minority/marginalised people in a perpetuating of the very problems that Hōkai Rangi seeks to address.

The explicit identifying of partner agencies such as Police and Oranga Tamariki also represents the privileging of these agencies/institutions as being the most qualified to help 'answer' the problem of criminality and individual desistance from crime. Arrigo and Milovanovic (2010) postulate that penal policy represents a discursive practice through which aspects of existing correction practice are selected, emphasised, reified, and formally discussed, while others are ignored, subjugated, postponed, and formally dismissed. I would argue that this is what is happening with the privileging of engagement with other agencies whose fundamentals are based in the same politicised, mainstream psychological understandings of criminal behaviour and human risk as that of the Department of Corrections. The implicit focus here, based on the historical and cultural function of these agencies, is not on the 'oranga' of the people but on the collective risk assessment and mitigation practices of these institutions whose contribution so far to the 'problem' of criminality has failed to address overrepresentation of marginalised groups, and may be argued, function as sustaining this phenomenon.

Hōkai Rangi explicitly states that it is a strategy aimed at addressing the overrepresentation of Māori in the justice system and looks to build cultural

responsiveness for staff. Lang (2006) would argue that the practitioners (staff) themselves, whether they be Māori or not, are shackled by the notions and values that underpin the practice of colonisation and imperialism. This is through insidious and all-pervasive means that transcend and flow through our daily lives based on the systems, knowledges, epistemologies and historically and culturally bound constructs of our colonised nation. It is also, importantly for Hōkai Rangi, bound specifically in our assessment of criminal risk, control, desistance, factors, acts, etc. This cultural binding must be addressed in some way should we hope to achieve an outcome that differs from the strategies that have come before it. The decolonisation of knowledge is a practice that has been around for a while now and focusses on the liberation and reinstatement of indigenous knowledge (Lang, 2006). It is also a space for resistance to dominant social constructs and where indigenous perspectives, experiences and issues can be privileged (McIntosh & Coster, 2017).

However, what is implicated here is not only decolonisation but also decolonialism, a term which Lang (2006) relates to the liberating of the coloniser through an 'undoing' or picking over of the knowledge used based on majority epistemologies and ontologies. Decolonialism is important as being distinctive from decolonisation as the onus is placed back on the coloniser and the privileged to unravel the knowledge that has led to negative outcomes for the colonised minority (Lang, 2006). Arrigo and Milovanovic (2010) would agree that this is an important practice as they show how it is that the practices, knowledge, and systems that lead to overrepresentations for minorities and marginalised peoples in the criminal justice system also confine and keep captive all others in society. That is to say that the knowledges that are used to build our understandings, societies, and environments constrain what it is to be human through subtle power relations which

prescribe what is normative versus abnormal. In the case of the criminal justice system, these constraints are enforced both physically and in the psychology of the individual.

Implications for Hōkai Rangi

Arguments for decolonialism suggest that in order to achieve the worthy aims of Hōkai Rangi for changing responsiveness to Māori overrepresentation, decolonialism of the systems and assessments used by the Departments frontline practitioners is needed. It is not to state that risk assessments and the knowledge that underpins them is 'thrown out' but rather that the assumptions upon which these assessments can be built are scrutinised and made explicit in order that we can see where and how it is that they do or do not apply. Without such work, an expectation that an individual from a colonised Western majority system will be able to engage with offenders and their whānau in such a way as to truly improve well-being outcomes and reduce overrepresentation in recidivism rates is likely unfounded.

Decolonialism, discourse and criminal justice

Decolonialism, particularly for a criminal justice system, is important even without the specific issues surrounding a colonised country, as it is a way of looking at the 'totalising logic' that Arrigo and Milovanovic (2010) discuss – the discourses that create and perpetuate all parts of a criminal justice system as each of the 'parts' discusses and reifies the importance and/or function of their particular space as well as each other. Arrigo and Milovanovic (2010) then discuss how it is that despite this mundane discourse, that repetition reconstitutes the whole, there is hope in the form of indigenous realities, minor narratives, and subaltern voices, that can act as resistance to the system without reconstituting the hierarchies. Should Hōkai Rangi, as a strategy, look to improve well-

being outcomes and reduce overrepresentation for Māori in recidivism rates, practitioners themselves will need to be empowered to work from a space that can privilege some of these knowledges. This will not be easily accomplished, as I have experienced for myself when an 'undoing' of the totalising logic is attempted and a differing logic is used in an attempt to create a different 'positive' outcome for an individual. A single act or behaviour that 'reminds' those involved of the 'risk' will automatically precipitate a return to the totalising logic and halt any progress in aid of a return to well ingrained familiar practices. This phenomenon does not come as an outcome of the desire or intents of any who were legitimately engaged in the progression but rather as a result of the way in which our criminal justice system is constituted through this mundane, ever repeating discourse (Arrigo & Milovanovic, 2010). The repetition of unexamined colonial discourse seems to me to be the biggest difficulty that the frontline practitioner will face when looking to implement the ambitions of the Hōkai Rangi strategy.

The coloniser's task

It is the view of Lang (2006) that decolonialism is best enacted through the work of the coloniser of indigenous peoples to not only address the ideas of bias that are held toward minority colonised peoples (hearts and minds), but also through the amending of systems and institutions that operate to oppress and marginalise. Mitova (2020) and Cusicanqui (2012) create strong arguments in support of this as they demonstrate the need for radical and profound decolonisation that includes the 'undoing' of taken for granted knowledges. Addressing the societal deprivations that are faced by colonised indigenous peoples worldwide cannot be achieved through a continued effort of 'engagement' with these populations by apparatus and institutions that find their cultural and historical positions in Western epistemological foundations of knowledge. A reforming of the way in which

empirical post positivist psychological knowledge has trapped us in perpetuating cycles of oppression and marginalisation of particular groups within our societies is necessary to avoid the outcomes reflecting tokenism or institutionalism of the individuals in question (Mitova, 2020; Cusicanqui, 2012; Lang, 2006; McIntosh & Coster, 2017; Arrigo & Milovanovic, 2010).

Processes of change are necessarily discursive in nature, and decolonial change necessitates discursive change (Hardy, Palmer, & Phillips, 2000). To redirect or (re)create knowledge, which is mostly acquired through discourse, and which is what informs discourse, there must be a new way to represent reality through language that is representative of change and that is reciprocally understood by both the enunciator and the viewer (Hardy, Palmer, & Phillips, 2000; Van Dijk, 2011). To effect this, it is also necessary that the position of the enunciator warrants voice (Hardy, Palmer, & Phillips, 2000). That is to say that the institution that leads on the current knowledge, applied through discourse and discursive practice, is the best placed to lead the change through an undoing of current knowledge, replacement with a more holistic knowledge that is representative of the individuals at the centre of their efforts, and a discursive approach that creates new meaning (Van Dijk, 2011; Hardy, Palmer, & Phillips, 2000). In the case of Correctional work, the continued reliance on psychology that is founded on the philosophically incomplete empirical and post-positivist understandings needs reviewing in terms of the reifying relations it holds with managing and defining human risk.

Ethical Activism

Despite the word 'activism' having the potential to raise the eyebrows of those who would question the suitability of the activities of deliberately political agents within a professional

workspace, Jansson and Dodd (2002) show how the 'ethical' form is not only possible but at times morally obligated. Frontline work within the Department is a space where ethical activism could be, and in my experience can, and at times is, employed. Frontline workers acting on behalf of the Department of Corrections occupy a role that works with, in, around, and through multiple parts of the Justice system including Police, lawyers, Courts, Oranga Tamariki and NGOs. Jansson and Dodd (2002) look at ethical activism as it applies to social workers in a medical setting and present the definition as:

"actions directed toward reforming institutional policies and procedures, as well as attitudes of physicians and other medical staff, to create a more favourable climate for social workers' participation in ethical deliberations" (p. 13).

So, we are looking at the ability, potentially moral obligation, of those with a more qualitative or rich knowledge of the people at the centre of professional decisions to help inform and hopefully change the perspectives and mechanisms of the professionals and systems engaged in making decisions relating to these individuals (Jansson & Dodd, 2002). Frontline Department of Corrections staff work with some of the most marginalised and stigmatised individuals in society, often in a way that requires intimate and personal details to be disclosed. Hōkai Rangi is also asking that the practitioner extend this relationship to the whānau in order that they build knowledge of an individual's support network and create a richer relationship. From this position I would propose that, given the arguments in Jansson and Dodd (2002), the practitioner has a moral responsibility to be working from a position of ethical activism. If this is the case for the individual practitioner (a very individualistic Western discursive view) then it must be achieved through the efforts of the Department as a whole to acknowledge this and work enabling

practices into frontline roles so as it can be achieved by the practitioner without punishment/blame for negative outcomes. As I see it the 'clash' of reasoning here is that the reductionist views of empirical psychology of criminal conduct that seek to define the variables by which crime can be predicted will attempt to retrospectively answer any negative outcome, as well as predict based on the variables defined and 'measured' (Andrews & Bonta, 2010). This approach will both greatly restrict the way in which a practitioner can interact and 'assess' the offender as well as being fundamentally unable to account for the relationship building and accountability that will be ethically active should the practitioner operate from the more holistic aims of Hōkai Rangi.

What does become clear when reading Jansson and Dodd (2002) is the power relations that are in play based on dominant discourses around medical care that tend strongly, in Western societies, toward the bio-medical as the lead knower of patient treatment (Foucault, 1980). In researching the use and need for ethical activism in medical settings Jansson and Dodd (2002) look to the field of social work as the best placed to provide input on ethical considerations. Yet their initial findings showed that, more often than not, social workers were left out of discussions by doctors and medical professionals when invasive medical procedures were being considered (Jansson & Dodd, 2002). Foucault (1980) would show how it is that this could be the case, as the dominant discourse in the treatment of patients privileges doctors, trained in medical practices, as the best placed to answer the question of whether or not it should be used. Yet, as discussed by Jansson and Dodd (2002) it is most often the social worker who has the in depth understanding of the patient, caregivers, and their whānau that should be considered when discussing their patients' ethical issues. Foucault's (1980) conceptualisation of discourse and how it operates would show how it is that power relations created through discursive claims to

knowledge would constrain what can be said, by whom, and about which subject. In the case of medical ethical activism, introducing the knowledge of a social worker as representative of the wider social network of the patient, has the ability to change the way in which the otherwise entirely bio-medical discussion can be engaged (Jansson & Dodd, 2002).

There is potentiality within the framework of Hōkai Rangi that the Department frontline staff could work from a place of ethical activism to help both achieve the goals of the strategy as well as truly work on improved well-being for Māori and all offenders. Hōkai Rangi acknowledges that the Department is but one piece of the puzzle when it comes to the Justice System in which Māori are so highly overrepresented. It is then proposed that part of the answer is to work alongside these other 'parts' and occupy a leading role in building a holistic, integrated sector wide response (Hōkai Rangi). From my time spent in frontline roles, and also ongoing as a senior advisor, I am aware that the Department does have the ability to look at the issues presented in a fairly holistic manner and to link positive healing and proactive mitigations into the picture for individual outcomes. It is often, though certainly not always, the frontline practitioners who advocate more for this type of work in the face of risk reduction discourses. What seems to happen is that the sway of perceived public concern/fear as well as fear of 'reputational risk' drives high level decisions that advocate for the more simplistic punitive approaches (Arrigo, 2013). This can feel like such a crime when the more complex and caring decisions are more likely to be based on better outcomes and multi-disciplinary approaches that would/should better demonstrate the professionalism that the Department has built in the area of working with people in the Justice System. It could be argued that, taking this into account, the Department has an obligation to occupy a more ethical activist position in

relation to less informed, archaic punishment-based discourses which can pervade media coverage as well as some partner agencies practices.

McIntosh and Coster (2017) highlight that there are competing narrative flows that exist: one that professes knowledge of the overrepresentation of Māori in prison, and one that continues to disavow the damage that high incarceration rates inflict on whānau and communities. It is also argued that the prison system has an ideological function to 'remove' 'undesirables' and relieve us of the responsibility of thinking about the real issues afflicting their (our) communities. Prisons, to most, are an abstract idea within society that serve this ideological function upon moral 'others': out of sight. This allows for society at large to ignore the systemic, insidious issues such as racism and global capitalism that build such conditions of marginalisation and desperation (McIntosh & Coster, 2017). Hōkai Rangi does acknowledge that a more holistic understanding of the offender is needed n order that some form of healing can take place, which fits, in some way, with the understandings of McIntosh and Coster (2017) that two narratives are completing. A perspective such as Jansson and Dodd (2002)'s view of ethical activism has the potential to take the acknowledgement further, into practice, prioritising a narrative that enables practical ways the Department could advocate for those who are placed in their care. The experiences of those who get labelled as criminal hold many features that, though salient to the individual, are not accounted for in risk measurements and/or the discourses that construct criminality. Thus these features are over-looked or go unacknowledged and so cannot form part of the picture for healing and desistance.

Changing the narrative

Coombes, Denne and Rangiwananga (2016) discuss Arrigo's Society of Captives to show the importance of an 'ethical revolution' in the practice of correctional work that allows for an 'ethical encounter' with the other. An ethical encounter challenges the position of the 'keepers,' those who ensure the maintenance of the boundaries of 'othering' and that of 'kepts' who is held constrained by colonial boundaries and dismantles the 'wall' that lies between them. This conceptualisation speaks to Fairclough (2005)'s argument that the change must be discursive whereby we reimagine the 'work' and change the practices in order that a space can be created for the frontline worker to see the whole of the person in front of them and recognise the conditions of assessment and social harm that act upon them. Coombes, Denne and Rangiwananga (2016) highlight the position of psychology within the criminal justice sector as it locates the harm and risk within the individual, who is then in need of 'fixing' to meet the criteria of good citizenship. This empirical, positivist take set in a neoliberal understanding of individualism creates conditions that would completely prohibit frontline workers from engaging with those on their caseload in the way would allow for ethical activism. Indeed, Coombes, Denne and Rangiwananga (2016) argue that the site at which captivity of the 'other', which is administered, (re)produced, and enacted, through the idea of human risk, is made manifest (particularly correctional work) is where we constitute our own 'kept' subjectivity. This is also then, where difference becomes incomprehensible, and ethical relationships incommensurable (Coombes, Denne, & Rangiwananga, 2016).

Coombes, Denne and Rangiwananga (2016) explore the notion of restorative justice which entered the Aotearoa New Zealand justice system around 2007 as a potential site for ethical activism to take place. They postulate that the advent of restorative justice

created an opening for psychology to reimagine the way in which individualised human risk was seen and treated. It could be that psychology could have opened a space where our response to risk privileged ethical and epistemological non-violence. Restorative justice had the potential to account for and respond to diversity of the 'other' in context of socio-political community relationships and look to re-connect the parts of a community that can become disjointed, disconnected, and marginalised (Coombes, Denne, & Rangiwananga, 2016). What becomes apparent, and is the conclusion drawn by the authors, is that the practice (and concept) of restorative justice was 'made to fit' by the existing Western Eurocentric, neoliberal justice system. Thus, restorative justice came under the influence of individual accountability through discourses related to choice and individual agency that ignore social power relations and complex system interactions which work to co-produce concepts of human risk. Again, this adoption by the existing apparatus to make palatable and knowable a potentially transformative process renders the intention and possibilities unknowable or impossible to enact. However, it does show that there is possibility to create a different way of doing correctional work and that ethical activism could sit comfortably as the 'mechanism' through which this possibility could be realised (Coombes, Denne, & Rangiwananga, 2016). It also highlights that there is an 'undoing' that is necessary to make this kind of change, as the discourse and discursive practices will act back on any 'new' knowledge in order that it becomes palatable and knowable to the existing systems.

As has been mentioned, Hōkai Rangi acknowledges the problems with working in a way that does not holistically 'see' the person who is at the centre of the work, but it does not look to the 'dismantling' of the spaces/knowledges that work to create this. As with many strategies for Western institutions that rely on the unacknowledged philosophies and

theories that construct and constrain based on historically and culturally laden epistemologies and ontological commitments; Hōkai Rangi, seemingly, seeks to 'layer' fixes over the top of the current problematic situation. Coombes, Denne and Rangiwananga (2016) make it clear that ethical activism must begin with an institution, discipline, apparatus, making explicit through reflection, where they are positioned or located in relation to the knowledge they purport to, as well as the problem(s) they aim to 'fix'. Done well, reflection of this kind should lead to understanding the role(s) that have been played by an institution or discipline in, at times, furthering the marginalisation and oppression of those that become their subjects.

Coombes, Denne and Rangiwananga (2016) make it clear that the onus for holistically 'seeing' the person sits with the discipline of psychology which purports to know how to diagnose, and/or risk assess, an individual based on empirical positivist measures defined from within this discipline. Their take on ethical activism is from within the discipline of psychology looking not just at the application of psychology through individual clinicians but also through the way in which the discipline is researched and taught. In pursuit of this Coombes, Denne and Rangiwananga (2016) highlight that the Code of Ethics for psychologists practicing in Aotearoa New Zealand where it is stipulated that psychologists are required to attend to social power relationships under the guidance of social justice and responsibility to society. Seeing the whole of a person, as Hōkai Rangi states is needed, would invoke to me that the social harms that are experienced by the vast majority of those who enter the justice system would be part of social injustice that is our ethical responsibility. This should not only include socio-economic harms such as lack of housing, access to health care, or education, but also epistemic harms that are imparted on marginalised populations through defining of the 'other' (Arrigo, 2013).

Prisons, in particular, are a form of social harm which tend to enact that harm based on psychological knowledges of the assessment and control of human risk understood to reside in the criminal other (Arrigo & Milovanovic, 2010). Taking an ethical activism role by the Department on the harm that is prison could be a locus from which to begin a larger discursive change in how it is that society understands prisons and how the imprisoned are able to experience prison. As McIntosh and Workman (2017) point out the statistic of overrepresentation of Māori in Aotearoa New Zealand prisons is acknowledged, while at the same time the damage that this does to whānau and communities is disavowed. The simultaneous revealing and concealing of the nature of the experience of prison for Māori demonstrates the power of a discourse that has made prison so accepted as to be a normalised part of life for the marginalised and criminalised (McIntosh & Workman, 2017). Having the privileged access to know and experience the other as the Department does should render obvious a need to act ethically toward addressing the social harm that is prison. For the discipline of psychology this would begin with understanding the limiting, identity creating, way in which assessment, diagnosis, and professional judgement of human risk constructs the physical and psychological parameters for how a person is to be treated and managed in both the prison and wider justice sector (Arrigo & Milovanovic, 2010; Coombes, Denne, & Rangiwananga, 2016).

Restorative Justice

As has been explored, through the work of Coombes, Denne and Rangiwananga (2016), the concept of restorative justice has been corrupted by the prevailing discourses of mainstream psychology's neoliberal discourse of individual accountability and responsibility, as well as the justice systems need for comprehensible sanctioning. As such, the form we find it in is not a liberating force to engage in freeing the Department

from a totalising madness of managing human risk. Arrigo (2004) offers an explanation that restorative justice may have become so over popularised that it has lost any congruence with its roots. However, exposing restorative justice to the type of thesis proposed by Arrigo and Milovanovic (2010) can outline how this type of justice could transform the way in which criminal harm and the criminal other is conceived. As Coombes, Denne and Rangiwananga (2016) consider, there are other viable theories to approach restorative justice with, as opposed to mainstream neoliberal psychology, that could expand the ways in which it is carried out.

As Arrigo (2004) rightly points out, restorative justice can lose all shape and form when exposed to over rigorous categorisation, essentially a needing to know exactly what it is. Maintaining and becoming comfortable with a certain "fuzziness" in an important goal for concepts such as restorative justice should we wish that it keeps its form as a different way of doing (Arrigo, 2004). Restorative justice is a process as opposed to a programme or model, just as the development of the theory and practice of restorative justice is a process. That is to say, restorative justice as a conceptual framework is, and should remain, an ongoing (re)negotiation of how justice can be achieved, hence the idea of comfort with "fuzziness" regarding its clarity (Arrigo, 2004). An outcome exposing restorative justice to existing justice apparatus where it's protocols are defined by colonial systems which claim to know 'how justice is done' reduces the process to a space that encompasses only the offender, victim, and their respective supports (relatives, friends) (Arrigo, 2004). Yet the possibilities for restorative justice extend far beyond these social networks to concepts such as community, reflected through community engagement in the process. Community in this sense is not simply the associations of the individuals in question but also community players from businesses to sports clubs and NGOs to local

government appointed officials. The engagement of this community is not necessarily to provide solutions to a specific problem or to facilitate the restoration of justice, but to observe and view crime and the criminal from another nexus, one that may not allow for dominant discourses to make sense (Arrigo, 2004; Arrigo & Milovanovic, 2010). This approach has the potential to create a far greater transformational change than simply a facilitated apology. Support from a community for restorative justice could build support at broad system levels and create a discursive change around who and what a criminal or criminal harm is, and what a justice approach could be (Arrigo, 2004).

Restorative justice used in a way to help all involved make meaning of harm and look to the perspective for all the individuals involved holds an empowering potential for victims, offenders, their families, citizens, and support people (Arrigo, 2004). It is also a space for engagement in the public debate over crime and criminal harm that holds salient meaning due to the interests held by each of the individuals involved and what the harm has represented for them. This is a space for (re)negotiation of meaning, a dialogue with the ability to change discourse, which cannot be underestimated for its ability to affect policy and systemic change (Arrigo, 2004). For the Department, which operates across the spheres of prison and community there is both an opportunity and an ability to engage in restorative justice for those who come under their oversight. This could also be a space for ethical activism to aid in the public comprehension of the pains of imprisonment (for both prisoners and staff) and a space to look at healing of the harms present in the act(s) of the offender, as well as the keepers, regulators, and watchers (Arrigo & Milovanovic, 2010). Indeed, it is the view of Braithwaite (2003) that restorative justice should represent radical transformation. This is not just in the case of criminal justice but also for the entire legal system, our family lives, our workplaces, and our practice of politics (Braithwaite,

2003). This seems ambitious, yet Fairclough (2005) shows how discourse as a mechanism for social change can make lasting transformational changes across multiple spheres of knowledge when it is engaged with. Indeed, Foucault (1980) allows us to understand how our entire society of relational powers and knowledge is transported through time and space as a creative and constraining force for the ways in which we act, build, respond, and know about or toward a subject. Given that discourse is a social negotiation represented in the acceptance of knowledge by the public it is therefore also renegotiable (Fairclough, 2005; Foucault, 1980; Arrigo & Milovanovic, 2010).

In the construct of criminality, the concept of restorative justice is so far limited to specific players; both victim and offender are needed while the other facilitators and navigators are represented by professionals who are privileged with the 'knowledge' to safely and accurately navigate the process (Arrigo, 2004). This way of engaging restorative justice is highly unlikely to create the type of discursive change needed to restore justice. In the first instance, all those involved, including victim and offender following their submersion in the justice system, are operating from the same discourse, informed by mainstream psychological knowledge (Arrigo & Milovanovic, 2010; Arrigo, 2004; Foucault, 1991). The professionals identified as facilitators occupy the role of the knower and therefore occupy the position of power when defining what is and what is not permissible as knowledge, or beneficial in the process. If we think about the parameters of discourse and how it operates in society, current practice of restorative justice severely limits ability to affect discourse or to heal wider communities from the harm that is offending, as well as the harm that can inform offending behaviour, and the response to this that harms the offender (Arrigo & Milovanovic, 2010). The importance of involving a community as identified by Arrigo (2004) is that the multiple views and interests engage in a meaning

making process that holistically sees the multiple outcomes and drivers that either have been done or are represented as possible from here.

What Arrigo (2004) and Braithwaite (2003) both make clear is that restorative justice is not an across-the-board applicable practice. Some crimes or instances of crimes are not going to necessarily create healing when exposed to a facilitated mediation, and in fact have the potential to cause harm. This is in no way an argument against restorative justice and does not affect the ability of restorative justice to change the meaning making of communities and create multi-faceted responses to crime reduction (Arrigo, 2004; Braithwaite, 2003). Rather the limitations of restorative justice as currently practiced speak to the continued complexities involved in the identifying, policing, punishing, and responding to criminal behaviour. Restorative justice as a process of healing remains a powerful tool to affect discourse of criminality and the criminal other, which includes the understanding of the complex nature of societies and their discursive choices around what is and what is not crime and how the human is represented in systems of justice (Arrigo & Milovanovic, 2010).

To take a lead on restorative justice in the ways I have described the Department would need to engage with critical and indigenous psychologies to avoid the continuation of neoliberal psychological accounts of individuals making rational choices in the production of crime and criminal harm (Coombes, Denne, & Rangiwananga, 2016). This discourse leads to the diminishing of possibilities for transformational change that are inherent in conceptions such as restorative justice involving a represented community. The foundational theories of empiricism and positivism are more likely to apply a rigorous scientific lens to claim a better understanding of what restorative justice is and should be

from a notion of an objective world (Coombes, Denne, & Rangiwananga, 2016). It is the very "fuzziness" of a concept such as restorative justice that gives it the transformative potential to restore individuals and communities in a way that creates new meaning in the face of dominant discourses (Arrigo, 2004).

Therapeutic Jurisprudence: How not to do it

I originally wanted to include therapeutic jurisprudence as a "how to do things differently" possibility. This was because I had only a cursory knowledge of the practice and how it was/should be implemented, while understanding that the intent was to acknowledge the Justice System as a social force that was able to inflict further trauma to those it purports to help. I did have my misgivings that the concept of 'therapeutic' had any place in the justice system as it stood and so felt uneasy at how this inclusion was going to fit. Upon reading more behind the genesis of therapeutic jurisprudence as well as the forms it has taken I was more comfortable siting it as an example of how systems and apparatus can 'swallow' well intentioned change and make it palatable in a way that does not manage to achieve the intended reform. As I will unpack, Arrigo (2004) makes explicit the uncomfortable feeling I had when trying to equate therapeutic understandings with a Western system (apparatus) of justice.

Therapeutic Jurisprudence has its foundation in the work conceived by David Wexler (Professor of Law) and Bruce Winick (Professor of Law and Psychiatry) who took the stance of seeing the law as a social force that acts upon those involved in it. The bold change that Wexler saw was needed related, in the early 1990s, to law in the field of mental health, whereby he conceived that society would be better served by mental health law if it were studied and improved to act as a therapeutic agent (Perlin, 2019). Given that

the scope of this work was to assess therapeutic and counter-therapeutic outcomes of law, Wexler and Winick, tautologically, engaged with the discipline of behavioural psychology in order that they could both use this lens to inform their ideas as well as measure their outcomes (Perlin, 2019). However, what was not well established by Wexler and Winick, nor seemingly retrospectively by mainstream psychology, was the meaning of the term 'therapeutic', especially in specific relationship to jurisprudence and the existing function of the legal system (Slobogin, 1995). Slobogin (1995) highlights that Wexler preferred to keep the concept vague, stating "as a mere heuristic, therapeutic jurisprudence has eschewed a tight definition of 'therapeutic', and has similarly left open the nature of the party or person upon whom the therapeutic or antitherapeutic consequences might be visited" (p. 196).

As stated, Wexler and Winick saw therapeutic jurisprudence as the study of the role of law as a therapeutic agent (Slobogin, 1995). This study takes the form of empirical research, by behavioural psychologists, to determine the effect of a rule or practice as regards the therapeutic or counter-therapeutic outcomes (Slobogin, 1995). Given the inclusion of psychologists as the lead on the research into these effects, therapeutic jurisprudence has been touted as being "truly interdisciplinary" by Wexler (Slobogin, 1995, p. 194). Early examples of therapeutic jurisprudence invoke the idea that there is value in choice for those who are subject to restrictions or orders from the court and that these individuals be engaged in conversation about their relevant conditions of release in order that they can assent to them as opposed to simply have them imposed. This would then be empirically measured to see if this has encouraged compliance (Slobogin, 1995). I would argue here that the glaringly obvious questions that are posed include: where is the therapeutic concept present in ideas of 'compliance'?; and, who's interest is

compliance serving? The lack of refined definition of just what, or how, therapeutic outcomes were to be created by the justice systems' law makes these questions redundant as it regards the individual experiencing the legal ramifications. That is to say, when placed at the centre of the legal requirements, and as a subject of mainstream criminal psychology, compliance of the individual, and the interests the compliance serves, are already captured by the discourse of controlling human risk (Arrigo & Milovanovic, 2010).

Therapeutic jurisprudence was seemingly well accepted by the legal system and its stakeholders at large, as Perlin (2019) outlines, judges, psychiatrists, mental health advocates, forensic psychologists, and other legal professionals saw the value in what was being proposed. This led to an expansion of the reach of therapeutic jurisprudence across the legal landscape into civil, criminal, and legislative areas. As a discipline it became part of the academic knowledge that could/should be studied by those who wished to practice law (Perlin, 2019). As has been explored in this thesis, the idea or proposal(s), that made up the concept of therapeutic jurisprudence has then been placed into already existing justice system apparatus. This includes, arguably as the lead discipline regarding direction and knowledge of success or failure, mainstream psychology, particularly in the form of forensic or criminal psychology. All the 'players' are coming from established apparatus and systems that have long been involved in the justice system that has seemingly created a 'problem' that urgently needs addressing. Yet, again, as has been explored, there was no 'undoing' of the knowledge bases for these 'players' that has led to the 'problem' in the first place. There are epistemological assumptions that have not been addressed to create a space for therapeutic jurisprudence to fit in a meaningful way.

The notion that law and legal systems should have a therapeutic 'intent is a worthy one, and the practices that have come about as a result of therapeutic jurisprudence can be seen as 'better' than previous practices, for the individual at the centre of the practice. However, what can be damaging is believing that these practices have a therapeutic quality that goes beyond simply encouraging compliance, which has no link to 'therapy'. In fact, Arrigo (2004) poses the possibility (probability) that the idea of increased compliance invokes the normative dimension at the centre of therapeutic jurisprudence, which has the likely outcome of limiting and eroding prospects for humanism and justice. The increasing of compliance through therapeutic jurisprudence, guided by mainstream psychological knowledge, promotes a logic of identity that displaces and denies individual and group differences (Arrigo, 2004).

In an example of a challenge to a system coming from within that system and relying on the necessity of much of its pre-existing tenets, therapeutic jurisprudence ultimately assumes the legitimacy of the law (Arrigo, 2004). This includes overlooking ideology, power, and violence embedded within legal narratives, while simultaneously adhering to the idea that compliance is representative of a 'good' legal subject, and falsely fosters the idea of a consciousness among citizens (Arrigo, 2004). As Arrigo and Milovanovic (2010) have presented, knowledge as discourse and discourse as knowledge allows for a constant engagement with, and then disengagement from, our agency as humans to produce our dynamic worlds. This also continually removes us from an interaction with each other that recognises our agency as a place for liberation and reform. To assume that a disempowered person at the centre of an institution or apparatus as vast and insidiously powerful as the justice system, has the ability to choose compliance, or to

know how to engage the other players in a way that allows them to express humanness differently, seems, at best, naïve. Rather, therapeutic jurisprudence seems to take the normative values at the centre of the existing justice systems that designs measures of risk in relation to dominant, colonial norms and looks to encourage compliance with them (Arrigo, 2004). The definition of harm that is offered by Arrigo and Milovanovic (2010) shows that to restrict or deny a person the ability to engage in their own difference and do and be human differently is a harm. We could also couple this, in the case of the marginalised criminal other, with the fact that compliance, in this form, promotes a normative, constricted way of being and doing humanness through mainstream psychological assertions of human as a state of normalcy. This is also enacted through the investment of energy in injury-producing, socially constructed relations of power based on inequalities constructed around difference. Therapeutic jurisprudence's concentration on compliance, without creating space to have the disempowered co-author their conditions, could be considered in the realm of criminal harm (Arrigo & Milovanovic, 2010; Arrigo 2004).

PART TWO: CRITICAL DISCOURSE ANALYSIS

CHAPTER FIVE: STRATEGICALLY ENGAGING DISCOURSE AS STRATEGY

Discourse, Knowledge, and Power

The relationship between knowledge and discourse is a reciprocal one, whereby we acquire most of our 'knowledge' through discourse, and we cannot produce discourse without 'knowledge' (van Dijk, 2011). Discourse privileges and/or dismisses certain 'knowledges' through the use of specific speech mechanisms in both spoken and written word (Arrigo & Milovanovic, 2010). To understand that discourse (which resides within language) is not an objective representation of knowledge or a necessarily sensible way to impart knowledge, it helps to briefly engage some of the tenets of Saussure. It is the arbitrariness of the relation between the signifier (word) and the signified (object/concept) that gives us the understanding that language does not represent the world, but rather stands in for the world and constructs it. That is to say that language does not simply describe the objective world but negotiates, through social forces or collective behaviour, the accepted/discursive reality of the world (Saussure, 1998). It is important to understand that the use of arbitrary to describe this relationship does not allude to the fact that the speaker is able to simply use any word (signifier) to describe any concept (signified) as this is most certainly not the case, and in fact, the opposite is true as language becomes 'accepted' or discursive. Rather it is that the signifier is unmotivated, or has no natural connection with the signified: it is arbitrary (Saussure, 1998). As Susan (2018) puts it,

> The arbitrariness of the linguistic sign proves another, more fundamental, point: linguistic elements are defined not in terms of their seemingly inherent qualities, but, rather, in terms of their functions – that is, in terms of their capacity to enable human subjects to engage

in constative, normative, expressive, and communicative forms of
action (p. 2003).

At once we can see that language is not able to represent the world and is therefore best considered as a stand-in in which we construct psychological concepts through social interaction. While also seeing that once fixed and formed as a signifier language (despite its arbitrary relation to the signified) is not negotiable least language become insensible (Saussure, 1998). Language, it would seem, from Saussure's viewpoint, brings the world into a sensible order that does not necessarily exist. It creates patterns through its own series of rules and structure, Radford and Radford (2004) quote Saussure who succinctly put:

"A language is a system in which all the elements fit together, and in which the value of any one element depends on the simultaneous coexistence of all the others" (p. 61).

What Foucault saw, in going beyond the structuralist ideas of language and, though Foucault himself disavowed being any specific "ist", working from a seemingly post-structuralist position, was that the organisation of language does not simply describe the world but constitutes it (Armstrong, 2015). Foucault showed how the historical and cultural context of the present worked to shape what was considered knowledge rather than what was/could not be considered so through discourse. Foucault saw that, beyond an idea of language being a system in which elements fit together and depend on the coexistence of all others, it is also presented in the form of discourses that obey other sets of rules (Tenorio, 2011). These 'rules' pertain to knowledge that is invoked or inherent within institutions, disciplines, or apparatus, creating a discourse that allows certain statements most often at the exclusion of others. It is knowledge that informs discourse, while also discourse is the main way in which we acquire our knowledge (van Dijk, 2011). As

Foucault (1980) has stated, particularly in regard to the human sciences, these discourses are not making a distinction of what is truth or what is not but rather what is considered scientific versus what is not. Here we can see the intersection of how a power relation operates in that the legitimacy of the speaker, using the accepted discourse, informed through a reciprocal relationship with knowledge, is considered to speak to the most valid representation of the world. This concept also shows how a constant reproduction of power relations in a society that has privileged objective scientific knowledge (empiricism and positivism) is carried out (Arrigo & Milovanovic, 2010; Foucault 1980). The interrelationship between discourse, power, and knowledge is a co-producing, reproducing effect that continues to privilege and elevate certain acceptable aspects of knowledge through the dominant understandings or discourses present at the historical and cultural nexus.

In the case of criminal systems of justice human risk is identified and managed based on concepts of difference represented by humans being and doing humanness differently (Arrigo, 2013). Discourse privileging mainstream neoliberal accounts of human risk as the best qualified (most scientific) discipline to comment on what is the reality of human normal versus abnormal is an example of how this knowledge is territorialised (Arrigo, 2013). I have experienced the way in which psychological accounts of what is or what is not normal are privileged in meetings, case work, and plans for rehabilitation. It is not that the individual as representing the psychologist attempts to push an agenda as such, but rather that the discourse available to speak the 'truth' about the criminal other privileges mainstream psychological accounts. Combined with the fact that discourse also identifies the person (people) best positioned to speak on a subject, mainstream psychological accounts when spoken by a practitioner of this discipline are taken as representations of

an objective reality (Foucault, 1980). It becomes extremely difficult to present a different theory of reality as the unpacking of the assumed collective representations of what is being discussed takes time and negotiated meaning. Yet conversely, and following Foucault's understanding of the rules that govern discourse, the discipline of mainstream psychology can function through the Department of Corrections to introduce new discursive sayings that are assumed to represent a reality to which they have knowledgeable access (Foucault, 1991; Foucault, 1980). In a couple of examples of this I have heard in recent years the use of two 'new' concepts that have made their way into discussions around prisoners and offenders. These concepts are '*extreme risk'* and '*chronic risk'*. Neither of these concepts have academic basis that I have been able to find, and this includes from within mainstream psychological research.

Spoken into existence by the person (people) positioned as having the best access to knowledge of human risk in a setting that discursively understands what human risk is from an empirical positivist psychological construction, these concepts of 'extreme' and 'chronic' risk easily take on meaning, and get taken up in practice (Foucault, 1980; Arrigo & Milovanovic, 2010). This can be understood in simple terms as the fact that 'we' (as a Department) have a cognitive representation of (human) risk as well as cognitive representations of chronic and extreme so that we can create an easily accessible cognitive representation of both concepts. The concern is (or should be) that these concepts can now be acted on through the institution's practices to limit and constrain the possibilities of being for the individuals who come under this new assessment (Arrigo & Milovanovic, 2010; Arrigo, 2013). Again, I have had experience of questioning the use of these concepts, with some early limited success as the speaker struggled to unpack these

concepts when questioned about the available literature, yet both concepts have continued to proliferate in different settings across the Department.

Hardy, Palmer and Phillips (2000) discuss the use of discourse as strategy. Strategically, discourse aligns with Foucault's idea that society responds to identified urgent needs through its dominant discourses and pre-existing apparatus or institutions. Used strategically, discourse can show how these concepts can make their way into accepted knowledge (Hardy, Palmer, & Phillips, 2000; Foucault, 1991; Foucault, 1980). New statements made from within disciplines privileged as knowing about a certain subject, easily gain momentum when repetitively spoken into existence (Hardy, Palmer, & Phillips, 2000). What Coombes, Denne and Rangiwananga (2016) argue, is that the ethicality of this is not defendable when there are lived experience outcomes that act on the body of people through an institution such as the Department. As such, 'extreme' and 'chronic risk' entering the Department's discourse demonstrates, almost perfectly, the way in which the interplay of discourse knowledge and power works to create inescapable realities, through claims to truth, that constrain the possibilities for being and doing humanness differently (van Dijk, 2011; Hardy, Palmer, & Phillips, 2000; Arrigo & Milovanovic, 2010; Taylor, 1984). In understanding the outcomes of these concepts as they enter discourse through the position of knowledge and are acted upon by the Department through practices of containment, constraints, and descriptions that enter the justice system to describe and identify an individual, we must accept that harm is being done to those contained, constrained and described. Through the mechanisms of Western empirical positivist psychology's discursive account (construction) of chronic and extreme risk we can see that epistemological harm is enacted against the criminal other (Teo, 2010). Arrigo and Milovanovic (2010) would conceptualise that there is also a form

of criminal harm in place as the concepts are enacted upon disempowered people actively, through mechanisms of social power relations (the actions of the Department) that constrain and disavow the potential of the identified 'other' to be and do humanness differently.

Discourse constrains the levels of possibility by privileging certain institutions, disciplines, or apparatus to answer, or even discuss, a particular topic or area of society. These apparatuses then give rise to discursive practice that make sense to the discourse used, which in turn can 'trap' them in their practices (Tenorio, 2011). Quoting Foucault, Tenorio (2011) states "discourses are practices that systematically form the objects of which they speak" (p. 186). It's Foucault's understanding that "truth" is not a thing that can be found but rather a production of multiple forms of constraint that induces regular effects of power (Taylor, 1984). Truth is a navigation or meaning making process for each society reflected in its general politics of truth, or the type of discourse which it accepts and makes function as true (Taylor, 1984). Macais (2015) demonstrates how it is that Foucault's work on discourse shows how power relations shape the production of truth and that the truth that is shaped is at the expense of other truths. In exploring the shift from an authoritarian regime to a democratic one in Chile, Macais (2015) explains the moment of rage experienced when the new government constructed the extensive suffering of the people under the preceding regime as a series of individual actions enacted by individuals. Yet as is explored, how could an entire regime that used existing apparatus and political channels create a society wide suffering targeted at 'undesirables' over decades if it was simply individuals making individual choices (Macais, 2015). For Macais (2015), the structures used to create a regime that was able to terrorise so many of its citizens do not, and cannot, represent simply a series of neoliberal ideas of individual actions, and

could not have been enacted without multiple discursive strands that constructed the undesirable other as enemy to people (state). This way of understanding what happened is actually far more likely to reflect a truth as opposed to the neoliberal discourse used by the incoming democratic government. So why then was the government pushing a neoliberal account of individuals simply acting in 'bad' ways? Macais (2015) shows how it is that this discourse allowed for a democracy of agreements that served the purpose of political elites who were able to sustain the transfer of power to a civilian government.

Though Foucault's work does offer the idea that humans are freer than we think, which is reflected by Arrigo and Milovanovic (2010) in the concept that we are the agents of our own production of our dynamic worlds, he also shows that there is no form of pure liberation or freedom just as there is no objective truth (Taylor, 1984). Truth, rather, is a production of discourse and discursive practice/choices, and the power that it implicates or creates is coextensive with human society (Taylor, 1984). Hardy, Palmer and Phillips (2000) look at how it is that discourse can be strategically used to create new meaning of objects and subjects to change the way in which we act toward or upon these.

The seemingly inescapable production and reproduction of power relations would only imply a depressing state of hopelessness if we were of the belief that there is an end point or utopic position for humanity to aim toward and occupy. If instead we see human systems as necessarily dynamic, fluid, and evolving/devolving then the possibilities of constant liberation (often going hand in hand with someone's oppression), the work to liberate no longer seems hopeless. I would see this as vital to Arrigo and Milovanovic's (2010) concept of human becoming. In the discursive production of human through mainstream psychology we see the notion that there is a human psychological 'form' to

take that is better than the implied opposite – this speaks to fixed truths creating power relations and discursive marginalisation for those considered 'other' under these parameters (Arrigo & Milovanovic, 2010). Here we find the mad, the criminal, the disordered, all of whom are acted on and upon through accepted discourse of knowledge by institutions and disciplines who largely rely of the discourse of mainstream psychology to categorise, silo, and treat/fix the deficits the institutions themselves describe. None of this current state acknowledges the forces that worked to produce their necessity or to privilege them as those best placed to answer an urgent need (Foucault, 1980).

Methodology

Critical Discourse Analysis (CDA) was chosen as the method to investigate this topic. The strategy of Hōkai Rangi has claimed to be a change for the better for those who are either imprisoned with, or supervised by, the Department of Corrections as well as for their whānau. Given the reach and impact of practices of imprisonment and managing 'human risk' throughout society itself, this type of change must represent a social change in both the Department of Corrections and Aotearoa (Arrigo & Milovanovic, 2010; Fairclough, 2005). It may seem a bold statement that this type of change must represent social change in Aotearoa as a whole, but it is so clearly discussed in Arrigo and Milovanovic (2010) how, through constitutive theory, the practices of managing human risk, given discursive reference through penology, works to give form, permanence, and sustenance to the subordination of human agency. It is hoped that a CDA of the Hōkai Rangi document will make apparent the underlying discursive discrimination(s) and languaging that 'traps' the Department of Corrections in its current practices, which would negate any ability to achieve the aims of the strategy. As Fairclough (2005) highlights,

this type of change is often initiated with new discourses that 'recontextualise', creating new ways of being and/or doing. Arrigo and Milovanovic (2010) discuss how it is that all who are engaged in the acts (of criminal harm), debates, theorising, practices, and policy making that relates to penology and crime coproduce a discourse that "gives form and permanence to the very entity that they collectively despise…" (p. 10). Given the issues explored in the first part of this thesis, choosing a methodology that allows me to explore the structural relationships of dominance, discrimination, power, and control as manifested in language seemed an obvious choice (Fairclough, 2005). Avoidance of empirical data collection followed by academic interpretation leading to 'knowledge' of the criminal other is also seen as important to avoid perpetuation of epistemological violence (Teo, 2010).

CDA as a methodology understands that discourse shapes economic, social, and cultural change as well as those processes that take place outside discourse (Blommaert & Bulcaen, 2000). It also allows for awareness of the marginalising, discriminating, and controlling power of discourse in, often taken for granted, social processes. It is the nature of discourse that it is often an opaque power object that operates through social agents and apparatus in ways that disempower those who are subjects of their attention (Blommaert & Bulcaen, 2000). CDA aims to make these opaque power relations more transparent. In the case of Correctional work, the importance of making these power objects transparent is impossible to overestimate. The simple facts are that we imprison and impose sentences of supervision, in the majority of cases, on already marginalised and disempowered groups of society (Mihaere, 2015; Arrigo & Milovanovic, 2010). When it comes to a strategy for the Department of Corrections it therefore seems critical that

the text itself be subjected to CDA in order that some transparency be achieved to hopefully help guide those who can effect change.

Arrigo and Milovanovic (2010) present how it is that the multiple different forms of engagement in any 'discussion', study or argument around the system of prisons and 'correctional' work legitimises these systems (even when the intent may be to argue against the systems). It is through these 'debates' that the discourse around prisons and managing human risk is reified, constructed, and further legitimised. Over time, the continued rhetoric, either for or against the system, becomes the generally accepted discourses and definitions within a culture – at this point they become 'assumed' and act as 'base' knowledge around which any discussion or disagreement must take place (Arrigo & Milovanovic, 2010; Fairclough, 2013). As Arrigo and Milovanovoc (2010) state, all those who discuss, work in, commit crime, judge, study and so on essentially become 'imprisoned' by the language. Fairclough (2013) simultaneously outlines how it is that discourse operates in the form of existing social realities as humanely produced constraints that can operate to reduce human flourishing while also increase human suffering. In creating a document that outlines a 'new' strategy it is assumed that the immersion in the social systems that 'construct' the Justice System and the Department's specific role within this system will affect what can be said and who should be privileged in the 'doing' of this piece of work. The discourse will be culturally and historically linked reflecting the history of Aotearoa New Zealand as well as the Western capitalist underpinnings of a prison and punishment-based system of justice. Hōkai Rangi makes the statement that it is an attempt to move into a more Te Ao Māori view of Justice and restoration of a person back to their communities in a healing way. Thus, it could be assumed the practical implication of Hōkai Rangi will contain a recontextualising of the

current practices that show how this strategy can alter or replace the established discourse(s).

When it comes to Hōkai Rangi as a text, critical discourse analysis recognises that text in context can be defined by its effect (Tenorio, 2011). Discourse as a pragmatic process of meaning making produces the text (Tenorio, 2011). This text, presented as a strategy then has effect back on the discursive practices and ways in which action can be taken. Text is interactive and influenced by sociolinguistic factors. The discourses represented in text are internalised by individuals in the process of constructing themselves and society – in this sense discourses control and organise what can be talked about, how it can be talked about, and by whom (Tenorio, 2011). In statements of intent representing an institution is the discourse, reflecting knowledge and power relations, that gives insight to what is or is not being done. Discourses form individual and collective consciousness which influences people's actions, this is achieved through the repetition of ideas and statements that operates to solidify knowledge (Tenorio, 2011). It is the aim of critical discourse analysis to show how social phenomena are interconnected and to enable social actors to emancipate themselves from domination through self-reflection. By making clearer the opaque power relations that are held in discourse people can make changes to practices through renegotiating the meaning making of actions (Faiclough, 2013; Tenorio, 2011).

As with the Foucauldian understanding, Tenorio (2011) states that critical discourse analysis and the emancipation or liberation that it offers is not through claims of truth. It is through resisting and counteracting enactments of power and power abuse that critical

discourse analysis can offer a 'space' for re-negotiating meaning making that looks to address the oppression and marginalisation that the power inflicts (Tenorio, 2011).

CHAPTER SIX: READING HŌKAI RANGI STRATEGICALLY

Analysis

The Document

Hōkai Rangi is a "we will do" document that lays claim to knowing that the past work in the area of corrections in Aotearoa has largely failed to address problems of recidivism and disproportionate representation of Māori in both prisons and community managed sentences. The "we will do" is seemingly aimed at a Department wide audience, as well as general public, without mentioning those specific people (employees) in their situation specific space(s) that will do the doing. While the document does mention that Correctional work to date, including past strategies, has not managed to answer the 'problem' of overrepresentation for Māori, it does not look to unpack the how or potential why these strategies have failed in the past from a Corrections practice specific position. Hōkai Rangi could, in this manner, be seen as a response to an urgent need that has been identified not only by the justice system but also by the government of Aotearoa New Zealand (Foucault,1980). It is given a time frame of five years to achieve strategic outcomes that have been identified as necessary over the past few decades, and more recently through engagement with select iwi and governmentally commissioned reports into the 'problem' of Māori overrepresentation. As such the document can be seen as a guide for the Department as a whole with ideas of the areas that should be focussed on to achieve better outcomes.

Hōkai Rangi does manage to reflect on the Department's own discourse, as a discourse should, through outlining some of the areas where there is a prioritising of risk management and containment. It also mentions that there should be more of a focus on wrap-around support for the individual through whānau and the community. However, modes for change are still represented as being best engaged through addressing "criminogenic needs", a concept that is entirely mainstream psychological in theoretical and philosophical basis (Webb, 2005). This is also an homage to the work of Andrews and Bonta and their model of Risk Needs Responsivity (RNR) that defines the criminogenic parameters that an individual can be assessed on to be categorised and acted upon to address or fix these areas of risk (Webb, 2005). Outlining the need to focus on criminogenic needs while also highlighting that the Department does wrong when over prioritising safety, containment, and risk management seems oxymoronic. To address criminogenic needs through the mainstream psychological lens, with its empirical positivist understandings, necessitates the continued assessment and siloing of an individual as being a delinquent other who, through discourses of safety in a prison or community environment, will continue to be managed through containment related to assessed risk (Arrigo & Milovanovic, 2010). It is a symptom of the totalising madness that keeps society captive through panoptic fears and prescriptive forms of humanness as normative versus abnormal (Arrigo & Milovanovic, 2010).

What could be reconstructed here is the concept of individualised risk as residing in the criminal other to be understood as contextual interaction of the different social locations that an individual has/does occupy (Hankivsky, 2022; Arrigo & Milovanovic, 2010). By seeing the person in this way then the automatic inclusion of whānau and the communities they represent is implied as the risk is no longer solely assessed as residing

in the individual (Arrigo & Milovanovic, 2010). This would require an engagement with other theoretical perspectives and knowledges such as critical and indigenous psychological perspectives on what humanness is. It could also be argued, certainly from my perspective, that this way of understanding a more holistic picture of how risk is constructed would offer a space for ethical activism of the practitioner (Coombes, Denne, & Rangiwananga, 2016; Jansson & Dodd, 2002).

Allowing for frontline practitioners to engage with different theoretical understandings of how it is that the constituent parts of a person's life work in ways to construct their lived experience would allow for a change in what is being done and the meaning making behind the engagement (Arrigo & Milovanovic, 2010; Coombes, Denne, & Rangiwananga, 2016; Jansson & Dodd, 2002). They could then place themselves and their role as a Corrections frontline employee in that context to better understand the role this positioning plays in constructing the individual in question. From here the frontline practitioner can advocate for those on their caseload when it comes to being and doing humanness differently and effect the discourse of what it means to be criminal and what managing human risk entails (Arrigo & Milovanovic, 2010).

Hōkai Rangi is presented as a thirty-seven-page document that begins on page 1 and 2 with a foreword from both the minister for Corrections as well as the Chief Executive Officer at the time. Preceding this is a short explanation of what Hōkai Rangi means and where the name has come from:

> *This name was given to us by Te Poari Hautū Rautaki Māori, our Māori*
>
> *Leadership Board. It is taken from the karakia 'Kete o Te Wānanga',*

which describes the ascent by Tāne into the highest heavens. It is drawn from the following section: 'Ko te hōkai nuku, ko te hōkai rangi' (traversing the earth, ascending into the heavens). It aligns with the metaphor of Ara Poutama Aotearoa, which is drawn from the same narrative.

Hōkai Rangi represents the journey of Ara Poutama Aotearoa, the people in our care, and their whānau, to achieve full potential.

In this translation is a bold statement that Ara Poutama (Department of Corrections) is on a journey to help the people in their care and their whānau to achieve full potential. If we look to the transformational thesis of Arrigo and Milovanovic (2010) this would seemingly implicate that the idea of being and doing humanness differently will be embraced by the Department. It can be seen, in a discursive sense, to allude to not only the avoidance of harm being done by the Department, but also to the creation of a space for the individual to be and do humanness differently in a way that does not limit or repress another. Achieving this would be an alignment with the revolution in penology that is offered by Arrigo and Milovanovic (2016), but would necessitate either an extremely cautious and considered application of mainstream psychological practice, or a removal altogether of any diagnosing, siloing assessment that works to identify and limit that person's potential. It is a discursive practice for mainstream psychology, especially in the forensic setting, to be used to identify and silo the individual in question through a series of personality and risk assessments that then inform not only the way in which that person is acted toward but also the very environment in which they will be contained (Coombes, Denne, & Rangiwananga, 2016). Presented in this opening translation is a direct challenge to discursive practices employed by the Department when it comes to the way in which

human risk is assessed and managed in the justice system. Yet without expansion to understanding the mechanisms that have so far worked to keep those identified as criminal oppressed and marginalised within this system the challenge to discourse does not have a redefinition of the practice that can create the change implied (Arrigo & Milovanovic, 2010). The power relationship that is reinforced here is that the Department already knows how it is to reach a full potential and by invoking the concept of "care" that they are able to practice in some benign manner. The Department is ultimately placed as the lead in knowing about how an individual may become 'better', simultaneously invoking the concept of what is worse, or in other words what is normative versus abnormal for human (Arrigo & Milovanovic, 2010). Reaching a full potential seems to deny the idea of human becoming and instead place a limit of reaching a normative human condition which, based on the dominant Western psychological knowledge used within the department, is constrained to Western silos of psychological wellness (Arrigo & Milovanovic, 2010).

To claim that the Department will be able to help people reach their full potential ignores the reifying act that is prison and penal harm. A prison system and system of justice that uses monitoring through Corrections of criminals limits the potentials for all individuals that are either under this type of management or containment as well as the keepers, regulators and watchers (Arrigo & Milovanovic, 2010). There is certainly no discursive challenge to the privileged position of Corrections as the institution best placed to know about criminal individuals, nor is there a challenge to the reality that the prison and community correctional systems are sites of 'totalising madness' where the fears and discursive constraints of society are concentrated (Arrigo & Milovanovic, 2010).

If we accept that imprisonment, and community management of 'offenders', is the outcome of continuing to respond to an urgent need to control risky individuals who are primarily seen as a burdensome population who do not fit the values or perceived needs of a largely mercantile society, we must see that it continues to serve this function (Foucault, 1980). We also see that to serve this function through the discourse of mainstream psychological knowledge, the individuals at the centre must represent a person who has a deficit within their psychological function that can be fixed (Reiman & Leighton, 2020). Accepting how managing human risk responds this fix would come in the form of a conformity to the needs of a society, which is not interchangeable with the needs of human, particularly being and doing humanness differently (Arrigo & Milovanovic, 2010). Here is where Foucault's ideas of the docile body comes into play and we can see that managing human risk, including imprisonment has a goal of recreating the actor to simulate the acceptable (normalised) body of the docile self-controlling citizen (Foucault, 1991). This is an important reflection for the Department to engage in if it wishes to undo and redress the reifying ways in which discourse is informing its practice and constraining its ability to change the lives of those who enter the system. The example of therapeutic jurisprudence should act as an example of getting this type of reflection wrong as it focusses on the compliance of the other with the institutions and apparatus, that are both outcomes of and reifying agents in marginalisation, constraint, and oppression of the abnormal other (Arrigo, 2004).

One discursive theme that is repeated throughout the Hōkai Rangi document is one of a focus on rehabilitation, even stated at one point as "*a relentless focus on better rehabilitation…*". From a discursive perspective, this repeated commitment will make sense to the layman, as this is one of the main purposes of modern imprisonment. Yet

this idea is reflective of the mainstream psychological knowledge that has been built alongside, within, and by the system of managing human risk that has, so far, been implicit in perpetuating the conditions of continued focus and 'policing' of marginalised communities and individuals (Arrigo & Milovanovic, 2010). The seemingly benign statement is able to be seen as such given the picture that is accessible to the wider public as well as the institutions that engage in the criminal justice sector. A notion of correcting the delinquent other is acceptable and knowable without having to think too hard about what is actually to be done (Reiman & Leighton, 2020; Foucault, 1991). Here is represented the nexus of the power that the state has, created and accepted through discourse and working through the apparatus of the justice sector, to know and to carry out on behalf of the rest of society, the correcting of those identified as criminal (Arrigo & Milovanovic, 2010; Foucault, 1991). All of this is to be achieved through systems that currently exist and that are able to carry out this important piece of work behind closed doors. Arrigo and Milovanovic (2010) also discuss how it is that the concept and practice of rehabilitation in the criminal justice system has been perverted from its original intent to be discursively understood as a show that the state has more concern for the manipulation, inspection, and regulation of the offender than for the harms committed and the victims who suffer.

A continued focus on rehabilitating also denies the ability to engage with other ways of knowing about criminality, including from a critical or indigenous psychological perspective. Rehabilitation is, in fact, poorly defined from with mainstream psychology itself (Forsberg & Douglas, 2022). The problem is not only that the concept of rehabilitation, what is and what is not, covers a range of actions or interventions, but also that the idea of rehabilitating must take the individual at the centre of this as being

understood within their multiple social locations (Hanvisky, 2022; Arrigo & Milovanovic, 2010). For me, the word itself implies that there is or was a position within society that the individual should or can be restored to that will benefit them from a perspective of living in a way that they are able to be and do humanness in a way that is meaningful to them, as well as not harmful to others. Yet through my experience and study I would not be of the view that this space existed or potentially could exist, particularly not with the increased monitoring that is inherent in the oversight of someone who has been identified and labelled offender by the justice sector. A continued, and even increased, focus on rehabilitation as a cure for the criminal represents a discursive choice to continue down the path of neoliberal mainstream psychological knowledge of the other in a society that has not seen the benefits of this approach to criminality in all the years it has been functioning (Arrigo & Milovanovic, 2010; Mihaere, 2015; Coombes, Denne, & Rangiwananga, 2016).

A radical renegotiating of criminal harm and the criminal other would represent a genuinely transformational change that can be engaged through recognised practices of ethical activism and restorative justice (Ward, 2013; Arrigo, 2004). The practicing of these modes of healing has the potential to create wide ranging systemic change that is relevant to the communities from which harm has come and to whom harm has been done (Arrigo, 2004). As discussed in Braithwaite (2003) when there is a crime or 'bad act' in society it represents a rupture in human interactions, which creates needs and responsibilities for the direct participants, as well as for the larger society in which the act takes place. This understanding places the community in which harm has taken place as just as relevant as the Department in knowing and understanding what it is that has transpired and what

it is that is needed to restore the offender, heal the victim(s), and work to avoid further harm in the future.

In the "Purpose and Context" section of Hōkai Rangi it is outlined that the Department of Corrections is a single part of the Justice System. The explanation then goes on to stipulate that the Department is "at the final point of this process…", invoking a concept of inability to affect the system or outcomes unless working with other Justice System 'players'. These concepts are then refined later in the paragraph:

> *"Our specific responsibility in this system requires us to focus on doing*
>
> *our best with those who come into our care and management, in order*
>
> *to help reduce the chances of them returning to the justice system."*

This conceptualisation, and seeming rationalisation, of the role which the Department plays in the Justice system (and unavoidably, wider society) ignores the function of discourse and the concept of intersectionality. Intersectionality challenges us to look at human as being shaped by the interaction of different social locations (race, gender, class and so on) that occur within a context of (inter)connected systems and power structures (relations) (Hankivsky, 2022; Arrigo & Milovanovic, 2010). It is not just that intersectionality can be applied to understanding inequities as never being the result of one single distinct factor but rather that they are the outcomes of intersections of different social locations, power relations and experience (Hankivsky, 2022). It is also that the people who work in, watch, research on, enforce, and experience the application of Correctional practice are also located within their socio-political and economic societies (Arrigo & Milovanovic, 2010). This means that they (we) are all able to engage in and

negotiate the meaning and function of our dynamic worlds (Arrigo & Milovanovic, 2010). From the position of the Department there is also a power relation in that this institution is privileged to know about the criminal other. Thus, the Department is able to take a lead on the discourse through knowledge of the criminal other to affect and change the way in which the identified individual is understood. Far from being a passive receiver of the outcome of the justice system, the Department is capable of active engagement in the meaning making available to the kept, keepers, watchers, and regulators (Arrigo & Milovanovic, 2010).

Hōkai Rangi statement of "specific responsibility" gives the sense that the Department is almost a passive space waiting for the outcomes of the rest of the system before it is 'allowed' to act. Yet all that the Department does has a direct influence on the discourse of criminality available to all parts of society. This is the thesis that the 'management' of human 'risk' extends to the 'kept' as well as their 'keepers', regulators, and 'watches' (Arrigo, 2013). Despite the ways in which it is constructed and perceived by society at large, a Prison is not separate from society. Nor is 'Correctional' work able to be engaged in in isolation from the values and expectations of the society that defines it (Arrigo & Milovanovic, 2010). Those working in a prison or community corrections site cross the 'wall' every day for work both taking from and introducing to their environment all other parts of their lives that they engage in (Hankivsky, 2022). These are the people whom the Department offers training, 'upskilling', reflective practice, strategies, notions of safety, job descriptions, as well as the physical environments in which the 'work' takes place. All these factors are 'transported' back to the parts of society that both the staff and those that the staff work with occupy. The Department therefore, has an active role in affecting

the discourse that informs what criminality is, specifically in regard to what the criminal other is as an individual, and how best to treat these people (Arrigo & Milovanovic, 2010).

Construing the Department in this way avoids the reality that a prison is part of society – as such leaving the institution unchallenged and maintaining its power. Despite the walls that separate it, a prison resides within society and is an accepted part of the cultural landscape (McIntosh & Workman, 2017). Managing and containing human risk is a discursive practice operated on by the dominant societal discourse of Western imperialist societies (Foucault, 1991). Therefore, the notions of what is crime, a criminal, an appropriate response, is represented in the practices and imprisonment that the Department undertakes. There is a strong argument here then, that the Department has a moral obligation to take a lead role in the ways in which society is able to engage in these discussions and how meaning is made of the constructs (Lang, 2006). The Department is not passive in its ability to restore or heal those it has oversight of and those through whom it enacts its practices. There is the ability to engage with other theories and disciplines than the largely empirical positivist mainstream psychological knowledge that is currently privileged (Coombes, Denne, & Rangiwananga, 2016; Teo, 2008). The discipline of psychology contains practitioners engaged in both critical and indigenous psychology who have the ability to reframe constructs that can allow space for renegotiating the discursive realities that keep us all constrained as a society of captives (Arrigo & Milovanovic, 2010; Coombes, Denne, & Rangiwananga, 2016).

The ability to engage in practices such as ethical activism and restorative justice to affect the way in which society at large can make meaning of crime and the criminal other, and the very active role Corrections can play in this, makes the notion of passivity insensible

(Jansson & Dodd, 2002; Arrigo, 2004). Given that the individuals designated as criminal and convicted as such live their lives, mostly for transitory periods, within the administrative and physical practices of the Department, the nexus for this type of change sits, in a practical sense, with the Department. Though Coombes, Denne and Rangiwananga (2016) show how it is that restorative justice has become a practice (re)defined by power relations and dominant discourses with claims to knowledge of criminality, Arrigo (2004) demonstrates its transformative potential if engaged from a different theoretical stance. Jansson and Dodd (2002) provide a framework for ethical activism, that if taken together with Coombes, Denne and Rangiwananga (2016) theoretical perspectives, could sit comfortably alongside a restorative justice practice initiated by the Department.

The effect that Corrections does have on the rest of the justice system is therefore ignored by constructing the Department as simply awaiting outcomes. What is stated is:

> *"The policies and approaches in one part of the system can impact on other parts, and therefore joining up our approach allows us to identify these effects, and implement changes that have the best outcomes for everyone."*

The "joining up" that this statement is alluding to is across the justice system with Police, Courts, and 'stakeholders' identified as the partners. In this statement there is at once both an acknowledgement that these parts are interconnected as well as a reflection that by 'streamlining' the policies and approaches, better outcomes can be achieved. I would argue that the positioning of the Department as the 'last stop' and as the institution that

treats or fixes the individuals identified and processed by the latter two, this is a site for ethical activism (Ward, 2013). It is also worthwhile revisiting the act of naming Police, Oranga Tamariki, and the Courts is a discursive choice that privileges these institutions (which are part of the same apparatus) at the expense of other potential 'partners' (Arrigo & Milovanovic, 2010; Foucault, 1980). Arrigo (2004) identifies the communities in which acts of harm have taken place as purposeful partners in the process of restorative justice. Hōkai Rangi does mention whānau throughout, as well as iwi, and discusses how they play a potentially transformative role, not only in the restoration of the offender and victim, but also in the way in which we make sense of crime. Arrigo (2004) rightly points out that, if we accept that whānau and iwi represent social connection not community, that these are representative of a social network not a community. Though social networks are important and certainly would be part of a person's community, to consider them reflective of community is to greatly reduce the broader concept that should be used to achieve wider reaching change (Arrigo, 2004). In the specific case of Māori overrepresentation in prisons, it is important to understand why their whānau and iwi, as social networks, are not the only ones who should be engaged in restorative justice or helping answer the problem of this overrepresentation. This is because Māori are not a homogenous group; those who identify as Māori occupy all stratified levels of society (McIntosh & Workman, 2017). As is the case for all Westernised societies, the vast majority of those imprisoned or on community-based sentences are from the lower(est) socio-economic positions, experiencing the most deprivation (Reiman & Leighton, 2020). This phenomenon is the same in Aotearoa New Zealand, meaning we are not imprisoning Māori, as representative of all Māori, we are imprisoning poor Māori (McIntosh & Workman, 2017). In this way, it is not colonisation itself that imprisons Māori, but the conditions of neoliberal capitalism that create the social conditions in which space we look for the actors who represent the

criminal (Reiman & Leighton, 2020; Foucault, 1991). These are the communities that represent the partners who could best work through the process of restorative justice to address, understand, define, and heal the harm that has happened (Arrigo, 2004). Though iwi and whānau are likely to be implicit in this community, they should not be singled out as reflective of community on their own (Arrigo, 2004). Nor should the onus be placed on Māori representatives to fix the problem that is created by the majority coloniser (Lang, 2006).

What is omitted in the Hōkai Rangi document when it comes to identifying 'partners' to be engaged to achieve the objectives are those who are either imprisoned by or managed in the community by the Department. There is a section that presents accounts from those who have previously been or currently are under the management of the Department; however, there is no discussion of further partnering to engage these individuals with changing the practices or assessments used. As such Hōkai Rangi constructs the person at the centre of their efforts as 'criminal others', positioned as lacking legitimate knowledge, essentially awaiting the informed decisions of the professionals following their informed assessment. Arrigo and Milovanovic (2010) present the importance of self-authoring in liberating the oppressed and marginalised. Partnering with the people upon whom the justice system actively acts has the potential to co-create a way of being, within practice and meaning, that is diverse allowing for coexistence of human differences (Brown, 2013).

I would also argue that this is a locus that reflects the need for decolonialism to create a space where the voices of iwi, whānau, and those under the management of the Department become relevant and capable of (re)negotiating processes of justice (Lang,

2006). To bring in iwi and whānau to a non-decolonised system or institution would raise the question of how far through such a system their voices could permeate. I would argue that they could not permeate far in the face of the overwhelming Western mainstream psychological discourse that places risk as a deficit, assessed as a criminogenic need in the individual. Therefore, partnering with iwi and whānau would represent a token gesture of inclusion toward Te Ao Māori that does not allow a space for (re)negotiation of meaning. Decolonialism would put the onus back on the coloniser (represented by the institution that is the Department of Corrections) to engage firstly in an undoing of their knowledge that keeps us imprisoned as society, before engaging the colonised (represented in Hōkai Rangi as iwi, and whānau) to (re)negotiate meaning (Lang, 2006; Arrigo & Milovanovic, 2010). I have experienced meetings with iwi partners where the discussions fail to move into ideas of practice or practical change as the implicit understandings of prison and prison function, represented in discourse, have not been addressed. Decolonialism could be used to peel back the knowledge that has been used, which has led to the discourse and discursive practices, to create the space to bring a Te Ao Māori worldview in as a co-designer for meaning making (Lang, 2006). At this point iwi's participation is in reconstructing discourses that we use to construct the problem of criminal harm, the criminal other, and rehabilitation.

Arrigo and Milovanivic (2010) present their constitutive theory of penology in a way the shows how it is that community (as society) is represented by parts within parts and segments within segments that dynamically interact to coproduce our dynamic world. This includes criminality, what is criminal, and criminal harm. As a partner for the Department to work with, whose place, people, and discourse is part of these communities, the communities from where the harm has come, or been inflicted, represent a discursive

change in addressing the problem of criminal harm (Arrigo & Milovanovic, 2010). Police, Courts, and Oranga Tamariki represent a continued adherence to the status quo system that has so far failed to answer the questions of how to best deter criminal harm, decrease Māori overrepresentation, and lower the rates of recidivism.

One of the strongest discursive challenges comes in a statement early on in Hōkai Rangi that states:

> "…*the extent to which society provides housing, health, and benefits/welfare is a critical factor in whether people avoid the justice system in the first place.*"

What is interesting about this statement from a discursive perspective is that there is no mention of criminality here. The acknowledgement of the complex inter-play of societal factors that can converge to play a "factor" in whether a person "avoids the justice system" does not speak to the necessity of a 'crime' as such. As has been explored, Arrigo and Milovanovic (2010) discuss how the parameters of criminal harm can create a way of understanding that the victimisation of disempowered individuals through active apparatus that use power relations to injure is a legitimate way to conceptualise crime. The above statement confirms that the experience of societal deprivations plays a "critical" role in the identifying of the criminal actor (Foucault, 1991). Defining crime within a society is a process of discourse (Foucault, 1991; Arrigo & Milovanovic, 2010). Given that there are multiple forms of harm within society and that, particularly with colonised, neoliberal, capitalist societies, there are vast spaces of unequal, inequitable socio-economic and socio-political positions; the type of harm(s) have been constructed as

criminal or not (Arrigo & Milovanovic, 2010; Foucault, 1980). To have a system that can 'avoid' providing housing, health, and welfare is to have a system that can harm its citizens and place them in a position to be more likely to enter the justice system. Yet the apparatus and discursive understandings that allow for this harm to be enacted is not understood to reflect criminality, while the individuals who become identified as criminal through an interactive combination of these factors are.

Yet the challenge to the discourse of reoffending and rehabilitation presented by the acknowledgement that it is through a deficit of social measures such as wealth, health, housing and work that a person 'come into contact with the justice system' seems in conflict with this notion. On the one hand, there is the lack of acknowledgement that the 'justice system' is represented by the Department itself, while also no direct messaging that the Department will be changing its focus to address anything other than the individual and their whānau. The previously stated commitment to work with other justice sector partners such as Police and Oranga Tamariki would also seem to be in conflict with the notion that the addressing of these identified social measures is to be targeted in the new strategy. Mihaere (2015) would argue, and I would be in agreeance, that these 'parts' of the justice system have, and can only continue, based on their focus, discursive practice, and functional apparatus, perpetuated the risk categorisation and controlling of these individuals. A continuation of 'contact with the justice system' through these agencies without the addressing of the other social measures, only increases the chance of 're-entry'. While it is accepted that this 'phenomenon' will not happen through intent, particularly of the players involved (frontline in particular), and in fact the document Hōkai Rangi shows an intent to change in a way that creates better, more positive outcomes, it is an example of how the discursive challenges represented in the strategy must be

explicitly linked through to an undoing of the negatively impactful frontline practices and a recreating of new practices that align with the desired new outcomes.

Conclusion: Possibilities For Change

The rise of the prison system and correctional practices of justice have their genesis in Western society as a response to an urgent need that is historically and culturally contextualised through the dominant discourses of the time or episteme (Foucault, 1980). Imprisonment and constraint of people through conditions of community sentences made lawful through Courts and the legislative powers given to the Department of Corrections is harm (Arrigo & Milovanovic, 2010). This harm is, by and large, focused on specific spaces in society that tend to experience the highest levels of deprivation and lack of access to basic needs made possible through socio-economic positioning (Reiman & Leighton, 2020). Through colonisation this system has been imposed upon Māori in Aotearoa New Zealand. As is the case for all colonised Western systems it is the indigenous population that are oppressed, marginalised, and disproportionally represented in these areas of socio-economic deprivation (McIntosh & Workman, 2017). The flow on effect of this is that Māori are overrepresented in prison populations as well as those on community based sentences (McIntosh & Workman, 2017). In response to the urgent need to address this problem, the Department of Corrections has, since 1999, engaged multiple strategies aimed at alleviating Māori overrepresentation in systems of criminal justice (Mihaere, 2015). So far, these strategies have not been successful in lowering levels of overrepresentation despite the intent and efforts for those involved (Mihaere, 2015) Hōkai Rangi represents the most recent of these strategies, at the time of writing.

What seems to be mutual across the research available as well as through the discourses reflected within society and the institutions that represent the justice system themselves, is that the current system of correctional work is indeed, not working. Whether this is

invoked through empirical and positivist philosophical standpoints or social constructionist understandings, the problem remains. The difference is in the ways in which it is conceived as not working and the ideas of what represents a fix. Hōkai Rangi is the current document (at time of writing) that sets out a strategy to address this problem, at once identifying that the Department understands something is not working, while (re)presenting the problem in a continuation of decades of strategic ideas that are meant to fix this (Mihaere, 2015). What I am arguing is that to construct the problem from the dominant discourse(s) that invoke neoliberal empirical positivist knowledges of self and rationalism is to believe that further rigour from these disciplines can fix what is, essentially, a problem that at once resides in the constructions of these disciplines, while remaining unacknowledged as doing so (Arrigo & Milovanovic, 2010). There are multiple theoretical positions from which to understand the problem as well as to offer solutions, it is the function of apparatus, through discourse, to make choices, whether this is understood or not, as to which theoretical position will be used for this. In the case of criminality, empirical positivist mainstream psychology has long had the privilege of knowing and being able to fix an individual who is represented as self through ideas of rationalism, autonomy, and choice making (Blackburn, 2008). This standpoint has not managed to create systems that answer the problem, or even that diminish the problem; it therefore seems insensible to me that these disciplines continue to take the lead on a fix. A radical renegotiation of the problem itself through disciplines such as indigenous and critical psychologies would represent the potential to produce a different discourse and discursive meaning making that has the potential to not only reframe the problem of correctional and justice system practice, but also to recreate the meaning of restoration following harm (Arrigo, 2004; Coombes, Denne, & Rangiwananga, 2016).

The function of discourse in constraining the possibilities of humanness is implicit in the rise of the Correctional system of justice, constructed through institutions, apparatus, and dominant discourses inherent in natural sciences built on empirical positivist philosophies (Webb, 2005; Foucault, 1980; Arrigo & Milovanovic, 2010). These philosophies represent the dominant theories that won a cultural battle of knowledge from the 19th century which disavowed the validity of other, more complete philosophies and theories of knowledge (Teo, 2008; Berlyne, 1977; Tarnas, 2010). Despite the seeming inability of empiricism to answer fundamental questions of mind and being, it has remained and been 'improved' on to include positivist understandings in order that it can continue to be applied as a knowledge of what it is to be human, normal or otherwise (Teo, 2008; Berlyne, 1977; Webb, 2005). Chief amongst these disciplines that uses empirical positivist based knowledge production to know the 'other' is Western mainstream psychology. This form of knowledge and its discursive practices is what the Department of Corrections has historically, and does so presently, rely on to inform how to treat, contain, and fix the criminal other (Webb, 2005).

Constructing knowledge of the other through culturally laden historically linked science, and then imposing that knowledge on the identified group to constrain and manage their difference is epistemological violence (Teo, 2010). In a society that has access to other theoretical perspectives that are just as valid a way of understanding what is being constructed or discussed, this also represents an epistemological choice to do violence (Teo, 2010; Colombo, 2020). When this violence is then enacted on disempowered people through socially constructed power relations that limit their expression of humanness, constrains their potential, and does so through active efforts, this can be considered criminal harm (Arrigo & Milovanovic, 2010). These ideas are inherently

represented throughout Western criminal justice systems, and implicate race and cultural specificity in colonised countries given that these systems have been imposed upon indigenous populations (Arrigo & Milovanovic, 2010; McIntosh & Coster, 2017; Teo, 2010). This is not to say those working for the Department need to be seen as criminal, but it does mean that the harm that is prison and human risk management should look to the discourses that build the realities of its practices and engage with them from another theoretical perspective that acknowledges the harm being done. Here in Aotearoa New Zealand there is access to indigenous and critical psychology academics and their work that can help to (re)negotiate the meaning of imprisonment and human risk management practices (Coombes, Denne, & Rangiwananga, 2016). Engaging with epistemological theories from within these disciplines would allow for a radical renegotiation of what criminality is and what the individual at the centre of the associated assessments represents (Arrigo & Milovanovic, 2010). Seeing society as a dynamically interconnected series of parts, segments, and parts and segments within each of these, allows for a different perspective to mainstream psychological, neoliberal views that have so far pervaded correctional practice in Aotearoa New Zealand (Coombes, Denne, & Rangiwananga, 2016; Arrigo & Milovanovic, 2010).

(Re)negotiating the understandings of criminality, the individual, and what a correctional space (prisons, community sentence management) is, represents a decolonising approach to knowledge (Lang, 2006; Mitova, 2020). What is set out in Hōkai Rangi is that the Department will make attempts to bring a Te Ao Māori worldview into its spaces and practices. It would be my contention that without undoing the knowledge that has led to a radical exclusion of Te Ao Māori, in society as well as systems of justice, there would not be an ability to bring this worldview in in any meaningful way. If the Department continues

to be led by mainstream psychological knowledge through forensic and clinical psychology, I would see it as likely that the notions and practices advocated for will be corrupted and made palatable as they are made meaning of by the dominant discourses used to know criminality and the criminal other (Coombes, Denne, & Rangiwananga, 2016; Arrigo, 2004). A Te Ao Māori worldview cannot simply be gained and embedded through engagement with Māori representative bodies; its likely counter discursive realities must be engaged with as knowledge production to renegotiate the meaning of the subjects and objects that have so far been constructed through Western empirical positivist science (Lang, 2006; Teo, 2010; Coombes, Denne, & Rangiwananga, 2016; Colombo, 2020). As Lang (2006) discusses in their idea of decolonialism, the onus for change is on the coloniser, not the colonised. Without undoing the knowledge that has been used to construct the discursive representations the knowledge from indigenous psychologies that can privilege Te Ao Māori will not penetrate the systems, meaning making, and discursive practice (Lang, 2006).

If the Department is able to engage in a process of decolonialism to radically (re)negotiate what it is that criminality and the criminal other are, this will be represented in the production of new discourse that is used to construct new discursive practices (Hardy, Palmer, & Phillips, 2000; Arrigo & Milovanovic, 2010). Jansson and Dodd (2002) then offer a locus whereby that discourse could operate to affect the management, perception, and acts toward the individual in question. Through ethical activism, the frontline staff for the Department, who represent the only true agents of change, could challenge and change the way in which the criminal other is acted toward and discussed in different settings throughout the justice system and society (Jansson & Dodd, 2002; Arrigo & Milovanovic, 2010). Ethical activism for frontline staff must start with a discursive shift that

accounts for the positioning of the Department both in the justice system as well as in wider society and the effect it can and does have on the lives of those who come under its management (Coombes, Denne, & Rangiwananga, 2016).

While Hōkai Rangi manages to reflect on some of the practices that continue to inflict harm and constrain through the construct of human risk the potential of those who come under the management of the Department, it still disguises the power relations and discursive constructs that inform the way in which this constraint is given meaning. The document speaks to looking for solutions through partnering with existing justice sector institutions that operate from the same discursive positions as the Department. Positions that Foucault (1980; 1991) and Arrigo and Milovanovic (2010) would show have worked to construct the existing problems, constrain the possibility of human, and operate through the apparatus of the justice system privileging mainstream psychological knowledge and empirical positivist views as reflections of reality with claims to truth (Taylor, 1984). Thus this partnering cannot be representative of transformational change but rather an increase in the application of a totalising madness that keeps all of society captive through panoptic desperations (Arrigo & Milovanovic, 2010).

Identifying iwi and whānau as being representative of community partners is also a discursive choice that is not given context into which these voices will be received. What is left implicit is that 'included' voices will be placed into a system imposed through the dominant epistemologies of the coloniser, likely leaving no space for a (re)negotiation of meaning. This also falls short of the more extensive and discursively relevant concept of community that is laid out by Arrigo (2004) whereby the community of dynamically connected parts is engaged to help restore the harm that has been done. The

epistemological violence that is carried out through the justice system will not disappear by more rigorously applying the existing dominant knowledges to (re)address the problem (Teo, 2010). A decolonialism of the knowledges that have led to the totalising madness that is management of human risk and a renegotiating of what criminal harm is through indigenous and critical psychologies would be the only way to make iwi and whānau voices meaningful from a Te Ao Māori perspective (Lang, 2006; Arrigo & Milovanovic, 2010).

Access to a different discursive reality reflective of a more holistic and complex knowledge base that does not lay claim to truth but rather remains aware of the epistemological and ontological commitments it uses, has the potential to move from an understanding of human being to human becoming that does not fix the self to positions that constrain, silo, restrict, and harm (Arrigo & Milovanovic, 2010). From these positions, modes of engagement such as ethical activism and restorative justice can be used to empower the frontline agents of change to engage in a restorative and negotiated process that empowers the disempowered and acts on the discourse of criminality throughout different societal locations (Arrigo, 2004; Lang, 2006). Within these practices and discursive changes is represented a potential for genuinely transformative change that understands that this change will always be in play without any form of utopia of being as a goal, meaning as we dynamically engage to constantly recreate our dynamic world, the management of human risk can change too (Arrigo & Milovanovic, 2010).

Hōkai Rangi is essentially a "same but more" strategy that looks to increase the frequency and modes of engagement with identified partners who have all, at one time or another, been part of strategic engagement with the Department in the past (Mihaere, 2015). This

approach continues to disguise, or at least ignore, the power relations represented in dominant discourses, based on Western mainstream empirical positivist psychology. These power relations cannot be undone or diminished through continued application of the same knowledges that have been implicit in systems of criminal justice since the birth of the prison (Foucault, 1991). There are knowledges represented through different philosophically founded psychologies that could create this type of undoing and redoing, just as there are practices that could proliferate the challenging of these power relations through discourse. Practices of restorative justice partnered with communities where harm has taken place, as well as ethical activism informed by critical and indigenous psychologies, could vastly increase our active engagement as the authors of our dynamic worlds (Arrigo & Milovanovic, 2010).

It is in the concept of human becoming that we find the liberation to engage our dynamic world in shifting meaning making through discourse (Arrigo & Milovanovic, 2010). While we do find ourselves constrained by what seems at times to be insurmountable power relations and pre-excepted understandings of representations through discourse, Foucault offers us the notion that we are freer that we think to (re)negotiate what is (Taylor, 1984). Without laying claims to 'truth' we can continue to engage those at the core of oppressive marginalising discourses and discursive practice to allow them some ability to self-author (Arrigo & Milovanovic, 2010; Arrigo, 2004). Understanding and engaging Arrigo and Milovanovic (2010)'s thesis offers a way of reconceiving what criminality and the criminal other are, opening spaces in which new relations are (and can be) actively constructed. In this process, the Department needs to be an active player that has the ability, through its positioning, to take a lead on these new spaces and relations.

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