

# **From a Search for Rangatiratanga to a Struggle for Survival – Criminal Justice, the State and Māori, 1985 to 2015**

The 2015 JD Stout Lecture

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7<sup>th</sup> October 2015

## **Introduction**

In this presentation, I consider not only the relationship between Māori and the state, but the response of key criminal justice agencies to the surge of Māori confidence in the 1970's and 80's, and desire to take control of their own destiny – the Māori renaissance as it became known. How did the Police, the prisons and the youth justice system respond to this call for rangatiratanga? How easily did it respond to the idea that Māori, far from being passive recipients of the criminal justice system, wanted a piece of the action? How well did the operational reality meld with, on the one hand, the state's vision of a bicultural nation, and on the other, the Māori vision for a measure of autonomy, a rangatiratanga not realised in any earlier constitutional or political arrangements?

## **Defining Rangatiratanga**

According to Hill, many meanings have been given to rangatiratanga, which until fairly recently was translated as “chieftainship.” In his view, the term “autonomy” provides the most useful overarching interpretation, and one which accommodates conceptual differences over time.<sup>1</sup> The Taranaki Report of the Waitangi Tribunal saw Māori autonomy as “the rights of indigenes ... to manage their own policy, resources and affairs, within the minimum parameters necessary for the proper operation of the State.”<sup>2</sup>

## **The Emerging Māori Renaissance**

It is necessary to track back to the 1970's, which was a time of considerable political upheaval. In the latter part of that decade, the anti-war movement merged with other major causes; women's rights, the anti-apartheid movement, and the emerging Māori renaissance. Māori sought increased control over their own affairs; between 1975 and 1980 there were high profile protests against the alienation of Māori land, and powerful resistance against earlier policies of assimilation and integration. Māori made clear its autonomist view of Māori partnership with the Crown, and called for the government to reflect the bicultural direction of New Zealand society. While the public sector came to grips with the emerging policy of biculturalism, the Māori cry for tino rangatiratanga became increasingly persistent, transforming not only conversations within the public sector, but across the nation.

Kara Puketapu was appointed as Secretary of the Department of Māori Affairs in 1977, and introduced the “Tu Tangata” or “Stand Tall” philosophy, which centred on community-based development and promoted cultural and economic advancement through self-reliance and self-determination. Its “bottom-up” model of community development influenced the public sector for the good part of a decade. By 1980, Māori and Treaty matters that previously seemed esoteric for mainstream New Zealand were increasingly common topics of national debate.<sup>3</sup>

By 1985, the nation had witnessed the emergence of a large number of Māori-led initiatives in health development, the formation of Kohanga Reo, the establishment of the Māori Language Commission, and the creation of Urban Māori Authorities. Māori-led community-based initiatives actively addressed the structural issues which contributed to crime, with active government support in such areas as job training, health and well-being, initiatives and social housing. The Mātua Whangai programme, started in 1983, provided for whānau and hapu based (rather than state-welfare) intervention, to provide alternative care for “youth at risk,” and to de-institutionalise young Māori in Social Welfare homes. Māori were being listened to, and were increasingly seeking a greater role in addressing issues of offending by Māori.

### **Māori Over-Representation in the Criminal Justice System**

At the same time that Māori were seeking a greater role in state business, including criminal justice, the incidence of reported offending by Māori was growing, a trend which increased exponentially during the post-World War Two urban Māori migration, but for which there was evidence well before that. In the nineteenth century, the ratio of Māori prisoners had fluctuated at between 1.5 and 3 percent of all receptions, rising to 4.6 percent in 1918. This figure remained stable until the post-depression economic recovery, growing to 11 percent in 1936. Between 1936 and 1944 that percentage increased to 26.4%. Between 1950 and 1970, the number of Māori prisoners received into prisons, relative to all prisoners, doubled.<sup>4</sup>

By 1947, “offences against good order,” comprised 38.5 percent of all offences by Māori, with drunkenness being the most common offence.<sup>5</sup> Assaults remained under 5% of all offences, and there was a significant increase in traffic offences. At that time, the police force was ethnically pākehā with one glaring exception; Inspector Bill Carran, an officer of Māori descent who joined the police in 1920 and retired in 1960 with the rank of Assistant Commissioner.<sup>6</sup>

Māori commentators suspected that the pākehā police were harder on Māori than on Pakeha.<sup>7</sup> Toward the end of World War Two, perceived inequality of treatment grew, and led to a Commission of Inquiry in 1955.<sup>8</sup> Subsequently, the 1961 Hunn Report confirmed that Māori were more likely than non-Māori to be imprisoned, sent to Borstal or placed on probation, less likely to have court cases dismissed than non-Māori, and more likely to be committed to the Supreme Court for trial.<sup>9</sup> Māori came to Court with no idea how to plead or defend themselves, and about 80 percent of Māori were not represented by counsel, compared to 60 per cent of Europeans. In addition, about 80 to 85% of Māori pleaded guilty compared to 60 percent of Europeans.<sup>10</sup>

The Hunn report failed to develop its insights further and failed to consider the possibility of institutional and personal racism, or the lack of legal representation. Jack Hunn did raise the issue with the police and judiciary, but was stonewalled.<sup>11</sup> These differences persisted, and were later confirmed in a 1973 study by O’Malley.<sup>12</sup>

### **The Police and Māori**

By 1974, as the crime rate and violence increased, Māori became the focus of Police attention. The Auckland Police Task Force, formed to reduce crime, quickly drew allegations that it was racist and selectively picked on young Māori and Polynesians. Complaints about its conduct were made by the Auckland Committee on Racism and Discrimination (ACORD), the Auckland District Māori Council, the Citizens Association for Racial Equality (CARE), and the Auckland Council for Civil Liberties. Commissioner Burnside intervened, and met with complainant groups to hear their complaints. Police policies toward Māori and Pacific peoples improved in 1975.<sup>13</sup>

The Police were under pressure, and it started to show. Cameron's study of successive annual Police reports to Parliament during this period suggests growing hysteria.<sup>14</sup> A "war on crime" theme emerges, and with a staggering disregard for history, describes the increase in violence as "characteristically foreign" to New Zealanders. In 1974, the need to arm the police is hinted at, crime has become organised, and bikies are somehow connected to terrorism. By 1978, the law has become an "ass" and "penal kindness" has been substituted for the deterrent aspects of punishment.

By 1978, there was a significant increase in ethnic gangs, and evidence that the problem was spiralling. Warren Young and Jane Kelsey's 1982 research on that period shows that the community went through a period of moral panic, encouraged by media reporting and political rhetoric, which led to an increased emphasis on hard-line policing, repressive legislation, and severe sentences. The Police alleged that gangs represented a threat to the very roots of society, and were being exploited for political ends by Māori political activists.<sup>15</sup>

### **Māori Activism**

The coupling of Māori gangs with increased Māori political activism gives some indication of the additional pressure on the Police, at a time when the Māori cry for rangatiratanga took on a more active expression.<sup>16</sup>

The police found themselves facing confrontational expressions of rangatiratanga at Waitangi Day, and a succession of protests, beginning with the 1975 Hikoi, the Raglan Golf Course protest in 1978, and the infamous evictions at Bastion Point in 1978.

Public support for the police was becoming increasingly problematic. Apart from the continuing Police–Māori conflict, Police behaviour during the 1981 Springbok tour divided the community.

### **Māori and Prisons**

By 1980, Māori comprised 50% of the prison population. Prisons were at that time managed by the Penal Division of the Department of Justice, under the provisions of the Penal Institutions Act 1954, with a hierarchical structure that would put the Prussian Army to shame, and a high number of Prison Superintendents with a background in the British Prison Service or Armed Services. The underlying prison culture was not welcoming to Māori. The Department of Justice's cultural development programme, started in 1986, had bypassed the prison service, and until the early 1990s Māori prison officers were forbidden to speak Māori to one another or to prisoners, while prisoners were forbidden to speak or correspond in te reo Māori. Most Superintendents had no networks with local tribal or Māori organisations, and saw no need for it.<sup>17</sup> Those relationships were left for the senior managers of the Department of Justice to develop.

Māori community members provided tikanga Māori programmes within the prison, but there was never any suggestion that Māori might have a significant input into policy development or operational processes. A proposal by Dr Pita Sharples for a Kaupapa Māori prison at the old Napier Prison was unsuccessful, and when the Assistant Secretary, after consultation with Ngāpuhi, submitted a proposal for a partnership arrangement for a prison planned (but subsequently abandoned) in Te Tai Tokerau, the file was "lost." After years of negotiation, the new Department of Corrections agreed to establish a Māori Focus Unit at Hawkes Bay Prison in 1997 –but one very much owned and operated by the department.

## **The Criminal Justice System and the Question of Autonomy**

There is a current assumption that government agencies are subject to the whims of their Ministers, and the political ideology of the day. However, when it comes to the issue of departmental autonomy, it would be dangerous to assume that government agencies do not have a rangatiratanga of their own: an underlying view about their own special place in the universe, their own a set of underlying values and beliefs, accompanied by the underlying determination to preserve their autonomy.

The assumption that when shifts in public and penal policy occur, operational departments will just roll over and do it, beggars belief. When organisational change requires a government agency to share its power and autonomy with another government agency, or even worse, with community organisations, there will always be resistance. If Chief Executives have an individual vision for change, or better still, the instincts of a social policy entrepreneur, they will strategically prepare their staff for change, and personally invest in changing the prevailing belief system. Otherwise, it is unlikely the change will either occur, or if it does, that it will be successful.

It is useful to consider, then, the nature and reasons for departmental resistance to the push for rangatiratanga.

## **The Police Culture**

The prevailing police culture from 1920 to the 1970s was very much modelled on Sir Robert Peel's vision of the "New Police," and the need for the police to stand above community and factional influence and act out their part as impartial servants of an impartial law. Public acceptance of police authority was critical and depended on two basic attributes: their legal relationship and the aloofness it gave them from the political process, and the restraint and decency of their actions.<sup>18</sup> From the late 1960s, and in the face of growing political, economic, social and ethnic conflict, the police redefined its role, seeking refuge in a call for "law and order."<sup>19</sup>

The police role then become that of maintaining the governability of the state, and policing became more abrasive and more ubiquitous.<sup>20</sup> By the early 1970s, the police pinned its relationship with the public and their law enforcement strategy on rapid and efficient response to public calls for help; i.e., more efficient "reactive" policing.<sup>21</sup> The development of services such as Youth Aid and Crime Prevention were intended to offset the hardening police image, and were more about increasing police/community contact than involving the community in the business of crime prevention. While the early 1980s promised a more active community role in crime prevention, no real changes occurred in the overall style of local policing or the centralised command structure that supported it.<sup>22</sup>

By 1985, police efforts to maintain and reinforce their autonomy and to manage and contain dissent resulted in the development of a police service in which the war on crime became the central focus of policing, and the police institution envisaged itself as being at the centre of civil society.<sup>23</sup>

What the Police did understand was that by broadening formal local input into and support for policing, it had a better chance of preserving its political autonomy; a pressing issue, given the political compromises that were made by the Police during the 1976 Dawn Raids on

Overstayers, and the 1981 Springbok Tour. Broadening of community contact, would of necessity involve and include Māori and other minority groups.<sup>24</sup>

### **Values and Philosophy - Corrections**

One of the defining differences between the Police and Corrections at that time was that the operational head of the Police had a one to one relationship with the Minister, and a constitutional arrangement that provided him with a level of autonomy which other permanent heads could only envy. The prisons, by way of contrast, were a division of the Department of Justice, and the head of prison operations had no input into penal policy. Indeed, during this early period major excursions into penal policy became increasingly the preserve of Ministerial Committees.

From 1977 there was growing concern about the operation of the prison system, and in 1981, the Minister of Justice established a committee of high-powered criminal justice professionals to examine and make recommendations about corrections in New Zealand.<sup>25</sup> Known as the Penal Policy Review Committee, it took public submissions, visited prisons, and tabled a 232 page report.

Its central finding was that prisons cannot rehabilitate and should not be expected to do so. It recommended restricting imprisonment as much as possible, and expanding alternatives. Most of the recommendations were ignored, and resisted by criminal justice officials, although some provisions were later included in the 1985 Criminal Justice Act. By the time Labour took office in 1984, Geoffrey Palmer inherited a service that was in trouble. Between 1982 and 1984 prison populations had risen by 15 percent, prisoner violence was increasing, and in 1985, eight prisoners committed suicide.

Palmer's primary response was to replace the Criminal Justice Act 1954 with the Criminal Justice Act 1985, which mandated prison for serious violent offenders, made it clear that property offenders should not be sent to prison, and expanded community-based sentences and the availability of parole. The recidivism cycle shortened for a time, but prison numbers rocketed after 1985. By November 1987, the prison population was over 3000, and by 1991 it had risen to over 4,200.<sup>26</sup>

While Palmer's expansion of community-based sentences included the potential for Māori cultural and marae-based programmes, they were few and far between. Whereas the Police had been wrestling since the 1980s with developing a responsive relationship with Māori at a tribal level, and senior management of the Department of Justice were equally concerned to interact with the Māori community, the Penal Division's commitment was confined primarily to supporting Māori individuals who delivered tikanga Māori programmes within the prison.

Corrections had always resisted the notion that external providers had the capability to deliver effective rehabilitative services, without constant monitoring and a burdensome compliance regime. The belief was that "No one does Corrections, as well as Corrections." The contracting regime within Corrections made it difficult for community providers to work in an environment of trust and partnership.

Unlike the Police, prisons were not concerned with courting public support; but rather reflecting the perceived public attitudes of the day.<sup>27</sup> Prison culture is notoriously resistant to change, as Professor Andrew Coyle, a former Governor of Brixton Prison, explains.

... in the eyes of the public and of governments, prison staff lag well behind the police in terms of status and public recognition. Sometimes prison staff even sense that the public link all of those behind the walls of the prison, whether prisoners or staff, as having pariah status. They become frustrated and angry that this should be the case. There are two ways of expressing this frustration. The first is by treating the prisoners in a way which emphasises that they, the staff, have a moral superiority over them. The second is by making the lives of management difficult, usually through indirect obstruction of their initiatives.<sup>28</sup>

### **Puao te Ata Tu – Addressing Concerns within the Department of Social Welfare**

The one exception was the Department of Social Welfare. In 1984 a series of hui had been convened by the Department of Social Welfare to discuss the concerns felt by many Māori that the department was a racist and hierarchical institution which reflected the dominant Pākehā values of the day and failed to provide fair access for Māori to its services and to income support. A group of Auckland staff known as the Women's Anti-Racist Action Group, and others emboldened by Puketapu's Tu Tangata strategy, joined in the fray. Māori were being listened to, and were confident enough not only to pursue changes within government, but to lodge grievances against it.

It was through this collective concern about the deplorable government provision of care for children and young people that Puao te Ata Tu was born.<sup>29</sup> If there was a project in which it could be argued that rangatiratanga found (for a time) its fullest expression, Puao te Ata Tu was it. The Minister of Social Welfare, Hon. Anne Hercus, formed an advisory group under the leadership of Tuhoe elder John Rangihau, to engage in direct and extended consultation with Māori communities, social work staff, government agencies, the wider public, and other stakeholders. The Inquiry was strongly supported by the then Director General of Social Welfare, John Grant. Over 60 hui were held within a nine month period.

The Puao te Ata Tu Ministerial Report sought a commitment from Social Welfare to a programme of reform founded on partnership principles as validated by the Treaty of Waitangi. It argued for significant procedural and legislative change and greater recognition of Māori customary support networks as a conduit for State assistance to Māori communities.

The Appendix to the Report presented a compelling representation of Māori as colonised, before a Pākehā ethos of conquest and subjugation. It argued persuasively that there would be a major crisis if Māori socio-economic deprivation was not addressed, and recommended that Māori communities needed to be integrally involved in addressing Māori issues and problems. It urged the government to incorporate the "values, culture and beliefs of the Māori people in all policies developed for the future of New Zealand."<sup>30</sup>

The case for structural reform, and for the shifting of resources to Māori communities, was well argued and the report made a significant contribution to the Children, Young Persons and Their Families Act 1989, with greater recognition of customary Māori support structures. The Act mandated a radical reform of the youth justice system, and in so doing, attracted international attention.

### **The Public Sector**

In the early 1980's as Māori grievances and problems came forcefully to the government's notice, public servants were unprepared, and didn't know how to respond; they were struggling to move from a monocultural to a bicultural mode of thinking. In the latter part of the decade,

as the focus shifted toward devolution of social services to iwi, and a restructuring of the economy based on the principles of neoliberalism, political attitudes toward offenders hardened. The call from Māori to occupy a pivotal place in the criminal justice system, other than as offenders and victims, met with increased pushback and resistance.

### **Cabinet Direction**

In 1986 a Cabinet Minute called for a re-examination of the policies and practises of Government Departments and directed that all future legislation referred to Cabinet at the policy approval stage should draw attention to any implications for recognition of the principles of the Treaty of Waitangi. It also required government departments to consult with appropriate Māori people on all significant matters affecting the application of the Treaty.<sup>31</sup>

### ***Te Urupare Rangapu***

The publication of *Te Urupare Rangapu* in 1988 with its focus on an enhanced Department responsiveness to Māori needs and tradition left no doubt that major changes would be necessary in the Public Service.<sup>32</sup> In *Te Urupare Rangapu*, the Government made plain both an intention and an obligation regarding the handling of matters Māori by public sector agencies. It required of its agencies a more positive and effective response to Māori issues, aspirations and concerns, and with this in mind gave notice that its chief executives would be held accountable for the implementation of such measures.

Over the years, government funded agencies had largely been unresponsive to the needs of Māori people and this manifested in the low levels of achievement and consumer satisfaction that Māori experienced. *Te Urupare Rangapu*, in the absence of any Cabinet instruction to the contrary, became the Government's implicit Māori policy framework, and was later built upon by the focus contained in *Ka Awatea*.<sup>33</sup>

That government commitment wavered over the next decade, but from time to time successive governments re-asserted a commitment to biculturalism. The strongest references to Article Two rights were articulated in He Pūtahitanga Hou, the Labour Party's 1999 proposed Māori policy.<sup>34</sup> Alongside acknowledgement of the Crown's Article Three responsibility for the protection of Māori citizenship rights sat references to "co-signatories" and "self-determination" which implied that the Labour Party was serious about negotiating the current power-sharing arrangements by recognising Māori as an equal partner. "Self-determination", in particular, is a highly contestable term, but in the Aotearoa/New Zealand context it certainly has connotative meaning that in this case implies, if not intends, recognition of tino rangatiratanga.<sup>35</sup>

In a 1999 policy manifesto, the Labour government was highly critical of the lack of responsiveness to Māori issues demonstrated by public sector departments and agencies, and made clear its expectations:

Government is seeking increased assurance that departments are actively improving their capacity to develop Māori policy advice and implement effective service delivery mechanisms for Māori. There is an increased expectation that Chief Executives and their departments will address Māori issues.

### **Māori and Neoliberalism**

When a Labour Government was elected in 1984, it began to see devolution to iwi as a central way forward on Māori issues. What became apparent over time was that Ministers and officials viewed Māori desire to run their own affairs as consistent with the introduction

of neoliberal policies, policies which would, over time, abandon the principles of the welfare state and replace them with those of capitalist individualism. Neoliberalism had a history in other nations which viewed indigenous peoples and cultures as obstacles to economic development, and a group to be eliminated, or at the very least, side-lined. In that context, neoliberalism had the potential to become a vehicle for the transmission of older colonial beliefs and values, but through more covert language and reasoning.<sup>36</sup> The question therefore arose as to whether indigenous people would be permitted to exercise their sovereignty, or whether the government would introduce new rules, impediments, or challenges to make it difficult, if not impossible, for Māori to succeed.

Some Māori were quick to voice their fears that deregulation and a laissez-faire approach would worsen their already poor socio-economic position, given their concentration in the types of employment which would suffer most from the new policies. Others, however, believed that if rangatiratanga was paid fundamental respect, then a decade down the track, welfare support to achieve parity with pākehā would no longer be needed.

Unfortunately, the latter position prevailed. By the late 80s and early 90s the country was feeling the effects of extreme neoliberal policies. Between 1989 and 1990, the total number of Māori people receiving the unemployment benefit increased by 20 percent.<sup>37</sup> At the same time there was a drive to cut the amount of revenue spent on government benefits. Jonathon Boston picks 1991 as the turning point in creating mass child poverty in New Zealand. He singles out one policy change, the 1991 budget cuts to benefit levels, as being the major cause of the one-quarter of New Zealand's children now living below the poverty line.<sup>38</sup>

### **The 1987 General Election**

There is a rich repository of knowledge and insight into the increase of punitiveness over the last thirty years. John Pratt's work on "the new punitiveness," Garland's reference to the "politics of exclusion," and Robert Reiner's description of punitiveness and inequality, all contribute to an understanding of the growth of punitiveness, and its relationship to neoliberalism.<sup>39</sup>

New Zealand's response to neoliberalism was more enthusiastic than almost any other, as was its preparedness to engage in policies of intolerance and punitiveness. By the 1987 General Election, the political rhetoric was downright scary, with the opposition emphasising threats to public safety, and the Labour Party mounting a "Rub out a Crim" campaign. John Pratt's 2005 paper "The Dark Side of Paradise" provides the most compelling explanation that I can find: he depicts New Zealand as an inherently punitive nation, one intolerant of non-conformists and ne'er do wells.<sup>40</sup> If that description is accurate, then the neoliberal agenda fitted like a glove.

The neoliberal agenda expanded over time, as did the political rhetoric and behaviour that accompanied it. These included reference to the dangerous underclass, the need to "right the balance" between prisoner's rights and victim's rights, policies which erected boundaries of exclusion between the law-abiding community and offenders, the exercise of control and surveillance not only within but beyond prison, an increased commitment to putting more people in prison for longer, and making it more difficult for them to leave.

These policies and attitudes not only shaped future policy, but also impacted on the existing policy regime. The 1985 Criminal Justice Act had been overtaken by retributive public opinion and political rhetoric by the time it was passed, and was extensively amended in 1987, 1993, and 2002, to reflect hardening attitudes.

Mātua Whangai underwent a number of changes after 1985 and, by the late 1990s, it had moved away from the original intent of developing Māori-community centred approaches, to a limited service provision model that implemented departmental aims with programme contractors. These types of community crime prevention programmes incorporated features of Māori responses to social harm, but became state-controlled and designed initiatives with “added” Māori cultural elements to existing intervention logic.<sup>41</sup>

Even Puaotea Tu failed to escape. As recommended by Puaotea Tu, and agreed to be the earlier Labour government, a Social Welfare Commission and District Executive Committees were set up in 1990, with Māori representation on each. A year later they were abolished by legislation. The official reasons were various, but the general view is that there was public sector resistance to having Māori involved in the policy formation process.

The accepted view is that if Palmer’s Criminal Justice legislation had been introduced after 1987 it would never have seen the light of day. That fate however, was reserved for Moana Jackson’s significant publication *He Whaipānga Hou*, commissioned in 1985 by the Department of Justice.<sup>42</sup>

By the time *He Whaipānga Hou* was published in 1988, the die was cast. Jackson’s work involved three years of research among the wider Māori community, including police, correctional officers, policy workers, inmates, community workers, and academics. In his recent PhD thesis, Riki Mihaere comments that the report

... advanced the view that a history of colonialist policies and practices have marginalised Māori people and that the disproportionate rate of offending and imprisonment is inextricably bound to the status of Māori at the margins of New Zealand society. Further, he argued that the high rates of Māori crime are related to the intersection of Māori, predominantly Māori men, acting in a negative way to the imposition of a mono-culturally myopic system of power and the subsequent detrimental reaction of the criminal justice system towards Māori.... In this context, the criminal justice system’s focus on the rehabilitation of Māori offenders and prisoners is negated by the reality that, for many Māori, the omnipresent effects of marginalisation that colonialism has brought to bear on generations of Māori communities have not provided an environment of good habilitation that can be returned to.<sup>43</sup>

And further:

In the third part to his report, Jackson identifies the institutional bias of systematic responses to Māori, such as race-based policing and discriminatory judicial sentencing trends, which in the view of his research participants increased the likelihood of entry into a perpetual cycle of negative contact with the criminal justice system. The consequences of this are manifest in an increase in Māori vulnerability towards crime.<sup>44</sup>

The report was a stunning analysis of the interaction of Māori with the criminal justice system, its cultural bias and the imposition of inappropriate styles of working with offenders, victims and their communities. This body of knowledge was largely ignored by public servants, politicians and the press, who instead focussed on Jackson’s “considered alternative” for a parallel, autonomous Māori justice system. The government and media conveyed that view to the public in stark and simplistic terms, avoiding Jackson’s in-depth analysis. Contrary to the

protocol of the time, the Minister of Justice did not provide a written introduction to it, and according to Charlotte Williams, there was ample anecdotal evidence that Palmer would have liked to prevent its publication.<sup>45</sup> After 1992, the significance of this work was studiously ignored or sidestepped, both inside and outside government, as Williams comments, “almost as if it were on the Vatican’s index of prohibited reading for Catholics.”<sup>46</sup>

During the 1990s, and despite government advancement in other parts of the public sector, the primary trend in the criminal justice sector shifted toward the controlled integration of Māori concepts and cultural practises into confined areas of the criminal justice system.<sup>47</sup> Criminal Justice managers introduced “acceptable” elements of Māori culture into the state-dominated system and sought to enhance the goals and status of the formal system through recruitment of more Māori into the justice sector. Officials also strove to achieve the goals of the strategy through enhancing officials’ awareness of Māori culture.<sup>48</sup>

The New Zealand Police, for example, actively recruited more Māori officers and developed cultural awareness programmes as part of its responsiveness policy. In the view of social commentators of the times,

broader issues outside the normal institutional discourse – such as entitlement of the tangata whenua (people of the land), closure of the socio-economic gap, empowerment of tribal authorities and enhancement of Māori language and culture – received little attention.<sup>49</sup>

As Tauri and Webb describe it, the responsiveness strategies developed through the 1990s became the conduit for the integration of acceptable elements of Māori culture into the state dominated system, but failed to address the structural organisation or the power relations between the State and Māori.<sup>50</sup>

The Corrections Bi-Cultural Therapy Model, introduced in 1998, aimed to deliver psychological treatments to Māori offenders through grafting elements of tikanga into western therapeutic models of intervention.<sup>51</sup> It was an approach which caused a great deal of dissension and distress amongst Māori, and was the subject of a Treaty claim in 2004.<sup>52</sup>

The state’s treatment of *He Whaipanga Hou* achieved two things. First, the public repudiation of a parallel but complementary approach to Māori justice diverted attention away from Jackson’s comprehensive analysis of the genesis of Māori offending. Second, it led to the government taking a different route, which found refuge within the government’s Responsiveness to Māori Framework. The Responsiveness Framework became a means of moderating and managing Māori aspirations for autonomy and rangatiratanga within the criminal justice system.

In short, the 1980s was a time of big reviews and of landmark legislation. The list of reviews is impressive, but the quality of their output varied. Almost all of these committees and inquiries came up with recommendations relating to offending by Māori, and almost all of them were either ignored or implemented badly.<sup>53</sup>

### **Addressing Issues of Structural Discrimination**

That did not mean, however, that the concerns identified by Jackson around institutional bias, race-based policing and discriminatory judicial sentencing trends were shelved. Thirteen reports were written between 1998 and 2009, including reports from government agencies, which provided clear evidence of systemic bias against Māori.<sup>54</sup> From 2009 onwards, however,

government agencies stopped addressing the issue, and actively discouraged external researchers from undertaking this research. Government approaches to the issue of racism changed from 2009, and is today characterised by Ministerial denial of the existence of racism within the criminal justice system.

From 2005 onwards, successive governments developed a stock response to recommendations from a range of United Nations Committees, requesting that the government urgently investigate the issue of Māori over-representation in the criminal justice system, and the existence of racial discrimination. The government highlighted programmes and achievements which purportedly demonstrated high levels of cultural responsiveness, and then completely avoided UN recommendations directed at addressing issues of structural discrimination and personal racism.<sup>55</sup> The 2015 recommendation from the UN Committee on Arbitrary Detention, is typical of earlier ones:

105 (e) The Government should intensify its efforts to tackle the root causes of discrimination against Māori and Pacific Islanders in the criminal justice system, and particularly to reduce the high rates of incarceration among Māori, especially Māori women.<sup>56</sup>

The UN Committee on Human Rights, which monitors state party compliance with the International Covenant on Civil and Political Rights (ICCPR), examined New Zealand's performance during its 116th session from 7 to 31 March 2016 in Geneva. The advance unedited edition of the Committee's Concluding Observations (CCPR/C/NZL/CO/6) followed the pattern of similar UN reports over the last decade by first acknowledging the government's programmes and initiatives, but moving on to remind the government that these initiatives did not address the underlying issue of Māori over-representation in the criminal justice system.<sup>57</sup> At its 3259th meeting, held on 24 March 2016, it adopted the following concluding observations:

#### **Non-discrimination in Law-Enforcement**

23. The Committee notes the information provided regarding the outcomes of the investigations related to the so-called Operation Eight (anti-terrorism raids carried out on 14 October 2007), as well as the efforts made to incorporate some of the recommendations by the Independent Police Conduct Authority (IPCA) in the police operational planning and operational guidelines. It also notes statements by State officials suggesting an "unconscious bias" in police operations towards Māori and is concerned about allegations of racial profiling involving Māori and persons of African descent (arts. 2, 7, 14, 26, and 27).

24. The State party should undertake comprehensive review of law enforcement operational policies in order to ensure their conformity with human rights principles, including the prohibition of discrimination, and to evaluate their impact on indigenous peoples. The State party should also provide training to law-enforcement officials in order to sensitize them to the need to conduct themselves in a way that does not lead, even unintentionally, to acts of racial profiling.

25. While noting the efforts made by the State party to address the issue of overrepresentation of Māori and Pasifika in the criminal justice system, with particular focus on youth, including through the initiative "Turning of the Tide: A Whānau Ora Crime and Crash Prevention Strategy" and the Youth Crime Action Plan, the

Committee remains concerned about the disproportionately high rates of incarceration and over-representation of Māori and Pasifika, and particularly women and youth, at all levels of criminal justice process (arts. 2, 14, 24, 26).

26. Recalling its previous concluding observations (CCPR/C/NZL/CO/5, para. 12), the Committee urges the State party to:

(a) Review its law-enforcement policies with a view to reducing incarceration rates and over-representation of members of Māori and Pasifika communities, particularly women and youth, at all levels of the criminal justice system, as well as reconviction and re-imprisonment rates;

(b) Eliminate direct and indirect discrimination against Māori and Pasifika in the administration of justice, including through human rights training programmes for law enforcement, the judiciary and penitentiary personnel.

### **A Socially Constructed Silence**

One of the most frustrating and indeed traumatising experience in life is to want desperately to have a conversation about a compelling and disturbing trend, only to find that there is no one prepared to talk. On the issue of racism and structural discrimination, there exists a socially constructed silence. In a different era, in a different place, from a different perspective, the need to debate would be huge and obvious; the 1981 Springbok Tour comes to mind. In 2015, institutional racism in the criminal justice system was big in Ferguson, Missouri; in New Zealand, in contrast, we live within the confines of a socially constructed silence, and the few voices that are raised against it are so marginalised as to present no moral challenge.

### **A Changing Role for Cultural Responsiveness Strategies**

Within this contemporary context, departmental Responsiveness to Māori Strategies are being used to fill three purposes for which they were not originally intended. First, they have been used as window dressing; as a subterfuge to convince external observer's that the government agency is fully committed to a Crown-Māori partnership. Second, within the criminal justice sector, they serve to avoid addressing the root causes of discrimination, and indeed of crime, against Māori and Pacific peoples. Third, they are used as a tool to manage, control and suppress the full expression of rangatiratanga.

### **Where is Rangatiratanga Now?**

Has the state finally contained the energies of rangatiratanga and appropriated them for its own purposes, as it has attempted to do so many times since early colonisation? Compare the government's approach of 1986 to Pu Ao Te Atatu as described earlier, with the very recent Review of CYF. The 2015 CYF review contains no reference to Government / Māori partnership or the Treaty of Waitangi. Nor was there any significant consultation with Māori. As Richard Hill comments, "for Māori to gain Crown recognition of te tino rangatiratanga, decision makers on both sides will need to explore ways of genuinely meeting indigenous aspirations."<sup>58</sup>

He quotes the view of Webster, who in 1979 noted that:

If the Pākehā majority does not understand the implications of the Māori search for identity and if it reacts with hostility to the growth of Māori nationalism and remains blind to the growing necessity for cultural pluralism, then with the rise of Māori consciousness there will be a realisation of the limits of passivity. More militant doctrines will take hold.<sup>59</sup>

### **What Might Rangatiratanga Look Like?**

I want to close by making two observations. First, and as earlier mentioned, Hill favoured the term “autonomy” as a useful interpretation of rangatiratanga, preferring it to the earlier concept of “chieftainship.” Public servants and politicians will have their own vision of what that entails.

Earlier this year I was part of a group which evaluated an innovative Māori managed programme called Wakamoemoeā. Run by a small Māori Trust, and funded by Te Puni Kokiri, it had operated in three “hard to reach” Māori gang communities, with former gang leaders playing a key role in a social mobilisation strategy, aimed at reducing violence, increasing social functioning; and improving community safety. After three years of operation, the results were stunning. There had been increases in full time employment, adult education, reductions in crime and family violence, children were staying at school for longer and there were changes in attitudes toward the female gender. This was clearly an exercise in rangatiratanga; marginalised Māori communities being quietly supported to take responsibility for bringing about social change. As the late Mongrel Mob leader Roy Dunn once said, “We don’t want a hand out, we don’t want a hand up – we just want a hand.”<sup>60</sup>

I was not totally convinced, until one day, shopping at Countdown, I encountered a male gang member who had been involved in the project, with his 10 year old mokopuna, wheeling a shopping trolley. This was a minor miracle. Male gang members don’t shop – the women do the shopping. I couldn’t resist it, and said to him, “Manu, you’re shopping!” He looked a little sheepish and responded, “Oh, Matua, don’t you know? Anything women can do, men can do better.” I prodded him a little further. “But you’re at Countdown. Your whānau usually shop at Pak’n’Save!” He produced his I-phone, tapped an app, and showed me. “Yeh, but I’ve got this Countdown app, and it tells me when there’s a bargain. After that, I go back to Pak’n’Save.” At the moment, the store supervisor came up to us, and said to me, “Is everything all right, Sir?” Manu looked at me, his eyes rolling upward, that “here we go again” look. I couldn’t help myself, and replied, “No it’s not. My mate has this Countdown app, and he won’t tell me where all the bargains are!” At that, we both cracked up, and the supervisor swiftly departed, trying to make sense of it all.

There was one feature of the evaluation however, that was less than satisfactory. The key social agencies that were aware of the programme, and were expected to participate fully in it, distanced themselves both from the programme, and the evaluation. The decision not to engage was interpreted by the community as avoiding the possibility that they might be asked to endorse the efforts of a group that has had been repeatedly labelled as criminal. The non-engagement of the State suggests that these “hard to reach” communities would continue to remain both isolated and marginalised. But it is an indication of what could be achieved, by the deliberate transfer of rangatiratanga to those people most affected, and empower them to make the changes themselves.

### **Closing Observation**

My closing observation is of a more personal nature. Today I tracked one thread of thought over a thirty year period, commenting earlier that there are so many different threads that only make complete sense when they come together.

As I wrote this paper, I kept being drawn back to the words spoken by the first Māori King, Pōtatau Te Wherowhero,

*Kotahi ano te kohao o te ngira  
 E kuhuna ai te miro ma te miro whero me te miro pango  
 A muri i a au kia mau ki te ture ki te whakapono ki te aroha  
 Hei aha te aha! hei aha te aha!*  
 “There is but one eye of the needle,  
 Through which the white, red and black threads must pass.  
 Hold fast to the law, hold fast to faith, hold fast to love  
 Forsake all else!”<sup>61</sup>

Te Wherowhero was speaking of the importance of unity, and holding fast to key ideals and principles. Early one morning I awoke, and realised what the problem was. We have lost the needle – there is nothing for us to thread those ideas through. The needle is lying lost somewhere in the haystack of neoliberalism, of market solutions, of competition, of performance measurement, of materialism.

Imagine if we had a needle called justice, through which passed only those threads that contributed to that one ideal. If we can discover (or re-discover) that needle, we can once more be unashamed of our reputation as a nation that pursues the ideal of justice; we can talk with pride about our human rights record, our legislative performance, and an overriding concern for the “least, the lost and the lonely.”<sup>62</sup> It is a public conversation waiting to be had.

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<sup>1</sup> Richard S. Hill, *Māori and the State – Crown-Māori Relations in New Zealand Aotearoa, 1950-2000* (Wellington: Victoria University Press, 2009), 6-8.

<sup>2</sup> Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (WAI 143 Muru me te Raupatu - The Muru and Raupatu of the Taranaki Land and People, 1996), chapter 1.  
<http://www.justice.govt.nz/tribunals/waitangi-tribunal/Reports/wai0143/chapt01>

<sup>3</sup> Hill, *Māori and the State*, 187.

<sup>4</sup> Greg Newbold, *The problem of prisons: corrections reform in New Zealand since 1840* (Wellington: Dunmore, 2007), 55-56.

<sup>5</sup> Graham Butterworth and Susan Butterworth, *Policing and the Tangata Whenua, 1935-85* (Wellington: Victoria University Press, 2008), 24.

<sup>6</sup> Sherwood Young, “Carran, William,” *Dictionary of New Zealand Biography. Te Ara, the Encyclopedia of New Zealand*, updated 6 June, 2013,  
<http://www.TeAra.govt.nz/en/biographies/5c11/carran-william>

<sup>7</sup> Butterworth, *Policing*, 25.

<sup>8</sup> New Zealand Herald, 4 June, 1955.

<sup>9</sup> J. K. Hunn, *Report on the Department of Māori Affairs* (Wellington: Government Printer, 1961), 34.

<sup>10</sup> *Ibid*, 32-33.

<sup>11</sup> Butterworth, *Policing*, 30-31.

<sup>12</sup> P. O’Malley, “The Amplification of Māori Crime: Cultural and Economic Barriers to Equal Justice in New Zealand,” *Race* 15, no. 1 (July 1973): 47-57.

<sup>13</sup> Butterworth, *Policing*, 43-46.

<sup>14</sup> Neil Cameron, “Developments and Issues in Policing New Zealand,” in *Policing at the Crossroads*, ed. Warren Young and Neil Cameron (Wellington: Allen and Unwin, 1986), 7-45.

<sup>15</sup> Jane Kelsey and Warren Young, *The Gangs: Moral Panic as Social Control* (Wellington: Victoria University of Wellington Press, 1982), 135.

<sup>16</sup> Michael King, “Cooper, Whina,” *Dictionary of New Zealand Biography. Te Ara, the Encyclopedia of New Zealand*, updated 6 June, 2013, <http://www.TeAra.govt.nz/en/biographies/5c32/cooper-whina>

- <sup>17</sup> Helen Lomax, "Cultural Development in New Zealand Prisons," in *Private Sector and Community Involvement in the Criminal Justice System*, ed. David Biles and Julia Vernon (Canberra: Australian Institute of Criminology, 1994): 253-63.
- <sup>18</sup> Cameron, "Policing," 12.
- <sup>19</sup> S. Hall, *Drifting into a Law and Order Society* (London: Cobden Trust, 1979).
- <sup>20</sup> T. B. Bowden, *Beyond the Limits of the Law*, (Harmondsworth: Penguin, 1978), 22.
- <sup>21</sup> *Report of the New Zealand Police for the Year Ended 31 March 1979* (Wellington: Government Printer, 1979), 8; Martin Kettle and Tony Bunyan, "The Police Force of the Future is Now Here," *New Society* 53/927 (1980): 351.
- <sup>22</sup> Trudie McNaughton and Annabelle Woodhouse, "Neighbourhood Support Groups and Their Impact on Community Policing" in *Policing at the Crossroads*, ed. Warren Young and Neil Cameron (Wellington: Allen and Unwin, 1986), 194-204; New Zealand Police Department, *Community Initiated Crime Prevention Programme: Seminar Report* (Wellington, 1985); Kim Workman, "Community Policing in New Zealand – An Agent for Organisational Change?" *Public Sector* 8, no. 1-2 (1985): 43; K. O. Thompson, "Community Policing in New Zealand?" *Public Sector* 8, no. 3 (1985): 29.
- <sup>23</sup> R. Clarke and J. M. Hough, *The Effectiveness of Policing* (Farnborough: Gower, 1980); Workman, "Community Policing," 43.
- <sup>24</sup> W. R. Miller, *Cops and Bobbies* (Chicago and London: University of Chicago Press, 1977), 25; Cameron, "Policing," 8; R. Baldwin and R. Kinsey, *Police Powers and Politics* (London: Quartet, 1982), 246-57.
- <sup>25</sup> Office of the Ombudsman, "Annual Report for the period ending 30 June 1977," *Appendices to the Journals of the House of Representatives*, A3, 1977: 8-9.
- <sup>26</sup> Greg Newbold, *The Problem of Prisons: Corrections Reform in New Zealand since 1840* (Wellington: Dunmore, 2007), 90.
- <sup>27</sup> Michael Ignatieff, *A Just Measure of Pain: The Penitentiary in the Industrial Revolution 1750-1850* (London: Macmillan, 1978); D. Garland, *Punishment and Modern Society* (Oxford: Clarendon, 1990), 252.
- <sup>28</sup> Andrew Coyle, "Managing Prisons in Times of Change," Address at Senior Management Seminar, Department of Corrections, 14 May, 2008.
- <sup>29</sup> Pua te Ata Tu can be translated "The Heraldng Light of the New Dawn."
- <sup>30</sup> Hill, *Māori and the State*, 210-12.
- <sup>31</sup> G. Palmer, *New Zealand's Constitution in Crisis* (Dunedin: McIndoe, 1992).
- <sup>32</sup> T. O'Reilly and D. Wood, "Biculturalism and the Public Sector," in *Reshaping the State: New Zealand's Bureaucratic Revolution*, ed. Jonathan Boston, John Martin, June Pallot, and Pat Walsh (Auckland: Oxford University Press, 1991), 329-42.
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- <sup>41</sup> J. Tauri, "Explaining Recent Innovations in New Zealand's Criminal Justice System: Empowering Māori or Biculturalising the State?" *Australian and New Zealand Journal of Criminology* 32, no. 2 (1999):153-67.
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- <sup>43</sup> Riki Mihaere, "A Kaupapa Māori Analysis of the Use of Māori Cultural Identity in the Prison System" doctoral thesis, Victoria University of Wellington, 2015), 77.
- <sup>44</sup> *Ibid*, 81.
- <sup>45</sup> Charlotte Williams, *The Too Hard Basket: Māori and Criminal Justice since 1980* (Wellington: Victoria University Press, 2001).
- <sup>46</sup> Williams, *Too Hard Basket*, 95.
- <sup>47</sup> J. M. Tauri and R. Webb, "A Critical Appraisal of Responses to Māori Offending," *The International Indigenous Policy Journal* 3, no. 4 (2012): 1-16.
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- <sup>50</sup> Williams, *The Too Hard Basket*.
- <sup>51</sup> Tauri and Webb, "A Critical Appraisal," 4-7.
- <sup>52</sup> Mihaere, "A Kaupapa Māori Appraisal," 97.
- <sup>53</sup> Williams, *The Too Hard Basket*.
- <sup>54</sup> Kim Workman, "Structural Discrimination within the Criminal Justice System," *Rethinking Crime and Punishment*, accessed 28 September, 2015, <http://www.rethinking.org.nz/Default.aspx?page=5083>; Kim Workman, "Māori Over-representation in the Criminal Justice System – Does Structural Discrimination have anything to do with it?" *Rethinking Crime and Punishment*, accessed 28 September, 2015, [http://www.rethinking.org.nz/assets/Maori%20and%20the%20CJS/02\\_Structural\\_Discrimination\\_in\\_the\\_CJS.pdf](http://www.rethinking.org.nz/assets/Maori%20and%20the%20CJS/02_Structural_Discrimination_in_the_CJS.pdf)
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- <sup>56</sup> UN Report of the Working Group on Arbitrary Detention: Mission to New Zealand (July 2015), A/HRC/30/36/Add.2
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- <sup>58</sup> Hill, *Māori and the State*, 291.
- <sup>59</sup> Peter Webster, *Rua and the Māori Millennium* (Wellington: Victoria University Press, 1979), 279.
- <sup>60</sup> Roy Dunn, a Presentation at the Prison Fellowship New Zealand, "Beyond Retribution: Advancing the Law and Order Debate" Conference, held at the Silverstream Conference Centre, Upper Hutt, 12-14 May 2006.
- <sup>61</sup> <http://www.kiingitanga.com/history/>
- <sup>62</sup> Paraphrasing *Matthew* 25:31-46.