NGĀ PAE O TE MĀRAMATANGA
NEW ZEALAND'S MĀORI CENTRE OF RESEARCH EXCELLENCE

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Whānau ora and imprisonment

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An expert paper as part of Toi Tū Te Whānau, Toi Tū Te Kāwai Whakapapa: The Criminal Justice System in New Zealand project led by Tracey McIntosh *(Ngāi Tūhoe)* University of Auckland,[2] Kim Workman *(Ngāti Kahungunu ki Wairarapa and Rangitāne o Wairarapa)* and Patricia Walsh *(Ngāti Porou, Ngāti Ruawaipu)*.[3]

INTRODUCTION

In February 2018, Superu and Ngā Pae o te Māramatanga commissioned three "think pieces" on the role of whānau and whakapapa (relationships) in three critical public policy areas of New Zealand: the precariat, oranga tamariki (child welfare and wellbeing) and imprisonment. The focus was to be on "blue sky" thinking, supported by historical precedent, evidence and research. This paper explores the effects of imprisonment on the whānau ora (family wellbeing) of Māori communities.

It is an opportune time to write about the criminal justice system, imprisonment and whānau. The government announced in 2018 its intention to reduce the prison population by 30 per cent in 15 years, when it launched its programme of work to reform the criminal justice system called Hāpaitia Te Oranga Tangata—Safe and Effective Justice. The launch was part of a criminal justice summit where 700 people discussed the challenges ahead, including the role of whānau and whakapapa. In June 2019, He Waka Roimata: Transforming Our Criminal Justice System, the first report from Te Uepū Hāpai i te Ora—The Safe and Effective Justice Advisory Group (2019a), acknowledged that "solutions need a whānau-centred approach that both recognises the whānau dynamic and reflects that whānau have also been affected by having a member in the criminal justice system" (p. 27). One month later, in July, a Hui Māori report, Ināia Tonu Nei—Now Is the Time: We Lead, You Follow, recommended that "Whānau Ora navigators be established for the justice sector working with the social sector" (Te Uepū Hāpai i te Ora—The Safe and Effective Justice Advisory Group, 2019b, p. 28). In August, the Department of Corrections then released a new five-year strategy that "innovates to find new and alternative ways to achieve better outcomes with Māori and their whānau" (Department of Corrections, 2019, p. 2).

> **"A new paradigm of transformative justice** based on whānau development"

This paper contributes to the ongoing discussion by calling for closer attention to be paid to the issues of whānau and whakapapa within the criminal justice system, and advocates for the development of a new paradigm of transformative justice based on whānau development.

In December 2017, Justice Minister Andrew Little summarised the situation at that time. The prison population had increased by 20 per cent since 2015. The incarceration rate was 220 prisoners for every 100,000 people, when the OECD average is 147 (Little, 2017).

Who was in prison in December 2017? Nearly two-thirds of prisoners had literacy and numeracy levels below NCEA Level 1. Ninety per cent of youth offenders had significant learning difficulties. More than three-quarters of prisoners had themselves been victims of violence. More than 60 per cent of prisoners had had a mental health problem in the previous 12 months, and nearly half had an addiction problem. A significant number had recorded traumatic brain injury. Prisons do not as act as a deterrent—they are serving the same purpose today as they served 100 years ago, and with the same results. All the while, the crime rate has steadily declined since 1993.

Fifty-two per cent of the prison population is Māori, and Māori women make up 63 per cent of the female prison population (Department of Corrections, 2017), an increase

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of 5 per cent since 2012 (Stats NZ, 2012). Māori were being imprisoned at a rate six times that of non-Māori. For Māori males born in 1975, it was estimated that 22 per cent had a Corrections-managed sentence before their 20th birthday, and 44 per cent had a Corrections-managed sentence by the age of 35 (Ministry of Justice, personal communication, May 5, 2011).

I EARLY MĀORI IMPRISONMENT

Most public policy analysts assume that the purpose of the criminal justice system and imprisonment is and always has been the same for the Māori and non-Māori citizens of New Zealand. A closer examination of our colonial history shows otherwise. First, in addition to the usual reasons for imprisoning citizens, in the 19th century there was a prevailing view that the imposition of British law and penal policy on Māori would expedite the process of assimilation by preparing Māori for British citizenship. Second, the imposition of British law and imprisonment was a means of denying Māori the right to punish and correct according to their own traditions and tikanga. Third, the imprisonment and arbitrary detention of entire whānau (men, women and children) was a key strategy for dealing with Māori who resisted the unlawful actions of the state, or who were perceived by the state as comprising a "dangerous underclass" or being "in rebellion" to the state (Pratt, 1992, pp. 41–68). The other factor that is not widely understood is that the experience of imprisonment for Māori had a profound effect on their personal mana and tapu, and was met with fear and repulsion (Shirres, 1997).

These attitudes still exist and contribute to Māori over-representation in our prisons and the wider criminal justice system, and it is these attitudes that need to be excised from the criminal justice system so that our whai ora (health and sense of wellbeing) can flourish.

Turning Māori into citizens

Although Māori were made citizens of New Zealand under the Treaty of Waitangi in 1840, from the British viewpoint citizenship was about the acceptance of the behaviours, practices, social codes and institutions which represented the British way of life in the 19th century. The British Colonial Office and the New Zealand Government pursued a policy of assimilation towards Māori, including the adaption of modes of punishment and dispute resolution to achieve that purpose. This included the power to punish and the way in which punishments were to be inflicted (Pratt, 1992). Māori penal thought and practices were gradually supplanted by those of the British as part of the assimilation process.

Colonisation and the purpose of Māori imprisonment

Colonialism in the 19th century not only meant that Britain became the model for New Zealand to follow; it also denied legitimacy to the Indigenous way of sanctioning offenders. The purpose of punishment was to produce "good citizens", and colonial sanctions were designed to achieve that purpose. Māori were judged on the basis of how deficient they were in relation to normative European standards—it became the state's responsibility to reshape them to the new standard. As part of that process of assimilation, tikanga Māori relating to social control and penal thought were subsumed by the state during the 19th century and the early part of the 20th. Māori culture was reconstituted so that it would comply with the social codes, norms and expectations that went with British citizenship.

There was, of course, a very robust system of Māori law in existence pre-contact. Jackson's (1988) comprehensive account of that system, written over 30 years ago, still stands as the most comprehensive and authoritative account we have.

Contrasts in punishment

The Māori system of punishment is largely forward-looking and aimed at repairing relationships while accounting for past wrongs. In a worldview predicated upon a norm of balance and harmony, the inclusion of the victim and their whānau or hapū, and the process of facilitating reparation and mediating a settlement were critical to the outcome. It was not a soft option—the appropriate utu or payment for any given hara (crime) could include death, or loss of group treasures or resources, and, at the very least, involved public shame and humiliation. The emphasis on the future, however, prioritised a desire to reintegrate offenders into communities, heal victims and maintain a balance between the acknowledgement of past behaviour and moving on.

There was an additional factor: in Te Ao Māori being imprisoned was the same as being taken captive. Imprisonment, like captivity, had a profound effect on the personal, emotional and spiritual state of Māori. Māori resistance to imprisonment is an oft-repeated theme in colonial history. For a modern prison not to affect Māori in that way, it would need to be based on Māori justice principles. Such a prison would, from the outset, work to restore inmates' mana, protect their tapu, achieve balance and, at the end of it all, restore the offender back to their community as a fully functioning human being.

Mass imprisonment of Māori

As Māori resistance to Pākehā encroachment of land escalated and settler numbers grew, pressure on the government to acquire land increased (Hill, 1989). The government introduced legislation to deal with Māori resistance, which led to Māori mass imprisonment. Under the Suppression of Rebellion Act 1863, any person fighting in defence of their land was deemed to be in rebellion against the Crown—a criminal offence. The right to a fair trial before imprisonment was suspended and anyone who came before the courts was threatened with prison or death. Under the New Zealand Settlement Act 1863, the Crown could confiscate the land of anyone deemed to be in rebellion. They could then be imprisoned and deported, without due process.

Incidents of mass arrest and imprisonment (e.g., those at Waerenga-a-Hika, Pakakohi and Parihaka) had a devastating impact on Māori prisoners, their whānau and the wider community. At Waerenga-a-Hika, members of Pai Mārire were involved in an aggressive confrontation with Pākehā from 1864 to 1868 (King, 1997). As a result, while most of

the Pai Mārire resistance fighters were pardoned (Rosenfeld, 1999), four shipments of Māori prisoners (328 men, women and children) were deported to the Chatham Islands (MacKay, 1966). They were treated harshly so as to send a clear signal towards potential dissidents of what they could expect. By June 1868, three groups had been deported, and the total number of detainees on the island was 203: 116 men, 49 women and 38 children. There were 22 births to 69 women over 27 months—around one birth for every six women. Four of the babies died within days of their birth. Adult deaths between March 1866 and November 1867 amounted to six men and two women. Six children also died. By early 1869, 22 men had died in the course of their detention (see Waitangi Tribunal, 2004, Vol. 1, p. 177).

The prisoners were initially given two months' government rations and were expected to be self-sufficient after that. They were in poor physical condition from the outset, and many were too weak to work. Most of their initial crops failed, and they remained on government rations for the duration of their stay. The women and children, who were "not to be treated as prisoners", received less food; women were on two-thirds rations, and children on one-third. Meat was provided once a week, but no tea, sugar or rice (see Waitangi Tribunal, 2004, Vol. 1, p. 175). The detainees remained employed in both public and private works such as road cutting, building a hospital, and stone cutting.

Indefinite detention

The Waitangi Tribunal's (2004) Turanga report documents the government's difficulties in deciding when the prisoners should be released. From the outset, the prisoners' expectation was that they would be released after a year. The government's position shifted; release was to be dependent on the termination of rebellion, and establishment of peace (see Waitangi Tribunal, 2004, Vol. 1, p. 180).

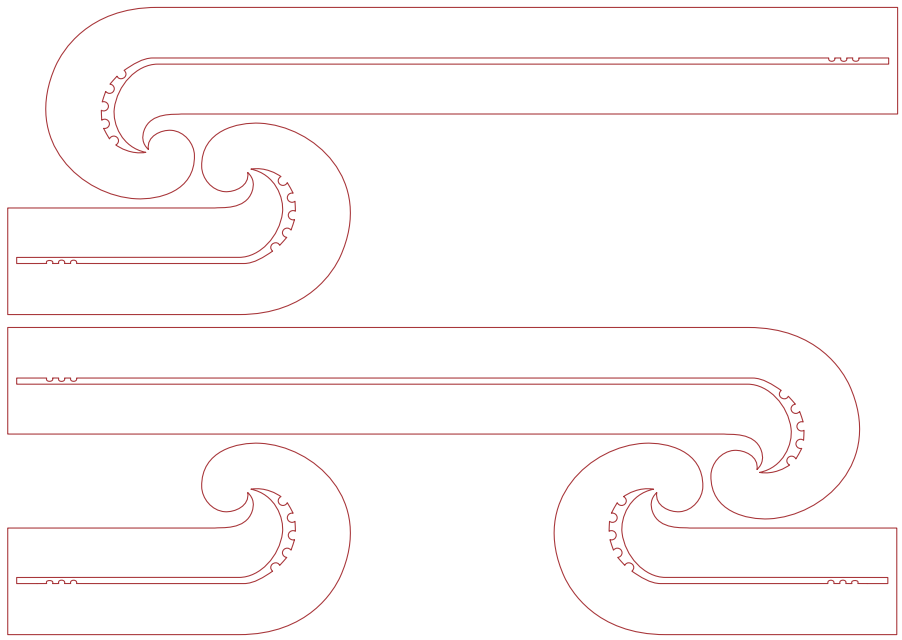
The actions of the government in relation to the assault on Waerenga-a-Hika, and the part that imprisonment played in the criminalisation of Māori resistance, set the precedent for future mass confiscation and dispossession of Māori from their lands.

Parihaka

The events that took place in and around Parihaka, a Taranaki coastal settlement, between 1860 and 1890 had their origins in the Land Wars. In the year 1881, one of the worst infringements of civil and human rights in New Zealand's history occurred. By September 1880, hundreds of men and youths had been exiled to South Island prisons, where they were forced to build the infrastructure of cities like Dunedin. The wives, sisters and mothers of these men often followed them down south, hoping to assist their loved ones. These women often lived in poverty and some died during their exile. Many never returned to Taranaki; on average, one person died every two weeks. The government resorted to these measures to confront organised and disciplined passive resistance and to assert the dogma of moral right.

What we have learned

1. In the early colonial period, the imprisonment of Māori served purposes additional to that of punishment for criminal offending, namely:
   a) to expedite the process of assimilation by preparing Māori for British citizenship
   b) to deny Māori the right to punish and correct according to their own tradition and tikanga
   c) as a key strategy for dealing with Māori who:
      i. resisted the unlawful actions of the state
      ii. were perceived to comprise a "dangerous underclass"
      iii. were perceived as being in "rebellion to the state".
2. The imprisonment, unlawful detention and inhumane treatment of entire whānau were a key strategy of coercion to encourage Māori compliance and obedience to the state.
3. The state's strategy of compliance extended to policies of:
   a) mass imprisonment
   b) unlawful detention
   c) indefinite, indeterminate and arbitrary detention
   d) breaches of basic human rights
   e) an extension of detention on the basis of perceived risk to public safety.
4. The state's actions during the colonial period contributed to intergenerational trauma within affected whānau.



II EXERCISING RANGATIRATANGA

One of the fundamental issues for whānau and whakapapa in relation to both incarceration and the criminal justice system in general, is the state's determination to ignore or re-interpret the Māori cry for tino rangatiratanga—for autonomy, and for recognition of the concepts of ōrite, mana, tapu and motuhake. Those values are fundamental to the concept of Māori justice. If the principle of tino rangatiratanga is fully acknowledged, then the development of a Kaupapa Māori justice system is an achievable outcome.

Assimilationist policies in colonial times

In colonial times, some concessions to tikanga Māori were seen as necessary to bring about the gradual familiarisation and assimilation of Māori into the British way of justice. By the end of the 19th century, the sites of Māori resistance to British justice were confined to specific unsettled localities such as the King Country and the Urewera. Various reports at that time described the steady assimilation of Māori into Pākehā ways; talk of utu and muru (plundering) tended to be just that (Pratt, 1992).

Māori did not feature to any great degree in 19th-century crime statistics. Europeans made up the bulk of prisoners. In 1872, Māori constituted only 2.3 per cent of the prisoners received; in 1902, 2.8 per cent; in 1912, 3.1 per cent; and in 1934, 8.9 per cent (Pratt, 1992, p. 243; see also Lingard, 1936, p. 55). For much of the 19th century and well into the 20th, Māori were praised by residential magistrates for their conduct. But as Māori society began to disintegrate the system increasingly mopped up those who had least and were deemed a public nuisance. Māori "lads" were sent off to borstal "in their own interests" because they were judged to have come from bad surroundings—a practice since taken over by youth justice institutions (Pratt, 1992). Prison sucked up all types of offenders from the lower strata of society: the habituals, drunks, vagrants, mentally ill, and so on. Prison provided social benefits: it hid them from view; it allowed politicians and the courts to maintain public credibility; it assuaged public indignation at the idea of people being "let off". But "out of sight, out of mind" is incapacitation personified. In addition, the recidivist nature of these low-level offenders guaranteed the long-term maintenance of the prison estate.

Patterns of the past—lessons for the future

The state has mostly resisted efforts from Māori to introduce measures of autonomy into the criminal justice system. The impact of public sector reform in the 1980s contributed to that difficulty. While the reforms were justified as necessary to achieve economic and political viability, it was wrongly assumed that the success of the reforms could be measured by economic performance alone. The right of people to enjoy their own traditions in a way that makes sense to them is important if reforms are to be consistent with a fair and just society (Kelsey, 1997).

The expectation was that the market-driven policies and the downsizing of the state would be accompanied by a parallel devolution of functions to tribal entities and community organisations (Wetere, 1988). The Waitangi Tribunal (1998), in hearing the claim lodged by Te Whānau o Waipareira, noted the narrowness of government policies inherent in the devolution of state functions to Māori. In the Tribunal's view, devolution should be primarily about empowerment.

The state typically responded to Māori demands for greater autonomy with a measure of annoyance, non-cooperation and resistance. Serious efforts to promote power-sharing arrangements were often seen by the state as an attempt to undermine unity, rather than promote a state of shared belonging (Fleras, 1999). Devolution was driven by the government with limited Māori input, participation or control (Fleras & Elliot, 1992). Devolving service delivery was about making use of iwi organisations rather than empowering them. Māori would never achieve rangatiratanga; the most Māori could hope for was to get involved in systems of benevolence which were for the most part paternalistic and condescending, in the vain belief that it would "make a difference for Māori". Within the criminal justice system, and for the last 30 years, Māori have been contracted to provide services to prisoners not as equal partners but as a means of meeting sector-perceived Treaty obligations (Kingi, 2002).

In the decade after the public sector reform, Māori became major players in service delivery in the health, education, social welfare and labour sectors as providers of a range of services that had previously been the province of the state or of professional enclaves. Māori engagement within the criminal justice system, however, was much more restrained (Durie, 2004).

Looking ahead

A shift to increased Māori autonomy would have required a radical realignment of the criminal justice system so that it not only recognised the Māori call for tino rangatiratanga but understood that there would be no significant advancement for Māori without it. It would mean that iwi/Māori and government would work collaboratively in accordance with the Crown's Treaty of Waitangi obligations.

In an ideal scenario, the government's paternalistic state of mind would shift from doing things either to or for Māori to working with Māori. It would move from a management culture of state-centred control, evaluation and reporting to the promotion of local Indigenous community control and culturally appropriate adaptation. It would involve the full-bodied incorporation (rather than co-option) of tikanga Māori; a whānau-centric approach to prison management, rehabilitation and reintegration; addressing causes rather than symptoms; focusing on Māori assets and strengths rather than deficits; reciprocal engagement; and taking collective responsibility for change (Taylor & Dorne, 2015).

The impact of Whānau Ora on the criminal justice system

While its impact was not immediately apparent, the Māori health initiative Whānau Ora has positively influenced the criminal justice sector since it was introduced in 2010. In simple terms, whānau ora, or family wellbeing, can be achieved through Māori cultural values—empowering whānau as a whole rather than focusing separately on individual whānau members and their problems. Whānau Ora puts whānau at the centre of decision-making about their future. It recognises the collective strength and capability of whānau to achieve better outcomes.

Whānau Ora's attraction for Māori is that it goes some way to resolving the tension with the state, around the extent to which Māori are able to exercise control over their own lives. Wright's (2009) bicultural continuum framework (reproduced in Appendix A) shows that Pākehā prefer "soft" bicultural ideals of inclusion which invite Māori into existing institutional frameworks, and Māori prefer "hard" biculturalism, and separate institutional space from Pākehā. Whānau Ora takes Māori closer to the tino rangatiratanga end of the spectrum (Humpage, 2004).

The concept of whānau ora has been a major influence on such criminal justice policies as New Zealand Police's Turning of the Tide strategy, Te Pae Oranga, Te Kooti Rangatahi and, more recently, the Justice Sector Māori Outcomes Strategy.

What we have learned

1. The state's determination to ignore or reinterpret the Māori cry for tino rangatiratanga, for autonomy, and for recognition of the concepts of ōrite, mana, tapu and motuhake strikes at the very heart of Māori justice.
2. Fundamental to a strategy which aligns government actions with Māori need is a radical realignment of the criminal justice system so that it not only recognises the Māori call for tino rangatiratanga but accepts that if the system is to do better for Māori, then that recognition is fundamental to progress.
3. Such a strategy would include the full-bodied incorporation (rather than co-option) of tikanga Māori, take a whānau-centric approach to the management of prisons, focus on Māori assets and strengths rather than deficits, involve reciprocal engagement, and take collective responsibility for change.
4. Whānau Ora puts whānau at the centre of decision-making about their future. It recognises the collective strength and capability of whānau to achieve better outcomes, and takes Māori closer to its goal of tino rangatiratanga.
5. Any new strategy must recognise that, as outlined in Section 1, in Te Ao Māori imprisonment is seen in the same light as captivity, and has a profound negative effect on a person's personal, emotional and spiritual state.

> 'Tino rangatiratanga is not a journey to somewhere else—**it is a foundational right.**'

III KAUPAPA MĀORI JUSTICE IN THE 1970s

Māori concern about the Eurocentric nature of the Department of Social Welfare and the youth justice system in the 1970s often meant that Māori were reluctant to report child abuse, neglect or family violence to either the police or child welfare authorities. That in turn stimulated alternative approaches by Māori communities, which sat more comfortably with Māori values and traditions and avoided feeding Māori children and youth into the formal criminal justice system.

Balance and imbalance

One of the points of difference that caused difficulty for Pākehā was that Māori models of justice moved beyond individual offending, and the emphasis was more about maintaining community wellbeing than imposing punishment. Early approaches taken by Māori practitioners in the criminal justice arena were grounded in the spiritual authority and tikanga of pre-European settlement, which Mead (2003) describes as "the accumulated knowledge of generations of Māori" (p. 13), to correct imbalances caused by breaches of tapu and diminishment of mana and order the life of tribal societies.

The response of Māori leaders and influencers to offending by Māori in the 1970s and 1980s, and the promulgation of an alternative methodology for dealing with offending by Māori, presented a major challenge to Pākehā perceptions. Until then, the criminal justice system had been largely reliant on a monocultural analysis of Māori offending, which had produced very little new understanding. As a result, the colonisation process and the imposition of a foreign legal paradigm meant that Māori offenders had little connection to the legal system (Jackson, 1988).

Building balanced communities

In the 1970s and 1980s, there was a powerful articulation of what Māori justice looked like. The differences from the Western system were highlighted: the focus on ōrite, or whakahoki mauri (restoring balance). The key concepts of mana, tapu and mauri were interwoven with the unifying concept of motuhake—autonomy and independence. The differences between Māori justice and the Western system were becoming clearer to Pākehā, and it was an uneasy fit. Māori justice demanded the inclusion of whānau and the wider community in the balancing process.

He Whaipaanga Hou

Moana Jackson's report The Māori and the Criminal Justice System: He Whaipaanga Hou—A New Perspective was published in 1988. This large body of knowledge was largely ignored by public servants, politicians and the press, who publicly rejected Jackson's "considered alternative" for a parallel, autonomous Māori justice system, insisting that there can be only one justice system. The government and media conveyed its opposition in stark, simplistic terms, avoiding Jackson's in-depth analysis.

The government's firm rejection of Whaipaanga Hou not only signalled its lack of commitment to alternative approaches but may have discouraged Māori researchers and academics from taking an active interest in the topic in the future. Over the next 25 years, there developed a significant gap between the volume of research into Māori justice and the volume of research into Māori health and education issues.

Kaupapa Māori models in the criminal justice sector

In the 1980s and 1990s, Māori developed and promoted Kaupapa Māori models, particularly in the fields of health and education. Probably the most widely accepted and resilient model was Mason Durie's (1998) Te Whare Tapa Whā. Te Whare Tapa Whā generated wide Māori acceptance when introduced; it enabled Māori to redefine health goals in their own terms, and forge a positive role for themselves in shaping and reshaping health services. It continues to underpin the work of many Māori service providers, not only in the health sector but also in the provision of both social and criminal justice services.

In the later widespread adoption of Te Whare Tapa Whā by government agencies, and its implementation by Māori service providers working in a Western environment, the impact of colonisation was either downplayed or ignored (McNeill, 2009). Its wide use and acceptance within the criminal justice sector has meant that it has been used as a surrogate Kaupapa Māori justice model. The challenge for us today is to find a way through that, to articulate a justice model that the government and the public sector can accept and work with.

What we have learned

1. The Eurocentric criminal justice system of the 1970s stimulated alternative approaches by Māori communities, which sat more comfortably with Māori values and traditions.
2. Māori models of justice moved beyond individual offending, with the emphasis on maintaining community wellbeing rather than imposing punishment.
3. The Whare Tapa Whā model is widely used within the criminal justice sector. Research is required to develop a Kaupapa Māori justice model that is widely accepted.
4. Based on Māori justice principles, the aim of prisons would be to restore mana, protect tapu, achieve balance, and restore the offender back to their community as a fully functioning human being.

IV TALKING ABOUT WHĀNAU

This section examines legislation and public policy in relation to Māori incarceration, and their impact on whānau. Whakapapa whānau have gone through massive upheaval and change with the impacts of colonisation and urbanisation. Social policies have served to undermine, reinterpret and redefine whānau (Turia, 2003).

The Families Commission literature review of whānau

The theoretical position underlying the Families Commission literature review (Lawson-Te Aho, 2010) is Kaupapa Māori (G. H. Smith, 1992, 1995), defined as "the philosophy and practice of being Māori" (Mahuika, 2008, p. 4). The review identified two pre-eminent models of whānau: whakapapa (kinship) and kaupapa (purpose-driven) whānau. Whakapapa whānau is the more permanent and culturally authentic form of whānau (Walker, 2006); although whakapapa and kaupapa whānau are not mutually exclusive. While kaupapa whānau may or may not share whakapapa, some hold that when there is only a kaupapa whānau there is nothing to bind people together beyond the achievement of the goal or purpose (Kruger et al., 2004).

Whānau ora and incarceration

The social policy emphasis on whānau wellbeing and development recognises that whānau continues to be a key cultural institution for Māori and is therefore a key site of intervention and service delivery (Gifford, 1999; Metge, 1995; Te Puni Kōkiri, 2005). However, the assumption that all whānau operate to provide a positive experience of whanaungatanga is problematic and narrows the reach of social policy towards those whānau that exhibit "potential". Whānau are a pre-eminent site of intervention for change and maintenance of both positive and negative intergenerational experiences (such as whānau violence) (Kruger et al., 2004). Durie (2003) has categorised different types of contemporary whānau according to their impacts on the health and wellbeing of whānau members and the risks that they pose.

One two-year study of the children of prisoners surveyed 368 sentenced prisoners in nine prisons (six men's and three women's) (Gordon, 2011, p. 8). Surveys were completed by 123 women and 245 men. In total, 59 per cent of prisoners surveyed were Māori, with 71 per cent of the women surveyed being Māori. In total, 269 of the 368 prisoners surveyed stated they were parents, and between them had 861 children (Gordon, 2011, p. 10). It is estimated that 40 per cent of all prisoners have associations with gangs, and that around 85 per cent of all gang members are Māori.

Findings from the Māori data showed that the children of Māori prisoners are far more likely to be imprisoned, to be nicotine dependent, to be diagnosed as having a personality disorder and to have no educational qualifications (Gordon & MacGibbon, 2011, p. 48). They are more likely to be drug dependent, to attempt suicide, or to become a young parent, unemployed or welfare dependent. With unresolved physical, emotional and mental health problems, whānau structures which are barely coping, inadequate income and educational support, and alienating police and justice practices, society is continually remaking (or failing to stop remaking) the next generation of prisoners. Māori bear the brunt of this.

Legislative and policy support for prison and gang whānau

A critical issue then is the extent to which prison and gang whānau are supported by legislation and social policy—or indeed whether they are considered to be whānau at all, or simply biological appendages to the offender.

Section 10 of the Families Commission Act, since repealed, excluded kaupapa whānau from being defined as family. However, the specific reference to the exclusion of a whānau group which gathered for the "sole purpose of committing offences" was mistakenly interpreted by policy analysts to mean that gangs don't qualify as whānau, on the basis that their primary purpose was to commit crime—whether or not they were whakapapa whānau. The section, however, did not contemplate the possibility of families both being related in some way and pursuing a common purpose. Whānau that are a combination of whakapapa whānau and kaupapa whānau were therefore not excluded by the Act from being considered "family".

The boundaries of whānau are self-defining and change over time, and the policy impact of that is not insignificant. In the early 1960s the Mongrel Mob—the first of the Māori gangs—were primarily individual members of dysfunctional families, and the whakapapa links within gangs were not that obvious. They were "gang members who happened to be whānau". That is not the case today. Many Mongrel Mob and Black Power members function as whakapapa whānau and it is not unusual for three generations of gang members to be part of a kin-based whānau. They are today in most areas "whānau who happen to be gang members".

Contrary to the explanatory note to the Prohibition of Gang Insignia in Government Premises Bill 2012, which states that "gangs are commonly identified by their insignia, which associates the wearer with an organisation that has criminal intent", there is often no clear link between Māori who identify or are associated with a gang and recent criminal activity.

Impact of legislation and policy on the whānau of gang members and offenders

Public policy fails to take into account the impact of legislation and policy on whānau members who are not offenders. Section 8 of the Prohibition of Gang Insignia in Government Premises Bill 2012 provides that the police may pursue, stop and search a vehicle if an occupant is suspected of wearing gang insignia on government premises—a provision which breaches the Bill of Rights. The impact is to traumatise other whānau members who happen to be in the vehicle, including children. The prisoner survey referred to earlier revealed that 96 parents (35% of all parents) reported that one or more of their children saw them being arrested. The arrests were very traumatic for the children and caused ongoing emotional difficulties (Gordon, 2011, p. 12).

The recent establishment of a multi-agency Gang Intelligence Centre, hosted by New Zealand Police, draws on information from several government agencies to build detailed intelligence about the activity of gang members, associates and prospects. The Centre gathers information about the parent(s) of children, criminal history, gang association, employment status and their past or present beneficiary status to determine whether or not they are "at risk". One of the most powerful predictors is missing, however: whether gang members or their associates had been in state care as a child. That omission is an abdication of state responsibility.

The Centre's activities directly conflict with the human rights law prohibiting "arbitrary rights interference". If the state interferes with an individual's rights there should be a legal basis for that activity, to protect people from being treated differently based on arbitrary measures such as where they live or who their parents are.

There is international resistance to the use of "big data" for the purposes of risk-based assessment, because of its impact on people who are poor, live in marginalised communities or are members of a racialised group (Office of the US Attorney General, 2014). It widens the gap between who is incarcerated—Māori, the poor and the marginalised—and who is not (Starr, 2013). We no longer imprison the partners and children of prisoners and offenders, but it may be that the oppressive and inhumane behaviour of colonial times has been replaced with more insidious techniques which in the long run produce similar results.

What we have learned

1. The dismantling of tikanga Māori justice processes disenfranchised whānau from the judicial process.
2. The development of a Whānau Ora framework within the criminal justice system will legitimate the place of whānau in the criminal justice system.
3. Whānau are considered to be a pre-eminent site of intervention for change and maintenance for both positive and negative intergenerational experiences.
4. Current legislation (e.g., the Prohibition of Gang Insignia in Government Premises Bill 2012) and policy (e.g., the use of big data in the Gang Intelligence Centre) discriminates against the whānau of gang members.
5. The widespread use of static data in risk-assessment technology such as whakapapa, homelessness, unemployment, marital status, age, education, finances, ethnicity and whānau background is discriminatory and widens the gap between who is incarcerated—Māori, the poor and the marginalised—and who is not.
6. Existing legislation and policy mitigates against the development of strategies which will improve the situation for the children of Māori prisoners, gang members and associates. By failing to intervene and support our tamariki to grow up as effective citizens, society condemns itself to a continued increase in rates of imprisonment. Recent research notes how difficult it is to reverse policies of mass imprisonment (Western, 2007).

V WHĀNAU AND HUMAN RIGHTS: THE ABUSE OF PARLIAMENTARY SOVEREIGNTY

The concept of parliamentary sovereignty in New Zealand is derived from that in the United Kingdom, and the constitutional position in New Zealand is clear and unambiguous. Parliament is supreme and the function of the courts is to interpret the law as laid down by Parliament. In colonial times parliamentary sovereignty allowed Parliament to introduce legislation which led to episodes of mass imprisonment and significant breaches of the Treaty of Waitangi and basic human rights.

A weak or non-existent rule of law is a feature of countries where democracy has broken down. In a nation where human rights are ignored, court decisions are overlooked and Parliament sidesteps long-standing conventions about how government operates, democracy is equally compromised.

Ignoring parliamentary process and the Bill of Rights

Over the last decade, there has been an incremental introduction of legislative measures that are fundamentally in conflict with the rule of law, to the extent that the New Zealand Law Society (2013) was impelled to report the matter to the United Nations. The Society listed a series of recent Acts that have allowed the Executive to use regulation to override Parliament, that deny citizens the right to legal representation, and cancel their right to appeal to the courts to uphold their rights under the law.

Parliament used Supplementary Order Papers and urgency to avoid proper parliamentary scrutiny of legislation, and bills that would have formerly been declared by the Attorney-General to be in breach of the Bill of Rights were enacted. Eleven of the 14 legislative measures which breached the Bill of Rights related directly to prisoners and offenders (New Zealand Law Society, 2013).

The impact on whānau ora

While it affects all offenders and their families, legislation that breaches human rights and is discriminatory impacts on Māori and their whānau disproportionately. Changes to the current legislative and sentencing process could change the extent to which Māori and their whānau are negatively impacted. The following changes are recommended.

Review the use of the regulatory impact statements

When there's a proposal to create, change or repeal legislation or regulations, the government agency responsible often has to provide Cabinet with a regulatory impact statement (RIS). Since at least 2005, departmental RISs have omitted any mention of the impact of new legislation on Māori or Māori over-representation, in contrast to the practice of earlier generations, which considered the implications of legislation on the Crown's obligations under the Treaty of Waitangi.

Introduce racial impact statements

In some overseas jurisdictions, new legislation is subject to a racial impact statement, which considers the impact of new legislation on creating additional racial disparity and proposes alternative approaches that reduce disparity, without affecting public safety (Mauer, 2009).

Enforceability of the Bill of Rights

The 1990 Bill of Rights Act is an ordinary statute and is not entrenched. It confers no power on the courts to strike down inconsistent legislation (see Keith, 2000; Rishworth, 1995). Section 7 of the Bill of Rights requires the Attorney-General to report to the House whenever a bill appears to be inconsistent with it (Glazebrook, 2004). The failure of the Attorney-General to report an inconsistency to the House does not, however, impugn the validity of an Act. Reports are only required on inconsistencies which exist at the time of a bill's first reading, and there is no requirement for the Attorney-General to actively monitor a bill for any inconsistencies which develop as a result of amendments during its passage.

Given the experience over the last decade, there is a case for strengthening the processes adopted in pursuit of Section 7 of the Act. That could include:

(a) providing for external and independent scrutiny and input into the assessment process (e.g., the Human Rights Commission)

(b) expanding Section 7 reporting to include all legislation, so as to inhibit non-reporting on legislation which is clearly in breach of the Bill of Rights.

Sentencing provisions

Section 27 of the Sentencing Act 2002 enables a sentencing court to receive evidence or cultural advice on cultural factors affecting the offending, the offender or any proposed sentence. It is seriously underutilised, and those involved in the adjudication process have been urged to make more use of this provision (Williams, 2013).

What we have learned

1. When human rights are ignored, court decisions are overlooked, and Parliament sidesteps long-standing conventions about how government operates, democracy is compromised.
2. When substantive human rights are not proactively protected, the principles and intent of Whānau Ora are severely compromised. When legislation is introduced which breaches human rights and is discriminatory, and impacts on all offenders and their families, it impacts on Māori and their whānau disproportionately.
3. The legislative process must be designed to:
   (a) identify and address the impact of new legislation on existing socioeconomic and cultural disparities
   (b) consider the implications of legislation on the Crown's obligations under the Treaty of Waitangi
   (c) identify the unintended consequences of a new initiative or legislative proposal and consider alternatives that prevent the creation of additional racial disparity within the criminal justice system
   (d) consider the impact on whānau ora.

> '**a "safe and effective" criminal justice policy** through a closer consideration of the role of whanau and whakapapa (relationships).'

VI KAUPAPA MĀORI PRISONS AND/OR WHĀNAU-FACING PRISONS

This section discusses whether it is possible to establish a Kaupapa Māori prison within the Corrections system, explores the concept of a "whānau-facing" prison (i.e., one which facilitates the maximum involvement of whānau within the prison) and looks at the place of whānau ora in the life of the prison.

The government's goal of a "safe and effective" criminal justice system is tested by the tendency towards building large prisons, which are ineffective (Workman, 2018). The prevailing discourse of the "prison-industrial complex" treats prison-building expansion as a means of creating local economic benefits and opportunity, and prioritises efficiency and cost savings over effective rehabilitation (Jewkes, 2018).

Kaupapa Māori prisons

Historically, government policy has shifted towards the controlled integration of Māori concepts and cultural practices into confined areas of the criminal justice system (Tauri, 2011; Tauri & Webb, 2012). The responsiveness strategies developed through the 1990s became the conduit for the integration of acceptable elements of Māori culture into the state-dominated system, all without significantly altering the structural organisation or the power relations between the state and Māori (Tauri, 1999). This included, in 1998, the introduction of the Corrections Bicultural Therapy Model, which aimed to deliver psychological treatments to Māori offenders through grafting elements of tikanga onto Western therapeutic models of intervention (Mihaere, 2015). 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 (Mihaere, 2015).

Since 2018, there has been a renewed discussion about the establishment of a Kaupapa Māori prison. The topic has been recently debated by politicians, in the media and by Māori, with opinions ranging from support in the face of "lamentable Māori imprisonment rates" (van Beynen, 2017) to the view that there is no mana in prisons, and there's no point in reconciling two totally different philosophies and then branding the product as good for Māori, let alone New Zealand society (Niuapu, 2017).

At the heart of the issue is the prevailing view that the government would never agree to the establishment of an independent Māori prison based on Māori justice principles. In the absence of political support for a Kaupapa Māori prison, the next best option is the concept of a "whānau-facing" prison.

Whānau-facing prisons

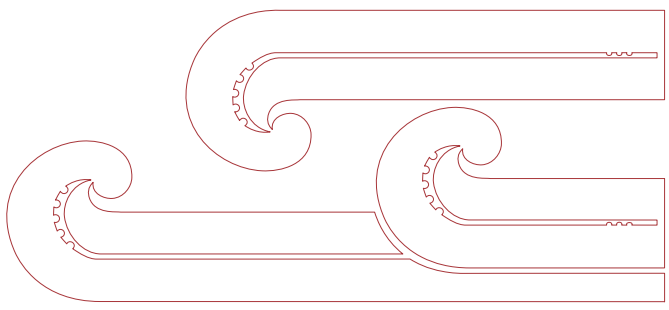
The idea of a whānau-facing prison derives from the work of Yvonne Jewkes (2018) and others, in their promotion of "healthy prisons" that nurture positive staff–prisoner relationships; foster feelings of decency, safety, trust, compassion and respect; and attempt to encourage the flourishing of potential, as opposed to the breaking of spirits. Jewkes (2018, pp. 329–330) identifies the common basic environmental elements that are universally desired by people in prison:

- a need for privacy
- warmth when it is cold, and effective ventilation when it is hot
- freedom of movement outside as well as inside
- regular, high-quality whānau visits
- meaningful and appropriately paid work/education/activities (including essential transferable skills)
- the ability to undertake a pastime or hobby beyond those traditionally permitted within custodial settings
- facilities to cook one's own food (and perhaps for one's whānau)
- interaction with nature (e.g., "to feel the grass under my feet"; to not just be able to see a tree, but to touch it)
- to have a high degree of choice, autonomy and control over fundamental actions.

With ideal design, prisons are not only "normalised" to the fullest extent possible but are also "trauma-informed", which creates an environment which promotes calm, tranquillity and wellbeing.

Equally important is that prison staff work in surroundings where they feel safe, and are able to exercise their power, interpersonal skills and discretion. They need airy and pleasant eating and relaxation facilities, with outside facilities, sufficient shower facilities and adequate parking.

While good prison design does not challenge the idea of prison as an institution, it could be a vital component in achieving radical justice reform, including decarceration. If the idea of housing people in a prison is not significantly different from housing people in a well-designed healthcare facility or in any other kind of "normal" social environment, it may not be a huge conceptual leap to connect such a prison to notions of justice that can be achieved while offenders remain in the community (Jewkes & Lulham, 2016).



What is important for whānau?

Research over the past decade has advanced our understanding of whānau. A recent "In Focus" report by Superu (2017) summarises much of that information. Given what is known about the strength of whānau, it is time to consider a different approach to the development and delivery of a Kaupapa Māori approach in prisons, one which affirms the role of whānau in strengthening Māori cultural identity. Mihaere's (2015) research into the place of Māori cultural identity within prisons is critical to this discussion. In discussing his findings, Mihaere recaps the key elements of cultural identity loss and reclamation, the central role Māori culture has recently taken in policies and practices of offender rehabilitation, and the detrimental effect of that for Māori.

A rights-based approach to whānau engagement

One approach is to develop a rights-based framework on the management and administration of prisons, one which would inform and guide the formation of whānau-focused policy. The United Nations Declaration of Indigenous Rights lends itself to such an analysis, and a proposed framework is presented in Appendix B.

What we have learned

1. The viability of a Kaupapa Māori prison relies on the willingness of government to establish an independent Māori prison based on Māori justice principles.
2. Housing people in a prison should not be significantly different from housing people in a well-designed healthcare facility or in any other kind of "normal" social environment.
3. A Kaupapa Māori approach in prisons affirms the role of whānau in strengthening Māori cultural identity.
4. A rights-based framework, such as the United Nations Declaration of Indigenous Rights, for the management and administration of prisons would inform and guide the formation of whānau-focused principles and provide for the closer involvement of Māori and whānau within prisons.

VII WHĀNAU-FACING JUSTICE

The dominant rational economic model which has prevailed over the last 30 years proposes that all criminals are rational beings who choose to commit crime depending on the relative costs and benefits incurred (Becker, 1968; Zedner, 2009). Such an approach rejects 20th-century criminology and its focus on the structural causes of crime while acknowledging individual offender responsibility (Reiner, 2007).

Neoliberalism excludes those who do not conform to dominant norms, using the criminal law to do so, when and if required (Crawford, 1998). For community safety to resist the dynamics of social exclusion, both government and the local community must foster the conditions in which partnerships can flourish and nurture forms of cooperation (Crawford, 1998).

The call for a "safe and effective" criminal justice assumes that government agencies, iwi and Māori, community, whānau and service providers will work collaboratively towards an improvement in collective Māori wellbeing. A prison is at its most effective when it contributes to other agencies' outcomes. Any future measurement of prison performance should include an assessment of the prison's potential to contribute to long-term public safety, the strengthening and empowerment of families and community, the development of civic values, and its contribution to social capital and social cohesion.

Deficit-based approaches to prisoner rehabilitation and reintegration

The rehabilitation and reintegration model favoured by Corrections is needs-based, and functions on the basis that offenders are different from the rest of us. The standard response to offenders is to focus on their problems. Māori object to this approach as it involves doing things to people rather than with them. Māori have traditionally been treated as subjects of dependency, and have been denied the opportunity to take control of their lives. As a result of the compliance culture which permeates the criminal justice system offenders are, through the sentence management process, subjected to well-meaning instructions about what they need to do in their lives to "put things right".

> 'Māori are being imprisoned at a rate **six times that of non-Māori**'

Building on strengths: An alternative approach to rehabilitation and reintegration

The promotion of strengths-based programmes with a focus on social identity change, whānau-supported reintegration and a values-based model of transformation is the approach preferred by Māori.

Redefining public safety

The language of "public safety" is embedded in the criminal justice system. Its particular view of "public safety" comes from the recognition that persons arrested and sentenced to prison are not randomly selected from our society. They are disproportionately poor, disproportionately Māori, and with disproportionate health, addiction and mental health conditions. They also have poor educational and employment skills, and marginal housing, and are more likely to come from violent neighbourhoods and dysfunctional families and whānau. They are widely perceived as an underclass, presenting a safety risk to a law-abiding community.

For Māori, public safety is achieved when the functioning of communities and whānau reflects a collective sense of wellbeing beyond the aggregation of individual behaviours (Travis & Visher, 2005). Recidivism is not the ultimate measure for ensuring public safety. Public safety can be affected not only by a lack of sentence compliance but by overzealous enforcement, and destabilising the whānau of offenders (M. E. Smith, 2001).

The key measure is the way that communities and whānau function, and in large part, their sense of safety in their relationships with each other. It is only in recent times that whānau has been recognised as a positive social construct which should be nurtured and supported, rather than as an impediment to economic and social progress.

From offender management to whānau transformation

One of the key comments made in a recent Superu (2017) report was that we have more information and knowledge than we use and we need to be better at sharing it (p. 7). Currently, criminologists are revisiting the work of early theorists who focused on why people became offenders, and who described the manner in which people assumed or were assigned deviant labels. Goffman's (1963) conceptualisation of stigmatisation is one such early work. While he described how people entered into deviant roles, he did not consider how they exited them, and how they assumed a positive identity. That is changing. Recent research focuses on such issues as the nature of identity transformation; the role of programmes, whānau and social support in transforming the self; and how reformed offenders use their ex-identity in service to others (Veysey, Christian, & Martinez, 2009; Ward & Maruna, 2007).

This recent research has the potential to lead towards a theoretical framework based on:

a) the theory of whānau development, and the building of strength and resilience in whānau

b) the theory of social identity change, and desistance from anti-social behaviour.

Exemplars of whānau ora are whānau who are setting their own goals for their own development and who pursue and achieve them in all spheres (Lawson-Te Aho, 2008; Te Puni Kōkiri, 2005). Whānau require additional support in making the transition to being a successful whānau.

Desistance theory aims to alter behaviour through a process of personal transformation (Loeber, Stouthammer-Loeber, Van Kammen, & Farrington, 1991; Maruna, 2000; Meisenhelder, 1977; Sampson & Laub, 1993; Shover, 1996; Sommers, Baskin, & Fagan, 1994). Whānau transformation, however, can be achieved using a "behavioural-ecological" model of intervention in which the entire precariat community is viewed as an individual client and the community's weaknesses and strengths are diagnosed and addressed (Hunsaker, 1981). Interventions are designed to shape the behaviour of the community so that it provides a more adaptive setting for its members. In this model, a reversal of power is implied; community leaders are directly involved in positively influencing change.

Such an intervention employs the whānau and community members as change agents (Cooper, 1967). Early research found that professionals were no more effective than paraprofessionals, and in many cases were less so (Durlak, 1979). A 1990 meta-analysis showed that where interventions employed members of the Indigenous community (including present and former gang members who were part of targeted setting), they were more likely to produce positive results (Davidson, Redner, Amdur, & Mitchell, 1990; Reissman, 1965).

What we have learned

1. The key "public safety" measure defines how communities and whānau function, and in large part determines their sense of safety in their relationships with each other.
2. Whānau must be recognised as a positive social construct which should be nurtured and supported rather than seen as an impediment to economic and social progress. For Māori, public safety is achieved when the functioning of communities and whānau reflects a collective sense of wellbeing beyond the aggregation of individual behaviours.
3. Recent research has the potential to lead towards a theoretical framework based on:
   a) the theory of whānau development, and the building of strength and resilience in whānau
   b) the theory of social identity change, and desistance from anti-social behaviour.

SUMMARY

This paper is intended to provide the criminal justice sector with a pathway for a "safe and effective" criminal justice policy through a closer consideration of the role of whānau and whakapapa (relationships). It has challenged public sector "business as usual" thinking and urges a reconsideration of rangatiratanga within the criminal justice space.

Current public policy is based on the false assumption that the purpose of the criminal justice system and imprisonment is, and has always been, the same for Māori and non-Māori citizens of New Zealand. A closer examination of our colonial history shows otherwise. First, the imposition of British law and penal policy on Māori expedited the process of assimilation by preparing Māori for British citizenship. Second, it was a means of denying Māori the right to punish and correct according to their own tradition and tikanga. Third, the imprisonment and arbitrary detention of entire whānau (men, women and children) was a key strategy for dealing with Māori who resisted the unlawful actions of the state, or who were perceived by the state as comprising a "dangerous underclass" or being "in rebellion" to the state.

The response of Māori to imprisonment was one of fear and repulsion, and it had a profound effect on their personal mana and tapu. Since then, the state's determination to ignore or reinterpret the Māori cry for tino rangatiratanga and to deny the expression of core Māori values has meant that the development of a Kaupapa Māori justice system has not been within its grasp.

The introduction of Whānau Ora in 2010 and the idea that whānau ora, or family wellbeing, can be achieved through empowering whānau as a whole, rather than focusing separately on individual whānau members and their problems, has changed that. Pākehā have started to accept that Māori models of justice move beyond individual offending and are more about maintaining community wellbeing than imposing punishment.

A focus on whānau and whakapapa needs to encourage closer scrutiny of legislative and policy processes. When legislation is introduced which breaches human rights and is discriminatory, and affects all offenders and their families, it impacts on Māori and their whānau disproportionately. Processes must be introduced which measure the impact of new legislation and policy on socioeconomic and cultural disparities and take into account the Crown's obligations under the Treaty of Waitangi. The processes would identify the unintended consequences of a new initiative or legislative proposal and consider alternatives that prevent rather than promote racial disparity within the criminal justice system.

Recent political and public discussion about the concept of a Kaupapa Māori prison centres on the willingness of government to establish an independent Māori prison based on Māori justice principles. Such a prison would from the outset work to restore inmates' mana, protect their tapu, achieve balance and, at the end of it all, restore the offender back to their community as a fully functioning human being.

In the absence of political support for Kaupapa Māori prisons, the next best option may be to promote the development of a "whānau-facing" prison system. Housing people in a prison should not be significantly different from housing people in a well-designed healthcare facility or in any other kind of "normal" social environment. Such a prison system would affirm the role of whānau in strengthening Māori cultural identity and function within a rights-based framework—one which encourages the closer involvement of Māori and whānau within the prison.

Such a move would encourage wider debate and discussion about the nature of whānau-facing justice—and the nature of justice itself. For example, the concept of "public safety" permeates political and public sector thinking. For Māori, public safety is achieved when the functioning of communities and whānau reflects a collective sense of wellbeing beyond the aggregation of individual behaviour. Recidivism is not the ultimate measure for ensuring public safety. Public safety can be affected not only by a lack of sentence compliance but also by overzealous enforcement and official behaviour which destabilises the whānau of offenders.

In the long term, closer attention to the issues of whānau and whakapapa within the criminal justice system will lead to the development of a new paradigm of transformative justice based on whānau development and strategies which build strength and resilience, and promote desistance from crime.

PROJECT TEAM:

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APPENDIX A: Wright's (2009) Continuum

Models	Denial	"Soft"	Moderate: Cultural model	Inclusive: Structural Model	Strong: Diversity Model	"Hard": Separation Model
Goals	Conformity to Pākehā culture; denying place of Māori culture	Celebrating Māori culture, language and tradition in society	Improving race relations	Partnership within institutions	Separate but equal	Māori self-determination, tino rangatiratanga; the system; centres of resistance
Structures	Status quo; Western and "colonial"	Removal of discriminatory barriers and prejudice	A Māori perspective added to the culture of an institution	Active Māori involvement within the central mission of an institution	Parallel institutions both committed to the same aims overall	Māori models of self-determination
Policy Outcomes	Retaining status quo; absorption acculturation	Incorporating Māori; maintaining assimilation	Accommodation; integration	Responsiveness to the other; inclusivity; partnership	Devolution of power, resources and outcomes; self-management; parallelism	Self-determination
Treaty of Waitangi	Historical; nullity or fraud; irrelevant	Māori invited into colonial framework	Paternalistic parts to be honoured	Partnership as one people; adaptable	Partnership but parallel; principles	Movement from restorative justice framework to framework based on Indigenous values and principles

APPENDIX B: An Indigenous Rights Framework for Prisons

Iwi, Investment in Infrastructure and Economic Development	***Article 20*** Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.
Governance and Participation in Management	***Article 5*** Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.
Whānau Development Rights in Programme and Service Provision	***Article 23*** Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.
Improvement of Economic and Social Conditions	***Article 21*** 1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security. 2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.
Whānau Cooperation	***Article 36*** 1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders. 2. States, in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.
Whānau Participation in Decision-making	***Article 18*** Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.
Whānau-mandated Representation	***Article 35*** Indigenous peoples have the right to determine the responsibilities of individuals to their communities.
Consultation with Iwi and Māori	***Article 19*** States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.
Humane Containment	***Article 7*** 1. Indigenous individuals have the rights to life, physical and mental integrity, liberty and security of person. 2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.
Whānau Engagement in Cultural and Recreational Activity in Prison	***Article 11*** Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
Whānau Involvement in Prison Education	***Article 14*** Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.
Use of te Reo Māori in Prisons	***Article 16*** Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.
Service Provision and Delivery	***Article 23*** Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

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