THE MAORI AND THE CRIMINAL JUSTICE SYSTEM A NEW PERSPECTIVE: HE WHAIPAANGA HOU

PART 2

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Study Series 18

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Private Box 180
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November 1988

ISSN 0113-0234
ISBN 0-477-07247-X

FOREWORD

"He Whaipaanga Hou" is the second part of a research project which attempts to reach an understanding of Maori offending.

It completes an exercise begun in 1985 and initiated by the Department of Justice in its search for some explanation for the over involvement of young Maori in the criminal justice system. Both parts of the study were undertaken by Moana Jackson of Ngati Kahungunu and Ngati Porou.

As my predecessor Mr Callahan said in the department's 1985 annual report, the problem needed addressing in a manner that took into account the way the criminal justice system interacted with the Maori people.

The need for a comprehensive approach to this issue, which involves the participation and co-operation of the Maori community, has been identified in a number of recent important reports. Although "Puao-te-ata-Tu" was principally about the operations of the Department of Social Welfare, its authors drew attention to the disproportionate number of Maori appearing before the courts and in the prisons. The 1987 Report of the Ministerial Committee of Inquiry into Violence devoted a section to the Maori perspective. It noted the Maori community's plea to be given an opportunity to provide an answer and supported the broad philosophical approach of "Puao-te-ata-Tu". The Roper Report recommended that the initiatives of the Maori people be brought to bear on such areas of concern as families and children at risk, education, disadvantaged groups, rehabilitation of prison inmates and the court system. The Report of the Royal Commission on Social Policy did not address the specific issue of criminal offending but stressed the general importance of developing economic and social policies within an appropriate cultural context.

Part I of "He Whaipaanga Hou" was published by the department in February 1987. It outlined a methodology for a study of criminal offending by Maori from a Maori point of view which took into account cultural, historical, and socio-psychological factors.

Part II is the end product of a consultation process spread over 14 months. Hui were held in many parts of the country particularly in the North Island and in various venues - marae, kokiri centres, government offices, sports clubs, gang headquarters, schools and private homes - in order to elicit the experiences and perceptions of Maori people. Over 3200 people were consulted in this way and another 2800 were interviewed or surveyed. During the synthesising and distilling of views consultation was continued with pakeke and kaumatua of Ngati Kahungunu and other iwi who guided the report's written formation. The result is not an analysis of the social and biographical data of individual Maori offenders but an appraisal of the total context within which Maori offending takes place and is dealt with. This includes the history and policies which have led to and maintained a social environment in which many young Maori people have an acute lack of a positive cultural identity and a deep sense of confusion and frustration.

The report is a major contribution to the understanding of Maori offending and I believe it will prove to be of great value to the department and to others outside the department. It conveys a great depth of anger and anguish from within the Maori community and it is critical of this department and other agencies. Although there is validity in some of the criticism levelled at this department (and I can comment only in respect of this department) the reader should be aware that neither this department, nor the other agencies mentioned, have had an opportunity to respond to the comments made in the report.

One of the themes of the report is that the criminal justice system and the Maori offender cannot be viewed in isolation from the social, economic, and cultural influences which shape the well-being of the Maori people. The remedial initiatives and actions put forward in the study accordingly extend into many areas of social policy and the operations of most government institutions.

Major changes in government policy, planning and service delivery are advocated in order to proceed in the direction of biculturalism. In the criminal justice system a sharing of resources, responsibilities and decision-making with appropriate Maori people by those agencies operating at each stage of the system is seen as necessary.

The report's proposals also canvass the importance of language and culture, including patterns of family and iwi nurturing. As well they range through education and employment, and the influence of the media and alcohol.

Undoubtedly the most controversial part of the report is its advocacy of an autonomous system for dealing with Maori offences that parallels the existing criminal justice system. This proposal is rested on the status of the Maori as tangata whenua and on an interpretation of the word rangatiratanga in the Treaty of Waitangi.

It is not clear from the report what this parallel system might entail in practical terms. But it is a concept that has already raised concerns in the wider community and it is one which the Minister of Justice has specifically rejected. The Minister has made it clear that while he supports the need to make the legal system sensitive to Maori values and needs, he believes it is essential that New Zealand retains one legal system in which everyone is equal under the law.

The report provides useful ideas on how the legal system could be better attuned to Maori values. It would be regrettable therefore if attention was unduly focussed on the proposal for a parallel system to the detriment of the many valuable insights, commentaries and perspectives it contains.

"He Whaipaanga Hou" has been presented to the department by Ngati Kahungunu and we are looking forward to working through the issues raised by the report in relation to the department and establishing procedures for discussing these with the wider Maori community. This process can begin when "He Whaipaanga Hou" is returned to Ngati Kahungunu and other iwi as a published document.

Secretary for Justice

ACKNOWLEDGEMENTS

Many people have helped in the preparation of this Report.

I wish to thank especially the kaumatua and kuia of Ngati Kahungunu ki Heretaunga for their support and guidance, and to the people generally of Ngati Kahungunu and Ngati Porou whanui - Tena koutou taku whanau Ngati Kahungunu me Te Tai Rawhiti. Anei te mutunga o tenei kaupapa. Na koutou katoa e arahi e tautoko. No reira mihi mai, whakatau mai i roto nga korero kua rangatira nei.

I thank those of our people throughout all of the iwi who shared their views and their experiences. Your interest and support has given strength; your views are hopefully conveyed adequately in this Report.

I thank my research assistants Dean Hapeta, Ngati Raukawa, and Hinemoa Awatere, Ngati Porou/Ngati Whakaue. Tena rawa atu korua mo ta korua mahi, awhina, tautoko.

My thanks also to the staff of the Policy and Research Division, Head Office, Department of Justice, and to the staff of the Wellington District Probation Office.

I offer this work in memory of my tuakana, Billy Te Awaroa Nepia, my kuia, Parekura Beaton, and my kaumatua, John Tangiora, who travelled with us to hear the concerns and mamae of our people -

Aku tipuna, takoto mai, takoto mai.
Takoto mai i roto te wairua tapu.
Na koutou ka mau ka manaaki e ahau a koutou kaupapa. Kua eke, kua ea, kua rangatira.
No reira, hoki wairua mai.

Moana Jackson

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HE PURAKAU TENEI HEI KORERO HEI WHAKAATU KI TE IWI

E nga mana, e nga reo, e nga iwi, tena koutou, tena koutou, tena koutou katoa

I nga wa o mua e mohiotia nei e tatou ko te reanga o kui ma o koro ma, me ka pa mai he raruraru he awangawanga ranei ki te iwi, tere tonu o ratou whakaaro ki te whiriwhiri. He aha te putake o tenei raruraru? Akuni pea he whiu, he tikanga ano mo tenei ahua. He korero ano pea hei korerotia.

No reira, i te wa i puta ai nga whakaaro o o tatou tipuna, kia whakawhiti ratou i te Moana-nui-a-Kiwa, wehi ana o ratou whatumanawa ki te taumaha o tenei kaupapa. Te tawhiti, te taitai o nga ngaru o te moana. Ka whakaaro ano ratou, me pehea ka taea e ratou tenei huarahi tipua. Ka korero ratou mo nga manu, e taea nei e ratou te whakawhiti nga moana i raro, i nga manaakitanga a Tawhirimatea, to ratou tipuna. Koia nei, te matua o nga hau. Maana e manaaki ratou i te huarahi - ma nga whetu i te po ma tama-te-ra i te awatea. Ma ratou e honohono nga ara, a, tae noa ki nga whenua o tera taha i korerotia nei e Kupe. Ko enei nga tikanga a iwi i waihotia nei e ratou ma. Mai i Tawhiti-nui, Tawhiti-roa, Tawhiti pamamao, te hono ki wairua, tau ana ki Aotearoa.

I waenganui i enei mahi, i to ratou unga mai, ki tenei whenua, ka kite ratou te maha me te tini o nga kai moana o te whenua nei. Ka moumoutia e ratou nga kaimoana, me nga kai o te ngahere, engari kaore i roa ka kite ratou i o ratou he. Ka hoki ano ratou ki nga tohutohu o o ratou tipuna, ko enei nga akonga rahui, i heke kia tatou o tenei wa. Mai i nga mahi i mahia e ratou, kua heke mai enei hekenga a iwi kia tatou. Te mauri o nga mea katoa, nana nei i whakatangata tatou.

I roto ia tatou mahi i nga wa katoa ko nga kaupapa i heke mai, ko nga koha i tukuna mai e ratou ma. Me ka takahia e tatou enei mea ataahua ka whakataurekarekatia e tatou, tatou ano. No reira, kia mau ki nga mea a kui ma a koro ma. Tautokotia A ratou akonga, ma enei ka tu rangatira tatou.

Ka kite tatou mai ia ratou korerorero, i a ratou waiata, i heke kia tatou te rangatiratanga o to tatou iwi. I whiria e ratou i nga whiringa mai i Hawaiki, nui, ia Ranginui, ia Papatuanuku, ia Io te whakamaramatanga o nga kete o te wananga. Te kete tuauri,

te kete tuatea
te kete aronui.
Kua whakatauria ki runga ia tatou.

Kua korerotia nga korero o te wananga. Te matauranga, te maramatanga, i tukua mai e ratou ma, hei awhina hei whakanui i te iwi Maori. Inaianei, ko tapiritia nga mahi o te wananga, ki nga matauranga o te Pakeha, ka puta te awangawanga ki a tatou. Kua ngaro ke te nuinga o te wananga, ia tatou te iwi Maori. Me pewhea ra? Ka taea ano te huri whakamuri

ma te reo ranei -
ma nga marae ranei -
ma nga kaha o te iwi katoa.
Me pewhea.

THERE IS A STORY THAT NEEDS TO BE TOLD -

In the days that we call the past, and in the times when doubt or trouble confronted the Maori, wise people would seek explanation and say, "There is a story that needs to be told."

And when the ancestors looked in awe across the never-ending sea, and wondered how they could ever navigate its vast and unknown loneliness, a story was told. A tale of migratory birds guided by the moving winds of Tawhirimatea, and of star paths linking their flights to the far horizon. And from the story came a certainty that created a tradition of great voyages to new and distant places.

And when the ancestors turned to the ocean for food, and wondered how to maintain the bounty that was waiting for them, another story was told. A tale of the careless robbing of once rich reefs and an unforgiving Tangaroa claiming back the mauri of his bounty. And from the story came a certainty that created a tradition of respect for the gifts that are given to us, and a realisation of the need for balance in all things.

And when, in the course of everyday events a person abused those gifts or upset the balance, and people wondered how to restore the good order and peace of the iwi, a story would be told. A tale of imbalance in those who had done wrong, and the wise acts of those who in the past restored their place and the place of those they had wronged. And from the story came a certainty that created a tradition of precedent and law to guide the ways of the Maori people.

And from the telling of all those stories came a belief that a stable sense of order, of knowing one's place in the world, gave strength and understanding. And from that understanding came solutions to the many problems the people would face throughout their lives.

And the stories themselves came from the voices of the iwi and were woven from the threads of their own existence.

Today, as the harmony of life is threatened by pressures unknown to the ancestors, and as the young seem to upset the uncertain balance of their place in the world, there is a need to seek out new stories, new certainties, new understandings.

This Report tells one such story and seeks out one such understanding.

HE WHAKAMARAMA — INTRODUCTION

Kaua e tapaetia te he ki te rawakore,
Kaua hoki e tautokotia;
Engari whaia ko te maramatanga.
Seek not to blame the wrongdoer,
Seek neither to condone;
Seek instead to understand.

NGA WHAKAARO O TE IWI - "THE PEOPLE'S THOUGHTS"

The following statements are collected from the research hui and discussion - other statements are inserted throughout the text and marked with an asterisk.

> *"You have a mammoth task but begin by looking at the past. We are aware of what's happened in the past and we need to have published our own views and experiences. We have a setting of yesteryear where Maoridom was something to be proud of, very disciplined people, and they had purpose...now make a comparison with the Maori of today where we are dispersed and depressed and you will understand what has happened and why we have these things like crime...you tell our story of what has happened."*

> *"I'm going to say what's easy - that a lot of our young people who go to prison deserve to be there because they've stuck their necks out - they've committed a wrong against society, often our own people, and they pay the penalty...just as they would have done in the old days. But*

what's not easy is to say why they do those things - that needs a real study of all the things that make our people what they are today and that can only come from us."

"When some of our Pakeha people researched this thing they didn't dig deep enough...sometimes I get hoha cause they only go so far...how much of these people know our culture, do they understand us, do they even listen to our side of the story?"

"When I see what some of our young men do, those gang rapes and things, I get angry, I want utu, because its our own people getting hurt...but then I tangi, I cry, because I don't know why they do those things."

"Some of our young ones...we want to jump on them and say what are you doing to drag us down, our Maori prestige? But that's no good...we have to stand back and say why do you act like that?"

"Finally a pakeke had the guts to say to me...stop whacking policemen over, stop calling police officers pigs, prison officers screws,...those things were just my anger, my gut reaction against symbols...symbols of what has happened to us as a people...symbols of all that took away my wairua. They stand for all the attitudes and laws and history that have tried their damndest since 1840 to take away our mana Maori."

"We can't talk about justice and our kids who are crying out to us unless we see what justice means...what happens to our people, and what happens to our kids is part of the same story...that's what we need to understand, that crime is part of injustice."

"There are many things that we have that are great and I believe with all sincerity that the cure for our ills, like our rangatahi in the prisons, the cure lies in us glancing back and letting our past give us the answers for the future for our mokopuna."

"Our people are the most consulted in the world to the point of being the most insulted you know - will anybody listen this time?"

This Report is the second stage of a research project[1] which attempts to provide some insights into the complex questions of why some Maori men become criminal offenders and how the criminal justice process responds to them.

It approaches the topic from within a Maori conceptual framework and seeks to explain Maori perceptions of the causes and consequences of criminal offending. It endeavours to do so within the context of three broad aims-

(a) to clearly facilitate a valid explanation of Maori offending from a Maori point of view.

(b) To use a Maori research perspective to consider structural, social, and cultural factors within New Zealand society that may lead to criminal offending by young Maori men.

(c) To elicit perspectives on the relationship between the Maori and the criminal justice process, and to ascertain what influence the operations of the process may have on the rate of Maori conviction and imprisonment.

These aims have been formulated in a deliberately broad context because criminal offending is woven so deeply within the social fabric of the New Zealand community. Its presence both reflects and questions society's sense of security and good order. Its manifestation threatens social stability by stretching the cohesive threads of community life. Its understanding must therefore be sought in a context which recognises the complexity of its causes and consequences.

Such understanding is founded in an essentially holistic framework which places Maori offending in the context of the social, economic, and cultural issues which have shaped New Zealand society. It has grown out of a specific socio-historic relationship and is influenced by processes operating within a particular cultural construct. Both require a wide ranging framework of analysis.

The pursuit of this analysis is based in the hurt shared by Maori people over the pressures which lead their young into offending, and by the harm which crime causes to them and their community. The wasting imprisonment of so many young Maori men, the violence so often meted out by Maori upon Maori, and the shame inflicted by crime upon Maori families, is a source of deep concern to Maori people.

To understand this concern, and to seek explanations for the criminal acts which occasion it, is the focus of this Report.

TE WHAKAPUMAUTANGA O TE KAUPAPA - THE RESEARCH IN CONTEXT:

The first step in searching for these explanations is to analyse the extent and reality of criminal offending by young Maori men.

The first and obvious difficulty in ascertaining the extent of any rate of offending is that not all committed crime is brought to the notice of the police. The "dark figure" of crime is an unknown variable and a "Maori crime rate" is simply an index of those crimes committed by Maori people and reported to or by the police.

The accuracy of this index is questionable however, because of the different methods of compilation used by the Police and Justice Departments. The accuracy of their figures present an acknowledged difficulty which flows from the varied methods used to define ethnicity, and from their culturally inappropriate methods of identification. The problem was noted in the Report of the Ministerial Committee of Inquiry into Violence where it is stated

> *"...There appear to be inconsistencies between the methods of ethnic identification used by the Police, the Justice Department, and the census... the police determine an offender's ethnicity by asking the offender ...but this is not always done; rather a judgment is made about...ethnicity...based on...appearance and name. It follows that statistics...relate to perceived rather than actual ethnicity."*[2]

Statistics based on observer guesswork rather than individual declaration may not therefore accurately reflect offending by young Maori because the actual basis of identification could be wrong. A consistent use of observer estimation to classify Maori offenders in fact produces not a "Maori crime rate", but a "Maori as perceived by the police" crime rate. Since the dark figure is also unknown it is clear that assessing the reality of Maori offending from statistics is a difficult task requiring care in both interpretation and analysis.

Unfortunately, the statistics are often used, in some research and in the media, with apparent disregard for the difficulties involved. Instead, they are presented as unqualified statements about Maori offending and even, in some instances, as explanations rather than descriptions

of the situation. Such a use is methodologically dishonest. It is also socially mischievous because the constant use of such statistics not only produce an erroneous perception of the extent of Maori offending, it also contributes to the creation of negative stereotypes about Maori behaviour in general.

Because the statistics are often used as part of the media concentration on particularly sensational or violent crimes committed by young Maori men, often in gangs, a distorted and unhelpful stereotype becomes established. This has the effect of turning a rationally-based concern about crime into a publicly irrational fear about certain types of offences and offenders: a frequent concentration on Maori offenders means that this fear can lead to an apprehension based on racial prejudice.

In this Report it is hoped to avoid this problem and to place statistical analyses of Maori offending in an appropriate Maori context. This involves acknowledging the methodological shortcomings of the statistics and the means of identification on which they are based. It also involves acknowledging the fact that the Maori offender is a person shaped by quite different forces and influences than the Pakeha offender. His behaviour, and any statistics which attempt to reflect it, are mere indicators of a particular pattern of existence which is part of, and inter-related with, a wider socio-historic and cultural context.

Many statistical analyses of Maori crime ignore the importance of those factors and the difference between Maori and Pakeha offenders. Some allege that Maori men are disproportionately represented in prison because they make up a percentage of the prison population which is higher than their percentage of the combined Maori/Pakeha population. From a Maori perspective this type of analysis is simplistic. It both ignores the differences between Maori and Pakeha offenders and assumes that crime and ethnic statistics are reliable and static enough to permit such broad-based comparisons. Of course they are not.

This Report does not place Maori offending rates in a comparative context with the Pakeha but views them solely within the population context of the Maori people. It thus accepts the reality that some Maori men are arrested, sentenced and imprisoned; according to the most recent Prison Census there were 1214 Maori men held in penal institutions in November 1987.[3]

The reasons for this situation have been much discussed by criminologists and other experts. Unfortunately their discussions have produced little understanding because of the determinedly monocultural nature of the research itself. In this context the monoculturalism has manifest itself in two implicit assumptions. The first is that methods of research developed in a Western tradition are applicable in a different cultural context; the second is that alternative methods either do not exist within that context, or are inferior in terms of "objectivity" and applicability. This has led to a view that "Maori crime" can be understood as a "sub-set" of "Pakeha crime" and that the Maori offender is akin to the Pakeha. This in turn has led to Maori criminal behaviour being viewed as a current phenomenon influenced only by contemporary socio-economic or psychological pressures. In effect, the behaviour of the Maori offender has thus been isolated from the historic and socio-cultural forces which shape it, and has been interpreted according to Pakeha perceptions.

The holistic perspective of this Paper places the present-day manifestation of "Maori crime" within the context of its historical antecedents, and interprets it within the framework of Maori perceptions. The values, attitudes and place of the Maori community today are a cumulative consequence of the incidents and pressures which make up its history. In particular, they are the consequences of the recent past, and the interaction of the Maori with the introduced world of the Pakeha. The behaviour of those young Maori labelled as criminal flows from that process of interaction.

> *"The links are there all the time in Maoridom - there's no one action by Maori that should be perceived as being different from our philosophy of life. No one action at all can be separated from the things that have effected us as a people. The behaviour of our kids - when they break the law - is part of that whole cycle you know of being cut up and sliced by the forces of history."**

Such a viewpoint highlights the importance Maori people attach to the past as a guide to understanding the present; a perspective which has unfortunately been the cause of much confusion. As applied to a contemporary issue such as criminal offending, the perspective does not assert, as many Pakeha people believe, that young Maori dominate the prisons simply because of century old land claims, or that Maori offending is directly "caused" by colonial injustices. However it does claim that those injustices defined Maori/Pakeha

relations and determined the contemporary place of the Maori community which so often exhibits the stresses that can render the young criminally vulnerable. To ignore the history which established that environment is to inadequately discern the reality of Maori offending. In this sense it is indeed true that

> *"we do not study the past, but the present in the light of the illumination which the past casts upon it."* [4]

To understand the Maori offender, we therefore need to understand his make-up, his community, and the historic forces which shaped them both.

In this Report, such an understanding is drawn from two main premises or threads of understanding.

The first is that the behaviour of members of a particular culture is influenced by both the values of that culture and the pressures exerted upon it by any other cultures with which it may coexist. Implicit in this coexistence are the dynamics of intercultural conflict which are heightened when one cultural group is in a position of numerical and institutional dominance over another. The sources and consequences of this conflict will unavoidably shape the relations between the two cultures. They will also, of course, shape the values and behaviour of people within them. Any understanding of the cause and effect matrix of this conflict has been hampered hitherto by a monocultural bias. "Culture conflict" has always been seen to arise because of a Maori inability to adapt to the inherently "right" Pakeha values. However, the issue in this culture conflict is not whether Maori youngsters may be maladjusted to Pakeha values, but whether those values are in fact appropriate to them.

An equally important issue is whether the attempted imposition of Pakeha values actually denies young Maori people the chance to absorb and adjust to their own. The policies implemented through the schools, the law, and other institutions, have meant that Pakeha society has demeaned the worth of Maori culture and raised questions about its survival. The assimilationist assumptions which underlay the belief that Maori people are not adequately adapted to Pakeha values do not explain cultural conflicts; they are in fact the cause of them.

The misinterpretation of culture conflict has done little to further understanding of issues such as Maori offending. For this reason this Report interprets "culture conflict" within a context which identifies the effects that the policies of cultural subordination have had on the Maori community. From such a viewpoint a specific issue such as Maori offending can be seen as part of a broader weave of socio-cultural interaction. Thus the conditions of low socio-economic status and lack of educational qualification which are often associated with criminal offending can be seen as products of the inter-relationship between the Maori world and the wider society. It is the threads of that relationship, and the consequences which flow from it, that must be unravelled if a proper understanding of Maori offending is to be gained.

> *"We blame the system, we blame education, we blame our parents, we blame the police, we blame all sorts of things...but we need to sort out how all these things are tied together and see how they effect our people."**

The first premise in understanding the Maori offender therefore is to place him in the framework of Maori cultural life as it uneasily exists within the wider setting of New Zealand society. In this context the offenders can be woven into the complex fabric of their total existence, with each thread representing the social, economic and psychological forces which have shaped them and their culture. Such an approach means that a consideration of Maori offenders is also a consideration of the society which governs over them and the systems which it uses to control their behaviour. An understanding of the former is impossible without an analysis of the latter.

The second premise of this Paper is that the present day relationship between the Maori offender and the structures of the criminal justice system contain factors which contribute to the "Maori crime rate." The historic relationship between the Maori people and the criminal justice process has been an unhappy one, and the analysis focuses on the reasons for that unhappiness as a necessary introduction to the current operations of the police and the courts.

It has been stated that

> *"...what was criminal was what the authorities defined as criminal... and it was given definition only within a set of social relationships."*[5]

To understand crime, one therefore needs to consider the relationship between the crime-defining authorities and those whom they define as "criminals." The mechanisms of definition are laid down by "the law" and grow out of the norms accepted by the public as right. The police and the courts classify a person as criminal in a systemic response to those approved definitions of unacceptable behaviour. How that systemic response operates in the specific case of the young Maori offender, and whether it functions in a different way to the Pakeha offender, are important factors in understanding the Maori crime rate.

The first premise in this Report is called "offender-based", and focusses on the unique socio-psychological make-up of the Maori offender within the context of his own culture. It will discuss the historic forces which have shaped the contemporary state of Maori culture and how that affects the social values and emotional attitudes of the young Maori. It will illustrate the role that the law has played in this process of cultural change and how it has both directly and indirectly contributed to those conditions which increase the vulnerability of so many young Maori men.

The second premise is "system-based" and attempts to analyse the effects of the specific interaction between the criminal justice system and the Maori offender. It will involve an analysis of the various steps in that interaction and place the system in the institutional context of structures imposed on Maori people since colonisation.

NGA TIKANGA O TE KAUPAPA - THE RESEARCH APPROACH

Both premises involve an understanding of a contemporary phenomenon, "Maori crime", in the context of a present born of its past. The whakatauki

> *"nga hiahia kia titiro ki te timata, a, ka kite ai tatou te mutunga"*
> *(you must understand the beginning if you wish to see the end)*

is the conceptual thread which frames an understanding of Maori perceptions about the courts and criminal behaviour, just as it embraces the Maori comprehension of our wider society.

The story of "the beginning" in this context is essentially the history of Maori/Pakeha contact. Like all histories it has been a mix of good intentions and bad, of understanding

and incomprehension, of justice and injustice. It is essentially the history of a power relationship in which the dominant Pakeha culture and its structures have excluded Maori institutions and values from the processes of social organisation and authority. The effect of that relationship has been to bequeath an uncertain and often unhappy legacy to its beneficiaries.

Today the legacy manifests itself in a society struggling to confront the realities of its colonial past while endeavouring to meet the challenges of its future. One manifestation of that struggle is found in the present social position of the Maori people.

So often stated that it has become a cliche, the Maori provide the negative features of all social indices. Statistics are monotonously produced to show that the Maori has a shorter life expectancy than the Pakeha, that there are more Maori unemployed, that there are more Maori failures at school, and perhaps most often cited, that there is a "disproportionate" number of young Maori men in prison. It is a consequence of our colonial past and the monocultural attitudes it fostered that while as a society we have been very adept at tabulating the statistics, we have been less able or willing to interpret them in a meaningful way.

This Report is an attempt to remedy that failure and to gain some understanding of the causes, consequences and social perceptions of criminal offending by young Maori men. It draws but lightly on the acknowledged, if often competing, theories of Western criminology. Instead it draws the threads of its understanding from a framework based in Maori concepts of causation, analysis and interpretation.

In other societies, the groups who have produced most recorded crime have been very much the same. There has been no equality of the sexes or of ages in compiled statistics of crime. Neither has there been an equal distribution of offending throughout the economic classes. Instead, young men, and especially young poor men, occupy a disproportionate share of places in prison. And minorities, except minorities in power, have tended to make up the largest crime-prone group of all.

The trends recorded among the Blacks and Native Americans in the USA, or among the inner-city Blacks of Britain, find their echo in New Zealand in the young Maori male. It is

the face of the young Maori man which is most often encountered in our courts and most often seen in our jails. It is the mind of the young Maori man which is most often dispirited with mental illness and treated under committal. It is the body of the young Maori man which is increasingly maimed by accident or destroyed by suicide.

The young men faced with these problems are seen as travellers in a migration where the seas which buffet them are not those of Tangaroa, but the changing currents of life over which they often have little control. It is a migration quite different from that which brought our tipuna to Aotearoa. It is a journey of different proportions to that undertaken by our young men who fought with such bravery in World War Two, a voyage some kaumatua call "te hekenga o te toto", the migration of blood. It is rather "te hekenga ka tahuri moumou tangata", the migration of wasted lives.

This Report aims to gain some understanding of this migration and to place it in a context which has meaning for Maori people. For this reason, the main threads of understanding are drawn from contexts beyond the weave of western criminological debate.

The need to weave a different pattern of understanding arises from two main concerns within the Maori community. The first is that the existing research has not provided adequate explanations or solutions for Maori offending; the second is that such research is not based within a Maori framework. It is clear that different, but equally valid methods of investigation are required, and that such methods will actually create

> *"...different types of criminology to suit situations where concepts and resources are different from the West".*[6]

Such a culture-specific criminology recognises that there is an often remarkable layer of agreement on unacceptable behaviour within different societies, but that there are also differences in terms of the definition, understanding and treatment of that behaviour. The conduct of a Maori offender manifests itself in a context dominated by the ideals and structures of another culture. An understanding of his behaviour therefore requires an analysis in both a general and a culture-specific sense. It also requires an analysis of the meaning, significance and adequacy of the systems which the dominant culture has developed to deal with that behaviour.

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

The threads of this current research will be drawn from, and interpreted within, the framework of those cultural forces. They will seek a balance between social and psychological "explanations" of offending, and will interpret them against the background of Maori/Pakeha interaction.

Such a framework asserts that the extant research and any consequent policies which may have flowed from it have been grounded in monocultural methodology. The research has been vicarious, with an apparent unawareness

> *"... that the interpretation of Maori data must be perceived in Maori terms, not forced into preconceived Pakeha methodologies."*[7]

This Report attempts to synthesise the perceptions of Maori people so that understanding of the Maori offender can be elicited. From their perceptions of the behaviour of their own young people come the seeds for comprehending that behaviour. From their perceptions of the justice system come insights into its impact on Maori people and the seeds for positive amelioration of those effects. These perceptions establish what may be termed a Maori perspective which can be reflected through a particular research framework.

The basic thread of methodology in this perspective is drawn from a process of consultation with Maori people. While it was necessary to also consult a range of Pakeha people involved within justice processes, the key consultative guide was Maori. It was essential to draw out from the diversity of Maori opinion the hitherto largely untapped wisdom and perceptions which render intelligible both the behaviour of Maori offenders and the systemic responses to that behaviour.

The information gained from this consultative process is difficult to quantify and impossible to fit within traditional Pakeha methodologies. However it is the contention of this Report that the recorded perceptions and views are developed within a Maori framework which is equally valid. It is a framework of whakawhitiwhiti whakaaro (shared thoughts) which encourages input from both old and young and then relies on accurate and impartial assessment to draw out the major issues of concern. It is a framework which was taken to tribal, not court, districts, and was discussed in the forums which each group deemed appropriate. Most importantly, it is a framework which allowed for an expression of Maori views.

Because the methodology was specifically Maori, the information collected in the course of the research also had to be gathered in a way which was specifically Maori. This was done by conducting unstructured and open-ended "interviews" in a way and in forums which were culturally appropriate. These were more "public" forums than the term "interview" implies in a Pakeha situation, because they included korero in a marae or hui situation where others were present. The collection, analysis, and interpretation of the material elicited in this situation required an understanding of the cultural forces and attitudes at play.

This methodology is valid in a cultural sense and needs to be recognised as equally valid in an analytic and research sense. It draws its validity not from pre-set surveys or questionnaires, but from a form of input determined by the particular tribal, hapu, or other group concerned. The input was based on an oral, rather than a written transmission of information.

In specific terms, the research drew heavily on the traditional structure of decision-making and required consultation with appropriate elders, kaumatua and kuia, to provide an accepted base for consultation with the wider Maori community. It also required an acceptance of the need for such research by the researcher's own tribe and whanaunga. In particular, it placed an obligation on the research team to constantly refer back to appropriate pakeke for guidance during the synthesizing and distilling of the views elicited from the consultation. It is this monitoring of draft material which gives the Report validity in Maori research terms and which reinforces the consultative process itself.

The information base for the research is thus woven from a lengthy period of consultation and discussion. For a total period of fourteen months a research team met with a wide cross-section of Maori people: members of the judiciary and members of gangs; the unemployed and those in work; probation, prison and police staff; urban and rural dwellers; kaumatua and rangatahi; the "criminal" and "non-criminal." The hui were held throughout the country on marae, in sports clubs, kokiri centres, government offices, welfare homes, universities, psychiatric units, gang headquarters, courtrooms, and private homes. Over 3200 people attended these hui or were consulted by the research team. (See Appendix One).

The open korero and discussion which made up the information base is distilled within this Report to produce a synthesis of Maori views about crime and the criminal justice system. The approach used to elicit information, and the methods of analysis used to seek out conclusions, are grounded in the reality of shared experiences and perceptions, and in the accepted links between past actions and present consequences. They are grounded also in the lengthy but necessary process of monitoring so that -

"E taku ringa
Kaore naku - na ratou ma i timata
Ko taku
He tuku atu ki te ao katoa"

"O hand of mine
Twas not of me but from the ancients
Came the truth.
I but repeat it now
and tell it to the world."

Perhaps most of all, they derive from the acknowledged interaction between what may be termed attitudes, processes and effects. In the specific context of Maori offending, that interaction is between the monocultural attitudes which permeate society and the justice system, the processes which arise from them, and the effects which they have on an offender. The reality of this interaction provided the framework for the consultation, and the methodological guidelines for the research and the conclusions which it draws.

To augment the consultative synthesis, further analyses were undertaken. Background profiles on some Maori offenders, and the common threads of korero on specific areas of the system such as the role of the police have been tabulated and are included as appendices to this Report. As well, the team visited and observed criminal proceedings in 16 District Courts. With the cooperation of court staff, assessments were made of the interaction between the court, the prosecution, and the Maori defendant. These assessments supplement a number of the views expressed at the various hui and enable a Maori perspective on court procedures and attitudes to be developed.

The process of consultation elicited an often sad and bitter commentary about the police, probation, and the courts. It is not possible to adequately convey the depth of anger often expressed at the hui; neither is it possible to adequately convey the concern expressed about crime. However it is possible to express the wish of Maori people to positively contribute towards its prevention. This Report is hopefully a small contribution towards the fulfilment of that wish.

NGA WAHANGA O TE RIPOATA - THE STRUCTURE OF THE REPORT:

The Paper is divided into four sections.

Part One establishes the legal-religious structure which underpinned traditional Maori society and outlines the conflicts which occurred with the establishment of the English legal system in New Zealand. This outline will help identify the innate respect which Maori people had for legal restraints, and illustrate how this respect was transferred in absolute trust to the British justice system after 1840. It will also provide a context for understanding the subsequent weakening of Maori spiritual, behavioural and cultural values which still exerts an influence on the young Maori of today. In particular, Part One presents two main hypotheses. The first is that the legal constraints of traditional Maori society contain precedents and values suitable for dealing with and understanding contemporary offending: not as fossilised relics reflecting an impractical yearning for the past, but as viable and culturally appropriate alternatives which may provide insights into ways of understanding and dealing with contemporary problems. The second and interrelated hypothesis is that the distortion and suppression of Maori religious and legal ideals helped set in motion the forces which eventually established an environment of criminal vulnerability for so many of today's young Maori.

Part Two formulates an "offender-based" explanation of why some young Maori men commit crimes. It endeavours to place the Maori criminal in the socio-cultural cycle of confinement that determines the place of Maori people in New Zealand society today. It attempts also to place Maori criminal behaviour in a context which recognises the unique psychological and emotional stresses which are caused by that cycle.

Its aim is to

> *"render intelligible the behaviour under examination... with an intelligibility that is compatible with the objective meaning of the behaviour for the actors involved."* [8]

Part Three is a "system-based" analysis of the various steps in the justice system as they affect the Maori offender. The process by which this system replaced Maori concepts of control, and the way it now operates in relation to the young Maori offender, are interwoven parts of the same story of cultural conflict which has shaped the Maori community today.

The imposition of the English legal system reflects the fact that English Law, like any society-based law, carries with it the myths and biases particular to its own culture. It is necessary to analyse the ways in which these biases have defined the role of the State's enforcement, prosecution and sentencing agencies in relation to the Maori offender. In particular, it is necessary to discuss whether specific actions of those agencies may currently contribute to differences in Maori/Pakeha rates of imprisonment.

Part Four draws the preceding threads together and details some specific areas which merit further research. It places these threads and a number of remedial initiatives within the context of the Treaty of Waitangi. The obligations placed on both parties to the Treaty are then used to provide the overall framework for understanding Maori offending and for remedying institutional failings which may contribute to it.

The Report does not deal with the Prison Service or its effects on the many Maori delivered into its custody. Its treatment of Maori inmates, the culturally inappropriate nature of its training, and the historical exclusion of Maori views in its policies, are an inevitable consequence of the Western philosophy which isolates an individual from the control of his community. They are also a consequence of the ideals motivating the whole criminal justice

process that eventually places young people under its control. They are issues of great concern and sadness to Maori people and need separate study.

Neither does the Report deal with gangs as a specific phenomenon of Maori offending. The forces which led to their development, and the criminal behaviour of their members, are consequences of the same pressures which contribute to all offending. The fact that such behaviour is often abhorrent and causes genuine concern and anger within the Maori community, simply indicates that they are a particularly hurtful product of the deprived world of Maori existence. To ignore this reality, and to place special emphasis on gang activities, too often leads to a focus on their existence as a crime-control or law and order problem, rather than as an indicator of the socio-cultural shortcomings in New Zealand life which created those problems. If one is to understand Maori offending, it is essential that the gangs be seen as part of the Maori community, and their conduct as but an extreme manifestation of the pressures which have shaped that community.

For these reasons, this Report does not concentrate on gangs but focusses on the forces which propel any young Maori into the criminal justice process. Its threads of analysis and interpretation are drawn from the process of consultation, and because the Maori community, like any human community, is characterised by diversity, divisions, and debate, there are naturally many different views about crime and criminal behaviour. However underlying this diversity is a remarkable commonality of thought and a deeply held sense of concern. Their binding threads are a set of clear perceptions which weave together any discussion about the "causes" and consequences of criminal offending.

Essentially these perceptions are -

1 That the correlates of crime common to Maori and Pakeha offending such as low socio-economic status arise from different contexts so that the "causes" of Maori offending must be seen differently from the "causes" of Pakeha offending.

2 That the apparently disproportionate number of Maori offenders compared to Pakeha reflects those contexts, and the fundamental imbalance in contemporary social status which has flowed from them.

3 That New Zealand society is burdened with a rate of Maori offending that is related to its own policies and attitudes towards the Maori people.

This Report is an attempt to understand those policies and to synthesize the views and perceptions of Maori people. Its aim is to elicit some understanding of why some young Maori men may commit crime, and to seek such understanding in a way which is appropriately Maori.

TE WAHANGA TUATAHI

"NGA KORERO E RUA : NGA TIKANGA I TE HARA -
TWO HISTORIES - THE BACKGROUND TO OFFENDING.

Mai i mamaetanga o mua
Ka tipu te mamae o tenei ra.
Mai i te mohiotanga o mua
Ko te maramatanga o te mamae.
From the sorrows of the past
Comes the pain of today.
In the wisdom of the past
Is the understanding of the pain.

NGA WHAKAARO O TE IWI

> *"Of course we had a ture, a law, and when we lost that we were a wayward people. If our rangatahi are wayward today, you go back to the loss of our ture to know why."*
>
> *"Those tohunga that sailed that water, they had to know all those things - how to control our naughty ones, how to heal our sick - all those things that were our law."*
>
> *"I feel that we could be stronger as a Maori because it's proven all over and over again that if all our ture were handed down and kept for us we would be superior and far more would be expected of us."*

"You know if I did something to you in them times I'd go and have to work for you or else give something back to you just, you know, to balance it back up, but there's no more balance now."

"In Maori law, if you threw a rock at someone and hit him, the questions asked would be "why did you do it and what relation are you to the other person." If you missed, the questions would be the same because your intentions were the same. In Pakeha law, if you hit the person the question would be are you guilty of, say, assault. If you missed, the question would be are you guilty of, say, attempted assault. The questions would be different because the consequences were different. That's an important cultural distinction."

"The law that was prescribed after the Treaty was the law that we know as British law...at times we must not overlook the fact that we have been grateful for that law but that that law has also failed to meet the requirements of Maori people."

"Maybe that's why we don't believe in justice because the Pakeha law all started wrong in injustice - in land, in wars, and all those things."

"You see we have always been banging into the Pakeha law, always there holding us back or taking things from us, never giving us a say."

"I would say in the area of law-breaking, Maori attitudes towards Pakeha law is a hell of a lot different because of the fact that we were brought up in a law - tapu, whakanoa, wairua - of what is rightfully ours, and there doesn't seem to be any relationship now between the law from our tupuna and the law of the Pakeha. The Pakeha tried to destroy Maori law and in so doing they weakened our power base which is our whanau, our mode of operation, our values, our philosophy, our collectiveness."

"We need to understand why all those things that have happened to us since tauiwi arrived have messed us up, because our people never used to act like a lot of our young ones do today."

The Pakeha law and the systems which have been established to implement it in New Zealand are often regarded as the cornerstones of democracy. They govern all spheres of life and are seen to represent the community desire for peace and good order. They incorporate the rule of law without which society would degenerate into anarchy and they maintain the belief that all persons are equal before the law. Their roots are in the Western Christian heritage and their operations perpetuate a set of ideals which reflect that heritage.

All societies share a similar desire to control the behaviour of their members and to ensure the transmission of important ideas and norms. Each system of law has been shaped by the history and values of its particular culture and adapted over time to maintain a sense of order. Most have been derived from a concept of divine authority which has been exercised through chosen human agents who are deemed to exercise it impartially, or it has been incorporated into the belief systems whereby divine sanction is accepted as direct and personal. In both cases, the system is one which is attuned to the particular cultural needs of its people. It provides the myths and reality of necessary control by which societies maintain order and harmony; a set of myths which exhibit a not surprising universality in their general assumptions about what is acceptable or unacceptable behaviour.

It is one of the tragedies of Western history that the culture - specific nature of its own systems of law has blinded it to the existence of law in other societies. This monocultural myopia, when coupled with the economic demands of an imperial ethic, has led to a dismissal of other cultural systems as not being "legal", and a subsequent imposition of the Western way. Maori society was one of many colonial victims of this shortsighted monolegalism. Indeed, the eventual suppression of Maori religious and legal values was

> *"underlain by undoubted (English) convictions of the superiority of English institutions, and ... by a limited appreciation of local values."*[1]

Part of this "limited appreciation" has led Pakeha anthropologists and jurists to foster the myth that Maori society had no system of law. Rather, it had merely a complex set of customs and lore which regulated the behaviour of its people. Although this Report does not require a detailed exploration of the semantic debate about "law" and "lore", it is necessary to understand those norms of control which were seen as legal constraints by the pre-European Maori. Such understanding is needed for a number of reasons.

First, although the Maori system shared with the Pakeha a clear code of right and wrong behaviour, its philosophical emphasis was different. The system of behavioural constraints implied in the law was interwoven with the deep spiritual and religious underpinning of Maori society so that Maori people did not so much live under the law, as with it. It was a part of their everyday existence, and although many of the institutions may no longer be in place, the beliefs which shaped them remain to this day. This fact has led many Maori people to seek out traditional concepts as a means of preventing, controlling, or punishing unacceptable behaviour today.

Secondly, the apparent breakdown of traditional legal controls during the early nineteenth century led many Maori chiefs to see the Treaty of Waitangi as a guarantor of justice, order and protection. However, the changing role of English Law from protector to usurper of Maori land and customary rights after 1840 began a process of disenchantment with the justice system which still manifests itself and influences Maori perceptions of the criminal justice process.

Thirdly, attacks on the efficacy and sovereign appropriateness of the Maori system was at the root of early conflict with missionary and settler concepts of good law and order. The development of this conflict shaped subsequent Maori/Pakeha relations and defined the place of the Maori community, and the Maori offender, in New Zealand society.

An understanding of the process by which the Maori system was thus replaced by the Pakeha explains much about current Maori views about the criminal justice system. It places in context perceptions of systemic bias. It illustrates the difficulties seen by many Maori people in the maxim of "one law for all", and it permits consideration of Maori calls for authority to deal with Maori offenders in an appropriately Maori way.

It also clarifies the forces which have moulded Maori society and the conduct of its members. As such, it can be seen as one of those agents of change which have created the particular mix of social, cultural, and psychological forces that create an environment of criminal vulnerability for so many young Maori people.

NGA TURE A TE MAORI - MAORI LAW:

Western sociologists and jurists have consistently asserted that systems incompatible with their own were not "legal", and that societies not based on their constitutional framework were without law. Some have therefore claimed that

> *"there is no law until there are courts,"*[2]

while others have maintained that law is restricted to

> *"social control through the systematic application of the force of a politically organised society."*[3]

Both imply that an authorised rule making body or legislature is required for a society to have "law."

Under both of these definitions traditional Maori society would have had no law. However the definitions say more about the blinkered views of much sociological thought rather than describe the actual position in the Maori community. Indeed, to maintain that Maori society lacked

> *"law in the strict sense and had jural not legal institutions"*[4]

because it did not possess a system of Westminster style courts or legislature is monocultural sophistry. It places an undue emphasis on the structure and processes of a legal system rather than the more important concepts and philosophies which underlie them.

If one moves from a narrow jurisprudential definition to the more general terms of the Concise Oxford Dictionary one finds the law defined as the

> *"body of... rules recognised by a community as binding."*

Within those terms it is clear that Maori society was founded upon a system of law.

Although there was some tribal variation, there was a distinct set of conventionally approved means of ensuring acceptable behaviour. Its bases, constructs, and methods of application were naturally quite different to the state centered models of Western jurisprudence. However a system of social control and dispute resolution did exist, and Maori people recognised it as a system of law. The system was able to adapt to meet different

circumstances, and by the missionary period of colonial history it had already made striking changes.

This very adaptability has meant that it has often been difficult to determine what was "traditional" Maori law and what was "traditional missionary" Maori law. The early Pakeha descriptions of Maori society were dismissive of any idea that a legal system existed because there was no easily discernable Maori structure which could fit their own model of the law. The early missionary records were also not so much accurate descriptions of a system and its philosophy as attempts to show the "superstitions" of a people in need of conversion. Thus

> *"missionaries, instead of recording the Maori notions, attempted to stamp them out."*[5]

In spite of those difficulties relating to some specific forms of Maori law, it is clear from oral traditions that the Maori community did have an underlying set of beliefs which had guided, monitored, and controlled its social relationships for centuries. It was a

> *"universal law, a coordinated, local and completely integrated system governing individuals, classes and functional groups, places, things, times and circumstances."*[6]

In failing to recognise this fact, or in dismissing Maori law as the "barbarous custom of the native race," the jurists and anthropologists merely reflect their own monoculturalism. That the early settlers, missionaries and colonial officials were even more dismissive and ethnocentric led to the policies of amalgamation and assimilation which have determined the course of race relations in New Zealand. Their replacement of Maori religious and legal restraints tore at the basic fabric of Maori society and so placed its relationship with the Pakeha in a weave of inevitable conflict.

The seeds of this conflict lay partly in the fact that while the outward mechanisms of Maori law such as muru could be observed by Pakeha settlers, their underlying philosophies were less easily described and less well understood. This difficulty in perceiving the differences between the matauranga and the maramatanga of Maori law, or what may be termed its "jurisprudence" and its practice, underlay many of the misconceptions held about it. In turn, misconceptions about the very real differences between the philosophical ideals and purposes of the Maori and Pakeha systems led to conflict in the early period of colonisation.

The course and consequences of that conflict were determined by the crucially cohesive role played by the law in both societies, and by the ultimately inseparable links between Pakeha law and colonial policy.

The traditional Maori ideals of law had their basis in a religious and mystical weave which was codified into oral traditions and sacred beliefs. They made up a system based on a spiritual order which was nevertheless developed in a rational and practical way to deal with questions of mana, security, and social stability. Like all legal systems, it covered both collective and more specifically individual matters. There were thus precedents embodied in the laws of Tangaroa which related to the use and protection of fisheries, and the laws of taonga which related to the transfer or exchange of tangible and intangible "treasures". There were also specific but interrelated laws dealing with dispute settlement, and the assessment and enforcement of community sanctions for offences against good order.

The particular reasons why certain people might act in breach of social controls, the "causes" of "offending", were understood within the same philosophical framework which shaped the laws themselves. Anti-social behaviour resulted from an imbalance in the spiritual, emotional, physical or social well-being of an individual or whanau: the laws to correct that behaviour grew from a process of balance which acknowledged the links between all forces and all conduct. In this sense, the "causes" of imbalance, the motives for offending, had to be addressed if any dispute was to be resolved - in the process of restoration, they assumed more importance than the offence itself.

This belief led to an emphasis on group rather than individual concerns: the rights of an individual were indivisible from the welfare of his whanau, his hapu, and his iwi. Each had reciprocal obligations tied to the precedents handed down by shared ancestors. Although oral, the precedents established clear patterns of social regulation.

Each precedent showed that the whole world was in a state of balance and that every human was but one part of the total weave who drew life and strength from Papatuanuku the earth mother, and guidance for conduct from those she had nurtured in the days before. The rules of conduct and sanction were merely part of the process of balance and for this reason,

> *"...at least as important (as punishment) was the rehabilitation of the offended persons or group... to control what happened in their life."*[7]

The righting of any imbalance was often sought through physical action or through processes of mediation that were part of a clear philosophy and a long socio-religious heritage in which

> *"the temporal (was) subordinate to the eternal, and the material to the spiritual, for the situation below (was) ordered by an ideal determination from above."*[8]

This heritage gave rise to specifically Maori systems to maintain social order.

Those systems were not an isolated set of rules to be invoked only upon an infringement of acceptable behavioural limits. Neither were they part of a distinct discipline to be "learned" separately from the spiritual and religious beliefs of society. Instead, they grew out of and were inextricably woven into the religious and hence the everyday framework of Maori life. They reflected a special significance which was manifest in the spiritual ties of a people to their gods and the contractual relationship shared between an individual and the deities which nurtured him. Legal duties were manifest and included the ancestrally defined responsibility to maintain order and to protect the land by ensuring a balance between the interlinked animal, plant, spirit, and human worlds.

The explanations for these rights and obligations, their philosophy, grew out of, and were shaped by, ancestral thought and precedent. The reasons for a course of action, and the sanctions which may follow from it, were part of the holistic interrelationship defined by that precedent and remembered in ancestral genealogy or whakapapa. The whakapapa in turn tied the precedents to the land through tribal histories, and so wove together the inseparable threads of Maori existence.

These threads found physical expression in a number of clearly defined institutions. Thus the institution of muru was known to be a

> *"legalised and established system of plundering as penalty for offences, which in a rough way resembled (the Pakeha) law by which a man is obliged to pay damages."*[9]

Tribal histories are replete with examples where a whanau has had to accept the consequences for a member's wrongdoing. They range from the relatively recent payments of taonga made by an adulterer's family to the whanau of the aggrieved spouse, to the large muru parties which sought recompense from whole villages. In each case, utu or the price of compensation was mediated through ritualised korero and was acknowledged by both parties as a just and appropriate means of settling the dispute.

The process of rahui was instituted to prohibit particular activities for a certain time. It was invoked to prohibit entry into areas polluted by the tapu of death, to ensure conservation of food supplies, or as a political act to establish control over an area of resources. It was a

> *"device for separating people from contaminated land, water, and the products thereof,"*[10]

and its breach could result in a muru claim against the offender, or a more serious supernatural sanction.

The complex institution of tapu had two major facets. First, it was the major cohesive force in Maori life because every person was regarded as being tapu or sacred. Each life was a sacred gift which linked a person to the ancestors and hence the wider tribal network. This link fostered the personal security and self-esteem of an individual because it established the belief that any harm to him was also disrespect to that network which would ultimately be remedied. It also imposed on an individual the obligation to abide by the norms of behaviour established by the ancestors. In this respect, tapu firmly placed a person in an interdependent relationship with his whanau, hapu, and iwi. The behavioural guidelines of the ancestors were monitored by the living relatives, and the wishes of an individual were constantly balanced against the greater mana and concerns of the group.

Secondly, tapu was

> *"a religious observance established for political purposes"*[11]

in which there were religious and legal connotations. In this sense tapu was a specific restriction which could be placed on a person, an object, or a piece of land, and so render it especially sacred as a type of protection or prohibition. It was jural as well as religious in this context and could be invoked directly or through association, as with the tapu extended to the possessions of a high ranking chief. Direct application occurred through specific processes of dedication and consecration -

> *"...the dedication was man's part, the consecration the response of the gods."*[12]

The ritual of this process established a sacred protection or rite of prohibition which was secured by the sanctions of the gods. They were rituals which were applicable in all areas of Maori life. For example, a protection could be applied to a canoe to ensure its sea-worthiness, and a prohibition could be applied to prevent trespass on certain land while a rahui was in force.

In both cases, the ritual linked the people and the event with an ancestral precedent. Any failure of the protection or breach of the prohibition would be due to human error and would be punished by ancestrally-defined sanctions. These punishments were frequently swift and sure, and although the breach could occur out of ignorance, ignorance of a particular tapu, as of Pakeha law, was no excuse.

Of all Maori sanctions, tapu is the most culture-specific. It evolved from the Maori consciousness and their belief that things and people had an inherent value or mana. If the notion of no person being "above the law" is a basic tenet of Pakeha law, the concept of a life-style protected and nurtured by an ideal of special worth is a basic tenet of Maori law.

The sanctions imposed through these institutions were accepted and understood because they were drawn ultimately from the threads which tied the people to their tipuna and their land. They were essentially religious because religion both dominated and was a reflection of the Maori way of life. It emanated from the everyday existence of Maori people and at the same time gave their existence meaning. Which particular sanction was correct or which course of action was appropriate at any given time were decisions made by the people - chiefs, tohunga, or the community assembled in runanga or hapu gatherings. However the deterrent value of the sanctions and their effective force flowed not just from the mana of the people involved, but from their interrelationships with the ancestors.

These close ties meant that the obvious non-human scale of many sanctions recorded in tribal histories could be understood and passed down as precedent. Thus, when fish were once eaten in breach of a prohibition,

> *"...that very night the monsters of the deep appeared, the sea arose, and oh my friends, it overwhelmed those people... men, women and children were overwhelmed and buried in the earth by these monsters - there the people are even now."*[13]

It is not possible, or appropriate, to outline the depths of the philosophies which governed Maori life. However their beliefs and the rules of behaviour which flowed from them can be compared to the parts of a sheltering whare. They were the foundations which supported the society, the walls which enveloped its members in security, and the roof which protected them from disorder and imbalance.

The system imposed responsibility for wrongdoing on the family of an offender, not just the individual, and so strengthened the sense of reciprocal group obligations. The consequences of an individual or group action could therefore redound on the whanau, the hapu, or even the iwi, since the ancestral precedents which established the sanction also established the kinship ties of responsibility and duty. Thus the use of muru enabled justice to not only be done, but to manifestly be seen to be done by all members of both the offender's and victim's whanau. The ever-present influence of tapu created a group consciousness about behaviour which was tika or correct because everyone was linked to its source -

> *"Ko te tapu te mana o nga atua"*
> *"Tapu is the mana of the spiritual powers."*

These concepts were not "foul superstitions" as the missionaries claimed, but a consistent body of theory and sanction upon which the society depended. They incorporated and reflected the Maori ideals of group control and responsibility within a weave of kinship obligation. The rules of conduct were not divided into civil and criminal laws since a "criminal" act of violence or a "civil" act of negligence infringed the same basic order: the balance between the individual, the group, and the ancestors.

Sanctions imposed for any infringement aimed to restore this balance. Thus the whanau of the offender was made aware of its shared responsibilities, that of the victim was given reparation to restore it to its proper place, and the ancestors were appeased by the acceptance of the precedents which they had laid down.

The laws of the Maori did not, of course, prevent all violence or outbreaks of war, just as the Pakeha law has not done in Western history. However they did provide a basic framework which ensured that Maori society could function in an ordered way. They were clearly seen

as binding because

> *"...these things were the law which came from the wisdom of our past and which bound us to our tipuna..."*[14]

They were part of the spiritual and religious weave which bound the iwi and established the precedents for group responsibility -

> *"To do the right thing is to follow the ancestors... there is true continuity in the concept of tipuna, for this word unites in it all the generations which have set up and still set up the standards by which the kinship group lives."*[15]

The precedents were refined over time and their application clearly proceeded on a different basis to that of Western jurisprudence. However they provided a sense of legal control which was effective because it had a unifying basis that recognised the need for social order and the value of balance in community affairs.

NGA TAKAHITANGA A TE TURE PAKEHA - THE IMPOSITION OF PAKEHA LAW:

With the onset of colonisation however, this balance was to be disrupted. The early Pakeha settlers ridiculed the efficacy of the spiritual powers, the missionaries condemned the philosophy which underpinned them, and the colonial government suppressed the sanctions and institutions which gave force to them.

The suppression of course involved more than the replacement of mere institutions. It involved the removal of one of the major cohesive forces in Maori society and so had a direct effect on the security, values, and self-esteem of the people themselves. The increasing alienation of land compounded this sense of loss because it removed the tangible link between those living in the present and those in the past from whom the precedents for behaviour came.

> *"When the missionaries said our religion was bad they implied our whole way of life was bad - our laws, our ways, our very being. Is it any wonder our culture was weakened?"**

The story of the combined attacks on the two basic threads of Maori existence is well known in the Maori community and is a source of grievance still expressed at hui throughout the

country. It is a story kept alive not because of a stubborn desire to instill guilt in the Pakeha community, or even to exact revenge; but simply because of the injustice inherent in the narrative, and the often tragic consequences played out in its present-day epilogue.

The extent of criminal offending is a specific part of that epilogue, and its understanding flows from a realisation of how traditional Maori society was affected by colonisation.

> *"It has happened all over the world when an indigenous people have had their language and their faith and their laws attacked. Their whole culture is in danger of disintegrating and with that comes crime and social upheaval."**

While it is not possible or necessary to embark on a lengthy historical treatise in this Report, some analysis is necessary. Indeed a socio-historic synthesis which reflects Maori views about the violence of colonisation and the particular role of the Pakeha law in that process is necessary to understand the young Maori offender.

In the early period of Maori/Pakeha contact there were many disputes involving sealers or whalers and the Maori which required resolution. They were usually settled in skirmishes or in accordance with Maori methods of resolution. The writ of England was, of course, unknown to the Maori, and a frequent irrelevance to the Pakeha settler so far from home.

The disputes arose from the inevitable friction existing between two different cultural systems meeting for the first time, but the Maori concepts of order were generally respected and there were often periods of settled peace between the Maori and Pakeha. The numerical dominance of the Maori and their ability to acquire the skills of trade and writing ensured the continuation of this harmony. However a steadily increasing Pakeha population began to threaten this co-existence and to place new pressures on the Maori way of life.

The Maori population was being effected by its lack of immunity to introduced diseases and by the gradual introduction of firearms into tribal disputes. The traditional religious beliefs were downgraded by the increasing influence of missionary teaching. The exposure of many young men to travel and new cultural influences often brought into question the authority structures built upon ancient ideals. It was a period of rapid change, and ideas of individualism began to replace traditional group cohesiveness.

The extremely important integrating and conserving influences of legal and religious institutions were being weakened and it seemed to some Maori people as if their concepts of good order, of law, were in jeopardy-

> *"...The eternal traditions are lost and not understood anymore... the people are confused and desperate in this country now."*[16]

However many Maori leaders, who were astute in adapting Pakeha material assets to benefit their iwi, began to seek ways to maintain order by adapting some assets of Pakeha law. At the same time, some Pakeha recognised the need for cooperative law enforcement to control the burgeoning settlements.

Although both the missionary and the Maori felt the need for some effective legal and coercive mechanisms, it is clear that their views developed from different perspectives. The missionaries saw the introduction of Pakeha law and order as a means of facilitating their conversion work among the Maori as a prelude to the establishment of government. The Maori saw it as a tool which could help preserve the taonga of their culture during a period of confusing change. In particular, they saw it as a tool which could be adapted to suit their needs and to serve their particular concepts of dispute resolution: as a system which could operate in conjunction with their own and so allow them to maintain authority over their people's conduct.

The precedents of certain missionaries having sufficient mana to be allowed to settle some inter-whanau or iwi disputes, and the fact that many Maori leaders recognised the fine as a type of utu, indicated that the two procedures could be moulded together. However there were fundamental problems underlying any proposed amalgamation of legal authority.

In both the Maori and Pakeha concepts of social order there was an obvious correlation between the power to impose legal sanction and the mana implied in that power. To the Maori it was tied to the ancestral and spiritual origins of the law and to its binding force as a fundamental base of good order. To the Pakeha it was similarly regarded as a fundamental base of social order. However in the colonial context it was also regarded as the justification for ultimate sovereignty over the country. It was inevitable that the two ideals needed to find some way to co-exist or conflict would follow.

Conflict was initially avoided because the Maori were numerically dominant and their traditional norms were still largely functional. Pakeha settlers and missionaries therefore adapted to Maori procedures and accepted the need for some fusing of their system with the Maori.

However the increased number of settlers brought with it an increased call for "good government and law and order." Misunderstanding arose when this call was echoed by a number of Maori leaders. The Pakeha assumed that this desire for social order on the part of the Maori implied a willingness to submit to British law and order. The Maori on the other hand implied no such submission. Rather they assumed that social order could be maintained by a retention of their mana and a possible adaptation or sharing between the Maori and Pakeha systems.

Within this context, it is ironic that the English Act which set in train the relationship between the Maori and the Pakeha criminal law was a New South Wales Ordinance passed to "protect" the Maori. By the early nineteenth century many young Maori men were serving on English trading ships and often suffered cruel harassment and abuse. In an attempt to prevent this, a law was passed which reflected the humanitarian ideals that characterised much of the early attitudes of the colonial authorities towards the Maori. The 1805 Ordinance accepted that Maori crewmen were under the protection of the Crown and made it a criminal offence to mistreat them. The law was unenforceable however and failed to prevent such bitterly recalled atrocities as the Maori crew of the ship "Parramatta" being thrown overboard and used as targets for musket practice. That the Maori were subsequently able to deal with this attack according to their own legal concepts by claiming utu against the ship "Boyd" indicated that Maori rather than English writ held sway.

Such incidents, and the differing assumptions about the role of the law, interacted with the growing Pakeha pressure on the British government to assume sovereignty. This in turn implied that the ethnocentric ideals of the English law were to be supreme. It was of course clear that immediate supremacy was impossible because of an obvious lack of enforcement capability and because of the prevailing "humanitarian" ideal that

> *"it would be palpably unjust to govern savages by the strict enforcement of a criminal law framed for civilised communities."*[17]

Increasingly however, the settlers saw the replacement of Maori beliefs by Pakeha law as an inevitable step in the process of colonisation.

It was from these quite different viewpoints that the Maori and Pakeha attempted to adjust their relationship in the periods immediately before and after the signing of the Treaty of Waitangi. It was from these different viewpoints that they also undoubtedly interpreted the Treaty as well.

Although there is much evidence from colonial office statements and the views of Maori leaders that there was a need for some kind of mutual cooperation, events subsequent to the Treaty were to deny that need.

The playing out of those events and the differing attitudes of the Maori and Pakeha towards the Treaty provide the most tangible touchstone of Maori grievance. Their perception that the Pakeha failed to fulfil their Treaty obligations was reinforced by the negative interpretations which the courts and the legislature placed on the agreement. The law's eventual dismissal of the Treaty confirmed the Maori sense of betrayal.

To many Maori people, the terms of the Treaty provided the ultimate protection for their way of life, their institutions, and their culture: they were mechanisms to protect their taonga. Under Article One of the Maori version, the Maori gave up the concept of kawanatanga or governance to the Queen. To the Maori, this term implied simply that the Queen should provide for the good order and security of the country while recognising the rights which accompanied the special tangata whenua status of the Maori. Recognition of those rights or "customs" carried with it an acknowledgement of the laws and institutions which had developed over the years to maintain harmony in Maori society. To ensure its maintenance in a rapidly changing world, the Maori saw those laws as operating parallel to certain systems of the Crown. To the Pakeha however, Kawanatanga corresponded to the more absolute concept of "sovereignty" ceded by Article One of the English version. This view clearly foresaw the ultimate supremacy of the Pakeha way and the implementation of the ideal of one law for all, with the law, of course, being English.

The undertaking to preserve "other properties" in Article Two was translated in Maori to include

"all things highly prized such as their own customs and culture."

However although Maori legal ideals were frequently described as "quaint customs", the Pakeha settlers did not regard them as sufficiently quaint to be protected under Article Two. Neither did they accept the Maori belief that the "tino rangatiratanga" guaranteed over those customs was an assertion of authority and control. Rather they claimed absolute sovereignty and interpreted the Maori acceptance of the "rights...of British subjects" as permitting an exclusive imposition of the philosophies, systems, and machinery of English law. They thus rejected any recognition of Maori law and Maori authority, and hence any possibility of shared control.

The humanitarianism of Victorian colonialism was clearly to be superceded by the realities of political power, realities woven together by the twin threads of monoculturalism and racism. In a general sense, ideas of monoculturalism assumed that Pakeha values and ways of doing things were the only valid ones, and that other cultures should accept those ways either because they did not possess appropriate methods of social order themselves, or because they possessed ideals which were inferior. The basis of those assumptions was an inmate prejudice against the norms of other cultures. Their implementation in policies exercised through political power and ethnically-defined "rights" of civilised superiority or competence led to personal and structural racism.

Within this context, any notions of Maori authority were to be supplanted by a monoculturalism which assumed that the Maori would willingly accept the imposition of English institutions, and by a racism which believed that they were not really competent to share in the administration of those institutions. In effect, this meant that the Treaty reference to British rights was to be restrictively construed to deny Maori participation and authority both in the development of law and the machinery of administration. Any possibility of retaining Maori autonomy or establishing complementary legal systems was therefore effectively undermined by the racial attitudes which in practice overwhelmed the ideals of the missionaries and the wishes of the Maori.

Maori leaders, who were concerned to preserve the autonomy of their iwi and the sanctity of their land, had seen Pakeha government and law as valuable adjuncts in the maintenance of order and authority. To be denied participation in the systems of government and in the formulation of law demeaned their mana and diminished the worth of their ideals. It also disillusioned them in their beliefs about the honour of the Crown, and betrayed them in their interpretations of the Treaty. It thus began the disenchanted realisation that Maori values were to be suppressed by the imposition of a rule of law from which they were excluded.

In the initial post-treaty period however, there was a balance, albeit tenuous, between the Maori and Pakeha systems of legal authority. The land, to which so much of the philosophies of Maori law were tied, was largely protected and any sales were monitored by the Crown. A number of Imperial statues gave some recognition of mana Maori and enabled a mix of institutions to exist. Thus the Native Exemption Ordinance and the Resident Magistrate Courts Ordinance allowed for the appointment of "Native" Magistrates and incorporated traditional concepts such as utu.

Such measures were perhaps shaped more by the realities of the Maori/Pakeha population imbalance, and the continuing dependence of many settlers on the Maori for survival, rather than by any real respect for Maori authority. However through them the Maori were at first able to retain and adapt aspects of their authority and so maintain control over most of their people. But the increasing pressure for land from the early 1840's became synonymous with the assumption that the Pakeha settlers would impose their political authority over the Maori and reject any ideas of power-sharing.

Such indeed was the case and the institutions of Maori law and general social stability were rapidly replaced by the dictates of settler government. The dictates were, of course, always framed to reflect concepts of "the law",

> *"...successive governors have promised...that the colonists and the Maori should form but one people under one equal law,"*[18]

In so doing, the colonists failed to accept or recognise that the imposition of one Pakeha law was in itself a monocultural act that was dismissive of, and damaging to, the ideals of Maori law, Maori sovereignty, and indeed Maori cultural survival. Instead, the government justified its actions on the grounds that Maori institutions were simply inferior to their own -

> *"The general policy...has been to convince the natives that their traditional customs had...become obsolete and useless and that it would be to their own advantage to adopt our laws."*[19]

Such views were in direct contrast to Maori beliefs that they should retain authority over their own people and share as partners in the political and legal structures of the country. Their beliefs were encapsulated in the statement of a leading chief that

> *"... you must know that it is by our law... that we should try our own."*[20]

While these beliefs emanated from the need to preserve chiefly mana and integrity, they also arose from the very real awareness that the loss of traditional controls and legal constraints would weaken the cohesiveness of Maori society. With that, of course, would come a weakening of the culture and the people themselves.

Many Maori people, alarmed by these possibilities, vainly sought protection in the guarantees of the Treaty. However the different Pakeha interpretations of what the Treaty meant were now finding expression in colonial legislation, and legal processes were being used to reject the guarantees which Maori people thought had been covenanted with the crown. The colonial legislature which made the law, the police force which enforced it, and the courts which interpreted it, dismissed the Treaty and so tore further at the threads of Maori life.

Laws were enacted which both deprived Maori people of their traditional beliefs and denied them their rights as British subjects. Most dealt with land, the economic and spiritual base from which all else sprang: for example the Native Lands Act 1862 individualised Maori Land Title and the New Zealand Settlements Act provided for confiscation. Other legislation suppressed religious practices, culminating in the various Tohunga Suppression Acts which prohibited "superstitious beliefs" and provided for the imprisonment of those "designing persons commonly known as tohunga." Still other legislation removed basic civil liberties, such as the 1880 Maori Prisoners Act which stated that

> *"... it is not deemed necessary to try the ... natives in order to inflict punishment."*

The police were used to enforce these laws and to implement overtly political decisions such as the removal of the Parihaka settlement. In so doing they established a policy which declared that

> *"socio-racial subjugation would take place in the shadow of soldier/police who wielded and embodied as well as symbolised the coercive right of the state."*[21]

The courts interpreted the laws in a way which reflected the prevailing views of colonial society. They mirrored the bias of selective legal traditions by applying concepts to the Treaty which both denied the Maori their rights under it, and excluded their special claims as tangata whenua.

Such an approach inevitably conflicted with earlier attempts to establish some form of shared authority involving input from both legal traditions. Thus the move to establish "Aboriginal Districts" for the maintenance of Maori "laws, customs and usages" as envisaged in S71 of the 1852 Constitution Act was never implemented. The earlier appointments of "Native Magistrates" were gradually revoked, and regulations were passed to specifically suppress

> *"...injurious native customs and...(substitute) remedies...in cases in which compensation is now sought by means of such customs."*[22]

This process essentially had three specific effects. First, it weakened the religious and legal traditions which the Maori used to monitor behaviour and which provided stability to his community. Secondly, it began the long process of exclusion which denied Maori people an input into the creation, implementation and enforcement of the law. Thirdly, it established a disenchantment with Pakeha legal processes which still exists today.

This effective exclusion of Maori people from the law-making process and hence the exercise of power implied a very real denigration of Maori values and worth. It was a process in which

> *"...the concept of the rule of law was prostituted...in the pursuit of white supremacy and the acquisition of Maori land, in that Maori were deprived a coequal share in its administration, in that the courts became bureaucratic (and) staffed by Pakeha enforcing Pakeha values."*[23]

From a Maori perspective, it was also the process which set in train the mix of events that have shaped the social, cultural and psychological makeup of today's Maori offender. Any remedying of his problems, and the problems he creates, can only come from an understanding of the historical causes and social consequences of that process.

The period which saw the beginning of that cycle of loss and alienation is one which many Maori people have called "te wa pouri o to tatou iwi," the dark age of the people. It was a period which the Maori, of course, survived. But it was a period the consequences of which are seen today in the struggle to preserve the Maori language, in the low socio-economic status of most Maori people, and in the distressingly familiar statistics of deprivation. It was a time in which the imperial ideas of an ordered society were used to demean the Maori philosophies of law and religion and to alienate the land which underpinned them both -

> *"They were all tied together, they were the same thing, and when they were finished, what was left? Our whole history seemed to be threatened by a different way."*[24]

An awareness of the effects of this "different way" on Maori life highlights the fact that the New Zealand community now faces a social situation which its own ancestral precedents established. The historical processes which have confined most Maori people to the lowest levels of society have also created unique stresses and behavioural pressures which may sometimes be manifest in crime.

Knowledge of the fact that the legal system gave legitimacy to these processes of colonisation highlights the bitterly ironic fact that it now has to deal with the consequences of what it helped to shape - an environment which engenders a sense of frustration and disrespect for the law itself.

But an understanding of the conflicts inherent in this process can also highlight a positive fact. Many of the beliefs which underlay Maori concepts of behaviour control and social order can provide insights into possible ways of dealing with contemporary problems such as criminal offending. That those beliefs have survived and are often the subject of debate in Maori circles points to their viability. However their development into programmes which could help prevent young Maori people offending, or rehabilitate those already trapped in crime, requires two preconditions. First, there must be an acceptance that their

validity and appropriateness is derived from the tangata whenua status which first shaped them, and the terms of the Treaty which subsequently established their place. Secondly, there must be an understanding of the wider socio-cultural pressures contributing to Maori offending which can only be remedied by the Maori/Pakeha cooperation and power-sharing which is also envisaged in the Treaty.

The need to frame the understanding and remedying of offending within this context is drawn from two threads of perception.

The first is the clear belief that because the dismissal of the Maori interpretation of the Treaty and the rejection of their special rights as tangata whenua were an inseparable part of the process of colonisation, they contributed to the pressures which now shape the young offender -

> *"In our way of looking at things, the dismissal of the Treaty symbolises all that has been done to us ... and you can't look at any problem, not even our tamariki in trouble, without seeing what that rejection has meant."**

The second perception is that the specific methods of remedying the consequences of that process must also be drawn from the framework of those rights. In particular, they must be drawn from a perspective which recognises that the tino rangatiratanga guaranteed in the Treaty includes the authority for Maori people to develop initiatives for the welfare and conduct of their young -

> *"When you look at what needs to be done, and the authority to do it, look at the Treaty ... and I mean the Treaty as we understand it and as our tipuna signed it."**

The implications of these perceptions will become apparent after a consideration of the "causes" of Maori offending and a recognition that those "causes" are intertwined with the conflicts which suppressed traditional beliefs. That interrelationship is the focus of the offender-based analysis outlined in the next section of this Report.

TE WAHANGA TUARUA

NGA WHAIPAANGA HEI WHAKATUTUKI I NGA KAUPAPA - HE WHAKAMARAMARA I TE HARA.
(PLACES IN THE SCHEME OF THINGS - AN EXPLANATION OF OFFENDING.)

Kaore te totara e tu mokemoke.
The totara does not grow in isolation.

Ma e tumanako ana koe ki te mohio
i te matau o te tangata,
Whaia te maramatanga o tona ao.
If you wish to understand a man,
Know the world in which he lives.

NGA WHAKAARO O TE IWI

"No-one can explain in detail why someone does something. Everyone, every individual has a certain control over his own motives, but we can try to understand the things that influence those motives."

"Pakeha always talk about this urbanisation thing as a cause of the crime. Well let's look at that...after the war...the powers that be were asking where's the force, the workforce for our new factories...ko wai nga powers that be, te kawanatanga...what do they say? They looked at the untapped manpower living in the rural maraes and how can they get that workforce from A to B. They used the law, te ture Pakeha, and said next time those Maori start building their homes around marae...you tell them no...no more on your land, we will get you sections in the town. Unbeknowns to the Maori he was now being manipulated...and kei te mohio koutou what happened...what the ture has done to us."

"This is one of those things we need to look at, social or community engineering, which was organised by the Pakeha for our people."

"I know there's lots of reasons why we have so much trouble but if you fullas take this as a serious problem you need to see the pressures our whanau are under - look at what our whanau was and what has happened to it."

"Our whanau are poor. You know our families don't get what they should and you tangi because you know what being poor does...and you tangi because you know our tupuna weren't poor."

"Look at education. We are being told that we are not coping...we are not coping with the type of education that's being dished out."

"You know what I think is a criminal offence...when your child is sent to school for all those years and hasn't come out with anything."

"Pakeha's don't understand racism but our kids suffer it everyday...my youngsters come home and the racist remarks that they get at school...when we were at school if we got a racist remark we'd give them a bang...today if they do that, if it's the only way they can defend themselves, they become the cause, the aggressor, and they get labelled like that."

"Our heritage is lost once we see only Pakeha ideas on the TV and we start to copy the yankee style. No, your tu tangata is here, we don't have to copy, but for so long we've been told that the Pakeha thing was the only thing worth copying."

"You young ones, you men, you need to talk together in your own space because you lot watch those XX video things and you beat up our women and abuse our kids...you know, before this pornography stuff came along our men didn't treat us like that."

"...and I think the Pakeha must be clever. They know their one road is straight for them but us Maoris have to keep crossing over from our road to theirs and we find all these potholes and detours that make us confused."

"I subscribe to the view that all these things effect identity. A lot of our tamariki are only brown Pakeha-this is what we've been saying for a long time-but that's all they can really be if they are denied knowledge about who and what they are...and let's not blame our old people for denying them that knowledge...blame the things that made them think our knowledge was useless...that's the worst thing ever done to our people."

"We've been thrust into the modern world so fast we haven't had time to sit back and say where we're going. We're just surviving...we are always reacting...somebody hurts something that's precious to me, I want to strike back...perhaps then crime is a reaction to the fact that Maori people are powerless...that since the Pakeha came we cannot determine our own destiny."

"Finding out why we have criminals, or so many criminals, means looking at all the possibilities in the context of where Maori people are in this Pakeha world and what put them there."

It has long been accepted that it is impossible to find a single "cause" of criminal behaviour. There are as many "causes" as there are offenders, and each offender's behaviour is in itself the result of several "causes".

These "causes" have often been found in the social characteristics of the offender. They have included a disadvantaged socio-economic status (crime is a life-way of the poor, not the rich), a low level of educational attainment (crime is an occupational corrollary of failure at school), or a defective learning of social skills (crime is a consequence of bad parenting).

Other "causes" have been found in the personal and psychological characteristics of the offender. The criminal has an inadequately moulded and immature personality (crime is a life-way of the young), he is emotionally unstable (crime is a symptom of psychological disorder), or he is ineffectively nurtured (crime is a consequence of bad parenting).

These various "causes" are offender-specific and attempt to isolate the social and psychological factors which may predispose an individual to commit crime. As such they tend to define an offender by his social responses or his psychological makeup, and ignore both the interrelationships between the two and the role which culture plays in that interrelationship. They also ignore the external system-based factors which may influence the behaviour of an individual or the operations of an institution towards him. They therefore run counter to the Maori view which holds that all parts of a being and all causes of an action are interrelated - the body, mind and soul of a person are shaped by and react with many overlapping pressures. Physical health is tied to one's emotional contentment; mental or psychological health is interlinked with both physical and spiritual well-being; personal attitudes and behaviour flow from them both. All are related to a person's place in his culture, in the land from which the culture springs, and in the society which imposes upon that culture.

Within this perspective, it is impossible to view an offender as an isolated victim of some internalised quirk of psychological or emotional instability. Likewise, it is impossible to regard him solely as the victim of external social pressures. The two sets of stress are interlinked and it is the manner of their interaction in a given case which will create imbalance in a person's life and so determine whether they will or will not become an offender. An emphasis on one set of "causes" at the expense of another is thus inadequate and inappropriate to a holistic Maori understanding of behaviour.

An emphasis on these pressures divorced from the history and cultural interaction which shaped them would, of course, be similarly inadequate. The behaviour of a young Maori offender does not manifest itself in some spontaneous social or psychological act committed in a contemporary vacuum. Rather it is manifest in a context shaped by the historic forces which have defined his place in the New Zealand scheme of things. Today, that place is both stressful and unique.

Because the traditional rules governing Maori behaviour were largely suppressed or lost in the face of Pakeha pressure, the behaviour of the young Maori today is not monitored solely from within his own cultural heritage, but from sources imposed upon it from without. He is thus the unwitting heir to the long process of culture conflict between Maori and Pakeha.

He is the beneficiary of past racial policies and the victim of present racial attitudes. He is a person moulded in his perceptions and behaviour by the consequences of those policies and attitudes. Because

> *"the circumstances that destroy a culture are the circumstances that induce crime,"*[1]

that legacy is relevant to an understanding of Maori offending.The major legacy and corollary of Maori/Pakeha interaction has been a persistent sense of cultural denigration and cultural deprivation. These distinct phenomena have effected the Maori in unique ways and distinguish their current situation from that of any other ethnic or cultural group in New Zealand.

Cultural denigration arises when a dominant group, by acts of omission or commission, demeans the cultural ideals and precepts of another. In New Zealand this has occurred throughout history in the dismissal of Maori spiritual beliefs, in the non-recognition of Maori concepts of status, and in the abuse and mispronounciation of Maori language.

Cultural deprivation occurs when a dominant culture employs policies and adopts attitudes which effectively prevent members of a group gaining access to their own cultural values. This has grown largely out of the process of cultural denigration which has led to specific acts of institutional racism and social policy that have denied Maori people the economic and emotional resources to retain and transmit their cultural values. Although all minority groups have been subjected to this process in varying degrees, the tangata whenua status of the Maori people makes their deprivation seem irredeemable and especially hurtful.

The combined and interrelated effect of cultural denigration and deprivation has been to create the uncertain world of insecurity and weakened self esteem which characterises so much of Maori life today. It is a world of cultural limbo which has a particularly damaging effect on the Maori young. Many in effect grow up without the security of knowing their cultural place and all that that entails in terms of language and identity. In Maori terms, it means that many are unable to answer two questions crucial to the establishment of Maori identity - ko wai koe, no hea koe? Who are you, where do you come from? Without this knowledge

> *"... our rangatahi look Maori, are seen to be Maori, but don't know what being Maori really means.*[2]

This situation of cultural limbo, the pressures which created it, and its effects, have been largely misunderstood or ignored in Pakeha studies of Maori offending. There has therefore been an incomplete analysis which has ignored the especial cultural history which has shaped the offender as a Maori.

A consideration of the conditions which have influenced this history will not produce the "causes" of Maori criminal offending - such a task is as fraught with difficulties as the legendary journey and exile of Tura. However it will draw out those "correlates of crime" which seem to go with criminal behaviour and will illustrate the particular conditions which shape the young Maori. It will also lead to an understanding of why certain young men respond to, or react against, the conditions of their lives in a criminal way. As such, it will be the first step in "rendering intelligible" the behaviour of the Maori offender.

The correlates or conditions which are detailed in the following discussion are based on those the Maori community regard as important guides to understanding criminal behaviour. They are based as well on the profile drawn from korero with a number of young men who have had varying degrees of criminal involvement. Together they provide the necessary information base to understand offending in a way which is "compatible with the objective meaning" of such behaviour to offenders, and to the Maori world from which they came. They are the strands of Maori existence which lead to an "offender-based" understanding of Maori crime.

The profile presents several threads explaining the socio-economic and cultural background of the Maori offender. It does not attempt to produce an all-embracing image of a "typical" Maori offender. However it does illustrate common features in the background of many Maori offenders and so identifies the forces which have impacted upon them. These common features illustrate their place in the scheme of things. They also illustrate common factors contributing to criminal behaviour which can be classified as correlates of crime. When these features are synthesised with the perceptions of the Maori community there is remarkable agreement and a clear understanding of the conditions and imbalance which predispose some rangatahi to commit crimes.

The foundations for the profile are based on korero with 943 young Maori men. The turuturu whatu or weaving stick from which the threads of description are drawn is

grounded in the basic questions of Maori identity - Ko wai Koe?, no hea koe? (See Appendix Two)

The profile which emerged from the korero is not new. It shows that the Maori offender is mainly a young urban dweller who is part of a family which has been in the city and separated from tribal ties for less than three generations. The family structure is nuclear and is headed by two adults, either married or in a de facto relationship. In a substantial minority of cases, the family is headed by a solo parent because of the death, separation, or divorce, of the other partner. A small minority of male parents have had some degree of criminal involvement as have a substantial number of siblings.

The majority of the families are economically supported by both partners although there is a marked history of parental unemployment. The parent's jobs tend to be in "unskilled", labouring, or seasonal work. The family home was most often rented, although a substantial minority were under mortgage with the Maori Affairs Department or Housing Corporation. The families clearly fell within the lower socio-economic levels of society.

The children often witnessed heavy drinking by one or both parents in the home, or were aware of regular hotel drinking. The families were subjected to periods of violence by the male parent against his partner or the children, often coincident with heavy drinking. A disturbing number of children also knew of the sexual abuse of sisters or nieces.

The great majority of the young men left school with no academic qualifications, usually after periods of truancy, or, in some cases, suspension and expulsion. They worked in the same areas as their parents, were unemployed, or on subsidised work schemes.

Most of the families endeavoured to attend the tangihanga of relatives but had little other specific "cultural" involvement. A small minority of parents spoke fluent Maori but all of the men in the profile spoke English as their first language and knew little, if any, Maori language. All of them knew their tribal identity, from information gained at home, at school, on work schemes, or in prison. However only a few were able to give that identity real meaning through involvement in tribal affairs or knowledge of a family marae. Even

less were able to explain their whakapapa links to the tribe or to equate their tribal identity with the spiritual significance of sacred mountains, rivers, or waka.

The profile therefore presents an image of a young person born into a family confined to a world of socio-economic and cultural deprivation. It is a profile which would be distressing but not surprising to Maori people. It illustrates the cultural alienation of young Maori from the keys to their identity - their language, their genealogy, their land, and the spiritual self-esteem which flows from them. It also reflects the socio-economic status of much of the Maori community, and the stresses which are associated with it.

The process by which the Maori community has been confined to that status has its origins in colonial history. The consequences of the process manifest themselves in varied socio-economic and cultural conditions. These shape attitudes to behaviour and establish "places in the scheme of things" which are unique to Maori people; places which were once tied to a weave of certainty, but which are now frayed like a net of Kahukura caught in a changing sea.

Together these economic and cultural factors shape the background profile of the young Maori offender and contribute to the complex mix of factors which establish the likelihood of criminal vulnerability. They thus illustrate the fact that the reality of New Zealand's social organisation defines the place of the young Maori, and that the attitudes and structural racism which underlie it inevitably influence his behaviour as well. To understand how this process operates, and how it may result in specifically criminal behaviour, it is necessary to focus on the major areas which contribute to the young Maori's "place in the scheme of things".

There are five of these "places in the scheme of things".

They are -

1 Te wahanga ki te ao Maori - The place of the Maori community in New Zealand society.

2 Te wahanga ki te whanau Maori - The place of the Maori family.

3 Te wahanga ki nga rangatahi Maori - The place of Maori youth.

4 Te wahanga kia ngawari ai te ngakau o te Maori - The place of Maori peace of mind.

5 Te wahi whakawhitiwhiti whakaaro - The place of changing attitudes.

1 TE WAHANGA KI TE AO MAORI -

The place of the Maori community in New Zealand society has been analysed by experts in all disciplines from the early navigators to the contemporary psychologists. In most cases the only unifying threads of analysis are that the information has been compiled by non-Maori "experts", the data has been interpreted within an ethnocentric framework, and the conclusions have been drawn from a monocultural viewpoint.

The colonial assumption that the Pakeha could accurately interpret and analyse Maori concepts or behaviours no doubt grew from the belief that the Maori was

> *"a frail and wayward creature which had been committed to his care."*[3]

It is unfortunate that so much contemporary analysis seems to proceed from the same sense of misguided confidence.

It has meant that theories which were developed in a Western framework have been applied to the Maori community with little questioning of their relevance or validity in a Maori setting. The research has therefore advanced hypotheses about the Maori community which assert Pakeha values as an unquestioned "given", and attempt to explain Maori behaviour within the framework of those values.

There are a number of shortcomings in this approach from a Maori point of view. First, it ignores the specific effects which those Pakeha values themselves may have had on Maori belief and value systems. Secondly, it tends to "describe" the particular situation rather than analyse its underlying causes, especially if those causes raise questions about the efficacy of Pakeha values or actions. Thirdly , it regards any apparent correspondence between a Maori/Pakeha situation as being the result of similar

pressures and the cause of like behaviours. This is particularly apparent in most Pakeha analyses of the contemporary Maori community and the place of the Maori offender in that community.

Numerous studies have described the status of the Maori community and illustrated its low socio-economic position. The indices of deprivation have been tabulated to show everything from high rates of ex-nuptial births and middle-aged obesity to low rates of home ownership and high criminal offending -

> *"the problem of Maori offending can be attributed to the lower socio-economic status of the Maori"*[4]

Unfortunately such studies have merely presented a descriptive analysis of the situation and have failed to offer an explanation for its existence. They have emphasised the correlation between low socio-economic status and the risk of Maori offending but have not analysed why that correlation exists for the Maori community, what factors contributed to it, and whether in fact it is a valid correlation at all. Thus a major study which has shown that the risk of offending is influenced by low socio-economic status also indicated that Maori youngsters are at greater risk than Pakeha youths, irregardless of their socio-economic status.[5] The doubts which such a conclusion should have raised about a simplistic economic status/offending correlation were not explored in that study. Neither were any detailed analyses made of why most Maori offenders were actually in the lower socio-economic levels, how this influences the likelihood of offending, and what effect a person's race might have in the justice system's processes of defining criminality.

To view Maori offending, or indeed any Maori issue, in purely socio-economic terms is unnecessarily restrictive and limits any meaningful understanding of the problem. It is true that the bulk of the Maori population is confined within the lower socio-economic fringes of society, but the reasons for, and consequences of, that confinement are different from those of the Pakeha poor. While many of the burdens of poverty are shared by all people in the lower socio-economic stratum, the difficulties of the Maori poor emanate from specific historic and cultural forces that overlay the purely economic.

*"It's wrong for the Pakeha to talk all the time that our crime or our bad health is a class or a poverty problem ... it's more basic than that because the poverty grew from what happened to our culture, not the other way round."**

In an economic sense, there is no doubt that much of the Maori community is faced each day with the reality of an actual shortage or complete lack of money. Over time this becomes a demeaning source of stress and anxiety for parents unable to adequately provide their families with the basic needs of good food and shelter. It is a stress constantly heightened by the perceived need to also satisfy the consumer wants induced by the advertising world.

Above all, it is a stress which seems inescapable as the initial lack of money sets in motion an inexorable spiral of deprivation. The shortage of money forces many families into sub-standard accommodation and habits of poor nutrition and health care with inevitably damaging effects. The "agony of survival " may engender depression and anger. Parents may seek relief in alcohol or gambling. Children may suffer physical and emotional damage.

It is these realities which lie behind the statistics of poverty. Much of the Maori community knows these realities and shares with many Pakeha people the facts of deprivation.

However it is incorrect to attribute either the general features or specific behavioural characteristics of the Maori community to solely economic factors. To do so acknowledges the realities of their economic difficulties but ignores the socio-cultural forces which interact with them. That interaction has led to social and economic policies targetted directly or indirectly at the Maori community as a specific group within society. For example, the legislative prohibition against building homes on "Maori land" after World War Two was a deliberate policy decision which contributed to the depopulation of Maori rural areas and their consequent economic decline. In this sense the policies led to a racialisation of poverty which has shaped much of the present day position of the Maori community and clearly differentiates it from the situation of Pakeha people who are poor. The particular place of the Maori therefore has its roots in the conflicts of Maori/Pakeha interaction and it cannot be explained in simple notions of social stratification or economic deprivation.

These conflicts are themselves manifest in the cultural deprivation and denigration which has trapped the Maori community in a cycle of social confinement. The cycle was set in motion by the demands of colonisation which imposed policies that effectively weakened the economic and spiritual weave which had held the Maori community together. It was continued by the assimilationist aims of the education system and other institutions which sought to fit the Maori into the Pakeha world. It is maintained by the economic imperatives of the twentieth century which have moved the Maori into the cities for employment and thus isolated him from the cultural strengths of his whanau and hapu. It has been an interacting process of social, cultural and economic change which has had far reaching effects. It has created a Maori community which is now largely landless and struggling to preserve its language and culture.

The institutional and structural racism which sustained the process has ensured the Maori people's economic deprivation; the social and personal attitudes which underlay it have ensured their cultural denigration. Together they have constantly reinforced the cycle of confinement.

The burdens of this cycle are imposed through the direct and indirect demands made upon the Maori community as part of their everyday existence: demands which interweave the weakening of culturally-appropriate ways of behaving with the simple demands of economic survival. Their seemingly mundane but unavoidable nature serves to trap Maori people more firmly in the cycle and makes it less likely that they will escape the stresses associated with it.

For example, the situation of many Maori families is exacerbated by the demands of employment which may require long parental absences from home. Because the urban situation was structured around the nuclear family, the traditional availability of extended whanau to share child-care responsibilities has been removed. Culturally unable to provide appropriate care, and economically unable to employ alternatives, the family becomes caught in a cycle of apparently inadequate parenting.

The demands of employment may also prevent the Maori family from fulfilling specific cultural obligations. For example, industry is still unwilling to recognise and grant adequate leave for the responsibilities involved in such culturally important events as

the tangihanga. This increases the sense of cultural isolation of many Maori families and deprives the children of involvement in the whanau strengthening implicit in such obligations.

The demands of economic security, often difficult on a low wage, become especially stressful in times of unemployment. The sense of frustration and loss of pride so frequently consequent upon loss of work may be compounded by culturally specific feelings of diminution of mana. This may result in parental violence or alcoholic escapism which the cultural isolation of a modern subdivision may exacerbate.

The demands of school effectively prevent many Maori youngsters from achieving the educational advancement which might help them break out of their family's economic trap. The essentially monolingual and monocultural curricula and the non-recognition of Maori values still present in many schools create insecurity, rejection and "failure". This in turn denies access to well-paid employment which creates further economic stress within the family. The cycle of interlinked cultural denigration and economic deprivation is thereby confirmed and bequeathed to the next generation of the Maori community.

The pressures upon much of the Maori community are therefore more then the "normal" stresses of low socio-economic status. They are compounded by the fact that the place of the Maori community in New Zealand society has been determined by demands specifically made upon it by the policies and attitudes of the dominant culture. The results of these policies may appear to be largely economic, but from a Maori perspective their stimulus is clearly racial.

The reality of this fact places a particularly stressful burden upon the Maori community. It is a burden of common hurt and deprivation which has an effect upon all Maori people who share it. The pain can be expressed in several ways and is perhaps manifest most clearly in the specific consequences of unemployment and loss of language fluency. Both manifestations are threads of the Maori people's place in society and are therefore relevant to the incidence of Maori criminal offending. Although apparently quite different problems, they are consequences of the same historical forces, and their interrelationship heightens the stress imposed upon young people. As such, they are indicators of a possible correlation between the place of the Maori community and the criminal offending of many of its youth.

Unemployment -

Although ethnic-specific rates of unemployment are not compiled it is clear from many sources that there is a substantial rate of Maori unemployment - according to a 1987 Household Survey, 10.4% of Maori males are unemployed.[7]

New Zealand society, like most western systems, equates job advancement, status, and economic security with educational or vocational qualifications. The education system itself acts as a gatekeeper for young people and dispenses the keys to employment and hence status. However its monocultural bias effectively prevents most Maori youngsters from gaining qualifications and thereby deprives them of access to the most rewarding areas of employment. The cycle of confinement thus imposed ensures that the Maori community will be limited to those areas of unskilled work which are most often subject to seasonal variation or functional unemployment in an economic downturn. The cycle is not new, although it has been aggravated in recent years.

The consequences of unemployment are many. They include an obviously increased economic dependency as well as associated psycho-social health problems linked to emotional stress. They can also include long term "hysteresis" effects, ie an inability to begin or resume fully productive participation in the work force because of the loss of skills or erosion of work habits which unemployment causes. It is these wider effects which reinforce the view that while not all Maori unemployed are involved in crime, the loss of or inability to find work creates an added set of pressures to those already endured as a consequence of life in the cycle of Maori confinement. The unemployed, therefore, become more vulnerable to those other forces which predispose people to offend.

While the existence of links between unemployment and criminal behaviour has been much debated in western criminology, there is considerable dispute about empirically proving any such link.[6] However a major long-term study has shown that

> *".....young people are more likely to commit crimes when they are unemployed....."*[8]

Another study has stated that while

> *"..... no-one pretends that a solution to unemployment would automatically eradicate crime, ... high levels of joblessness can hardly avoid accentuating criminogenic pressure."*[9]

There is a similar Maori perception that, although some Pakeha research is uncertain, the existence of high unemployment clearly aggravates the role of criminal offending -

> *"It seems damned obvious that many bros with no mahi but plenty of time will do burgs or other jobs to make ends meet."**

Since the major mechanisms for ascribing status in western society are based on economic wealth which flows from access to employment, it seems equally obvious that exclusion from work will have effects on the perceived self-worth and hence the behaviour of the unemployed. For the Maori community, unemployment is the ultimate sign of its deprivation, its demeaned status, and its exclusion from the mainstream of New Zealand society.

For most Maori people who are in employment, their low wages and consequent struggle to provide for their families highlights the Maori-Pakeha differences in economic equity. For those who are unemployed, they are accentuated: the differences in socio-economic status give rise to a bitter sense of injustice and unfairness that creates discontent and anger.

Of course, to be in this position is not in itself a necessary cause of long-term dismay and inadequacy. Neither can it be seen as an inevitable spur to criminal behaviour. However, where it is experienced as part of a process of historical and contemporary injustice it can heighten the feelings of deprivation and exclusion to such an extent that anti-social behaviour may follow. When this process is accentuated by the pressures of racial discrimination and monoculturalism, unemployment becomes a racial as well as a social problem.

The alienation of people from work becomes synonomous with racially-based isolation from the "accepted" forms of social conduct and political compromise. Alienation from the predominant form of conventional activity, employment, loosens the ties of

responsibility to the social system promoting that activity. This often sets in train a seemingly inevitable process which leads to a criminal reaction against that system. In this situation, it is the sense of deprivation in relation to other racial groups

> *"... which is the crucial determinant of social action ... relative deprivation experienced in comparative prosperity ... may stimulate conflict based on ethnic divisions."*[10]

It is this type of conflict which the high rate of Maori unemployment predicates. The historic origins of contemporary Maori socio-economic status are compounded by the racial imbalance in current unemployment statistics. They heighten the obvious differences between much of the Maori community and the Pakeha world, and they limit the ability of Maori youths to achieve material wealth, and hence status, by legitimate means. The social and economic inequalities which unemployment highlight, establish a sense of deprived status and a loss of self-esteem that may express itself not just in acts against property, but in acts of criminal violence against the person as well. When these inequalities are seen to correspond with racial differences, the aggression and violence clearly flows not from any absolute deprivation, but from the relative deprivation which exists between the different ethnic groups. The acts of criminal violence perpetrated by some young Maori men are therefore the high price New Zealand society pays for its racial and economic inequalities. Overseas research has shown that

> *"socio-economic inequality between blacks and whites does have a positive effect on criminal violence."*[11]

From a Maori viewpoint, there is an equally clear correlation between the comparative socio-economic inequality of the Maori community, its high unemployment, and its rate of criminal offending.

The Language - Te Reo -

The Maori community is therefore subject to the very real pressures of economic deprivation. The consequences of these pressures are worsened by the fact that it also faces the hurt of cultural deprivation, which is most manifest in the state of the Maori language.

To analyse the state of any culture is a difficult task, but the foundation from which all else grows is clearly the language -

> *"Ka ngaro te reo, ka ngaro taua, pera te ngaro o te Moa".*
> *(If the language be lost, we will be lost, as dead as the Moa).*

The Maori community is currently engaged in a well documented struggle to preserve its language and halt the decline to which our shared history condemned it. The struggle is not just to maintain an oral history, but to retain the soul of a people -

> *"The language is the embodiment of the particular spiritual and mental concepts of the Maori ... it offers a particular world view (and) its emphasis on holistic thinking, group development, family relationships and the spiritual dimension of life is not inappropriate in a nuclear age."*[12]

For many young, and not so young Maori people, this dimension is already lost. The historic processes which contributed to that situation are well known. Their consequences are the creation of a large section of the Maori community which has been deprived of the fundamental means of insight into its own culture and thereby denied a unique sense of identity.

For many Maori people, alternative means of gaining self-esteem and identification have had to be found in the images and stereotypes of Maoriness that are fostered by the wider society. Unfortunately these images, as conveyed through the media, by the schools, and by general attitudes, have been consistently negative. The historic failure of Pakeha institutions to recognise Maori values and to promote positive role models has created a cultural vacuum in which nothing of value appears to exist for the young Maori to aspire to or to emulate. The accepted criteria for self-esteem and status are Pakeha-defined, and the public absence or dismissal of Maori criteria implies a lack of worth. The deliberate or unwitting suppression of Maori language, beliefs and cultural constructs, has trapped many Maori people in a continuing weave of low self-esteem and uncertainty.

The attitudes of society have defined a people as Maori by their appearance or their "blood", but deprived many of them of the language and unique cultural attributes which give that definition meaning. The institutions within society have instilled into

Maori people the ideals for Pakeha success, but by their operations have effectively prevented them from achieving those ideals.

Thus many Maori people, especially the urban young, know that they are Maori only through a peculiar mix of cultural empathy, self-identification, and societal imposition. Their constant exposure to negative Pakeha perceptions of stereotyped Maoriness, and their isolation from the positive values evinced through the language, means that the identification is often incomplete. With such an insecure sense of cultural identity, it is inevitable that the Maori community would be under a unique stress.

This stress arises basically because the definitions of Maori worth, and indeed Maori identity, are frequently determined by the Pakeha world. It is Pakeha legislation for example which has traditionally categorised who is a Maori for census or land claim purposes. It is the constant Pakeha reference to the Maori as a "minority group" which defines the place of the Maori community solely in relation to the dominant culture, rather than in relation to the status of tangata whenua. There is indeed truth in the old adage that "the namer of names is the father of all things."

The idea of monocultural superiority implicit in these definitions engenders a hurt and frustration which is constantly aggravated by the seemingly mundane events of daily life; the lack of respect shown in the failure to pronounce a Maori name correctly, the prejudice shown by many landlords in denying Maori people accommodation, the lack of sensitivity shown by many institutions in their dealings with Maori clients, the lack of positive images of Maori life in the media. Each event is a type of violence which devalues both Maori culture and the Maori individual. Their consequence may be the equally violent reaction of anti-social or criminal behaviour.

Although the Maori community has never forfeited its mana or denied its cultural uniqueness, the policies of monoculturalism continually place it under stress. The reality of racial prejudice and the demeaning of Maori identity create a sense of cultural deprivation as real as that engendered by the stresses of economic deprivation.

This cultural deprivation is not, as some Pakeha experts have maintained, an absence in the Maori community of those indices of European culture deemed important - material

wealth, fluency in the English language, educational involvement as evidenced by "books in the home", and so on. Rather it is simply the loss of Maori values initiated by the imposition of those Pakeha indices. A culturally deprived Maori child is not one who has difficulty reading English, but one who has difficulty speaking Maori.

When this cultural deprivation as evidenced by the difficulties of language retention interacts with economic deprivation as evidenced by unemployment and low socio-economic status, the cycle of social confinement turns in upon the Maori community itself. There seems an almost inevitable correlation between this defined state of economic and cultural "unworth", and a reaction against the systems perceived to be imposing those definitions. Criminal behaviour is one way in which this reaction manifests itself.

Within this Pakeha-imposed cycle of confinement the Maori community, of course, displays a vibrant strength and determination. Initiatives from the Maori people themselves have sought to revitalise the language and the inner strengths of the culture to provide the self-esteem and sense of identity so essential to the well-being of any individual and community. Many Maori families have of course been able to cling to those strengths and to succeed in the difficult world of the Pakeha. Many however have achieved that success only at the expense of losing the richness of their Maori heritage. A large proportion of others, mainly the urban young, has been sadly unable to find either the strengths of their tipuna or the success of the Pakeha.

The place of the Maori community is thus defined largely by the attitudes and policies of the Pakeha culture. It is confined to lower socio-economic levels with the consequent pressures which that lack of status inevitably brings. It is placed under further pressure by the monocultural attitudes of the wider society which restrict its attempts to assert cultural autonomy and which give little real respect or recognition to Maori values and ideals. It has thus had imposed upon it a stress which contributes to an environment of criminal vulnerability for many of its members.

It is ultimately the family which suffers the brunt of the forces unleashed by this cycle of confinement and which provides the immediate scenario of vulnerability. As our shared history has shaped the confinement of the Maori community, so it has also

determined the role, structure and place of the Maori family in the New Zealand scheme of things.

2 TE WAHANGA KI TE WHANAU MAORI -

The role of the family in shaping the attitudes and values of its members is obviously important in any society. If that role is disrupted or inadequate there will be often damaging consequences for both the emotional and physical well-being of the children. The link between this damage and consequent criminal behaviour has been the subject of much research.

A number of studies have found that offenders

> *"... were more commonly from homes in which the parents had a history of various physical ailments, mental retardation, emotional disturbances, drunkenness or criminality."*[13]

Other research has maintained that offenders are the products of homes characterised by

> *"divorce ... alcoholism, criminal siblings ... and a lack of parental control."*[14]

As with so much crime research however, the findings have either been incorporated into criminological stereotypes - "broken homes cause crime" - or into politically-voiced catchphrases such as "parents are failing in their responsibilities". While it is clear that the influence of family patterns on criminal behaviour cannot be gainsaid, it is important to recognise that parental influence and family structures vary in different circumstances and within different cultures. It is also important to recognise that the family is subject to wider social pressures which affect both its stability and its capacity to ensure adequate parenting.

It is unfortunate that Maori offenders and their families are often seen as some peculiar isolates, creating alone the forces responsible for their behaviour and their failings. It has thus been often stated that a major "cause" of Maori offending is the breakdown of

the Maori family unit. Judges have often commented upon an apparent lack of parental concern and politicians have urged Maori parents to "face up to their responsibilities to their children".

However this emphasis on an apparent lack of Maori parental concern inappropriately promotes the symptom of one type of malaise as a cause of another. It ignores the stresses which shape the behaviour of Maori parents and imposes a specific and monocultural ideal of what is good parenting and good family values.

This bias emphasises the ideal of the nuclear family. It fosters the desires of material comfort and individual success measured in possessions. It too often promotes a standard of wealth and harmony measured against the saccharine world of television sitcoms. It provides unreal images and aspirations for many families whose major concern is economic survival rather than media-induced security.

For the Maori, it provides images which may not only be economically unattainable but culturally inappropriate. Parenting clearly involves more than the ability to be a child-oriented consumer, and judgements about what is good or bad parenting will vary across cultural boundaries. While all parents would wish for the well-being and security of their children, the means of providing this may be based on different values and different methods of child-rearing.

To judge Maori parenting from a nuclear-family viewpoint shows a monocultural insensitivity to different ideas about upbringing and emotional sustenance. To denigrate it as uncaring is to ignore the wider social pressures which have affected those values, and the economic strictures which have undermined their effectiveness. An understanding of the Maori family, and whether it contains elements which may increase the criminal vulnerability of its young, requires a culture-specific understanding of the changing role of the Maori family and the strains under which it may operate.

Maori people have their own clear standards of appropriate parenting and accept that the Maori community is not exempt from the consequences of inadequate family support. As in any group there are "good" and "bad" parents. Indeed, there is much sad evidence of continuing domestic violence, and a damaging pattern of Maori men sexually abusing children in their care. However there is equally sad evidence of

Maori parents struggling to provide the basic necessities for their families on inadequate wages or benefits, and a damaging pattern of marital stress hastened by that struggle.

> *"I get hoha, I get wild when people blame our parents for everything ... of course we've got some bad ones, but let's look for a change at why they might be bad ... why they go to housie or why they beat their kids with the vacuum pipe ... and let's look for a change at all our good parents too."**

If a correlation is to be established between an unstable home and Maori criminal offending it is necessary to focus on the pressures which create that instability, rather than indulge in arrogant or ignorant denigration of the people subject to them. Once these pressures and their effects have been isolated it will be possible to establish whether the disrupted family situation which results is a contributory factor in offending. Such a process must begin with an understanding of the traditional structure and role of the Maori family.

In traditional Maori society, the basic social unit was the whanau or extended family. Consisting of several related generations under the guidance of kaumatua and kuia, it was responsible for the interdependent support, education, and rearing of its members. Each whanau was tied by whakapapa to a hapu and iwi which gave overall organisation to its way of life.

It was the whanau which nurtured the child and taught it the appropriate rules of behaviour in a process of shared responsibility. The sharing could be the informal division of tasks or the formal "adoption" of particular children. To whangai or "adopt" a child was an ultimate sharing of responsibility in which a child would be raised by his adoptive parents but retain close ties with his natural family. These natural links would be superseded by bonds of affection and service to the adoptive couple, but the child would be in frequent contact with his birth parents. The sharing was also extended to the grandparents who were active agents in the care and education of their mokopuna.

The kinship ties of the large family unit implied a sharing of support, discipline and comfort for all members of the whanau. Its structure provided young people with their feeling of well-being, their security and their sense of a group good greater than their own. It provided them with a sense of their place in the scheme of things and ensured

that rules of behaviour and cultural transmission were maintained. It provided the old with complementary security and a socially useful role in the care and education of the young. The total structure grew out of the needs of the Maori people and was the key agent in meeting and shaping those needs over time.

Sadly however, this family unit with its undoubted values and warmth has suffered much in the process of colonisation. A conflict between the individual-based values of the Western family and the group-based ideals of the Maori whanau was inevitable. The course of this conflict has been moulded by direct and indirect acts of the dominant culture; the result has been the fracturing of the basic support unit of the Maori people.

The agents of change which assailed the extended family were part of the general forces of colonisation. The missionary sanctions against the "heathen practices of the natives" included the "sinful living together of all classes of people". The political injunctions to abandon "obsolete and useless customs" clearly embraced the group concept of whanau. The path to amalgamation and assimilation was to be trod by individuals from a nuclear family.

The law was part of this complex challenge to the make-up of the whanau. The various pieces of land legislation and the implementation of the Imperial Wills Act directly accelerated the individualisation of title to land and property. They also indirectly promoted the interests of individuals within a nuclear rather than an extended family. The Native Land Act of 1909 forbade adoption that was "in accordance with Native custom" and decreed that marriage between natives was invalid unless in accordance with the Marriage Act. Through such actions, the basic threads of the Maori family structure were placed at risk.

The process quickened from the 1940s. While the Maori remained a largely rural and isolated people, the group cohesiveness and control of the large family could be preserved. The move to the cities irrevocably weakened that cohesiveness. What the church and law had started in the process of colonisation, the law and the dictates of a modern economy were to exacerbate in the process of urbanisation.

In the post-war period, over 70% of the Maori population left their rural base and settled in the towns. Once strong Maori communities were depopulated in a move which commentators have named the "urban drift". The term implies either a random move by Maori people over a period of time or a voluntary exodus prompted by an unquenchable desire for the riches of what the writer Witi Ihimaera has called "The Emerald City". However the term is inappropriate because the movement was neither an entirely random drift nor a necessarily voluntary migration. In fact, it was prompted as much by an economic necessity born of governmental policy decisions and legal strictures, as it was by a search for a "better life". As such, it was an external pressure placed on many Maori people which subsequently led to the internal disruption of the Maori family unit.

During World War II, the various National Service Emergency Regulations established wide-ranging powers for government to administer the war effort and control manpower organisation. Among them were the establishment of "essential services" and the power to direct anyone over the age of 16 to "perform such services in New Zealand as may be specified". Many Maori people were directed under these regulations to work in city industries away from their rural marae. Any dislocation which this may have caused to Maori family structures was initially minimised by the total commitment of Maori people to the war effort and by the fact that the Maori community was able to organise both its domestic and overseas efforts on a tribal basis. War-time demands led the government to recognise the strength of kinship links and promote the restoration of

> *"... the ancient characteristics of tribal leadership now so vitally essential to the successful prosecution of the Maori war effort."*[15]

This recognition meant that the important ties to extended family and iwi were maintained despite the separation brought about by war.

However such recognition did not survive the return of peace. Although the Maori Social and Economic Advancement Act of 1945 claimed to retain the powers exercised by tribal committees during the war, it actually removed their autonomy and replaced it with bureaucratic and ministerial control. The structures of support and control for those Maori families now in the towns were therefore largely lost. The number of people in this situation gradually increased as statutes such as the Town and Country

Planning Act and restrictions on loan finance for the development of rural "Maori land" forced people into the towns. Effectively denied the right to build homes on the communally-owned land which had nurtured them, many Maori people accepted the pull of city jobs.

The families which eventually arrived in the cities did not escape the policies aimed specifically at them as Maori. The housing policies of the time emphasised the view that the nuclear family unit was a more suitable domestic arrangement than the extended family in an industrial society. There was therefore no real planning for the accommodation needs of extended family members and a crucial thread in the fabric of whanau support and regulation was broken. The situation was worsened by the "pepper-potting" policy of spacing Maori homes throughout a suburb rather than together. Such policies isolated Maori families from their traditional sources of assistance and cultural input and created unique tensions which are still experienced today.

The move to the cities was not therefore a casual "drift" promoted solely by a Maori desire for material wealth, but a process in which Maori people frequently had no say and over which they had even less control. Neither are the consequences of that process, a fragile and vulnerable family structure, due to an inability or unwillingness by Maori people to adapt to the urban environment. Instead, the effects are largely due to the fact that the policies which encouraged the "drift", or which created the consequent urban environment, were dismissive of, and insensitive to, the cultural and social needs of Maori families.

> *"It's quite wrong to talk about urban drifts or urban migrations ... our people didn't migrate, they were displaced by government policies."**

Today, the product of those policies, the urban whanau, has developed into a unique sub-stratum of New Zealand society which is caught in a web of internal and external conflict. The "inner conflict" manifests itself in the whanau's struggle to attain material well-being while maintaining links with the spiritual well-being of its cultural base. The "outer conflict" is caused by the continual efforts of the wider society and its institutions to assail that cultural base. These conflicts have created a state of uncertainty in which the basic values of the extended family clash with the demands of

nuclear family uniformity. Most urban families attempt to adjust to this clash or attempt to adopt it to fit more closely with Maori ideals.

This has resulted in a wide range of family patterns in an urban setting. A number of families still care for "whangai" who grow up as part of the immediate family, and some are still fortunate to have a kuia or kaumatua living with the whanau or close enough to assist in the traditional roles of counsel and adviser. Other Maori people, particularly the young, attempt to overcome the isolation of city living by moving between the households of relatives or friends to share or participate in daily life.

These efforts to fit the Maori concepts of extended family ties and shared responsibilities in upbringing into what is essentially a nuclear framework is limited however by the realities of urban living. The separation from relatives means that many parents, already uncertain of their own judgment, are left to cope with economic and emotional stress alone. The range of adults to provide guidance or to be models for the children is restricted to the nuclear situation and may result in strains in the parent-child relationship. In such a situation, parental stress may be perceived as lack of interest and the young may then become dependent upon and involved with peer groups outside the family.

The values of extended responsibility, although still strong in the Maori community, are restricted therefore by the emphasis on the nuclear structure within the urban setting. The importance of sharing in the upbringing of mokopuna is handicapped by physical isolation from whanau. The desire to adequately provide for the material and emotional welfare of the young is often hampered by the realities of economic subsistence. The need to provide a sense of cultural self-esteem and strength is subverted by the separation of many parents from the source of that strength and its ever present denigration by the wider society.

The Maori family of today has thus been influenced by a unique history which has effected its structure, its values, and its spiritual and economic strength. It is now largely confined to the lower economic levels of New Zealand society and is subject to the pressures of institutional and personal racism. It often exhibits a physical

deprivation and emotional frustration which may manifest itself in alcoholism, violence, and sexual abuse. It more often exhibits a strength and warmth which shields its members from the greater inequities of their position in New Zealand society. In both cases, the emotional, psychological and material resources of the family are under constant stress. It is thus faced with a trauma of cultural and socio-economic deprivation which often produces an environment of instability and low self esteem.

In the Maori context, the greater mobility of the nuclear family has therefore been of little recompense for the weakening of cultural ties. The greater freedom of the individual family has been a heavy price to pay for the weakened ability of elders and surrogate parents to monitor, support, and regulate behaviour. That many Maori families have found the burden heavy and have bequeathed to their children a legacy of violence or neglect is an almost inevitable consequence of those conditions. Equally inevitable are the feelings of inadequacy and rejection which are shared by the children. In these circumstances the young may be particularly vulnerable to an involvement in crime.

It is obvious that the difficult circumstances of many Maori families is not a "cause" of criminal offending. Indeed most Maori families are able to provide their children with the security and warmth which mitigates against criminal involvement. However the stressful circumstances of many families are clearly detrimental and may eventually result in parental reaction which is emotionally and physically damaging to the children. It may also lead to the breakdown of discipline and the loss of respected behavioural models for the young to emulate. It will certainly lead to an inability to provide the cultural strength which will enable the young to more adequately cope with the attitudes of the wider society and its institutions. These factors in turn heighten the complex of feelings and attitudes which make some people turn to crime.

It is, of course, apparent that a young Maori person is shaped by a number of forces besides the socio-economic status and cultural impoverishment imposed upon his family. However all such forces emanate from the same cycle of confinement which determines the cultural and economic position of his family and thereby influences his attitudes, his self-image, and his behaviour. The history which created that cycle has

established frequent parallels between low economic status and high cultural deprivation, between failure in the personal status areas of Pakeha society and isolation from the culturally-enriching areas of the Maori world. These parallels do not necessarily converge, but they have clearly shaped a Maori family unit which is under particular economic pressure and specific cultural stress.

The disproportionate confinement of Maori people in the lower levels of the economy has therefore meant that the behavioural patterns often related to low socio-economic status are intertwined with the frustrations of cultural deprivation. The obvious ethnic inequality implies that the economic riches within view are withheld because of race and

> *"...the result is resentment, frustration, hopelessness and alienation (which) wreaks havoc on the family, thus weakening ... the most important informal bulwark against crime."*[16]

The Maori family, under stress from the pressures of its past and the frustrations of its present, may be unable to exercise the restraint and control which will protect its young from the effects of this alienation and hopelessness. Sadly, it may break apart itself under the stress and mete out to its young the violent release of its own sense of frustration.

Within this context it is simplistic and hurtful that Maori parents are so often "blamed" for the behaviour of their young. To do so ignores the realities which have shaped their roles in the contemporary Maori family and denies the history which forged those realities. To apportion blame in fact overlooks the fundamental issue that any correlation between the patterns of Maori family life and youthful offending derive from the interwoven threads of cultural and economic distress. How this creates an environment which might predispose a young Maori man to commit crimes in a specific situation is determined by a complex mix of personal responses to those pressures.

It is a sad consequence of our shared history and contemporary attitudes that the whanau which was once the source of the emotional strength of the Maori is now so often under stress. A related consequence of this stress is criminal behaviour by some of the young in the Maori family, and their place in the scheme of things will now be considered.

3 TE WAHANGA KI NGA RANGATAHI MAORI -

The Maori have recovered from the "dying people" suffering of the last century and rejected the "smooth pillow" laid out for their demise by some colonial politicians. Their present population is young, with 63% aged under 25 years.[17].

This large population of young Maori would seem to have inevitable consequences for offending since it is one of the few agreed points in criminology that crime is mainly committed by young people. Although there are variations in the types of crime committed by different age groups the most "criminally vulnerable" sector is that of young men aged between 15 and 24.

Because the Maori has a large part of its population in that group it could be argued that the high Maori crime rate is simply due to the large number of Maori young. However this argument is too facile and was dismissed in the Roper Report when referring generally to young offending-

> *"...while there has been a population bulge affecting the group (aged 15-24) it is not sufficient to explain their over-representation in offending"*[18]

Societies throughout history have, of course, bemoaned the apparent lack of respect or control of their young. Behaviour born of this "lack of control" or youthful bravado may sometimes be brought to the notice of the police and so become criminal rather than merely immature or daring. However it is apparent that the involvement of so many young people in repeated and often violent offending is due to more than an adolescent testing of society's behavioural boundaries. There are clearly deep-seated factors within New Zealand's social organisation and the life style of its young which predisposes some men towards crime. It is equally clear that the young Maori man is subjected to factors unique to the sub-stratum of New Zealand society which he inhabits; a sub-stratum both shaped and demeaned by the values of the wider Pakeha community.

Contemporary Pakeha society encourages its male adolescents to aspire to an ideal of bravado, power, and machismo. It is an ideal forged in the Western past where masculinity was equated with dominance and emotional suppression. The predominance of men in society's power structures and the dark undercurrents of

violence against women and children are the frequent present-day manifestations of this ideal. It is an ideal which has shaped not only the Pakeha male's concept of acceptable masculine behaviour, but has also distorted and oppressed traditional attitudes to the male/female relationship in Maori society.

The extreme acting-out of this ideal sorely tests the behavioural codes of any society and exposes the delicate balance between the accepted Western macho and the unaccepted criminal. An adolescent striving to assert his independence and find his place will often upset that balance and so reveal the inherent conflict between the two. When this striving is overlaid with other forces, the conflict becomes more pronounced and the balance more tenuous.

It is the sad lot of the young Maori that he is not only responsive to the pressures which shape all adolescents within New Zealand society, but that he is also shaped by forces peculiar to him as a Maori. His vulnerability to the former is increased by the latter since the history of the Maori community has meant that he is often trapped in a family situation which is unable to provide either the contemporary economic security or the traditional cultural stability necessary for personal confidence and self-esteem.

> *"I see our tamariki with the plastic bag up on their face or acting all tough up the mall and .... I know that they haven't got the job and they haven't got the reo so they get even more mixed -up than the Pakeha boy."**

Thus the mere nature of the less-fixed behaviour patterns of adolescence which may in themselves create conflict can be heightened by the realities of existence within the Maori cycle of confinement. The lack of financial means can cause frustration that is heightened by a sense of racial injustice which is seldom articulated but frequently experienced and perceived. The absorbed ideals of machismo can interact with the frustration and injustice to create behaviour patterns which are frequently violent and criminal. This interrelationship between the "social liabilities" of the young and the place of a Maori, has created an environment of stress and insecurity for many Maori youngsters. The pressures upon their families and their communities mirror this stress and isolate them from the traditional patterns of upbringing which nourished Maori children.

In traditional Maori society, the young were seen as the coming strength of the people and were nurtured as such. They were the taonga of the tribe and the foundation of its future mana. As such, they were granted the spiritual protection of the gods and the physical support of the hapu. They were given clearly understood rights with concomitant duties and obligations which ensured that as they grew up they were

> *"...taught the customs of the people and the essential law of the tribe"*[19]

The child was therefore secure in his sense of self-esteem and place; he knew that as an individual he was tied through whakapapa to a much wider world. Although he may be destined to be chief, he would still be just one thread in a patterned weave of relationships. The self-gratification of an individual would always be balanced or superseded by the gratification of the whanau.

The patterns of rearing, discipline and education were set within the whanau group. In the words of our tipuna -

> *"Ka uhia te ngakau rangatira o te rangatahi i roto nga tuitui ataahua o nga tukutuku." -*
> *(The upbringing of our young is interwoven like the patterns of tukutuku.)*

Unfortunately these patterns have been disrupted by the restriction of the Maori to the nuclear family and the individualisation of his values and behaviour. The consequences of these disruptions have been to create generations of young people divorced in their individuality from the support of whanau relationships, and isolated in their urban limbo from the strength of cultural awareness. At the same time, they have created an environment for young Maori people in which almost inevitable conflicts occur because of the confusing weave of behavioural pressures in which they are trapped. The confusion is compounded by the attitudes of the wider society towards things Maori, and by the transmission of those attitudes through social interaction or by institutional imposition in structures such as the education system.

Education -

The schools and their alleged lack of standards or discipline are often blamed for the ills of society, including crime. However the education system is not an institution

divorced from the community. It is both responsible and responsive to the social order it serves, and it promotes the culture and values of that order. In New Zealand that has historically been a monocultural order, and the underlying philosophies of the education system reflect that fact. As one of the major agents in the socialisation and acculturation of the young, the schools have secured assent to the beliefs of the dominant culture to the almost total exclusion of Maori values.

> *"... when I blame the schools I don't mean they breed criminals ... I mean that they reinforce the terrible culture nothingness of our people and that's what turns our young to crime."**

In this sense the schools, of course, do no more than reinforce the accepted mono-cultural views and values of society. However their influence as shapers of minds and moulders of views has been devastating for generations of young Maori people. Although there have been recent moves to redress this situation and to more adequately cater for the needs of Maori pupils, the education system still largely retains the legacies of its monocultural history and its institutional racism.

The implications of this history and the failure of Maori children to "succeed" within the education system are well documented elsewhere. However the record of the schools in providing for the particular needs of Maori pupils has been succinctly stated by the Waitangi Tribunal-

> *"We think the record is quite unmixed. It is a dismal failure."*[20]

The effects of this failure on the young Maori have been essentially economic and cultural. The monocultural structure and curricula has contributed to their inability to achieve the academic success which would ensure reasonable employment and economic status. It has also reinforced their sense of cultural deprivation by failing to incorporate culturally appropriate resources and by neglecting to provide them with positive and empathetic role models.

There is clear evidence that youngsters learn best in a culturally sympathetic environment. This setting recognises the value of languages other than English, the equal validity of oral and written skills, the need for culturally relevant learning aids,

and accords respect to different backgrounds and ideals. In not providing this environment the schools have failed many Maori children and thereby played a major part in both defining the place of the young Maori in the New Zealand community and in maintaining society's perceptions about the worth of Maori culture.

In so doing, the schools effect both the self-esteem and consequent behaviour of the young Maori. In particular, the education system, and the Maori boy's experiences within it, play a large part in shaping his attitudes towards authority.

The first place where children are generally faced with authority figures who are not members of their whanau is the school. The familiar patterns of young people's behaviour often meet or fail to meet with approval differently for Maori and Pakeha, and the particular culturally-defined aspects of Maori behaviour are often not understood. Thus, for example, the very real sense of "whakama" which a Maori feels in a situation of embarrassment or reprimand can manifest itself in a quiet withdrawal which is often mistaken for obstinate defiance. The misinterpretation or differing responses of teachers to such behaviour can effect the youngster's attitudes towards authority. When that authority is exercised in a situation of "failure" for the child, as it so often is in the schools, the child can become resentful and frustrated.

The traditional acceptance of authority which Maori children were taught in a disciplined environment of culturally-defined respect has been replaced by an imposition of impersonal authority from a source dismissive or unaware of those cultural definitions. When this is combined with the weakened discipline of the home which is often consequent upon existence in the cycle of confinement, the threads of potential conflict with authority are set in place.

Many Pakeha people, of course, find such perceptions hard to accept or understand. That difficulty does not invalidate them however; it merely illustrates the monocultural presumption that because a Pakeha-defined system works well for most (but not all) Pakeha youngsters, it will also work well for Maori children if they are "motivated" and have the right "attitude". This view has led to a castigation of the Maori pupil as being the product of a "poor" home which fosters negative attitudes toward education, as squandering the "equal" opportunities offered to him at school, or as simply being

lazy. The generalised victim-blaming of such views prevents an analysis of the reasons why many Maori youngsters seem to come from impoverished homes, and whether that fact, and their consequent views about school, might not have been shaped by the policies of the schools themselves. From a Maori perspective it is clear that the schools contribute to and maintain the processes and attitudes which define Maori existence. As such they do not adequately recognise or provide a framework of learning that is culturally appropriate and stimulating; consequently neither do they provide Maori children with equal access to a fulfilling education. Because of these failings, the schools contribute to the cultural and economic deprivation from which offending arises.

The schools have thus contributed to the general web of existence which traps Maori people, and to the specific attitudes which may be manifest therein. Indeed, the truancy and "behaviour problems" of Maori pupils are merely the early expressions of the frustrations which may later be expressed through crime.

The young Maori men who make up a large proportion of criminal offenders therefore occupy an especially stressful place in New Zealand society. The high crime rate to which they contribute flows not from their youth per se, but from the weave of economic and socio-cultural inequality which shapes them. The active energy and bravado of youth interacts so readily with the frustrations of inequality that some reaction is inevitable. When legitimate avenues to satisfaction and status are barred by the attitudes and institutions of society itself, the reaction may well be anti-social and criminal.

Our shared history has defined the place of the Maori young within the cycle of confinement which traps their community. It has thereby created an environment of vulnerability which suggests to many young Maori that crime may be the only means of breaking that cycle or of reacting against the injustice it imposes. The complex threads which predispose some young men to act upon this suggestion are woven in personal reactions to the realities of their place and the emotional stress it lays upon them.

4 TE WAHANGA KIA NGAWARI AI TE NGAKAU O TE MAORI -

An individual's personality and character develop out of many variations in his upbringing, his life-style, and the socialisation processes which he undergoes. They mould a complex "state of mind" and influence his emotional and mental well-being. They are linked to his physical health, and their interaction helps define his sense of worth and shapes the way in which he may behave.

Over the years there has been much debate about the effects of a person's emotional state on criminal behaviour. "Psychogenic factors" have been identified which indicate that some lawbreakers are essentially mentally ill persons suffering from specific psychoses.

However many Maori offenders are simply under different types of severe emotional stress as distinct from being mentally "ill". The reasons for this stress lie in the particular pressures which can effect Maori self-esteem.

> *"What insecurities and stress develop from being the butt of racism ... what effect does constantly hearing "Maori car", "Maori side-step", have on our young minds?"**
>
> *"... when they're stumbling round in a world that doesn't respect who they are and when their minds are bashed about, their wairua is destroyed ... at those times it must seem there's only two choices, violence or death."**

To understand this pressure it is necessary to consider the different perceptions which Maori culture has about the causes of mental illness and emotional stress.

The mental health and emotional well-being of a Maori person was traditionally inseparable from his physical health and his relationships with the world around him. It depended upon the stability of his individual and group identity and on the strength which he gained from a cohesive culture. It was sustained by the secure interrelationship which he had with the religious or spiritual world, and was nourished by his language and his ties to the land. This interrelationship implied a balance in a person's life which ensured the security of his place in society and the well-being of his person.

Today, the rate of admissions to mental hospitals would seem to imply that there has been a marked deterioration in the mental health of Maori people, especially young Maori people. A general profile in 1984 found that patients in mental hospitals were-

> *"more likely to be single, male, aged 20-39, and Maori."*[21]

Of these patients, many are admitted by committal from non-medical agencies such as the courts and

> *"...Maori people are, in fact, more than twice as likely to be referred from law-enforcement agencies as non-Maori people."*[22]

Although racial stereotyping and cultural insensitivity may contribute somewhat to this position it seems clear that many young Maori men are suffering emotional stress and mental illness. However the admission figures are merely the extreme end of the threads of emotional pressure which pull at the Maori community.

The holistic Maori concepts of health find their echo in many non-Maori definitions of mental health which emphasise that it largely depends on-

> *"...adaptation to the environment with a balance between internal and external forces with which the individual interacts."*[23]

It is clear that these forces in Maori society include the external pressures of their socio-economic status and the internal pressures of cultural loss.

It is the latter which Maori people regard as crucial since any weakening of one's culture is a weakening of one's very being and hence one's emotional security. The World Health Organisation, in adopting the 1978 Alma Alta Declaration, stated that it was necessary to recognise culture as a basis of good health, and it is now generally accepted that one's culture is intertwined with emotional stability.

To the Maori, three of the fundamental ingredients of his culture which provide that stability are the whanau, the land, and the language. They are sustained and linked by the essential beliefs and wairua which underpin the culture. Any loss of land can

therefore be interpreted as a precursor to a loss of identity which in turn is a determining factor in the attainment of good mental health. The individualisation of title which facilitated the loss of land and consequently weakened the extended whanau structure has placed many Maori youngsters at risk. Their emotional plight reflects on the inadequacies of the nuclear family which land division and the urban shift made paramount. These inadequacies in turn hindered the transmission of the Maori language which has resulted in generations of Maori children having difficulty with communication skills and hence problems in their relationships with others.

The traditional Maori strengths which

> *"...contributed to mental health by enhancing respect and self-esteem, and consolidated the personal and tribal sense of identification that ensured socio-cultural integration"* [24]

have clearly been weakened. The deeply personal need for cultural identification is often unable to be properly satisfied within the cycle of confinement which shapes Maori existence.

As a result, Maori people may be driven to a state of Pakeha-defined mental illness or be placed in a state of mate Maori, the complex illness derived from traditional spirituality or infringement of tapu. The young Maori may also be led to behaviours as diverse as the swaggering bravado or glue-induced shuffling of the "street kid", or the callous indifference of the violent offender. In each of these cases the illness or the behaviour is linked to an inability to satisfy the cultural and emotional needs of positive self-esteem and self-respect. There is thus a correlation between the emotional stress caused by the cultural and economic deprivation of much Maori life, and the criminal vulnerability of those shaped by that existence.

In essence the "state of mind" of the young Maori is moulded by his own perceptions of his worth which are shaped in turn by society's definition of his place and the value of his culture. This ongoing process is fostered by the impact of institutions and "instruments of influence" in the Pakeha world which deny young Maori access to the values and ideals of their own culture and replace them with changing attitudes and codes of behaviour.

5 TE WAHI WHAKAWHITIWHITI WHAKAARO -

The changes which the Maori people have undergone in their cultural norms and institutions have led to an equally disruptive shift in the attitudes which they have towards themselves and towards others. Since attitudes are shaped by the values of a culture, they have been subject to the same influences which have powered the process of cultural change.

The co-existence of Maori and Pakeha cultures has been historically based on a population imbalance and an unequal distribution of resources. The codes of behaviour and attitudes which Maori culture has transmitted have been effected by this imbalance and have often been questioned or denigrated by Pakeha culture. As a result, young Maori people have frequently received mixed or uncertain messages about what attitudes and conduct are appropriate.

It is an inevitable consequence of colonisation that pressures are placed upon traditional attitudes and norms. To the Maori, his iwi provided a culture which was a

> *"historically created system of meaning in terms of which we gave form, order, point and direction to (our) lives."* [25]

The monocultural "correctness" of the political, religious, economic and social attitudes which underlay colonisation altered this sense of order and direction. The corresponding shift in Maori attitudes has been an ongoing process which has undermined the spiritual strength of the people and removed the codes which controlled their physical conduct.

Although this removal of traditional restraints has been accompanied by the attempted imposition of new codes of conduct, the process has had unsettling repercussions. Many young Maori men are excluded from the Pakeha systems which promote these new values and hence they have little empathy with them. Unfortunately they are also alienated from traditional Maori notions of acceptable behaviour so that they develop attitudes towards themselves and others which are often inconsistent with both value systems. The increased sense of isolation which this brings confirms them in their assumed attitudes and leads to behaviour which tears at the threads of their own culture and creates conflict with those of the dominant society.

For many Maori, this process is aggravated in a general sense by the stresses imposed by life within their cycle of confinement. It is stimulated in a specific sense by the continuing actions of monocultural institutions such as the education system, and abetted by instruments of influence peculiar to the electronic and consumer age. The cumulative effect of these influences is to reflect the values of the Pakeha world and to reassert their validity. The young Maori who is subject to these influences is both emotionally and culturally impressionable and hence susceptible to the values and models presented by the dominant culture.

The Media -

There are, of course, many instruments of influence such as alcohol and drugs, but perhaps the most pervasive and persuasive today are the media. Their impact upon the attitudes and perceived value of Maori culture has derived historically from the dominant Pakeha values they promoted, and from the acts of commission or omission by which they belittled Maori ideals. They derive today from the same sources plus the images of violence and sexual exploitation which they advance in the guise of entertainment or advertising.

The role of the media in concentrating on negative Maori "news" and in failing to present a Maori perspective on issues has been recorded in research. The origins of that role lie in the media's historical acceptance of attitudes which saw the missionaries suppress Maori beliefs, the settlers frequently call for the extermination of the Maori, and the legislators impose a foreign system of law -

> *"The attitude of the natives...shows very clearly that anything but a firm policy ...only encourages in them a disregard of the law...in a matter of this nature we are called upon to...(demand) simply obedience to the law." (1886)* [26]

In more recent times, that approach has been manifest in many ways - in a perpetuation of untruths about Maori ideas -

> *"The trouble with (taha Maori) is that it is totally permeated with...the satanic supernatural...(and) is a coverup for the reintroduction of satanic beings," (1987)* [27]

an in an inappropriate imposition of Pakeha perspectives on Maori values -

> *"(women) not being allowed to speak at the powhiri or welcome ... displayed quite clearly that sexism is alive and well on some marae."*[28]

Such extremes illustrate a media which Maori people see as being insensitive to, and ignorant of, Maori values -

> *"I know it's been said again and again but there's not enough positive Maori things, encouraging things, on TV and in the news media ... Maori things get misunderstood or all blown up ... and encourages any aggressions that our young people seem to be doing. I've no doubt that when TV feeds our kids bad things about what they are, then lots of the things that happen are defense mechanisms."**

That insensitivity is compounded by the frequent use of such things as inadequately explained statistical comparisons based on monocultural assumptions and the blatant misuse or mispronounciation of the Maori language. Through such actions the media have helped to mould Pakeha perceptions of Maori people and Maori issues. They have also conveyed to Maori people a definition of their culture's value: by acts of omission they have presented an image of comparative worthlessness, by acts of commission they have created an image of negative underachievement. Their compelling power has thereby influenced the attitudes of Maori people towards their own values and their own sense of self-worth.

Some young Maori people, with little or no knowledge of their cultural heritage, accept the non-Maori ideals so attractively packaged by the media. Others may seek to retain what cultural links they have, but the absence of Maori language and empathetic role models weakens those links and raises doubts about their worth. In both cases the media contributes to the perceptions of self-worth which Maori youngsters have about themselves. The tragic extremes of this unworth have been illustrated in studies which showed that up until the age of 12 many Maori children denied their Maoriness and identified as Pakeha. The media helps shape that denial through its own cultural "mind-set" because its ways are Pakeha ways and the values it conveys are Pakeha. This does not necessarily mean that the media are anti-Maori, merely that their Pakeha underpinning ensures that they will convey messages of Maori unworth through a focus

on negative Maori images or an absence of any real Maori focus at all. They therefore prejudicially affect Maori attitudes, experiences and behaviour, and they mould Pakeha perceptions of that behaviour. They also heighten the existing frustrations of Maori people by denying the reality by which society prevents Maori youngsters from fulfilling those Pakeha images which they constantly show as desirable.

Many of those images are, of course, portrayed in advertising which indirectly reinforces the reality of Maori economic deprivation and contributes to the hurt of cultural exclusion. The advertising of economic goals and assets beyond the reach of most young Maori, clearly aggravates their sense of economic frustration. The comparative lack of Maori models within those advertisements, or their representation as inaccurate stereotypes, reinforces negative perceptions of self-worth. More subtly, the ever-present commodification of values and land reaffirms the economic basis of all things and thus undermines the worth of traditional and spiritual attachments.

The values conveyed in advertisements are the most overt expression of the media's overall message that Maori people, their language and their ideals have no place in the wonderful fantasy world which they create. By their effective exclusion of the Maori through what may be called a transmission of invisibility, the media and their advertisers underscore the absence of Maori input and involvement in the things which the wider society regards as important.

The media are thus a tangible reflection of the policies and social views which have established the place and the attitudes of the Maori community. Through their monocultural bias they remind Maori people of the realities of cultural deprivation and denigration. Through their advertisement-besotted emphasis on material wealth they remind Maori people of their economic inequality. These emphases contribute to the frustrations of Maori existence and ultimately effect not just a Maori person's attitudes towards himself and his own culture, but towards the lives and worth of others. Eventually such attitudes will be manifest in behaviour.

Throughout its history New Zealand society has established a number of instruments of influence that promote its beliefs and codes of conduct. The teachings of the

missionaries, the texts of the schools, and the statutes of the law, have all altered the attitudes and behaviour of Maori people. The contemporary images of the electronic media are but another instrument which presents models of behaviour that influence and mould the perceptions of the young Maori. While it would be wrong to hold the mass media solely responsible for shaping attitudes, they are clearly one of society's most powerful means of reinforcing its values. In this role they present not just general images of society's ideals. They also promote specific attitudes about the acceptability or appropriateness of different types of behaviour. In particular, they foster certain images about the violent resolution of conflict and the sexist demeaning of women.

There have been many attempts made to establish a causal link between the media portrayal of violence and violent behaviour within the community. Some studies are uncertain whether there is such a link and argue that media violence does not generally cause a viewer to behave violently. Other research indicates that there is a correlation and maintains that

> *"there is a relationship between exposure to crime and violence in the media and enforcement of an ideology which makes the use of force.. the essential content in human relationships."* [29]

A similar stance was adopted in the Report of the Royal Commission of Inquiry into Broadcasting which concluded that there was established knowledge about the long term cumulative effects of media violence on some viewers. The Roper Report also concluded that the gross distortion of violence on television presented harmful models of behaviour to young viewers. It seems fatuous to the Maori community that media and advertising interests deny the validity of such conclusions, and it seems illogically

> *"... wondrous that the mass media also... finance themselves mostly through advertising... although such... advertising does not allegedly exercise any influence.."* [30]

The anger and frustration of cultural and economic deprivation in which many Maori exist create their own sense of propriety and acceptable behaviour. The media both reinforce the institutions and values which create the deprivation, and shape the attitudes which determine the behaviour. The emotional stress and lack of self esteem

which may lead to youthful suicide, and the socio-economic frustration which may provoke crimes against property, are a corollary of the cultural denigration to which the Maori community has been subject. The commission of violent crimes, the incidence of sexual attacks by Maori men on Maori women, and the increasing disclosure of incest cases, are a particularly tragic part of the same deprivation. In each instance, the media both reports upon the behaviour and relays the values which contribute to the deprivation from which it sprung.

Traditional Maori attitudes towards the respective roles of men and women, and the resolution of interpersonal conflicts, already weakened by other instruments of influence, are modified further by the models presented in the media. The ancient definitions of manliness based on courage and wisdom have been confused with Western notions of machismo based on violent domination. The ideals of the group responsibilities of the male have been supplanted by an individualism founded in a disregard for the interests of others. The traditional sharing of responsibility in raising children within the whanau which lessened the stress of parenting and so mitigated against the use of corporal punishment, has been replaced by the stresses of an isolated nuclear family and a resort to physical violence. The ancient respect of woman, her tapu, and the vitality of the female element, have been largely replaced by Western chauvinism.

This "attitude-reversal" began with the imposition of Victorian Christian beliefs about the role of women, the definition of family, and the dominance of the patriarchy. It was promoted by Pakeha-inspired "histories" which focussed on the violence of Maori society in a context divorced from its cultural explanations. It was advanced by a monocultural analysis of Maori philosophy which aimed to highlight their "barbarous customs" and so led, for example, to the incorrect but often-cited "expert" view that the story of Tane and Hine-Titema illustrated Maori acceptance of incest. It was incorporated in the imposed criteria for successful family life which dismissed traditional methods of child rearing and instilled the twin beliefs that the wife was chattel to the man, and that to spare the rod was to spoil the child. It is maintained today in the media images, and society's apparent acceptance of, the violent resolution of disputes and the sexist definitions of a woman's place.

Alcohol and Drugs -

The media are instruments of influence that affect the attitudes and behaviour of the young Maori through an indirect but progressive transmission of ideas. A more direct effect is introduced by the influence of alcohol and other drugs.

That alcohol can be defined as an "instrument of influence" is clear from the fact that while it does not "cause" behaviour such as criminal offending, it certainly contributes to it. The reasons for people drinking are related to the behaviours which drinking stimulate, and there is a clear interaction between the motives of an offender and the alcohol which may stimulate his aggression or crime.

The effect of alcohol, and more latterly drugs, has been devastating to the Maori community. The almost physiological intolerance of drink which caused illness and associated problems for the Maori in the early days of Pakeha contact was quickly supplemented by its use as a release from depression and denigration. The tragic consequences of alcoholism and dependence were then directly exploited by unscrupulous land agents to ease sales from people whose debts could not be paid, or from reputed owners who were drunk at the time of sale. It is sad that the history of the early Native Land Court is filled with stories of such exploitation.

What is not recorded, however, are the wider consequences of those actions and the continuing damage alcohol causes within sections of the Maori community. That damage, as evidenced in family violence, marriage breakdown, and loss of personal self-esteem, came to symbolise the disruption which Pakeha pressure had caused to Maori society. In this sense, alcohol became the same source of escape as it has in many other indigenous cultures exploited by the colonial power which had introduced it in the first place. And as in those other instances, the Maori has been castigated for his inability to cope with alcohol, a "fact" which has then been used to justify discriminatory laws imposing prohibition or restricted sale in Maori areas. Today that same attitude is seen to motivate moves to close public bars, the place most frequented by Maori customers.

The actual effects and symbolic meaning of alcohol have not therefore greatly changed, although they have been overlaid with the introduction of other more damaging drugs.

The involvement of young Maori in the selling and use of such drugs merely seems part of the same continuum of corruption that began with the first sale of alcohol. Indeed, it seems clear to Maori people that while the reasons for alcohol or other drug abuse may be complex in an individual sense, they represent a frightening symbol of the damage wrought by various instruments of influence on Maori society as a whole. They are seen to have contributed to the changing attitudes and behaviour of many young Maori, and thus helped shape the correlates of criminal offending.

> *"We must blame the alcohol for a lot of these crimes - especially the violence when our men get haurangi ... but I suppose they wouldn't act so vicious, get so stupid, if they had a better chance, if they had less mamae (pain)."**

The changing attitudes of the Maori community and of young people in particular, are therefore shaped by the same forces which have affected their culture. The instruments of influence which have brought about these changes in the course of colonisation have been supplemented by the pervasive contemporary influences of the electronic media. The unacceptable attitude and behaviour of many young Maori men towards women is but an extreme example of how effective the process of altering traditional Maori values has been.

It is clear that changes in attitude lead to behavioural changes which may become criminal. In this sense, the Pakeha instruments of influence contribute to the complex forces which shape the Maori offender.

DRAWING THE THREADS TOGETHER -

Young Maori offenders are shaped by the circumstances and background of their place in the New Zealand scheme of things. Their community and families occupy a place in society which is largely defined by a sense of cultural and socio-economic deprivation. The emotional stress and changes in attitude which this imposes upon them create an environment in which they are vulnerable to criminal involvement. The correlation between offending and the cycle of confinement in which many Maori exist is a real and almost inevitable consequence of the racial and economic inequalities which exist within New Zealand society: inequalities that create an imbalance in the social, cultural and emotional harmony of many young Maori lives.

The present relationship between young Maori, their families and community has been divorced by inequality from the realities and strengths of its traditional form. In the past, the relationship was like a fabric design woven from the threads of a vibrant culture. Its borders - the ideals of whanau, whenua and religion - were an interlaced taniko pattern which gave order to the design, strength to the fabric, and meaning to the relationship. Those threads have been torn by the history of Maori/Pakeha interaction and frayed by the contemporary realities of life in a consumer society. They have been rewoven into a new, confusing, and often destructive pattern of existence.

The denigration of Maori culture by the dominant society has trapped many young Maori in a limbo of cultural shame and uncertainty. The mechanisms which society has used to define a young person as Maori have at the same time deprived them of access to those cultural values which would give that identification real meaning. This has led to a confused definition about what it is to be Maori, and many young Maori become trapped by the contradictions between what Pakeha society wants them to be, expects them to be, and their culture's own conception of what Maori identity really is.

The image of many young Maori, their self-perception, is therefore often created by Pakeha social definition rather than an accurate instilling of Maori values. Since the expectations of the dominant culture are largely negative, a sense of cultural confusion develops which means that a young Maori is frequently unable to adjust appropriately

to either his own culture or to that of the wider society. The reality of cultural denigration and deprivation is thereby confirmed.

The reality of this deprivation for young Maori men is not just evidenced by a lack of fluency in the language or in the readily recognisable "concert skills" of haka and waiata-a-ringa. It is evinced as well in the changing attitudes and behaviours which seem to blithely dismiss the need for the former, prevent participation in the latter, and bolster a Maori image adopted from Pakeha perceptions rather than Maori realities.

The attitudes manifest themselves in the acceptance of Western machismo rather than Maori manliness, and in the use of women as Victorian objects rather than Maori taonga. They are expressed in tattooed masks of identification divorced from the mana of spiritual respect, and in physical abuse dismissive of their body's inherent tapu. They are exhibited in acts destructive to the wairua of their contemporaries, their tipuna, and themselves. They are attitudes and behaviours which shape their reactions to both the injustices of the Pakeha world and the derived knowledge of their own. Each one has helped to fill the void of cultural deprivation which our shared history has created.

Maori youths raised in the positive strengths of their culture are able to largely escape the worst effects of this cycle of deprivation. Secure in their iwitanga they have a strong foundation from which to approach the pressures of the Pakeha world. The demeaning consequences of cultural, racial and economic inequalities are lessened by the self-esteem they gain from the cultural ideals transmitted by whanau and iwi. Assured of their worth, they are often able to successfully contend with the effects of prejudice and discrimination. Unfortunately, many young Maori people lack this background. The emotional tensions of cultural deprivation which are compounded daily by institutional racism and personal prejudice leave them exposed and vulnerable. When this vulnerability co-exists with socio-economic deprivation, the young person is often unable to cope.

The young Maori, educated in the schools to believe in equal job expectations, and persuaded by the media to make certain consumer demands, is prevented from satisfying those demands by the same institutions which encourage them. The racial

inequities of the education system, and the qualifications society demands for status, ensure that young Maori are assimilated in terms of Pakeha aspirations but denied the economic means to achieve them. They therefore feel the effects of discrimination all the more acutely and become aware that they are manifestly unequal when compared in economic terms to their Pakeha peers. The whole

> *"... pantechnicon of twentieth century entertainment arousing desires, creating hopes, displaying different and enviable lives, and making (the young) wonder and want,"*[31]

creates an economic myth beyond the reach of most Maori youths.

It is not surprising that the combination of this economic inequality and cultural deprivation has established the cycle of confinement in which most of the Maori community exists. Maori people see a clear correlation between this cycle and certain patterns of behaviour which appear to reject its stultifying and depressed modes of control.

The instability of existence within the cycle means that concepts of appropriate behaviour are in a state of flux and often amoral uncertainty. Young Maori, battered in their self esteem by the effects of cultural deprivation and denigration, are denied access to the Maori ideals of right and wrong, and are thereby weakened in their allegiance to any traditional standards of behaviour. The resentment of economic inequality reduces their willingness to abide by the accepted codes of the wider society so that a developing pattern of behaviour emerges which challenges both of those codes.

This pattern may take many, often interrelated forms, each of which may eventually lead to behaviour that is defined as criminal. Thus the lack of a positive cultural identity may lead to identification with peer groups and an initiation into the solidarity and sub-culture of a gang. The lack of a legitimately respected economic position may lead to an identification with life-styles which provide access to illegitimate means of gaining status. The lack of emotional security may lead to an identification with behaviours which provide security in drug or alcohol-induced escapism. Whatever the scenario, and there are many, the patterns are manifest in the too frequent cost of violence to oneself, to others, or to property.

Economic unfairness and cultural loss thus feed off each other in an almost symbiotic relationship shaped by the cycle of social confinement. Within this framework cultural denigration establishes a general sense of deprivation which in turn is stimulated by economic inequality into an environment where the potential for criminal involvement is exacerbated. While the facts of Maori economic existence establish many of the correlates that predispose some youths to criminal behaviour, it is the aching reality of cultural deprivation which determines the extent of that predisposition.

Thus if low socio-economic status is the catalyst for much unacceptable behaviour by Maori youth, it is cultural loss which makes that behaviour manifest itself to such a worrying extent. Since economic and cultural deprivation both exist as the outcome of a shared history, it is clear that any disproportionate behavioural consequences of Maori existence issue from that history as well. In this sense, the level of criminal behaviour by young Maori men can be viewed as the cost of the history and policies which have shaped their place in contemporary society.

The definition of this cost in terms of a "Maori crime rate" is a systemic matter determined by the institutions of the criminal justice process. This process is itself part of the same structural colonialism which has shaped the economic and cultural inequalities that contribute to criminal behaviour. The operations of the criminal justice system may therefore reflect the same insensitivity and institutional racism which has defined the relationship between Maori people and other socio-political organisations. Whether this insensitivity is actually present, and whether it influences the compilation of a Maori rate, or prejudicially affects Maori offenders, are questions of system-based analysis to be addressed in the next chapter of this Paper.

TE WAHANGA TUATORU

TE MAORI ME NGA TURE WHAIPANGA ANA KI TE HARA - THE MAORI AND THE CRIMINAL LAW

Kimihia nga putake katoa o te kaupapa,
ina kitea kimihia nga rongoa.
Look for more than one reason for the problem,
then seek the solution

Ka piupiua te rakau i te maha o nga hau
Engari ma wai e kii kei te he te hau?
A tree is blown by many winds,
But who will question the wind?

NGA WHAKAARO O TE IWI

> *"If you ask why we've got all those Maoris in jail you've got to ask either are all these Maoris born criminal or has something made them criminal...and when you ask what contributed to that, you must ask have the police and the courts, the system, played a part in it all."*

"What we must remember is that you can't separate the things that have turned some of our men into bashers and rapists from the things that drive the justice system - they are both part of the process of one culture suppressing another and you can't understand one without the other."

"When they talk about justice they talk about the system, the courts and that, but for us Maori that's not the same thing."

"They train them six months and then send us a young cop that's supposed to know the environment, the community, the...how we move, how we think, but what's he know about how we live?"

"Brutal, brutal police intimidation and violence is so common and Maori people know that racial discrimination within the police is there and that it's ... awful."

"The courtroom, that's their marae - that's the Pakeha marae - stand up, don't lean against the wall, take your hat off, that's fair enough but it's not our marae."

"One experience was enough for me because after that I saw it happening time and time again - our tamariki pleading guilty because in a sense it's all designed to take us down...that's what I feel and our history shows that's what the law has done."

"I can respect a judge as a learned man but his learning doesn't mean he might not be prejudiced or he understands us...I wonder for example if he would respect my learning."

"Judges and those others need to be sensitised. This has been said once, it's been said twice, I'll say it again because they, the brotherhood of judges, are not sensitised about us."

"The probation service prevailed in those days but the measures that were put in place...were the measures that were sort of built or architectured by British law, certainly not by the requirements of Maori people, and so today it is found to be failing and failing miserably."

"How can that probation officer understand me and how I live when he's never lived our life...all he does is write what he thinks."

"Every time I hear some court clerk mispronounce a Maori name I want to say...hey...you're guilty of abusing me."

"You should change the name from Department of Justice to department of law because you have more to do with law than justice."

"... in all sorts of ways the name "Department of Justice" is all wrong because you actually can't get justice from an organisation that's institutionally racist ... and you've only got to analyse how it deals with our people to know that's true".

"I honestly think that Pakehas must stop kidding themselves that their criminal system is fair just because everyone, or every Pakeha, keeps saying it is...it's their system and it might be fair for them, but it's not ours and it's not fair for us."

"Well, listen ... the Pakehas they've got their system so seeing it's theirs they'll be sweet in their system. Like if the Maoris had a system and the Pakehas were living in our system I reckon most of the Pakeha would get done too."

The relationship between Maori people and the operations of the Pakeha law has clearly dominated much of our shared history. Today the major interface of that relationship is the criminal justice system. The interaction which occurs there is shaped by the broader relationship between the Maori and the law, and is therefore affected by the same socio-cultural history and the same power imbalances.

Whether a young Maori is classified as "criminal" and is defined as part of the Maori crime rate is dependent upon a series of often discretionary decisions made about his behaviour. How these decisions are influenced by socio-cultural attitudes, and how they may be applied in instances of Maori offending, are important issues in determining the institutionally-defined extent of Maori crime. Like so many influences in Maori life, they are issues which have been shaped by the realities of cultural conflict. They therefore highlight the different perceptions which Maori people have about how the system operates, and how it fits into the context of that conflict.

To the Maori, the criminal justice process is an establishment into which they have had little cultural input. It is seen to be insensitive and dismissive of Maori ideals. Its central focus in the interaction between the Maori and "the law" means that its processes are seen to affect both their general relationship with the law, and the specific extent of their criminal involvement. An analysis of this interaction and its consequences is essential to a full understanding of the Maori crime rate.

Such an understanding can be gained through a system-based analysis which assesses the procedures and ideals of the criminal justice process, and fits them within the holistic framework of forces which impact upon the Maori offender. This analysis recognises that the underlying "philosophies" of the police and the courts are an integral part of the same socio-cultural process which has shaped and continues to determine the place of the Maori community, and hence the Maori offender, in New Zealand society.

Unfortunately very little detailed analysis has been done of the basic ideals of the criminal justice system and how they might effect the actions of the police and courts in relation to young Maori. That this has not been done is regrettable but perhaps illustrative of the limitations imposed by an ethnocentric viewpoint.

A monocultural system assumes that its norms are inherently fair and valid. Any powers exercised by the state or its agents to maintain those values are also assumed to be fair and valid. If the powers are discretionary in nature, as they often are in criminal cases, there is a further assumption that the discretion is applied with fairness and validity. Those who exercise this discretion do so on behalf of society: they are seen to apply judgements which reflect the concerns of the conforming public. Although those concerns are usually

defined as being those of the majority, which by its nature often excludes "minority" Maori interests, their basis and the judgements arising from them are rarely questioned. To do so may actually be seen as questioning the very concerns and ideals which are the basis of social conformity.

Unfortunately these cultural assumptions are often incorporated into research frameworks which maintain that the various stages of the criminal justice system are inherently fair and effective for all. As a result, the research focus placed upon the system is a descriptive one in which its officially stated goals are taken for granted. The means by which these goals are realised are analysed only insofar as they permit descriptive revelations of their application. The actual rationale behind the operation of the process, the heart of the system, is precluded from analysis by the monocultural base of the research itself.

Inequities which may be uncovered are neither processed into theoretical questionings of decision-making nor used to develop analyses of structural appropriateness. They are inequities seen as aberrational rather than systemic. In analytic terms, this has had two effects. It has limited research to the degree of people's adaptation to set structures, rather than an assessment of the structures themselves. It has also meant that most research into the operation of the justice system towards Maori offender has merely described the existence of certain disparities between them and "comparable" Pakeha offenders.

In order to seek explanations rather than descriptions it is necesary to set up a research framework which can analyse why and how the system operates in a particular way in relation to Maori offenders; this will then provide insights into systemic factors which may be responsible for exacerbating the recorded rate of Maori offending.

The foundations of that framework are found in the historical relationship between the Pakeha legal system and the Maori people.

The operation of the Pakeha legal system defines the parameters of social behaviour and reinforces the attitudes of social interaction. Its codes, whether enunciated in legislation, regulated in local by-laws, or laid down in the common law of the courts, provide the framework for social order and control. As such, the law both shapes the society it serves and helps to establish and maintain the place of people within it.

The procedures which the law uses to perform these functions arise from the unique history of its Western-Christian heritage. They are methods based upon a concept of individual rights protected by the ideals of impartial application, indivisible justice, and inherent fairness. They developed as a means of achieving peace and individual well-being so that

> *"...the paramount dignity of the free and lawful person, originally the creation of faith nurtured in the Pauline epistles, (became) reserved at law as a humanistic ideal."*[1]

Over time, the processes which derived from this ideal incorporated many different philosophies and assumed the aspirations of those who had been given the power to make the law and develop its processes. The development of legal ideals reflected their views of an ordered society, and the criminal law became

> *"...critically important in maintaining bonds of obedience and deference, in legitimising the status quo, in constantly recreating the structure of authority which arose from property and in turn protected its interests."*[2]

By the nineteenth century, the general ideals of equality before the law and the impartial imposition of legal remedy were regarded as fundamental tenets that reflected the dignity of the individual on which Victorian wealth and society was developed.

When the law was exported to New Zealand as an agent of colonisation those fundamental tenets became allied with the concerns of the new propertied settlers and government. The specific interests of the colonial law-makers and the culture-specific bases of the legal system interacted to deprive Maori people of their traditional legal-religious ideals and to deny them the "new" rights guaranteed under the Treaty of Waitangi. The general law supported and gave credence to the promotion of settler interests in land and the imposition of the "English way" on Maori society. The monocultural assurance which motivated this process was particularly evident in the specific area of criminal justice.

While the Maori community shared the universal abhorrence for acts which did violence to people, property, or good order, their methods of expressing this abhorrence were quite different to those enshrined in Pakeha law. The individual-based English system stressed that an offender was solely to blame for his crimes which, perhaps paradoxically, were considered acts against society, not another individual - the Crown was the aggrieved agent which sought redress.

This, of course, conflicted with the Maori system which was shaped by ideals of kinship obligation. Because Maori possessed individual rights but collective responsibilities, offenders were never regarded as solely to blame for their crimes. Rather their whanau were deemed equally liable for their actions which were held to have aggrieved not just another individual but another whanau. Redress was therefore sought not by some distant symbol of "the Crown", but by the whanau involved - both the victim's and the offender's. There was thus a very real and close relationship between the offender, the victim, and the "judge and jury" - a relationship which could be retributive, rehabilitative, and a deterrent. The imposition of the Pakeha system removed this intimate sense of responsibility and replaced it with its own courts and police force in which

> *"imprisonment typified the Western response - the equation of individuals with animals distanced from their communities."*[3]

These varied ideals of group/individual responsibility and methods of redress illustrate obvious systemic differences between the Maori and Pakeha concepts of "crime control". They also place in context the apparently paradoxical attitudes Maori people have towards the Pakeha law. One the one hand, it is seen as a necessary ideal to maintain order; on the other its formulation and enforcement is seen as an alien, exclusive, and often discriminatory process detrimental to their interests. This paradox shapes Maori perceptions about how the law functions and how it effects the Maori community and the Maori offender.

In its actual operation the criminal justice process helps perpetuate the ideals of its own monoculturalism in a way which denies the validity of any others. Thus, for example, the theory of focussing criminal responsibility in an individual rejects the possibility of any concept of reciprocal group obligation. That this may be unfair in dealing with cultures that stress collectiveness is masked by various legal myths. The idea that the law is impartial is therefore promoted to show that it is a culturally neutral process that treats all people alike. By this reasoning the ideal of individual responsibility is held to be fair for all cultures because the law's inbuilt protections against bias or insensitivity ensure impartiality. However because these "protections" are also monoculturally defined they do not necessarily guarantee fairness in a bicultural situation nor acknowledge that a different concept of responsibility may be valid. The myths of impartiality are nevertheless accepted by the dominant culture which sees the law as somehow being free from the influences of its

own social prejudices. Their maintenance is fundamental to the philosophy of the law and has led to an exclusiveness which seems to preclude any questioning of their bases or effects, and to deny any cultural input at variance with them.

Unfortunately the individuation of an offender does more than increase the isolation of a Maori person from the reciprocal ties of kinship responsibility. It also removes the cohesive ties of support which had traditionally monitored behaviour, and thus maintains the law's role in the process of social fragmentation begun by the very monocultural biases it claims to be free from.

Debate about

> *"...whether the law is good, whether it ought to be obeyed, what its origins are, what relationship it bears to other social and cultural phenomena,"*[4]

is thereby proscribed in an area where Maori people feel that debate is essential. Indeed, their perceptions of the law raise the possibility that the basic tenets of the criminal justice system are far from culturally neutral and far from universally applicable.

Maori people question the belief that the ideal of "one law for all" can be meaningfully applied to people of different cultures when the "one law" does not reflect those other cultures. They query the idea that "equality before the law" can be interpreted to recognise the obvious inequalities in power and status which exist between their community and that of the Pakeha. Their acceptance of the notion that all people are moulded by the norms of their culture also leads them to doubt that the agents of the law can be impartially detached from the racial and social biases which have shaped Maori/Pakeha relationships.

Such questions raise many issues relevant to Maori offending because the unfairness implicit in them may result in injustices that actually increase the recorded labelling of Maori "criminals", and hence increase the likelihood that young Maori men will be arrested, charged and convicted. The possibility of this occurring is acknowledged on occasion, but is usually attributed to aberrational rather than systemic factors: that corrupt or prejudiced agents are enforcing or applying the law in a contrary and discriminatory way. This assertion implies that the law itself remains fair and equal because fairness and equality are enshrined as basic tenets - a culturally smug and circular proposition.

There is a clear Maori perception that the criminal justice system does not act fairly towards young Maori nor treat them with equality. Such beliefs arise from both an experience of prejudicial or unfair action by agents of the system, and from a very real concern that the system's monocultural foundation itself creates unfairness in bicultural situations. The unfairness is thus seen as being both systemic and aberrational.

> *" it's a cop-out to say that any prejudice in the justice system is only just a personal thing - it's much deeper than that and goes to the heart of the system itself."**

It is necessary to consider these perceptions in turn. A general notion that the system may be inherently unfair arises because the underlying philosophies and procedures of the law are culturally exclusive and unavoidably reflect those western origins that dismiss other cultural ideals. A more direct perception proceeds from the recognition that this cultural exclusivity helped shape a specific colonial history in which the law was the agent of Pakeha socio-cultural domination. The criminal justice system, as an integral part of that law, has thus inevitably been seen as operating in a way that vindicates the attitudes and policies of Pakeha culture, to the detriment of those not belonging to that culture.

In this sense, the actions of the criminal justice system which are perceived as being due to the unfairness or racial prejudice of individual police or court officials may actually be a reflection of the culturally-biased philosophies of the system itself. If the criminal justice process uses monocultural stereotypes to determine who will be arrested, prosecuted and sentenced, and then uses monocultural methods of dealing with those so arrested, it illustrates the shortcomings of its own heritage in a bicultural setting. It is, in effect, operating in a way which is institutionally racist.

The term "institutional racism" is often dismissed as a "fashionable cant phrase", but it clearly defines the workings of any organisation which deliberately or unwittingly functions contrary to the interests and aspirations of people who do not share the same cultural background. In New Zealand, a number of major institutions are addressing the problems of this form of racism in which their

> *"...normal, seemingly neutral operations...create stereotyped expectations that justify unequal results...that confirm original prejudices (or) engender new ones."*[5]

Maori people believe that the "seemingly neutral operations" of the criminal justice system create similar stereotyped expectations in which

> *"the connotation of race...becomes the connotation of offending."*[6]

Unfortunately the justice system itself has been unwilling to entertain the possibility that it may function in this way, and little research has been done to establish whether in fact it does so operate or not.

It is the clear perception of many Maori people however that the system is institutionally racist. The system-based approach adopted in this section of the Report attempts to analyse the underlying philosophies of the Pakeha law and to determine why Maori people believe that they are responsible for acts of bias and injustice. It is of course extremely difficult to establish the existence of unwitting or covertly prejudiced and discriminatory practices within the processes of an institution. Unlike acts of overt bigotry, they may be easily perceived by those who are victims, but easily dismissed by those alleged to be the perpetrators. Indeed the difficulty has led some people to claim that it is impossible to establish a link between the acknowledged prejudice present in society and the consequential prejudice which flows into and from its institutions. They claim that to assert such a link is to put forward a "non-justifiable proposition" incapable of either proof or refutation. However the acknowledged difficulty of quantifying discriminatory behaviour, or of "proving" that link, does not exclude the possibility of its existence; nor does it deny the validity of establishing that link in some other way. Neither, of course, does it deny the reality of the hurt experienced by Maori people who are the actual victims of institutional racism.

The genuine concerns and perceptions which reflect this hurt in the Maori community arise from a sense of justice

> *"...deeply rooted in (Maori) culture. If the law does not recognise this sense of justice, then people will have difficulty relating to the law."*[7]

It is unfortunate that many Maori people do have difficulty in relating to the law, and do feel that their sense of justice is abused. It is necessary to acknowledge this fact and to place it within a framework which can be defined and acted upon. In the course of this research that framework became evident as a paradox of fear within the Maori community. On one hand,

Maori people share a fear of violent crime, and a common anger at its consequences. On the other hand, they show a fear of the tactics the police often use in dealing with alleged Maori offenders, or the Maori community in general, and a scepticism that the courts and other agencies will treat them fairly. There is an almost resigned acceptance that their concerns about crime will not be adequately or fairly addressed, and a belief that their dissatisfaction with the operations of the criminal justice system will be dismissed. (See Appendix Three).

To understand this paradox, it is necessary to consider in detail the relationships between the Maori offender and the various institutions within the system which impact upon him.

THE POLICE AS AN ENFORCEMENT AGENCY

Reports and studies have frequently expressed community hurt and concern about various policies and practices of the police. Just as frequently, the concerns seem to have been dismissed as being "imbalanced and lacking in support background or analysis."[8]

With this type of precedent, it is perhaps not surprising that the concerns expressed in the course of this research were proferred with considerable scepticism and little hope that they would be heeded. But proferred they nevertheless were - with a depth of genuine anger and frustration which is difficult to convey -

> *"They always question our credibility when we talk about the police, as if all the mamae is not real. Whenever we complain or try to tell our story they say we've got no evidence ... our mamae is our evidence."**

That Maori people at every hui presented views critical of the police while accepting the likelihood that "nothing will be done", indicates a level of disillusionment which has grave portents for Maori/police relations. They also indicate a deeply-held sense of injustice which it would be foolish and unwise to continue to ignore. As the Waitangi Tribunal has so cogently stated -

> *"When one section of the community burns with a sense of injustice, the rest of the community cannot safely pretend that there is no reason for their discontent. That is a recipe for social unrest...*[9]

Within the context of this discontent, the often bitter expressions about the police assume a significance not easily dismissed as imbalanced or lacking in background support.

The background is clear: it lies in the historic part played by the police in colonial relations with the Maori, and in the role they now play as enforcement/authority figures placed over the Maori community. The balance is equally clear: it lies in the fact that while the Maori people are generally supportive of the police and are appreciative of their often positive contributions, they nevertheless still have very grave misgivings about police structures and policies. The concerns therefore take validity from expression within a basically supportive community context that nevertheless feels an increasing sense of alienation and hurt. It is important that the expressed grievances be accepted in the context which gave rise to them, and in the environment which continues to nourish them. It is perhaps most important to accept that even if some of the concerns appear misplaced, the fact and the extent of the anger and hurt cannot be questioned.

The police are the legal agents most familiar to many of the urban Maori young, and it is their interrelationship which helps sharpen Maori perceptions of the police. It is a relationship often characterised by mutual mistrust and claims of police harassment and violence. Allegations of abuse of police powers of search and arrest, and the use of force, define the parameters of the relationship. Incidents of conflict create frictions which heighten Maori feelings of frustration and increase the concern with which they view police methods and attitudes.

Because these concerns are fuelled by specific incidents which seem prejudicial or antagonistic towards Maori people, they assume an importance beyond their contribution to the climate of suspicion which sours police/Maori relationships. They are also relevant to an understanding of Maori offending since prejudice could bias the compilation of any Maori crime rate and predispose the police to more readily arrest and prosecute young Maori.

Of course such an hypothesis cannot be sustained solely on "incident-specific" allegations of bias or abuse. Rather it becomes sustainable by considering whether the police behaviour disclosed in certain incidents is "institution-specific" and flows from the socio-cultural place

and attitudes of the police organisation itself. This type of analysis essentially requires an assessment of the historic and contemporary framework which has determined the relationship between the Maori and the police. If the organisational structure and ethos of the police institution is monocultural and biased, its operations and its "incident-specific" relationship with Maori youth will be similarly biased. It is the attitudes and philosophies of an institution which shape the actions of its agents.

Maori people accept that the job of the police is often violent, frequently distasteful, and always stressful. However they also recognise that the police are more than the most visible and accessible symbol of the authority of the State: they are also the protectors of its image, and through their policies, the guardians of its values and attitudes. Their history in New Zealand, and their relationship with Maori people, reflects the tensions inherent in these roles and illustrates the conflicts created by their monocultural definition.

The first calls for a constabulary to enforce "law and order" in colonial New Zealand were prompted by frequent instances of general lawlessness in many of the settlements. This led to three Northern chiefs being appointed as "constables" by the Resident Magistrate Kendall in 1814. Their appointment, based in English, not Maori law, illustrated the colonial notion that imperial law should prevail, and indicated that any subsequent police force would reflect the interests of the colonising power.

The appointment of police magistrates after 1840 and the establishment of an "armed force" of constabulary in 1846 confirmed the possibility of conflict and secured the outlines of policy for much of the colonial period. The police were to be an overtly coercive arm of government policy to help facilitate untroubled settlement and to satisfy demands for land. In some areas the police were actually led by commanders who were also land purchase officers: in all regions they were largely made up of settlers who shared the Government's desire to impose Pakeha law and acquire Maori land in the name of civilisation.

The settler police shared the monocultural insensitivity of the colonial government, and this led to many clashes that both alienated the Maori and reaffirmed their developing perception of the police's role in relation to their community. In one such incident, the police

and police magistrate displayed both cultural ignorance and tactical stupidity. In the early 1840s, an armed police party sought to arrest a Pakeha trader at Russell. After forcibly entering his home at 3.00 am the police wounded the trader's Maori wife. Such a wounding was a serious insult as well as an assault on a woman who belonged to a senior whakapapa line. The tribe sought utu as redress but the magistrate rejected their demands. Only the intervention of missionaries prevented a serious confrontation and the utu demand of horses was eventually met. In what many of today's Maori familiar with the case regard as a premonition of more recent events such as the Paul Chase shooting, the Governor was moved to report "I wish the constables had gone unarmed and waited at the man's house until daylight".

It was thought in some quarters that the recruitment of Maori constables might decrease the likelihood of such incidents happening. Provision was therefore made to enlist Maori staff, but their use to enforce Pakeha law which was often contrary to those of their own people created a divided loyalty and contributed to the gradual weakening of the whanau groups traditionally charged with monitoring behaviour. The incorporation of Maori into the police thus contributed to the overall policy of amalgamation aimed at suppressing Maori authority and mana - "civilisation" was to be imposed by the police in pursuance of their duty to enforce the Pakeha law. And in a particularly bitter and ironic twist on an early theory of "user-pays", the Maori were to have the protection of that Pakeha law at a cost. Under the Outlying Police Districts Act, chiefs could sell their land to the Government and from the proceeds of the sale the Government would maintain military police in their area. That this Act also provided for land confiscation in those areas where alleged "rebels" were sheltering clearly established the role which the State had in mind for the police.

The aims of the first Ordinance in 1846 which had established a force of "able men who would serve as an armed force for preserving the peace and preventing robberies and other felonies and apprehending offenders against the peace" had clearly been changed. The context of cultural conflict and the reality of colonial settlement saw an extension of the perceived function of the police. When the Police Force Act set up the national organisation in 1886, the potential for tension between it and the Maori was already established.

The police were seen by Maori as an agent of the State which had attacked and denigrated the foundations of their society. Their role as an enforcement body removed from Maori input was deemed contrary to the ideal of partnership and the reality of rangatiratanga contained in the Treaty of Waitangi. The creed of impartial police service to the law was seen as meaningless because the law itself was not impartial. Its role seemed not so much to protect the Maori community from crime, but to control it.

These threads of Maori perception are drawn from a weave of often oppressive socio-cultural history. It is impossible to isolate today's police from that history because it both reinforced the intrinsic monoculturalism of their own organisation and shaped the pattern of contemporary police values and strategies. The current police philosophies are the product of a cultural ethos that still functions in a broad social sense to demean Maori ideals and to deny Maori people access to authority. In acting to vindicate their own particular cultural ethos, the police therefore operate in a way which has the potential to prejudice Maori people.

Whether this potential is actually realised in the unfair or prejudicial classification of certain behaviour by Maori men as "criminal" can be determined by analysing how the criminal justice system defines the relationship between the police and the offender.

The process by which a person is defined as criminal is the major tangible ritual through which society is seen to maintain order among its members. The underlying philosophies and systemic implementation of this ritual reflect their monocultural roots and reinforce the necessary mythology of an impartial arbiter of justice. Entry into the process is of course determined by police decisions over who will be apprehended, arrested and charged. Often this decision is clear-cut: the offender may be caught in the act of committing the crime, or the evidence may point clearly to the reasonable likelihood of his guilt. Whatever the circumstances however, the police have a discretionary power to charge and prosecute. It is often claimed that there is an over-use of this discretion and that many young people are unnecessarily labelled as criminal for comparatively minor offences which could have been more effectively dealt with in a diversionary way. It is claimed in the Maori community that the police often seem more likely to act this way towards Maori offenders:

that the exercise of police discretion is unfairly biased in favour of prosecution against them.

> *"It's like every time we go out some cop can make up his mind to do us ... and it's not what we get up to or even what the law says ... it's what he says.**
>
> *"From our time observing police operations, and that goes back fifteen years ... it is clear that young Maori are more likely to be harassed for what I would call discretionary offences."**

Such claims arise from the recorded experiences of many Maori people and from a clear understanding of the nature of any discretionary power. In theory, the police, through training and professionalism, are able to exercise their discretion based on a disinterested assessment according to law. In practice however, any discretionary power is ultimately subjective and non-mechanical. It cannot be isolated from the values, moral viewpoints and attitudes of the people involved; neither can it be divorced from the institutional ethos responsible for their training. It is always a selective and purposeful act of applying and interpreting the law in given circumstances, rather than an impartial enforcement of it.

It is clear to Maori people that the use of any discretionary power is therefore influenced by a mix of interacting factors. It is most obviously affected by the clear interrelationship between the social perceptions individual police officers may hold about different groups, and the policies adopted by the police organisation towards those groups. Since both are shaped by the wider society which has consistently adopted policies that have been monocultural and discriminatory, the use of discretionary powers, in practice and in philosophy, can be similarly discriminatory.

Individual police, both as officers and as members of society, are aware of the high rate of Maori offending. Its ceaseless promotion by the media and the inappropriate use of statistics create a perception about Maori behaviour which predisposes many people to associate crime with the young Maori. This shared perception means that members of society may unconsciously attach negative significance to a person's race and thereby fail to recognise

> *"...the ways in which their own cultural experience has influenced their beliefs about race or the occasions in which those beliefs affect (their) actions."*[10]

Individual police officers, subject to those perceptions, become susceptible to beliefs that Maori men are more likely to be criminal, or that certain types of conduct are more likely to be associated with them. Such beliefs unavoidably, if often unconsciously, effect the exercise of discretionary powers.

These individual perceptions and stereotypes are reinforced by the intrinsic attitudes of the police institution which is constantly aware of the wider society's concerns and values. Thus, for example, a social perception of increasing gang or street crime, apparently disproportionately committed by Maori offenders, will lead to an increased allocation of police resources to those areas of activity. Such a concentration leads to a greater number of arrests of mainly Maori people which in turn will maintain the perception of Maori criminality. The likelihood that this perception will bias future use of discretionary powers by the police is thereby increased as well. It is a cyclic process of "deviancy amplification" in which stereotypes and perceptions help stimulate policies in a self-fulfilling weave of unfairness.

It would be wrong to assert that individual police are encouraged to "go out and get Maori offenders", as they are not. However the reality of deviancy amplification is that they are not discouraged from "finding" offences and offenders in situations where most potential miscreants are likely to be Maori. In this context the institutional and culturally-defined perceptions of behaviour interact with such specific institutional strategies as the police clearance rate.

Apprehension and arrest procedures flow from two different methods of bringing crime to the notice of the police. The first method involves the reporting of an incident to the police by a citizen. In this case the police must first determine whether a crime has been committed and then begin the often difficult task of finding the perpetrator. If an offender is found and arrested, the crime is "cleared". The second method involves the reporting and discovery of a crime by the police themselves. In this situation the offence and the offender are often "found" at the same time - a certain type of behaviour observed by the police is defined as criminal, an arrest is made, and the incident is "cleared".

"Police-reported" crime clearly has the potential to inflate a crime rate, particularly if there is subtle or deliberate institutional pressure placed on police divisions or stations to improve

their clearance rates. This pressure increases the likelihood that the Maori male will be most adversely affected as the police will seek out offending in those public areas which he tends to frequent. Thus the interaction between the institutional demands of high clearance rates and the institutional and personal perceptions of Maori behaviour will tend to inflate the Maori crime rate. Although the extent of this "police-reported" crime is lower than public reporting, the relationship between structural and individual police perceptions has established a clear Maori belief that young Maori men are the most likely offenders to be so reported. Indeed all of the apprehensions for minor offences canvassed in this Report's offender profile were the result of police reporting, a fact which reinforces that belief in Maori eyes.

> *"Cops seem to go where we are and pick up who they want...because we get together there...and if you look for crime in those areas you'll find it...and they always concentrate on where we are."**

It is often claimed that an "over-eagerness" to arrest and hence bolster the Maori crime rate is, like alleged police harassment, a result of aberrational rather than institutional or systemic factors: that on occasion individual police officers may act out personal prejudices, but that they do so in a way which is contrary to oft-stated policies of impartial enforcement. It is asserted that the behaviour in such cases merely reflects the fallibility and behavioural range to be expected in any group drawn from a cross-section of society. The conduct is thus seen as an individual reflection of that fact, rather than as a response moulded by institutional values and social perceptions.

It is obvious and unquestioned that the police administration does not countenance deliberate or overt prejudice. However, as the Department of Social Welfare review has shown, policy goals and practical implementation can vary for reasons other than the individual misbehaviour of those in the "frontline" with the public. If the training, structures, and attitudes within an organisation are insensitive to, or exclusive of, different cultural views, it can foster an environment detrimental to them.

The police are the product of a unique history and they reflect that history in their values and attitudes. They are therefore as likely as any other institution to manifest in policy a set

of behaviours and precepts which are prejudicial to Maori people. Because of this, the discriminatory or unfair behaviour of an individual police officer may be aberrational or contrary to publicly stated goals, but not necessarily aberrational or contrary to the context of institutional racism in which the organisation functions: to claim impartiality does not ensure that it exists.

The ideals of a monoculturally defined institution inevitably impact upon individual police officers and interact with the various pressures which have shaped their personal growth and attitudes. The resulting combination of socially-absorbed attitudes and institutionally-determined values means that individual police adopt an unconscious stereotyping and internalised prediction of how people will behave. Such predictions reflect and reinforce both institutional priorities and personal conduct.

There is thus a clear relationship between the attitudes of the institution and the process set in train by the individual officer. This means that the institutional racism of the organisation encourages, or fails to discourage, and adequately subdue, the personal prejudices of the individual. The consequences of this interaction are evidenced in the widespread Maori perception that the police "over-prosecute" and harass young Maori men.

The potential for that type of abuse is inherent in the framework of police institutional attitudes which demean or dismiss the rights and status of Maori people. The realisation of that potential in a specific case flows from the interaction of that racism with the personal attitudes of officers placed under stress in a situation of conflict or confrontation. The importance of such interaction lies not merely in the fact of abuse, but in the fabric of alienation which the abuse creates, and in the unjust introduction of people into the criminal justice process which ensues.

A long-running series of personal and frequently traumatic experiences have been shared by people from all sections of the Maori community - not just the allegedly disaffected young, but parents and elders as well. They illustrate a chronicle of abuse aggravated by apparent police indifference. They were detailed in the course of this research in words of frustration and bitter sadness: the tears shed by kuia over the manner in which the police had treated their mokopuna were a real and damning indication of the state of police/Maori relations.

> *"If I tangi for the bad that some of our moko do, I tangi now for what the pirihimana does to them - I have seen it - they treat our mokopuna ... and kaua koutou e wareware na tatou mokopuna ... they are all ours ... like they are animals ... there is no need ... no need."**

The abuse and alienation has taken many forms. They range from frequently alleged instances of intimidatory tactics to equally common allegations of assault in custody. But they sadly include much more. They encompass the shameful embarrassment of a 65 year old kuia wetting herself with fear after verbal police abuse in an Auckland hotel, and the demeaning road-side strip-search of a 15 year old in Kaitaia. The recorded instances illustrate an attitude within the police force which allows Maori people to be treated with a lack of courtesy and civility. Worse still, they seem to indicate a police perception that Maori people, especially young Maori on the streets, can be treated with a scant regard for their civil liberties.

> *"Why should they be able to swear at you when you can't ... you gotta stand there and take it ... The things they say to you, you don't even have to say half as harsh things back to them and you get your arm bent up your back."**

> *"The stop us, they hassle us, they act in a way like we're bound to react and land ourselves in it."**

No facet of particular police strategies caused more anger or hurt than the operations of the team policing units. The concerns have often been expressed and did lead to an internal police investigation in 1987. While that report did rebut some allegations and suggest some areas of change, the basic focus of Maori concern remains unaddressed.

The team policing units continue to target places, usually hotels, that have a reputation as potential sources of conflict. That there is a duty upon the police to patrol such places and to ensure people are protected from unacceptable and usually drunken behaviour is accepted. However, it seems clear that although the methods of patrol are defined by police general instructions, they remain often inappropriate and prejudicially applied in practise. In fact, the reality indicates that team policing unit members continue to either ignore those instructions or unwittingly behave in a way that is contrary to them.

> *"All the time we hear about these strict controls on the task forces but if you're a Maori in a pub up here there's no controls on them that we can see."**

There is a clear perception that the ethos of the team policing unit as developed since their beginnings in task force operations has created a sub-culture of attitudes and behaviour that is absorbed by staff and perceived by the public. The frequent absence of simple courtesy in dealing with the non-offending public, the evidence of abuse of people's rights, and the use of numbers inappropriate to a particular situation, perpetuate feelings of fear and disrespect and so maintain the "them and us" attitude which seems to nourish the unit's own cultural base.

> *"Time and again I have seen them charging in like there's a war on and they're their own law ... a law unto themselves ... and our people pay for that ... they get abused and harassed and yet you talk about civil liberties ... what's civil liberties?"**

This situation has aggravated the "them" and "us" approach which shows little appreciation of either the ideals of impartial and fair law enforcement, or the personal and cultural sensitivites of individuals.

It is perhaps not suprising that such a division should have developed from the tensions inherent in the relationship between the Maori and the police. It is also not surprising that many Maori have experienced or are aware of those tensions, nor that they support the view of the Roper Committee that

> *"in general the police are sadly lacking in that appreciation (of cultural values) with the result that Maori community cooperation is not forthcoming."*[11]

The existence of this situation gives rise to two major issues. The first is that there is an increasing acceptance by those in the older generation of Maoridom that their young people's perception of routine police harassment and abuse is justified. This acceptance has the affect of creating a reciprocal cycle of set perceptions: the belief that police routinely act unfairly towards them will inhibit the willingness of Maori people to cooperate in the reporting or investigation of crime. Such reluctance may be interpreted as obstruction and will ultimately reinforce police prejudices and misconceptions. The completed cycle will limit the effectiveness of police work in the Maori community, and alienate Maori people to the extent that they will lose faith and confidence in police procedures.

That these consequences are possible is already evidenced by the antipathy of many young Maori and by their unwillingness to use official complaints procedures to address their

grievances. Although some Maori people are willing to embark on the difficult and often frustrating task of laying a complaint, there is a widespread cynicism and disappointment with the procedures. This arises partly because of the expectation that no person or institution can fairly be judge in its own cause, and partly because of a known history of ignored Maori complaints. This experience has already fostered a latent cynicism about the effectiveness of the proposed Police Complaints Authority.

The second issue which arises from the climate of strained relations is that the cycle of set perceptions manifests itself in the specific exercise of police discretion to arrest. A system shaped within an historical environment dismissive of another culture will reflect that history in its operations. An organisation influenced by certain preconceptions about behaviour, and the identification of that behaviour with particular groups or areas can foster in its agents a predisposition to harass or more readily arrest those within the identified group or areas. This predisposition also leads to a pressing of charges when some other process would have been more appropriate.

Most analyses of minority group offending consider the possibility of this predisposition in terms of what has been called a "differential involvement hypothesis" or a "racial discrimination hypothesis". In the former, a high arrest and imprisonment rate is attributed to more frequent criminal involvement; in the latter it is attributed to discrimination within the administration of criminal justice. Studies of Maori offending have tended to accept the former hypothesis and dismiss the latter, as evidenced by a recent judicial statement that "Maori people are in prison more because they offend more".

This acceptance of only one possibility ignores the interaction of offender-based and system-based factors which affects the make-up of criminal statistics. It is, of course, clear that the statistical rates essentially reflect the fact that a number of Maori men do commit crimes, shaped as they are by the cycle of social confinement which characterises their existence. However it is equally clear that the police force impacts upon those rates through its policies and attitudes, shaped as they are by the cycle of set perceptions which has characterised its monocultural development.

The values which have shaped the role of the police, their relationship with Maori people, their perceptions of criminality, and their concentration upon certain types of behaviour, are all part of a seemingly invulnerable monoculturalism. The scenario of harassment of Maori people is but a symptom of that monoculturalism and evidence of an attitudinal and structural racism which permeates Pakeha institutions. The prejudicial exercise of a discretion to arrest young Maori people is a symptom of the same racism and a consequence of the socio-cultural history which created it. That history, and its contemporary manifestations, give substance to Maori people's beliefs that the police act unfairly towards them. They also reinforce the view that such actions are but threads in the weave of social and institutional pressures which buffet wider relations between the Maori and Pakeha. In this sense, system-based factors influence both the police perception of Maori behaviour and the extent to which that behaviour is defined as criminal.

THE INSTITUTION OF THE COURT

> *"I grieve every time I get into that court. What goes on in that courtroom is a result in my opinion of everything which has transpired over the generations which have effected the Maori."**

If the police are the gatekeepers of the criminal justice system and decide who will be apprehended, arrested and prosecuted, it is the court system which has the keys to the gate and determines whether those so apprehended will be prosecuted, convicted, fined and/or imprisoned. The manner in which it has performed this task throughout New Zealand history, and the way it operates today, reflects a paradox: while it strives to preserve the integrity of its many admired and traditional ideals, the maintenance and monocultural base of those ideals makes much of its methods of operation inappropriate in New Zealand's bicultural setting.

The District Court is the forum most often experienced by the young Maori offender. It, and each of the other courts, exhibit varying degrees of monocultural inappropriateness. They can be seen in a physical environment insensitive to the needs of clients, in an apparent emphasis on procedural correctness rather than concepts of "justice", in an expeditious

despatch of cases to the detriment of a right to be heard, in a sense of collusion between the Prosecution and defence counsel which limits input by the defendant, and in a general atmosphere of monocultural exclusiveness. Each of these manifestations contributes to a perception of bias and insensitivity towards non-Pakeha defendants. They also contribute towards a belief that the courts do more than maintain the socially necessary appearance of crime control. It is perceived that they also validate the social status quo which initiated and nurtured the process itself, and thus reaffirm the imbalance between the forces of "justice" and the powerlessness of those caught up in the system. The realisation of these aims impacts upon the Maori people in a way which affects both the defined rate of their criminal offending and the perceived image of their worth and status in New Zealand society. The role of the courts in establishing the set perceptions of Maori criminality, and in contributing to their disillusionment with criminal justice processes, has a two-fold relevance to an understanding of the Maori crime rate. First, it is a role that is inseparable from the part played by the law in usurping Maori authority, because the courts contributed to the processes that placed the Maori community within its current cycle of social confinement from which the correlates of offending can be drawn. Secondly, it is a role which reflects in its most stark manner the bases of cultural conflict that have shaped both the correlates of offending and the Maori unease with the institutions established to deal with their consequences.

The imposition of the English criminal courts system, and the gradual removal of Maori methods of monitoring behaviour, were direct attacks on the authority structures of Maori society and the rangatiratanga guaranteed in the Treaty of Waitangi. Although consistently applied under the guise of the need for a unitary legal system guaranteeing equal justice for all, their effect was to demean Maori structures and to enshrine the policy of assimilation. Their eventual and total exclusion of any Maori input reflected a monocultural bias that laid the foundations for the attitudes which Maori people have about the courts and their operations.

After the signing of the Treaty, the ability of Maori people to maintain their authority was constantly challenged by the establishment of English legal institutions. By Royal Charter in November 1840 the Governor was empowered to appoint judges, and in 1841 the right to a jury trial was granted. The Supreme Court was established in the following year, and magistrates were appointed to hear summary criminal cases.

Some of these institutions had Maori input. Thus the 1846 Resident Magistrate's Ordinance allowed magistrates to have the assistance of two Maori "assessors" in cases involving Maori disputants. The court was to sit in Maori communities where the mana of the decision did not come from an isolated judiciary or a police enforcement body, but from the iwi's view of the appropriate remedy and laws to be applied.

Unfortunately the notion of creating a unique institution which incorporated the shared authority of Maori and Pakeha succumbed to the monocultural dictates of colonialism. The Resident Magistrate's Courts were replaced by Native Criminal Courts with power to "hear, determine and punish....all crimes, misdeameanours and other offences". Although the magistrate could be assisted by an unpaid Native Assessor, the law and processes were to be English.

At this time, some tribes attempted to adapt traditional runanga structures to draw up legal codes aimed at dealing with crime. However their standing as judicial bodies was never recognised by the Crown, and their status as a source of continuous and autonomous Maori authority was feared by the settlers. It was clear that criminal jurisdiction was to be the preserve of the settler government in pursuit of the idea of one law for all. It was equally clear that this not only meant the exclusion of the Maori from any real participation in the formulation and application of the law, but also exclusion from the definition of behaviour acceptable in the newly emerging society. This effectively helped deny Maori access to social and political power, and prevented any leavening of strict Pakeha legal principles with essential Maori ideals of justice.

The criminal court system was thus an ally in the process of colonial domination which the legislature and civil courts were implementing through their decisions on Maori land, Maori religion, and on the status of the Treaty. While professing to be "protecting" the Maori from crime, and to be guaranteeing his Treaty rights, the criminal law was actually helping establish the dominance of the Pakeha way. It was thus ensuring the maintenance of the settler's own economic, political and legal interests. It reflected the

> *"...spirit of legal pedantry from which no English society is ever emancipated and...the contempt and aversion with which the European race everywhere regard the Black races."*[12]

This context establishes the basis of Maori concern about the courts and the contemporary operations of the criminal justice system. The courts of a century ago were a part of the colonising process: today they are at the interface of a conflict borne by many young Maori struggling to cope with the consequences of that process. The way they handle that conflict is influenced by their institutional structures, by the attitudes that shaped their development, and by the continued monocultural bias of their operations. They are products of the general traditions of the law, and the specific history of its interaction with Maori people.

The courts illustrate this history and tradition in both their administrative and judicial functions. Their organisation and administration reflect the peculiar characteristics of a Westminster-style bureaucracy, and the actual judicial disposition of cases mirrors the features of its common law precedents. In both instances the courts exhibit the insensitivity of their inherent institutional racism. Such characteristics therefore make the law appear to the Maori as something more than a merely uncaring institution. They also raise the specific possibility that Maori offenders may be prejudicially effected by the ways in which the courts operate. If this is in fact a reality, both the quality of justice and the actual rate of Maori offending based on arrest and court disposition will be influenced.

The perception that such injustice occurs is not new within the Maori community. However it is often claimed in denial of this perception that the criminal justice process is not biased or institutionally racist but simply inefficient in an organisational and administrative sense. However this view exhibits a monocultural sophistry that attempts to deny the history and exclusivity of the courts and the laws which they apply.

The court system does suffer from the organisational inefficiencies which seem to characterise any large bureaucracy. However these inefficiencies are quite distinct from an institutional ethos and judicial insensitivity that is shaped by cultural bias. It is these factors which create a structure that is institutionally racist, and which stimulate Maori unease with the criminal courts. They are factors apparent in both the administration of the courts, and in the judicial tenets which they espouse. Thus, for example, the administrative prohibition against non-professionals in the body of the court reinforces the judicial imperative of individuating criminal responsibility. Likewise, the legal and judicial definitions of what behaviour is criminal are culturally-determined, and they are imposed through

Pakeha administrative structures. When the courts use those monocultural definitions in a bicultural context their actions carry the potential for misunderstanding, inequality and injustice.

Of all our institutions, the courts are probably the most determinedly monocultural. The trappings of horsehair and silk, the ritual of procedure, and the very language of the law, are obvious illustrations of their essentially English origins. They are seen to deny real Maori access to justice, to effectively exclude defendants' whanau from the process, to favour Pakeha who have power and status, and to be culturally-biased in the presentation and disposition of cases.

> *"...it's simply that lawyers and the whole court structure only know about Pakeha values - they certainly don't know us."**

Unfortunately the status and cultural self-assurance which characterises the law seems to preclude any understanding of the fact that the courts' structure and operations can have such discriminatory effects. The influence of the myths and conventions of fundamental impartiality have led to a belief that the process is innately fair and that the Pakeha way

> *"...is the right and proper way of doing things. They cannot relate inequality with cultural practices."*[13]

In this sense, the courts are no different from other monocultural institutions which have been imposed since colonisation. They are responsible and responsive to the history and ideals of Pakeha culture and they thereby exclude other cultural input. They operate contrary to, and in dismissal of, Maori cultural ideals.

To make this claim is not to imply that Maori people view the criminal law itself as necessarily racist or unjust. Although the legal definitions of acts such as offensive behaviour are monocultural, and exclude, for example, the offence caused to Maori people by the mocking or derogatory performance of cultural ritual (as seen in the 1979 "haka incident" at Auckland University), there are common areas. Indeed, the general laws requiring sanction against violent behaviour, abuse, and property damage complement Maori ideas about the obvious need for social order and control. What is of major concern is the enforcement of that law by the police, and its application by the courts: it is the "implementation at the interface" which is seen to indicate institutional racism.

Although all cultures share common ideas of what is unacceptable behaviour, the definitions of what constitutes a "crime" and the methods of dealing with it vary greatly across cultures. In the New Zealand criminal justice system, the definitions of both the crimes and the methods of disposition have made little allowance for those variations. The codification of the criminal law and procedure was based on Pakeha definitions, and the duties of each court officer are still defined by Pakeha statute, regulation, and precedent. The application of that law and the performance of those duties is therefore culturally-confined and potentially biased in a cross-cultural setting.

The court is served by a number of officials in criminal proceedings - the judge, the registrar and administrative staff, lawyers, probation officers and the police. Each contributes to a perception of monocultural exclusiveness by the nature of their roles and by the performance of their tasks in any given case. Their interrelationship and their duty as servants of the court create a clear distinction between the worth of the system they uphold and the worth of the defendant. Where that defendant is Maori, the court represents society's most obvious symbol of rejection of things Maori. It thus conveys a cultural insensitivity which alienates and antagonises the Maori defendant, and which frequently results in a systemic bias being exercised against him.

In a general sense, this exclusion of things Maori is illustrated by the interrelationship between the different purposes for which courts exist. Their judicial purpose represents the Pakeha ideal that wrongdoers are best dealt with by officials who are impartial and somehow removed from the realities which precipitated the offence. Their administrative purpose represents the belief that the system should function efficiently and expeditiously. Both aims represent a cultural approach different in many ways to traditional Maori beliefs. In a Maori setting, offenders were never alienated from the victim of their actions or the authority which decided their fate. Their actions were the shared responsibility of a whanau or iwi, and the consequences and judgement of them was similarly shared. Justice could not be dispensed by someone removed from the community ties and input of the offender and victim: it relied for its efficacy on that input and the kinship obligations implicit within it. Likewise, in a Maori context, the expeditious resolution of a dispute is not necessarily the most just. The ideals of consensus and whakawhitiwhiti korero were as relevant to settling criminal disputes as they were to deciding matters of great tribal import: the ties of kinship

responsibility and the possibilities of rehabilitation and retribution had all to be established before resolution could be achieved. Pakeha time and "efficiency" were not necessarily the most important factors.

The bias of the Pakeha approaches which replaced these Maori views continues to underpin the purposes of the courts in the contemporary criminal justice system. It is that bias as evinced in institutional racism which shapes Maori views about the process. It is their actual experience of that racism which reinforces their perception of bias and reaffirms their scepticism about the fairness of court officials.

THE POLICE AS PROSECUTORS

The role of the police as prosecutors in summary cases raises the same difficulties in Maori eyes as does their role in the apprehension and arrest of offenders. The decisions they make to charge an offender and to proceed with a specific court prosecution are frequently discretionary ones hidden from public scrutiny. They depend very much upon

> *"...the police officer concerned and possibly on his assessment of evidence, the culpability and character of the alleged offender, and the desired outcome of the case."*[14]

Many of these discretionary decisions to prosecute are made on arrest for minor charges such as insulting language and disorderly or offensive behaviour. The use of such offences, and the methods used to prosecute them, illustrate a number of the concerns which Maori people have about the police prosecution role and the criminal courts in general.

The decision to arrest and prosecute for a minor charge such as offensive or insulting behaviour is based on a monocultural definition of what that behaviour is. While there is, of course, considerable agreement over behaviour that is offensive, there are often culturally-specific acts which are offensive to the Maori but not recognised by the Pakeha. Maori people believe that the underlying idea of behaviour "offensive or insulting to the reasonable person" does not include the reasonable Maori person. Acts offensive to Maori cultural precepts are therefore excluded from recognition or punishment by the Pakeha law, which thus maintains its monocultural power to define criminal behaviour.

This power also ensures that many offences are processed through the courts when Maori people would prefer that they be handled in a non-judicial way. The removal of certain non-violent minor offences from criminal sanction would more readily enable Maori people to deal with such behaviour in an appropriate Maori way. It would also more accurately reflect contemporary attitudes towards offences such as insulting language which is a crime in the streets but apparently not in the media.

The major concern which Maori people have about the retention of minor offences however is that the police are often perceived to prosecute such charges against young Maori men in a prejudiced and racially-biased way. The existence of this perception gains substance from the recorded experiences of young Maori being prosecuted when Pakeha co-offenders are not, from the instances of Maori first offenders being prosecuted solely for minor offences, and from the observed practices of prosecutions in court.

The role of the police as prosecutors of their own charges is therefore fraught with the same potential for discrimination as is the discretion to arrest. Although the various rules of procedure in evidence establish a burden of proof which could theoretically mitigate against discriminatory prosecutions, the reality of the court's operations frequently nullifies this factor. The concept of equality between the prosecution and the defence, which would support the burden of proof argument, is diminished by the dominant role of the police in the whole judicial process. They arrest, prosecute, and present evidence with a degree of resource backup unavailable to the defendant. It is also diminished by the administrative need for a speedy despatch of prosecutions which can result in the police exerting pressure upon unrepresented defendants or duty solicitors to submit a guilty plea.

Maori defendants, often confused and unaware of either their rights or the operation of the system, may be particularly susceptible to this pressure. The cultural shame of whakama may compel a young Maori to simply seek a quick and "hassle-free" release from an awkward and embarrassing situation. In this case, any prejudiced decision to prosecute is given substance by an affirmation of guilt which may bear little relation to the merits of, or reason for, the prosecution

That the police have the potential to exert such pressure is a consequence of the relative position of power which they hold in the process, a power reflected in the fact that defendants or counsel must rely upon them for information in summary cases. That the police do on occasion exert pressure for guilty pleas is the recorded experience of many Maori defendants and practitioners.

THE LAWYERS

> *"You know even lawyers don't help our kids get a fair go - they just want a quick in and out story so they say plead guilty that's better but they should fight for our kids not make the police's job easy."**

The pressure upon a defendant to plead guilty, or the simple confusion of the court environment, is often aggravated for Maori defendants by the attitudes and performance of the legal profession.

There is a general and often expressed community disenchantment with practitioners who are seen more as servants of the court than as servants of the defendant. There is a particularly Maori dimension to this disenchantment as lawyers are seen to be especially insensitive to cultural realities and to be often disdainfully supercilious in their dealings with Maori people. They exhibit perhaps more than any other court personnel the "arrogance of exclusive knowledge" which can manifest itself in an often deliberate or unwitting air of cultural superiority.

Such knowledge is gained from a background of legal training and experience that is monocultural and almost totally exclusive of Maori input and values. Until quite recently, no law school focussed attention on Maori issues or the role of the law in Maori/Pakeha relations. None appear willing to debate the applicability of monocultural legal concepts in a bicultural country, and most refer to Maori concepts only in the context of land law courses which tend to maintain the myth that the current fragmentation of title represents traditional communal "ownership". Apart from tentative steps being undertaken at one law faculty, the profession continues to perpetuate a type of legal education which adheres to its own exclusive background and traditions. It is a background which, of course, reflects the institutional development of the profession in New Zealand and its historic role as advocate and supporter of laws detrimental to Maori people.

The attitudes which have determined that role have seen the profession fail to acknowledge the existence or validity of the Maori legal system, reject the contribution that that system might make to a unique body of New Zealand law, and oppose initiatives specifically aimed at re-establishing Maori legal institutions. Those attitudes have resulted in an isolation from the Maori world and a cultural and institutional elitism that is dismissive of Maori views.

Perhaps most hurtful has been the profession's continued dismissal of the Treaty, a view expressed in the belief that while

> *"attempts have sometimes been made to found legal arguments on the Treaty but they may be taken to indicate that counsel has been driven to desperate straits."*[15]

Although in recent years there has been a gradually changing view of the Treaty, and a slowly developing awareness of Maori values, the fundamental ethos of the profession remains tied to its Pakeha origins. In a narrow legalistic sense, those origins have shaped an unquestioning professional acceptance of the appropriateness of a unitary legal system. That has in turn fashioned and maintained a broader monoculturalism which determines social expectations of Maori behaviour.

In criminal cases, those expectations can affect the relationship between a Maori defendant and his lawyer, and detrimentally affect the service he is given. In most situations, a Maori defendant only has access to a duty solicitor and the relationship is immediately hampered by the generally recognised restrictions and administrative weaknesses of that scheme. The unwillingness of the profession to assign practised counsel to the duty solicitor roster means that most lawyers involved are young and inexperienced; the pressures of overloaded court lists means that most are able to spend only a short period of time with their clients. These shortcomings, and the apparent professional disinterest they engender, can interact with the cultural insensitivities of the lawyer and result in an inadequate and insensitive service being offered to Maori defendants.

An unwillingness or inability to recognise the cultural importance of whanau input or support, an unawareness of culturally-defined barriers to communication, or an unwitting expression of socially-instilled ideas of Maori conduct and worth, can inhibit an effective understanding of the client's situation. If these cultural inadequacies are compounded by

the administrative need for quick disposal of the case load, the Maori defendant is effectively denied justice.

> *"We rang up the legal aid lawyer and all he said was "Meet me at quarter to ten and we'll plead guilty, that'll be best" but that's not right ... best for who? ... not for us but for the Courts maybe ..."**

This denial builds upon a basic sense of alienation which the Maori feels within the criminal justice process. If the officials within the system are seen to collude to exert pressure upon him to plead guilty, the alienation becomes a cynical but understandable perception of injustice. The subsequent decision is then seen to be based on monocultural bias or administrative ease, rather than a judicial analysis of the evidence. In such a situation, the solicitor is seen as an agent of that bias rather than as a guardian of the defendant's rights.

That such a perception exists is evidenced by the widespread Maori concern with the role of lawyers in the criminal justice process. That the perception has substance is evidenced by recorded cases in which counsel prevented defendants from exercising their rights or denied them information relevant to specific defences available in the Summary Offences Act. In such cases the solicitors ceased to be servants of the judicial functions of the court and became, at best, the servants of its administrative efficiency. At worst, they became the mere ciphers of its institutional racism.

> *"When working in the Court ... we have heard lawyers tell our people to plead guilty even when they have not wanted to ... and sometimes we have found out later that there were things ... laws ... and things that could have got them off."**

The practitioner in the criminal justice system is therefore seen by Maori people to be the agent of a culturally insensitive process. The recorded comments by Maori defendants about a solicitor's elitism and apparent lack of concern illustrates their disillusionment with a system in which

> *"...the prosecutors and defence regularly collude...and the defendant (is) usually excluded."*[16]

This process effectively denies justice to many Maori defendants. It also compounds a general injustice by bolstering the recorded rate of Maori offending through systemic bias rather than criminal reality.

Should a case be heard in the High Court, the sense of alienation felt by Maori offenders is aggravated - the distancing of judicial authority, the rituals of conduct and dress, and the apparently increased detachment of counsel, make the process less culturally relevant and less capable of ensuring respect. And it is unfortunate that these feelings are intensified by what should be a guarantor of fairness for the Maori defendant - the empanelling and use of juries.

THE JURY

The concept of a trial by jury is one of the most cherished and ancient traditions of English law. The ideal that one should be tried by one's peers was enshrined in Magna Carta and reaffirmed over the years in the belief that like people could best and most impartially determine guilt or innocence.

However throughout New Zealand history this tradition has reflected more of the interests of those who had power, and the dictates of monoculturalism, than it has of the original notion of trial by someone of similar background. The Ordinance which first established juries limited membership to property owners which by colonial definition excluded all Maori and by English practice all women. In 1844 these exclusions became specific with jurors being limited to every male British subject (except Maori) who was "of good fame and character".

An early jury trial of a Pakeha settler charged with murdering a Maori woman and child soon illustrated to Maori people the pitfalls inherent in this restrictive definition of who could be jurors. Although the case was investigated by a Pakeha missionary and eye-witness evidence was given by the defendant's Maori wife, the jury acquitted the defendant. The legal niceties of the inadmissibility of a spouse's evidence did nothing to diminish the Maori perception that the all-Pakeha jury had dismissed the Maori evidence and placed little value upon the loss of Maori life. It was an unfortunate precursor to much subsequent disillusionment but could not prevent the colonial determination to establish a single British system exclusive of Maori authority.

This determination was briefly modified in 1868 however when cases involving two Maori parties were permitted to have an all-Maori jury. Although a Maori charged with an offence against a Pakeha was still bound to be tried by a Pakeha jury, the move towards all-Maori

juries was seen as part recognition of the Maori wish to monitor their own people's conduct. Unfortunately its implementation was frequently obstructed and it was eventually repealed.

Today Maori are, of course, eligible for all jury service, but the monocultural attitudes which promoted the earlier legislation are now reflected in courtroom practice which effectively restricts the definition of "trial by peers" and fosters bias in jury operations. The compilation of jury lists is basically a random selection of names from the electoral rolls. Unfortunately the realities of population distribution mean that most potential jurors are Pakeha whereas a large proportion of the accused are Maori. The apparently "culturally-neutral" method of selection thus results in an actual predominance of monocultural attitudes in a situation where the behaviour and values of the accused may be defined by a quite different cultural context. From a Maori perspective, this scenario does not constitute trial by one's peers, and neither does it guarantee a fair hearing. In fact, because the jury's views of Maori behaviour will be moulded by the largely negative stereotypes current in society, Maori people feel that the possibility of a fair trial often seems very remote indeed.

As the 1868 statute seemed to recognise, trial by one's peers is not a culturally-neutral act, but an inherently culturally-specific one. It implies a degree of empathy and cultural understanding to ensure a fair hearing.

> *"Being judged by your peers doesn't mean a Maori being judged by a Pakeha - a Maori peer is another Maori, someone who brings Maori ideas of right and justice, not Pakeha prejudices ..."**

However the criminal justice system regards the present selection process as the only just possibility in a unitary legal framework. It therefore rejects any suggestion that, for example, Maori defendants could be more appropriately tried by all-Maori juries. Such a view is contrary to its promotion of the ideals of "one law for all" that underlie monolegalism. The system thus seems to accept the often-expressed view that trial by one's cultural or racial peers carries the potential for bias or favouritism towards the accused - perhaps it is this view which prompts counsel to so frequently challenge potential Maori jurors when the defendant or victim is also Maori. Unfortunately Maori people are left to wonder about the validity of this view when all potential Pakeha jurors are not challenged in the trial of a Pakeha offender.

A number of recent cases have highlighted the counsel use of challenge to bar Maori jurors, but Maori experience of the practice is longstanding and frequent. Maori people subject to public challenge feel a sense of cultural embarrassment which is unrecognised within the impersonal monoculturalism of the court. They consequently feel that the challenge has less to do with a counsel's procedural right than it does with the system's inherent prejudice.

The subsequent empanelling of a Pakeha jury to try a Maori accused confirms the perception of systemic prejudice and establishes the potential for monocultural bias in its deliberations. Pakeha attitudes towards the Maori, their behaviour, and their worth are not abandoned at the jury-room door. The idea that jurors can divorce themselves from the influences of their upbringing and their consequent perceptions about minority groups or criminal behaviour is as tenuous to maintain as the myth of discretionary impartiality.

The jurors bring those perceptions to the court. They also bring an awareness of the status of the court in their culture, and an acceptance of its role as the guardian of social order. They share the same cultural background and the same sense of order as the process of which they are temporarily the agents. In this situation, they are as one with the views and philosophies of the law itself: they share its monocultural ideals and hence its blindness to the inherent bias it contains. They exhibit that bias in what may well be an unconscious prejudice that can result in an unjust verdict against a Maori defendant.

There is considerable overseas evidence to show that

> *"...the race of the defendant significantly and directly affects the determination of guilt."*[17]

The clear Maori perception is that a similar significance is attached to race in New Zealand jury verdicts. It is a viewpoint based on the reality of cultural conflict and the set perceptions of misunderstanding which have moulded Pakeha attitudes towards the Maori. Unfortunately it is also based on the reality of sad experience. Maori defendants, victims, witnesses and practitioners have often perceived and recorded their belief that jurors exhibit stereotyped biases that result in prejudiced and unjust verdicts against Maori defendants. In recorded cases where a person escaped challenge and was the sole Maori on a jury trying a Maori offender, the prejudice was clearly perceived and was often more overt than unwitting.

Such bias is also perceived to operate in cases where there is a Maori victim of a crime committed by a Pakeha. In this case the interests of the victim are often subordinated to the professional obligation of counsel to "do his best" for his client. However this often manifests itself in a public humiliation or denunciation of the victim that frequently reflects more on the professionally articulated prejudice of the lawyer, than it does on his duty towards his client. In effect, the counsel's prejudice appeals to the stereotyped attitudes of the jury to almost inevitably ensure a racial bias against the Maori victim.

It is these experiences which shape Maori views of the present jury system. It is seen to reflect both the monocultural bias of the criminal justice process, and the cultural prejudices which permeate so much of New Zealand society. It does not represent trial by one's peers, but an ordeal in which the Maori accused or victim is often caught between the institutional prejudice of court processes and the social biases of the jurors who are meant to guarantee a fair hearing.

THE JUDGES

Once guilt is established, by jury or judge, the act of sentencing becomes an affirmation of the power of the judiciary and the imposition of the state's censure for the crime committed against it. The sentencing judge thus becomes the central focus of the criminal justice process - its final arbiter and its most tangible symbol of authority. As such, the judge occupies a position in the eyes of the Maori community which is somewhat paradoxical.

On the one hand, judges are held to be worthy of respect because of their learning and wisdom, on the other they are held responsible for injustice because of their service to an often prejudiced and unjust law. This paradox is a consequence of the Maori community's acceptance of the past as a determinant of the present, and the role that judges played in our history. It would perhaps surprise the Pakeha community to know, for example, that many Maori people are aware of, and continue to respect the frequent questioning of colonial policy by the first Chief Justice Sir Charles Martin. It would be perhaps less surprising to know of continued Maori anger and grievance at Chief Justice Prendergast's dismissal of the Treaty and his subsequent actions as administrator in signing unjust legislation aimed at the people of Parihaka. The law, and the judges who apply it, are part of the known history of Maori/Pakeha interaction.

Today, the judiciary cannot therefore be isolated in a Maori context from the realities of that interaction, nor from the traditions which determined it. The paradox of Maori attitudes is ultimately overlaid with the threads of colonialism and the monoculturalism which defines the judge's role. In the operations of the criminal justice process, that monoculturalism and that history are perhaps most sharply brought into focus.

Through their backgrounds as barristers or solicitors, and through their experience, judges have acquired a range of skills and insights which reflect a knowledge of the law and the social attitudes and behaviours which it is meant to address. Unfortunately that background and experience are confined by the ethnocentrism of their own heritage, and the social attitudes which they address are determined by the values of the dominant culture.

In spite of this reality, the judiciary is deemed by its own mythology and by society to be immune from the specific values of that heritage and to dispense an accultural and independent justice. However, the recognised independence of the judiciary is merely an independence from the obvious pressure of overt prejudice or corruption: it cannot be an independence from the inevitable influence of the ideals of their profession or the views of their culture.

> *"I know that my Maori view of the world affects how I see and understand things...so I know that a Pakeha judge's view of the world also affects what he sees and understands...and if he's ignorant about us, how can he judge our rangatahi?"**

The almost total exclusion of Maori input into the criminal justice process and the legal profession seems to make it inevitable that judges will exhibit the same potential for monocultural bias as any other person within the process. From a Maori viewpoint the myth of cultural neutrality is difficult to sustain when the judiciary functions as the apex of an organisation which is institutionally prejudiced. Indeed, the Maori belief that all things are interrelated means that the judiciary is but one thread in the interwoven fabric of the criminal justice system: it cannot exist unaffected by the overall pattern of the fabric. It is woven inextricably to the system's institutional values, its traditional and historic antecedents, and to the attitudes of the society it serves.

This interaction can therefore manifest itself in sentencing in criminal cases involving Maori offenders. In defended summary cases the point of sentencing is linked to the judicial determination of guilt. It is possible that such decisions could be influenced by a system-instilled predisposition to accept the comparative credibility of the police case over that of the defendant. In this situation there is a complementary exercise of power by the police and the courts to reaffirm their status and the validity of the social values they are deemed to uphold.

In undefended cases, or in jury trials returning a guilty verdict, this commonality and the cultural perceptions of worth accorded the status of a person may influence the severity or the type of sentence imposed. Thus monocultural insensitivity may cause a judge to reject a whanau-based sentence of community care as inappropriate when he is unaware of the sanction as well as the rehabilitation implicit in whanau control. Likewise the monocultural definitions of worth may result in sentence variation between, say, an unemployed Maori and a professional Pakeha. Indeed it is the stated view of the Criminal Bar Association that a young lawyer on charge has "more to lose" if convicted and sentenced than does someone unemployed. The unacceptable class bias of this view is equally offensive in a cultural sense as it also ignores what are quite different Maori views of status. The Pakeha employment position of a person is frequently irrelevant to his degree of mana and the extent to which he might lose prestige within the Maori community. Indeed, many people in the Maori world do not possess the qualifications to which the Pakeha accord status so that their loss of prestige would not be understood within the monocultural definitions of "status factors" so often considered in sentencing.

The ethnocentric and unquestioning acceptance of the ideas of judicial impartiality essentially means that the possibility of such views affecting sentencing is rarely raised or even less frequently researched. Thus recent studies indicating that Maori are more likely than Pakeha to receive custodial sentences is explained purely in terms of more frequent and more serious offending. However Maori people firmly believe that the potential for judicial bias is often realised as the end result of a process that is itself culturally biased. When all the necessary variables of previous offending, legislative guidelines, and gravity of the offence have been considered, Maori people record instances where their sentence, or the rejection of a Maori-based alternative, can only be attributed to judicial insensitivity and prejudice.

> *"Sometimes the feeling towards something or someone can't really be explained. The vibes I get at court when observing judges many times are like this. I have noticed that judges, while most of them try their hardest to show themselves to be free of prejudice (and some of them may be) ... a subconscious form of prejudice shows itself in the judges' attitudes, sometimes when talking to, sometimes when looking, at Maori defendants ... Maori people know that look and they know what it means."**

THE PROBATION OFFICER

In passing sentence, judges frequently have recourse to the advice of probation officers whose position is also seen as a somewhat quizzical paradox. While lawyers are often viewed with scepticism and some considerable anger by the Maori community as willing servants of an insensitive system, probation officers are viewed as perhaps less willing, as quasi-social workers who are nevertheless bound by a similar monocultural definition of their role.

The Probation Service was established in 1886. Its purpose was to provide supervision for those first offenders placed on probation in cases where the court felt it would be conducive to the public good not to impose a sentence of imprisonment. The aim of that statute has basically remained although the parameters have been much extended from its first restrictive definition.

The duties of probation officers are now defined by the Criminal Justice Act 1985 to provide, among other things, such reports as the court may require, and to arrange courses of

> *"...social education or counselling...directed at the social reintegration of offenders."*

It is in fulfilling these tasks, especially the presentation of sentencing reports, that probation officers most often act in ways detrimental to the interests of their Maori clients. They do so as a consequence of the institutional values which shape the whole criminal justice system and the specific criteria which define the performance of their roles.

In compiling reports, probation officers are required to present a general or narrative assessment which covers the officer's estimate of the offender's character and any

appropriate "formative influences and life experiences". Such assessments, by their nature, must be subjective. They are therefore susceptible to the same influences of monocultural bias and misunderstanding which Maori people believe affect the use of any discretionary or interpretative act. That these assessments are used as an aid to the judge's sentencing decision gives them an especial influence that highlights their monocultural shortcomings.

The value judgements probation officers make about a Maori person's character, life influences, and chances for social reintegration inevitably reflect their own attitudes and perceptions. They are coloured by

> *"their own knowledge, experience, beliefs (and) values...and...the information they present as real must be looked at in this light."*[18]

The requirements outlined in the Department of Justice Probation Manual make it certain that the "reality" they present will be Pakeha. Its emphasis on written form completed within guidelines of administrative efficiency and common practice indicates that little cultural sensitivity is shown in either the methods of compiling the reports, or in the information they contain. Indeed it was the recorded perception of many Maori probation officers that their particular views on the background or proposed sentencing of a Maori offender were often actually negated by the requirements of procedure or the demands of bureaucratic "appropriateness".

In their presentation the reports are essentially based on the casework approach which is a peculiarly American model for assessing individual behaviour. It is quite foreign to the paramountcy of group influences evident in Maori assessments and is thus contrary to Maori values. Indeed the reports reflect the misconceptions which flow from any monocultural interpretation. They present a reality which includes the probation officer's own ideas about behaviour, the social perceptions of an ethnic predisposition to offend, and an ethnocentric definition of what constitutes good character and "formative influences". The emphasis they place on "social reintegration" is most often interpreted as re-fitting the offender into the wider Pakeha community, rather than on finding the most appropriate means of establishing his place and identity within Maori society. Although the recent stress on biculturalism within the Probation Service attempts to reduce the likelihood of such inappropriate reports,

the administrative and institutional philosophy which underlie them has remained monocultural. The reports are therefore still shaped by that fact, and if efforts are made to reintroduce the offender to his Maori community, it is on Pakeha terms and to a Maori world as defined or deemed "appropriate" by Pakeha. Maori people feel that this displays a cultural arrogance that ignores the inherent misunderstandings present in any cross-cultural recommendation. For this reason many feel that it is institutionally racist simply for their own people to be scrutinised and objectified in this way by Pakeha.

It is often claimed that the Probation Service is aware of this concern and that reports are protected from cultural insensitivity by the discretion given individual officers in their compilation, and by the fact that they are required to be shown to defendants. However this view ignores two fundamental issues. The first is that the reality of bureaucracy means agents are bound by the rules and administrative needs of their controlling organisation. The requirement that reports be used as aids in judicial sentencing means that probation officers are ultimately tied to the structural ethos of the Department of Justice and the courts. From a Maori perspective, the administrative and institutional needs of the criminal justice process therefore ensure that the information presented to the court, and the manner of its presentation, will be monocultural. In this sense, the Probation Officer is bound by, and perpetuates, the institutional racism of the system as a whole.

The second issue concerns the reality of the relationship between a probation officer and a Maori defendant. The officer holds a position of power within the criminal justice process and many Maori offenders would be too hesitant or whakama to question his "professional judgement". Of course most reports would not contain obviously objectionable attitudes or inaccuracies. Instead they would contain the more subtle and often unwitting denigration and bias that reflects institutional racism. Thus while some research has indicated that

> *"...the way in which probation officers seek and utilise information in the course of making decisions is more a characteristic of the officers rather than the nature of the information,"*[19]

the Maori perspective is that such information is also shaped by institutional bias. Unfortunately, when the attitudes of institutional and personal prejudice combine, the

Report so produced is clearly insensitive and inappropriate. If specific Maori-based sentencing options are dismissed, or the socio-cultural background and "formative influences" of a young Maori are misunderstood, the advice given to the judge could result in a sentence that is unjust.

Maori people's experience with the Probation Service indicates that inappropriate and prejudiced reports are submitted to the court. In cases where Maori defendants have questioned report information, their queries have been dismissed on such recorded grounds as "it is better said this way for the court", "the judge won't understand that", or "your whanau's proposals aren't really appropriate". More specifically, there is evidence that Maori proposals for community care or community service sentences under the Criminal Justice Act have been frequently rejected by probation officers. In some instances they have been turned down because the Maori sponsor was deemed "unacceptable", in others the sponsoring groups were told their proposals would be accepted only if they were supervised by "better organised" Pakeha institutions such as the YMCA or the Salvation Army. The dismissive racism of these rejections indicates to Maori people that community care or service is defined by what the officials determine is appropriate, rather than what the Maori community believes is necessary or possible.

In each instance, the actions of the Probation Service effectively deny the Maori subject input into, or control over, what should happen to him. In the cause of administrative efficiency and judicial understanding, the probation officer acts as a filter of information for which he may have little understanding or empathy.

> *"The question is how, when the Justice Department introduces this system of community care, the community responds, wanting to care, but the department doesn't like our way, with the whanau and so on, and they turn the cards...that's something else we end up having to carry and become bitter about."**

The role of probation officers is therefore simply that of another servant and administrative cipher of the criminal justice system. Their advisory role to alleged offenders is fashioned by their own personal attitudes and circumscribed by the procedural and administrative requirements of the process. Their advisory role to the judiciary is limited by their comparatively subservient status in the system and ultimately reflects the same monocultural attitudes which shape the process itself. They contribute to the Maori perception of the

system's insensitivity and help ensure the culturally-prejudiced disposition of cases involving Maori defendants. They are therefore part of the systemic bias which unconsciously effects the rate of Maori offending by including the arrest, prosecution and sentencing of young Maori men in circumstances where their behaviour is often defined more by the effects of institutionally racist procedures rather than available evidence.

THE COURT ADMINISTRATION

Although the clerical and administrative functions of the court do not directly effect the process' systemic bias towards Maori offenders, they are nevertheless part of the same structured monoculturalism which ensures the bias. The relationship of court staff with Maori people reflects the underlying attitudes of the process and therefore contributes to its aura of cultural alienation. Indeed the fact that the administrative staff is at the interface of contact with Maori people often means that their conduct most publicly conveys the system's ideals.

> *"What sort of image do these clerks ... think they are getting across when they can't even say our names properly or respect our old people in there ... if the image at the counter is the image of the justice, God help us."**

That the staff often exhibit an appalling insensitivity in dealing with Maori individuals, both in the public office and the court itself, is a sad reflection of the institution's fundamental racism. It is evident in many areas of court administration, from the emphasis on Pakeha-approved qualifications for staff appointment to the physical structure and organisation of the court itself. It is perhaps most obviously seen in what Pakeha culture often seems to regard as an unimportant issue - the use of Maori language.

Pakeha people appear to find it extremely difficult to understand either the general importance of a language to a people, or the specific importance of using that language with respect. The constant mispronounciation of Maori names by court staff is one of the most tangible signs of cultural disrespect which the court shows. It reflects the inferior status accorded Maori culture within society and indicates to the individual Maori the lack of respect his identity is accorded by the processes of the law. That something as intimately

personal as a name is mispronounced, often with little apparent attempt at correction, is an indictment of the dominant culture's disdain for things Maori. It is also an act which could have potentially unjust effects: in a case observed in the course of this study, a mispronounced name actually resulted in the wrong defendant appearing and being charged. Only the intervention of an alert kuia prevented the confused and whakama youth being tried on charges of which he had no knowledge.

In view of such attitudes, it is sadly ironic to Maori people that the Maori Language Act which at last gives statutory status to the language effectively limits its recognition to use in the courts. Through this Act, the language has been given status in a process that is both disrespectful of its value and responsible for many of the practices which led to its original denigration.

The type of attitude which a seemingly minor act of mispronounciation expresses is a deep-seated cultural disrespect reflective of the norms of the criminal justice system itself. It is indicative of a structural violence to which Maori people are exposed every day, and although it does not directly impact upon the disposition of Maori cases, it does impact upon their general perceptions of the law.

THE DEPARTMENT OF JUSTICE

As an organ of the bureaucracy, the department exhibits all the strengths and weaknesses of any branch within the Public Service. As the department charged with the administration of justice however, those strengths and weaknesses have a special impact upon citizen's lives. In the specific context of the criminal justice system and its relationship with the Maori offender, this impact is shaped by the cultural values of its management strategies, its training and selection policies, and its overall philosophy. Although only three divisions may be regarded as directly involved in the criminal justice system - courts, probation, and penal - they are merely part of the overall institutional framework which drives the department.

This framework is essentially a bureaucratic sub-culture which has its own values and norms. Its structure is based largely on the exercise of power - an external power inherent in the administration of government policy, and an internal power based on a hierarchical

distribution of responsibility. The exercise of this latter power largely determines the role which civil servants play and defines the extent to which the value of that role is assessed on grounds of achievement. The existence of internal power structures also determines the manner and degree of support individuals receive, and the perceptions which they have of their value. It is a unique sub-culture which is shaped by and responsive to the attitudes of the wider culture within which it exists. And like that wider culture, it is a peculiarly individualistic and western framework that is, by its nature, assured of the rightness of its methods and dismissive of those that are culturally different. In this sense, it is an institutionally racist organisation as it maintains and operates under administrative procedures that benefit those of the same cultural viewpoint while penalising and excluding those who are culturally different.

It is a large department. It has administrative responsibility for over 160 statutes and has grown considerably since the first under-secretary was appointed in 1873. Its growth has been characterised by the steady implementation of monocultural policies and organisational structures. The Head Office and regional structure which has evolved is firmly grounded in the administrative requirements and bureaucratic ethos of Pakeha culture. Thus while it has a stated commitment to "provide for the tangata whenua in our justice system", it is unclear how that commitment is to be satisfied. The establishment of a Cultural Resource Unit and the development of a policy statement on cultural perspectives has indicated a welcome willingness to recognise some Maori input, but there is a concern that the basic structures and policies of the department are amenable to change only within the parameters of its own organisational philosophy. This raises the perception that its commitment to meaningful partnership with the Maori may be

> *"conditional on their subjugating their own values and systems to those of the system of the power culture."*[20]

There is thus a belief that while Maori may now be involved in a consultative role that is "culturally appropriate", the results of that consultation will be ultimately determined by the interests of the department and the ideals of a legal system based in English traditions rather than in truly bicultural strategies.

> *"... all these tari, and Justice is the same ... they say we want to help, we want to be bicultural, but when the crunch comes and the Maori wants a real say in how to do things ... well then they tarapekepeke haere (jump about) all over the place."**

Many Maori people perceive the reality of this situation in the fact that Maatua Whangai staff are frequently used not so much as aides in the re-establishment of whanau links (as established in its original largely preventative programme), but as facilitators in the smoother running of existing court procedures.

Indeed, the actual operation of the Matua Whangai programme, and the bureaucratic oversight exercised by the Department of Justice, Maori Affairs, and Social Welfare, seem to often run counter to the kaupapa of the programme itself. There is a widespread practice of involving Matua Whangai staff only when young people appear in court or decisions have been made to place them in "care". Such late notification gives little time for adequate support mechanisms to be set in place and little scope for preventative strategies to be established. The comparative lack of resources makes these tasks even more difficult, and ensures that many of the efforts of deeply committed Matua Whangai workers are ineffective.

The kaupapa of Matua Whangai has thus often been thwarted in practice by the operations of the bureaucracy. The notion that in a modern world there was still a place for traditional nurturing patterns, for a sharing process in the raising and discipline of the young by Matua Whangai, has been effectively usurped. It has been redefined not within the terms of whanau responsibility, but within the needs of departmental control. It seems to often operate not to serve the requirement of the young Maori at risk, or the Maori community as a whole, but to ease the workload of established systems. In effect, it seems to ensure the continued institutionalisation of Maori people but in a way that is ostensibly "bicultural".

It is a sad but clear example of how a Maori initiative can be overwhelmed by a type of departmental operation and a set of required management skills that simply reflect institutional monoculturalism.

> *"You know, I go to the wharekoti every week to help our young ones, but I think I'm like a tap that the Pakeha turns on and off because I can only awhiawhi them if the Pakeha gives the say so ... it's no wonder that our rangatahi get hoha with us ... we can't really do anything."**

It illustrates how the Department of Justice has consistently failed to recognise the particular cultural, social and political views of Maori people, a fact reinforced by its responsibility for administering policies actually contrary to those views. The department's historical

administration of the laws relating to land, wills and adoption has affected some of the fundamental bases of Maori society and has contributed to its present cycle of existence. The specific interrelationship between the department's institutional ideals, the policies it administers in the courts, and the place of the Maori community, is both clear and often tragic. It is essentially a relationship in which the external and internal power structures of the department have interacted to reject Maori values contrary to its own.

This relationship can be seen in many areas of the department's operations. Its recruitment policy, while stating that job descriptions should specify any cultural dimension relevant to a position, ignores the logical corollary that in a bicultural organisation such dimension are relevant to all positions. The emphasis placed on Pakeha educational qualifications in recruitment, even when they may not be directly appropriate, maintains a monocultural barrier to meaningful Maori participation. The training programmes remain culturally sterile in relation to the needs of Maori staff and the Maori community; the only cultural perspectives realistically addressed are those of the existing departmental structure.

As the principle administrative agent of "the law", the department is responsible for both the smooth implementation of statute law and for the punishment and efficient control of those who act in criminal breach of it. When such people are Maori, the department is essentially punishing those whose position in society has been largely determined by the law itself. It is thus, in effect, dealing with the socio-cultural consequences of policies and laws that it historically helped formulate and administer. The way in which it has dealt with those consequences has merely perpetuated the social attitudes and institutional racism that promoted them in the first place.

The department's structure and operations therefore both reflect and reinforce the same monocultural ideals as the workings of the courts, the police, and the legal profession. Together they exhibit the ethnocentrism which characterised the law's colonial implementation, and reaffirm in practice the policies of amalgamation and assimilation which underlay its ideals. In the disposition of criminal cases the department's influence is not, of course, as direct as that of the police or judiciary. However because the various organs of the law are so closely interrelated, the department's internal philosophy and

organisation provide the administrative environment in which systemic bias is able to be exercised against Maori offenders. The stereotyped Pakeha perceptions of Maori behaviour, the prejudicial use of discretionary powers, the cultural exclusivity of the judicial ethos, and the other systemic factors which mitigate against them, are all maintained and nurtured within the processes of the department. In administering the law, the department reflects the Pakeha values which shaped it and maintains the monocultural attitudes which imposed it. It thereby ensures its continued institutional racism and creates a weave of cultural dismissiveness which permits the prejudicial treatment of Maori offenders.

> *"Apart from the police, it's the Justice Department that's finally responsible for everything that happens to our kids - they organise the courts and they train the probation people - if they're racist it's because the Department is."**

The attitudes expressed in culturally inappropriate probation reports or in the personal interaction of court officers with Maori people, flow directly from the training and management policies of the department. The attitudes and operations of the police, the profession, and the judiciary, share the same philosophical background which gave rise to those policies: a background of monoculturalism that has effectively defined the general place of the Maori citizen within New Zealand society, and the specific treatment of the Maori offender within the criminal justice process.

DRAWING THE THREADS TOGETHER

The way in which the criminal law is applied against Maori offenders fosters a clear perception of discrimination and institutional racism. The perception is based on the general realities of the law's historic interaction with Maori people, and the specific experiences of Maori offenders. It is evidenced in the systemic bias of a process which is founded in an institutional racism that advances Pakeha viewpoints and procedures to the exclusion of others. It is maintained by the unquestioning acceptance in Pakeha society of the myths and conventions of justice which underlie the importance of the law and mask the fact of its own cultural bias.

Each of the steps in the criminal justice process, from the enforcement role of the police through prosecution, legal representation, jury deliberation, probation reporting, judicial determination, and departmental oversight, are moulded by the same values and needs. The values are Pakeha, and the needs are the maintenance of a system which upholds Pakeha traditions and concepts of justice. The whole process has asserted the appropriateness and validity of those traditions and has imposed them through a process of cultural dismissiveness. It has not seen this exclusion as insensitive, racist, culturally arrogant, or even inappropriate in a bicultural setting. Rather it has promoted the myth of the law's cultural-neutrality and impartiality while ignoring the fact that this idea and its consequences are themselves the product of a specific cultural viewpoint.

It is clear from the recorded experiences and observations of Maori people that this viewpoint results in instances of unfairness and prejudice against Maori offenders. If the cycle of confinement in which the Maori community exists has established the correlates of criminal offending, the operations of the criminal justice system exaggerate the rate of that offending. As the law played a major part in the historic processes that established the cycle of confinement, so its contemporary operations reflect the biases which motivated that history. The monocultural attitudes which led to the cultural denigration and deprivation of Maori people both shaped the cycle of their existence and moulded the legal system which deals with the consequences of that existence. They gave rise to particular processes within the criminal justice system that are culturally insensitive and lead to the discriminatory and unjust treatment of Maori offenders. The effect of those attitudes and processes has been to

create a situation in which young Maori men have been apprehended, arrested, prosecuted or sentenced on the basis of cultural and racial perceptions rather than strictly criminal reality. In this way, the monocultural and institutionally racist nature of the criminal justice process influences the number of young Maori defined as criminal, and hence the rate of Maori offending. This in effect means that there are systemic factors as well as offender-based pressures which establish the extent of Maori offending.

TE WAHANGA TUAWHA - RESPONSES AND SUGGESTIONS

Te rongonui o te taniko
kei roto i te whiriwhiri noa,
mau tonu tona ataahua.

The beauty of taniko
is that there is more than one pattern

Ma te mana o te tui me te kiwi
ka mohiotia te tangata matau.

The wise man appreciates both the tui and the kiwi.

NGA WHAKAARO O TE IWI

> *"We are seeking for the medicine that will fix our children up. So I say, let's have a look at those past generations and let's have a look at what happened in those times that prevented us from doing things wrong. If we look at those things we can find our medicine."*

> *"The systems have to address the value of the culture and not from their point of view, but from a Maori point of view. But even more than that, they have to recognise that our point of view is as good as theirs."*

> *"... there must be a starting point for any remedying of the behaviour of our rangatahi and ... like all things it must be the Treaty and the richness of our own heritage."*

> *"What we are talking about in preventing or handling crime is how to help a young person retain mana or to give him an insight regarding his own mauri, his own particular life force, his self-esteem...and you can't give a person self-esteem if our people as a whole are not sure about their own self-esteem."*

"You can try to change the courts and the police but if society is fearful of Maori gangs or is prejudiced against Maori people as a whole, your attempts to change institutional racism will not get anywhere."

"There's definitely racism there in the police force...they should think about doing some ground work on that, a racism workshop, admit the problem, that would be a small first step."

"The very fact that the police enforce the law which many Maori see as unjust, is putting them in an adverse position with the Maori people...so if you are going to look at the police you also have got to look at the law they enforce and the way that they actually enforce it."

"... we have always looked at ways to make the Pakeha court work better but ... perhaps this is the time to look at our Maori alternatives and see how they can work ... see how the Maori way can work today."

"They wanted to bring the court to our marae but we said no way...it's because we have to have a place for our people, where they have a space of their own. I know some of our people think its great to have a Pakeha judge there, but the marae is the only Maori place we've got left and now they are trying to put something else there."

"It's too late by the time a kid's in Kohitere...he's gone you know...it's a long term thing if we want to prevent this...and it's a long time back in the past as well as in the future, is what I mean."

"Quite simply we need to find a way to bring our young ones back. Bring them back to the strength that is our own tradition and our own culture."

"We have to look at not just how to put our young back in touch with who they are so that they don't offend ... we've got to look at all of the things that affect them when they've got into trouble ... the police, the lawyers, the courts, everything."

"The Justice Department and the courts and all those other places seem to me to be nervous or something about listening to our kaupapa, or giving us a chance to develop it...why should they be scared if it all results in justice in the end?"

"Its time to stop talking about revenge ... about jailing or hanging or castrating our young ... it's time to look for cures."

"You have heard from various people in the various areas to which you have gone as to reasons for offending. You have heard it all and you have heard them repeat it. Now you must put it all together in a way that people will understand. But will the Pakeha then sit down and listen and will they really believe?"

The factors which contribute to the rate of Maori offending are interrelated. They are found in the personal reactions of certain young Maori men to the cycle of confinement in which they exist, and in the systemic responses which those reactions trigger in the criminal justice process. The reality of that offending, as distinct from its extent, is characterised by behaviour that shows a frequently dehumanised and callous disregard for the inherent tapu of other people, as well as a selfish and frequently destructive disregard for their property rights. The lack of moral responsibility and personal sensitivity to the worth of others which it illustrates is a reflection of the offender's own deprived sense of self-worth.

It is not surprising that so many young Maori people are burdened with this negative perception of themselves and their cultural place in the New Zealand scheme of things. The constant reaffirmation by Pakeha society that their racial identity is somehow tied to social inferiority and economic inequality, inevitably creates an insecure sense of personal value. Their isolation from the knowledge and insight of their own culture equally inevitably denies them a solid cultural base from which they could nurture the strengths and positive

meanings of their racial identity and so combat any negative perceptions they may have about themselves. The result is a complex of cultural, economic, social and psychological stress which may in extreme cases establish a frightening world of psychotic paranoia, but more often engenders an emotional frustration that finds release in violent criminal behaviour. The perceived frequency of this behaviour instills in much of Pakeha society a set of mistaken perceptions about Maori behaviour which aggravates their fear of violent attack and raises a natural concern for the protection of their families and property. It also arouses an anger which unfortunately inhibits any understanding of the behaviour and thereby prevents the acceptance of initiatives which could positively redress it.

Maori people are similarly fearful of criminal violence and often share that same sense of anger which prevents rational understanding. However, their anger is circumscribed by two important factors. The first is the constant realisation that because the offenders are kin, are mokopuna, tradition imposes a community responsibility for their actions which has not been diminished by the pressures of cultural change. The second is the awareness that those actions come from a cycle of prejudice and powerlessness that has touched all of Maori society. These two factors combine with the hurt which the offenders are seen to inflict upon their own community, and so ensures that its anger is assuaged by a wish to understand and to ease the hurt.

The challenge in discussing the Maori offender within a Maori context, and in deciding how best to curb or rehabilitate him, is one of finding a balance: a balance which contains the rage so that an understanding can be introduced which expresses warmth and aroha as well as anger and pain, that promotes whanau support as well as sanction. Such a balance can only be achieved by weighing-up both general and specific responses. There must be an attempt to seek a general balance by ensuring that the Maori community has a viable socio-economic base developed from the provision of adequate resources, and a stable cultural base developed from the respect accorded its language and values. Such a balance will be achieved by addressing the "offender-based" pressures which shape the life of the Maori criminal. A specific balance must be sought by acknowledging the way in which traditional ideals can be adapted to mould the conduct of the present-day Maori, and by accepting how the precepts of Maori law can be used to monitor and seek sanction if that behaviour becomes unacceptable. This balance will be achieved by addressing the "system-based" factors which shape the operations of the criminal justice process

in relation to the Maori offender.

To formulate the discussion in terms of this balance will, hopefully, achieve two ends. First, it will remove the issue of crime control from the debate about punitive or politically popular sanctions against groups or individuals which merely delays the discovery of long-term strategies for reducing offending. It does not, of course, dismiss the need for sanction nor does it ignore the fear and the anger. However, it does place them in a positive context which recognises the very complex causes of offending, and the very real hurt which it creates in the Maori community. Secondly, it will permit acceptance of the fact that the offender-based pressures which shape the young Maori flow from an imposed set of social and historic attitudes and processes that have established an unbalanced world of cultural and economic deprivation. This recognition will in turn ensure that attempts to redress the effects of that imposition, and the system-based procedures which depend upon it, are framed within a holistic perspective.

THE RESPONSES IN CONTEXT

In this section of the report an attempt is therefore made to advance responses and initiatives that may effectively address both the "causes" and consequences of Maori offending. It endeavours to outline measures that will help reduce offending by addressing the offender-based stresses that contribute to it, and the system-based approaches which exacerbate it. It synthesises them from the shared ideas and thoughts of Maori people, and draws them from experiences which reflect the collective reality of life in a society historically bound to Pakeha monoculturalism.

Many earlier studies have acknowledged this reality, and have noted the general need to reduce Maori offending by promoting racial harmony or improving the socio-economic status of the Maori community. However, such proposals have been framed within a Pakeha context which illustrates the fundamental difficulty of cross cultural research and the recommendations which often flow from it. Their approach has often been based in the belief that Maori offending can be reduced within the framework of a "socio-cultural class model" which they believe also explains its causes. Thus the monocultural belief that the Pakeha system is inherently right, and that Maori people simply make up a non-adaptive and disadvantaged socio-economic sub-class, an "under-class", has led to a perception that

offending flows solely from that status. Any reduction has therefore been seen as synonomous with economic improvement.

While it is sometimes recognised that part of that process of improvement is related to increased cultural pride as well as economic advancement, the underlying philosphy is to help the Maori "catch up" with the Pakeha and thereby reduce offending. Thus even though it is often acknowledged that socio-economic status does not account for all Maori offending, or that the degree of economic growth needed for a reduction in offending would have to be almost unrealistically substantial in the medium term, the major emphasis remains on socio-economic improvement. Initiatives to encourage Maori self-help programmes, or to improve the self-image of young Maori, therefore tend to be framed within a simple belief that time and money will reduce the rate of Maori offending. This approach ignores the cultural denigration which underlies economic deprivation and simply reinforces the monocultural environment from which Maori offending arose in the first place.

A Maori perspective is quite different. Because it relates the "causes" of offending to the inter-relationship between the cultural and soci-economic deprivation that creates and maintains the cycle of Maori confinement, it sees the starting point for remedial initiatives as being that inter-relationship, rather than its purely economic consequences. This implies that it is actually culturally inappropriate to see the Maori as simply another economic minority or under-class in their own country. Rather, they need to be accepted as tangata whenua and partners to the Treaty of Waitangi, so that the correlates of their present cultural and economic status, including offending, can be addressed within a specific cultural and constitutional framework which acknowledges the reality of a genuine partnership.

> *"If you are going to sort out how to help or stop those of our young ones who are in trouble, you are going to have to look at alternatives that share power and retain our mana. Authority to deal with our wrongdoers without those two things is useless."**

Because the present Maori social position is a consequence of processes and attitudes which denigrated the authority bases of their tangata whenua status, any initiatives to alleviate problems such as criminal offending must address the fundamental forces responsible for that denigration. This will involve not a set of remedies which merely perpetuate the Pakeha-defined status quo, but wide-ranging perspectives based on a cultural co-existence

which recognises the link between past and present Pakeha policies towards the Maori, their underlying monoculturalism, and their specific effects as manifest in offending.

These perspectives therefore necessarily relate to the Maori place in the social scheme of things, and to the specific institutions of the criminal justice process which define the extent of their criminal involvement. Such an approach enables a drawing together of the many threads of Maori offending and addresses the power imbalances and social constructs that have imperilled the basis of Maori cultural and economic survival. In practical terms it means that not all responses will fall within the specific purview of the Department of Justice or, indeed, any single institution. Attempts to address differing attitudes and processes are necessarily wide-ranging and removed from the constraints of bureaucratic demarcation. The Roper Committee stated that

> *"The resolution of the problem of violence ... and the establishment of a more gentle society requires a concerted and simultaneous effort on many fronts."*[1]

The remedying of Maori offending requires a similarly broad-based approach. It must seek social and racial equity rather than mere administrative reform. It must strike a balance which will recognise both the hurt which offending causes and the hurt which often contributes to it. It must also address the fundamental structural, philosophical and cultural bases of the systems established to deal with the criminal consequences of that hurt.

There are of course many difficulties in attempting to achieve the appropriate balance and to question the accepted values of the existing justice processes. Many are related to the actual place of Maori society, others are linked to the crucial role of the criminal justice system in the Pakeha scheme of things.

The first of these difficulties is the simple reality that the Maori community does not have the material resources to implement any effective initiatives. That it has the emotional resources is undoubted: however, it does lack adequate capital funding to properly develop long term strategies in crime prevention just as it does in many other areas. For this reason a number of present Maori initiatives are researched, developed and staffed by volunteers in a manner which simply places further strain on the community's already taxed emotional and economic resources. A practical consequence of this is that the programmes are almost

bound to fail because of the lack of forward planning able to be undertaken, and the sheer burden for Maori people of maintaining commitment within a social and family framework already under stress. In a particularly cruel twist of the cycle of Maori confinement, this may actually mean that involvement in projects aimed at addressing the socio-economic and cultural deprivation of Maori people can result in personal and community stresses that further aggravate that deprivation.

> *"Our own people have it in their hands to prevent a lot of those crimes and other things our kids are doing, but we have to face up to the fact that we can't do it without resources...for too long we have been trying to do things for aroha and nothing else...we simply can't survive as never-ending volunteers..."**

The second difficulty is that the upholding of Pakeha models as being the superior way of handling problems has effectively denied the Maori people the opportunity to develop or have the authority to implement their own initiatives. The reality of institutional racism has ensured that the Maori community has constantly had to adapt Pakeha ideas to its own circumstances. This has had the effect of placing Maori people in a reactive situation rather than allowing them opportunities to discuss and develop strategies drawn from their own experience and from the wellspring of their own traditions.

The third and closely related difficulty is that the holistic approach of the Maori perspective has often been restricted and made ineffective by bureaucratic division of responsibility. The belief that certain issues are or are not the responsibility of the Justice Department or the Department of Social Welfare or the Police is seen by Maori people as an artificial barrier to an effective addressing of criminal offending. Apart from some pleasing exceptions such as the joint departmental commitment to the maatua whangai project, bureaucratic demarcation tends to hinder Maori initiatives, especially in relation to issues such as funding and accountability.

The fourth difficulty is that the Maori community needs time and a recognition of its right to develop and reassert those skills which could support effective initiatives. The Kohanga Reo movement is a stimulating example of how Maori people can reach back to their traditional strengths and adapt them to a present situation: but it has needed time to develop its strategies and it still needs increased funding and support from the Pakeha community to achieve its goals. The development of any long-term strategies aimed at preventing Maori

offending, or rehabilitating present offenders, will need similar resources and a corresponding recognition that the Maori people can find and organise appropriate programmes of their own.

The fifth difficulty is a corollary of all these problems. One of the most damaging consequences of our shared history has been the weakening of tribal ties which previously bound Maori society together. Today there is obviously a need to reweave those ties as a crucial part of re-establishing cultural pride. In a specific sense, that spiritual strengthening will reduce the deprivation which contributes to offending, and help the Maori organise structures to deal with its consequences.

Although the reality of the urban shift compounds the difficulty of this task, it is clear that tribal links will provide the basis for joining the urban and rural Maori populations: moves to establish urban tribal runanga and roopu -a-iwi are part of this process. During the period of adaptation however, it is necessary to recognise various urban groups as representative of Maori concerns in particular areas. For this reason, many of the proposals outlined in this report refer to the need for involvement from both iwi and urban-based groups. Often they will be the same, but there are a number of pan-tribal groups involved in programmes devoted to young Maori and young offenders in particular: it is important that their expertise be recognised. To do so accepts both the many difficulties consequent upon tribal dispersal, and the fact that the forces responsible for it also created the problems with which Maori organisations are now attempting to deal. Above all it accepts that the Maori community can adapt its structures and processes to deal with the realities and problems associated with their cycle of social confinement.

Each of these difficulties relate to the general need for change in the social and cultural processes which shape the correlates of Maori offending. They also relate to the specific need to change the processes which shape the bias and insensitivity of the criminal justice system itself.

This latter need raises a number of issues because many Maori people see systemic change as involving more than bureaucratic reform of the existing process. They see it instead from a perspective of the Treaty and their tangata whenua rights which actually recognise Maori authority to establish or participate in the structures that deal with criminal misconduct - a view that ultimately questions Pakeha definitions of the concept of "one law for all".

These difficulties define the responses to both the offender and the system-based correlates of offending. In each case there is a clear need for Pakeha understanding and resource support to develop appropriate strategies that might reduce offending. This need arises mainly because many of the initiatives require an addressing of Pakeha attitudes and institutions. However, it also arises because those attitudes have in the past frequently questioned the ability of the Maori community to address its own difficulties or denied the validity of their proposals aimed at doing so. This has effectively deprived the Maori community of adequate resources and has thereby inhibited their capacity to properly monitor or change the behaviour of those of their young who are involved in crime.

For these reasons the proposed initiatives require not just a commitment to resource support but a commitment to understanding. This understanding is particularly important because the responses often move beyond the accepted solution shaped by Pakeha perceptions and instead reflect the often different ideas of Maori people on how best to grapple with the problem of offending. Some are based, for example, on the simple need for Maori people to synthesise and further develop their own ideas. Others are based on wide-ranging responses to shortcomings in areas as diverse as the media presentation of Maori issues and the education of prospective lawyers - matters perhaps not usually considered in studies of criminal offending. However because the "causes" of Maori offending are so complex, and because the systemic responses to it are based in such deep-seated attitudes and processes, the responses need to be broadly based.

> *"The one thing we need to do is ... look at remedies that don't try to look at the causes of our young people's behaviour in isolation ... we mustn't get caught up like the Pakeha because looking at only one part of the problem, say the schools or the Justice Department ... only gives us a half-pai answer."**

The many proposed initiatives would of course need to be coordinated and particular programmes subject to input from appropriate hui. The need for such coordination and continued discussion means that the suggested responses of this report are both general and specific as well as long-term and short-term. All are ultimately shaped by the realities of, and responsibilities to, the tangata whenua status of the Maori and their interpretation of the Treaty. In fact, it is the obligations imposed by the Treaty which illustrates the need for certain responses and which provides the framework for their implementation.

The traditional whakatauki

> *"Kotahi ano te kohao hei urunga atu mo te miro ma, te miro whero, me te miro pango.*
> *The white, red and black threads are drawn together through the single eye of the needle."*

aptly describes the framework of this approach and helps illustrate the way in which the Treaty can be used as its basis. It suggests that the remedying of Maori offending involves many different threads or initiatives being drawn together through the fabric of responsibilty established by the Treaty. In other words, because the causes of offending lay in the tearing of that fabric, their alleviation lies in re-establishing the equally shared pattern and balance of co-existence which the Treaty envisaged. This requires short-term strategies to change specific features within the criminal justice process, and longer term measures to address the fundamental cultural deprivation and powerlessness endured by Maori people. They are necessarily interrelated approaches because the criminal justice system does not exhibit its institutional racism divorced from the attitudes and processes which shape the operations of employment strategies or the education and health services that contribute to the reality of Maori existence. The unskilled or unemployed status of the young Maori male, his "failures" in the education system, and his representation in the wards of mental hospitals, are realities which both contribute to his involvement in crime and illustrate the pressures under which he lives. All have been shaped by the same monocultural fabric. All must be addressed if that fabric is to be rewoven and the tragedy of Maori offending reduced.

THE TREATY OF WAITANGI

The first thread in establishing appropriate initiatives is thus drawn from the weaving stick of Maori perspectives about the Treaty itself. It is not necessary in this Report to canvass in detail the whole history of the Treaty, nor to contribute further to the screeds of Pakeha academic writing about its "legal" validity. However, it is essential to formulate a Maori view of the Treaty as it is from such a perspective that one both confirms an understanding of the conflicts which shaped the correlates of Maori offending, and the bases on which that offending may be addressed.

The Treaty is the shared touchstone and starting point of "official" Maori/Pakeha interaction. Its place in the New Zealand scheme of things, like the place of the Maori community, has been largely defined by the Pakeha. It has been dismissed as irrelevant, as a legal nullity, and more recently as an agreement setting out certain principles of partnership between the Maori and Pakeha. The Maori people have constantly and consistently seen it quite differently, but the monocultural assurance of the Pakeha law has meant that Maori perspectives have been dismissed, and debates about its worth have been usurped and defined by Pakeha attitudes.

> *"... we have always seen the Treaty differently to the Pakeha - they have either left it for the rats to eat or they have tried to tell us what it means ... but we know what it means and its not what tauiwi says."**

To the Maori the Treaty has a status quite separate and distinct from that which the Pakeha law attempts to impose or remove. It is a status and perception that is not new -

> *"The Maori debate on the importance of the Treaty has continued throughout most of the 150 years since it was signed ... the recurring theme is that the Treaty promised Maori people the retention of their mana or traditional authority and status."*[2]

The bases of that status were found in the tenets of Maori law which recognised that the acts of ancestors or tipuna could become precedents for controlling and monitoring behaviour. Because the Treaty was signed by rangatira on behalf of their iwi, the subsequent actions of Maori people reinforced the precedent and strengthened the mana already accorded the Treaty through the chiefs' signatures -

> *"Ko te kupu te mana o te tipuna."*
>
> *"The word reflects the ancestor's mana."*

Although many tribes did not sign the Treaty and, indeed, some dismissed it at the time as "that piece of paper which Ngapuhi signed", they have subsequently seen it as the cornerstone of Maori/Pakeha relations. They have frequently used it as the basis for petitions to the Queen, and for dealings with the government. Thus rather like the decisions of a higher court binding those not directly party to an action, so the Treaty has come to be accepted by Maori people as a covenanted precedent defining behaviour and establishing a framework for relations with the Crown.

Because it was so ordained and acted upon by ancestors as a solemn agreement, it is a kawenata or spiritual covenant that cannot be lightly dismissed. This spiritual aspect does not mean that the Treaty is separate from the material world, but rather that the material rights are guaranteed and have a spiritual sanction. Like the other acts of tipuna which came to be regarded as precedent, the Treaty was thus regarded as an affirmation of rangatiratanga and hence a confirmation of the authority implicit in that term to act on behalf of the iwi and to bind them in their future conduct.

Such acts of tipuna which were referred to by their descendants for guidance and assistance were as important to the Maori sense of social order as any Pakeha judicial decision or legislative enactment. The failure of colonial governments to recognise or accept the validity of those precedents led to the destruction of the agreed codes of behaviour that tradition dictated should guide conduct between Maori and Maori, and the inevitable demeaning of the agreed codes of behaviour which the Treaty said should guide conduct between Maori and Pakeha.

The Pakeha dismissal of the Treaty and the mana accorded it by the Maori was, therefore, a symbol of the same monoculturalism which had suppressed traditional precedents. Their rejection of the actual rights it appeared to grant to the Maori was synonomous with the rejection of their rights to maintain the linguistic, land and spiritual bases of their own society. The claimed power of the Pakeha law to define and interpret the meaning of the Treaty was merely part of the same power which the dominant culture took to define the worth and place of Maori culture itself. They thus represent the same socio-historic and economic forces which established the cycle of social confinement from which Maori offending arises.

If the mana of the Treaty as seen by the Maori is re-established, it provides both a symbolic and practical framework for initiatives which can remedy that offending. However such initiatives need to be based on three clear precepts - the tangata whenua status of the Maori people, the partnership which the Treaty imposes upon them and the Crown, and the idea of biculturalism which grows out of it. These terms in turn need to be clearly understood within a Maori framework which is quite different to the meaning and application they have been given by Pakeha definition.

The Treaty is the only agreement which the Crown has entered into with its own citizens and it therefore carries a special significance for its relationships with the Maori. That significance is clearly tied to the fact that the Maori are tangata whenua and that their culture and language developed their uniqueness here. The distinctive features of that culture are indigenous to New Zealand and were shaped by the people's interaction with this land. Such uniqueness does not give them an exclusive understanding or sense of belonging to the land, but it does give them a pre-eminent right to be heard and to participate in what happens to and within it.

But the term tangata whenua is overlaid with meanings. All Maori are tangata whenua, but in tribal areas the specific tangata whenua status of the iwi, their ancestral and spiritual ties to a specific area of land, takes precedence over the general status shared throughout the country. Thus, for example, within the area traditionally recognised by Ngati Porou, they are tangata whenua and their perspectives, their kawa, apply. This tribal or regional status is often ignored and misunderstood by Pakeha. However, it is crucial to any understanding of the Treaty and the obligation it imposed: it is particularly important if Pakeha institutions and government departments seek biculturalism by adopting cultural perspectives elicited from nationally-structured organisations. Any cultural perspectives adopted by such groups will be inappropriate if they do not recognise the wishes and mana of tribal tangata whenua who may be affected by their decisions.

In terms of the development of Maori/Pakeha relationships, and the eventual confinement of the contemporary Maori community, there is perhaps a more important aspect to the idea of tangata whenua status. Although Pakeha later claimed that the Treaty signalled the "annexation" of New Zealand and the ceding of Maori sovereignty to the Crown, in actual fact in 1840 it was in many ways merely an acceptance by the British of the realities of the situation: it recognised the fact of Maori possession of the land and acknowledged that their superior numbers precluded conquest. But in recognising this reality, the Treaty also affirmed that the Maori had a special status which derived from their long existence on these shores. That status was their place as tangata whenua, and it carried with it certain ideals of title, of rights, and of law. Those rights were later of course to be dismissed by the Pakeha law as either being non-existent or held only on sufferance from the Crown. To Maori

people however, they pre-dated the Treaty, they were not removed by it, and they remained the basic threads that wove together the many patterns of their place as the people of this land.

There is thus a clear link between the idea of tangata whenua status and the Maori perspective of the partnership enshrined in the Treaty. It is only in recent times that Pakeha law has accepted and defined any concept of partnership. However, the Maori community has always seen it as crucial to the Treaty, although its definition varies markedly from that currently espoused by the Pakeha. To the Maori people the partnership of the Treaty developed from the tangata whenua status itself, and from the rangatiratanga or authority which that gave them to establish an equal relationship with the Pakeha. The Treaty was the tangible recognition of that relationship, and its terms were the framework within which it was to develop.

Pakeha law has defined that partnership in terms of the "principles" of the Treaty and many Maori people have similarly endeavoured to formulate broad-based guidelines for Maori/Pakeha conduct. However, the precedent which the Treaty was felt to impose on Maori society as an act of tipuna given mana by their status was grounded in the actual terms of the Treaty itself. And although there was some mutual confusion in 1840 about what was involved in the transfer of "kawanatanga", there was no doubt in Maori minds that their mana (the closest Maori equivalent to sovereignty) was preserved, and that their rangatiratanga or authority was expressly maintained under Article 2. There is a long history of oral tradition and written record of hui from Kohimarama in 1860 and Waipatu in 1892 to Te Tii in 1934 and Ngaruawahia in 1985 which outlines that perspective. The Waitangi Tribunal has maintained that viewpoint -

> *"The Maori text conveys an intention that the Maori would retain full authority over their lands, homes and things prized. This is more than the ... possession guaranteed in the English text. In Maori thinking "rangatiratanga" and "mana" are inseparable."*[3]

The guarantee of Article 2 to preserve certain resources and ensure the maintenance of rangatiratanga was seen to be absolute, just as the promise to preserve Maori custom in the Protocol or 4th clause was unrestricted. To the Maori then, their sovereign power and all that that implied was intact, and it therefore left them free to subsequently negotiate, as an equal partner, the limits, meanings and principles of Articles 1 and 3.

It is this broadly-based perspective of social, economic and cultural partnership that underlies the following proposals for remedying the problems of Maori offending. It is not, of course, possible for this Report to outline the specific strategies and policies which are needed to change the fundamental social attitudes and processes that shape Maori existence and hence the Maori offender. However, it is essential that the need for change be illustrated. For this reason the proposals which could be adopted by the Department of Justice or other institutions are clearly placed within a broader framework of social and cultural change. While the particular initiatives are not necessarily dependent upon that change, and in fact they may contribute to it, their implementation would certainly be facilitated within a more empathetic, equal and culturally sensitive society. For this reason also the proposals relate both to the general and specific factors which shape the offender-based place of the young Maori, and to the system-based institutions which help define that place. They are essentially interwoven proposals designed to address the effects of life in the cycle of Maori confinement.

The pursuit of such proposals will naturally cause many difficulties for the Maori community. However, such difficulties are as nothing compared to the general consequences of the Maori not striving to revitalise their language and their positive cultural values, or of attempting to improve their economic lot. Neither of course are they as daunting as the specific consequence of more offending and more wasted young lives which would follow if the proposals were not implemented. And because so much of our present is shaped by the threads of our past, those difficulties are as nothing compared to the challenges our tipuna faced as

> *"they travelled to this new land, as they adapted to its difficult and often harsh environment, and as they sought to cope with the strange white ways recently brought to its shores."*[4]

But there is, of course, a major difference between those ancient problems and the current difficulties; the deprived status of the Maori people today cannot be remedied by them alone. Because so much of their alienation and deprivation was imposed by Pakeha attitudes and processes, they must also be addressed by the Pakeha community. In a specific sense, because New Zealand society has a level of Maori offending that reflects its own policies and attitudes towards the Maori, its reduction can only be achieved by a Pakeha desire to address those attitudes, and a Pakeha commitment to a partnership in fact as well as theory.

It is within the hope of this partnership that Maori people discussed and presented their thoughts in the course of this research: from those thoughts a number of proposals have now been synthesised. Their responses were offered in the hope that their concern over offending would be recognised as genuine, and that their attempts to address it would not be thwarted by a monocultural dismissal of their perspective, nor by an unfair demand for redress being placed upon them without adequate resources and support.

It is this hope which underlies each of the following responses. They are all related to the places in the scheme of things from which the correlates of offending arise, and to the system-based responses to that offending. In the former case, they recognise that the place of the Maori community, its whanau and its young have been shaped by particular historical forces and are confined by specific contemporary difficulties. Both contribute to attitudes and processes which often have criminal consequences. In the case of the system-based responses, they are shaped by particular Maori perspectives on how justice operations have developed and how they currently function.

The key to both responses is the basic Maori belief that because all attitudes, processes and effects are interrelated, so must be the remedies -

> *"One of the hard things is that the Pakeha has split everything up: there's an Education Department, a Social Welfare Department, a Justice Department and they are all guarding their own little patch of authority. But when we talk about offending and trying to fix it up, that's no use ... offending starts down here and it goes right up so that it cuts across all those departments."**

THE OFFENDER BASED RESPONSES
- CULTURAL DEPRIVATION AND DENIGRATION -

The most stressful feature in the lives of young Maori, and the most obvious correlate of Maori offending, is the cultural deprivation and denigration that has denied positive knowledge of, and close links to, their own cultural heritage. The fact that the law, the education system, and other bases of power in New Zealand have been subject to Pakeha control, has meant that Maori socio-cultural status has been defined by monocultural processes unwilling or unable to adequately serve different cultural needs.

The continued dismissal of Maori values as being of little worth in the real world, and the unease about eliminating any cultural bias unless it is within the context of continued Pakeha control, raises two disturbing possibilities. First the maintenance of bias and prejudice will create pressures leading to further increases in specific behaviour such as Maori offending. Secondly, it will continue to present a threat to the general survival of Maori as a viable and vibrant culture. In this sense the effects of socio-cultural deprivation are more damaging than the interrelated consequences of economic inequality - while both shape the depressed weave of Maori life and both contribute to the reality of Maori offending, only the former imperils Maori cultural survival. There is, therefore, a very real challenge confronting Pakeha society and its institutions, as well as the Maori community, to ensure that the transmission of Maori language, values and cultural ideals is promoted. That promotion is dependent upon the Pakeha community accepting the equal worth of Maori culture and committing itself to the concept of a truly bicultural society. Viewed from this perspective, the attitudes which lead to acts of cultural denigration and the processes which have resulted in cultural deprivation are remediable only from a mutual basis of understanding that is in itself the framework for biculturalism.

New Zealand is, of course, a community of many cultures but the worth of any claims to be a multicultural society will be meaningless if the Pakeha world does not first create a valid relationship with the tangata whenua. For the Maori people the relationship envisaged by the Treaty and the unique tangata whenua status of the Maori should be the foundation for any interaction between different cultural groups. As the Pakeha treats the Maori, so will its treatment of other groups be defined; if the Maori are not granted recognition, and their sovereign place in their own homeland is not assured, then the aim of a multicultural community based on mutual respect will be an unattainable myth.

Most studies of offending have recognised the importance of this cultural base. However, their proposals to reaffirm the status of Maori culture have usually focussed on the Pakeha education system and efforts made there to expand the teaching of taha Maori or to increase the number of Maori teachers within that system. While such initiatives are needed, the effects of cultural deprivation clearly cannot be alleviated solely within the present school system. More fundamental issues need to be addressed, and while these cannot be canvassed in depth in a report of this kind, there are some specific initiatives which can be considered.

TE REO

The continued maintenance of Te Reo Maori as a living adaptable language is still under threat by its dismissal by the dominant Pakeha culture and by its consequent lack of everyday recognition or use. Although a number of recent measures such as the Kohanga Reo and Te Ataarangi movements have been established to alter this situation, a more broadly-based approach is needed. Such a strategy would of course have the fundamental purpose of ensuring the survival and transmission of the language. However an obvious spin-off would be an increased cultural pride on the part of young Maori which would help mitigate against criminal offending. But for that to occur there would need to be changes to the existing social attitudes and processes that dismiss or demean the language. This implies the need for specific initiatives to accord the Maori language a status worthy of respect.

At the present time it is unfortunate that many young and not so young Maori people see their language as being of no use or value. This clearly flows from its general non-recognition by Pakeha society and its perceived lack of status in everyday life. The only status that has been accorded in that context is within the 1987 Maori Language Act. While there is a certain monocultural assurance in the idea that Pakeha legislation is the only process which can declare Maori an "official" language, its symbolic value is important as an indicator to the Pakeha community of the worth which the law accords the Maori language. Unfortunately the present Act restricts that worth to a right to speak in court, a right which is further restricted by the judge having power to determine questions about the accuracy of any interpretation.

The value of the present legislation to the Maori community in general terms is thus very limited. Its relevance to the great majority of those young people likely to appear in the criminal courts is almost non-existent since most are unable to speak or understand their own language. In fact it is possible that knowledge of its use in legal proceedings could further alienate young offenders from their culture as it would be associated with Pakeha institutions which they see as unjust.

An important step which the Pakeha community could undertake to ensure respect for Maori language, therefore, is to have the Act extended so that legal recognition is granted to the use of Maori in all official proceedings. As well, the Maori Language Commission

which was established under the Act should be seen simply as a first step in promoting the value of Maori culture as a whole. At present, the Act states that the commission can "initiate....advise upon and assist" in the use of Te Reo in the courts and generally promote its use. It is the belief of many Maori people that its brief should be extended so that it can facilitate New Zealand's move to a fully bilingual society. From this base it should be possible to establish a more wide ranging organisation, Te Roopu Tikanga Maori, a Centre for Cultural Research, which recognises that language is the base of all the threads which make up Maori culture.

A CENTRE FOR CULTURAL RESEARCH

This organisation could be resourced as a full-time centre to act as a clearing house and facilitator for study into tikanga Maori (all things Maori). With appropriate input from iwi authorities or outreach projects into tribal areas, research could be undertaken into subjects as esoteric as traditional spirituality, or as practical as the limits of Maori fishing grounds. It could initiate and sponsor research into particular problems such as alcohol and drug abuse, and relate those to the traditional Maori concepts of health and so develop appropriate Maori programmes for treatment and counselling. With the language as a fundamental base of its programmes, the centre could be a pan-tribal resource, drawing on the taonga of the past to help solve the problems of the present. Although the proposed Ministry of Maori Affairs is to be charged with policy development and could perform similar functions, the independence of such a commission would ensure its activities would have support and participation from iwi, and therefore be more culturally meaningful in terms of research.

At present many university Maori departments stimulate much valuable research, and the establishment of a resource centre could share their expertise and make information more readily accessible to all Maori people. There are many overseas models of indigenous resource projects such as the Chicago-based Centre for the History of the American Indian which researches and sponsors study into native issues. While such a model is not of course directly transferable, it does indicate how worthwhile such a centre would be for Maori people.

Once established, the centre would help foster the slow but necessary rejuvenation and transmission of the culture, a task already contributed to by many voluntary organisations. Most importantly, its permanently funded base would enable it to develop long-term programmes to address the reality of cultural denigration and deprivation.

The effects of the former have been to demean and in many cases prostitute the value of Maori culture. The consequences of the latter have been to prevent many Maori from learning the essence of their heritage. The two processes have together resulted in many conflicting and erroneous pieces of information cluttering up the Maori cultural landscape. There is therefore a need for the Maori community to define its cultural inheritance, to assess that which has been altered by the pressures of Pakeha religion, education and history, and to define how best to adapt and transmit the truths of Maori and iwitanga to its young.

That development of cultural self-determination and strength must be seen as the thread that shapes the pattern of Maori society. Any general initiatives to promote Maori socio-economic development that are not tied to cultural awareness will lack significance and substance. Any specific initiatives to curb Maori offending that are not woven into the richness of Maori ideals will be unsuccessful.

The establishment of an organisation such as a centre for cultural research would help in that weaving process. It would also serve as a symbol for both the Maori and Pakeha communities and indicate the status ascribed to the Maori language and the culture. It would be established quite independently of any specific language initiatives suggested in the Education Department's Curriculum Review, or in proposals for the Maori people to organise their own school programmes to strengthen and maintain the transmission of the language.

MAORI-BASED LANGUAGE INITIATIVES

In this regard Maori people see a distinction between initiatives that are necessary to preserve and transmit their language, and the education that is necessary to provide the specific skills needed for employment in a modern society. The differences between these two aims are not mutually exclusive and in fact the latter could, of course, be promoted within a truly unitary and bicultural system infused with Maori values. Indeed, it is in this

type of all-embracing school curriculum that a fully developed and jointly administered taha Maori programme could be most effectively used. However, the particular measures needed to transmit Maori language and ideals to the Maori people require different initiatives which must be devised and controlled by the Maori themselves. A centre would be one such initiative, but there are others.

KOHANGA REO

The kohanga movement is an obvious example of a broadly based Maori initiative that was aimed specifically at fostering the language. The interactions encouraged between young children, parents and kuia and its incorporation of topics relating to health care and parenting skills emphasise the traditionally shared experience and all encompassing nature of learning. They also clearly illustrate how well Maori youngsters can learn when appropriate Maori methods of instruction are used and how important the group strengths of extended family support are to the actual learning process.

Unfortunately this positive initiative devised and developed by Maori people is not accorded equivalent status with Pakeha methods of pre-school education. Consequently there is insufficient funding and recompense for the people involved - in spite of recommendations and statements as diverse as the Education Department Curriculum Review and the Roper Committee on Violence. Many Maori people are, therefore, forced to eke out their own inadequate material resources and draw on already strained emotional strength to simply keep the kohanga, and hence their language, alive for their young. Because the kaupapa of kohanga is so important and so successful, Maori people are determined that it will persist. However, the difficulties faced in ensuring its survival seem to indicate yet again the lack of worth accorded Maori language, and the lack of Pakeha understanding of the need for its survival.

WANANGA

In spite of these problems Maori people continue to discuss other strategies for reasserting the value of their language and culture. One such specific Maori structure is the tribal wananga or school of learning. The models for wananga are found in all tribal histories.

Their ancient role in the preserving, interpreting and transmitting the kete matauranga, the baskets of knowledge bequeathed to humans, was demeaned and frequently suppressed in the imposition of the Pakeha education system. However, it was never completely destroyed. Today many iwi are attempting to adapt the concept of wananga as a forum to pass on their distinctive history, kawa, language and whakapapa. They are seen as a crucial tool in helping re-establish tribal identity and unity, and in reintroducing urban Maori to their roots. Unfortunately, wananga are presently supported by the Maori community's own inadequate resources which means that they can only be held at irregular intervals and at times when those iwi members in employment are able to gain leave. It also means that the tutoring load falls on unpaid kaumatua and kuia already burdened with other pressing commitments.

There is a clear need for the re-establishment of wananga as part of a long term strategy to revitalise the Maori language and culture and so build on the work of kohanga reo. Such wananga could initiate particular research projects, develop curricula in association with the research centre to investigate tikanga Maori, or it could use that organisation's resources for specific iwi research projects. Resources to help tribes provide more regular wananga, to enable tribal authorities to employ appropriate methods of instruction, and to collate tribal traditions, would all ensure that increasing numbers of iwi members would have access to the bases of their cultural self-worth. As well, they would strengthen and in some cases re-establish the rightful place of kaumatua and kuia as the repositories of knowledge and so provide an unbroken thread of education between the old and young, the individual and the whanau.

There would naturally be organisational, administrative and associated difficulties for the Maori community in establishing such wananga. There would no doubt also be difficulties within the wider Pakeha community in understanding the need for such institutions. However, the Treaty guarantees to maintain taonga or treasures have been held by the Waitangi Tribunal to include the language, and it is clear that the establishment of wananga would be consistent with that guarantee. It is equally clear that because attendance at wananga would enhance the self-esteem and hence the abilities of young Maori, such courses should be regarded as a legitimate part of any job training programme and eligible for appropriate paid leave. The Department of Maori Affairs presently recognises the value

of wananga attendance, and other departments could also profitably view it as a practical contribution to bicultural sensitivity.

An increased legal recognition of the Maori language, the establishment of a centre to facilitate study of tikanga Maori, and the setting up of more permanently based and adequately resourced wananga would, of course, only partially address the problem of cultural deprivation. However, they would be major steps in the process of breaking the cycle of Maori confinement which prevents effective transmission of the language and culture and hence contributes to the frustrated lack of self-esteem which so often leads to criminal offending. With appropriate resource assistance they would be clear examples of the way in which Maori people could address their own difficulties in a specifically Maori way. To be completely effective in remedying the effects of cultural deprivation however, they would need to be matched with positive changes in Pakeha attitude. It is those attitudes which lead to the denigration of things Maori and which could nullify any wide-ranging responses that seek to reweave the fabric of Maori existence.

ECONOMIC DEPRIVATION

The racialisation of poverty in New Zealand has meant that the cultural deprivation and denigration of the Maori is inextricably linked to their socio-economic status. The lack of economic resources has made more difficult the retention and transmission of Maori cultural and spiritual resources; the lack of cultural resources has made almost impossible the acquisition of those Pakeha skills needed to gain and control economic resources. The lack of both engenders a frustration and emotional stress that may make the other pressures of contemporary Maori life such a frustrating and demeaning experience that crime becomes a means of escape or revenge. Many of the pressures of this cultural and economic deprivation are shaped by failings in the education system and are aggravated by the realities of large scale and increasingly long term Maori unemployment.

Maori frustrations with the education system are well known and have been the subject of extensive departmental review as recently as 1986. The clear link between the educational "failure" of young Maori men and their subsequent criminal behaviour means that remedial initiatives being debated by Maori people in this context have a particular relevance to issues such as offending.

Many Maori youngsters are unable to gain either the qualifications necessary for employment or the positive cultural input necessary for personal pride. It would be unfair to suggest that the Education Department is not endeavouring to address these concerns or that it has not attempted to respond to the well-founded criticisms of Maori people. However, the continued high failure rate of Maori youngsters and the consequent discharge of unqualified and ill-prepared young people into the community is creating a growing segment of the population that is discontented and disenchanted.

An almost inevitable involvement in offending is only one manifestation of that disenchantment, but the hurt and alienation it represents demands that it be addressed with urgency.

Current moves by the Education Department to expand Taha Maori programmes in the schools appear inadequate. The programme's emphasis on injecting a Maori dimension into all aspects of the school curriculum is handicapped by inadequate resources and in many cases insufficient commitment from school principals. While Maori people regard it as a valuable gateway for Maori and especially Pakeha children to share in the richness of Maori culture and so develop some mutual respect, its piecemeal implementation is doing little to enhance the learning of many Maori youngsters. Its constant categorisation by educationalists and others as a mere "extra" in the syllabus is not only damaging to the esteem of those youngsters but indicates a misunderstanding of the programme's purpose. The programme is not intended as an extra subject but as a Maori influence in all curriculum areas - it is an attempt to infuse the whole syllabus with relevant and appropriate Maori viewpoints. However, its perceived status and dismissal as a mere adjunct makes implementation very difficult, and confirms Maori people's beliefs that the education system and society continue to regard their culture as unimportant. Those perceptions can only be remedied by giving taha Maori and Maori language the same status as other major areas of the curriculum. Indeed, if the equal partnership of the Treaty is to have any meaning, taha Maori should have the same mandatory status as taha Pakeha.

It is hurtful and perplexing to Maori people that something as fundamental as their culture and language should be regarded as an "adjunct" - for Maori children those things are the major threads of their identity and should be basic to any syllabus that attempts to prepare them for a full and rewarding life.

It is this belief that the Maori language and culture are the keys to identity and hence the ability to learn which underlies Maori initiatives to improve the educational environment for their children. One such initiative involves a rapid extension of taha Maori programmes into more broadly based tikanga Maori. These will eventually lead into full courses in Maori language which would have equal status with all other subjects. The obvious extension of this proposal is increasing resource development for bilingual schools and total immersion programmes in which Maori is the medium of instruction.

The bilingual and total immersion programmes presently in operation in communities such as Paki Paki and Ruatoki indicate how existing schools can be adapted to a Maori learning environment, while the Hoani Waititi Marae school is a model for the establishment of new schools within the cultural embrace of the marae. Each of these schools functions within the existing educational system but with a flexibility determined by their Maori structure to present or adapt the curriculum to the particular cultural needs of their pupils. They are therefore models that show how schools can inculcate in youngsters both a knowledge of their heritage and the specific skills they may use later in the Pakeha world of work. Unfortunately most Maori children are unable to attend such schools. Urgent measures are therefore needed to extend their development, and to ensure that taha Maori programmes are effectively incorporated throughout the curriculum in ordinary State schools.

At secondary school level the problems are more intractable because of the emphasis on Pakeha-defined examination criteria and monoculturally based academic curriculum. Major Maori education hui and the considered Maori contribution to the education curriculum review have all recently addressed these issues. Their suggestions have ranged from Maori and specifically iwi representation on school boards as of right, to the establishment of more appropriate Maori language syllabuses reflecting suitably developed Maori criteria for monitoring progress. However, these suggested changes do not really address the basic issue that the education system is founded upon and continues to promote the values of the dominant Pakeha culture: meaningful changes are therefore dependent upon changes to the Pakeha attitudes and processes that maintain the schools as insensitive and institutionally racist organisations. For this reason it is sad for Maori people that the Waitangi Tribunal's recommendations that the Education Department undertake an urgent enquiry into the way Maori children are educated has not yet been undertaken. There is a vital need for such an enquiry.

Because this process of changing attitudes is a slow and difficult one, there is an increasing perception among Maori people that the necessary skills for living in the modern world will only be gained by Maori youngsters in an independent or parallel system of education. The record of many existing independent Maori schools has provided a model for these alternative methods of education. They could be established as independent or cooperatively linked schools within the existing education system, or as completely autonomous kaupapa Maori schools functioning parallel with the existing system. The medium of instruction would be initially bilingual with a gradual progression to Maori, and the curriculum would be adapted and appropriately tailored to suit Maori students. Although such ideas are still at the discussion stage at hui and on marae, a recent major gathering of people from many tribes at Matawaia actually declared a preparedness to begin korero and research on their feasibility.

Such a declaration does not just indicate an increasing depth of dissatisfaction with the often sincere efforts of many educationalists; rather it recognises the importance Maori people have always placed on education and the realisation that it can only be adequately provided in a process which they have themselves devised and controlled. They seek to devise that system so as to more properly prepare their children as Maori and as citizens free from the deprivation which so often inhibits their full contribution to New Zealand society. They place the need for control within the context of the Treaty, and a belief that they can ultimately devise a more suitable education for their own.

The underlying thrust of any educational thinking or initiative within the Maori community is the clearly perceived need to develop skills and positive strengths as a Maori, and skills in marketable abilities for the work force. Maori people as well as Pakeha see education as the key to escape economic deprivation; but they see it as a key which must be forged in their own cultural awareness.

The belief that cultural assurance and the transmission of supportive values is conducive to academic achievement is seen at an advanced level in Te Wananga o Raukawa, the independent Maori university at Otaki. The wananga provides degrees and courses ranging from business studies to Maori law, and bases its policies firmly in Raukawatanga and a need to give the iwi contemporary skills. The fact that education authorities have failed to recognise those degrees is an indication of their educational arrogance rather than

a reflection of any inadequacies in the academic organisation of the wananga. Te Wananga o Raukawa is a good example of how the traditional ideals of the Maori schools of learning can be adapted to provide not just necessary cultural knowledge of the iwi, but appropriate knowledge for the iwi to survive in the modern world. The example it and other proposals provide could be researched by the Centre for Cultural Research as models for educational strategies that will help Maori people break their cycle of cultural and economic deprivation.

UNEMPLOYMENT

Providing more appropriate Maori educational models is, of course, but one thread in the need to establish economic security for the Maori community. The other major thread is obviously the need to develop strategies that will alleviate the problem of large scale Maori unemployment.

Clearly the major strategies for relieving long term unemployment and re-establishing a strong economic base conducive to full employment are matters of political policy beyond the aims of this Report. However, Maori people experience daily the effects of unemployment and clearly see the link between its frustrations, the further depression of their community, and the eventual likelihood of criminal offending. It is thus necessary to attempt to synthesise the expression of those concerns as they relate to initiatives that could prevent the link between unemployment and crime becoming an inevitable feature of Maori life. Such a synthesis of course accepts that the reality of low Maori socio-economic status is created by many processes and attitudes that have led to a racialisation of poverty. They also recognise that the alleviation of unemployment is merely part of the wider socio-cultural changes that are necessary in New Zealand.

However Maori people also feel that there is a clear need to prevent the social and economic stresses of unemployment through the reintroduction of properly structured work schemes, and the development of longer-term proposals for training and business establishment. Unfortunately such programmes in the past have raised some real concerns about the organisational and administrative accountability required for the projects to run successfully. Often these are due more to the failings of the education system to adequately prepare Maori youngsters for anything other than unskilled jobs or unemployment and the

effective exclusion of the Maori from business, rather than any inherent lack of skill or accountability in Maori society. Indeed the accountability of Maori within the iwi is frequently more personal and more demanding than that seen in many other areas of social organisation. In any business or work schemes for Maori people it is therefore the strategies of accountability and organisation that need to be addressed, rather than the notion of accountability itself.

With appropriately designed programmes controlled by the iwi or iwi-based urban groups and with proper training, management, and processes of accountability, Maori people are quite capable of establishing effective employment strategies. It is the hope of many Maori that these structures can be further developed within an expanded resource allocation for such long-term programmes as Maori Access and Mana Business Enterprises.

In the short term the reintroduction of subsidised work schemes was seen as a crucial factor in both alleviating the emotional stresses and preventing the hysterisis consequences of unemployment. These schemes were never seen by Maori as "make work" projects nor dismissed because there is "no market for bone carvings and other trinkets". Rather, the schemes were seen as positive measures in a socio-cultural as well as an economic sense. The involvement of many marae and pakeke in various schemes often re-established long lost whanau links with the young unemployed and frequently gave the workers their first real introduction to their culture. The key to the development of marketable skills may not so much be in the work performed, but in the developed cultural pride which led to pride in oneself and one's work: for many young Maori something they had not previously experienced.

The recent announcement of the special work schemes for gangs is therefore seen as a welcome initiative although there are considerable reservations about its format. Its restriction to gangs and its perceived purpose as a purely crime prevention measure rather than a positive source of occupation, particularly causes concerns in the Maori community. It is felt that those restrictions will reconfirm already damaging stereotypes: because many gang workers are young Maori the cycle of mistaken perceptions about generally negative behaviour by Maori will be reinforced. Similarly, the perception of Maori dependency and bludging will be reinforced in the social consciousness from which the attitudes of general prejudice and discrimination arise. For these reasons it is hoped that emphasis can be

shifted from their publicly stated crime prevention purpose and be extended to also address those unemployed Maori who are not in gangs. It is believed that such schemes can be extended as an appropriate short-term measure by which all unemployed young Maori can learn appropriate social and work skills. If adequate resources and management training are allocated to Maori authorities the schemes will be able to develop cultural pride as well as employment skills.

Such short term initiatives do not remedy the causes of unemployment nor do they adequately address the pressures in Maori society that establish the correlates of criminal offending. However, they do provide one more key to some form of economic worth, and, if properly organised by Maori authorities, an important method of establishing a cultural self-esteem which will mitigate against criminal involvement.

THE WHANAU UNDER STRESS

The realities of cultural and economic deprivation shape the state of both the Maori community in general and the Maori family in particular. While any initiatives to address the strain and parental difficulties within many Maori families are dependent upon a stronger cultural and economic base for the Maori community, there are a number of "family-specific" initiatives which can be adopted to alleviate the distress. These focus on the immediate pressures besetting the family and are based within two different but interrelated approaches. The first addresses the general problems of nurturing a vibrant and healthy family unit - the need to ensure adequate parenting skills, knowledge of child care and development, and the effective budgeting of household resources and so on. The second addresses the specific problem of male violence within the family. For each to be successful they must be based in kaupapa Maori and be part of an overall programme to improve the physical and emotional health of the family as a whole.

The need for this approach was constantly restated in the course of this research, and it was stated in words of anguish and desperation that stressed how many families were struggling simply to survive. That hurt underlay the belief that the pressures upon Maori families needed to be considered not just in economic terms but in fundamental human ones: that the help many Maori families needed extended beyond budgeting on an inadequate income to

the basic realities of physical, emotional and cultural nurturing. Such problems are ones which the Maori community, in spite of its deprivation and frequent depression, has the will, aroha, and inherent knowledge to solve.

THE NURTURING OF THE FAMILY UNIT

For a number of years the Maori Women's Welfare League and many other organisations have attempted to address the many problems facing the Maori family. However, the continuing lack of resources has meant that worthwhile initiatives have often struggled to achieve long term results.

Many Government and voluntary initiatives have also been tried but have frequently encountered difficulties because they were defined within a monocultural understanding of family dynamics or they were simply attempts to impose American models of casework support on the urban whanau. It is clear that any programme to assist and strengthen the Maori family must overcome these two shortcomings: they must be adequately funded and researched, and they must be based on culturally appropriate ideas. Crucial to these ideas is an acceptance of the Maori view of family, and the rights and obligations of the people within it.

One of the most difficult areas of conflict within the background of young offenders has been the power of the State, especially the Department of Social Welfare, to place children in care after appearances in court or some family breakdown. The conflict is best captured in the differences between the Pakeha view that the State has the right to consider the interests of the child as paramount, and the Maori view that whanau and group obligations are equally valid. This difference is not one of children's rights versus family rights, or even protection of the child versus the maintenance of a potentially damaging family relationship. Rather it is a question of who can most appropriately decide what is best for the child.

This concept of family welfare has been much misunderstood and misinterpreted. It is often claimed, for example, that it is not "culturally appropriate" for Maori men who abuse their children to be reported, or for that man to be removed and the children protected from further violence. This is simply untrue: the cultural perspective reflected in traditional law is clearly that offenders should be subject to sanction and that the children be defended

against continued abuse. It is a gross misinterpretation to assume that the Maori community would countenance the continued abuse of a child in the belief that the cohesiveness of the family unit and the welfare of the whanau should predominate over the safety of that child.

What is culturally inappropriate is not the sanction or the removal, but the present process which excludes the wider family from involvement in the decisions about how best to support the family immediately concerned, and how best to protect its vulnerable young. The Maori view therefore emphasises the distinction within a group context between whom the main concern should be for, the child, and with whom the primary work should be done, the abuser. The Maori community has both the knowledge to most effectively decide who should care for any child and the wisdom to exercise that care within a framework that works with and supports the family. Today both that knowledge and wisdom are part of an interrelated network of support that is, of course, often disrupted and ill-resourced. However, the basic networks nevertheless still exist. Thus while the Maori community would not countenance a continued exposure of a child to a violent family environment, they do maintain that the extended whanau has the right to decide how the child in such a situation can best be cared for and protected. The reweaving and strengthening of those extended networks is a basic thread of the concept of maatua whangai and is obviously dependent upon both expanded material and emotional resources. Most importantly, it is dependent on a reassertion and acceptance of Maori philosophies about family development, and ideas about how the family unit can best be strengthened.

Once such philosophy has been promoted by the Waiora programme which was established to holistically address areas of concern in Maori health. The ideal of "ukaipo" which it advances embraces the total health of families and individuals. In its simplest sense, ukaipo means bearing, sustaining and nurturing life. However, it also embraces the transmission of positive values and identity as well as the physical and emotional requirements of child care and family harmony. It is a kaupapa based firmly in the idea of balance: in this case a balance between the welfare of individual family members, the group cohesiveness of the whanau, hapu and iwi, and their relationships with the environment.

Within this or similar frameworks many Maori groups, particularly women's groups, are attempting to devise practical programmes of family support and training in appropriate parenting skills. There is a clear need for initiatives to be coordinated and ideas shared

for the overall well-being of vulnerable whanau. To this end an essential part of the structure of the proposed Maori Law Commission would be to establish a Task Force charged with researching and implementing programmes to support families presently under stress, particularly those with criminally vulnerable young, and to develop longer term strategies for whanau strengthening. Membership of this group could be drawn from the many roopu presently involved in assisting the Maori family, although there is firm belief that it should have both male and female representation as a means of symbolically re-establishing the balanced role of both parents in the Maori family. Ultimately the worth of such a group must be linked to that of various iwi initiatives since it is those tribal groups who must eventually draw together the threads of the korowai which cover and ensure the welfare of their whanau.

There was support in the Maori community for the recommendations of the Roper Report on Violence to increase funding for groups working with families, with special assistance for programmes meeting Maori needs. Thus the recommendation that specialist family units within hospital boards or the Social Welfare Department should be more adequately funded, needs to be extended to the formation of parallel Maori units. They would then have the ability to identify and support Maori families in need, especially young mothers at the pre-natal and post-natal, pre-school stages.

The underlying belief of such extended proposals is the fact that because the whanau, like the language, is fundamental to the survival of Maori culture, only the Maori people can ultimately devise the appropriate strategies for family support and nourishment. But if such programmes need to be drawn from the threads of experience of the Maori community as a whole, the initiatives needed to address the specific problem of male violence within the family must come first from Maori men.

MALE VIOLENCE WITHIN THE HOME

The violence meted out by Maori men upon their partners and children is one of the most damaging forces at work in the Maori family. It is a consequence of the pressures endemic to the cycle of Maori confinement and is aggravated by the changing attitudes towards the male/female relationship that that cycle has engendered.

To propose strategies by which Maori men can confront their own violence is not to diminish the realities of those pressures or to minimise the personal hurt they suffer from the racism and economic or cultural deprivation of their daily lives: indeed they flow from the belief that those pressures have taught Maori people to doubt themselves and to question their own values so that violence becomes internalised and directed at those within the whanau. To address the source of such pressure obviously requires general community-based strategies. However their particular manifestation in violence against women can only be alleviated by initiatives which Maori men devise and take responsibility for.

At the moment there are many initiatives being considered by Maori groups such as Tukinotangata, the task force associated with the Committee for the Prevention of Family Violence, and by Maori women's groups such as Te Kakano. Unfortunately there has been comparatively little organisation or attempts to analyse the problem by Maori men. While a small number of groups which operate in Auckland and in various other tribal areas are attempting to devise strategies by which Maori men address their own violence, there seems little awareness or willingness to do so in a concerted manner. That this does not happen is sad but not surprising. Many Maori men are as unwilling to confront the realities of their own violence and dominance as Pakeha men. Maori men, however, also have the added burden of socio-economic survival which does not allow the time or permit the level of skills needed for developing anti-violence or anger management strategies. The luxury of time and resources available to middle-class Pakeha men to address their own behaviour is not shared by most Maori men.

For these reasons it is important that the proposed national task force should accept Maori male violence as one of its most urgent priorities. In this area it would complement the work already done by Tukinotangata, but instead of concentrating on the empirical extent of the violence, it would initiate educational and practical programmes linked to the whole question of family relationships and the male/female role in Maori society.

As part of this educative process, the Maori community needs to undertake an analysis of traditional role relationships and assess how much of the received definition of those roles is influenced by Victorian missionary views of patriarchal power. The Pakeha ideas of male chauvinism which underlie sexual violence sadly have their reflection in Maori society.

Their elimination depends initially upon a clarification of traditional role relationships and how they may need to change within a Maori framework so that the present aspirations of Maori women are satisfied.

The programmes of practical change which could grow out of such analysis, while aimed at the male perpetrators of violence, should be monitored by the women who are the actual or potential victims. This would recognise that traditional balance which existed between the differing roles and duties of men and women. It would also take cognisance of the equal but different contributions men and women made to the welfare of the whanau, the hapu and the iwi. The re-establishment of that balance and the development of programmes giving effect to it through the removal of male violence is obviously a long-term process. However, it cannot be stressed enough that this process must be immediate: its direct physical and emotional effects on Maori women and children and the indirect effects it has on young Maori men need to be addressed without delay. If the attitudes and structural violence of Pakeha institutions shape the frustrations and demeaned self-esteem of those young men, it is the witnessed physical release of that frustration against Maori women which shapes their notions of its acceptability.

One model for a practical programme is provided by Te Whanau a Tane, an Auckland group established to deal specifically with Maori male violence. It operates on a whanau basis and aims to help men address their violence through a Maori kaupapa that shares experiences and responsibility rather than guilt. The acceptance of the need to change comes over time through a process of whakapiripiri (bonding) and whakarata (uniting). Those concepts are based firmly in Maori tradition and illustrate clearly how specific cultural ideas can be adapted to address contemporary problems in an ongoing long-term way. There is a need to expand and develop such initiatives while also attempting to deal with the immediate consequences of everyday violence.

In this regard there is a clear consensus within the Maori community that where there is actual evidence of male violence the police should continue their policy of immediate arrest of the offender. However, if the offender is Maori there are two provisos to that consensus. The first is that the support services offered to the wife, or the treatment facilities offered to her partner, should be Maori. The second is that the extended whanau network should be involved at the earliest stage possible. Obviously these provisos are dependent upon the establishment of more Maori-based support structures but their acceptance will serve

to reinforce the immediate arrest policy and thus bring home to the Maori men concerned the unacceptable nature of their behaviour.

THE PLACE OF MAORI YOUTH

Initiatives to overcome cultural shortcomings within society and its institutions and to foster concepts of ukaipo within the family, will all have long term benefits for the cultural strength and self-esteem of young Maori people. They will also, of course, help prevent criminal offending by easing some of the stresses created by their present cycle of existence. However, for those young people who are presently at risk there is a clear need to develop short-term alternative strategies. The Maori community has presented many initiatives over the years - half-way houses, urban whare awhina, and marae-based support systems have all operated to provide immediate assistance and to monitor young people's behaviour. Nga whare watea, a Mangere-based proposal to provide a marae centred place of support is just one long-term initiative aimed at breaking the specific cycle of cultural and economic deprivation. However, many such proposals have foundered on a bureaucratic unwillingness to either accept the validity of separate Maori proposals or to adjust their funding criteria so that such initiatives can be adequately resourced. This inability has meant that many genuine initiatives fail simply through a lack of funding which prevents long term planning and maintenance. As well, many fail because of restricted bureaucratic requirements or an inability of departments to cooperatively deal with the causes as well as the consequences of offending. In this regard Maori people feel there is a need for the Department of Justice to review its criteria for supporting preventive long term measures even if they necessarily involve capital works.

In the meantime, the Maori community endeavours to institute programmes that will promote the self-image of their young and channel their energies into positive areas. Many are based on the success of such schemes as Outward Bound and the Outdoor Pursuit Centre which impose physically demanding regimes to instill the self-discipline from which self-confidence and settled behaviour patterns develop. The difference, however, is that Maori initiatives recognise the specific need to address the fundamental factor which limits the self-esteem of many young Maori - their isolation from the cultural roots which define them and by which the Pakeha world ultimately judges them. They also recognise the fact

that the reality of the young Maori's present life style demands a programme packaged to transmit cultural values within a challenging and disciplined set of related activities. There are many models and suggested proposals within the Maori community which realise the need to cater for present day interests whilst transmitting the essential strength drawn from the past. Indeed, the concept of Outward Bound-type courses has its precedent in traditional schools established to test, train and discipline the young men of a particular iwi. It is this precedent which is directly used in Te Arawa, Ngati Kahungunu and other tribal areas to develop wananga programmes teaching the physical skills, spiritual background and mental agility needed to wield taiaha. Such wananga provide the discipline and emotional satisfaction some young Maori presently find in Eastern martial arts, but with a specific cultural base that is firmly woven to their own heritage.

Other tribal authorities such as Ngati Porou are seeking to develop outdoor pursuit centres of their own. Based within particular iwi areas, they would provide the challenge of physical effort within an environment that is rich in history and significance for the young men who participate. In urban areas, groups such as the Legionnaires provide a different kind of challenge but nevertheless instill the same sense of pride and control within a context that is tied to traditional ideas of discipline. Yet another type of challenge is provided by the work and skills-based programmes of the Taranaki Mauri Foundation.

The key to these initiatives is not so much the physical or emotional challenge, but the cultural environment in which they operate. Too many similar programmes are based on monocultural models and either ignore the importance of incorporating Maori values, or attempt to impose imported concepts of counselling or case method support that are often inappropriate. If the positive challenges and cultural needs of young Maori are to be met there will, of course, be occasions in which some form of emotional counselling or support is needed. However, this can be developed within a framework that is aware of Maori values and the realities of Maori mental health and emotional sustenance.

Unfortunately such development is not occurring because the programmes too often suffer from lack of resources. Although they are a clear example of Maori people recognising the need to instill self-control and self-pride in their young, the all too common difficulty of simple financial survival threatens their existence. Indeed, the fact that most iwi-based

wananga are almost entirely funded by personal contributions not only excludes a number of young people from participating, but also prevents the development of an effective ongoing programme.

There is a belief in the Maori community that such courses meet the need for that type of discipline often reflected in calls for the reintroduction of compulsory military training, but in a way that is particularly Maori. Because of this there is a clear need for sponsorship or other resource support to ensure the continued development and extension of such initiatives. If these programmes could be developed in tandem with cultural wananga, the Maori community would have the tools to cater for its young by providing a culturally appropriate base for both their physical and mental development. From that stronger cultural weave could then be drawn the threads of self-esteem which mitigate against criminal offending and provide a necessary security for survival in the Pakeha world.

THE PLACE OF CHANGING ATTITUDES

THE MEDIA

If the particular cultural and socio-economic pressures placed upon the Maori shape his cycle of confinement, the law, the schools, the media and other instruments of influence both contribute to and affect the attitudes and responses of those within it. There are many initiatives which can be adapted to change those processes and thus ultimately ease the specific pressures that lead the young Maori into criminal offending.

Perhaps the most pervasive of all influences is the media with their concentration on negative portrayals of Maori cultural worth and their presentation of violence and pornography. The former reinforces the demeaned status of Maori people, the latter shapes the attitudes which permit the violent resolution of conflict and the abuses that men commit against women.

In the first case, the effects can be balanced by both an increased Maori input into existing media organisations and by the establishment of Maori controlled media outlets. Maori people see a difficulty in the use of specific Maori units within existing Pakeha broadcasting structures however, since the power and editorial authority essentially remains with the

Pakeha organisation. The determination of such important issues as the news value of particular Maori items or the format of actual programmes is often beyond the control of Maori people. The journalistic need for "balance" is frequently used to justify the presentation of a Pakeha or multicultural perspective rather than a purely Maori one. Indeed, Maori views are frequently only presented if they are countered by opposing or contrasting Pakeha statements. In essence this means that the bicultural or multicultural perspective effectively excludes or diminishes any Maori contribution. The mere fact that Maori people are also usually expected to express their views in English in a forum controlled and exploited by articulate Pakeha does not permit the positive presentation of Maori points of view. There is a perhaps cynical belief within Maoridom that the electronic media needs to adapt one of two strategies. It can either allow Maori people to present their own points of view in a manner appropriate to them and free from the bias of bicultural balance, or it can ensure that all Pakeha viewpoints are subjected to a reciprocal bicultural balance by allowing contrasting Maori points of view to be inserted on any issue.

In its general programming, television and radio staff should be required to undertake adequate training programmes in Maori protocol and language. This is not of course a new proposal, but the mispronounciation of the language and the insensitive and sometimes ignorant presentation of Maori issues reinforce its need. It is hoped that the encouraging recruitment by Television New Zealand of increasing numbers of Maori trainees may lead to some improvements in this area, although a comparative lack of resources and air time for specifically Maori issues does not indicate real change in the overall Pakeha bias and non-recognition of Maori values.

In the specific area of television advertising, the so-called right of advertisers to choose their own models on the basis of race remains a fundamental preserve of overt racism. Maori people continue to oppose this attitude and support the Race Relations Conciliator's rejection of that alleged right. In the meantime, Maori people wait for positive images in advertising as they continue to wait for positive images in the media as a whole.

Radio is an almost equally pervasive instrument of influence in the lives of young Maori. Although there is some Maori programming on the National network, this does not reach the bulk of Maori listeners, especially the young who prefer the local commercial stations. The

attraction of the commercial network is, of course, the music played for the young and the local content with which the Maori community has a certain degree of identification. That the network does not develop this identification by using Maori news or programmes of relevance to the local Maori audience merely duplicates the transmission of cultural absence fostered by television.

The listener success of regional Maori stations such as those that operated in Ngati Porou, Te Arawa, Ngati Kahungunu and Wellington indicate that the mix of Maori and modern music, local Maori news, talkback and extensive use of Maori language, indicates both their appropriateness and their effectiveness. Indeed, their use as a source of panui (notices) and news serves not just to promote positive Maori activity, but to act as a unifying force within the Maori communities involved. The participation of young and old Maori as workers and listeners reinforces this cohesion and underscores research which indicates widespread Maori dissatisfaction with their exclusion from mainstream Pakeha radio.

The clear Maori recognition that the electronic media can be a positive force to re-establish cultural strength has promoted the same volunteer ethic of survival which underpins kohanga reo and so many other Maori initiatives. However, there is a need for the emotional and financial strains of this ethic to be eased by adequately resourced regional Maori radio stations under Maori control. Their role in informing the Maori community and in helping to reassert Maori values would be an essential thread in reweaving the fabric of strength and pride that would help reduce the sense of cultural unworth felt by so many young Maori people. It would thus also help reduce the stresses that lead to specific behaviours such as criminal offending.

The BCNZ has recently allowed the formation of a national Maori network based in Auckland and although this is an acknowledged step forward, there is Maori concern that it will not adequately reach Maori youth nor satisfy the tribal and local interests of the iwi. These two latter features seem crucial to any positive role radio could fulfill for the Maori community.

Almost as damaging spiritually, and certainly more immediately destructive than the absence of Maori values, is the media transmission of pornographic and violent material. Maori people share the concern of many in the wider community that these affect not just

the young but the underlying harmony of society as a whole. For this reason there is widespread Maori support for the work of the recently established Committee of Enquiry into Pornography. Indeed, pornography is seen to represent an extreme example of the attitudes and processes which have disrupted the lifeways of many young Maori and provides one focus for the process of Pakeha attitudinal change which Maori people believe New Zealand society has to undergo.

The Maori community also supports the decision of Television New Zealand to restrict the amount of violent programmes it screens but shares community concern over the shortcomings in the review of video material. It realises that such media programming is but one facet of the structural violence of racism and the cultural denigration to which the Maori is exposed, but acknowledges the specific need for some control of television, cinema and video material which reinforces the attitudes fostered by that structural violence.

It is of course essential that these initiatives be matched by moves within the Maori community to develop preventative programmes which would encourage more control over and understanding of the video material that Maori children may be exposed to. These programmes would be an essential part of any initiatives developed to nurture and guide the Maori family.

Changes within the electronic media, and corresponding changes within the newspaper industry, are essential if the value of Maori culture, and hence Maori people, is to be recognised. As such, they are a necessary part of the process to address not just the general monoculturalism within our society, but its specific consequences of cultural denigration which lowers the self-esteem of so many young Maori. In this sense they are also a part of the social changes needed to address those correlates of Maori offending from which offending arises.

ALCOHOL AND DRUGS

Maori responses to the effects of alcohol and the role it plays in criminal offending have three simple foundations: that culturally appropriate education programmes be developed to instill responsible attitudes towards alcohol in Maori youngsters, that similarly appropriate treatment programmes be developed, and that age and outlet restrictions on the sale of liquor be maintained.

The Kua Makona initiative of the Alcoholic Liquor Advisory Council which was aimed at Maori children was one positive initiative based on Maori kaupapa which unfortunately received inadequate support from the media and education authorities. However, it did contain appropriate Maori concepts and addressed the clear need for restraint in terms of the damage done to the tapu of one's body through alcohol abuse. There is a clear wish in the Maori community that similar programmes be developed and extended.

Most treatment programmes for addiction or abuse are singularly monocultural and while this may seem appropriate as alcohol and drugs are phenomena originally introduced, funded and distributed by purely Pakeha interests, there are Maori insights which should be incorporated into the treatment of Maori patients. Indeed, because the reasons for addiction may often be tied to the stresses of cultural deprivation, the re-establishment of balance and respect for the mana, wairua and tapu of the body and mind can only be achieved through Maori insights.

From a Maori point of view, however, any culturally appropriate treatment programme needs to be preceded by stricter control on the availability of alcohol. There are moves at present to lower the minimum age to 18 on the grounds that the present age limit is widely ignored and brings the law into disrepute. Maori people feel that such a view is less a ground for change, however, than an admission by the liquor industry that there are inefficient enforcement procedures in place. A clear consensus in this research was that the age of 20 should be retained: the effects of alcohol on the behaviour of young Maori and the violence it is associated with in the home outweighed any desire to ensure a more "liberal" distribution policy. This same feeling prompted opposition to extended opening hours.

It is axiomatic that nearly all reviews of the liquor industry have had no Maori membership or very little Maori input. The deliberations tended to focus on the legislative control and misuse of alcohol but have consistently done so from a monocultural perspective. The effect of that perspective has been to exclude any Maori viewpoint on a subject that causes real concern and damage to the Maori community. This shortcoming is clearly seen in the specific debate about the use of public bars.

The industry has sometimes sought the abolition of public bars which they are presently bound to provide under Section 187 of the Sale of Liquor Act 1962. Although many Maori

people accepted the behaviour of some young people in such bars as unacceptable, they oppose their abolition. There is a general belief that such closures prejudicially target Maori drinkers and merely repeat the discriminatory laws of earlier periods when the Maori was seemingly encouraged to purchase alcohol but prohibited from consuming it in certain places. There is a more specific belief that the removal of public bars with their often more relaxed environment will encourage irresponsible people to drink in public places with consequently more serious problems and disruption. The closures would also, of course, affect mature patrons of public bars, many of whom never cause the disruption advanced as justification for abolishing them.

One positive proposal which attempts to address the behaviour that leads to call for the closure of public bars is the issuing of banning rules to patrons who misbehave or cause violent damage. The industry's use of legal notices or "blueys", issued in accordance with Section 188 of the Sale of Liquor Act, has considerable support within the Maori community. However there are inherent difficulties in their use. At present, individual patrons can be banned under these notices for various activities ranging from violence and drunkenness to insulting or disorderly behaviour. The concern of Maori people is that because hotel proprietor's power to issue such notices is discretionary, the same possibilities for bias exist as in any other exercise of discretionary power. The wide range of behaviours involved, especially the concepts of insulting or disorderly conduct, is especially open to discriminatory interpretation as the Maori experience with the police shows.

These difficulties could be overcome by narrowing the range of behaviours or by clarifying their intent through a process of consultation between the industry, the police and appropriate Maori authorities. The results of those discussions could be publicised as part of an educative programme for both the Maori and Pakeha communities. The process would be a tangible way in which the Maori community could be made part of the rule making process and so ensure that the guidelines have their understanding and support.

Clearly the problems associated with alcohol and other drugs, and their particular influence on violence and crime, can only be addressed as part of long-term strategies to improve New Zealand's general attitude towards drinking. Those strategies in turn are only a specific part of the initiatives needed to break the particular cycle of Maori confinement. Without a

commitment to both of these strategies there will be little relief from the problems created by alcohol and drug abuse within the Maori community, or from their role as pervasive instruments of influence that shape Maori behaviour.

THE PLACE OF MAORI PEACE OF MIND

There is often a debate in society about how to ensure the mental well-being of people, how to minister to those who become mentally ill, and how to care for those who commit offences while suffering mental disability. This debate is of special concern to Maori people, partly because of the large number of Maori who are in mental hospitals, partly because of the link between various mental disabilities and offending, and partly because the debate itself has tended to be defined within purely Pakeha terms.

Initiatives aimed at restoring access to and strengthening the language, land and whanau bases of Maori life will ultimately assist in Maori mental well-being. In the interim, however, there needs to be acceptance of Maori views on the treatment of Maori patients and the procedures which commit so many of them into institutional care. To promote those views does not deny the place of certain treatments or techniques which have been developed through western medicine, but it does maintain that many Maori procedures are equally valid and especially applicable to Maori patients. In essence the acceptance of such procedures is part of the continuing debate about biculturalism and an attempt to reaffirm the right of Maori people to decide how best to restrain or care for the mentally ill in their community. In relation to the specific treatment of mentally ill offenders, the debate centres naturally on the powers of actual committal. This process represents an exercise of power which not only always ignores Maori views on the links between mental illness and offending, but frequently seems to ignore modern Pakeha ideas as well.

The place of the mentally ill Maori person is defined by two often conflicting priorities: the need to treat disability in a way which recognises the Maori dimension of mental health, and the need, if they are criminal offenders, to protect society while safeguarding their legal rights when subject to judicial committal procedures.

The medical profession and some hospital boards are slowly beginning to accept the validity of Maori initiatives in caring for the mentally ill as seen by the establishment of Maori units at Tokanui and Carrington hospitals. These units recognise the specific cultural factors which can cause Mate Maori or other manifestations of mental disturbance, as well as the particular pressures of the Pakeha world which cause mental anguish to many Maori. However, the profession still continues to maintain its control over the actual definitions of mental illness, and its treatment. Most worrying of all, it retains an exclusive control of the powers which can be exercised over offenders who suffer some form of disability. From a Maori perspective, there is a clear need to move away from this monocultural and professional control if the interests of Maori offenders are to be safeguarded.

The existing law and its proposed changes continue to ignore both the special needs and place of Maori patients and the rights of Maori people to participate in committal decisions. The law, for example, allows the police to arrest mentally disturbed persons found wandering at large and to detain them for a set time pending a doctor's examination. There is a long standing fear in the Maori community that this combination of potential police discrimination and dismissal of Maori definitions of behaviour by the medical profession, could result in the detention of Maori who are not mentally disordered at all.

The law controlling the committal of patients whether or not they are offenders also remains one of the most culturally damaging and insensitive procedures currently operating in New Zealand. Under it the Maori patient becomes trapped by both the cultural insensitivity of the judicial and medical procedures, and by the social insensitivities that shape the general attitudes towards mental illness.

Committal is governed by the Criminal Justice Act 1985 and by the Mental Health Act. Acting on the advice of two medical practitioners, a judge may find that a defendant is under disability and direct psychological examination on bail or commit the defendant to a penal institution or hospital for that examination. Other provisions provide for long term committal or for the admission and discharge of hospital patients admitted from the criminal justice system. Each provision denies the Maori offender access to an advocate or proper representation, and prevents culturally appropriate assessment by a tohunga or elder. The

review procedures similarly exclude Maori participation and proposed changes only allow ethnic participation on a cooptive basis if requested by the patient.

It is unfortunate that in the many recent reviews of psychiatric care the importance of Maori viewpoints has been ignored. There is a clear need for Maori involvement as of right in committal and review procedures - as tohunga given equal status with Pakeha professionals, as whanau representatives able to act as advocates for patients, and as community members of review panels. The present domination of committal procedures by the medical and legal professions, and the continued denial of patient's rights and cultural needs raises serious civil liberties questions as well as limiting ideas of bicultural partnership. It needs to be addressed by specific changes to the proposal Mental Health Bill. It is hoped within the Maori community that the present Committee of Inquiry into Psychiatric Procedure, an all Maori committee, will provide further cultural perspectives on these issues.

The procedures currently in place to deal with mentally ill Maori patients or offenders therefore exhibit a monoculturalism that denies the validity of any Maori values. They are simply symptomatic of the cultural deprivation and denigration which defines the place of all young Maori and shapes their attitudes and behaviours. They are thus part of the offender-based pressures which contribute to criminal offending, and they need to be addressed if its hurt is to be assuaged.

SYSTEM BASED RESPONSES

The creation of a more gentle and culturally sensitive society depends upon the gradual changing of people's attitudes and their acceptance that the values of other cultures are not inferior or necessarily threatening. The need for such a society is essential for the general development of harmonious race relations and for the specific development of an environment less likely to foster the conditions and attitudes that contribute to Maori criminal offending.

Because the institutions in our society, including the criminal justice system, reflect the social perceptions that have created the Maori cycle of confinement, and because they therefore operate in an institutionally racist way towards Maori people, it is essential that the process of change encompass their operations as well. Without fundamental and

corresponding changes in the philosophical base and operations of the justice system, any efforts to address the "offender-based" factors in Maori crime will be ineffective. Offender and system-based change need to be part of a complementary process. This process needs to be placed within two specific contexts. The first is a recognition that many of the systemic changes suggested in the past have had only limited effect in reducing general criminal offending. The second is a recognition of the need to address the particular issue of Maori offending and the system's responses to it in a way which is truly bicultural and which recognises the place of the Maori as tangata whenua.

THE FAILURES OF PAST SYSTEMIC CHANGE

> *"What we call the system is changing, but it is always changed by Pakeha and I think they fail because they haven't even stuck to their original kaupapa that they set out in the Treaty of Waitangi. That is, the kaupapa to recognise our special place here in Aotearoa."**

There is a widespread and long held perception in society and in many sections of the Maori community that systemic changes in the specific areas of sentencing and police resources will reduce the amount of violent crime. This has been reflected in the frequent statements that the courts are "soft on crime", and the view that the police must have increased resources to wage the war against crime. These proposals ignore a number of important issues including the specific differences which exist between Maori and Pakeha offenders. Any measures needed to reduce or combat crime must at least attempt to develop enforcement or sentencing strategies that recognise the differences. More generally, such calls also unfortunately exhibit the major weaknesses of all simplistic solutions: they ignore the research and facts which indicate that harsh sentences and the like do not necessarily reduce offending.

The available evidence shows clearly that the sentence likely to be imposed for any crime does not act as a deterrent. The actual commission of a crime is often impulsive and offenders do not even consider the severity of any punishment they might receive. The subsequent imposition of a harsh sentence will not necessarily deter the offender from further crime either. In fact, the harsh, short sharp shock of earlier detention centre training did not reduce reoffending rates in New Zealand.

While longer prison sentences may show society's abhorrence of certain behaviour and may prevent some offending in the sense that potential offenders are removed from society, they do not necessarily in themselves deter criminals from offending or reoffending. Because recent studies show the difficulty of predicting who is likely to commit crime, it is naive to assert that harsh sentences are an effective deterrent to either initial or subsequent reoffending. It has, therefore, been a failing of past suggestions for systemic change that they have too often sought merely the imposition of harsher prison sentences. Such sentences are clearly ineffective in addressing the consequences of offending and useless in dealing with its causes.

Systemic change which increased police numbers or their legal powers has similarly had little effect on the rate of offending. A body of overseas research shows clearly that more police does not necessarily mean less crime. Because most crime is committed away from the public view, and often impulsively, more officers on mobile patrol or on the beat has had little effect on whether the police can witness or deter them. It is often argued that increased numbers are not aimed at improving deterrence so much as improving the clearance rate or solving of crimes. However, evidence again shows that the clearing of crimes reported by the public is dependent more on community input and information rather than the number of police actually involved.

In spite of this evidence, past reviews on general offending have attempted to implement harsh sentences or proposed increases in police manpower. Because such proposals have been largely ineffective, the systemic changes suggested in this report do not focus on the perceived need for the courts to have wider sentencing power or for the police to have greater manpower. While not denying the need to constantly review police resources, they focus instead on structural and operational adaptation within the systems themselves, and on the way in which their existing powers are exercised in relation to the Maori offender. In so doing they, therefore, accept the fact that increasing the powers of criminal justice institutions already held in disrespect by Maori offenders will do nothing to reduce their offending nor to change the processes within the system which actually exacerbate the rate of offending.

The changes which Maori people feel the system needs to make are based on two different premises. The first is the need to see in what ways the existing Pakeha institutions can be

practically adapted to meet Maori requirements and to address Maori concerns; that is, to address ways in which the existing operations of the criminal justice system can be made more meaningfully bicultural. The second is the need to consider in what ways quite different and specifically Maori institutions might be developed to more meaningfully share the authority defined by the Treaty, and so more appropriately address the legitimate concerns of Maori people in relation to the criminal justice system. Unfortunately there is a growing belief that the first premise is too often based only on the use of culturally appropriate processes of consultation which do not actually change the basic structures of the institutions themselves. There is a parallel belief that the second premise is too often dismissed from a sense of monocultural fear or arrogance without an adequate consideration of either its philosophical and constitutional base, or of its potential effectiveness.

For these reasons there is a need both to re-assess the meaning of the term "bicultural restructuring" as it applies to existing justice operations, and to consider the validity of new and parallel alternatives.

BICULTURAL RESTRUCTURING

It is generally recognised that any addressing of the problems of monoculturalism and institutional racism requires a commitment to biculturalism. This has been defined as

> *"... the philosophy that constitutes the spirit and intent of the Treaty ... (and which) involves notions of an equal partnership ... reflected in an equality of power, resources and responsibility ..."*[5]

However, while the ideals of this definition appear to be accepted by both Maori and Pakeha, their implementation has hitherto been confined by Pakeha concepts of their appropriateness. In a general social sense, this has meant that the Maori are

> *"... required to be bicultural, knowing enough about two cultures to be able to operate in both, but ... the majority group remains monocultural."*[6]

In the specific context of biculturally restructuring institutions such as the criminal justice system, this has meant that the process of change is shaped more by the needs and criteria of the organisation, rather than by the precepts of equal input and responsibility -

> *"In the ... area of why Maori confront the criminal law, basically it is because they have no say in it. It hasn't been a part of their rules and acculturation even though they are society's rules and regulations. In the whole law context, it's Pakeha answers that are being provided, Pakeha systems, Pakeha dominance, and that's not a bicultural solution."**

In effect this has meant that the process of bicultural change has actually been defined from a monocultural perspective. To implement the ideals of biculturalism in a way which produces meaningful partnership and effective structural change requires a redefinition of that process. Such a redefinition must be shaped by input and processes that reflect both the notions of partnership and the realities of equal "power, resources and responsibility." The recognition of this type of equality in effect defines the Maori perspective on biculturalism.

It is one of the weaknesses of current thinking on biculturalism that many institutions appear to believe that they can gain Maori perspectives or meet Maori needs without acknowledging the validity of Maori initiatives that may be contrary to their own. They also seem to feel biculturalism can be achieved without sharing the decision-making processes within a particular institution. These beliefs have resulted in instances of what may be called "cultural appropriation" which appear to satisfy the theory but certainly not the reality of biculturalism.

There is thus a feeling in the Maori community that legislative injunctions to take into account "the Maori dimension", or to consider "all things which are part of the heritage of the tangata whenua", do not in themselves ensure compliance, or the development of initiatives sympathetic to Maori aspirations. They are seen to address the ideals of biculturalism, but the reality is that the Pakeha institutions continue to interpret the relevance and importance of the Maori dimension. They therefore continue to control to what extent Maori input will be permitted to influence the existing monocultural situation.

Specific proposals to develop bicultural institutions by such measures as increasing the number of Maori staff exhibit these shortcomings. Their implementation in Government organisations including the criminal justice system is not usually accompanied by corresponding changes in training or management policies, nor in the allocation and control of resources or authority to implement particular Maori initiatives. Because of this, the "indigenisation by numbers" of the criminal justice system does not necessarily guarantee the removal of monocultural attitudes and methods of operation.

While there is a clear need for policies of affirmative action in the employment of Maori people, the basis of those policies need to be carefully defined within Maori terms and within a Maori definition of biculturalism. The first criteria of any affirmative action policy needs to recognise that the right Maori people have to be employed is not based on a minority status, but on their status as tangata whenua partners under the Treaty. The second is that the increased employment of Maori people needs to be contingent upon the establishment of a structure and training process that recognises their cultural perspectives rather than one which attempts to mould those perspectives into an unchanging organisation.

> *"I worked in the prisons for 19 years but I left because I wasn't working as a Maori there. My thoughts were trained to do the Pakeha job ... and that's what happens if you put a Maori in a Pakeha job and don't put any Maori into the training or the structures of the job. The Maori stops being a Maori."**

Unfortunately, current thinking on biculturalism has different definitions of affirmative action or equal employment. It assumes first that the Maori are just another minority group with minority group disadvantages, a fact which enables the dominant culture to escape responsibility for the position of Maori people today. It also assumes that merely employing more Maori within an existing Pakeha structure will automatically lead to change. Such assumptions are false.

Another weakness in current thinking about biculturalism is the belief that individual Maori advisors or consultants will be able to bring about bicultural initiatives within an organisation. This usually does not happen because the consultation is not implemented at a structural level that gives mana to its findings. More importantly, from a Maori perspective, the mere use of individual consultants as presently adopted by many institutions is monoculturally insensitive. Many institutions make unilateral decisions about who their consultants will be, often without consulting the Maori people. As well, the frequent choice of an individual in itself ignores the Maori view that expertise arises not from any one person but from the consensus of many. As the whakatauki says

> *"Kaore te tohunga e whai matauranga i a ia anake, engari he mana i tukua iho e ratou ma."*
>
> *"The mana of the expert comes not just from his learning but from the people who gave that learning."*

The use of individual experts, therefore, runs the clear risk of isolating those people from the source of their spiritual strength. It also isolates them within the monocultural environment they are meant to change or comment on, something which may not only affect their impartiality, but also the degree of support their assessments will have in the Maori community at large. For these reasons, the incorporation of Maori initiatives must be pursued in a manner which acknowledges the co-equal right of the Maori community and the particular institution to choose those who will be consultants. In this sense a bicultural approach means discussing and sharing the power of appointment as much as implementing the advice of the appointee. Indeed the right of the Maori community to choose who will be their representatives seems fundamental to the idea of partnership: it appears incongruous that Maori "experts" should be chosen by Pakeha institutions, rather than the Maori people themselves.

From a Maori perspective there are other inherent weaknesses in current bicultural thinking. There seems to be a belief that exposing Pakeha staff to marae weekends, Maori language lessons and cultural awareness seminars, is sufficient to promote structural adaptation and understanding. However, like the increases in Maori staff, this initiative is only a commendable but first step along the path to meaningful systemic change. Indeed, the belief that knowledge of the language necessarily makes one more sympathetic is disputed by Maori people aware of our shared history. They point with often bitter sadness to the fact that many of the most effective proponents of colonial assimilation were people fluent in the Maori language and apparently comfortable in Maori settings. That fluency and comfort did not alter the fundamental Pakeha perspectives they brought to Maori issues, nor their self-interested belief that the institutions they were part of were superior to those of the Maori. There are, in effect, many recorded incidents in which settler politicians or missionaries used the Maori language to publicly demean Maori aspirations and institutions.

In the contemporary situation, there is also a specific organisational weakness in the "exposure to Maoritanga" strategy. Too often it is limited to staff above certain gradings who tend to be exclusively Pakeha. The fact that many young Maori in Government departments are divorced from their language is not recognised, and many hui of Maori Government workers have bitterly resented their exclusion from such courses at the expense of what they perceive to be career seeking Pakeha. A truly bicultural organisation would

accept the need for Maori staff to have priority selection rights for courses in their own language so that they may then more fully contribute to the department.

This exclusion also highlights a different shortcoming in current bicultural strategies. The insights which are most often conveyed in cultural awareness programmes are the traditional and spiritually important concepts of Maori or iwitanga. Unfortunately the depth and relevance of those concepts is often as alien to the reality of many young Maori as it is to Pakeha people within the bureaucracy. The relevance of any cultural programme, especially within the criminal justice system that deals with dispossessed young Maori, depends not just on the transmission of traditional values, but on an analysis of how their loss has affected the contemporary Maori. Institutions are thus required to do more for example than gain an awareness of mana or tapu: they must also be aware of the forces in Pakeha history and society which have dismissed those concepts. From this type of understanding will come a greater appreciation, say, of the attitudes and behaviours of young Maori offenders who feel deprived of their mana, and unaware of their own or other people's inherent tapu.

In essence, the need for an awareness of Maori values places an obligation on all monocultural institutions to first be familiar with traditional beliefs and then to acknowledge the part that they played and continue to play in devaluing them. It implies that they need to initiate anti-racism training in a much broader sense than that implied in cultural sensitivity seminars. They need, in fact, to begin a process of structural analysis which proceeds from the basis that their organisation's development and present operations are monocultural, that they altered the traditional behaviour patterns and place of the Maori people and that they are consequently now having to address the consequences of those changes in areas such as criminal offending.

Such an analysis is essential if the realities of institutional racism in the criminal justice process are to be meaningfully addressed. It clearly illustrates the fact that the acceptance of biculturalism and the recognition of Maori models and Maori perspectives involves much more than efforts to understand the language and the culture. It requires an acknowledgement by the system of its own institutional racism and the effect it has had on general Maori values and specific Maori behaviours such as criminal offending. It also requires a recognition of the valid contribution those values could still make to issues

confronting the justice process, and a willingness to share the resources and authority which will make those responses a practical reality.

In particular, there needs to be an acceptance that the processes which underlay traditional Maori law, and the concepts which they brought to the mediation of disputes, are easily adaptable and applicable to the contemporary situation. The emphasis they placed on the inherent tapu and value of every person, on the need for that tapu to be accorded mana through the support of whanau and the respect of community, and on the methods of redress which restored balance and nurtured that tapu, have their place in the philosophies of any judicial system.

The need for the criminal justice system to rethink its current bicultural initiatives therefore essentially requires an acceptance that the perceptions Maori people have about its processes are valid, and that there are appropriate ways in which the values underlying those perspectives can create a more just system.

It is within the framework of such acceptance that the following responses are presented in two distinct but interrelated sections. The first addresses the operations of the existing system and endeavours to synthesise perspectives on how it may be made more culturally appropriate and hence more effectively just in dealing with Maori offenders. The second outlines the need to establish a parallel system of justice, based on kaupapa Maori and aimed at giving substance to the meaning of tangata whenua status.

THE EXISTING PROCESS

The ways in which the criminal justice system defines Maori offenders, and operates in relation to them, highlight institutional shortcomings that are best considered by addressing each of its parts in turn. To do so from a Maori perspective means that the inter-relationship between the parts is actually more important than individual segments. This in turn means that reform or change in one will not succeed without corresponding changes in the other. In particular, amendments to the law which underlies the criminal justice system, and changes in the workings of the various institutions that maintain it, will not be effective without corresponding changes in the way that the Department of Justice exercises its administrative oversight. Although attitudinal changes within the police or professions

would naturally be quite independent of departmental change, the way in which the department addresses its own institutional racism will eventually affect all the operations of the system.

THE DEFINITION OF OFFENDING

The issue of how criminal behaviour is defined and recorded is an important first question to be addressed when analysing any possible systemic reduction in the rate of Maori offending. It can be addressed in two ways: by considering the statistical methods by which Maori rates are determined, and by examining the laws which those rates are meant to show have been breached.

STATISTICS

There are many difficulties for Maori people in the compilation and use of statistics recording the apparent Maori rate of offending. There is no doubt that one difficulty could be removed immediately if the definition of ethnic identification used in such statistics was based solely on personal cultural affiliation, rather than observer identification by the police or other Justice officials. If it was made mandatory for institutions to only use personal identification there would obviously be a more acccurate correlation between the statistics collected by various departments. Within the specific context of Maori offending there would be an equally obvious reduction in the risk of Maori crime rates being defined by institutional perceptions of race rather than ethnic truth. However, even if statistics are compiled in an accurate and culturally appropriate way, several difficulties would still remain.

One is the continued use of the statistics as bases for comparison with the Pakeha, or as grounds for negative and inaccurate conclusions. Maori people recognise a need for appropriately collected statistics to help plan initiatives and programmes for development. However the validity of those statistics rests not in their comparative value with the Pakeha, but solely as a culturally specific indice of the Maori place in a particular circumstance. It is, therefore, felt to be quite inappropriate that some statistics directly compare the Maori and Pakeha, or use categorisation which separate out the Maori but present no equivalent

tables for Pakeha, Pacific Island or other New Zealanders. In Justice Statistics, for example, the tables recorded for "Offences and penalties for persons sentenced", specifically separate out the Maori. This context illustrates the way in which the Maori is dealt with as distinct from the overall population in negative areas of offending, without a corresponding breakdown for other population categories.

It is also felt to be inappropriate, and it is in fact inaccurate, to constantly define the problem of Maori offending in the comparative context that the Maori make up only 12% of the general population but 50% of the prison population. Not only does this frequently cited assertion use quite different population indices and attempt to impute seriousness from quite different categories of identification, it illustrates most clearly the simplistic and essentially racist way in which statistics can be used. It is felt that this constant repetition of problem-oriented statistics reinforces the negative syndrome of Pakeha superiority without addressing the causes of that syndrome nor suggesting appropriate remedial initiatives.

Another difficulty which Maori people see in the frequent use of criminal statistics is found in the apparent lack of action that follows their publication. This reinforces the Maori perception of a racial bias in both the compilation and use of such statistics. It is often angrily noted, for example, that statistics have for years showed the high Maori prison population and the high number of Maori men in mental hospitals but little, if any, research has been undertaken to ascertain why this is so. Neither do there appear to have been many specifically Maori initiatives implemented to address the problem. The prisons and mental hospitals have remained unimaginatively monocultural, instead of changing and operating in a way which responds to the apparent statistical reality of their populations.

This experience leads Maori people to view with some scepticism the statement that ethnic data

> *"plays an important part in the description, development, and evaluation of policy and programmes within the Department of Justice."*[7]

Past experience has too often shown that the attitudes and processes within the criminal justice system effectively mitigate against appropriate policies being put in place irrespective of their apparent statistical justification. In effect, the monocultural interests of

policy-making ensure that the statistically shown need for appropriate Maori proposals is ignored.

This negative or ill-use of statistics inevitably questions the value of any racial statistics collated across ethnic and cultural barriers. For many Maori people, much statistical material is simply a monocultural collection of figures gathered with little appreciation of Maori definitions of racial status or Maori perceptions of their usefulness. For others, many statistics are simply unuseable and incomprehensible.

Classification on the basis of national rather than tribal grounds, the continued use of the English plural "Maoris" instead of the Maori language collective term "Maori", all indicate a lack of understanding of Maori perceptions. Many Maori consequently argue that ethnic statistics should not be compiled at all. However, it is felt that if the suggested policy change is made and the consistent and mandatory use of personal identification is the basis of compilation, and if consequent changes are made in their presentation and use, statistics could have some value.

It is felt, for example, that as a recognition of the value of the Maori language the use of the plural "Maoris" should be immediately discontinued, and replaced with the collective "Maori". As a corollary of this it is suggested that tribal affiliation be sought if an offender makes a personal identification as a Maori. It is also felt that all Justice tables which presently single out Maori offenders should be replaced by tables which give a breakdown by major ethnic groups. This would have the advantage of bringing consistency to Justice statistics, since ethnic breakdowns are already published for District Court and Children and Young Persons Court data.

If Maori statistics are collected in this way it is important that their utilisation be equally sensitive. There is a clear belief that the publication of Maori statistics in a way which only stresses comparison with the Pakeha should be discontinued, and that the dissemination of any Maori statistics should be accompanied by an appropriate explanation of the method and reasons for their compilation. To address the more pressing difficulty that the control and distribution of statistics remains with the dominant Pakeha institution, it is necessary to ensure that if there are good reasons to collect specific data on, say, Maori offending, resources should be given to Maori people to enable them to obtain and interpret the information in a culturally appropriate way. To achieve this, the Department of Statistics

should ensure the recruitment of Maori researchers and statisticians and work in close liaison with the proposed Maori Law Commission so that the difficulties of cross-cultural analysis in statistics can be avoided.

The recorded rate of Maori offending could be subject to considerable change if consistency was introduced into the methods of compilation. A halt in the comparative use of these statistics in relation to the Pakeha could then possibly reduce the actual incidence of offending as it would remove one source of input which negatively impacts upon the self-image of the young Maori.

THE LAW

The effective exclusion of Maori concepts from the criminal law and the continued inability of Maori people to participate in its formulation in a way which acknowledges their different cultural perspective and their tangata whenua status remains a source of great concern for Maori people. The fact that their ideals are deemed inappropriate in both defining what behaviour is acceptable or unacceptable, and in determining what sanctions should be imposed upon that behaviour, signals the lack of worth accorded those ideals. In a general sense it is a tangible sign of Maori exclusion from the processes of authority or control operating within the wider society of which they are a part. In a specific sense it engenders a disrespect for existing legal institutions and thereby makes them less effective in establishing a climate of socially accepted sanctions and deterrents.

These views establish the need to consider the criminal law itself. While there is a general correspondence between the existing law and the Maori ideas of necessary social sanction, there are a number of areas in which that law is felt to be either unnecessary or unfairly applied to young Maori people. There are also areas in which the Maori community feel there are gaps which clearly illustrate the lack of Maori input.

MINOR OFFENCES

One specific area of the law often regarded as both unnecessary and unfairly applied is that relating to minor offences. There is therefore a clear perception that public order and offensive behaviour offences not involving violence should be repealed. Such offences are felt to be open to subjective definition and therefore lead to instances of

discretionary arrest and sentence. Many Maori believe their repeal would diminish the possibility of discriminatory enforcement, and so remove one source of concern about police racism or harassment.

As well as this, trivial offences appear to consume so much of police and court resources that they effectively contribute to the perception that Maori people are denied adequate access to justice. Their contribution to the backlog of unheard charges and the limited time each defendant is therefore allocated to have his case heard, inevitably compounds the perception that administrative necessity rather than a judicial assessment determines the outcome of a case. The removal of minor offences would not only ease this perception: it would also, of course, free up resources to more adequately deal with the violent offending which causes so much more concern to the Maori community.

Perhaps most realistically the contradiction which many Maori see in the behaviour condemned by the justice system but apparently condoned in the media, is one of the most potent contributors to their disrespect for the law. The removal of this contradiction would at least make the law and social attitudes appear more consistent, and while some may regard this as undesirable, it would more accurately reflect the reality of everyday social activity.

This view has led to the frequent suggestion that there be a review of the Summary Offences Act and non-violent public order offences generally. That extension would enable a consideration not only of the possible repeal of minor offences, but an assessment of how any remaining laws could recognise Maori views on what behaviour is offensive or insulting - something completely missing from past reviews of that legislation.

CONSORTING LAWS

There are frequently calls for the introduction of laws banning consorting between gang members or known criminals as a means of crime control, and similar suggestions to increase police powers of arrest without warrant. From a Maori perspective such measures need to be rejected because they merely continue the approach of addressing the symptoms rather than the causes of offending. While there may be a need for certain measures to protect the community from the more objectionable public behaviours of some young people, it is felt to do so by allowing unfettered police discretion or by infringing

fundamental liberties creates too many potential difficulties.

Experience overseas clearly shows that similar laws are used predominantly against minority ethnic groups in a way which is often clearly discriminatory. There is a very real Maori fear that the present tension between the police and many young Maori, and the existing perception of discrimination by the police in the exercise of their discretion, would merely be aggravated by such laws. The control of unaccceptable behaviour can be achieved through existing police powers, and more effectively achieved in relation to young Maori by addressing the exercise of discretionary powers rather than the introduction of laws extending those powers.

While the laws which actually define criminal behaviour cause some concern because of their monocultural definitions and their often biased enforcement, there is a parallel belief that areas of defence to those laws do not recognise specific Maori perspectives in the form of a cultural defence.

A CULTURAL DEFENCE

The idea of specific defences such as provocation or insanity is, of course, well known in New Zealand law, but the concept of an affirmative defence based on different cultural perspectives is largely unconsidered. Prior to their abolition, the resident Magistrate's Courts did recognise ideas such as utu as defences to certain charges involving Maori offenders and victims. The idea was eventually abandoned in the process of establishing a unitary British system with its consequent denigration of Maori ideas.

However, there is a belief that in certain clearly defined cases the use of a culturally based defence may still be appropriate. It would be related to the present use of certain cultural perspectives in determining sentence, but would be quite distinct in the sense that particular concepts such as utu could be advanced as a defence not necessarily to exculpate a defendant but to reduce the gravity of a particular charge he faces. Its use would, therefore, be comparable in a legal sense to the defence of provocation as outlined in section 50 of the Crimes Act.

In a cultural sense, its use would both recognise the special place the Maori should have in defining a culturally appropriate criminal law, yet reaffirm the notion of individualised justice by recognising the cultural imperatives relevant to a particular defendant.

There would naturally need to be careful research of appropriate cultural perspectives and the necessary limits to be placed upon the use of such a defence. Those limits would need to include a clear definition of the particular concepts used as defences, the cultural awareness of the defendant seeking to use them, and the types of cases in which they would be appropriate.

However, the need for such a concept is recognised by many Maori people who have referred to numerous well-known cases in which it would have been deemed applicable. Equally clearly recognised by many Maori is the need not only to incorporate a specific cultural defence, but remedies which would reflect Maori concepts of redress.

CULTURAL REMEDIES

The most obvious example of a cultural remedy is the traditional concept of muru by which redress for wrongdoing was delivered by the whanau of an offender to that of his victim. The provision of reparation in the Criminal Justice Act 1985 contains some aspects of muru, but its emphasis on financial payment on an individual basis narrows the focus of responibility implied in muru. That responsibility was traditionally shared by the offender's family and was fulfilled not just in the transfer of taonga (or in more recent times money) but in service as well.

Where both the offender and victim are Maori and there is no dispute as to guilt, there seems little obstacle to the imposition of a mutually mediated muru. The use of muru, and the incorporation of ideas of group responsibility to an aggrieved victim rather than a distant symbol of the State, helps heal the hurt in a way not often possible in the existing adversarial system. It would also reinforce the sense of shame placed upon an offender because there is no doubt that, as in traditional times, his whanau would make him aware of the burden his wrong had imposed upon them.

The cultural awareness needed to make such a sentence effective today would flow from the greater acknowledgement of the relevance of Maori values which would flow from the establishment of organisations such as the Centre of Cultural Research and various tribal wananga. The practical difficulties of actually implementing cultural remedies will require research which incorporates both a Maori perspective and a Pakeha synthesis of the law. Unfortunately there is presently no organisation able to undertake this research or indeed to coordinate any Maori investigation of matters relating to criminal offending and the law in general. The Roper Committee did recommend the establishment of a crime commission to facilitate submissions to the Government on crime-related issues, and while such a proposal has considerable merit, the shortcomings which Pakeha research has exhibited in its understanding of Maori issues has led Maori people to seek the creation of an organisation to address law-related issues of specific relevance to them. Such an organisation would operate as a Maori Law Commission and focus solely on legal issues, although it would naturally often work in close cooperation with the centre for Maori Cultural Research.

TE RUNANGA WHAKAMARAMA I NGA TURE

An autonomous Maori Law Commission or runanga would be a resource body with several interrelated functions -

(a) to foster the study and development of traditional concepts of Maori law,

(b) to coordinate Maori responses to legislation,

(c) to promote consultation within the Maori community to ensure its participation in the law-making process,

(d) to submit Maori proposals for law reform,

(e) to undertake research into specific areas such as criminal offending and to develop appropriate strategies to deal with it.

Its administrative structure would need to be nationally based but with clear lines of communication and consultation to iwi authorities for whom it could undertake specific research projects or with whom it could share particular expertise. An important criteria

for its research staff would need to be an involvement and an awareness of Maori socio-legal issues, rather than just an emphasis on qualifications in Pakeha law. The staff will naturally over a time become involved in a wide range of legal issues. In the specific area of criminal offending, it is envisaged that the runanga would establish a Task Force on Maori offending and have a monitoring role over regional Maori legal services.

MAORI LEGAL SERVICES

While the runanga would operate as an investigative and research organisation, there would clearly be a need for a parallel organisation to deal more directly with the everyday legal needs of Maori people. Such needs could be met through the establishment of regional or iwi based Maori legal services.

The models for such services are found in many overseas countries where they have been established by various indigenous groups. The Northwest Inter-tribal Court System in West Washington, United States, and the Ontario Native Council on Justice, provide examples of services established for both individual criminal casework and for the provision of legal education in civil rights and land issues. The Aboriginal Legal Services in Australia work almost entirely in the criminal area, although their network of law centres sees this as not just involving casework but also issues such as defendant's rights, penal policy towards aboriginals, and criminal law reform.

It is clear that such organisations provide a much needed service for indigenous people. In New Zealand, the establishment of a network of Maori legal services would help break down many of the barriers between the Maori community and the profession and ensure that legal advice was tendered in an appropriate and culturally sensitive manner. In criminal cases, the service would help overcome the whakama of many Maori defendants and break down the present monocultural operation of the criminal justice process itself. More specifically, the services would function to educate Maori people about the criminal law and their rights under it.

Their staffing could be a mix of Maori legal professionals, trained legal workers, and community liaison staff. They should, where appropriate, be based on a marae with an

ability to take their services out to the Maori community. A voluntary pilot scheme is presently operating in Wellington, with a staff base of qualified Maori lawyers and a consultative network with the tangata whenua, other tribal runanga, and the local kaumatua council.

The idea of legal runanga or a Maori legal service is not, of course, entirely new. The Kotahitanga Movement of last century endeavoured to foster Maori legislative proposals, and the various tribal runanga established during the 1860s were structured on traditional lines and actually formulated legal provisions which melded Maori and Pakeha perspectives. More recently there has been considerable Maori discussion on the need for such a commission which has been reflected in various reports and hui statements.

Unfortunately such views have foundered on the monoculturalism of Pakeha legal and bureaucratic thinking. The legal response to the initiatives have changed little since the last century. It has dismissed any parallel Maori initiative as implying a somehow negative "separate development" which is contrary to the idea of a unitary legal system. The clear Maori view that that system is inadequate and unjust gives rise to the call for a parallel organisation such as a Maori Law Commission, but it does not necessarily contain the negative connotations implied in the term 'separate development'. What it does imply, however, is a recognition of the right of partners to contribute equally to the laws and rules which govern them, and it recognises that the laws which result will be more appropriate and thus help the justice system more adequately meet the needs of all society.

The bureaucratic response to the idea of a Maori Law Commission or Maori legal services has been largely moulded by a similar monocultural belief that the concerns of Maori people can be adequately met by changing the approach of those existing organisations involved in the review and development of the law. In pursuit of this aim there have been departmental directives of consultation with Maori people and the establishment of units to advise on matters affecting Maori people. While such initiatives are commendable, they do not address the fundamental area of Maori concern in relation to the development of the law - that the present process is still largely confined within Pakeha terms so that the Maori people do not actually define the parameters of any research or debate on legal matters. Their role is always reactive rather than pro-active, and if they are able to contribute

in some way, it is often only at a cost which further strains their resources and increases their frustration. Because of this, the law remains a distant process that continues to be shaped by monocultural ideas.

The establishment of a Maori Law Commission and the day to day work of Maori legal services would help change the situation and present a clear symbol of the fact that the laws were being formulated in a way which reflected the partnership within the Treaty of Waitangi. In a practical sense they would provide a pro-active resource base and a source of legal service from which the Maori community could effectively contribute to the law's development and more satisfactorily have their rights protected. In fact, the establishment of this resource base and the provision of these services would actually enable the law to be presented as a more accessible and relevant force to Maori people. It would thus ease the often insurmountable difficulties they seem to face when they seek to actually use the law as something positive to advance or protect their interests. Their establishment would also reduce Maori people's scepticism about the general law's efficiency and their particular dissatisfaction with the criminal law process. Their autonomy and close links to iwi authorities and local Maori communities rather than specific Government departments, would also ensure that they presented research or gave legal advice from a purely Maori perspective.

Of the many positive changes sought by Maori people in the course of this research, the need for an independent tribally linked legal resource centre and the provision of Maori legal services were two of the most frequently raised, both as developments which could revitalise and adapt traditional legal and spiritual values, and as bases from which the Maori could more effectively shape and use the laws which govern his life. There is a thus clear call for the idea of the commission and the service to be accepted and further studied. Their particular relevance as sources of Maori research into the strategies needed to deal with criminal offending, and their ability to provide appropriate legal support for Maori offenders makes that suggestion appear particularly urgent. It would be yet another frustrating denial of Maori aspirations if the potential implied in the establishment of a Maori Law Commission and Maori legal services were to be dismissed simply on the oft-repeated monocultural grounds that they were contrary to the ideals of a unitary legal system, or that the concepts involved could be reshaped within the boundaries of existing Pakeha structures.

Organisations established to contribute to or review the law must, of course, function parallel with the institutions established to actually enforce and apply that law. Those latter institutions also need to be assessed from a Maori perspective if they are to more adequately address both their general relationship with Maori people, and their specific interaction with those Maori who are labelled as criminal offenders.

THE POLICE AS AN ENFORCEMENT AGENCY

The issues to be addressed in dealing with the relationship between the police and the Maori community, and the impact that has on Maori offending, arise essentially from the monocultural shortcomings of the police organisation and many of its individual officers. The common response to those shortcomings is to recommend that the police training incorporate education in the "protocol, philosophies and values" of the Maori and endeavour to recruit more Maori into the police itself. The police reaction to such recommendations has generally been to stress its emphasis on multiculturalism rather than biculturalism, and to point to its community involvement in many areas with marae visits, Maori liaison and so on. There can be no doubt that such efforts are genuine. However, their emphasis on multiculturalism illustrates a disturbing unawareness of the tangata whenua status of the Maori, and a monocultural inability to recognise that the continued demeaning of that status actually contributes to the offending and the strained community relationships with which the police are expected to deal. This means that the police have actually failed to adequately address both the structural and cultural base of the systems they use to deal with Maori offenders, and the reality of those offenders' present lifestyles.

There are, therefore, obvious weaknesses in the suggested responses of earlier reports and in the police reactions to them. To remedy the relationships between the police and the young Maori requires more than a multicultural awareness or an injection of increased "taha Maori" into training programmes. Instead it requires an ongoing process of analysis which builds on those initiatives and addresses the socio-cultural framework which shapes both the Maori offender and the way in which the police organisation responds to him. Such a process would not hinder police effectiveness; neither would it imply a bias in its duty to enforce the law fairly for all. However, it would help the police respond more effectively

to the behaviour of Maori offenders and so ensure a greater measure of support from all sections of the Maori community.

The first step in this process of analysis in institutional change involves providing the police with a permanent Maori support structure which can effectively develop existing cultural initiatives within the force. The two most important factors in such a structure would be its composition and its function. To meet the requirements of a real bicultural commitment it would, of course, need to consist of community as well as departmental personnel. It would need to be resourced to meet regularly, and be granted sufficient mana to positively contribute to policy decisions at an organisational and administrative level. It would not, of course, be part of any specific operational or strategic structure.

Its function would solely be to provide the police with a range of Maori expertise that could contribute in a number of ways. It could, for example, develop appropriate and mandatory cultural awareness projects for use in cadet training, contribute to the overall training programme by introducing a Maori viewpoint as an accepted part of all training modules, assist in the development of management training programmes, and help present a Maori perspective on relevant submissions the police may be required to make to Committees of Inquiry and the like.

Over time such simple contributions would have a number of positive effects. The development of more relevant training programmes would naturally produce more culturally aware officers. This in turn would provide the base for more stable relationships with Maori people and enable the Maori community to feel a greater respect for the police because they would have contributed to their work. This will lead eventually to a breaking down of the cycle of mutually mistaken perceptions which characterises current relationships between the Maori and the police. In a specific sense there would be two particularly positive consequences. First the continuing input of Maori initiatives and proposals would reduce the likelihood of the police acting prejudicially against Maori offenders and so help minimise the effects systemic factors have on the rate of offending. Secondly, it would prevent the presentation of racially insensitive and inaccurate public submissions such as those made to the Roper Committee on Violence; submissions which caused real hurt and anger in the Maori community.

Similar proposals have been made in the past, but have unfortunately met with little positive response. But the fact that present strategies continue to prejudicially affect the extent to which the police arrest and prosecute Maori offenders and thus increases the tensions between them and the Maori community, is an indication that such initiatives must now be given urgent consideration.

The second step in the ongoing general process of analysis in bicultural adaptation is the internal process of "philosophical" analysis which the police need to undergo in the specific terms of their own institutional racism. There are various forms in which this anti-racism training can be developed, but many Maori people look simply for a commitment from the police that they will move away from the idea of mere cultural appropriation and seek practical strategies which address the prejudices of their own operations. In this way they can then acknowledge their own contributions to the cycle of set perceptions which shape their relationships with the Maori community. Such analysis could be done initially through specific research on models of police operation conducted jointly with the Maori Law Commission or, prior to its establishment, through an analysis of the police's socio-historic relationship with the Maori undertaken in conjunction with its own Maori support group. The use of bicultural management strategies would be another alternative method of recognising and addressing basic issues of institutional racism. Each approach would help the organisation address the issues of how and why their structures may be inappropriate in a bicultural society, and how they constantly reflect the simple monocultural belief that the Pakeha way which they adopt is normal and right. The key factor in such analysis of course is that the process must result in observeable change in both the general operations of the police and the specific behaviour of individual officers towards Maori offenders.

Many institutions which seek input in Maori management strategies or cultural awareness remain confined within the Pakeha perspective of biculturalism. This prevents meaningful structural innovation and aggravates the feeling of "consultation frustration" within the Maori community. It would be simply more damaging to the relations between the police and the Maori if such input or consultation was not followed by continued dialogue and adaptations that could be seen and understood within the Maori community. At the moment the claimed consultation and liaison appears to be producing little change.

As part of these philosophical strategies, the police also need to address the specific place of its own Maori staff. To many Maori people, one of the most difficult and often hurtful situations they encounter is to be confronted by a Maori constable exercising his duty in a way which is insensitive and inappropriate to his own cultural background. The basic dilemma of any Maori working within a Pakeha institution is perhaps most apparent in the work which the police are trained and inevitably bound to do. The belief in many sections of the Maori community that Maori police are "worse than the Pakeha" is not necessarily a reflection on the individual officers. Rather it is a recognition of the extent to which the attitudes, training and ethos of the police appear to have removed them from the everyday reality of their people's existence.

The stress which this causes within the Maori community, and to many individual Maori police, merely increases the tension between the two. To relieve that tension the police need to recognise that the kinship ties which bind the Maori officer to his whanau and iwi, and the undoubted pride which they often feel when their mokopuna are seen to perform positive police functions, actually provides a thread which could draw the community and the police closer together. A tangible way in which this could be done would be for the police to assist the iwi, or whanau of any Maori officer on transfer to kawe or "carry" him to his new area of work. The ritual handing over of their kin to the Maori community in that area imposes very real as well as symbolic obligations on both parties. In particular, it establishes the fact that the officer is now theirs - not in any sense of being a person to show bias or favour towards them, but as a tangible sign that they have a state in the maintenance of law and good order.

At present, police training so often culturally desensitises Maori officers that they are viewed with suspicion by their own people. Changes in training which balance their own cultural sensitivity with the needs of the job (and they are not necessarily incompatible) plus the drawing in of the Maori community in ways tied to the rituals of their own traditions, will help alleviate that suspicion.

Another area concerning Maori people and needing redress within the police organisation is the continuing role and purpose of the team policing units.

TEAM POLICING UNITS

The responses of Maori people to the operations of the Team Policing Units were among the most angry and the most clear-cut elicited in this research. They felt simply that the units should be disbanded.

The experience of many Maori with different units has led to a belief that police claims about correct procedure and adequate control over unit operations are ineffectual. It is felt that the units maintain set perceptions about Maori conduct which result in the prejudicial exercise of discretionary powers to arrest. Indeed, the use of arrest for offensive behaviour and other comparatively minor offences reinforces the perception that this often occurs. This has led to a deeply-held mistrust and suspicion of the units' operations and rationale.

The appearance of special units charged with combating group violence is also seen as being a catalyst for violence and as a stimulus to police harassment and abuse of legal rights. Those perceptions and the truth of experience from which they derive resulted in frequent calls for the units' disbandment. While there will obviously remain a need for firm and rapid "law and order" initiatives, they could more appropriately be met within the flexibility and mobility of normal police operations.

POLICE COMPLAINT PROCEDURES

The unease expressed in relation to the team policing units illustrated another concern - the complete inappropriateness of present and proposed systems for addressing complaints against the police. Indeed the complaints procedure seems to embody the most monoculturally confined strictures operating within any bureaucracy.

The traditional method of the police internally dealing with complaints raised obvious difficulties which appear little altered by the establishment of a new authority consisting of a barrister or solicitor. While that change clearly removes the difficulty of the police being seen as judges in their own cause, it does little to address monocultural legal barriers which Maori people so often find intimidating. It also maintains the exclusion of Maori people, and indeed the wider community, from input and participation in the procedure that affects their own relationships with the police.

The reluctance of many Maori people to bring complaints to official notice will not be eased by a quasi-judicial organisation which continues to be dominated by the legal profession. Their grievances could be appropriately addressed, however, by a system which more closely linked the process with their own communities. It is often suggested that this could be achieved by Police Advisory committees established in each of the police districts. Such committees would be selected from community representatives with equal Maori/Pakeha participation, and their role would be to hear initial complaints about police conduct. If the complaint was of a comparatively minor nature and could be settled at district level, that committee would have final power and resources to reach a decision on appropriate action. If the matter was of a more serious nature, for example cases involving death or serious injury, the matter could be transferred to an expanded national authority, again consisting of appropriate community representatives.

Although this procedure places another step in the system, it does reassert the mutual responsibility and obligations which should exist between the police and the local communities they serve. Maori community involvement would over time help establish trust in the impartiality and effectiveness of the process. The national authority would then receive mana and status not simply because it was to be headed by a lawyer, but because it would be seen as a final arbiter in a process shaped by Maori community participation.

POLICE DISCRETION AND OFFENDER'S RIGHTS

The police discretionary power to arrest and charge, and the processes which follow those actions, also cause concern to Maori people.

The biased exercise of discretion is, of course, a deeply seated systemic problem that is closely tied to the negative attitudes held about the Maori in society and in its institutions. Because of this, it is not readily capable of immediate solution. Any operational solution based on the application of strict guidelines may effectively hinder all exercise of discretion and be actually counter productive. However, its incidence can be reduced by the implementation and enforcement of the long term initiatives already suggested. Thus the introduction of a programme of structural and cultural education would help remove the set perceptions which so often prejudice the exercise of police discretion against young Maori.

Likewise a properly accountable and accessible police complaints procedure would be a catalyst for Maori complainants to air their grievances, thus acting as a potential deterrent to police officers who may be prejudiced.

The issue of protecting an alleged offender's rights is related to the problems created by biased discretion and by the set perceptions of behaviour which lead to them. It is the experience of many young Maori that their rights at the time of apprehension, charge or questioning are frequently abused. The steps needed to improve this situation are based in three interrelated questions - how to inform young Maori of their rights; what action can they take if their rights are abused; and what procedures can be set in place to ensure that the police do not exceed their powers and so abuse an offender's rights.

The first question is a purely educative one. There is an absence of any indepth education in our schools about the law, its place in society and people's rights under it. This has led to an often appalling ignorance about basic rights in all sorts of areas, from consumer to civil liberties. For the young Maori confronted with police apprehension or charge, this lack of knowledge establishes a scenario in which their civil liberties may be abused without question.

It is insufficient for the police to assert that offenders are informed of their rights by a "notice to accused persons" that is attached to a receipt form for personal property. In the tension and aggravation of an arrest or detention situation, such notice is often not understood or it is ignored. It is also inadequate that community law centres are expected to provide such information on their limited budgets and with their limited distribution outlets. It is particularly regrettable that the Education Department seems unwilling to develop any legal programmes, especially in view of the strong recommendations in its own curriculum review. This unwillingness has resulted in the Law Society collating some material for 6th form students, but it makes little real reference to legal rights in the criminal area and targets itself only at those senior pupils perhaps least likely to need the information.

Although some schools do endeavour to inform their pupils, many do not. In fact, a number have actively opposed some community law centres' efforts to introduce programmes on civil rights into their curriculum. There is a clear need for a coordinated programme of legal

rights, both civil and criminal, to be introduced at the form 1 to IV level. The development of such programmes should not, however, be entrusted solely to the Department of Justice or other legal institutions, but have input from community and consumer groups as well. The responsibility for its funding, however, should be shared by those institutions and by the Justice, Police and Education Departments. The particular role of the Police and Justice Departments in enforcing and administering the law must be matched by an obligation on their part to inform people of their rights under it. Part of that obligation should be an outline of the channels of redress that are available to a person if his rights are abused by the police.

Education in itself is, of course, a long term strategy, and in the context of Maori/Police relationships, probably not enough in itself to reduce the risk of abuse of civil rights. For these reasons Maori people see a need for specific amendments and police instructions relating to questioning.

The detention and questioning of young people under the age of 17 is an area of particular concern to the Maori community. At present, General Instruction C42(2)(3) merely urge the police to exercise extreme care to ensure that no untrue admission is obtained. However, it places no obligation to ensure that the youngster is accompanied by an appropriate adult, unless it is "practicable and having regard to the particular circumstances". This instruction needs to be amended so that the presence of an adult is made mandatory, regardless of the circumstances. The police have maintained that the reality of many apprehensions is such that it is not always possible to have adults present. This claim is rejected: no interviews should be so urgent that a parent, other whanau member, or perhaps a member of the proposed justice advisory committees would not be available. Indeed, the establishment of the justice advisory committees could provide that network of links to the Maori community which would ensure that appropriate people could always be contacted. The predominant reality for the Maori community is not the difficulty of contacting parents, but the fact that steps need to be taken to break down the individuation and isolation of their young in the criminal justice process.

General Instruction C42(4) provides that interviews with children at school must be arranged through the headmaster who should be requested to remain throughout. This instruction again reinforces the isolation of the youngster from his family and the whanau

networks which should give assistance. While teachers are assumed to be in loco parentis, they are still authority figures removed from the traditional framework of Maori support. Many Maori families are, of course, unable to provide the necessary support for their young; and it may, in fact, be that lack of support as shaped by their confined existence which has actually led to the child being brought to the notice of the police in the first place. However, to exacerbate that position by excluding Maori parents or whanau from the interview situation is unacceptable. Instruction C42(4) should, therefore, be amended consistent with C42(3).

The establishment of these initiatives, when coupled with more culturally adequate police training, will over time establish an environment in which police will be less likely to infringe civil liberties and the young Maori will be more confident in seeking redress if abuse occurs. Under present policies, neither of these possibilities is likely.

Such proposals are part of the responses needed to address factors within the police structure that adversely affect the Maori offender. They would ease concerns about police harassment and make it easier for Maori people to seek redress for any abuse of their legal rights. Perhaps most importantly, they would help ease the general tensions that exist between the police and the young Maori offender, and so reduce the possibility of any prejudicial use of police powers to arrest and charge. In this way they would contribute to the removal of one systemic factor which influences the recorded rate of Maori offending.

THE POLICE AS PROSECUTORS

There was a clear community call for the prosecution process to be independent from the investigatory role of the police. Although the cost of establishing a prosecuting service would be expensive, Maori people feel it is essential if the perceptions and reality of discriminatory prosecutions are to be removed. It would, of course, be impossible to achieve a complete division between investigation and prosecution, since there would obviously need to be cooperation between the two. However any substantive change in the organisation of prosecuting procedures would ensure that the autonomy of both the police and counsel would be jealously guarded.

Current moves to address the question of discovery in criminal cases, and the suggested desirability of the prosecution supplying the defendant with a summary of facts in summary prosecutions, do not meet the wishes of Maori people for an independent prosecutor. The understanding they have of police power in the present system to charge, arrest and prosecute, and their perception of the prejudiced exercise of that power, requires structural rather than mere administrative change. The procedural changes would obviously help redress the imbalance which currently exists between the prosecution and defence in terms of resources, and the rules which in effect subordinate the defendant's wishes to those of the court servants. However, these advantages will be more easily promoted by the establishment of an independent prosecutor system.

An independent prosecutor's office would provide both a practical and symbolic sign for Maori people, or indeed any person appearing before the courts, that the charges laid by the police have been impartially assessed prior to the hearing. Maori defendants could therefore proceed in the knowledge that although not all possibility of prejudice and hence injustice had been removed, the rhetoric that charges are brought only on the basis of substantive evidence is more likely to be true. Such knowledge then makes it more likely that justice will be seen to be done in their eyes.

THE LAWYERS

The present Maori disenchantment with many in the legal profession, and the perception that they help maintain the bias of the criminal justice process, can be addressed through a number of interrelated initiatives.

The first is based on an obvious need in Maori eyes to restructure the course content of most law faculties. From a Maori perspective, the link between the training a lawyer receives and the monoculturalism of the process he serves is obvious. If the criminal justice system is to cease being institutionally racist, then the criminal lawyers clearly need to reconsider the attitudes and processes of their education. Introductory courses in legal system and law in society should therefore include sections on both Maori law and the place of the Treaty in New Zealand's constitutional framework. It seems to be inappropriate for New Zealand law students to study the foundations and sources of the relationship between law and policy

without considering the relevance and importance of the Treaty. It seems equally inappropriate that constitutional law courses appear to focus most attention on the British rule of law and the purely English traditions of constitutional history and theory rather than on the particular colonial and post-colonial precedents or issues which have determined the specific ethos of New Zealand law. Because those issues illustrate the role of the law in the colonisation process they should be a mandatory part of any law degree, not as philosophical possibilities, but as actual historical facts which shape the present legal status quo.

The introduction of Maori viewpoints also needs to be extended into other areas of the course. In family law it is essential to an understanding of issues such as guardianship and adoption. In planning law it is essential that Maori ideas of land utilisation, conservation and the general environment be incorporated into any study of planning procedures. In land law there is an obvious need for proper consideration of Maori land law, although such study must differentiate between traditional land tenure and the Pakeha law's definition of it. For those students studying criminology, there needs to be a revision of the methodology and perspectives presented on Maori offending, and the introduction of an analysis of how the criminal law and the criminal justice process affect the correlates of Maori offending. Perhaps most importantly, there should be a compulsory course on Maori law in all degree courses, as a philosophical adjunct to the studies of western jurisprudence.

The continuing development of such courses could be done in consultation with Te Runanga Whakamarama i Nga Ture, the Maori Law Commission. The runanga could also establish compulsory courses in tikanga Maori in association with the centre for cultural research to be implemented as part of the Professionals course undertaken by all law graduates prior to their admission.

A number of specific initiatives are also needed to better prepare Maori law students, and to ensure greater numbers of Maori in the profession.

Each faculty should establish a policy of preferential placement for Maori students similar to that operating as a recruitment measure in the medical schools. To retain those students, Maori staff should be appointed as both lecturers and counsellors for Maori students, and study groups should be established to transmit both the cultural strengths of their Maori

background and the technical skills of the Pakeha law. A number of law faculties in the United States and Canada hold summer schools for indigenous students, and a similar programme could be implemented in New Zealand - with several provisos. The structure and courses for such schools must be developed in partnership between the faculties and Maori people, and they must not be used as a screening process to eliminate Maori students: something which unfortunately occurs in some overseas models.

The Council for Legal Education and the individual law schools need to implement practical measures to more adequately prepare all their students for work in a bicultural situation. The particular measures needed for Maori students should be implemented as part of the profession's commitment to that biculturalism.

To date the profession has not addressed the legitimate concerns of Maori people in any meaningful way. The role that lawyers have played in shaping Maori perceptions about the alienation and unfairness of the criminal justice system is maintained today. Although there are a number of lawyers sincerely committed to the development of a more culturally aware profession, there needs to be a general undertaking by the profession to foster change. That change will need to move beyond the idea of cultural appropriation or the entrenchment of the myth that the legal status quo is fair for all. It needs to address fundamental issues such as the law's role in the cultural deprivation and denigration of Maori people, and to recognise the rights which Maori people have under the Treaty to share in the development of the legal process. The initiatives suggested here would meet many Maori people's concerns about the profession's insensitivity and apparent cultural arrogance. They would also make practitioners more effective in working with Maori clients both in civil and criminal matters. In the latter field, they would therefore help remove the legal and systemic biases which currently prejudice the treatment of Maori offenders.

PUBLIC DEFENDERS

A corollary to the development of independent prosecutors is an office of State-supported public defenders or public advocates. The establishment of such a scheme is seen as the most effective form of legal aid for Maori offenders and the most efficient way of providing a stable pool of defence counsel.

The 1978 Royal Commission on the Courts concluded that such a system was unsuitable for New Zealand, a view supported by the Law Society. However the clear need to address the often inadequate defence of Maori and other defendants plus the well known shortcomings in the legal aid and duty solicitor programmes, indicates a special case for its establishment. Arguments against the system which claim that the public defender system will deny poorer clients the choice of counsel or would result in the perfunctory treatment of offenders are realities that exist now for Maori defendants. The present duty solicitor and legal aid schemes are often manifestly perfunctory and patently exclusive of choice. The related views that the success of such a scheme would depend on its funding and personnel, and that the difficulties in assigning counsel would detract from the solicitor/client relationship are also present realities. The refusal of many law firms to commit experienced staff to the duty solicitor scheme, and the subsequent brief contacts with an offender, clearly inhibits the development of any successful solicitor/client relationship.

From a Maori perspective, the submitted arguments against a public defender scheme are in fact arguments against the present system. They can be addressed by an independent adequately resourced organisation whose sole function is to provide a professional defence.

The development of such a scheme would establish an important philosophical base for Maori people as well. The traditional idea that the authority of the whanau, hapu or iwi was responsible for breaches of good order was always balanced by the equal responsibility those groups had to ensure that the offender and victim were supported and not left in isolation. The equivalent threads in a modern context can be found in the idea that the State should not just enforce its principles of justice but it should also offer a properly resourced system of defence to that enforcement, and so effectively reduce the chances of unfairness or injustice.

A particular concern which is often expressed is that there would be a lack of independence in the scheme since one Government agency is in effect defending people against the charges of another. However this difficulty can be addressed with appropriate mechanisms and safeguards. The positive effect of the scheme in a professional sense is that the present difficulties of inexperienced counsel using duty solicitor work as "practice" would be

specifically removed over time by the establishment of a career structure within the public defender scheme that would help establish a growing pool of expertise available to balance the resources of the prosecution.

The operation of public defenders in many states of the United States and Australia has been successful for a number a years. Their experience indicates that a similar system with clearly defined spheres of operation could succeed in New Zealand. Those operations could include the provision of initial advice to defendants, the implementation of a duty roster to provide immediate counsel in court, and the provision of normal representation in defended cases or appeals where people do not have their own solicitor. The only equivalent service presently operating in New Zealand at present is the Child Advocate Scheme in the Children and Young Persons Court. However this scheme raised particular concerns in the Maori community because of the comparative lack of Maori solicitors and the insensitivity of many Pakeha counsel appointed to the programme. To overcome these misgivings and provide an appropriate service to Maori defendants, the public defender's scheme would obviously need to recruit Maori staff and operate in close cooperation with the Maori Law Commission. To cope with the present shortage of trained Maori lawyers, it could in the short term liaise with or contract counsel from Maori legal services, and seek the acceptance of trained Maori para-legals.

THE JURY

The expressed concerns about jury trials in criminal cases are best met by amending the Juries Act 1981. Provision should be included for Maori defendants to have the right of election of trial by an all Maori jury. This amendment has its roots in a firm bicultural foundation: the commitment of Magna Carta that people should be tried by their peers, and the preservation of rangatiratanga in the Treaty of Waitangi. The proposed change would not affect the rights of challenge in sections 24 and 25 of the Act, but it would ensure that Maori defendants would in fact as well as theory be tried by those from their own community.

THE OPERATIONS OF THE COURT

The need for the court to be more culturally sensitive in its relations has been stressed in many recent reports. The suggested responses have been genuine but largely determined

by the Pakeha definition of bicultural restructuring. Thus some cultural training programmes have been implemented for the judiciary and staff, some court sittings have been held on marae, some cases have been transferred to marae committees for determination of sentence, and some attempts have been made to consider other diversionary programmes.

Some of these initiatives have merit and need to be expanded, but others need to be the subject of serious review. Still other new responses need to be implemented if the court is to more meaningfully prevent systemic bias in its dealings with Maori defendants.

The existing optional participation of court officials in cultural awareness programmes should be made mandatory. It seems singularly inappropriate that court officials are meant to administer and judges preside over criminal cases largely involving Maori defendants without some basic understanding of correct Maori pronunciation, Maori protocol and Maori values. If this training is built upon a more appropriate system of legal education, then the court process would inevitably become more culturally sensitive in the long term. In the meantime, continuing training in Maori values and issues for court personnel is essential.

Associated with this process there needs to be a removal of the physical barriers which presently exist between the defendant, his whanau and the court. The present reservation of the body of the court for counsel and other officers establishes a very real division between the system and the community it is meant to serve. Defendants should have the right to have selected whanau representatives present in the body of the court with them to act as support, to indicate the acceptance of shared responsibility, and, where appropriate, to act as advocate or McKenzie friend. This simple move would help break down the individuation of offending and establish the court as a forum more sensitive to Maori needs.

THE REVIEW OF THE COURTS

Such sensitivity would not, of course, in itself alter the basic operations of the court system. For this to occur there needs to be profound structural change which can only come from an analysis of the court's role in the continuing process of institutional racism which shapes the criminal justice system. Such an analysis should be part of the review of the court currently being undertaken by the Law Commission.

It is unfortunate that the Law Commission has no Maori staff in either its legal or research section to assist in this review. That it has been entrusted with the task of determining the "most desirable structure of the judicial system" without active Maori participation beyond consultation is regrettable. If a Maori Law Commission was established, then a truly bicultural restructuring could occur in a process of cooperative dialogue between the two organisations. In the interim, there is an urgent need for both Maori staff to be recruited as a major part of the courts review, and for the commission to establish an appropriate process of soliciting Maori participation. In view of the particular disquiet in Maori circles about the operations of the criminal courts, it is essential that Maori people be involved in the process of their reform. It once again needs to be accepted that any understanding of the Treaty and the tangata whenua status of the Maori, and any commitment to biculturalism in the justice system, requires that Maori participation be as of right.

MARAE-BASED COURT SITTINGS

As part of that process it is strongly felt that a review be undertaken of the present policy of some District Court judges to hold sittings on marae. While this idea was motivated by a genuine desire to make the court more accessible to Maori people, and was seen in such a way by some Maori communities, the process raises concerns which need to be addressed. These misgivings are cultural and have profound implications for Maori society.

At present, many young Maori, both offenders and non-offenders, are alienated by circumstance from the marae base which should symbolise their ties to the land and hence their ancestors and their cultural strength. This alienation is a historic consequence of the attitudes which shape their cycle of existence, and is a contemporary reality of their insecurity in their own cultural world. If the Maori community is to overcome the cultural deprivation and denigration of the past, and reach out to its disaffected young, the marae must be a major centre of that effort. The supportive warmth and sense of tradition which marks a marae must be made accessible to the young so that they feel part of it and thus able to begin the slow process of re-establishing their cultural links. An inability to speak and understand the language and protocol, the tensions of a generation gap within Maori society, and the apparent distance of the marae from the realities of present day life, make this

process difficult. It is rendered even more difficult if the marae is also seen to be the base for a Pakeha court which is already perceived to be intimidating, alien and unworthy of respect.

The mere transference of existing court procedures onto a marae setting alters neither its operations nor the views many young Maori have about it. What it runs a very real risk of doing is making young Maori associate the injustice and dismissiveness of the court process with the marae. The emotional and cultural support of the marae would clearly be undermined in this situation. The long-term effects on the self-esteem of young Maori offenders, and on their ability to establish a solid cultural base, would be emotionally damaging and simply increase their sense of isolation from the ideals and places which should give them pride.

It is therefore essential that the judiciary and the Maori community reassess the value of marae based court sittings. That reassessment needs to be based on the cultural effects it has on our mokopuna and on the reality of how the system is applied within the marae setting. If the court process is altered simply by the rituals of powhiri and karakia, but the actual procedures and legal concepts remain the same, then the cultural cost of increased alienation of young Maori offenders is surely too high.

This is not to imply that the marae has no role to play in judicial proceedings. It does, and the repeated calls for community-based alternatives to courts clearly include the need for some form of marae-based tribunal. However the important point in having the marae play a role in the judicial process is that the mana of that role must be clearly seen to reside within the marae and the community it represents, not the Pakeha court. There are a number of existing or potential schemes which illustrate how this can be achieved and most fall under the broad heading of diversionary programmes.

DIVERSION

Diversionary programmes which have been developed particularly in the United States and Canada, cover a wide range of initiatives. They can include schemes for crime prevention outside the area of social welfare or police youth aid work, or the use of community sentencing and parole supervision programmes. The essential aim of each scheme is to

divert an offender, or a person vulnerable to offending, from the formal processes of the criminal justice system into a community-based programme of support, sanction or rehabilitation.

In New Zealand there have been a number of diversionary initiatives, usually targetted at young people. The establishment of children's boards under the Children and Young Persons Act 1974, the development of Maatua Whangai programmes, and much of the police youth aid work, have clear diversionary objectives. The court's power under section 19 of the Criminal Justice Act 1985 to discharge without conviction, and the power of Maori communities to deal with minor offences under the Maori Community Development Act 1975 are also diversionary schemes aimed more at adult offenders. Apart from organisation and administrative procedures, the various models of diversion only differ in the emphasis placed on the time of diversion - some attempt to divert youngsters in trouble before charge, some after charge but before conviction and sentence, others simply before the imposition of sentence.

Such initiatives have many positive features. They involve the community in the disposition and treatment of offenders and help the process of reintegrating them back into stable behaviour patterns. Many schemes stress restoration and reparation more than the conventional processes do, and the consequent involvement of victims often helps reduce their trauma as well.

Unfortunately many overseas models of diversion have tended to lose these positive features in a gradual "bureaucratisation" and take over by professional counsellors and "experts". Rather than being community alternatives to formal processes, they end up as part of them. It is essential that the community control and input be maintained if the schemes are to gain the trust of the people they are intended for. This is particularly so with Maori offenders as the mere dressing up of essentially formal procedures with Maori input would have damaging cultural and social effects that will negate the purposes of diversion.

Essentially there are two basic purposes behind any diversionary programme. The first is the obvious philosophical need for the community to have greater control over what happens to their young. The second is the practical need to establish an alternative that might reduce the rate of actual offending or reduce the number of offenders processed through the courts. Much criticism of the idea of diversion is based on the fact that some overseas research

indicates that those purposes are not actually fulfilled. It is reported for example that the first purpose is often defeated by undue formalism, while the second has proved hard to quantify. It is therefore maintained that this indicates a major shortcoming in the whole concept of diversion.

Maori people however have a firm belief that specifically Maori based models need to be implemented and then assessed independently of Pakeha or overseas research. They feel they should be researched, trialed and then analysed from within a purely Maori perspective.

NEW ZEALAND MODELS OF DIVERSION

There are a number of essentially Maori schemes which currently operate different types of diversion programmes. The Te Atatu Maori Committee and a network of Henderson community groups and Government officials have operated a Maori tribunal for a number of years. It deals with cases diverted by youth aid officers or from the Henderson Court prior to sentence. Based on a marae, it ensures the participation of whanau and endeavours to provide sentences based on specific reparation or various types of community service, often with a clear Maori component. For those offenders diverted prior to sentence, the decision of the tribunal is referred to the court for its sanction. If the tribunal feels unable to deal with a particular offender, it returns the case to the court.

The Fordlands Scheme in Rotorua operates on a neighbourhood rather than on a purely Maori basis, although most of the young people involved are Maori. It, too, endeavours to ensure whanau attendance and operates through a panel with at least one local elder. As at Te Atatu there is a certain flexibility about who is diverted and at what stage of the criminal justice process it occurs. Both schemes operate through the close cooperation of the police, the court and the community groups involved. The Te Atatu programme developed from the Maori Community Development Act 1975 which contains the potential for the development of particularly Maori initiatives.

A MAORI MODEL OF DIVERSION

At present the Maori Community Development Act allows Maori people to deal with a limited range of criminal or anti social behaviour. It permits district Maori committees to

impose penalties or issue certain orders for conduct that are essentially defined by the Summary Offences Act 1957. Committees thus have the power to deal with offences of drunkenness and disorderly or riotous behaviour, and to impose a $20 penalty or a prohibition order. In each case the offender may choose to be tried in the District Court although there is no clear procedure on how they may be referred to the Maori committee in the first place.

These provisions are rarely used. In part this is because they are often unknown in the Maori community, and in part because Maori committees lack the resources to detain and impose sentence on offenders. The present status of many Maori committees and their often tenuous links with the young who are likely to commit such offences also makes it unlikely that the process will be used or accorded respect by offenders. Aside from these difficulties, the comparatively rare occasions on which a Maori might "disrupt public worship" or hui, and the restrictive powers committees have to prevent such disruption, would render it largely ineffective. Indeed many Maori people see the powers granted to the committees rather like those granted to the first British resident James Busby - they made the committees judicial men of war without guns. Nevertheless the legislation contains a basic framework for Maori people to have more authority to deal with certain types of offending, as the Te Atatu scheme shows. However, to overcome cultural, generational and administrative shortcomings, there need to be amendments to that framework.

The committees presently established within the Act should be specifically reconstituted as community or marae based judicial committees - nga roopu o te ture. Their composition should reflect not just the traditional leadership, but the reality of the people with whom they will be dealing. They should thus have an equal male/female mix, representation from the young people, and in each case, coopted representation from the whanau of the offender and, where appropriate, the victim. The election of such committees, excluding of course individual whanau representatives, would take place at appropriate tribal runanga or, in urban areas with a mix of tribal populations, at hui called by the marae or particular groups concerned. Training in legal issues and the adoption of procedure could be coordinated through Maori legal services.

The roopu should be granted expanded powers in several specific areas. It should have the right to hear all charges relating to offences under the Maori Community Development Act, and to all equivalent offences under the Summary Offences Act where the offender is Maori and there is no dispute as to guilt. In such circumstances the case charges should automatically be transferred to the committee for disposition. Although the emphasis in such transfer should be to incorporate the Maori ideas of mediation and restoration in place of the Pakeha adversarial system, the offender should retain the right to dispute any facts, and the roopu should have certain powers of compulsion. It should, for example, be given power to compel the attendance of whanau and have extended powers to impose heavier financial penalties or to enforce orders of muru. They should also be adequately supported to ensure compliance with their orders and have access to the services of Maori community workers and Maori probation officers.

The philosophical base underlying the work of such roopu would be seen in the application of sentences such as muru and in the involvement of whanau. Both factors would reinforce the Maori concept of restitution and the restoration of balance. They would ensure that the victim is compensated, and that where the offence is victimless in terms of an aggrieved individual, the idea of recompense would be retained through redress to the community as a whole. Whanau involvement would both reinforce the idea of group responsibility and ensure the remorse and shame an offender needs to feel before effective rehabilitation and redress is possible. Together these factors would ensure that offenders are made to feel responsibility to their community which would also be made aware of its reciprocal responsibilities to the offender and victim. This is, of course, quite different to the notion of responsibility to, or respect for, some distant institution such as a Pakeha court.

In this situation, the cultural bases of traditional Maori values would be constantly reaffirmed in a forum which reflected both Maori and Pakeha law. Although its operations would have some similarity to existing diversionary schemes, there are important differences, based largely on who would have the right to determine the diversion of offenders, and at what stage that diversion should occur. In existing schemes, the decisions about diversion are essentially retained within the criminal justice process, either in the hands of the judge, the police officer, or a court registrar. Thus whether the offender is diverted prior to charge and treated in what is essentially a preventive way, or whether

he is diverted after the charge and so dealt with by the community as an alternative to prosecution or sentence, the retention of the power to determine how the community will be involved is "system-based".

In the process advocated through legislative changes to the Maori Community Development Act, the emphasis is different and crucial. Under this proposal, the decision on whether to deal with a particular case after apprehension will rest with the community, not the criminal justice system: it would be a "community-based" model of diversion. In effect, all Maori who commit the defined offences, and do not dispute guilt, would be diverted to the community roopu which could accept diversion on cultural as well as purely legal or welfare grounds. For example, existing institutions might decline to divert a minor offender because of his persistent offending or because of the "unsatisfactory nature" of his family background. A roopu however might feel that it could adequately address those whanau and offender interests through a culturally appropriate sanction which outweighs any concerns about the offender's record. On the other hand, the roopu might decline jurisdiction if it felt it was inappropriate - for example if it felt that the particular whanau would not respond to Maori methods of resolution. The key decision to hear a case therefore becomes a cultural, community-based determination, not an institutional one. The sanctions imposed, as in the existing programmes, would of course require endorsement and enforcement by the court, but the decision on who should be subject to it would be for the community to make.

At present the Department of Justice is considering a "system-based" diversion scheme in the Bay of Plenty. It is clear that if the pilot is successful, expanded roopu could be used as part of the model of diversion in other areas. However it is felt that serious consideration needs to be given to researching the feasibility of establishing, training and resourcing roopu by a pilot trial of their use as a "community-based" diversion model. Such a development addresses the right of Maori people to be involved in the processes which monitor the behaviour of their young. It also has the potential to cut the actual rate of Maori offending by reinforcing the ties of whanau support and responsibility and so provide that emotional and cultural stability which helps reduce criminal vulnerability.

SENTENCING

The determination and imposition of sentence in a criminal case symbolises the community's need for sanction against an offender. Unfortunately it is a process in which for too long the Maori community has been denied an effective part. While the extension of powers in the Maori Community Development Act would give some participation in the system, the great bulk of cases would remain within the court for disposition.

Because the sentence imposed on a Maori offender is so often perceived to be the final systemic act in a series of culturally insensitive or biased steps, it is important that its procedures be addressed. It is frequently claimed, of course, that the judiciary itself does not exhibit any racial bias or unfairness that might contribute to that perception, and instances of overt prejudice would indeed be rare. However, the possibility of unwitting or unconscious discrimination should never be discounted. For this reason Maori people felt that as part of the strategy to address sentencing procedures the mandatory education of judges in traditional cultural concerns and contemporary Maori issues is essential.

Another important part of the strategy is to review parts of the Criminal Justice Act 1985. The passage of this Act was seen by Maori people as an effective way in which they could participate in the process of sentencing and hence the reform and support of their young. Unfortunately it has been found to have several shortcomings. As well, it has been frequently interpreted by some court officers and bureaucrats in a monocultural way which defeats its purpose and prevents Maori involvement. The former difficulty can be overcome with legislative amendment, the latter with continued educative and structural changes aimed at breaking down the atttitudes and institutional racism of the process itself.

There are a number of sections in the Act which require amendment or review. Some deal with community contributions to the court processes of sentencing, others with community involvement in the sentence itself. Section 16 presently allows an offender appearing for sentence to call witnesses to speak about his cultural background and the way in which it may "relate to the commission of the offence and the positive effects it may have in helping to avoid further offending". Many Maori people are unaware of this provision and it needs

to be more widely publicised by the profession, the Department of Justice, and other appropriate organisations. However, the section has a cultural flaw in that it limits the right to call those witnesses if "for any special reason" it would not be of assistance to hear them.

The definition of what constitutes a "special reason" is unclear and is seen by Maori people as an unnecessary barrier to their right to contribute cultural insights into the conduct of their young and the sanction they should face. That restriction should be removed and Maori people permitted to speak prior to any sentence, except obviously in those cases where the penalty that may be imposed is fixed by the law.

The provisions in the Act which deal with the sentences of community service and community care satisfy many of the Maori ideals that the offenders must redress and be seen to redress the wrong they have done against the good order of society. Unfortunately, their implementation has often caused considerable anger as Maori people see the intent of the legislation frustrated by bureaucratic and, judicial insensitivity.

The fact that probation officers frequently reject community service or care proposals simply because they do not satisfy certain administrative criteria of accountability or appropriate supervision clearly needs to be addressed.

It is therefore suggested that any supervising probation officer assigned to a Maori under community service or community care should work in consultation with a Maori community adviser. There are numerous community groups associated with the courts from which such advisers could be nominated. They include organisations such as the VIP scheme established by Judge Mason in Otahuhu, Maori members of PARS or other court aides, Maatua Whangai and, when they are established, the Criminal Justice Advisory Councils. Community advisers could also be nominated from the appropriate iwi authority or Maori urban group in the area.

The establishment of these advisers would create a pool of Maori people whose knowledge and involvement in the community could be supplemented by training in court procedures and the administrative requirements of the Criminal Justice Act to provide input and support for probation officers dealing with Maori sentenced to community care or service. There are obvious resource implications in such a proposal but it is envisaged that the advisers

could work on a part-time but paid basis as required. Their role essentially would be to liaise with the group wishing to provide a programme of care or service, and the supervising probation officer. Through such liaison the administrative requirements of the court and the officer could then successfully be melded with the cultural requirements of the Maori group involved. If the group does not need the services of the adviser he should still liaise with probation to ensure the necessary cultural understanding.

The role of such advisers could also be extended so that any Maori defendant could use their expertise to monitor their probation report if they so desired. To this end the Department of Justice manual and the Criminal Justice Act should be amended so that any Maori defendant has the right to request a Maori community adviser to be present at interviews where his sentencing report is to be discussed. This would help prevent misunderstanding and ensure that the report finally seen by the judge is culturally accurate.

Another section which provides scope for Maori input is section 134 which provides for the establishment of Criminal Justice Advisory Councils. Among other things these councils are to

(a) encourage community support for and participation in facilities and activities for offenders;

(b) to promote suitable activities for persons in custody or undergoing community based sentences ....

(e) to advise officers of the Department of Justice of new or existing community based activities that might be available to offenders.

Since the passage of the Act there has been difficulty in setting up the councils, a problem compounded for Maori people by their proposed composition. The suggested membership is limited by the Act to a District Court judge or a retired judge, the superintendent of a penal institution, a probation officer, and six or eight other members of whom not more than two shall be employees of the Department of Justice. Past experience of bureaucratic selection processes convinces Maori people that this proposed structure will either totally exclude or effectively negate their contribution and so ensure that the work of the council is dominated by professional, departmental and, of course, Pakeha view points. This in effect

simply maintains the cultural exclusion of Maori people from participation in the criminal justice process.

> *"I am really sick and tired of having all these councils and things dominated by Pakeha experts and our people limited to one vote ... who says the Pakeha are always the experts, and who says just one or two votes is what the Treaty's all about?"**

It is therefore suggested that section 134 be amended to increase mandatory and effective Maori representation and to limit the domination of bureaucratic interests. To this end section 134(1)(d) which deals with community representation should be redrafted to ensure that the councils have

> *"not more than six nor more than eight other members, of whom four must be Maori nominated by the appropriate iwi or relevant urban Maori organisation."*

The Maori representatives on the criminal justice advisory councils would have a dual responsibility - to advise and contribute to the processes of the court, and to report regularly to the iwi or urban Maori authority. This responsibility naturally implies that the method of appointment should be determined by the appropriate Maori authority.

These practical systemic changes in the role of the police, legal education, administrative procedures, and sentencing, will help redress some of the prejudicial factors which establish the recorded rate of Maori offending. Each one of the changes is interwoven with the wider offender-based changes which need to occur in the attitudes and processes of New Zealand society. They are also, of course, linked to the specific institutional changes required within the Department of Justice.

THE DEPARTMENT OF JUSTICE

The way in which the criminal justice process operates both reflects and shapes the ethos of the Department of Justice. Suggested responses to shortcomings in other institutions need to be matched with corresponding initiatives by the department. Indeed if the criminal justice system is to operate in a way which does not deliberately or unwittingly prejudice Maori offenders, it is the department charged with its oversight which will ultimately determine the effectiveness and pace at which those operations are changed.

*"If you can fix up all the mamae and all the hara of our people you will cut the crime ... but if you don't change the Police and the Justice Department it will make no difference at all."**

While only the courts, probation and penal divisions are directly involved in the criminal justice process, it is inconsistent with a holistic Maori approach to concentrate solely on them in an effort to improve the cultural sensitivity and accountability of the department as a whole. To seek such improvement does not, of course, deny the fact that the department has many staff who are dedicated and genuinely committed to ensuring greater awareness of Maori concerns. However, the need to effect that institutional change which will remove systemic bias and ensure the fair treatment of Maori offenders can only be achieved with major changes in the department's philosophical base and in its policy, planning, research and service delivery.

These changes are felt to be urgent in the eyes of the Maori community because the department touches on so many areas of their lives and seems to prejudicially operate against so many of their young. Indeed the mere fact that the people dealt with by the criminal justice process are predominantly Maori, but the people controlling and managing it are overwhelmingly Pakeha, has created many of the institutional inadequacies uncovered in this and other reports.

As with the Police Department and the courts, the weaving stick for change within the department is therefore the need to undertake a long-term conceptual view of its operational bases and institute immediate changes in its training, management and policy making procedures. The threads of those reviews and changes need to be drawn from a broad-based definition of biculturalism, and a commitment to accord Maori ideas and strategies equal value with the Pakeha. Those requirements are a clear consequence of the partnership involved in the Treaty of Waitangi and a recognition of the authority of the community to participate in the procedures which monitor and control the conduct of its people. It was clear from the korero underpinning this research that the Treaty partnership was the constitutional base which validated any Maori proposals for reform and participation in departmental operations. Equally clearly it was felt that the tangata whenua status of the Maori was the unique cultural base which gave their proposals mana.

The department has a stated commitment to "recognise the importance of the tangata whenua," but has yet to recognise its obligations as an agent of the Crown under the Treaty. In spite of this, Maori people frame their responses within the weave of both the Treaty and their tangata whenua place in the scheme of things.

The strength of that weave will, of course, depend upon the definition and reality of the department's acceptance of Maori views about its general role and its specific oversight of the criminal justice process. Although that oversight has already resulted in a number of steps to incorporate a Maori perspective within the department, it is necessary to analyse them in the context of the Maori definition of biculturalism and to then determine what further steps need to be taken.

If the stated objectives to foster nga tikanga Maori within the department are to be applied simply as an example of cultural appropriation while leaving the basic monocultural structures unchanged, then the process is conceptually flawed. In this case the implementation of biculturalism becomes dependent upon Pakeha limits on Maori contribution; and "catering for the tangata whenua" becomes defined by the needs of the institution rather than the needs of the Maori people seeking justice. If however the objectives are to lead ultimately to a new structure in which Maori authority and participation is dependent on their right as tangata whenua, not on the benign awareness of bureaucrats, then the cultural aims will more effectively address the concerns of Maori people. It is these "philosophical" questions which the department needs to address, and for which it should seek, over time, the help of independent Maori advisers. The establishment of a Maori Law Commission, Te Runanga Whakamarama I Nga Ture, will provide one obvious source of such advice, although a process of consultation with the wider Maori community outside the department would also need to be undertaken. Such consultation would provide valuable perspectives for change, and the initiatives here suggested in the narrow framework of the criminal justice process come from such perspectives.

Major policy statements on cultural perspectives have been made by the department, and the establishment of a cultural advisory group and a proposed cultural advisory unit were major steps in achieving their aims. The former group of departmental employees meets regularly to discuss issues within the department, and the latter, when fully staffed, will be a full time in-house advisory unit.

A number of Government departments have created similar units but their establishment raises a number of concerns within the Maori community. The individuals appointed to such groups are often Maori people of mana and obvious commitment. However the principle of cultural units, as distinct from the people in them, does not necessarily address the basic issue of a department's structure and the distribution of authority implied in its own culture. Indeed, the actual operation of units in other departments causes a very real concern that the process of consultation with Maori people will simply be formalised through the unit but that tikanga Pakeha, the existing ethos of the department, will continue to effectively exclude tikanga Maori. There is also a concern that the views of the groups may in themselves be used to exclude input from Maori people outside the bureaucracy - a culturally damaging idea if their views, or those of the department, conflict with those of a particular iwi or tangata whenua directly affected by departmental decision. These concerns illustrate the fact that, notwithstanding the strength and character of the people involved, the concept of cultural units can often simply be a bicultural appendage to an institution that remains fundamentally monocultural.

> *"I can remember things that you young ones can't ... and I remember how after the war, when we came back from overseas, the law made it nearly impossible for us to build a home ... and they used Maori public servants to tell us we couldn't. What I'm worried about with all this consultation and all this talk about advisory units and experts is that the same thing might be happening again ... that the Social Welfare and the Justice will use our own people but nothing will change."**

The shortcomings in this interpretation of the role of the cultural unit are evident in two possible scenarios. First there is a danger that the unit will be used to comment on a policy statement or research initiative only after it is completed - its response is therefore to a fait accompli rather than to the processes of formulating actual policy. Secondly, the establishment of an isolated unit within the department could enable Maori issues to be referred to it for consultation or advice in a way which actually confines those Maori issues to that area of the department, instead of their being addressed at all levels within all divisions.

If the principle of a cultural unit is to effect meaningful structural change within the department, it must be part of a wider strategy of devolution of authority in the sharing of power. It will also need to be a group that is responsive to the needs of the Maori

community at large, and not merely reflect their concerns through the eyes of bureaucratic necessity. To ensure that this occurs, the composition of the departmental cultural advisory group should therefore have equal representation of Maori people from outside the department, and the cultural advisory unit alone should consist of departmental employees. A possible composition of such an expanded cultural advisory group would be one Maori representative from each of the main divisions within the department, and an equivalent number of community representatives selected by nomination through iwi authorities or other recognised Maori organisations. If such a group was established and met regularly in different areas, the department would be able to formalise its links with the Maori community and ensure that cultural advisory group members had support and input from a wide Maori network. The fully staffed cultural advisory unit could then be free to establish its right to initiate policy proposals and to assist in the positive restructuring of the department; a task far more relevant and challenging than merely reacting to decisions that essentially retain the Pakeha status quo.

Such changes would ensure that the establishment of a cultural advisory group and a cultural advisory unit would be seen as meaningful first steps in the long process of cultural adaptation. However the place of the cultural advisory unit within the department is only part of the broader issue relating to the general place of any potential or present Maori staff, and the specific relations of the department with that staff and the Maori community.

It is often stated by Maori people that the depth of a Pakeha institution's commitment to biculturalism or partnership can be judged by the treatment and status it accords Maori values and Maori workers. That commitment is not assessed by the number of Maori workers so much as by their place, and by the role they are expected to play in the institution's operations and in its relations with the wider Maori community. The Department of Justice provokes in many Maori people a very real concern that the process of cultural desensitising which occurs with many police recruits, is reflected in its own training and promotion policies. There is therefore an urgent need for positive commitment from the department on the recruitment and retention of Maori staff. This commitment is deemed necessary not just as a symbol of a general commitment to a Maori cultural perspective, but as a specific undertaking to involve Maori people in the processes of the law.

That undertaking in essence requires that the department consider an affirmative action policy that actively seeks Maori staff and then ensures their placement in all divisions of the department. This implies a positive commitment not just to appoint Maori to a cultural advisory unit but to review promotion and advancement criteria so that, once recruited, Maori employees are able to contribute throughout the department. That commitment will, of course, be unattainable without prior changes in recruitment and training, but it is strongly felt in many sections of the Maori community that it needs to be made.

The idea of affirmative action with its implications of proportional quotas and numerical goals is, of course, anathema to many Pakeha people. It is also anathema to many Maori if it is used simply as a means of "bilcultural window dressing". However, if it is part of a determined strategy to make realistic structural changes, it is perhaps the only way in which that strategy can be made to work. If commitments to biculturalism or the interests of the tangata whenua are confined merely to policy statements of intent, or do not move beyond making people culturally aware, they effectively make no real change. There is therefore a need for the department to review the place of its present and future Maori staff as part of the philosophical review it should undertake in relation to its policy development and its own cultural ethos.

Such a commitment would indicate to Maori people that the Department of Justice sees a cultural perspective as more than a willingness to permit staff to attend cultural awareness programmes, and that it is moving beyond a wish to simply induct Maori employees into the accepted Pakeha methods of operation. It would indicate instead that Maori involvement in decision making was to be genuine, and that particular Maori skills would be accorded equal status with the Pakeha. In the specific context of this Report, that involvement and those skills are essential if the department is to effectively address its handling of Maori offenders.

The long-term process of structural review and change needed to establish that effectivenss should begin with initiatives aimed at addressing shortcomings in its general organisation and hence in its effectiveness in dealing with Maori people as a whole. It is not appropriate in a report of this kind to analyse all the areas where change is necessary within the

department. That task will become clear as the long term processes of cultural awareness and structural adaptation take hold. However there are some operational procedures which are capable of immediate change. Those changes will ultimately affect the department's oversight of the criminal justice process, the relations between that process and the Maori community, and the wider perceptions Maori people have about the criminal law and its administration.

RECRUITMENT

The department's recruitment strategy is clearly outlined in the policy statement that job descriptions must specify any cultural dimension relevant to the particular position being advertised. It is a logical extension of the recognition of the tangata whenua that all jobs should require an understanding and awareness of Maori issues.

The appropriate degree and definition of what that understanding and awareness is should be determined by the cultural advisory unit, and implemented as a criterion for all employment. Maori people felt that such requirements were particularly important for any position in the courts, probation or penal divisions of head office, and for their particular field staff.

The present emphasis on Pakeha-determined educational qualifications should be modified and given weight only if they are directly relevant prerequisites for the particular position being advertised. Within the courts, penal, and probation services, and in areas such as policy and research, greater recognition should be given to appropriate skills in Maori or iwitanga, and to Maori community involvement or work completed in other areas of Maori employment.

Advertisements for many positions within the department are currently placed in various media outlets besides PSOC. Unfortunately many of these publications do not reach a broad range of Maori people. The department should therefore initiate negotiations with Maori media interests such as local Maori radio stations to utilise some programming time for job advertisements. It is important that the core of potential Maori recruits, or indeed of any recruits, be broadened so that wider participation can be assured.

JOB INTERVIEWS

If the emphasis on Pakeha educational qualifications is one effective barrier against Maori employment, the cultural perceptions of interviewing and selection are equally inhibiting.

In many cases the number of applicants for a particular job need to be shortlisted for interview. Invariably the decision about who should be shortlisted are made by bureaucrats according to Pakeha criteria. It is important that some guidelines be established to ensure that appropriate Maori perspectives are brought to bear in this process and that appropriate Maori personnel participate fully in it. The guidelines which they operate under should be based on appropriate cultural sensitivities and attributes. The decisions they make according to those guidelines should be accorded equal weight with relevant Pakeha criteria.

If Maori participation is accepted in this process as a matter of course, it is obvious that corresponding changes need to be made in the structure and method of the actual interview. At present Maori participation on interview panels is generally limited to cases where the applicant is Maori or expresses an interest in Maori issues. This approach is based on the State Services Commission policy instruction on multiculturalism which states that where positions have a largely Maori character, or seek Maori expertise, then "every attempt is to be made to ensure Maori representation on the interviewing panel." However if the department is to be fully bicultural, all positions should seek Maori expertise, and all panels should have adequate Maori representation. Without that commitment the determination of suitability remains monocultural. As well the failure to accept the importance of a Maori sensitivity will mean that any Maori panelist's views may be lost on a vote because of their minority status, or ignored because the cultural perspective is deemed of insufficient importance to the position. In certain jobs such as those in the courts, it is clear that the applicant will frequently deal directly with Maori people: in this situation their cultural awareness will obviously affect the manner in which they could fulfill their duties. However because all jobs in Justice will have some impact on Maori people it is essential that there be Maori representation at the interviewing stage. Maori participation as interviewers should therefore be mandatory for all positions and applicants, and their perceptions of an interviewee's suitability and cultural sensitivity should be accorded equal weight in relation to all other attributes.

All applicants, and in particular prospective Maori employees, should be encouraged to bring a whanau support group to speak on their behalf, irrespective of the job specification. Cultural support seems to be recognised at present only if the position is a specifically Maori one where "performance ... requires or would be enhanced by a knowledge of Maori language and culture." A truly bicultural organisation would, of course, accept that all positions are equally Maori and Pakeha and that all would be enhanced by a knowledge of Maori culture. That acceptance should then lead to the development of an interview structure which reflects both cultures and accepts whanau support whenever the applicant requests it. Such structures would then elicit the necessary information from an applicant in a way that is appropriate to each cultural perspective.

TRAINING

The training which an institution gives its staff, and the management strategies it transmits at senior level, obviously symbolise its philosophy and cultural perspective. They also indicate whether commitments to the place of the tangata whenua or the enhancement of tikanga Maori are directed at achieving Maori involvement in the existing Pakeha status quo, or are part of a policy aimed at creating a new bicultural organisation.

Training strategies within the Department of Justice presently seem to show that the former is the case. They indicate that training merely perpetuates the socio-historic ideals which shaped both the criminal justice system and its administrative oversight by the department. A number of training strategies are used including the Skills Development Associate (SDA) method and the various management programmes based largely on American ideals of effective corporate organisation. However the common threads in each programme seem to be the use of strategies designed to make the existing structures work more efficiently and the maintenance of the existing power hierarchies within the culture of the department, rather than the development of effective support structures for staff. They effectively exclude Maori perspectives on those strategies, and they prevent the development of Maori options on organisational structure.

There is an urgent need to review such training programmes, a task which will obviously require considerable resources and time. To ensure that there is adequate Maori input into this process two members of the fully staffed cultural advisory unit should be given the specific role of assisting in the development of training alternatives. They could provide the necessary links to the Maori community outside the department and so ensure that the Human Resources Division has broadly-based Maori input into the consideration of new training strategies.

While this review is in progress the department should work in consultation with the cultural advisory group, the Centre for Cultural Research, and other independent Maori groups to develop courses in Maori and iwitanga for immediate implementation at both Head Office and district level. Representatives of the appropriate urban Maori groups or iwi authorities should be involved at regional level, coordinated perhaps by the department's cultural officers appointed as part of the cultural advisory unit.

THE PLACE OF MAORI STAFF

Present and potential Maori staff within the department will, of course, be affected by any structural or administrative changes made to recruitment and training strategies. However there are other initiatives which Maori people believe the department should undertake in relation to its Maori employees. That the department has an obligation to undertake what some may call preferential policies in this area is a logical extension of its commitment to the tangata whenua and the obvious need for it to address how it can best incorporate Maori input into its policy.

It should be possible, for example, for the induction training of all Maori staff, at whatever level, to include instructions not only in the work related skills that they need as employees, but also in the cultural ideals and knowledge they need as Maori. This would be quite distinct from the normal cultural awareness training implemented for other staff and would enable the department to accept a commitment to directly contribute to the cultural reintegration of its own Maori staff. This in turn would help break down not only the consequences of the cultural deprivation and denigration which have shaped the lives of many Maori, but it would also establish a more culturally aware and hence more capable Maori work force.

To assist in this process attendance at tribal wananga should be accepted as work related training and attendance made possible for Maori staff on appropriate paid leave. The need for skilled Maori public servants to work for the iwi also needs to be recognised by the department and seen as both training for the individual Maori and enhanced cultural input for the bureaucracy. The department has permitted limited secondment but there is now a need to seek ways in which further transfer to iwi may be undertaken especially in relation to the management skills which that person could bring to tribal initiatives relating to crime prevention, Maatua Whangai, or other support programmes. The Department of Maori Affairs already permits secondments on this basis, and the skills of many Maori within the Justice Department would be equally valued by iwi in their efforts to assist their young.

The lack of adequate numbers of Maori staff at senior levels in probation, courts and the penal division of the department illustrate the need for specific initiatives targetted at Maori employees. It also, of course, makes more difficult the task of instituting change in the criminal justice process which goes beyond bicultural window-dressing. The lack of Maori staff in other divisions such as law reform and policy and research similarly increases the difficulty of having adequate Maori input and perspective on matters of general analysis and legal development. This is particularly obvious in the area of criminal offending where there is a clear need for much detailed research. There is a need for example to undertake research from a Maori perspective on Maori prisoners and the prison system, and on the specific subject of Maori female offending. There is also a desire in the Maori community for research to be undertaken into the tribal backgrounds and influences in the lives of Maori offenders, and into the specific operations of the Children and Young Persons Court as it relates to Maori youngsters.

The resources of the cultural advisory unit and the cultural advisory group are inadequate to provide expertise in all of these areas and clearly indicate the need for increased Maori staffing at all levels of the department. They also reinforce the need for the establishment of an organisation such as the Maori Law Commission which could undertake much of this necessary research and policy development initiatives.

THE DEPARTMENT AND THE MAORI COMMUNITY

This situation highlights the fact that the suggested changes within the department need to be linked to a process of participation from Maori groups and organisations that are independent of the department. It was the view of the Maori community in the course of this research that while a long term review of the department's structure is necessary, it would be regarded as ineffective without participation by the Maori community. It was equally clear that the specific responses of the Maori community to shortcomings in the criminal justice area needed immediate consideration and implementation. That consideration however needed to be interwoven with a departmental commitment to accept the validity of Maori perspectives on the basis of their authority to share in the procedures established to rehabilitate those of their young who are labelled as criminal offenders.

That authority was seen to go beyond such things as the participation of Maori people in sentencing alternatives, or the input of Maori staff into departmental decisions. It was felt that while those inputs were valuable, the Maori community needed to have participation in the process of whakawhitiwhiti korero which would eventually shape the department's efforts to become a more culturally appropriate institution. Indeed it was obvious that any organisational restructuring would gain validity only if Maori input from the community was assured.

It was therefore evident that the department needed to begin the review of its operational base through a process of hui and consultation that would address not just the specific systemic bias of the criminal courts, probation and the penal service, but its general role as the overseer of the law. The type of consultative process envisaged involves more than a commitment on the part of the department to listen to Maori concerns. Rather it needed a commitment to action which would ensure the development of a more sensitive department better able to share its authority with Maori people. It is the sharing of this authority which, in Maori eyes, will ultimately determine the effectiveness of both the specific responses needed to reform the criminal justice process and the general development needed to establish the department's commitment to the tangata whenua.

DRAWING THE THREADS TOGETHER

The responses of Maori people to the offender and system based factors which contribute to the recorded rate of Maori offending reflect the holistic belief that causes and consequences are complex and interrelated. They also reflect the belief that changes in the attitudes and processes of our criminal justice institutions will have little long term effect without corresponding changes in the attitudes and processes of our society. Because the present rate of Maori offending is in effect the price our society pays for its racial and economic inequality, it cannot be reduced without an alleviation of those inequalities. However, even the most glaring socio-economic inequities cannot be effectively removed if the reality of cultural deprivation and denigration is maintained in our institutions and social fabric. Their presence will continue to shape the confined existence in which Maori worth is devalued, and from which Maori offending arises.

For these reasons, the responses outlined so far in this Report are but first steps in the process of re-establishing a stable place for the Maori community. They are important steps which will do much to alleviate the hurt caused by cultural denigration and the frustrations and anger caused by criminal offending. They acknowledge the part which the law plays in defining the parameters of Maori existence, and they recognise that initiatives to reduce the criminal consequences of that existence must be drawn from the threads of Maori tradition. However if the responses are to effectively manage the problems of Maori offending they must also be framed within the Treaty of Waitangi. In particular, they must move beyond the decision-making and attitude-shaping points in the existing criminal justice system, and relate any changes to the broader context of the tangata whenua status of the Maori in New Zealand society. This context essentially requires a consideration of processes which fully recognise the authority of the Maori to control the destiny of their own. It is to such a considered alternative that this report now turns.

THE CONSIDERED ALTERNATIVE

The existing procedures of the criminal justice process can be shown to be inadequate in preventing both initial and subsequent offending by young Maori. In many cases they can be seen to be biased rather than inadequate because they maintain systems and attitudes of

prejudice that actually contribute to the rate at which Maori crime is recorded. That prejudice is the consequence of the monoculturalism which makes the process institutionally racist.

It is the belief of many Maori that such prejudice ultimately makes it necessary to consider the system-based factors of Maori offending from a different viewpoint. This involves a move away from both the imposition of Pakeha-defined models of change and the grafting of "culturally appropriate" panacea onto existing monocultural structures.

> *"Finally we've got to consider our own structures ... that can develop from our own ture and our own tikanga ... that's the challenge facing us if we really want to assist our young and treat them justly."**
>
> *"Be like our tipuna and go beyond the seas you know, the turbulent Pakeha seas of their justice system. Seek out the ture our tipuna knew and adapt the ways that Tane left in the kete for us ..."**

The imposition of Pakeha models on Maori people who did not have a hand in their design has of course been an inevitable but unsuccessful consequence of Pakeha perceptions about issues such as Maori offending. Clearly however the right to design models of development or redress for Maori difficulties must be based on Maori initiatives; and while in today's context this means that such models will be inevitably selected from all the ingredients that the tides of history have brought to these shores, they will be filtered through the needs and perceptions of the Maori people themselves. The models so developed will naturally have a distinct Maori base and will function in a way that is often quite different to the Pakeha. They will draw on the traditions of Maori culture and accord them equal validity and authority with the accepted Pakeha ideals which presently dominate in both social and institutional organisation.

They will also be drawn from the particular threads of Maori law as understood through Maori interpretations of their tangata whenua status and their rights under the Treaty of Waitangi.

Although some meaningful alterations can be made to the worst effects of institutional racism by a redefinition of bicultural restructuring as proposed in the preceding sections of

this report, the effectiveness of any change ultimately depends upon the perspective from which it is proposed. If the change accepts the basic rightness of the existing process for both Maori and Pakeha, then it may not be effective because it will not alter the philosophical base nor the authority which underpins the system. If however the change arises from a process which asserts that a specifically Maori approach has a basic rightness for Maori, just as a Pakeha model is inherently right for the Pakeha, then the changes will be meaningful because they address questions of authority and philosophical appropriateness.

The latter process is based on a concept of equality which maintains that the institutions and procedures of the Maori are as valid and worthwhile as those of the Pakeha. It is developed from an understanding of rangatiratanga and the rights of tangata whenua which maintain that Maori people should have the authority to care for and monitor the behaviour of their young. It is tied to the weave of Treaty partnership which maintains the framework for that equality and rangatiratanga. It is the context in which the development of a parallel Maori method of dealing with offenders can be considered.

However the development of this type of parallel system involves more than diversionary schemes or community participation in sentencing and parole. It involves the creation of a distinct process to hear, sentence and dispose of charges against Maori offenders in which the authority to determine the procedure and the law is retained in Maori hands.

The notion of such an autonomous criminal justice process based on kaupapa Maori rather than the procedures of existing Pakeha law has been often considered by Maori people. It was the most frequently raised issue in the course of this research and underlay the desire of both young and old to find a "Maori way" of dealing with offenders.

> *"We want to try to awhi those of our young ones that they say are bad. I know its a brick wall you've got to collide with, but let's give it a go. Let's try and do something for our own, find a Maori way."**

But as often as the issue has been considered in the past, it has been dismissed by the legal profession and decried by Pakeha society as a move symptomatic of apartheid. Those reactions have misunderstood the bases on which a parallel system would operate, and have misinterpreted the motivations which have prompted Maori people to consider its establishment. Most of all, they have displayed a monocultural unwillingness or inability to

consider the possibility that a process or value system other than their own may be valid.

A major aim of this section is to synthesise a Maori perspective on that monoculturalism and the opposition it engenders to the creation of any different process of dealing with offending. Another aim is to establish the cultural, philosophical and constitutional framework within which a specifically Maori process may be developed. The need for that synthesis is particularly important at this time in our history as New Zealand society seeks to redefine its place in the world and endeavours to establish new sets of relationships among its people. Included in that process must inevitably be a redefinition of society's institutions of which the systems of the law are clearly a part. They need to be reassessed within the weave of a different cultural reality that recognises the specific Maori perspective of what criminal justice actually means. In effect, the law, and especially the criminal law, need to be placed within a new context which will ensure the proper provision of justice for the Maori people and maintain a sense of order which protects their community, and the wider society, from the damage and hurt of criminal offending.

THE CULTURAL DEFINITIONS OF A CRIMINAL JUSTICE SYSTEM

The efficacy of law ultimately depends upon society's perception of its ability to provide justice. People respect legal institutions which they consider fair and which they have helped shape. They accept sanctions at law which they believe to be just and which relate to their personal and cultural beliefs. The perception of fairness is shaped by the systems established to enforce and apply the law, and a sense of justice flows as the end result of the processes which those systems impose on an alleged offender.

Maori people clearly believe that the processes of the present criminal justice system are often unfair, and that the end results are consequently unjust. That belief is shaped by the reality of their experience within a system whose attitudes and processes were developed in a non-Maori cultural setting. The powers which are exercised to determine arrest and charge, the laws which actually define the crimes, and the procedures which individuate the offence and isolate the offender, are products of an English tradition frequently inconsistent with that of the Maori. They both reflect its exclusive heritage and ensure its maintenance

through a process that is claimed to be inherently just; beliefs that have often led the Pakeha law to dismiss the need for any other process, or to regard a different system as manifestly inferior or unjust. In so doing, the law has however confused the processes of justice with the justice of a result.

The processes or procedures by which a system reaches a conclusion as to guilt or innocence in a criminal case may differ according to circumstance, as they do from jurisdiction to jurisdiction. In spite of those variations, the result or conclusion may still of course be just. If however the processes are unfair, as distinct from different, the likelihood of a just conclusion is naturally diminished. The justice of a criminal court system therefore lies in the fair and appropriate way in which its processes work towards an end result: it is not dependent upon those processes being the same, but upon their being fair.

In a practical sense, Maori people have no difficulty with the concept that, for example, like offenders should face like sanction (receive "equal" justice) for like offences. However they would claim that the process by which such a like result could be achieved can be based in different but equally valid cultural frameworks. Thus while it would be generally accepted that the purposes of a criminal justice system are to protect society, to transmit its abhorrence of certain behaviour, to seek a restoration of balance between offenders and victims, and to dispense justice, the processes by which they are achieved can show considerable variation. It is clear, for example, that the end result of the criminal justice process in say France or West Germany is just, notwithstanding the obvious but culturally appropriate differences in their actual processes.

A definition of criminal justice framed within a Maori perspective therefore looks to the attitudes and processes which produce the final consequences for an alleged offender. Those processes presently operating within the Pakeha legal system are based in monocultural attitudes that often result in a systemic bias and unfairness which effectively denies justice to the Maori. To remedy that situation, there is therefore a need to redefine the processes, and to base them in culturally appropriate attitudes that will ensure fairness.

The obvious key to that fairness lies in a process which is based not in English or Pakeha legal tradition but in Maori; it is a fairness founded in culturally specific systems aimed at achieving a culturally universal ideal of justice. Its philosophy and base would not, of course, be the Maori of 200 years ago, but those traditions and legal concepts which can best be adapted to suit the changed circumstances of today's Maori community. Its fairness is not dependent on any impossible idea of an exclusive traditional purity, but on the Maori framework in which it would be developed, and the cultural authority under which it would be implemented.

The cultural weave for establishing a parallel Maori process of criminal justice is therefore drawn from the need to develop different procedures that more appropriately reflect Maori rather than Pakeha perspectives, and that more effectively ensure the development of systemic fairness towards alleged Maori wrongdoers. It is based on the cultural imperative that criminal justice should not only impose sanction but should also seek restoration of balance among offenders and victims, their families and the wider community. In this context, the sanction expresses community disapproval while the restoration expresses a need for mutual responsibility. From these twin objectives arise an acknowledgement of individual worth and a respect for each person's inherent tapu.

For this cultural perception to have validity as a foundation for a criminal justice system, it must of course have a philosophical base which defines its power to deal with the consequences of criminal behaviour.

THE PHILOSOPHICAL DEFINITIONS OF A CRIMINAL JUSTICE SYSTEM

The major philosophical justification for the existence and maintenance of the present criminal justice system is the oft-quoted principle that

> *"It is essential for the health of the community that there be one law for all before it."*[8]

This maxim is tied to the ideal that the equality of all before the law should be the governing principle of a justice system, and the belief that the rule of law is best maintained by agencies that are impartial and free from external influence.

One of the many reasons why Maori people are seeking a Maori way of addressing issues of criminal justice is the fact that each of those fundamental principles are regarded as monocultural "givens" that the present system seldom feels a need to justify. Another is the belief that the tenets of equality and impartiality are inappropriate as presently defined, and untrue as presently practised.

If the argument to justify the ideal of a single law for all was one of consistency and certainty in redressing social wrongs, there is no doubt that the "health of the community" would benefit. There is no doubt either that Maori people would regard that as an admirable philosophy for any system of law. Unfortunately that argument ignores the fact that the New Zealand community is not a homogeneous unit requiring common treatment for the good of its health. Instead it is based on two different socio-cultural groupings joined by the terms of the Treaty of Waitangi which recognise the equal rights of tangata whenua and settler. The events of history of course dismissed those rights of partnership and imposed on the two different groups a system of law which reflects the traditions and cultural precepts of only one partner. This has meant in effect that the notion of one law for all has simply come to mean one Pakeha law for all, a circumstance which may be "healthy" for the Pakeha community, but raises real concerns for the Maori. Those concerns are clearly manifest in the fact that the law is presently systemically biased in its dealings with Maori offenders.

The purpose of the criminal law should not be to fashion society or to mould Maori wrongdoers according to an English or Pakeha model, but to reflect the state of society. Because our social structure is based upon the special relationship between the tangata whenua and the Crown, the law can only be relevant if it recognises that relationship. At present its interpretation of the one law principle as being one Pakeha law prevents it from doing so: instead it maintains a legal fiction that it can operate in a culturally neutral way while ignoring the fact that it developed in a specific cultural and socio-economic context far removed from that of the Maori community.

That culturally specific history has actually led the Pakeha law to assume that its processes are appropriate and inherently better than others. This in turn has led to a concentration on procedure so that the ideal of one law for all has become confined not just to one Pakeha philosophy of law, but to one specific process of the law as well. In effect therefore

the process has become synonomous with justice. This correlation is seen in the statement that

> *"There can never be any justification for the establishment of any form of separate justice."*[9]

From a Maori perspective it is actually impossible for justice to be separate; as an ideal it is indivisible. It is however possible to have many different or separate procedures aimed at achieving justice. Those different procedures could even of course be applied to the same substantive law which defines criminal behaviour: indeed many Maori ideals of criminal wrong are clearly complementary to those of the Pakeha. In that sense a notion of one substantive law for all that is applied and administered in different ways could easily accord with a Maori perspective of what criminal justice is. More particularly, if the notion of one law was interpreted to mean one justice for all, it would clearly be appropriate from a Maori viewpoint. Unfortunately the Pakeha preoccupation with process as the apparent justification for a unitary system means that Maori perceptions are ignored, and that Maori offenders continue to be subject to the systemic bias that is ingrained in the monoculturalism of that process.

The notion of equality before the law is a corollary of the one law ideal. It is assumed that a common procedure will ensure an equal treatment and an equal liability to sanction for all who act in breach of the law. Unfortunately this philosophy in practice is a legal fiction. It denies the fact that the definition of equality in law is not dependent upon some neutrally common norm, but is shaped by many diverse and sometimes conflicting moral or cultural precepts. Thus the simple economic resources available to the prosecution and defence are never equal, and the status accorded different defendants by the court's perception of their economic and social standing are comparative, not equal. The theory of equal liability to the law clearly does not guarantee the reality of equal treatment by it since judgments are constantly made within the criminal justice process which exclude some people from that liability. Decisions about who will be arrested, what charges will be laid, and what sentence will be imposed, are theoretically made on the basis of equal susceptibility to sanction. However because discretion is never exercised within a vacuum that is divorced from either the varying perceptions of social worth, nor from the inherent biases of the criminal justice process itself, any concept of absolute equality is diminished - both in terms of a general liability to be subject to legal processes, and a specific vulnerability to certain sanctions.

Maori offenders are particularly susceptible to these consequences simply because the monoculturalism of the one process ideal fosters an insensitivity that can actually promote inequality of treatment. In fact, because that process was imposed upon Maori people in a way which dismissed their values as not being of equal worth, and is maintained in a way which denies them the chance to develop their own procedures, it actually exhibits an inbuilt cultural denigration which prevents true equality.

From a Maori perspective, any notion of equality would therefore only be valid if it was redefined within a Maori context that acknowledged the realities of cultural denigration and deprivation. Indeed, in a bicultural society, the idea of equality before the law can actually be an inappropriate objective unless it is accompanied by equality of respect for different cultural processes and values. That respect requires not merely that existing Pakeha systems attempt to understand those different processes, but that the people for whom they are culturally appropriate have an equal chance to develop them within their own institutions.

The philosophies which underlie the Pakeha law, as interpreted and applied in practice, are therefore not all embracing ideals but culturally defined fictions. Because those definitions are monocultural, the law has seemed unwilling to either accept the possibility that they may not be fulfilling their philosophical claims in relation to the Maori, or that they may be inappropriate in a system attempting to deal across different cultural boundaries. That monoculturalism has also prevented the law from recognising the validity of any ideals or structures that are contrary to their own, and has led it to justify that non-recognition by upholding its philosophies as unalterable truths. That in turn has led it to confuse the processes of justice with the justice of the system's results. Perhaps most importantly, it has also inhibited any real understanding of Maori concerns. For the Maori, and especially the young Maori offender, the law is not a principle of oneness or equality, but the actual processes and practices applied by the police and the courts. In their experience, those practices consistently negate the principles which are supposed to underpin them. It is therefore inevitable that the principles should appear as a myth and a falsehood.

For the philosophical foundations of any system to have validity they must be perceived to be fair and justifiable in practise. The tenets of the law which are claimed to vindicate the operations of the present system merely mask its systemic unfairness and seek justification in the belief that the monocultural cornerstones of society should not be questioned.

In a Maori context, the fundamental truths of legal philosophy need to be redefined and justified in a culturally specific way. Thus the concept of "one law for all" can be interpreted as one indivisible concept of justice for all Maori offenders, achieved through varying processes that reflect the traditions of balance and sanction implicit in Maori law. The notion of "equality before the law" implies the equal right of all who define themselves as Maori to be heard in a manner which recognises that cultural and racially-specific identification.

The philosophical threads which would bind those ideals within the kaupapa of a parallel Maori system of criminal justice are drawn from history and traditional Maori law. Many would be regarded as universal truths of jurisprudence but they have been shaped by, and would be implemented within, a context that is specifically Maori. The Maori community of course needs to research the foundations of its traditional law and to analyse the precepts and processes that could be adapted to present circumstances. Just as there is a need to develop a Maori criminology, so there is a need to build upon Maori socio-legal ideals and establish a contemporary Maori jurisprudence. The establishment of a Maori Law Commission could facilitate research in both of these areas and help draw out the many known threads of Maori law.

Perhaps the most basic tenet of Maori law is the belief that the rights and obligations of individual and community are mutual and interrelated. Each person has individual rights but collective responsibilities which tie the preservation of a person's mana and the protection of his tapu to the welfare of a whanau, hapu and iwi. That inter-relationship and obligation is forged in a common sharing of Maori identity, interests, ideas, and myths that create the sense of cultural awareness and unity.

That unity is maintained through the establishment and preservation of culturally appropriate codes of conduct that reflect the general Maori traditions of social order and the specific Maori concepts of justice. In this sense, the notion of justice is derived from the

tikanga or rules established as a precedent by tipuna. Like all precedents they are subject to change, but they lead to a sense of justice that balances the anger and hurt, the mamae, of a victim's family, with the recompense and shame, the whakama, of the wrongdoer and his whanau. This need for restoration establishes justice not as a set of processes, but as an ideal or first virtue of social order, as important as truth to the systems of Maori thought.

Those beliefs, and many others, would form the philosophical basis of a Maori criminal justice system. And as the Pakeha law has drawn on such diverse strands of thought as those of the Aristotelians and the Stoics, so a developing Maori jurisprudence would undoubtedly draw on the ideals of other indigenous peoples and other legal systems. But in developing those ideals into actual legal practises, a Maori system would pass them through the filter of its own needs and its own perspectives. It is only by viewing the law through those perspectives that the Maori community can replace the systemic biases of the present legal system and adequately satisfy the needs for justice and redress occasioned by the offending of its young.

The Maori community clearly therefore has its own cultural and philosophical definitions of what criminal justice should be. However it also needs a constitutional basis on which to develop and apply those definitions.

THE CONSTITUTIONAL DEFINITIONS OF A CRIMINAL JUSTICE SYSTEM

Any discussion of criminal justice in a bicultural society must ultimately confront the legal and constitutional issues of a people's right to establish and maintain legal processes of their own. In New Zealand, that discussion raises issues about the status of Maori people and the place of the Treaty within our socio-legal framework. In particular, it raises fundamental questions about the nature and existence of Maori rights: cultural, social, legal, political, economic and educational.

It is therefore necessary to consider whether Maori people have any rights that are unique to them as tangata whenua, how they achieved them, whether they differ in degree and kind from the civil rights of others, and how they can be clarified and therefore protected or used

as the basis for a system to monitor the behaviour of their young. Such consideration needs to be framed in relation to the specific shortcomings of the present criminal justice process as it relates to the Maori, and within the more general context of a true biculturalism which recognises that the ideal of equal partnership implies equal acknowledgement of established rights and obligations. The institutional racism and monocultural attitudes which foster present shortcomings also, of course, hinder an acceptance of that type of biculturalism, so that any consideration of broader Maori rights will inevitably address their effects.

The starting point for this consideration, and indeed for any discussion of the constitutional definition of a judicial process different to that enshrined in the accepted legal framework, is the status of the group seeking constitutional recognition for itself and for its institutions. It is clear that the Maori have a unique status as tangata whenua and as partners to the Treaty. However it is necessary to define what that status means and whether it bestows a constitutional right to administer justice in relation to Maori offenders.

In the past, debates of this kind have been defined by the Pakeha law. Maori people have often unknowingly been confined by Pakeha definitions of sovereignty and legal rights, so that their traditional concepts of authority and rangatiratanga have been made subservient to the sanction and control of the Pakeha legal system. A Maori perspective endeavours to place Maori ideals of authority and rangatiratanga in a context that accords them due mana as of right, and establishes their validity in terms of the Pakeha law as well.

The tangata whenua status of the Maori is synonomous with what the 18th and early 19th century law called Aboriginal Rights, and which many jurisdictions and the United Nations now refer to as Indigenous Rights. In a general sense those rights are the traditional rights exercised by indigenous people prior to European contact: they are the inherent ancestral rights which they employed to preserve social harmony and to maintain balance with the natural and supernatural worlds. In the exercise of those rights, such societies developed social, cultural, religious, and legal philosophies which were applied through a network of interdependent kin relationships.

In Maori society, those philosophies and relationships were clearly defined. The authority by which tribal groups imposed the laws or transmitted the cultural values was equally well defined and constituted their sovereignty, their mana, their rangatiratanga. The nature of Maori social development was such that there was no "national" notion of sovereign power, but there was clear tribal authority recognised by all iwi members. The existence of this sovereignty and the rights it implied is obvious in the oral histories of all Maori tribes and in the simple fact of social order which prevailed. Although traditional Maori society was often violent and subject to war, as are most human societies, the acceptance of culturally binding laws supported by notions of precedent and sovereign power ensured a general social harmony.

With the onset of colonisation however, the notion of sovereignty and the reality of social harmony was to be demeaned and then virtually extinguished. The first step in that process grew from simple monocutural ignorance. Because Maori laws and precedents were different to those of the Pakeha, there arose the assumption that the Maori had no law and certainly no sovereignty. Paradoxically however, no settler ever claimed that traditional Maori society was "lawless": indeed the eventual calls for British sovereignty came largely because of the lawlessness of the Pakeha settlements.

In the initial years of Maori/Pakeha contact, the idea of indigenous rights, of recognising the unique institutions, language, laws and customs of the tangata whenua, was recognised by the colonial authorities. It was accepted in much of the Colonial Office correspondence and its unique tribally-based nature was also specifically recognised.

> *"... we acknowledge New Zealand as a sovereign and independent state, so far ... as it is possible to make that acknowledgement in favour of a people ... who possess few political relationships to each other."*[10]

The law also recognised the existence of aboriginal rights, and Privy Council decisions on the rights of native Americans and Canadians consistently upheld the doctrine of native title and native sovereign right. Thus the Privy Council decision in Mohegan Indians v Connecticut[11] clearly stated that the underlying premise of the consensual relations between the Crown and indigenous peoples was the political fact and the legal principle of native sovereignty and title.

By the time of the Treaty therefore there was little debate about whether Maori people had unique rights and specific institutions to enforce them. The Maori, of course, knew of those rights and the rangatiratanga which upheld them because they shaped his life and infused his whole social structure. The Pakeha accepted them partly because the law acknowledged their validity, and partly because although they might seek to claim sovereignty, it was the Maori who had actual possession and power. The relevance of this last factor was particularly important. It ensured that any Pakeha claims to have gained control over the land through the Treaty could not be meaningfully enforced in the early period of contact. Indeed to paraphrase the words of Chief Justice Marshall in an American case dealing with Indian sovereignty it would have been

> *"an extravagant and absurd idea that the feeble settlements on the sea coast"*[12]

could have ignored Maori possession and authority. It also meant that the related issue of Maori rights and sovereignty would be initially respected and acknowledged. There was thus a period when the precedents of the Privy Council and other jurisdictions were used by the courts to recognise Maori sovereignty, as in the case of R v Symonds[13]. It was also a time when legislative attempts were made to meld together Maori and Pakeha legal concepts as in the shortlived native magistrate and rununga proposals. With increasing Pakeha power that policy was, of course, changed. The legislature first imposed Pakeha legal institutions and removed the land and religious bases which had underpinned those of the Maori. Then, in the case of Wi Parata v The Bishop of Wellington, the court dismissed both the idea of pre-existing tangata whenua rights ("the Maori tribes were incapable of performing the duties and ... assuring the rights of a civilised community") and the notion of certain rights guaranteed the Maori under the Treaty (which was a legal "nullity" because it had not been incorporated into Pakeha domestic law).

That process of amalgamation, modification, and then extinguishment of Maori rights was carried out under the guise of legal responsibility and was promoted as necessary to ensure the provision of equality under one system of law for all. However by implementing this philosophical fiction of the Pakeha law, the process actually created others - that the Maori as tangata whenua had no special status, and that any rights they may have, like those of other minorities, were held simply on sufferance from the Crown. In essence this meant that to gain the equal rights of a British subject the Maori were expected to abandon many of the things which made them unique - their sense of community, their religion, their laws, and

their language. To gain access to a unitary Pakeha legal system therefore did not simply mean accepting laws as being applicable to both Maori and Pakeha so that there was "equality" under the law; rather it implied a process of depriving the Maori of rights and laws that had been theirs since time immemorial and which the Pakeha law had itself recognised for over 100 years. It also, of course, implied that the Maori had to accept any subsequent legal rejection of the Treaty which their tipuna had entered into as a means of ensuring recognition of rangatiratanga.

It was, of course, the consequences of this denial of traditional and Treaty rights which, in a general sense, helped shift the Maori from an independent culturally-secure people to a community trapped within a contemporary cycle of socio-economic and cultural deprivation. In more specific terms, the fiction that the Maori had no special rights either before or under the Treaty, has enabled the Pakeha law to deny Maori people any constitutional basis for establishing or revitalising their own judicial institutions.

The relationship between the Crown and native peoples, and the idea of tangata whenua or indigenous rights, nevertheless still provides a constitutional basis for Maori people to exercise authority over the conduct of their own. From a Maori point of view, the fact that such rights have been recognised as

> *"... established principles of law ... found among the earliest settled principles of ... (the) general law of the British colonial empire"*[14]

is simply confirmation within the Pakeha law of the rangatiratanga which established that authority. From a Pakeha perspective, those principles were, of course, nullified by a series of cases, and by the reality of the new political framework. However the validity of that claim needs to be addressed for a number of reasons.

Within a Maori context, there seems no principle in Maori or Pakeha law which permits one system to unilaterally deny the pre-existing rights of other people. In fact it would simply seem to be the height of monocultural arrogance for one system to assume that it could peaceably remove ancient rights to which it did not contribute, over which it had no sanction, and in which it was not recognised. To do so merely establishes a fiction whereby the Pakeha law in effect says that the Maori had no rights to their land, language and culture, unless they were granted by the Pakeha. That the colonial law was prepared to adopt this fiction denied Maori people the right to be themselves, but it did not necessarily

diminish the efficacy of their rights. Like the ancient precedents of Maori tradition -

> *"Kaore te ture noho moke moke ai, engari ka noho ai, ka whanga ai ka wawata ai i te rongo te hiahia o te tangata*
>
> *The law never stands alone, but waits for man to feel its need."*

From a Pakeha perspective, the notion of aboriginal sovereignty is developing in two distinct but interrelated ways. The international reality of internal self determination and indigenous rights, and the judicial definition of treaties and colonial precedent.

The idea of sub-state groupings having certain autonomy within the larger nation state reaffirms the belief of indigenous peoples that their rights and grievances are quite distinct from the domestic concerns of other minority groups: a fact clearly shown in the frequent attempts by Maori people to place their issues before the Queen as distinct from the New Zealand Government. The World Council of Indigenous Peoples was established in 1975 to specifically consider the issues of indigenous rights, which have also been the subject of much discussion within the Human Rights Committee of the United Nations and the United Nations Working Group on Indigenous Populations. Those discussions have drawn an important distinction between the indigenous rights of self determination and the right to secede from a nation state. It is clear that the assertion of tangata whenua rights does not necessarily imply dismemberment of the state, but rather sees the maintenance of such rights as part of a continuum of authority for indigenous people to have authority over their own.

In essence, this international debate clearly rejects the idea that there is no concept of indigenous rights. It reasserts the concept and endeavours to present indigenous people with strategies that recognise their need for a cultural survival perspective. This requires a degree of autonomy within the State sufficient to ensure the survival of indigenous peoples and a perspective which highlights their status as colonised peoples whose peoplehood has been suppressed since colonisation.

There is therefore clear evidence that the concept of aboriginal or indigenous rights, of tangata whenua status, is recognised as valid, and that those rights include the recognition of traditional values, laws, and customs.

The second area within a Pakeha perspective in which the idea of indigenous rights is developing is in the judicial consideration of treaties. In New Zealand, recent decisions in Fisheries cases such as Te Weehi seem to indicate that existing indigenous rights are returning to some pre-Wi Parata status as credible legal principles. There seems clear evidence that those rights are recognised and that the Treaty reaffirmed rather than created them. On the other hand, the Treaty recognition of rangatiratanga, and hence authority to apply traditional rights, still appears hampered by the lack of any coherent principle about the legal status of the Treaty. In a recent decision, the State-Owned Enterprises case, the Court of Appeal accepted consideration of the principles of the Treaty only because section 9 of the State-Owned Enterprises Act enabled it to do so. The questions of tangata whenua rights and sovereignty, and whether the Treaty affirmed or extinguished them, were not directly considered by the court because it was concerned only with the Treaty principles applicable to the State-Owned Enterprises Act.

What that decision did do however, was accept the obligation of the Crown under the Treaty not only to recognise the Maori interests specified in it, but to actively protect them. For the Treaty to continue to be affirmed as being of crucial importance to New Zealand's foundation, the recognition and protection of those rights can only be achieved through an acceptance that the Treaty has a legal status akin to that accorded it prior to the Wi Parata decision. Within that status, it is clear that the Maori definition of rangatiratanga in Article 2, and of custom in the Waitangi protocol, confirm the existence of indigenous rights and guarantee their maintenance.

The constitutional basis for a parallel Maori system of criminal justice therefore rests on both the indigenous right of Maori people to assert their tangata whenua status, and on the guarantees of the Treaty to preserve rangatiratanga and Maori customs. But perhaps more important in some ways than any cultural, philosophical or constitutional need for such a system is the simple but often expressed view elicited in this research that

> *"The statistics, and what we see, what we know, shows us that the Pakeha system isn't working for us ... maybe a Maori way will."**

There is thus a recognition that while there have been many attempts to evaluate the

ineffectiveness and inappropriateness of the present structure, they have neither reduced the rate of Maori offending nor removed the perception of systemic bias. Perhaps in this race against time to restore stability in Maori/Pakeha relations, there is no choice but to allow Maori people the opportunity to see if they can do better - surely they cannot do worse.

THE STRUCTURAL DEFINITIONS OF A CRIMINAL JUSTICE SYSTEM

The development of a parallel system of criminal justice is, of course, fraught with many practical difficulties. It cannot be implemented overnight, nor expected to develop without considerable resources devoted to its research, establishment, and continued operation. The effectiveness of any such process is dependent upon a re-evaluation by the Pakeha law of what legal equality means, and a reconsideration by Pakeha society of what is meant by the term biculturalism. That reconsideration will ultimately flow from long term changes in Pakeha attitudes and processes. At present, they seem to demand that Maori people sort out their difficulties, but deny them the resources and the cultural respect to do so in a way which is different to those of the Pakeha majority. A continuation of that monoculturalism will prevent Maori people from adequately dealing with the consequences of criminal offending, and inevitably maintain the pressures which promote that offending in the first place.

The efficacy of an autonomous Maori process is most of all dependent upon Maori people determining what legal structures might best help them support and monitor their young. As evidenced by the many calls for a Maori way to address offending, and by the establishment of Maori law courses at Te Wananga o Raukawa, the Maori community is both seeking that efficacy and actively researching what could be the jurisprudential foundation of an autonomous legal system. Indeed the current process of cultural revival and the suggested responses to establish a Centre for Cultural Research and a Maori Law Commission will all help establish the cultural framework within which that system could develop mana and ensure respect. Those factors make pertinent a Navajo proverb quoted at one hui

> *"Ask not the how or the why: seek instead for when."*

In practical terms there are many options and overseas models available to provide input into the establishment of a Maori process. Because of the changed situation of Maori

society and because traditional Maori culture did not have a court institution as such, the structural organisation of the system would be quite new within Maori terms. However the ideals of mediation, balance and sanction which infuse Maori law would remain as the philosophical base. For this reason it would perhaps be inappropriate to speak of Maori tribal courts as the native American jurisdictions do, but to speak instead of runanga. The manner in which such runanga would be established, their composition, their jurisdiction, their laws, and their methods of operation, are matters requiring considerable research. There are however some general kaupapa which can be outlined within this report.

The aim of a Maori system would not be to simply transplant the Pakeha organisation into a Maori context, but to develop a structural framework which reflects the imperatives of Maori law and the processes it developed for maintaining order. The runanga concept consisting of selected people rather like the committees envisaged under the reform of the Maori Community Development Act would be one obvious structure. The idea of a panel rather than an individual is important as it would stress the community responsibility to remedy wrongs committed against it. However, unlike the proposed committees under that Act, runanga would have power and authority to hear and determine all cases involving offenders and victims who identify as Maori. The attribution of guilt or innocence and the determination of reparation or other sanction, would be within its jurisdiction. If a victim was non-Maori, or an institution as distinct from a person, jurisdiction would be varied in the sense that the victim would have the right to have the matter heard within the Maori system or referred to Pakeha courts.

Once the alleged wrongdoer and his whanau met with the runanga, the aim of the hearing would also be quite different. Under Pakeha notions of criminal jurisprudence, the objectives are to establish fault or guilt and then to punish. The sentencing goals of retribution, revenge, deterrence, and isolation of the offender are extremely important, although the system often pays lip service to the idea of rehabilitation as well. A Maori system would endeavour to seek a realignment of those goals to ensure restitution and compensation rather than retribution; to mediate the case to everyone's satisfaction rather than simply punish. Of course, sanction to express community disapproval would necessarily be a part of the process, but the method and type of sanction would be shaped by traditions other than the need to further alienate an offender from his community. Implicit in the process of mediation is concern for the victim and the victim's whanau. While the

redress and restitution available would be defined according to each offence, the agreed whanau would have the right to contribute to its determination in any particular case. The end result would be a settlement and sanction that would not necessarily be any more harsh or lenient than those imposed by the Pakeha system, although the method of its imposition and fulfillment by the defendant would clearly be different.

If the method and underlying philosophy of disposition differed between Maori and Pakeha systems, the substantive law to be interpreted would reflect the fact that Maori concepts of criminal wrongdoing do not differ greatly from those of the Pakeha. Indeed, the different Maori and Pakeha processes could actually administer a common criminal code if it was developed through meaningful Maori participation, and if it incorporated or adapted the particular notions of wrongdoing which are contrary to Maori law and Maori ideas of social order. This commonality could even conceivably extend to the shared use of police resources and the processing and presentation of charges by perhaps a runanga kaiawhina attached to the independent prosecutor's office.

These few brief suggestions synthesised from the korero of many Maori people indicate not just the range of available possibilities, but the very real practical difficulties involved in a parallel Maori system of criminal justice. It is clear that the years of cultural deprivation imposed upon the Maori have taken their toll and it would be impossible and unrealistic for the Maori community to seek a process tied solely to traditional pre-Pakeha concepts. However it is not impossible or unrealistic to develop a new system which could recaste many of those ancient attitudes and processes to meet the contingencies of today. While that development does pose difficulties, resources and time will ensure their realisation. Time would also be needed for Maori people to overcome the insecurity of assimilation and recognise the validity and worth of processes developed within their own culture. That assimilation, plus a recognition of the value in some Pakeha legal concepts, makes it inevitable that some notions of Pakeha justice would be part of the process, although they also would need to be adapted within a Maori perspective.

The key cultural and philosophical issue in the need for a parallel Maori system was the need for Maori people to be able to assert their own rangatiratanga and their own control over the consequences of wrongdoing by their young. That need is part of the indigenous

rights of a tangata whenua to make their own decisions in a way that is relevant to them. It is a rejection of the monoculturalism which has tried to turn Maori into non-Maori, and which always assumed that Pakeha models were suitable and appropriate to them. Indeed, if the idea of tangata whenua status, and the guarantee of rangatiratanga in the Treaty is to have meaning, it follows that Maori-based judicial structures are a natural development of the rights implicit in those concepts. The need for research and development to establish such a structure is long term; the need for commitment to its validity is immediate.

DRAWING THE THREADS TOGETHER - THE STORY HAS BEEN TOLD

These then are the thoughts and perspectives on why so many Maori become involved in crime, what happens to them when they do, and what can be done to break the pattern of confinement and hurt. They make up a story which for many Maori people was sad in the telling, angry in the explanation, and frustrating in the expectation of little positive response. They illustrate the links between the cultural suppression of the past and the cultural denigration of the present. They show that the realities of cultural dismissal and the diminished self esteem of the Maori offender are part of the same process of deprivation. All are linked.

> *"I te mutunga ko tiaho mai te maramatanga.*
> *And now at the end may the light of understanding shine forth."*

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APPENDIX ONE

Hui were held at many venues and with many groups. Discussion and advice was also sought from individuals, many of whom also contributed at the hui. The consultation process took place in the form and at the venue chosen by the iwi, hapu, or other group involved. Some hui were small gatherings held in private homes, others were large group meetings held on marae or at various public venues.

This Appendix lists the venues and the groups and specific individuals consulted, as well as the courts observed.

Akina Activity Centre, Hastings
Akuhata-Brown, Joe, kaumatua
Anderson, Hemi, Prison Officer
Auckland District Maori Council
Auckland Maori Health Advisory Council
Auckland Maori Lawyers' Group
Arohanui Residents, Auckland

Bennett, Sir John, kaumatua
Bradbrook, Olivia, JP
Brotherhood of Jah, Tai Rawhiti
Brown, Judge Michael

Chadwick, John Te Manihera, Solicitor
Chapman, Dickson, Youth Worker
Cotter, Hana, kuia
Children and Young Persons' Courts, Auckland, Rotorua, Wanganui
Cooper, Rob, Te Runanga whakawhanaunga i nga Hahi

Department of Social Welfare, Porirua (staff), Mangere (public hui)
Dewes, Koro, kaumatua
District Courts - Wellington, Hastings, Napier, Gisborne, Rotorua
Hamilton, Auckland, Henderson, Otahuhu, North Shore, Whangarei, Kaikohe, Wanganui, New Plymouth, Nelson, Christchurch
Durie, Chief Judge Edward

Eru, Ken, Probation Officer
Eruera, Hemi, Youth Worker

Fordlands Community Centre, Rotorua

Group Employment Scheme (GELS) staff and clients, Wellington, Dunedin
Gisborne District Court (Maori staff)
Gisborne Education Centre (Maori staff)
Goodall, Dr Maarire

Hall, Donna, Solicitor
Harris, Rei, President Black Power
Hinerupe Marae
Hoani Waititi Marae
Huata, Canon Wi, kaumatua

Junior Mongrels, Heretaunga

Kaa, Herewini, Department of Social Welfare Coordinator
Kaikohe Memorial Hall
Kaikohe Youth Group
Kaitaia Community Centre
Kaitaia Mangu Kaha
Kaitaia, Wi, Probation Officer
Karaitiana, Kuku, Solicitor
Kaumatua Council, Whanganui-a-Tara
Keefe, Paki, kuia
Kokiri - Te Rahuitanga (Otara); Seaview; Hastings, Bell Block

Leaf, Helen, Community Worker

McGregor, James, kaumatua
McLeod, Eruera, Community Worker

Mahuika, Apirana, Te Runanga o Ngati Porou
Mahuta, Bob, Tainui Trust Board
Maori Affairs Department, District Offices, Hastings (public hui)
Wanganui, New Plymouth, Ruatoria, Rotorua
Maori Law Students, Wellington
Maori Women's Welfare League (National Executive)
Maraeroa Marae
Marsden, Rev Maori, kaumatua
Mason, Judge Ken
Mataatua Marae
Matahiwi Marae
Matarawa Trust
Matua Whangai Roopu - Wellington, Porirua, Carterton, Hastings,
Napier, Whangarei, Christchurch
Mead, Professor Hirini
Mihiroa Marae
Mohi, Charles Tohara, kaumatua
Morehu o te whareherehere, Bay of Plenty

New Zealand Maori Council
Nga Hau e Wha Marae (Kaimahi)
Nga Kaimahi a Toa, Tauranga
Nga Kaiwhakamarama I Nga Ture (Maori Legal service)
Nga tauira Whakairo, Porirua
Ngaia, Ben, Prison Officer
Ngarimu, Tuta, Spokesperson Mongrel Mob
Nga Toa Awhina Rununga
Nga Tokowaru Marae
Nga Whare Watea, Mangere

O'Regan, Tipene, Kai Tahu Trust Board

Paerata, John, Probation Officer
Pihema, Taotahi, Department of Social Welfare Coordinator

Porangahau kaumatua
Porowini Marae
Prisoners' Aid and Rehabilitation Society (PARS) - Gisborne, Hawkes Bay
Probation, District Offices, Wellington, Hastings, Napier, Gisborne,
New Plymouth, Christchurch
Pukaki Marae
Puriri, Adam, kaumatua

Rangihau, John, kaumatua
Rangitauira, Rawiri, Solicitor
Raglan Resource Centre
Rastafarian Brothers, Upper Hutt
Rehua Marae
Rickard, Eva, kuia
Robin, Ruruhia, kuia
Rotorua Youth Resource Centre
Runanga a Nga Kaimahi a Tamaki Makaurau

Sharples, Dr Peter
Smith, Eru, kaumatua
Stewart, Bruce, Tapu Te Ranga Marae

Tahuparae, John, Martial Arts Instructor
Takapau Rangatahi
Takarangi, Graeme, Solicitor
Tamahori, Canon John, kaumatua
Tangiora, John, kaumatua
Taraia Marae
Taranaki House, Department of Social Welfare Training Centre, Auckland
Taranaki Mauri Foundation
Tautoko Trust, Gisborne
Te Ara Hou (ALAC)
Te Arawa Maori Trust Board
Te Aute College
Te Hono ki Rarotonga Marae
Te Huia, Mihiroa, kuia
Te Kahui Community Base, Wellington
Te Kahui Kaumatua o Kahungunu
Te Kakano o te whanau

Te Maro, Ginger, Coordinator, Paparakau Work Skills Programme
Terenga Paraoa Marae
Te Roopu Awhina (Auckland)
Te Roopu Whanau Wharekahika
Te Rau Aroha Marae
Te Runanganui o Ngati Kahungunu
Te Runanga o Ngati Porou ki Poneke
Te Waka Manaaki Trust
Te Whanau a Noa Marae
Te whanau a Tane (Auckland)
Te Whanau Family Centre, Hastings
Tomoana, Tama, kaumatua
Tuhiwai, Bill, YMCA Maori Officer
Tukino Tangata (Maori Taskforce on Violence)
Tunohopu Marae
Turangawaewae Marae
Tutaki, Tip, kaumatua
Tutengaehe, Hohua, kaumatua

Waahi poukai
Wairarapa Kohanga Support Group
Waitete Rugby Clubrooms (Rangatahi hui)
Waipatu Marae
Waiwhetu Marae
Wainuiomata College
Walden, Peter, NZ Maori Wardens' Association
Walker, Dr Ranginui
Wallace, Zac, Court Worker
Wark, Betty, Youth kaiawhina
Waru, Sonny, kaumatua
Wellington High School
Whare Hui, Carrington Hospital
Winiata, Professor Whatarangi
Witehira, Te Ata, Matarawa Trust

APPENDIX TWO

OFFENDER PROFILE

Total Number of Offenders - 943

Family Status at Time of First Court Appearance

Status	Number	%
Partnered - Marriage/De facto	18	1.9
Single		
Living with one parent alone	322	34.1
Living with both parents	268	28.4
Living with one parent and de facto partner/remarriage	235	24.9
Living with other relative	50	5.3
Living alone/flatting	28	2.9
Living "in care" (DSW/foster home)	22	2.3
Total	943	

Family Status at Time of Most Recent Court Appearance

Status	Number	%
Partnered - Marriage	154	16.3
De facto	238	25.2
Single		
Living with one parent alone	116	12.3
Living with both parents	97	10.2
Living with one parent and de facto /remarriage	62	6.5
Living with relatives	60	6.3
Living alone/flatting	187	19.8
Living "in care" (DSW/foster home)	29	3.00
Total	943	

Offender's Tribal Relationship at First Court Appearance

Relationship	Number	%
Living in tribal area	238	25.2
Living out of tribal area	705	74.7

Offender's Lifetime Tribal Relationship at First Court Appearance

Status	Number	%
Born and stayed in tribal area	96	10.1
Born out of tribal area/returned	142	15
Born in tribal area/moved away	94	9.9
Born and stayed out of tribal area	611	64.7

Offenders' Knowledge of Tribal Identity

Status	Number	%
Knowledge of tribal name	912	96.7
Knowledge of "home" marae	709	75.1
Knowledge of tribal mountain and related significance	367	38.9
Knowledge of founding tribal ancestor	136	14.4
Knowledge of two-generation whakapapa	391	41.4

Offender's Fluency in Maori Language

Degree of fluency	Number	%
Fluent - Maori 1st language	0	0
Restricted fluency - English 1st language limited knowledge of greetings etc	612	64.8
No fluency - English 1st language no knowledge	331	35.1
Total English 1st language	943	

Fluency in Maori Language of Offenders' Parents

	Number	%
One parent fully fluent	150	15.9
Two parents fully fluent	92	9.7
No parents fully fluent	701	74.3

Offenders' Language Priority

Status	Number	%
High priority to learn Maori	407	43.1
Medium priority to learn Maori	284	30.1
Low priority to learn Maori	229	24.2
No desire to learn Maori	23	2.4

Education Status of Offenders

Status	Number	%
Intermediate school (yet to reach secondary)	18	1.9
1 year secondary	41	4.3
2 years secondary	371	39.3
More than 2 but no School Certificate "passes"	407	43.1
More than 2 with some School Certificate "passes"	105	11.1
Tertiary	1	.10
Total	943	

Employment

Occupational status of parent figures for offenders living at home as dependants at time of first court appearance.

Total number living at home as dependants - 847.

Parental status	Number	%
1 parent working	103	12.1
2 parents working	402	47.4
1 parent unemployed	285	33.6
2 parents unemployed	8	.9
1 parent on benefit (sickness/DPB etc)	46	5.4
2 parents on benefit	3	.3
Total	847	

Occupational Status of Offender at Time of First Court Appearance (1957-1987)

Status	Number	%
Primary/intermediate school	54	5.7
Secondary school	289	30.6
Labouring/unskilled	164	17.3
Apprenticeship/skilled	64	6.7
Professional	1	.10
Workscheme	15	1.5
Unemployed	356	37.7
Total	943	

Occupational Status of Offender at Time of Most Recent Court Appearance (1986-87)

Status	Number	%
Primary/intermediate school	18	1.9
Secondary school	144	15.2
Labouring/unskilled	187	19.8
Apprenticeship/skilled	44	4.6
Professional	1	.10
Workscheme	26	2.7
Unemployed	523	55.4
Total	943	

APPENDIX THREE

MAORI ATTITUDES TOWARDS CRIMINAL JUSTICE SYSTEM

Total number surveyed - 2000

Age	Male	Female	Total
15 -24	337	305	642
25 - 34	296	258	554
35 - 44	291	204	495
45 +	147	162	309
Total	1 971	929	2 000

THE POLICE

A - Adequacy - Percent believing police perform adequately in specific operation areas.

1 – Youth Aid Work

	Adequate				Inadequate				Don't Know			
	Male		Female		Male		Female		Male		Female	
Age	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
15 – 24	173	51.33	161	52.78	155	45.99	141	46.22	9	2.67	3	.9
25 – 34	154	52.02	143	55.42	131	44.25	105	40.69	11	3.71	10	3.87
35 – 44	158	54.29	126	61.76	129	44.32	78	38.23	4	1.37	0	–
45 +	93	63.26	97	59.87	54	36.73	65	40.12	0	–	0	–
Total by sex	578	53.96	527	56.72	469	43.79	389	41.87	24	2.24	13	1.39
Combined total	1105 – 55.25%				858 – 42.9%				37 – 1.85%			

2 – Liaison with Maori Community

Age	Adequate				Inadequate				Don't Know			
	Male		Female		Male		Female		Male		Female	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
15 – 24	123	36.49	118	38.68	204	60.53	187	61.31	10	2.9	0	–
25 – 34	103	34.79	94	36.43	193	65.20	164	63.56	0	–	0	–
35 – 44	119	40.89	83	40.68	172	59.10	121	59.31	0	–	0	–
45 +	68	46.25	74	45.67	79	53.74	88	54.32	0	–	0	–
Total by sex	413	38.56	369	39.72	648	60.50	560	60.27	10	.93	0	–
Combined total	782 – 39.1%				1208 – 60.4%				10 – .5%			

3 – Dealing with Minor Offences Fairly or Unfairly in Relation to Maori Offenders

Age	Fair				Unfair				Don't Know			
	Male		Female		Male		Female		Male		Female	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
15 – 24	127	37.68	129	42.29	205	60.83	176	57.70	5	1.4	0	–
25 – 34	94	31.76	103	39.92	202	68.24	155	60.07	0	–	0	–
35 – 44	116	39.86	86	42.15	175	60.13	118	57.84	0	–	0	–
45 +	63	42.85	68	41.97	82	55.78	89	54.93	3	2.04	5	3.08
Total by sex	400	37.34	386	41.55	664	61.98	538	57.91	8	.74	5	.53
Combined total	786 – 39.3%				1202 – 60.1%				13 – .006%			

4 – Dealing with Sexual Assaults Adequately or Inadequately

Age	Adequate				Inadequate				Don't Know			
	Male		Female		Male		Female		Male		Female	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
15 – 24	189	56.08	121	39.67	134	39.76	184	60.32	14	4.15	0	–
25 – 34	174	58.78	76	29.45	122	41.21	182	70.54	0	–	0	–
35 – 44	146	50.17	78	38.23	145	49.82	126	61.76	0	–	0	–
45 +	71	48.29	79	48.76	76	51.70	83	51.23	0	–	0	–
Total by sex	580	54.15	354	38.10	477	44.53	575	61.89	14	1.3	0	–
Combined total	934 – 46.7%				1052 – 52.6%				14 – .7%			

B - Attitudes

Perception of Police Attitudes towards Maori Offenders

Age	Fair				Prejudicial				Don't Know			
	Male		Female		Male		Female		Male		Female	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
15 - 24	95	28.18	113	37.04	226	67.06	192	62.95	16	4.74	0	-
25 - 34	112	37.83	115	44.57	161	54.39	143	55.42	23	7.77	0	-
35 - 44	131	45.01	87	42.64	154	52.92	110	53.92	6	2.06	7	3.43
45 +	62	42.17	67	41.35	76	51.70	84	51.85	9	6.12	11	6.79
Total by sex	400	37.34	382	41.11	617	57.60	529	56.94	54	5.04	18	1.93
Combined total	782 - 39.1%				1146 - 57.3%				72 - 3.6%			

Perception of Team Policing Unit Attitudes towards Maori People

Age	Fair				Prejudicial				Don't Know			
	Male		Female		Male		Female		Male		Female	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
15 - 24	77	22.84	79	25.90	239	70.91	207	67.86	21	6.23	19	6.22
25 - 34	109	36.82	102	35.93	187	63.17	156	60.46	0	-	0	-
35 - 44	128	43.98	84	41.17	163	56.01	114	55.88	0	-	6	2.94
45 +	60	40.81	60	37.03	82	55.78	90	55.55	5	3.40	12	7.00
Total by sex	374	34.92	325	34.98	671	62.65	567	61.03	26	2.42	373	3.98
Combined total	699 - 34.95%				1238 - 61.9%				63 - 3.15%			

C - Responses

Perception that Maori Complaints about Police Behaviour will be Satisfactorily Redressed

Age	Satisfactory Response				Unsatisfactory Response				Don't Know			
	Male		Female		Male		Female		Male		Female	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
15 - 24	91	27.0	76	24.9	222	65.8	208	68.1	24	7.1	21	6.8
25 - 34	107	36.1	98	37.9	178	60.1	160	62.0	11	3.7	0	-
35 - 44	130	44.6	81	39.7	158	54.2	116	56.8	3	1.0	7	3.4
45 +	64	43.5	60	37.0	76	51.7	87	53.7	7	4.7	15	9.2
Total by sex	392	36.6	315	33.9	634	59.1	571	61.4	45	4.2	43	4.6
Combined total	707 - 35.3%				1205 - 60.25%				88 - 4.4%			

THE COURTS

A - Treatment of Maori Defendants

Percent Believing Courts in Criminal Cases Treat Maori Defendants with Understanding and Fairness, or with Insensitivity and Prejudice

Age	Fair				Prejudicial				Don't Know			
	Male		Female		Male		Female		Male		Female	
	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
15 - 24	101	29.9	111	36.3	206	61.1	171	56	30	8.9	23	7.5
25 - 34	125	42.2	110	42.6	163	55.0	137	53.1	8	2.7	11	4.2
35 - 44	132	45.3	103	50.4	149	51.2	101	49.5	10	3.4	0	-
45 +	72	48.9	78	48.1	63	42.8	78	48.1	12	8.1	6	3.7
Total by sex	430	40.14	402	43.2	581	54.2	487	52.4	60	5.6	40	4.3
Combined total	832 - 41.6%				1068 - 53.4%				100 - 5%			

B - Lawyers in Court

Percent believing solicitors treat Maori defendants with understanding and fairness, or with insensitivity and prejudice

	Fair				Prejudicial				Don't Know			
	Male		Female		Male		Female		Male		Female	
Age	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
15 - 24	96	28.4	114	37.3	211	62.6	173	56.7	30	8.9	18	5.9
25 - 34	105	35.4	97	37.5	187	63.1	158	61.2	4	1.3	3	1.1
35 - 44	128	43.9	95	46.5	161	55.3	109	53.4	2	.6	0	-
45 +	76	51.7	77	47.5	68	46.2	80	49.3	3	2	5	3.0
Total by sex	405	37.8	383	41.2	627	58.5	520	55.9	39	3.6	26	2.0
Combined total	788 - 39.4%				1147 - 57.35%				65 - 3.2%			

C - Probation Officers

Percent believing probation officers treat Maori defendants with fairness and understanding or with insensitivity and prejudices.

	Fair				Prejudicial				Don't Know			
	Male		Female		Male		Female		Male		Female	
Age	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
15 - 24	130	38.5	129	42.2	180	53.4	150	49.1	27	8.0	26	8.5
25 - 34	102	34.4	113	43.7	182	61.4	140	54.2	12	4.0	5	1.9
35 - 44	124	42.6	101	49.5	149	51.2	99	48.5	18	6.1	4	1.9
45 +	60	40.8	91	56.1	66	44.8	71	43.8	21	14.2	0	-
Total by sex	416	38.8	434	46.7	577	53.8	460	49.5	78	7.2	35	3.7
Combined total	850 - 42.5%				1037 - 51.8%				113 - 5.6%			

D - The Jury System

Percent believing that the present jury system ensures a fair trial for Maori defendants.

	Fair				Prejudicial				Don't Know			
	Male		Female		Male		Female		Male		Female	
Age	No.	%	No.	%	No.	%	No.	%	No.	%	No.	%
15 - 24	132	39.1	130	42.6	183	54.3	150	49.1	22	6.5	25	8.1
25 - 34	100	33.7	111	43.0	187	63.1	143	55.4	9	3.0	4	1.5
35 - 44	120	41.2	102	50.0	154	52.9	100	49.0	17	5.8	2	.9
45 +	68	46.2	88	54.3	67	45.5	69	42.5	12	8.1	5	3.0
Total sex	420	39.2	431	46.8	591	55.1	462	49.7	60	5.6	36	3.8
Combined total	851 - 42.5%				1053 - 52.6%				96 - 4.8%			

DEPARTMENT OF JUSTICE

Just Released

Volume One, Issue 7, November 1988

A summary of:

The Maori and the Criminal Justice System

A New Perspective: He Whaipaanga Hou Part 2

Background

The project was commissioned by the Department of Justice in its search for some explanation for the over involvement of young Maori in the criminal justice system.

The aim of the project is to outline Maori perspectives on the reasons for Maori offending and the way in which the institutions of the justice system respond to that offending. It endeavours to fulfill that aim within the context of three main research ideals -

(a) to clearly facilitate a valid explanation of Maori offending from a Maori point of view;

(b) to use a Maori research perspective to consider structural, social, and cultural factors within New Zealand society that may lead to criminal offending by young Maori men;

(c) to elicit perspectives on the relationship between the Maori and the criminal justice process, and to ascertain what influence the operations of the process may have on the rate of Maori conviction and imprisonment.

The process or methodology by which this was achieved consisted of three clear stages.

Research

Many Maori people have long felt that the research into issues such as criminal offending has been inadequate and inaccurate. Basically this feeling exists because the research has been almost exclusively undertaken by Pakeha and conducted in a way which has ignored Maori concepts of analysis. In essence the research failed to recognise "... that the interpretation of Maori data must be perceived in Maori terms, not forced into preconceived Pakeha methodologies".

Stage one attempted to establish the inadequacy of those methodologies and to establish the appropriate Maori process.

The basis of that process is called "whakawhitiwhiti whakaaro", the sharing of thoughts, and develops from discussion and consultation. However it is consultation of a particular kind in that it is subject to approval by the particular groups involved; to acceptance by them of the researcher's credentials (Maori - more so than Pakeha); and to monitoring of the consultation and consequently analysis by accepted pakeke.

Stage one of this project (early to mid 1986) was devoted to setting up the appropriate process of consultation and monitoring, and to briefly outlining it in the introductory report.

The actual consultation process began with meetings with members of the researcher's iwi in Ngati Kahungunu and Ngati Porou. As a result of these meetings the first hui was organised for kaumatua and kuia at Mihiroa marae.

The purpose of this hui, and all subsequent meetings, was to elicit the views of a wide-ranging cross-section of Maori society on the topics being researched. The hui were held in many venues - marae, kokiri centres, government offices, sports clubs, gang headquarters, schools and private homes. Meetings were also held with judges, probation, and court staff.

The process was spread over 14 months and eventually involved korero with over 5000 Maori people.

The third stage involved drawing the threads of a Maori perspective from the information basis and writing the actual report.

It also involved continued korero with pakeke and kaumatua for feedback and monitoring of the synthesis and writing process. Indeed the referral to pakeke for support and guidance was considered to be an integral part of the research.

Findings

The completed report is based on four beliefs which seemed to underlie all the discussions -

(1) that the "causes" of criminal offending by Maori men cannot be addressed in isolation from the cultural, social and economic pressures which shape the place of the Maori community today;

(2) that those pressures can only be understood by examining the historical interaction between the Maori and Pakeha which has created them;

(3) that those pressures have also affected the attitudes and operations of the criminal justice system which must therefore also be analysed as part of any attempt to understand the rate of Maori criminal offending;

(4) that any attempts to address the "causes" of offending or to remedy shortcomings in the criminal justice system must be based on the particular status of the Maori as tangata whenua and the rights guaranteed them under the Treaty of Waitangi.

The expression and explanation of these beliefs is advanced in the four main sections of the report.

General Historical Background

The report suggests that in order to understand the "causes" of Maori offending, and then understand how the criminal justice system deals with them, it is necessary to establish the origins of both the pressures which lead to crime, and the philosophies which underlie the justice process.

From a Maori perspective, this is best done by seeking those origins in the history of change brought about in Maori society by the arrival of the Pakeha. Section one places this change in the particular context of the interaction between the Pakeha law and Maori society.

The report argues that the legal dismissal or denigration of Maori language, religion, law, and authority was the key process which led to the cultural and economic deprivation of the Maori. Within the cycle of this deprivation the report suggests that the "causes" of criminal offending lie.

The Offender-based Explanation of Offending

The consequences of this cycle of deprivation have been to establish certain realities of Maori life in which one can discern certain "correlates" of offending.

These have been identified as offender-based explanations of offending and are drawn from five places in the Maori scheme of things -

(1) The place of the Maori community.

(2) The place of the Maori family.

(3) The place of Maori young.

(4) The place of Maori peace of mind.

(5) The place of instruments of influence.

Within each of these "places" an assessment is made of such factors as unemployment, socio-economic status, education, the media, alcohol, language loss, and legal and political issues which Maori people believe have shaped their environment and that of the young offender.

The System-based Explanations Of Offending

When young Maori respond to their place in the scheme of things through criminal behaviour they become subject to the operations of the criminal justice system.

It is a clear Maori belief that because the system is shaped by the same attitudes and processes which defined the place of the Maori offender, its operations and philosophies need to be analysed in any consideration of offending.

Each step in the criminal justice process is therefore studied as part of a system-based analysis of factors which might contribute to the recorded rate of Maori offending through bias or cultural insensitivity.

Features within the Police, Probation, Courts, and Department of Justice which are regarded by Maori people as being unfair or institutionally racist are researched and placed within the holistic framework of factors which shape Maori offending.

The analysis of each step in the system is based on the experiences and perspectives elicited from Maori people in the consultation process.

Conclusion

The offender and system-based factors identified by Maori people need to be addressed on several fronts if the problem of criminal offending is to be adequately addressed.

The final section of the report outlines a series of possible responses and strategies which could alleviate the cultural/economic stresses of the offender-based factors, and the institutional racism of the system-based operations. Such strategies are both short and long-term and address issues such as the promotion of Maori language, education, unemployment, control of alcohol outlets, male violence, media attitudes, parenting skills and the operational bases of the justice system.

As well as outlining proposed strategies, section four also presents what Maori people regard as the philosophical and constitutional justification for the responses - the indigenous rights which they retain and the Treaty obligations which they share with the Crown.

The Maori perspective of these rights means that the suggested responses are seen as being more than recommendations from a consultative process - they are often seen as being a necessary consequence of historic breaches of various rights. Thus, for example, the response that Maori defendants should have the option of trial by an all-Maori jury is based on the 1868 precedent of Maori juries and the perception that Article Two of the Treaty encompasses such a precedent.

The report is essentially a synthesis of the thoughts and perspectives on why so many Maori become involved in crime, what happens to them when they do, and what can be done to break the pattern of confinement and hurt. It makes up a story which for many Maori people was sad in the telling, angry in the explanation, and frustrating in the expectation of little positive response.