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**Conferencing, Indigenisation and Orientalism: A Critical Commentary on
Recent State Responses to Indigenous Offending**

Keynote: Wed. eve

Conferencing, Indigenisation and Orientalism: A Critical Commentary on Recent State Responses to Indigenous Offending

Colonisation is always lethal to the colonised

Oliver (1995)

Introduction

The contents of this paper are motivated by the author's concern at the almost complete absence of a critical Indigenous voice in discourses and literature related to the expanding Restorative Justice and Conferencing industry. The absence of this voice has enabled both the industry and neo-colonial states that sponsor their activities to:

- appropriate Maori (and other indigenous peoples) justice philosophies and practices;
- utilise and present these practices inappropriately; and
- utilise Indigenous justice practices to further the expansion of the industry; resulting in negative consequences for First Nations who desire to develop and implement their own forums.

First Nations must begin to challenge the way indigenous peoples and their justice practices are represented by the restorative justice industry and state officials, in order to counter the negative impact the activities highlighted above, are having on our justice aspirations. This paper should be viewed as part of the call for a First Nation challenge to the appropriation of our justice philosophies and practices.

I will begin my critique by reviewing recent developments in New Zealand, with a particular focus on Family Group Conferencing. The paper will end with an attempt to explain the popularity of conferencing among neo-colonial jurisdictions, utilising Blagg's concept of *Orientalism*.

The New Zealand Situation

The criminal justice landscape in New Zealand has changed significantly in recent times as a result of the introduction of initiatives developed in direct response to Maori 'over-representation' in the criminal justice system. The initiatives (listed below) were developed with one, or more, of the following 'outcomes' in mind:

- i) reduce Maori offending;
- ii) make the system more 'responsive' to Maori offenders, victims and their families; and
- iii) increase the 'positive participation' of Maori in the criminal justice system.

The table below lists some of the significant programmes developed over the past fifteen years (in terms of resource and impact):

State responses to Maori over-representation

Research and Legislation	Corrections	Policing	Courts	Youth Jurisdiction
Review of S19 Criminal Justice Act	Treaty of Waitangi Strategy	Maori Responsiveness Strategy	Adult Diversion Pilots	Intensive youth rehabilitation programmes
CYF Act 1989	Maori Focus Units	Tribal Liaison Officers	Restorative Justice Pilots	Family Group Conferencing
Maori women's access to justice	Maori Cultural Programmes (Tikanga)	Maori recruitment drives	Maori Court Officers	Cultural programmes in youth units

Despite Government rhetoric, the initiatives have largely been ineffective in decreasing Maori offending, or increasing Maori jurisdictional autonomy.

There are a number of factors that help to explain why these programmes have been ineffective. These include:

- i) minimal Maori input into programme design and implementation;
- ii) over-reliance on non-indigenous theorising and research on criminality;
- iii) inadequate resourcing of the programmes; and
- iv) a politically motivated reluctance to look at the wider historical, social, economic, political and systemic causes of Indigenous offending.

In order to understand both the extent of Maori concerns for their relationship with the criminal justice ordering and contemporary state initiatives to alleviate the high levels of Maori offending, we must first discuss the development of contemporary government 'Maori policy'.

Explaining Recent Innovations in New Zealand's Criminal Justice System

In the early 1970s, Maori - spurred on by the ethnicisation of other indigenous peoples and influenced by the development of radical new social movements and ideologies that proliferated in the late 1960s - began to vocalise their discontent with government policy and practice using a more radical voice than had previously been the case. The confrontational tactics and hostile rhetoric employed by members of a growing, youthful Maori protest movement, differed greatly from the patient and tempered approach that characterised their dealings with the state over the previous 70 years (Tauri, 1996b).

The central doctrine of the radicals' message was a belief in the innate right of Maori autonomy or *tino rangatiratanga* (sovereignty), and Maori control of 'all things Maori' (Poata-Smith, 1996). On the whole, Maori aspirations at this time, both radical and conservative, focused on the "protection and preservation of cultural identity, removal of barriers to social equality, procurement of a sustainable economic base of self-sufficiency, and revision of formal status with the state" (Fieras and Elliot, 1992: 177-178).

In the early 1970s, partly in response to burgeoning Maori activism, the New Zealand government reacted by emulating the multicultural policies and rhetoric of some of its Pacific neighbours, primarily Australia (Pearson, 1996b). Social policy reforms, particularly in the areas of social welfare, education and Maori affairs, were developed that emphasised the importance of cultural diversity, acceptance of 'difference' (but not too different), and the equalisation of socio-economic indicators via 'equal opportunity' programs (Pearson, 1996a).

Beginning in 1978 and increasing dramatically after the election of a Labour Government in 1984, Government officials, policy-makers, and departments began to promote themselves as bicultural entities. Projects and initiatives implemented at that time emphasised the biculturalisation of the state sector. Examples include:

- the employment of departmental 'Maori advisors';
- the establishment of Cultural Advisory, Maori Perspective or 'Partnership Response' units by various government departments (including Inland Revenue and Social Welfare);
- the adoption by departments of a Maori name (which was then displayed on buildings and official documentation),
- the organisation of in-house 'cultural sensitivity' training sessions, and
- Treaty of Waitangi awareness seminars.

The State's bicultural project entailed the co-option of Maori traditional beliefs and values and the employment of symbolic and practical aspects of Maori culture in order to first; enhance Maori identity and self-esteem; second, to improve 'cultural understanding' and third, to facilitate the biculturalisation of departmental corporate image. In effect, this process brought about the rationalisation of Maori tradition within which it was broken down and utilised in departmental practice to enable the state sector to signify its commitment to biculturalism and, thereby, to Maoridom (see Sissons, 1990: 15-16).

The utilisation of Maori symbols and cultural practices by the state is not confined to contemporary government *image-politics*. The colonisation of indigenous life-worlds was, and is, an integral part of the colonial process wherever it took place. We might best describe the State-sponsored bicultural project that has characterised ethnic relations in New Zealand over the past twenty years, as signalling a continuation of the colonial process in this country. Sissons (1990: 17-18) for example, argues that biculturalisation of the State, both in its institutional practices and indigenous policy, has furthered the colonisation of the 'Maori life-world'. This program involves two interrelated processes: firstly, the *bureaucratic rationalisation* of Maori social relations in order to further the administrative ends of the State and secondly, the *instrumentalising* of Maori cultural meaning, values and traditions in order to legitimise the increased administration of Maoridom.

Bureaucratic rationalisation refers to the programs put in place to ensure the integration and reproduction of the labour force. With the downturn in the economy, the rise in Maori unemployment, continuing poor housing and low educational attainment, the state was increasingly seen to intervene bureaucratically in Maori social life. This continued penetration of State norms, programs and procedures into the Maori life-world coincides with an increased need for State legitimation. This need for legitimation is facilitated through the *instrumentalisation* process of symbol-utilisation, "hence Maori cultural meanings, symbols, traditions and identity are increasingly instrumentalised as bureaucratic resources" (ibid., 18).

The New Zealand Governments' use of co-opting strategies such as symbol-utilisation, are common reactions of modern settler-states to the radical politicisation of indigenous populations. Pearson (1988), applying the work of Mann, argues that while modern capitalist states such as New Zealand, are 'infrastructurally strong' they are, in contrast, 'despotically weak'. The result of this state of affairs is that modern liberal democracies rely heavily on policies of co-option and devolution to maintain hegemony.

By the early 1980s biculturalisation of State institutional practice and the accompanying program of symbol-utilisation of the Maori life-world, had become central elements of the State's indigenous policy. Poata-Smith (1997:176) describes the situation as follows:

"the fourth Labour Government (1984-1990) attempted to appease the rising level of Maori protest in two major ways. The first involved extending the jurisdiction of the Waitangi Tribunal retrospectively to 1840 and the second involved *adopting the policy of 'biculturalism'*, which was based on the selective incorporation of Maori cultural symbolism within the institutions of the state" (emphasis added).

However, analysis of policy and practice initiatives on the part of the government since

1978 shows that many of the changes made under the biculturalisation program have done little to empower Maori, nor satisfy their demands for the fair allocation of resources some believe are guaranteed them under the terms of the Treaty of Waitangi. It is the biculturalisation of the criminal justice system, most notably that which has taken place in the youth jurisdiction, to which our attention now turns.

Biculturalising Criminal Justice in New Zealand

One major area of government practice that has received much criticism by Maori since the 1970s, has been the criminal justice system. Maori concerns over their relationship with the criminal justice system were expressed by kaumatua (elders) attending the 1984 Maori Economic Summit in Taupo, and were highlighted in the 1984 Department of Social Welfare report, 'Daybreak', which called for more culturally appropriate ways of dealing with Maori juvenile offenders. Perhaps the most significant and controversial critique to date however, is Moana Jackson's 1988 report, *Maori and the Criminal Justice System: He Whaipaanga Hou*.

Jackson's report, commissioned by the then Department of Justice, represented the first large-scale empirical study of the relationship between Maori and the criminal justice system. The report articulated a number of significant criticisms of the justice system, including; its focusing of criminal responsibility upon the individual rather than on the community or whanau (extended family); the adversarial nature of the Pakeha (European) system, which prohibits the restoration of both individual self-worth and communal harmony; the institutionally racist nature of the current system, reflected in both its refusal to acknowledge Maori conflict resolution practices and philosophies; and the way in which criminal justice agencies prejudiciously apply discretionary powers (Jackson, 1988). Therefore, for Maori to achieve justice they must have their own system, one that is not only based on tikanga Maori (values and practices) but also one that Maori themselves control.

Official reaction to Jackson's report was primarily dismissive. Justice officials at the time, including the then Minister of Justice, Geoffrey Palmer, rejected Jackson's ideas as akin to apartheid (Patterson, 1992) and described the notion of Maori judicial autonomy as "absolutely intolerable" (Jackson, 1992:173). However, in line with the ongoing bicultural project that was transforming the face of State service-delivery at the time, the Government also signalled a willingness to compromise, and to look at ways of ensuring the criminal justice system reflected the state's growing symbolic and ideological commitment to biculturalism.

Over the fifteen years since the release of *He Whaipaanga Hou*, the New Zealand Government has implemented a number of initiatives that enabled the extension of the biculturalisation project into the criminal justice arena (see table on page 3). As expected, these responses have fallen well short of allowing Maori the significant measure of jurisdictional autonomy that many believe is their right under the various terms of the Treaty signed in 1840 (see Jackson, 1995; Wickliffe, 1995). Instead they include an assortment of programs, often poorly funded and supported by central Government. Some, including those that utilise tikanga Maori and others that merely employ various cultural symbols, appear to signal a continuation of the New Zealand State's historic co-option of Maori justice rather than an honest attempt at empowering Maori within the realm of criminal justice (Tauri, 1998).

The strategies that have been implemented and trialled, mirror - both conceptually and practically - the biculturalisation of government over the past fourteen years. Formal justice programs and initiatives have included the introduction of enhanced police diversion procedures and successful proposals to Parole Boards to allow Maori

prisoners to be released to their communities, the development of Maori Focus Units in prisons (4 to date); the indigenisation of the justice sector, signified by Maori and Pacific Island recruitment drives; biculturalisation of institutional image via the adoption of Departmental 'Maori' names, stylised letter-head; 'cultural sensitivity exercises', such as marae visits, and preliminary courses in te reo Maori (Maori language) for State sector employees. The Government has also commissioned a number of reports on the relationship between its various justice institutions and their Maori 'clients', including the MRL studies of attitudes towards policing (1993; 1995), the Ministry of Maori Development NZ Police joint-report 'Maori and Police Perceptions of Each Other' (2000) and Jackson's 1988 report for the then Department of Justice.

It is in the area of juvenile justice, however, that the most extensive and wide reaching developments have occurred. In 1989 the then Labour Government and its Social Welfare Department, introduced the *Family Group Conferencing* process with the passing of the *1989 Children, Young Persons, and Their Families Act*. The Act was influenced in part by criticisms of the prevalence of institutional racism and culturally inappropriate practices within the New Zealand criminal justice system, most notably by Moana Jackson (1988), and by the need to be seen to be 'doing something constructive' in the realm of juvenile justice (Tauri, 1998).

Family Group Conferencing: Indigenous Empowerment or Biculturalisation?

Advocates of family group conferencing in New Zealand have heralded this forum as indicating both the ability and willingness of the current justice system, to meet the special needs of this country's various ethnic minorities, particularly Maori (see Olsen, Maxwell and Morris, 1995). Whether the family group conferencing process provides Maori with a culturally appropriate avenue for addressing their justice needs, or simply signals a continuation of the State's willingness to utilise the symbols and practices of Maoridom, in its ongoing program of biculturalisation, is the question we now consider.

The family group conferencing process has been heralded as a revolution in the way New Zealand deals with juvenile offending, in particular for its reliance on forums for dispute resolution other than the Juvenile Court (see Hassall, 1996). The process also has been depicted as a successful attempt by the state to *culturally sensitise* New Zealand's juvenile justice process. Olsen, Morris and Maxwell (1995), for example, argue that the family group conferencing legislation was heavily influenced by traditional Maori justice practices. We are informed that family group conferencing is designed to heal the damage caused by an offender's behaviour, restore harmony between those affected by their behaviour, encourage the participation of those who have a direct interest in either the offender or the offence (Maxwell and Morris, 1993), empower the victim, and positively 'reintegrate' the offender back into the community (LaPrairie, 1995; Stewart, 1996).

And yet, when we compare the aims of family group conferencing with what little empirical research has been completed on the forum to date, we begin to comprehend how it might be argued that family group conferencing represents little more than an extension of the State's biculturalisation project into the arena of criminal justice. We begin to understand that the conferencing forum has done little to adequately address criticisms made by some Maori, of the justice system itself (see Jackson, 1988; Ministerial Advisory Comm., 1986; Tauri, 1998).

Empirical research on New Zealand family group conference forum fails to confirm that it empowers the indigenous population, particularly in relation to two key areas of concern for Maori; firstly, the cultural appropriateness of the conferencing forum; and secondly, deprofessionalisation and the exclusion of 'Maori cultural expertise'.

Cultural Appropriateness of New Zealand Conferencing

In terms of the 'cultural appropriateness' of the forum, Maxwell and Morris' 1993 research relates that the majority of Maori family group conferences are dealt with in Department of Social Welfare offices or facilities; with only five percent held on *marae* (Maori meeting house or area). This situation exists despite the continued importance of *marae* to contemporary Maori communities, and despite Maori criticisms of the precedence given to 'Government dominated sites' when dealing with Maori offending (see Jackson, 1988 and Tauri, 1998). This limited use of culturally appropriate sites continues, despite arguments by advocates of family group conferencing that one of the main aims of the 1989 Act is to encourage cultural sensitivity within juvenile justice practice (see Olsen, Maxwell and Morris, 1995).

Deprofessionalisation and the Exclusion of Maori Cultural Expertise

One of the main criticisms levelled by Maori at current justice practices is the authority given to those defined as justice experts within the European system; namely lawyers, social workers, and police officers (see Jackson, 1988 and Morris and Tauri, 1995). According to Jackson (1990), the empowerment of European justice experts in comparison to Maori further perpetuates the situation whereby Maori justice practices and philosophies are under-utilised and maligned in comparison to European knowledge and expertise. It is interesting, therefore, to find research by Maxwell and Morris (1993) that showed that social workers were present at sixty-two percent of all family group conferences evaluated.

This large percentage is all the more telling when we note that the 1989 *Children, Young Persons and Their Families Act* severely restricts their right to attend (only where the youth is in the care of the Director General of the Department of Social Welfare). Given these problems associated with cultural inappropriateness and the disempowerment of Maori 'cultural experts', we must conclude that the conferencing process has failed thus far to provide Maori with the opportunity to be much more than the passive subjects of an imposed criminal justice system. Perhaps this should come as no surprise; it was after-all, constructed during the height of the New Zealand State's biculturalisation project. Furthermore, the family group conferencing process is perhaps *the* primary example of symbol-utilisation of the Maori life-world in the arena of criminal justice in this country.

The co-option and utilisation of both symbols and practices associated with Maori justice are not contemporary phenomena. Both Pratt (1991, 1992) and Ward (1995) have shown that while the formal silencing of Maori justice was deemed an important and necessary element of the colonial project throughout the 19th century, the State continued to give limited recognition to Maori justice in various pieces of legislation passed between 1850 and 1945. In the end, however, the limited legislative recognition of their customary law practices allowed Maori little jurisdictional autonomy and, according to Pratt (1996) and Tauri (1996b), were largely indicative of the assimilationist agenda of Government Maori policy at that time.

We can view the family group conferencing forum then, as a continuation of the co-optive strategies that have epitomised the colonial attitude toward Maori justice since 1840. Indeed, the conferencing process represents precisely the type of 'twist' in judicial policy and practice one might expect as the State moves away from an openly assimilationist policy agenda towards one directed at the biculturalisation of Government 'corporate identity'.

Critiquing Symbol-Utilisation and Biculturalisation in Criminal Justice

For some Maori, the initiatives considered thus far are inadequate for addressing the problem of Maori over-representation. Maori criticisms centre on two arguments. The first is that the initiatives represent a piece-meal approach to the recognition of the validity of Maori justice practice and are formulated on the continuing assumption that the present system of justice is, whilst flawed, 'the best we have', requiring only minor tinkering for it to become *culturally appropriate* (Tauri, 1998). The second is that the recent trend in both the adult and juvenile jurisdictions for 'recognising' Maori rights to deal with their own, represents a continuation of the historical strategy of co-opting Maori justice for the purpose of legitimising the imposed justice ordering of the State (Jackson, 1995; Tauri, 1996b). These Maori concerns are similar to criticisms made of the indigenisation program undertaken in various Canadian jurisdictions throughout the 1970s and 1980s.

The criticisms of the Canadian indigenisation program fall into three broad categories, the first of which concerns the token nature of the indigenisation process. A number of commentators on the Canadian context (most notably Griffiths, 1988; Havemann, 1988; Harding, 1991; Landau, 1996; and McNamara, 1992) argue that indigenisation serves as an inexpensive and politically expedient strategy that allows the Government to be seen to be 'doing something' about the indigenous crime problem, without significantly altering State control of the justice portfolio. Secondly, linked to this area of concern is the charge that indigenisation is based not on the empowerment of indigenous peoples, but instead on co-opting their justice philosophies and practices within forums that are controlled by the State (Tauri, 1998). A third concern is that indigenisation continues the colonial process by furthering the judicial disempowerment of indigenous peoples. Finkler (1990), for example, argues that the Canadian indigenisation program of the 1980s did not adequately answer First-Nation calls for either a significant measure of jurisdictional autonomy, or the much broader issue of self-determination. Instead, indigenisation furthered the State's control of Indigenous use of culturally appropriate justice mechanisms.

These criticisms have also been made in reference to the biculturalisation of criminal justice in New Zealand. As the Maori-inspired justice initiatives discussed previously were developed from within an overarching state-sponsored biculturalisation project, we might perhaps more accurately describe them as representing our own *era of indigenisation*, rather than signifying an honest attempt at indigenous empowerment (Tauri, 1998).

Overall, both the New Zealand and Canadian biculturalisation/indigenisation programs, involved no substantial criticisms of the criminal justice system but rather, reflected a monoculturalist ideology that underlines the inherent correctness of the imposed European justice ordering. Jackson (1988: 206) underlines this criticism when he summarises the weaknesses of the New Zealand biculturalisation program:

"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 'cultural appropriation', which appear to satisfy the theory but certainly not the reality of biculturalism"

Certainly, it would appear that a major obstacle to the formulation of constructive, pro-

Aboriginal initiatives in both Canada and New Zealand, lies in the inability of the criminal justice system to look beyond itself and its underlying principles for answers to indigenous over-representation, apart that is, from the co-optive utilisation of their justice practices.

The problems associated with both biculturalisation and indigenisation, such as tokenism, co-option (of both indigenous peoples and their justice practices) and the continuation of the colonial process, cannot be overstated. Both the Canadian indigenisation and New Zealand biculturalisation programs have little to do with indigenous self-determination or empowerment. Some might contend that this argument ignores both the level and context of indigenous participation in Government programs, which may also involve them playing an important role in program formulation. Without wishing to undervalue indigenous agency in relation to either their acceptance of, or involvement in these programs, we must recognise the level of fiscal and 'bureaucratic' control the neo-colonial state maintains over the types of incorporationist justice strategies under discussion here.

For example, strategies designed to alleviate the biased operation of the criminal justice system in neo-colonial jurisdictions have traditionally been implemented to 'protect' indigenes, rather than to empower them. Thus McNamara (1995:2) writes of the Canadian situation that:

"for more than 20 years actual and proposed reforms to police, courts and prisons have been advanced on the basis that the system was in need of a bit of an overhaul rather than anything in the way of fundamental changes to its basic structure and underlying principles".

Furthermore, Harding (1991:370), describing Native constable programs in Canada, argues that they:

"were not fundamentally concerned with reducing incarceration rates of Aboriginal people, though the supporters of the program would likely prefer this to happen. If it did not however, the program would not have been seen to have failed. Social control, not self-determination, was the main concern".

In the New Zealand context, both Jackson (1988, 1990, and 1995) and Tauri (1998) have highlighted Maori disquiet with the co-optive and piecemeal nature of similar approaches developed here in New Zealand. Jackson (1995:34) highlights Maori concerns when he argues that:

"[j]ustice for Maori does not mean the attempted grafting of Maori processes upon a system that retains the authority to determine the extent, applicability, and validity of the processes. No matter how well intentioned and sincere such efforts, it is respectfully suggested that they will merely maintain the co-option and redefinition of Maori values and authority which underpins so much of the colonial will to control. A 'cultural justice system' controlled by the Crown is *another colonising artefact*" (emphasis added).

Similarly, Sissons (1990:18) underlines the disempowering nature of the State's employment of Maori cultural practices in its efforts to construct a bicultural image when he argues that:

"...there is a world of difference between the staging of hui [meetings] as an integral part of a life-world and the institutional use of hui as strategic displays affirming a commitment to biculturalism. In the former case the hui's meaning and value are taken for granted as organically linked to kinship, traditions, language, leadership, gender relations and a whole range of beliefs concerning life and death. In the latter case – the strategic use of hui – meaning and legitimacy are, in a sense, *parasitically derived*" (emphasis added).

One conclusion that can be drawn from the comments made by those writing on both the Canadian indigenisation and New Zealand biculturalisation experiments, is that indigenous peoples are not satisfied with their justice practices merely being 'recognised'. Disempowerment will continue if there is no significant measure of jurisdictional autonomy included in programs developed to deal with the problem of indigenous over-representation in the criminal justice system. Merely tinkering with the existing criminal justice system through such initiatives as recruiting more indigenous police and corrections workers, or implementing conferencing forums that recognise indigenous justice philosophies and practices while controlling their application, address neither the justice requirements of Indigenes nor their criticisms of the imposed mono-cultural justice systems under which they live (Griffiths and Belleau, 1995; Tauri, 1996b).

The Future of Justice in New Zealand: Indigenous Empowerment or More of the Same?

The barriers that continue to face those Maori advocating for control of the offending of their own, is reflected in the fact that New Zealand is a society in which the colonial process is continuing. It is inaccurate in many respects, to portray New Zealand as a country that is moving into an era of 'post-colonialism'. Perhaps a more accurate description of New Zealand society at present is of one in which the forms and practices of colonialism survive internally, embedded in governmental systems and structures "which regulate the relations between their initial 'settler' and subsequent migrant populations and their First peoples" (Bennett and Blundell, 1995:1). Despite the ideological rhetoric developing in settler-societies such as Australia, Canada and New Zealand that they are currently in the throes of a process of decolonisation, we see evidence to the contrary illustrated in the fragmented and co-optive initiatives that have characterised attempts to control the problem of indigenous over-representation in criminal justice statistics.

For some Maori the initiatives discussed here, including family group conferencing, are inadequate for addressing the problem of Maori over-representation (see Jackson, 1995; Tauri, 1998; Walker, 1990 and Wickliffe, 1995). One possible solution in New Zealand is to return to Moana Jackson's recommendation for the development of a Maori justice system. However, the future development of a justice forum that allows Maori a significant measure of jurisdictional autonomy, looks unlikely at present. The possibility for either a separate or parallel system of justice for Maori being created, would require a fundamental shift in the current government stance in relation to the issue of tino rangatiratanga (sovereignty) and also the underlying philosophies that legitimise current justice practices. As discussed earlier, the New Zealand State has, historically, shown itself reticent in allowing its indigenous population any significant measure of jurisdictional autonomy. We are not alone in this respect, for as Keon-Cohen (quoted in McNamara, 1992:584) argues in comparing native justice in Australia, Canada and the USA: "there remains a deeply ingrained reluctance in all three countries to cut the Gordian knot and allow separate, parallel native justice systems to develop", and so it is in New Zealand also.

The slowing down of the biculturalisation project would also appear to be unlikely at this stage. The New Zealand Governments' attempts to silence Maori activism, in particular its symbol-utilisation of the Maori life-world in the 1970s and 1980s have largely failed. Despite the biculturalisation project, or perhaps because of it, the 1990s and early 21st century witnessed a significant upsurge in Maori protest activity. Incidents of Maori protest and resistance to Government Treaty and overall Maori policy have increased significantly, including the occupation of Moutoa Gardens in 1995, the attempted chain-sawing of the pine tree on Auckland's One Tree Hill in 1994 and angry protests at the 1995, 2001 and 2004 Waitangi Day celebrations, among others. Of this upsurge in Maori protest Poata-Smith (1996:110) writes "these actions have been a long time in the making and reflect the growing anger, frustration and desperation at the lack of real options available to Maori for the resolution of their grievances". Nor, it appears, has there been a significant decrease over the last ten years of Maori dissatisfaction with the workings of the criminal justice system.

In July 1998 a three day hui was held in Wellington entitled *The Maori and the Criminal Justice System: Ten Years On*. The purpose of the hui was to evaluate both the current Maori relationship with the State's justice system, and the various governmental projects that have been implemented in the previous decade, ostensibly to alleviate the problem of Maori over-representation. In the main the majority of Maori presenters, many of whom are, or were at one time, justice practitioners (Social Workers, Prison Officers, Probation Officers, Youth Workers and Lawyers), condemned the government for its lack of attention to the problem and for the inappropriate nature of the initiatives it has implemented in recent times. A number of speakers voiced their frustration at the fact that ten years after publication of Jackson's report, the government had done little to alter the disempowering relationship between the criminal justice system and Maori. In the end, many were calling once again for Maori to establish their own systems of justice and to deal with their own offenders in ways *they* define as appropriate (Nga Kaiwhakamarama I Nga Ture, 1999). Therefore, while the State has not moved over the past decade in its position regarding Maori autonomy in the realm of justice, nor have many Maori significantly altered their view that the current 'way of doing justice' is both culturally inappropriate and disempowering for their people.

Exporting Conferencing: The Restorative Justice Industry and the Disempowerment of First Nations

It is also important that traditional decision-making processes are not repackaged by white professionals and presented to families as an innovative new practice, only serving to reinforce experiences of colonial superiority

Steve Jackson (1998)

Of late, New Zealand's family group conferencing forum has gained immense popularity in neo-colonial jurisdictions, such as Canada, the United States and Australia. This situation is heavily influenced by the arguments and representations from the restorative justice industry that were surveyed earlier in this paper. Namely, that family group conferencing provides a forum that empowers Maori, and signals the ability of the imposed criminal justice ordering to *culturally sensitise* itself and effectively *utilise* indigenous justice philosophies and practices (see Olsen, Maxwell and Morris, 1995; Maxwell and Morris, 1993 Consedine, 1995 and LaPrairie, 1995).

In response to these arguments I have countered that the family group conferencing forum signifies the *indigenisation* of New Zealand's criminal justice system. And,

rather than signifying the ability of our justice system to culturally sensitise itself, family group conferencing highlights the willingness of the state to disempower Maori by employing their justice processes while denying them a significant measure of jurisdictional autonomy.

In 1998 I was motivated to write on the issue of the appropriation of Maori justice, and the indigenisation of New Zealand's justice system, when I read a paper published in *Justice as Healing*. Many of you would have read Gloria Lee's excellent work *The Newest Old Gem: Family Group Conferencing* (1997). In this paper, Lee expressed strong concerns for the fact that the imported family group conferencing forum was being forced upon Canadian First Nations at the expense of their own justice mechanisms and practices. Lee (1997:1) argued that "...First Nation communities are vigorously encouraged to adopt and implement the Maori process and to make alterations to fit the specific community needs, customs and traditions of people who will make use of the new process".

Lee's statement of concern was both powerful and, as the fullness of time has shown, accurate. Almost seven years since the publication of that article, it appears to me, as an outsider that many Canadian First Nations are still struggling to gain support for the implementation of their own interventions and systems. Having faced a sustained period of colonisation, during which they had to struggle against continuous assaults on their cultural frameworks, including their systems of justice, they are now facing a new threat in the form of the global restorative justice industry's developing relationship with the neo-colonial state. The expansion of this industry should be viewed as part of the neo-colonial states re-colonisation of our justice systems, and our response should reflect this fact.

At this point, I return to the central case study of my paper, Family Group Conferencing. It is necessary for us to attempt to explain why the forum is so popular in neo-colonial jurisdictions, and why I am arguing that it represents a threat to First Nations in jurisdictions outside of New Zealand.

In order to explain what is happening across neo-colonial jurisdictions, I want to utilise the work of Harry Blagg (1997), or more accurately, his use of Edward Said's concept of *Orientalism*.

In 1997 Blagg wrote that he was struck by the degree to which the literature on family group conferencing, particularly the way in which Maori justice was represented, approximated what Edward Said calls *Orientalism*. Orientalist discourses are powerful acts of representation that permit Western/European cultures to contain, homogenise and consume 'other' cultures. It is through these techniques of representation that we identify what is essentially 'knowable' about these 'other' cultures: and our knowledge of them becomes a kind of cultural capital, the accumulation of which serves to reinforce non-indigenous beliefs in cultural superiority. Orientalist discourses represent the way European hegemony was secured over indigenous peoples, not just by terror and repression alone but by the formation of systems of knowledge which essentialises indigenous cultures and represented them within a series of stereotypes; for example, exotic, savage, timeless, lazy and uncivilised, to name but a few.

Orientalist discourses have the capacity to 'essentialise' other cultures and denude them of their indigenous histories. The discourses established by New Zealand, Australian and Canadian appropriations of Maori justice, in the form of family group conferencing, are Orientalist in a number of ways:

First, it imposes a westernised interpretation of Maori justice practice, denuding the process of its history, context and internal structures of meaning and 'representing' it as simply a regional, albeit exotic, variation on a universal theme (i.e. one model of a shaming ceremony).

Secondly, as previously described, the family group conferencing process (as set out in the 1989 legislation) reflects the appropriation of certain aspects of Maori justice that are palatable to the formal system. In turn it has been erroneously presented as underlining the ability of the system to respectfully 'accommodate' indigenous practices and empower Maori.

Thirdly, and importantly for other Indigenes, the Orientalist underpinnings of family group conferencing are highlighted in the popularity it has gained in neo-colonial jurisdictions. It is in keeping with an Orientalist appropriation to assume that "because the conferencing format reflects aspects of one indigenous culture, then it is somehow readily transportable to other indigenous cultures" (Blagg, 1997:487).

There is a tendency to assume that because these 'other' cultures, Australian Aboriginal and some Canadian First Nations, manifest similar mechanisms for ensuring adherence to accepted standards of behaviour; that family group conferencing is therefore an acceptable forum for any and all Indigenous peoples. The underlying Orientalist assumption is this: 'family group conferencing is based on Maori culture and Maori are an indigenous people; Australian Aboriginal and Canadian First Nations are indigenous, therefore the forum must be appropriate for all Indigenes'.

It is this statement and its underlying Orientalist assumptions about First Nations that highlight the concerns expressed by people such as Gloria Lee. What we are seeing now are Canadian First Nations and Australian Aboriginal clans, having to fight for recognition of their own cultural philosophies and practices in the face of the expanding restorative justice industry, and the popularity of its 'indigenous inspired conferencing forums'. The irony should not be lost on indigenous peoples: the practices of Maori are being bastardised, and knowingly or unknowingly, used to disempower First Nations cross a number of jurisdictions.

In the end, neither Federal nor Provincial governments in Canada or any other neo-colonial jurisdiction, should imagine that just because family group conferencing is *supposedly* based on indigenous (re: Maori) justice processes, that it is therefore appropriate for Indigenes residing in their borders. What they need to be doing is allowing First Nations the space to develop their own solutions.

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