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Māori Involvement in State Care 1950-1999

Chapter 3: Differential treatment

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# Chapter ThreeDifferential Treatment

He harahara wai ngā kanohi. The eyes overflow with tears.[[1]](#footnote-2)

## Summary

Differential treatment is a powerful traumatising mechanism linked to structural racism and the enduring colonising environment, resulting in intergenerational harms for whānau. This chapter builds on evidence presented in Chapter 2 to emphasise the differential and racist treatment of the settler State Care system towards tamariki Māori, whānau and communities (1950-1999) (p. 167).

The analysis demonstrates the extent and interrelatedness of structural, institutional and societal racism with a particular emphasis on the failing state systems of social welfare, adoption, fostering, schooling, youth justice and policing. (p. 167).

There was differential treatment towards pēpi, tamariki and whānau Māori within adoption practices. Adoption practices of the 1960s indicate that social workers treated the adoption of Māori babies and children differently, because non-white children were ‘undesirable’ and harder to place (p. 168).

Māori who wished to adopt were severely disadvantaged by the Court system, as they were often unable to afford court costs and/or legal representation. Applications made by whānau to legally adopt relations in a legal whāngai capacity were rejected on the basis of wealth and age. Whānau were often discriminated against by magistrates who viewed Pākehā upbringing as far superior (p. 168).

Throughout the 1960s social workers found it harder to find adoptive homes for any child considered different. Most adopters were of Pākehā descent and were reluctant to adopt brown children due to concerns of social stigma and shame. This created a ‘catch 22’ situation whereby government agencies and the courts were at an impasse. The courts at the time used legislation to prevent whānau from adopting children because a Māori upbringing was considered inferior. However, Māori babies were harder to place for adoption because Pākehā parents were reluctant to raise a brown child (p. 169).

Māori babies were placed at the lower end of desirability by social workers and were more often adopted by less desirable applicants. Agencies cut corners that disproportionately positioned tamariki in Pākehā families that social workers knew were less acceptable. These Pākehā families were known by the department to have issues of concern. Hence, they were placed at the bottom of the list for adoption approval but were more likely to be approved if they agreed to adopt a non-white child (p. 169).

There were differing standards for approval and payment for Māori and non-Māori foster homes. Māori foster homes were judged more harshly, Pākehā foster homes were considered superior, and therefore Māori foster parents received a lesser rate of payment (p. 170).

Māori children were particularly over-represented in national institutions administered by the Department that were intended for ’more difficult’ children who could not be placed in foster care (p. 170).

The issue of whānau deprivation became more obvious from the findings of a series of research reports from the 1960s – 1980s. While Māori were noted as over-represented in juvenile offending statistics, there were clear links with poverty, educational underachievement and poorer income levels (p. 171).

There is evidence of differential in the justice system. Historic explanations of higher Māori offending rates and imprisonment have consistently blamed Māori, and not the settler state mechanisms that administered European law. Literature and research analysis has highlighted that State Care systems, underpinned by the unrelenting belief in Pākehā supremacy, were racist. Socio-economic explanations aside, the data substantiates that inequitable treatment has been a characteristic of Māori engagement with the courts, police, and welfare (p. 176).

Research demonstrates that Māori conviction rates were higher compared to Pākehā (in the 1960s) and were directly associated with the lack of legal representation for Māori (p.175).

Data collected from the Children’s Court indicated that tamariki and/or rangatahi did not fare any better than adults, illustrated by their over-representation processed by the justice system (p. 175).

Tamariki Māori faced institutional racism and inequities within the judicial process as they were treated differently to non-Māori (p. 177).

Research clearly demonstrates that institutional racism within the Department of Social Welfare, the Ministry of Justice, and the New Zealand Police Service has contributed to the over-representation of Māori in State Care (p. 177).

Evidence of differential treatment can also be seen in negative and damaging stereotypes. Since the 1950s, there has been concern about the stereotypical portrayal of Māori as criminal (p. 179).

Racial stereotyping was used in the reporting of crime (p. 178).

Racialisation of crime and differential treatment towards Māori have been an intrinsic component of policing since the beginning of the settler state. Policing has endured as a colonial tool to coerce Māori into submission by force. This trend of police targeting of tamariki Māori has continued throughout the 1950s, 1960s and beyond. The differential treatment incurred during this period is likely to have directly influenced contemporary rates of Māori imprisonment and offending (p. 181).

Research indicates the philosophical foundations of the 1974 Children and Young Persons (CYP) Act has contributed to the disproportionate intrusion into the lives of tamariki, whānau, hapū and iwi (p ). There is clear evidence that the State Care system has failed to care and protect tamariki (p. 187).

## Introduction

Differential treatment is a powerful traumatising mechanism linked to structural racism and the enduring colonising environment, resulting in intergenerational harms for whānau. As youth offending statistics presented in the previous section illustrates, from the 1950s onwards there was an increased focus on child delinquency (Dalley, 1998). In particular, ‘links between family structure and delinquency were looked for and found’ (Dalley, 1998, p. 216). According to the settler state, the structure of whānau child rearing was backward, uncivilised and unsafe for pēpi and tamariki Māori, compared to that of the Pākehā (Labrum, 2002; Mirfin-Veitch & Conder, 2017; Stanley, 2016). Through urbanisation, increasing numbers of whānau moved into towns and cities seeking employment and better living conditions.

Research analysis highlighted the different ways that whānau were discriminated against, experiencing lower educational achievement and higher rates of unemployment, substandard housing, poverty, ill-health and incarceration than their Pākehā peers. Between the late 1960s and early 1970s unemployment rose dramatically, and larger numbers of children came to the attention of Child Welfare (Stanley, 2016). Child Welfare policy and services developed ‘a punitive edge’, particularly through the late 1970s and into the 1980s, as government policies of ‘individual responsibility’ took hold (Stanley, 2016, p. 31). Struggling whānau, particularly unmarried wāhine, faced further economic hardship and scrutiny. This in turn had a domino or cascading effect (Reid et al., 2017) as ever-increasing numbers of tamariki Māori became ensnared in the widening ‘welfare-justice net’ and were institutionalised in State Care facilities (Stanley, 2016, p. 34).

This chapter builds on evidence presented in other chapters that highlight the enduring, traumatising impact of colonisation and structural racism and the extent to which tamariki Māori and vulnerable adults were over-represented in the settler State Care system. In particular, this chapter presents evidence of the differential and racist treatment of the settler State Care system towards tamariki Māori, whānau and communities (1950-1999). The analysis emphasises the extent and interrelatedness of structural, institutional and societal racism with a particular emphasis on the failing state systems of social welfare, adoption, fostering, schooling, youth justice and policing.

## Differential treatment: Structural and societal racism and adoption practices

As highlighted in earlier sections, the focus of the Child Welfare Division during the 1950s and 1960s was often related to dealing with child delinquency. The family structure and home life of children was scrutinized, with increased concern for children ‘deprived of a normal home life’ (Dalley, 1998, p. 216). Deprived children included illegitimate children who were placed for adoption. Unwed mothers in Pākehā society at this time were often viewed as ‘fallen women’ and unable to provide the right type of moral upbringing (Dalley, 1998).

The proportion of children born to unwed mothers grew throughout the 1960s and 1970s. Dalley (1998) notes that whānau customary marriage influenced the numbers of pēpi Māori the state viewed as illegitimate. Dalley argues that prior to the mid-1960s the Child Welfare Division followed ‘a separate policy towards Māori single mothers’, considering it ‘impractical’ to notify ‘Māori ex-nuptial births in rural communities’ (1998, p. 220). She argues that throughout the 1960s the Child Welfare Division often stressed the ‘importance of Maori responsibility for Maori welfare’ emphasising that wahine with children ‘should look to their whanau networks for support’ (p. 220). However, Dalley also notes a disinclination on the part of the Division ‘to assist Maori communities’ (p. 220), although she does not elaborate further. In urban areas, inquiries into Māori ex-nuptial births were certainly part of the Division’s responsibility. Yet state assistance was only available ‘if a Maori woman were living ‘more or less’ as a Pakeha or would receive no other assistance if she registered her child as a Maori (p. 221). There was often reluctance by single women to request state assistance as this meant increased scrutiny, discriminating judgement and removal of children (Dalley, 1998).

Although the exact figure is unknown, evidence suggests that a significant proportion of closed adoptions involved children who could claim Māori whakapapa through at least one of their birth parents (Else, 1991; Griffith, 1998; Haenga-Collins,

2011; Perkins, 2009). O’Neill (1976) asserts that throughout the 1950s and 1960s the degree of ‘Māoriness’ exhibited by a child was the only official statistic recorded, regardless of post-marital or pre- marital status.

## Structural racism and social attitudes separated tamariki from whānau

It is well documented that unwed mothers from the 1950s onwards faced intense social scrutiny to marry the father or give their baby up for adoption. Nonetheless, Pākehā women pregnant to Māori men faced considerable pressure not to marry the father (Haenga-Collins, 2011). Rather than suffer through the racial and social stigma as an unwed woman with a brown baby, Pākehā mothers increasingly gave their Māori babies up for adoption. Moreover, they often omitted the name of Māori fathers on birth certificates (Else, 1991).

The Common Law considered that an illegitimate child was a child of no one, with neither legal guardians nor parents. This meant that when a child was placed for adoption, the father and his whānau had no recognised legal interest under European law (Haenga-Collins, 2011).

Research indicates that this was not coincidental. As highlighted in Chapter 1, settler state social policies were formulated to assist with assimilating and integrating Māori into Pākehā culture. By extension, the attitudes underpinning adoption practices functioned to racially and structurally exclude Māori from participating in the adoption process.

In essence, the social attitudes and settler state policies operated to prevent whānau from raising their relations as they would have otherwise under tikanga.

Else (1991) records instances of whānau actively pursuing the adoption of related tamariki facing racial prejudice in the form of structural racism (Else, cited in Haenga-Collins 2011). Dalley (1998) also emphasises the differential and complicated treatment of adoptions involving whānau.

A tangle of restrictions surrounded Maori adoption until 1955: if both parents and the child were Maori, the adoption case would be heard in the Maori Land Court under the 1909 legislation; if the adopting parents were Pakeha and the child Maori, the Infants Act applied; a Maori/Pakeha couple could adopt a Maori child, but the case would be heard in the magistrate’s court; Maori parents could not adopt Pakeha children. The sex of the child added further to the complexity: a Pakeha husband and Maori wife could only adopt a male Pakeha child, and a Maori husband and Pakeha wife a female child. A subtext of racially-based anxieties about intermarriage and the inheritance of property loomed large in these regulations (Dalley, 1998, pp 233-234).

Haenga-Collins (2011) states that Māori were severely disadvantaged by the court system, as they were often unable to afford court costs and/or legal representation. Most pertinently however, whānau were discriminated against by the magistrates who viewed Pākehā upbringing as far superior to that of Māori whānau. Applications made by whānau to legally adopt their relations in a legal whāngai capacity were rejected on the basis of wealth and age (Haenga-Collins, 2011). Haenga-Collins cites Durie in support of this claim, stating:

Social workers put a lot of blocks on grandparents adopting grandchildren . . . it [was] not written into statute at all, just a working policy adopted by social workers . . . not too many [Māori] met the [income] test (cited in Haenga-Collins, 2011; Personal communication, January 20, 2011).

Research into the adoption practices of the 1960s indicates that social workers treated the adoption of Māori babies and children differently, because non-white children were ‘undesirable’ and harder to place (Else, 1991; Haenga-Collins, 2011). ‘Undesirability’ within this context was measured first and foremost by race and appearance, with Māori features, dark skin, and heritage being the most undesirable attributes of a child (Else, 1991). Societal and institutional racism was fuelled by the belief in the superiority of Pākehā nuclear families.

Social workers also adopted practices of colour matching parents to children to better assist acceptability (Else, 1991). This ‘colour matching’ created a hierarchy in which pēpi and tamariki Māori who appeared more European were more likely to be adopted than those who possessed darker skin. Else reports that, though they [social workers] saw all mixed-race children as difficult to place, the degree of ‘darkness’ counted too, because some Pākehā couples said they would accept children who were light enough or whose non-European ancestry did not show (Else, 1991, p. 74).

As time progressed throughout the 1960s social workers found it more and more difficult to find an adoptive home for any child considered slightly ‘different’ (Else, 2019). Most adopters were of Pākehā descent, and likely to be reluctant to adopt brown children (Else, 2019) due to concerns of social stigma and shame. This created a ‘catch 22’ situation whereby government agencies and the courts were at an impasse. The courts at the time used legislation to prevent whānau from adopting children because a Māori upbringing was considered inferior compared with a European upbringing. However, Māori babies were harder to place for adoption because Pākehā parents were reluctant to raise a brown child.

Because Māori babies were placed at the lower end of desirability by social workers, they were more often adopted by less desirable applicants (Else, 1991). In essence, agencies cut corners that disproportionately positioned tamariki in Pākehā families that social workers knew were ‘less than ideal’ (Else, 1991; Haenga-Collins, 2011). According to Haenga-Collins (2011) Pākehā families who may not have readily been accepted as adoptive parents were approved on the grounds that they would take a non-white child, as these children were harder to place. These Pākehā families were known by the department to have issues of concern. Hence, they were placed at the bottom of the list for adoption approval. However, they were more likely to be approved if they agreed to adopt a non-white child.

This practice operated as a traumatising mechanism (Reid et al., 2017), whereby tamariki were forcefully assimilated into Pākehā society and denied the truth of their existence. In addition, assimilative adoptions added to the collective trauma experienced by whānau in being disconnected from tamariki. Moreover, the racial undertones of matching adoption applicants and children functioned to provide double-standards of State Care and protection.

## Differential treatment: Foster homes for and by Māori

Research analysis highlights the differing standards that existed for approval and payment for Māori and non-Māori foster homes. Dalley (1998) notes that a significant challenge facing the Child Welfare Division was the ‘appropriate’ fostering of tamariki Māori. While there were ‘frequent’ Division complaints about the lack of suitable foster homes for tamariki Māori, Dalley highlights that Child Welfare officers applied differential standards of approval or disapproval.

In 1957, for example, Lorna Hodder visited Mrs Whakaneke’s New Plymouth foster home, where she found the children to be well cared for. Their sleeping arrangements were not up to ‘European standards’, however, as the children shared beds. She suggested that in future Mrs Whakaneke receive less than the full board rate (Dalley, 1998, p. 238).

Tamariki Māori who were unable to be placed with ‘appropriate’ adoptive parents or in ‘suitable’ foster homes were likely committed to a State Care institution (Dalley, 1998). Our analysis has demonstrated that under the guardianship of the Director-General of Social Welfare, tamariki Māori were over-represented in various care settings of the Department. Māori children were especially over-represented in the national institutions administered by the Department that were intended for ‘more difficult’ children who could not be placed in foster care (Mackay, 1988; Parker 2006b, 2006c). At the same time, when the Intensive Foster Care Scheme (IFCS) was initiated for more ‘difficult’ children to provide them with an enhanced form of care by better trained foster parents, the conclusion by social workers was that ‘this type of fostering was not generally suitable for Māori or Polynesian children, as it was primarily a middle-class Pākehā scheme’ (MacKay et al., 1983, p. 132).

## Social disadvantage and offending outcomes

The issue of whānau deprivation became more obvious from the findings of a series of research reports from the 1960s – 1980s (Fergusson, Donnell & Slater, 1975; Fergusson, Fifield & Donnell, 1980; Hunn, 1961). While Māori were noted as over-represented in juvenile offending statistics, there were clear links with poverty, educational underachievement and poorer income levels.

For example, the cohort study of boys born in 1957 showed that 72% of all Children’s Court appearances in 1973 by the cohort sample were related to theft, burglary or conversion offences (Fergusson et al., 1975). The analysis indicated that the risk of juvenile offending was linked to both race and socio-economic status (based on the boy’s parent occupation). While the risk of non-European children offending remained higher than for children of European descent, it was found that as socio- economic status decreased, the risk of a child offending increased. The highest offending rates were found for Māori in the lowest socio-economic status category (defined by authors as ‘most disadvantaged’ position) and the lowest incidence of offending was recorded among children of European descent of high socio-economic position (defined as ‘most advantaged’ position). However, in the highest socio-economic status category defined as ‘Professional Workers’ (as parent occupation), there were no Māori boys compared with 4.3% of the European boys of European descent. This suggests that Māori offending was associated with their socio-economic position.

“…I remember saying to one of the old ones (social worker), ‘How did you place kids with all these caregivers?’ I was returning them back to family, and he said to me, ‘…back in the day, we just looked at a home and if it looked beautiful and flash and it was Pākehā we’d go up and say, ‘Do you want to have a Māori baby? Do you want to be a caregiver?’, I was like ‘Oh my God’.”

- Māori social worker

Fergusson et al., (1975) recommended policies to improve the socio-economic status of the non- European population to reduce both juvenile offending and the racial differences in official offending statistics (reduction of offending possible by 8-12% with changes in SES in the current findings).

Inspired by previous studies exploring links between the high incidence of offending by Māori and their disadvantaged socio-economic position (e.g. Fergusson et al., 1975; Jensen, 1971), Fifield and Donnell’s (1980) research, based on official statistics and trends between Māori and non-Māori groups examined the stability of this association over time searching for evidence to corroborate the commonly held belief at the time that Māori had ‘advanced in relative socio-economic standing’ (1980, p. 2).

Along with trends in incidence of offending, as discussed in the previous chapter, Fifield and Donnell (1980) examined the trends in socio- economic status indicators for Māori and non- Māori over three census periods: 1966, 1971 and 1976. The wide range of indicators included: educational attainment (including highest form reached and highest qualification by school leavers), educational qualifications of the labour force, incomes, occupational status, unemployment, home ownership (including occupants per dwelling) and health (including infant mortality, and death rates). Their comparisons revealed ‘a significant disparity between Māori and non-Māori achievement in terms of all the types of information included’ (1980, p. 47) and in some areas, such as educational qualifications, Māori were relatively more disadvantaged in 1976 than they had been in 1966 (10 years before).

The conclusions by Fifield and Donnell (1980) concurred with those of Fergusson et al. (1975) that ‘improvements in the relative socio-economic position of Maoris might contribute to a reduction in Maori offending’ (p. 51). Furthermore, high ethnic disparity in social statistics and Māori deprivation found in their analysis made the authors argue:

That improvements in Maori socio-economic status are unlikely to lead to a reduction in crime and other social problems unless they are sufficiently large to advance the relative position of Maoris compared to non-Maoris. If the gap in terms of socio-economic status is to close, not only must Maoris advance in absolute terms, but they must advance more rapidly than non- Maoris (Fifield and Donnell, 1980, p. 52).

Later research supported Fifield and Donnell’s conclusions showing clear associations between the socio-economic factors and the incidence of offending by Māori youth (e.g., Fergusson, Horwood & Lynskey, 1993a, 1993b). Mackay (1981) noted the higher overall incidence of guardianship orders for children from lower socio-economic groups and concluded that Māori over-representation amongst children subjected to guardianship orders, may have been partially attributed to their lower socio- economic status in comparison to Pākehā.

According to Williams (2019), since Jack Hunn’s (1961) promotion of the ‘modern way of life’ and his ‘integration’ policies, which encouraged urban migration, Māori economic disadvantage increased, whilst their cultural connections and capabilities decreased. Williams argued:

There was a minority of Māori who ended up at the bottom of the heap in urban locations at that time. They became part of the marginalised and disadvantaged urban poor which is the catchment from which almost all of the prison population is drawn (2019, p.43).

“Researching the justice statistics … you could see the figures staring you in the face of how disproportionate the number of Māori was.”

– Oliver Sutherland, advocate for Māori

The failure of the settler state to address whānau deprivation has continued over time. Socio- economic disparities increased with subsequent neo- liberal policies from the 1980s, exacerbating inter- generational deprivation. Instead of directing efforts to closing socio-economic gaps between Māori and non-Māori, political responses prioritised criminal justice policy changes that favoured more punitive penal outcomes, leading to higher incarceration rates (Williams, 2019). Williams argued:

More work on a nationwide basis needs to be aimed at ameliorating, or indeed abolishing, the conditions of scarcity and deprivation /…/ Far too many young people, though, travel along the pipeline that leads from child poverty to incarceration as young adults and recidivism thereafter (p. 45).

These recommendations are similar to those of previous researchers dating back several decades. Other empirical studies established a strong link between deprivation and child protection system contact and reiterated the policy advice about initiating interventions to address family poverty (Keddell et al., 2019).

Our analysis has highlighted the failure of the settler state to address economic and educational disparities impacting Māori communities. The negligence on the part of the settler state to uphold compelling research evidence and act as a Treaty of Waitangi partner, has continued to negatively impact tamariki and whānau Māori.

### Differential treatment in the justice system

Historic explanations of higher Māori offending rates and imprisonment have consistently blamed Māori, and not the settler state mechanisms that administered European law (ACORD, 1981). Literature and research analysis has highlighted that State Care systems, underpinned by the unrelenting belief in Pākehā supremacy, were racist. Socio- economic explanations aside, the data substantiates that inequitable treatment has been a characteristic of Māori engagement with the courts, police, and welfare.

Within the context of policing and the courts, race was used by Pākehā as an indicator of guilt and grounds for suspicion of an offence (Maxwell & Smith, 1998; Te Whaiti & Roguski, 1998). Indeed, research has uncovered a range of contributing factors to explain why Māori were disadvantaged by the justice system, including culture conflict, low socio-economic standing, urbanisation, and selective processing by state agencies (O’Malley, 1973). Nonetheless, race emerges as an integral component of the treatment of Māori defendants by settler state justice. This injustice fundamentally altered the trajectories of many whānau. Through their involvement with the state, Māori defendants were systematically poised to enter the pipeline into State Care and residential institutions.

Several researchers have demonstrated that Māori, in comparison to Pākehā were treated differently and disadvantaged by the justice system (Jackson, 1988; Jones, 2016; O’Malley, 1973; Sutherland, 2019). Such ethnically inequitable treatment has been identified as having serious consequences (O’Malley, 1973), contributing to Māori over- representation in justice statistics since the 1950s. The previous chapter demonstrated that tamariki and rangatahi Māori were over-represented in penal institutions; either being sentenced to prison, borstal, detention centres, or detained in custody on remand (Department of Justice, 1979; McCreary, 1955; Powles, 1977; Schumacher, 1971; Sutherland, 2019). Māori conviction rates and custodial sentences were disproportionately high, resulting in tamariki and rangatahi Māori being removed from their whānau and placed either in the care of Department of Social Welfare or in penal institutions. The next section highlights how processes and systems influenced adverse outcomes for Māori children.

### Differential treatment in legal representation

As previously noted, Hunn (1961) raised concerns about Māori crime in the 1950s. His report acknowledged a discrepancy in terms of the gap between the population statistics (e.g., Māori comprised about 8% of the population in 1961) and other statistics relating to Māori, such as, arrests (15.9%), convictions (17.8%) and imprisonments (23.3%). He explained this ‘puzzling circumstance’ by stating ‘Maoris often come into Court with no idea how to plead or defend themselves’ and observing that Māori were less likely to be represented by counsel and more likely to plead guilty (p. 34). Workman (2016) argues the Hunn (1961) report ‘failed to develop its insights further and failed to consider the possibility of institutional and personal racism, or the lack of legal representation’ (p.90).

Māori were more likely to appear with a frightened appearance which risked misinterpretation by the court as an indication of guilt and were less likely to appeal a guilty verdict (Jones, 2016). O’Malley (1973) argued that higher Māori conviction rates compared to Pākehā (in the 1960s) were directly associated with the lack of legal representation for Māori. He noted that non-Māori defendants (87%) were represented by qualified counsel in Magistrates’ Courts twice as often as Māori defendants (44%). Explaining the implications of this discrepancy, the author asserted that defendants who are not represented, are more likely to plead guilty, which ‘almost invariably’ leads to conviction (1973, p. 52). According to O’Malley 70% of represented defendants in the Magistrates’ Courts pleaded guilty, compared to 96% of defendants who appeared without counsel. Furthermore, there were ethnic disparities in the type of plea entered by defendants as 84% Māori defendants entered guilty pleas in Magistrates courts compared with 73% of ‘European’. The author concluded that this is ‘tangible evidence that ethnic differences in patterns of legal representation have serious consequences for the relevant crime rates’ (1973, p. 52).

As O’Malley (1973) demonstrated, Māori defendants appearing in the magistrate’s court within this period were more likely to have no legal representation, enter guilty pleas, and be unable to arrange sureties for bail, all of which affected the outcomes of proceedings. According to O’Malley, the right to bail entails two important functions in the administration of justice. Firstly, it gives the bailed defendant the freedom to prepare a defence; and secondly, it reduces likelihood that persons subsequently found not guilty would have been unfairly detained in prison. From the data, we can conclude that Māori appearing before the court were consistently denied those benefits.

Data collected from the Children’s Court indicated that tamariki and/or rangatahi did not fare any better than adults, illustrated by their over-representation processed by the justice system (Sutherland, 2019). Tamariki Māori faced institutional racism and inequities within the judicial process as they were treated differently to non-Māori (ACORD, 1981; Sutherland, 2019). The Children’s Court discriminated against Māori children and young persons, disproportionately sentencing them to borstals and remanding in prisons and police cells. During its operation, the Children’s Court dispensed sentences to children and young person’s ranging from admonishing and discharging the child, to an indeterminate borstal sentencing, of up to two years duration (Sutherland, 2019).

“Our children were treated very different in terms of penalties for offending.”

- Te Inupo Farrar, Māori Mātua Whāngai and DSW social worker

“You’ve got Pākehā decision makers, one way or another, discriminating against Māori young people. There’s no other way to explain the figures. And the question is why does it happen? How does it happen? I used to challenge the police until they wouldn’t talk to me anymore. I challenged the magistrates, they sometimes talked, I challenged the lawyers, … kids just don’t understand what a lawyer can do.”

- Oliver Sutherland, advocate for Māori

Sutherland (2019) maintained that lack of access to legal representation for children in courts, especially for Māori children, contributed to the disproportionate number of convictions of Māori children. He reveals the correspondence between himself as the Nelson Māori Committee secretary and the Minister of Justice on the issue of legal representation of children in court, which shows political reluctance to acknowledge the problem and implement change:

In a letter to the Minister of Justice, Sir Roy Jack, on 20 January 1972, when asked ‘if the onus is not on the magistrate to see that a child is properly represented, then who is it upon? The Child Welfare Officer?’ The Minister replied ‘… while there is no direct responsibility on the Magistrate, the police or a Child Welfare officer to obtain legal representation for persons appearing before the Children’s Courts, they are all concerned that defendants should have every opportunity to be legally represented if they wish’ (Sutherland, 2019, p. 3).

Sutherland (2019) emphasises the deliberate intent within the Minister’s reply to blame Māori children for their lack of legal representation: ‘it was up to the child to arrange his/her own lawyer’ (p. 4). The Nelson Māori Committee continued to advocate for establishment of a national duty solicitor scheme, whilst the Minister continued to endorse the status quo as reported in the media: ‘Implications that

 Maoris appearing before the magistrate’s courts in New Zealand are getting less than justice are incorrect … we have the best of British justice for all’ (Nelson Evening Mail, 1 August 1972, as cited in Sutherland, 2019, p. 4).

After two and a half years of campaigning for a duty solicitor scheme, a change was implemented in 1974, but this only included providing legal advice to defendants and not representation. ACORD responded that the proposal ‘would not remove discrimination from the courts and that it overlooked the particular needs of Māori and other Polynesian children and their parents’ (Sutherland, 2019, p. 4). From Ngā Tamatoa’s perspective the scheme ‘[did] nothing to attack the basic problem of the institutionalised racism which continues to exist in the whole of the judicial system, and which ensures that we remain the jail fodder in this society’ (as cited in Sutherland, 2019, p. 4).

The deliberate inaction by the Minister to recognise and address Māori disadvantage in the settler state judicial system, is further evidence of an enduring colonising, racist environment. This has resulted in considerable intergenerational harms for many whānau Māori.

### Differential treatment: Prejudicial decision-making and cultural ignorance

Research clearly demonstrates that institutional racism within the Department of Social Welfare, the Ministry of Justice, and the New Zealand Police Service has contributed to the over-representation of Māori in State Care. According to the ACORD (1981) report Children in the State Custody, the decision makers during the 1970s and 80s largely represented people of Pākehā descent. In adjudicating Court Processes, magistrates placed significant trust in the opinion of social workers when sentencing children brought before it.

The decision where to remand a child is ultimately made by the magistrate (judge), who is, with one exception, always Pakeha. But he or she invariably seeks advice from the Social Welfare officer and police. The role of the social welfare officer is crucial; it is effectively they who make the decision . . .[T]hey will have considered the stability of the child’s home; who is in charge of the home; is it a ‘good’ home and family; do the parents’ ‘care’; is the child likely to re-offend . . . A whole series or value judgements made by Pakeha welfare officers about children of another culture and from a family background which may embrace very different cultural values and lifestyle . . . We believe that these value judgements are totally without validity. Pakeha social welfare officers have no right and no ability to make these judgements on Maori children and their families (ACORD, 1981, p. 7).

The report suggests that Pākehā social workers, as opposed to magistrates, were the main decision- making authority about whether or not to take a child into custody. Other authors have observed that Child Welfare Officers’ reports compiled under the provision of Child Welfare Act 1925 were subjective and biased, as discussed by Matthews (2002):

Child Welfare Officers, who had the function of reporting to the Courts on individuals and their families, did so in secret. Their reports, unseen by the subjects, were uncontested. Frequently they contained unsubstantiated slurs, along the lines of ‘Mrs Brown is widely known as a drunkard and of low moral character’. Such evidence was sufficient to remove children from their original homes, place them in State Care, and transport them to remote locations where they would be supposedly free of ‘unsavoury’ family influences (p. 121).

Dalley (1998) writes that the 1974 legislation, for the first time, made the social workers’ reports compiled for Magistrates available to the young person and their parents. Dalley quotes a social worker’s comments about the change: ‘we could make all sorts of judgements and comments’ about families, but once parents and their counsel had access to the reports social workers became more cautious in their statements about the social circumstances of clients’ (p. 280).

The 1978 Inquiry into Social Welfare Children’s Homes in Auckland organised by ACORD, Ngā Tamatoa, and Arohanui Inc. included witness statements that emphasised the dissatisfaction of parents whose children were sent to DSW institutions on the basis of social workers’ reports. Examples of how these were described include: ‘the Departmental files are a tissue of lies and fabrication which parents don’t get to see or challenge’ (ACORD, Ngā Tamatoa & Arohanui Inc., 1979, pp. 6-7); ‘these Social Welfare Officers can write anything they like on a file; it doesn’t have to be fact, it’s what they think themselves … things are put on to that file which are not even true, and I feel that this is wrong’ (ACORD, Ngā Tamatoa & Arohanui Inc., 1979, p. 2).

According to Sutherland (2019), social workers were more likely to recommend to the court that tamariki Māori be remanded to prison or police cells, rather than recommending a lesser penalty. As a result, Māori were disproportionately sentenced to prison, borstal, or detention centres. Racism, both interpersonal and institutional, was evident among welfare officers, court officials and court practices during this period (ACORD, 1981).

ACORD (1981) describe decisions made by Pākehā Welfare officers about the likelihood of Māori children reoffending as ‘culturally arrogant’ and ‘completely invalid’ as they were based on judgements about home stability, parental control, and levels of care.

The effects of their cultural arrogance is clear from the figures. Māori children are much more likely to be taken from their families and denied bail than Pakeha children and are grossly over- represented in remands to adult prisons such as Mt. Eden (1981, p. 7).

Time and again we see the racist spectacle of Pakeha probation officers making value judgments on children of another culture. Once magistrates add their own prejudices to those of the probation officers it is not surprising that Maori children are twice as likely to be sent to borstal or detention centre than are Pakeha children (1981, p. 8).

Kōtiro Māori were most harshly affected by value judgements and prejudicial decisions. As previously noted, statistics demonstrate higher rates of custodial sentences of Māori girls than Pākehā girls and Māori boys. Racist attitudes were embedded within the justice system:

All that is wrong with our system of justice is typified by the scene of the middle-aged, middle-class, male, Pakeha magistrate/judge sitting in judgment on a young Maori woman, and deciding that her background, her home and her family are so bad, so worthless, that she should be taken from them and locked up (ACORD, 1981, p. 6).

Racism was also perceptible in the ‘pre-release report prognosis’ of Waipiata borstal trainees by the borstal superintendent between 1962-65. Only 28% of Māori youth as compared to 51% Pākehā youth received a favourable assessment of not committing offences after the release from borstal (Schumacher, 1971).

Cultural ignorance was also evident within the monocultural (i.e., Pākehā) residential institutions. A former staff member at Owairaka Boys Home in 1969 testified for the Inquiry into Social Welfare Homes about Pākehā cultural dominance by staff members:

 About 80% of the kids [in Owairaka] were Maori and Polynesian. The psychologist was recently arrived from the UK, and made ethnocentric, monocultural judgments in his reports, such as mistaking whakamā for sullenness. These reports of his sent children on to other establishments and institutions. … There was a lot of cultural arrogance, and no other cultural identification or positive pride. Maoris were put down and treated with contempt. There was no effort made to treat those children as human beings (ACORD, Ngā Tamatoa & Arohanui Inc., 1979, p. 13).

Conclusions by the panel of the Inquiry into Social Welfare Homes (ACORD, Ngā Tamatoa & Arohanui Inc., 1979, Appendix p. 2) included:

* The administration of the system is mono- cultural (Pākehā) – only 1-5% of the administrative and managerial staff of the institutions are Māori while in most of the homes, Māori and Pacific Islanders comprise about 70-80% of the inmate population. Institution regulations did not cater for any non-Pākehā concept of family or parents.
* A combination of racism and sexism in these institutions is particularly bad for Māori girls. There was only one female Principal in Social Welfare Reception Centre, and no female Principals in any of the Girls Homes.

Evidence demonstrates that from 1950 – 1999 child welfare decisions were developed through monocultural perspectives that privileged Pākehā communities and discriminated against tamariki and whānau Māori.

### Differential treatment: Stereotypical representation of Māori as criminal

The DSW (1973) publication ‘Juvenile Crime in New Zealand’ made the suggestion the high levels of Māori children’s offending was connected to their ‘maoriness’ (ACORD, 1981, p. 15). Māoriness as a concept was connected to a range of racial biases attributed to Māori. One such bias relates to the belief that Māori are congenitally criminal, and that causes of the deficiencies experienced lay intrinsically within tamariki Māori and their upbringing, rather than the colonial institutions that shaped their reality (ACORD, 1981).

Since the 1950s, there has been concern about the stereotypical portrayal of Māori as criminal. Thompson (1953, 1954a, 1954b, 1955) analysed articles about Māori printed in the New Zealand Press from October 1949 to September 1950. The analysis, including 6,000 newspapers across 25 daily and weekly papers, found that the most amount of attention was devoted to Māori crime, sport and accidents. Crime received the highest importance in Māori news reporting, with some newspapers (e.g., N.Z. Truth) devoting almost 75% of its Māori news to crime (Thompson, 1953). Thompson (1954a) remarked how the unfavourable themes appeared ‘hardened into stereotyped form’ (p. 5) and the stories reinforced ‘a common mental picture of supposed Maori characteristics and the belief that as a group, the Maoris are radically different from the Europeans’ (p. 8).

In Thompson’s (1954a) analysis, the overall depicture of Māori affairs in the Press was ‘distorted to a very considerable degree’ (p. 14). For example, one of the recurring unfavourable themes included ‘the Maoris abuse Social Security benefits’ (Thompson, 1954a, p. 3). Thompson’s analysis, however, found no substantiation of these claims.

Although the unfortunate influence of Social Security on the Maori people was reiterated through many leading articles and reported statements, no evidence was brought forward in support of this contention, that is, other than appeals to ‘independent opinion’ or to the fact of it being ‘widely recognized’. Occasionally a Hospital Superintendent would be reported on this issue, but only to state that in his experience there was little difference in behaviour between Maoris and Europeans in regard to Social Security benefits (Thompson, 1954a, p. 13).

 Thompson (1954b) claimed that if events confirmed the negative stereotypes of Māori, they ‘almost certainly’ were reported in the newspaper. Race- labelling was a widespread practice of news reporting in relation to Māori communities. There was frequent use of labels related to ‘half-caste Maori’ and ‘quarter-caste Maori’. Race-labels were ‘almost exclusively’ used for crime reporting, intended to illustrate the prevailing, negative stereotype that Māori were ‘criminals’. Race-labelling was, however, objected to by Māori professionals and newspaper readers: When a Maori committed a crime it was blazoned in the newspapers, but not so with people of other Nationalities’ (Maori vocational guidance officer for Auckland as cited in Thompson, 1954b, p. 217).

In New Zealand when a man who is half-Maori and, say, half-Irish commits a crime he is called a half-caste Maori, even if his name happens to be O'Malley. All the blame is on the Maori and the Irish gets off scot-free. There are good and bad Maoris just as there are good and bad Englishmen. Why persist in incriminating the whole race for the action of an individual? (Letter to Auckland Star, as cited in Thompson, 1954b, p. 220).

In his conclusions, Thompson (1955) highlighted, ‘the practice of race-labelling Maori crime news was widespread, unjustified, and inasmuch as the practice was virtually limited in its use to the Maori people, discriminatory’ (pp. 33-34). Duncan (1972) argued that some twenty years later this bias had not changed as sensational, provocative and emotive headlines and uncritical reporting continued to appear reinforcing negative stereotypes of Polynesian criminality.

Duncan (1972) suggested that a major contributing factor to the disproportionately high crime rate among Polynesians in Aotearoa New Zealand ‘is the readiness of others to believe that racial characteristics identify a criminal category’ (p. 32). He referred to a cyclic interaction between the public, the press, the police and Polynesians, all influencing Polynesian crime rates. In his explanation, Polynesian crime received adverse media publicity that reinforced negative stereotypes held by the public and the police. This increased an expectation of Polynesian criminality that resulted in more severe treatment of Polynesians and detection of their ‘crime’ by police. Duncan emphasised that adverse stereotypes made certain groups more ‘suspicious’, and their racial features tended to make them more visible, so that ‘innocent persons find themselves under constant suspicion, not as a result of their behaviour, but for their racial features and cultural mannerisms’ (p. 39). Duncan’s analysis demonstrated how the presence of negative stereotyping and adverse publicity contributed to more crime being detected and more arrests being made among Polynesians.

Dalley (1998) also noted the dramatic rise of appearances before the children’s court from the mid-1960s. She argued, ‘the rise in the number of court appearances may have been a self-fulfilling prophecy: a belief that juvenile delinquency was out of control may have led the Division to adopt a harsher attitude towards youthful behaviour’ (1998, p. 194). Jackson (1988) highlighted the links between and implications of the reporting of Māori crime and racial stereotyping. He referred to ‘a cyclic process of ‘deviancy amplification’ in which negative stereotypes and perceptions ‘help stimulate policies in a self-fulfilling weave of unfairness’ (p. 121).

### Differential treatment: Rights of children in custody

The 1981 ACORD report on children in custody found that rights and safeguards for the protection of children against arbitrary detention were absent in Aotearoa New Zealand during the 1970s (ACORD, 1981). The authors expressed the debilitating effects of isolating Māori children from whānau via visiting policies, stating: At Owairaka Boys Home, visits from families and friends are not permitted, only parents are allowed, which particularly affects Māori and other Polynesian children, cutting them off from their extended families (ACORD, 1981, p. 5).

At the discretion of the DSW, any child may be held in close confinement in ‘secure’, be denied schooling and be subject to an often degrading regime intended to force them into subservience. This regime was not subject to any statutory regulation and denied children their rights. Racial oppression exists ‘when one racial group holds power and uses that power to subjugate or persecute another racial group’ (ACORD 1981). The mechanisms behind criminal law and justice, during this period, were owned and operated nearly exclusively by Pākehā (ACORD, 1981). From 1950’s onwards children brought before the courts, remanded to prison, and locked up in institutions were predominantly Māori. These children were separated from whānau, deprived of their identity, and institutionalised by the system predominantly because they were Māori. These are examples of differential treatment and institutional racism (ACORD, 1981).

## Institutional police racism

Research analysis demonstrates the New Zealand Police Service is intertwined with the enduring process of colonisation in Aotearoa. Since its inception the service has acted as the agent of oppressive settler laws and social policies that have marginalised Māori communities. As a society, Aotearoa New Zealand has functioned on a presumption that the police conduct themselves in a ‘just’ and moral manner when applying the law. We presume the institution treats people equally regardless of race. However, research demonstrates the settler-colonial, and racist ideologies have been an intrinsic component of policing practices used against Māori communities.

This section examines evidence of systemic failures on the part of the settler state system and the New Zealand Police Service which resulted in tamariki and rangatahi Māori becoming over-represented in justice figures and in State Care. Over four successive decades from 1950-1990 there were widespread, systemic failures underpinned by structural racism that resulted in inadequate protection for tamariki interacting with the justice system. Research suggests that the New Zealand Police Service and courts were instrumental in this context as agents of the settler colonial state. Through a combination of deliberate action and inaction, the police service circumvented legislation enacted for the protection of children and young persons entangled with the justice system (Bromley, 1992; Levine & Wyn, 1991; Morris & Young, 1987).

Institutional racism, which is firmly rooted within Aotearoa’s colonial history, has resulted in tamariki Māori receiving harsher treatment compared to Pākehā children involved with the justice and welfare systems. The statistics illustrate the depths of the racism within the institutions and persons who administered the state’s drive to assimilate and dominate non-Pākehā. The statistics gathered by ACORD from 1967 to 1971 clearly illustrate the degree of racism which existed within the police, welfare, and justice systems which included the racialisation of the crime problem and blaming of Māori. From 1967-1971 the Department of Justice included all non-Māori Polynesians in the Pākehā category (ACORD, 1976). The reasoning and justifications of this are unknown. However, it is highly peculiar given that this artificially diminished the statistical disparities between Pākehā offenders and other ethnic groups.

 Viewed within the context of colonisation the reasoning for skewing the figures becomes apparent. Commentators have documented the ongoing nature of colonial power-control dynamics between the state and indigenous peoples. Part of that dynamic is the maintenance of the state’s position as the bulwark against the downfall of society. Taken further, crime is framed as a racial problem to which the indigenous community is accountable as are the social inequities manifested by the state. In turn, this is used to cement the position of Pākehā within social, political, and economic hierarchies to which the justice and police are actively involved. Racialising crime forms part of the wider strategy of colonialism because it deprives the targeted group of the ability to mobilize politically against the Pākehā occupation of their lands. Thereby maintaining the status quo and the state’s control of resources, territory, and political structures.

## Differential Treatment: Policing

The police force wields powerful discretionary abilities that function as a means to oppress Māori within their homes and communities. As an arm of the state, the police have made an inexcusable and substantial contribution to the over-representation of tamariki Māori in State Care. The institution and its culture have been cultivated to perpetuate strong anti-Māori sentiment among police officers and other police service employees. Data from the 1960s to 1990 strongly supports the contention that the police treated tamariki Māori and whānau differently to non-Māori. Research conducted over that time provides a compelling account of the racial prejudice underpinning government department and agency practices tasked with the care of children, young persons, and their families. Systemic failures of the police, in particular, to treat tamariki and rangatahi Māori equitably under the law, are highlighted by the literature.

Tauri (2005) asserts that Māori experience of prejudiced policing has led to their distrust in the New Zealand Police. Maxwell and Smith (1998) found that from their sample of police officers, at least two thirds had heard other police officers use racist language about suspects or offenders who were Māori; a third were more likely to suspect Māori of an offence; and nearly half believed that police officers were more likely to pull over a flash vehicle if the driver was Māori (Maxell & Smith, 1998; cited in Jones, 2016). Citing Maxwell and Smith (1998) Jones (2016) asserts that prejudicial attitudes were not uncommon among the police that they tended to actively profile offenders to resolve crimes.

Research indicates that ethnic stereotyping has the capacity to reinforce perceptions of ethnicity as a characteristic of offending. By extension, this has led to the over-representation of Māori in the justice system. This is not a coincidence when contextualised within colonisation and racialisation of criminality. Latu and Lucas (2008) state:

Police may be drawn to specific offenders already known to them, producing a cause and effect motion, whereby police become acquainted with particular people and areas by history of offending or offences, which inevitably influences police attentiveness. This may aid in the explanation of why Māori have higher rates of recidivism (Latu & Lucas, 2008, cited in Jones, 2016, p. 15).

Research indicates the police were ill-equipped, inadequately trained, and culturally inept in their practices and this had detrimental impacts for tamariki, whānau, hapū and iwi. ACORD was of the opinion in the 1970s that:

In view of the type of training police officers receive, in view of the diverse and often serious criminal situations with which they must regularly deal, and in view of their overall image, police officers in general cannot and must not be involved in child welfare work. They are in no way specialists in this field and yet it is a task demanding such care, sensitivity and dedication that it must only be undertaken by specialists (ACORD, 1974, p. 9).

Differential treatment and prejudicial decision- making was evidenced in the 1974 study conducted by Hampton (cited in ACORD, 1981), which showed that police were more likely to prosecute a Māori child than a Pākehā child for a similar offence. This same study identified that the likelihood of prosecution as a result of police biases was increased by socio- economic variables such as poor home backgrounds and broken homes. Applying cross cultural analysis, the study ultimately reasoned the police were more likely to prosecute if the youth came from a poor home environment, without consideration of race as a contributor. However, the inference we have drawn from a wider review of academic writings of the time is that the police were more likely to exercise their discretion in favour of prosecution if the youth was both poor and Māori.

During 1967-1971 the police racially stereotyped tamariki Māori resulting in disproportionately high arrests, prosecutions, and sentences (ACORD, 1974). In 1971, one 15-year-old Māori child per week was sent to borstal. During the same period, Pākehā children were twice as likely to escape with lesser penalties such as fines and admonishments than Māori children. In effect, the police and court systems used race as a basis for differential punishments, resulting in harsher sentences imposed on tamariki Māori.

“A real problem was the lack of Māori police officers and child welfare officers, and the absolute lack of knowledge of the police and social welfare around how to deal with young Māori who were neglected or who offended. The other feature was that within the police there were very good examples of racism and racist attitudes towards Māori and Pacific peoples, at the very top of the system. I recall that in 1950 there was only one Māori police officer in New Zealand. Around that same time period, the Commissioner surveyed the police to see how they felt about recruiting Māori into the police. And the staff were almost unanimously opposed to the idea…the view was that if you employed Māori, the Pākehā would resent being dealt with by Māori and that they might be inclined to let their own people off the hook. So it was decided that Māori were unsuitable for recruitment.”

– Tā Kim Workman, Māori senior public servant

Maxwell et al.’s (2004) analysis of a sample of retrospective cases of youth justice family group conferences (FGCs) from October 1997 to March 1999 suggested police differential treatment of Māori youth (15-year-olds) in relation to decisions about whether or not to charge a young person in the Youth Court. There are two referral pathways to FGCs (a) a Māori youth is referred via the Police Youth Aid Section, or (b) a Māori youth is arrested by police and brought before the Youth Court which in turn relies on FGC recommendations when deciding outcomes. The analysis by Maxwell et al. (2004) found that Māori young people (71%) were more likely than Pākehā (56%) to be referred to the Youth Court than receive Police referrals directly to a FGC. This had implications for Māori in terms of receiving harsher punishments as Youth Court processes had access to more severe outcomes. The authors concluded:

In practice, this meant that young Māori were more likely to receive outcomes involving orders for supervision either in the community or in a residence. This appeared to be independent of the seriousness of their offences but was consistent with (i) being processed through the Youth Court rather than being directly referred to family group conference, and (ii) entering the youth justice system more frequently due to increased vigilance (Maxwell et al., 2004, pp. 293-294).

These findings support the ‘increased vigilance’ explanation of the over-representation of Maori among young offenders as discussed in other research (e.g. Fergusson et al., 1993a; Maxwell & Smith, 1998).

## Colonisation and policing

Policing practices are invariably influenced by political rhetoric and mainstream Pākehā media opinions that stress the importance of being ‘tough on crime’ as the answer to social issues. Much of this is rooted within the colonial history of the police service itself. In the early stages of the colonial state the police operated as a coercive service to control and crush the Māori population (Te Whaiti & Roguski, 1998). This often meant using military force to subdue Māori communities. Bull (2001) argues that policing in nineteenth century Aotearoa New Zealand was directed towards ‘those who, by class or race, were perceived to threaten, actually or potentially, colonial state-envisioned concepts of order and regularity’ (p. 515). Within the context of colonisation, it is the colonised who pose a threat to the status quo. Hence, the coloniser increases police activity to maintain their dominance (Bull, 2001, p. 515). Bull (2001) asserts: ‘Official Māori offending profiles can be explained by primary culture conflicts, literal normlessness, over-policing of Māori drinking habits to placate Pākehā, and specific instances of the criminalisation of Māori independence’ (p. 517).

Bull (2001) contends the turning point came in 1911 when a 130 percent increase in offending by Māori, was driven by renewed attention to ‘law and order’ by the authorities, brought about by political strife and exacerbated by racism and the effects of the First World War (p. 517). Bull claimed that the toughening of police attitudes was directed most harshly towards Māori because ‘they represent a relatively powerless and readily identifiable group, and their persecution enables socially undesirable characteristics to be located with ‘the other’ (2001, p. 516).

Racialisation of specific traits associated with educational achievement, social status, employment, and criminality are deeply embedded with Aotearoa New Zealand society. Perspectives of youth delinquency and criminal acts were notably influenced by Pākehā perceptions of Māori rooted in the colonial narrative of civilising the native. Differing explanations have been utilised by the Crown to explain the underachievement of Māori in a range of contexts. Some of these have endured and continue to perpetuate cycles of racism amongst communities, the media, and institutions. For example, the 1970s over-representation of Māori in youth delinquency figures was attributed to Māori being a cognitively impaired race (Zimmerman, 1971). Hence, policing within Aotearoa New Zealand is likely to have been influenced by racially prejudiced conceptions of Māori. In contrast, the state and the police were portrayed as the guardians of law and order, as the ‘thin blue line’ that stands between the public and chaos (Hill, 1986, p. 24).

The social hysteria surrounding youth delinquency in the 1950s has been identified as the result of Pākehā resistance to Māori cultural and political resurgence post World War II. The racist undertones across government departments have been well documented including the assimilationist policies across the government departments of education, employment, housing, and economics[[2]](#footnote-3). The same racist political rhetoric would also have permeated the police and the Department of Justice. Statistics show that tamariki Māori incurred differential, and racially prejudiced treatment from the police. At the heart of the public’s concern were reports of rising sexual promiscuity among teens. Dalley (1998) documents that Māori girls in particular were singled out by the authorities as having a lax attitude toward sex considered to be delinquent in nature (Dalley, 1998). Research also stipulates the racialisation of crime had a profound effect on Māori boys during the 1970s-80s, the majority of whom were sentenced to residential institutions for first time, for often trivial offences (ACORD, 1981).

An overwhelming theme emerging from the literature is the impact of racially discriminative policies and practices on Māori communities. Curcic (2019) notes that mass-incarceration of indigenous communities is a by-product of colonisation which the police have an unequivocal responsibility.

## State failure to care and protect tamariki Māori

Research indicates the philosophical foundations of the 1974 Children and Young Persons (CYP) Act has contributed to the disproportionate intrusion into the lives of tamariki, whānau, hapū and iwi (Bromley, 1992; Morris & Young, 1987). Under the provisions of the 1974 Act, offending was regarded as a consequence of ineffective parental care or control. Children under the age of 14 fell within court’s jurisdiction by way of an action against their parents that the child was in need of care, protection or control (Bromley, 1992). Young persons (those between 14 and 17-years-of-age) could appear before the court either by prosecution of an offence; or a complaint the young person was in need of care, protection or control.

As discussed earlier, the police had two options available under the 1974 Act when interacting with young offenders, to arrest or refer the young person to the Youth Aid section of the police (Bromley, 1992). Review of the literature indicates that both options resulted in tamariki Māori becoming involved with the machinery of the state and taken into custody (as demonstrated by youth offending statistics in the previous section).

Research also indicates the 1974 Act’s focus on welfare contributed to disproportionate sentences and over-representations of tamariki Māori in State Care. Levine and Wyn’s (1991) research for the Department of Social Welfare criticised the welfare provisions of the 1974 CYP Act. They argue that rather than providing care, protection or control, the instrument resulted in greater intrusions into a young person’s life by placing them in residential institutions. Morris and Young (1987) note that often committing an offence itself was not sufficient grounds itself to warrant court action. Rather, criminal proceedings were brought following a complaint that a child was in need of care, protection or control. They explain that the ‘number, nature, or magnitude’ of apprehensions indicated that the child was ‘beyond control’ of his or her parents, or that it was ‘in the interests of the child’s future social training or in the public interest’ that such a finding (to be admitted to a residence) be made (Morris & Young, 1987, p. 252).

Hence, the structural implications of the Act resulted in infringement of the rights of young persons to due process under the criminal law. Bromley (1992) argues that the actions of the court within this context were often disproportionate to the offending of the child or young person. As stated by the National Director of the CYPF Unit: Previously, putting a young person in an institution because the particular offence defined someone as needing care, meant the sentence was often out of all keeping with the offence (The Dominion, 1992, as cited in in Bromley, 1992.)

Bromley’s (1992) analysis of selected youth justice provisions of the 1989 CYPF Act demonstrated that there were few statutory protections for young people caught within the machinery of the justice system. She argues that whatever safeguards existed prior to 1989 lacked the force of law, and therefore provided limited statutory protection for young person’s interacting with justice agencies. Viewed cumulatively, the efforts of the state to apprehend, convict and punish children from 1925 to 1989 were made without any concerted effort to protect the civil, legal, and indigenous rights of tamariki Māori under the Treaty of Waitangi. Hence, the over-representation of Māori within State Care is connected to the state failing to protect Māori citizens.

The ACORD (1974) submission on the Children and Young Persons’ Bill highlighted that any child 10 years-old and above could be lawfully questioned by police officers for any length of time at a police station without the presence of their parents or a lawyer. During this questioning the child could make and sign a statement admitting guilt without legal advice from a lawyer. Such statements were admissible in court and led to convictions even in the absence of supporting evidence. ACORD contended that this, and other examples of differential treatment of Māori within the children’s courts and welfare services, were symptoms of institutional racism across government sectors (1974). They argue that from 1925 the drafting and administration of child welfare legislation was almost exclusively managed by Pākehā practitioners who made decisions based on their assumed cultural superiority. Consequently, Māori were excluded from agreeing the definitions of ‘criminal offending’, ‘wilful neglect’, ‘proper parental control’ or ‘vagrancy’ and how offences should be dealt with (ACORD, 1974. p.3). Taken into context with colonisation, ACORD argued that:

White ruling class of New Zealand is completely responsible for the Act and for its enforcement; we set the punishments and meted them out and we must, therefore, accept responsibility for whatever resultant damage has been done to our society (ACORD, 1974. p. 2).

## Racialisation of youth crime options that didn’t protect tamariki

Racial stereotyping, and the racialisation of crime heavily influenced the willingness of police to adopt and adhere to the youth crime provisions of the 1974 Act. Morris and Young (1987) argue the police were often unwilling to accept diversionary mechanisms, and in the event of youth consultations, officers dominated the proceedings with impunity. They also contend that when police determined prosecution to be desirable, officers intentionally performed an arrest to avoid directing the offender to Youth Aid (Morris & Young, 1984).

Many police perceived Youth Aid consultations as a ‘soft path’, and a barrier to prosecution and effective policing (NZ Herald, 1992).[[3]](#footnote-4) In fact, increasing both the protective provisions for young persons, and of the restrictions on police questioning powers was not welcomed heavily by senior members of the police force (who criticised the protections conferred by the Act as ‘seriously inhibiting’ policing and ‘the public good’ (NZLD, 1992).[[4]](#footnote-5) In the media, the Police Association described the requirements as ‘unworkable’ ‘absurd’[[5]](#footnote-6), and ‘too tough’ a requirement to inform young persons of their rights (The Dominion, 1991). Recalling policing practices in Auckland during the 1970s, former superintendent Jim Morgan stated: Young people were arrested without any regard for their age. I remember visiting the cells and finding young people in cells who could barely look over the middle bar’ (The New Zealand Herald, Auckland, New Zealand, 20 June 1992, Section 1,9).

## Discussion

Māori have endured the colonising environment and numerous injustices evidenced in the differential and discriminating treatment, resulting in increasing numbers of tamariki Māori being captured by the State Care system (1950-1999).

### Structural and societal racism and adoption practices

Within the context of adoption, evidence demonstrates how pēpi and tamariki Māori and their whānau were subjected to differential and prejudicial treatment from social workers and magistrates (Else, 1991). In accordance with the colonial ideal, adoption was misrepresented by the state as an act of charity imposed on Māori who were unable to care for their whānau. In reality, the literature conveys the opposite. Adoption was

utilised to forcefully assimilate Māori babies into a Pākehā culture. In effect, the state actively altered the trajectories of whānau and individuals who were deprived of fundamental aspects of their identity. Thereby severing their connection to whakapapa and whānau.

### Foster homes for and by Māori

Research analysis highlights the differential standards of approval or disapproval of Māori and non-Māori foster homes, as well as different boarding rates for Māori. Limited ‘suitable’ foster homes for tamariki Māori resulted in their placements in State Care institutions. The Intensive Foster Care Scheme (IFCS) with an enhanced form of care by better trained foster parents was deemed to be more suitable Pākehā children.

### Social disadvantage and offending outcomes

A series of research reports have highlighted whānau deprivation and links between poverty, educational underachievement and poorer income levels and juvenile offending statistics. Addressing numerous research recommendations to improve Māori socio- economic status to reduce the racial differences in official offending statistics have been failed by the settler state.

### Justice system

Our analysis has demonstrated that whānau and tamariki Māori were subjected to differential treatment by the settler state system, and in particular the Ministry of Justice and the New Zealand Police Service. The Children’s Court functioned on a paternalistic model of unfettered discretion which negated the rights of tamariki, whānau and hapū (Watt, 2003). This was evidenced in terms of no requirement to provide legal representation for children and young persons appearing before the court (Watt, 2003; Sutherland, 2019). While the responsibility to obtain a lawyer fell with the child or whānau, due to the ongoing effects of colonisation and racial disadvantage, whānau faced systemic economic and social barriers to engaging a lawyer and defending themselves. In effect, tamariki Māori were less able to defend themselves, and more likely to receive harsher sentences from the system that discriminated against them from arrest, to processing and sentencing (ACORD, 1974).

Justice statistics also clearly show that tamariki were systematically discriminated against by government agencies, departments, and the justice system itself. The evidence demonstrates that the decisions made on behalf of tamariki and their whānau were not in their best interests. Rather, the interventions made for the ‘care’ and ‘protection’ of tamariki functioned in ways that contributed to intergenerational trauma. Discrimination and differential treatment in the Children’s Courts from the 1950s onwards saw more tamariki and rangatahi Māori being disadvantaged in terms of lack of legal representation, inability to obtain bail and receiving harsher sentencing.

The policing institution of the settler state directly contributed to the over-representation of Māori in State Care. Racialisation of crime and differential treatment towards Māori have been an intrinsic component of policing since the beginning of the settler state. Policing has endured as a colonial tool to coerce Māori into submission by force. This trend of police targeting of tamariki Māori has continued throughout the 1950s, 1960s and beyond. The differential treatment incurred during this period is likely to have directly influenced contemporary rates of Māori imprisonment and offending.

### State failure to care and protect tamariki Māori

Structural racism underpinned State Care protection policies and practices[[6]](#footnote-7). Considering the recent past, the steady rise of rangatahi involved with the state is clear evidence that the system has failed Māori. Retrospective analysis of the timeline reminds us that the state committed war crimes and acts of genocide within living memory of kaumātua. Hence, the institutions, including those within the justice system established in the 1900s by the state carried with them the past, and thus continued to perpetuate their power over Māori by any means. Analysis of the data shows that the courts and European law directly discriminated against Māori.

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