Family Group Conferencing: A Case-Study of the Indigenisation of New Zealand's Justice System

Juan Tauri*

Introduction

Of particular concern to many indigenous groups residing within neo-colonial nations has been their relationship with the imposed justice ordering of the state.[1] A number of these nation-states, particularly Canada, have responded to First Nation concerns by *indigenising* the existing justice system.

In this paper it will be argued that the New Zealand state has also indigenised its justice system as part of an overall *cultural sensitisation* of policy and service delivery to Maori. The indigenisation of the justice arena is exemplified by the *Children, Young Persons and Their Families Act 1989*, which instigated the Family Group Conference forum as a response to juvenile offending. It will also be argued that the construction of this forum, particularly its co-option of Maori justice practices and philosophies, challenges our understanding of the term indigenisation and the processes that are generally associated with it in academic literature.

Indigenisation and the Neo-Colonial State

In both Canada and New Zealand a quarter of a century of growing concern for the criminal justice experiences of its indigenous peoples has seen the evolution of 'justice' as a key focus of the indigenous political agenda (see Jackson 1988; Jarvenpa 1985; McNamara 1995). Initial reaction to indigenous criticisms of imposed justice orderings in jurisdictions such as Canada and the USA were restrictive in terms of the judicial autonomy extended to First Nations and the extent of control the state exerted over indigenous justice programs (Kickingbird 1976; Havemann 1988). The predominant thrust of initiatives in Canada, for example, have centred on the indigenisation of the existing justice system (Finkler 1990).

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* Lecturer, Institute of Criminology, Victoria University, PO Box 600, Wellington, New Zealand. Email: juan.tauri@vuw.ac.nz. I am grateful to Reece Walters, John Pratt and Rebecca Wolley for their useful comments on this paper.

1 The overrepresentation of indigenous peoples in various neo-colonial states is well documented elsewhere. For detailed information and statistics on indigenous arrest and incarceration rates, see Tauri and Morris (1997) and Statistics New Zealand (1996) (New Zealand); Finkler (1990) (Canada); and Biles (1989) (Australia).

Indigenisation is generally described as the 'involvement of indigenous peoples and organisations in the delivery of existing socio-legal services and programs' (Finkler 1990:113). Moreover, Havemann (1988:72) summarises the indigenisation process as '...the recruitment of indigenous people to enforce the laws of the colonial power...'. The indigenisation program in Canada included initiatives such as the active recruitment of First Nation members as police officers and prison personnel in federal, provincial and municipal forces and institutions (Harding 1991; Havemann 1988); as court-workers to provide assistance to native defendants in court (Fearn & Kupfer 1981; Griffith 1988) and increasing attempts to develop community-based sentencing and correctional alternatives for native offenders (such as, Sentencing Circles) (McNamara 1995).

The definition of indigenisation that summarises the Canadian context, appears adequate for describing many of the initiatives that have occurred in that particular jurisdiction, as well as many other post-colonial nations (including the USA and to a limited extent, New Zealand). However, it is argued in this paper that we need to broaden existing understandings of judicial indigenisation. This broader understanding is necessary as a result of New Zealand's own era of indigenisation, within which the state sought to 'culturally sensitise' not only the justice system, but all 'service delivery' institutions that deal with Maori.

The argument presented in this paper, that New Zealand indigenised its justice system, contests the claim made by those commentators who argue that New Zealand has not undertaken an indigenisation program similar to that of Canada (for example, Blagg 1997; Cunneen 1998; Havemann & Havemann 1995). The assertion made here is that New Zealand has attempted to indigenise the justice arena, and that these changes have thus far failed to resolve Maori concerns regarding their relationship with the criminal justice system (see Jackson 1988, 1995; Tauri & Morris 1997; Wickliffe 1995).

However, in order to fully contextualise New Zealand's indigenisation program, we must first visit, in brief, the history of the changing nature of government policy toward Maori in New Zealand.

Colonial and Neo-Colonial Maori Policy and Institutional Practice

The early period of colonisation, particularly the period beginning immediately after the end of the New Zealand Wars in 1868, was characterised by an aboriginal policy based on the assimilation of Maori into a European dominated society. The various governments of the early phases of colonisation sought to achieve assimilation by pulling Maori deeper into civil-societal structures such as education, religion and law (Tauri 1996a). During this period, State institutions, including those associated with justice, obstructed the dissemination of Maori cultural practices and knowledge in favour of European values, while at the same time failing to provide Maori the skills that would enable them to compete for resources and political power (Spoonley 1993; Tauri 1996b). This form of state response is characteristic of inter-group relations in a number of pluralistic societies, particularly those possessing a colonial past. Nations such as Australia and Canada generally followed assimilationist agendas underpinned by a mono-cultural ideology (Hanson 1989; Smith 1981).

At the beginning of the 1970s, a number of events conspired to force the New Zealand government to alter the ideological basis of its policy and institutional response to Maoridom. The first to occur was the rise of a young, radical, and politically active Maori leadership (Poata-Smith 1996; Walker 1996). Their rise was instrumental in bringing about the politicisation of Maori ethnic identity. This event was in no way unique to New Zealand, but mirrored events that had occurred or were taking place in other neo-colonial contexts,

in particular Canada and the USA. What occurred in these neo-colonial jurisdictions during the late 1960s and throughout the 1970s, was a process of 'ethnic reorganisation' amongst many of the First Nations residing within their borders (Nagel & Snipp 1993).

Whilst there are significant differences in the socio-political make-up of the various jurisdictions mentioned above, similaservice deliveryrities in terms of cause and effect do allow for comparisons of the ethnic reorganisations that took place amongst their various indigenous populations. Thus we see that commentators on the recent history of First Nation politics in both Canada (see Fleras & Elliot 1992; Boldt 1993) and the United States (see Cornell 1988; Robbins 1992) cite as primary influences in the radicalisation of indigenous politics such factors as overt assimilationist government policies, including forced urban 'relocation' of First Nation members, economic downturn and the institutionally racist practices of many government departments.

Similarly, in the New Zealand context we see that during this same period we have the onset of the Maori labour migration to New Zealand's urban centres (1955-1970) (Miles 1984). This phenomenon brought with it new pressures upon Maori society resulting from the effects of social dislocation, which were subsequently intensified with the onset of economic downturn in the early 1970s (Poata-Smith 1997). Pearson (1988) writes that the relative affluence of the 1950s and 1960s had eased the transition of the Maori into New Zealand's urban areas and was instrumental in defusing any radical element in its population. However, the downturn had the effect of clarifying the difference in relative socio-economic positions of the majority (European) and minority (Maori) populations: thereby laying down the conditions for the onset of Maori radical politics and subsequent ideological and structural alterations to the State's institutional response to Maoridom.

The radicalisation of Maori politics heavily influenced Government policy and institutional practice in New Zealand, just as First Nation protest had forever altered State/First Nation relations and policy in Canada and the United States. The political activity of the indigenous radicals signified a new, confrontational mode of articulation of grievances by these groups. No longer were indigenous groups content to seek justice within formal, state sanctioned forums. Instead, state-indigenous relations in all three jurisdictions throughout the late 1960s and early 1970s were characterised by often violent protests and numerous incidents of civil disobedience. In the United States such activities included the Indian All Tribes organisations occupation of Alcatraz in 1969 (Cornell 1988) and the Trail Of Broken Treaties protest march on Washington in 1972 (Fleras & Elliot 1992). In New Zealand, Maori also undertook various acts of public protest, including the Hikoi (Great March) to the steps of Parliament in 1975 (Walker 1987) and the Ngati Whatua[2] occupation of Bastion Point that began in 1977 and lasted 507 days (Walker 1990).

Initially, at least, the New Zealand government had two choices in responding to the radicalisation of Maori political discourse and action. Firstly, treat Maori displays of discontent as a law and order issue, or, secondly, recognise the validity of certain Maori concerns, offer redress and seek reconciliation (Kelsey 1996). The National government (1978-1984), under Robert Muldoon, chose, primarily, the former, culminating in the Bastion Point confrontation mentioned previously. The fourth Labour government (1984-1990) chose the latter.

Under the Labour government, the state met the challenge to its authority signalled by Maori radicalism, with a program of *passive reformism*. The aim of this governmental program was to secure change through policy reforms imbued with elements of Maori

2 The Ngati Whatua are a small iwi (tribe), situated in the central and southern suburbs of Auckland.

bicultural ideology and culture. This initiative was undertaken to provide a 'face-lift' for its various sectors through indigenisation of their institutional practices. The tactic was also designed to encourage belief among Maori that justice could be attained by their acquiescence to state instituted and controlled forums such as the justice system or the Waitangi Tribunal, a quasi-judicial body created by the government in 1975 (Webb & Tauri 1998).

As a result of this agenda of passive reformism, contemporary state policy and administrative response is significantly imbued with the rhetoric and symbols of Maori bicultural ideology. According to State discourses, successful 'pro-Maori' policy and practice changes implemented during this period have included increased public-service responsiveness to Maori values, needs and aspirations; a new 'distributive ideal' based on a bicultural allocation of power and resources; and a growing acceptance of the Treaty of Waitangi as a policy blueprint for reuniting 'the founding partners of New Zealand' (Fleras & Elliot 1992:173).

However, analysis of policy and practice initiatives on the part of the government since 1978 has shown that, as with earlier phases of its 'policy response', many of the changes made under the bicultural banner have done little to empower Maori. Nor have they satisfied Maori demands for the fair allocation of resources some believe are guaranteed them under the terms of the Treaty of Waitangi.[3] This situation can be demonstrated through an analysis of the systematic 'cultural sensitisation' of various State service delivery institutions undertaken from 1978 onwards.

The Indigenisation of State Policy and Service Delivery - 1978 Onwards

The indigenisation of government policy, legislation and service delivery began in earnest after 1978. At that time government institutions had begun to take heed of claims from various individuals and organisations, that their existing practices were viewed negatively by their Maori 'clients'. Partially in response to such criticisms the State Services Commission, Department of Maori Affairs, and the Public Service Association Working Party presented a working paper in 1979, on the state of race relations within the public sector. The report's main recommendations included the active recruitment of Maori and Pacific Island individuals into public service and provision of better service delivery to these two sections of their clientele (Spoonley 1993). These recommendations were to be symptomatic of state sector responses to criticisms from Maori over the next two decades. During this period the state sector chose not to make major changes to departmental practices in reaction to Maori claims of systemic bias, but instead concentrated on *co-opting* Maori, their bicultural ideology and cultural practices within institutional frameworks in order to transform the *face* of state service delivery. As a result, during the 1980s both the Treaty of Waitangi and certain 'acceptable' Maori cultural values and practices were given increased prominence and importance within the public service (Fleras 1991).

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3 The Treaty of Waitangi was signed initially on the 6th of February 1840 by representatives of the British Crown and Maori chiefs, and in subsequent months throughout New Zealand. In the Maori text of the Treaty, Maori gave the Crown kawanatanga, which loosely translates to the 'right to govern' (Walker 1989). This right extended to include the ability to pass and enforce laws and legislation regulating the growing European populations. This right was given in exchange for recognition of Maori tino rangatiratanga, or 'absolute authority' over their lands, dwelling places and taonga (treasured things) (Orange 1987; Williams 1989; Wilson 1995).

The Department of Inland Revenue provides an excellent example of the types of activity various state institutions undertook during the state's indigenisation era. In the late 1980s and early 1990s, this department undertook a number of programs in order to signal its 'partnership responsiveness'. These included the appropriation of a Maori name, *Te Tari Taake* (affectionately translated by some Maori as 'The Ministry of Take'), adoption of a departmental waiata (Maori song), Maori motifs added to departmental letterhead and the appointment of a Maori elder as institutional patron. The token nature of the government's sensitisation program is reflected in the fact that organisational accommodation of the State's bicultural experiment to date has largely concentrated on such sensitivity exercises. Another popular initiative included the organisation of in-house training sessions held on marae to encourage 'cultural and Treaty awareness' amongst departmental employees. As a result 'broader issues outside the normal institutional discourse - such as entitlement of the tangata whenua, closure of the socio-economic gap, empowerment of tribal authorities and enhancement of Maori language and culture - received little attention' (Fleras & Elliot, 1992:193-194).

The indigenisation of the Department of Inland Revenue was not an isolated occurrence amongst government departments at this time. A report by Manatu Maori[4] in the late 1980s on institutional responsiveness to biculturalism, indicated that many departments preferred to concentrate on staff marae visits and Maori language courses. As a result, issues such as operational procedures, corporate culture and enhancement of the Maori culture and language received little attention. In summary, the Manatu Maori research indicated that a large gap existed between governmental rhetoric that speaks of 'empowering Maori and reacting to their concerns', and the reality of state institutional practice (Fleras & Elliot 1992).

As stated earlier, New Zealand's indigenisation program is not entirely comparable to that which occurred in Canada. In the Canadian jurisdiction, indigenisation became concrete policy and was acknowledged as such by the state and its various agents (Havemann 1988). In New Zealand, as demonstrated, institutional indigenisation was more insidious, including initiatives undertaken in the area of justice policy and practice. What I intend to do in the remainder of this paper is offer up the indigenisation of New Zealand's juvenile justice system as a case study representative of the nature, underlying principles and failings of this country's indigenisation program. The central argument here is that the introduction of the family group conferencing forum highlights the continued willingness of the neo-colonial state in New Zealand to employ and co-opt elements of indigenous philosophy and cultural practice in order to (re)legitimise its institutional practices.[5] Furthermore, it will be argued that sensitisation programs established within justice and other areas of institutional practice in the 1980s, enabled the government to draw focus away from questions and concerns expressed by Maori with regards to social, economic and justice policy (Tauri 1996b).

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4 Manatu Maori was an advisory body established by the government on 1 July 1989. It was instituted with a mandate to monitor and advise government policy from a Maori perspective, and also to monitor state institutional and organisational responsiveness to government Maori/Treaty policy (Fleras & Elliot 1992).

5 One of the main features of the colonial project in New Zealand throughout the 19th century, was the gradual 'silencing' of Maori justice (see Pratt 1991; Ward 1995). Legislation was introduced that ostensibly recognised elements of Maori social control practice deemed acceptable to the colonisers (The Native Exemption Ordinance 1844, for example). The initial mood of European colonists towards Maori justice, was, therefore, one of compromise and accommodation (Russell 1990). This restricted recognition of Maori jurisdicion continued well into the 20th century, where legislation such as The Maori Social and Economic Advancement Act 1945 and its amendment The Maori Welfare Act 1962, gave Maori District Committees limited capacity to deal with deviant member of their communities (Tauri 1996a).

Family Group Conferencing and the Indigenisation Process

Havemann and Havemann (1995:81) argue that 'though there is no active policy of indigenisation [in New Zealand] such as exists in Canada..., Maori are to be found working as police, prosecutors, judges, in the correctional and social welfare, education and health fields'. It can be argued however, that this situation exists at present because New Zealand *did* in fact, undertake an indigenisation program within its various departments, including justice, throughout the1980s and 1990s.

The indigenisation of the New Zealand justice process throughout the 1980s covered a range of measures similar to those undertaken in Canada and the US, intended to encourage the greater involvement of Maori within the existing system. This included the active recruitment of Maori as justice employees (i.e., in the police force, probation service and corrections); the establishment of links between probation services, marae committees; iwi (tribal) councils and whanau (family) groups; and the involvement of Maori communities both in the administration of community-based sentences and provision of assistance to prisoners following their release. Also, Pratt (1996) reports that there has been considerable effort since 1989 to inject Maori cultural practices and values into the administration of prison life - through staff 'sensitivity' training and the provision of cultural programs for prisoners. The indigenisation program undertaken within justice, therefore, mirrors the cultural sensitivity exercises prevalent among those state institutions discussed previously.

The token nature of the government's indigenisation program of the 1980s, was further highlighted by the introduction of the family group conferencing forum as part of the *Children, Young Persons and Their Families Act 1989*. The Act was influenced in part by criticisms of the ethnocentrism of the New Zealand criminal justice system, most notably by Moana Jackson (1988) and by submissions from various Maori individuals and organisations to the Parliamentary Committee responsible for drafting of the 1989 juvenile justice legislation. The criticisms of these commentators placed pressure upon the government to respond constructively in the area of justice, just as Maori protest on breaches of the Treaty of Waitangi in the 1980s had influenced social and economic policy throughout that decade.[6]

The family group conferencing process has been heralded as a revolution in the way New Zealand deals with juvenile offending (see Hassall 1996; Morris & Maxwell 1993; Stewart 1996). The forum has also been depicted as a successful attempt by the state to *culturally sensitise* New Zealand's juvenile justice process (Olsen et al 1995). Based on these claims, the New Zealand process has received considerable attention from overseas jurisdictions searching for innovative ways to deal with juvenile offenders. As a result, the conferencing forum has been instituted or trialed by other western jurisdictions of late, most notably Australia, England and Canada (see LaPrairie 1995; Moore & McDonald 1996).[7]

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6 Maori were successful to some extent in the 1980s in influencing government legislation due to the attention given to the Treaty of Waitangi by the courts. In 1987 the High Court found that government actions in privatising New Zealand's forests were inconsistent with the principles of the Treaty of Waitangi. This resulted in the *Treaty of Waitangi (State Enterprises) Act 1988* which gave the Waitangi Tribunal the power to make binding recommendations for the return of land transferred under the *State Owned Enterprises Act 1986*, should a future claim be made against it (although these powers have yet to be exercised).

7 It is not the purpose of this paper to provide a thorough critique of the conferencing forum itself. In summary, criticisms of conferencing have included the high level of police and justice official involvement in conferencing forums, the net-widening potential of conferencing practices and the possible neglect of due process (see Bargen 1995; Polk 1994; Sandor 1994; Warner 1994).

Olsen, Morris and Maxwell (1995) argue that the family group conferencing legislation was heavily influenced by traditional Maori justice practices.[8] For example, family group conferences were arguably 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 & Morris, 1993), empower the victim, and positively 'reintegrate' the offender within the community (Stewart 1996). Furthermore, LaPrairie (1995) writes that the stated aims of the New Zealand conferencing forum include making offenders aware of the consequences of their behaviour, moving resolution of the offence from the state to the extended family and/or local community, and facilitating victim and offender reconciliation.

In their 1997 paper entitled *Reforming Justice: The Potential of Maori Processes*, Tauri and Morris (1997:157) argue that family group conferences provide a test case 'of the ability of the present justice system to adapt to the needs of indigenous peoples'. Their argument was based on an underlying justification for the forum: that it provide processes to enable outcomes that are culturally appropriate. In concluding, the authors argued that while the process did not always address Maori concerns and needs, 'at the very least, New Zealand's experience with family group conferences has shown that, *to some extent*, justice systems can be adapted to better meet the needs and demands of Maori' (1997:159, emphasis added). However, if we analyse the formation of the family group conferencing process within the governmental indigenisation project described previously, then alternative conclusions can be drawn.

Taking into account the evolution of government policy toward Maori discussed earlier, the family group conferencing process established in 1989 represents yet another element of the State's indigenisation program. When we compare the stated aims of the family group conferencing process within the 1989 legislation with empirical research on the conferencing process, we begin to perceive that both the family group conferencing forum and the 1989 Act represent the *co-option* of Maori justice practices. We also establish that New Zealand's revolutionary juvenile justice model, far from providing Maori with a culturally sensitive justice forum, has done little to adequately address criticisms made by some Maori, of the justice system itself (see Jackson 1988; Ministerial Advisory Committee 1986; Sharples 1995; Wickliffe 1995).

Empirical research on the New Zealand family group conferencing process to date, establishes that it has failed in those areas that supposedly distinguish it as a *Maori inspired justice forum*. For example, in terms of victim attendance, Maxwell and Morris's 1993 research found that only 46% of victims attended family group conferences (and only 49% of this group registered satisfaction with the result of the conference they attended). Also, only 5% of Maori family group conferences were held on marae (Maori meeting house), with Department of Social Welfare offices or facilities the most common venue utilised. This is an important area of concern, especially since one of the main aims of the Act is to encourage cultural sensitivity within juvenile justice practice. Concern was expressed for the practice of holding all conferences in the Wagga Wagga (NSW) conferencing experiment of the early 1990s, in the local police station (see Sandor 1994). A dubious justification for this practice given by one commentator (see Moore 1993) was that the police station '...is a setting that favours neither victim nor offender' (1993:204). Both Sandor (1994) and Cunneen (1998) dispute the efficacy of this statement given the historical involvement of the police in the subjugation of Koori populations throughout Australia. Similar issues could be

8 Space precludes an in-depth discussion of the philosophies and practices that underpin Maori justice. See Durie (1995), Consedine (1995) and Tauri and Morris (1997) for further discussion of Maori justice.

raised in the New Zealand context of the extensive use of Department of Social Welfare facilities for family group conferences involving Maori. This is a justifiable concern given the historical role the Department has played in the control and surveillance of lower socio-economic sectors of New Zealand's population, of which Maori make up a substantial number (Poata-Smith 1997).

The family group conferencing process as practiced presently in New Zealand, has also failed to deliver on another of the aims of the 1989 legislation, namely *deprofessionalisation* of juvenile justice. Maxwell and Morris' (1993) research showed that social workers were present at 62% of all family group conferences evaluated. This occurred despite the fact that the 1989 legislation severely restricts their right to attend (only where the youth is in the care of the Director General of the Department of Social Welfare). This is an important issue, given that one of the main criticisms leveled by Maori (see Jackson 1988; Morris & Tauri 1995) at current justice practices, is the authority given to those who are defined by European standards, as experts and professionals (for example lawyers, social workers, and police). According to Jackson (1990), this has aided in creating and perpetuating a situation where Maori justice practices and philosophies are under-utilised and maligned in comparison to European 'knowledge' and expertise.

We can argue therefore, that the conferencing process has to date, failed in one of the main functions attributed to it by Moore and McDonald (1993), namely to provide indigenous peoples, in this instance Maori, with the opportunity to be much more than the passive subjects of an imposed criminal justice system.

It must be said at this point that the conferencing forum established under the 1989 legislation was never intended for Maori only. One of its primary aims was to provide an alternative forum to the juvenile court which would enable 'communities of concern' (i.e. whanau (the family) and hapu (sub-tribe)) to deal with juvenile offending in ways they deem culturally appropriate. Nevertheless, commentators have argued that the legislation was intended to provide a forum that would allow Maori to put into practice elements of their culture that encourage social order (see Olsen et al 1995); an objective that, arguably, has yet to be achieved.

Viewing family group conferencing as part of the overall indigenisation program of the state, leads us to contest Blagg's (1997:484) recent claim that 'the creation of the [New Zealand] family group conferencing system... represented a counter-hegemonic reform on a truly Gramscian scale in that it has both created new structures and has shifted the balance of forces in a crucial region of Maori concern'. While Blagg's statement does not represent a complete misreading of the New Zealand situation, nevertheless the overview of the development of the New Zealand state's 'Maori' policy presented here, strongly suggests that the family group conferencing forum represents more a reaction to Maori counter-hegemonic discourse and activity, rather than the judicial empowerment of Maori (Tauri 1996b). The empirical research on the family group conferencing process in New Zealand discussed earlier does not provide evidence for Blagg's contention that a fundamental shift in 'the balance of forces' associated with criminal justice practice has occurred. Instead, the formation of the family group conferencing process can be considered as much an attempt to silence Maori criticisms of the imposed European justice ordering, as it can be seen as an effort to radically alter juvenile justice practice. To allow us to claim a significant movement in the 'balance of forces', we would have to see more family group conferences held on marae or in other arenas Maori consider appropriate. We would also require less emphasis on the role of judicial professionals, such as social workers and the police in those conferencing forums involving Maori youth.

Putting aside criticisms of Blagg's summary of the New Zealand situation, his use of Edward Said's concept of *Orientalism* to describe the nature of the Australian conferencing movement is helpful for understanding what the New Zealand state was actually 'doing' with Maori justice processes in the late 1980s. To summarise, Blagg (1997:483) describes orientalist discourses as '...primarily, powerful acts of representation that permit Western/European cultures to *contain*, homogenise and *consume* other cultures' (emphasis added). The New Zealand family group conferencing process contains many elements central to the orientalist initiative Blagg describes. For example, central to the construction of the 1989 Act was the appropriation of symbols, practices and values central to Maori culture, particularly those associated with maintaining social control. However, given that these Maori cultural practices and values are consumed in a forum where justice officials (i.e. police, social workers or a Youth Advocate) are able to stipulate when, where and how Maori may employ them; it is, therefore, indicative of the type of orientalist project Blagg associates with many Australian conferencing models.

A Critique of the Indigenisation Process

There are a number of criticisms that can be made of the neo-colonial state's attempt to culturally sensitise its institutional practice. In the Canadian context criticism has centred on the token nature of judicial indigenisation programs. Havemann (1988:74), for example, is heavily critical of the process, charging that it serves as an inexpensive and convenient option for the government in addressing indigenous justice concerns, without seriously affecting State control of the justice arena. He argues that 'indigenisation serves as a cheap substitute for a measure of autonomy, self-government or, indeed, sovereignty. It assimilates indigenous people into the imposed social control apparatus rather than autonomising the social control apparatus for the benefit of indigenous people'. Similarly, Finkler (1990) contends that for Canadian First Nations, indigenisation has not provided a substantial measure of judicial autonomy, but rather has led to the involvement of First Nations and their judicial practices in the delivery of the state's existing justice programs. Therefore, we might conceptualise the government's indigenisation program as both a pacificatory project intended to contain the legitimation crisis potential of radical First Nation politics, and as the attempted recolonisation of First Nation communities through the incorporation of their existing social control practices (Tauri 1996b).

There is of course, much more to the indigenisation project than the legitimation of existing institutional practice. Havemann (1988:73) argues that the Canadian indigenisation programs developed after the Second World War, aided in encouraging consensual rather than coercive relationships between the state and disaffected social groups, including First Nations. Indigenisation programs, then, are largely indicative of the move from coercive to consensus state control initiatives that has characterised state/indigenous relations for much of the twentieth century. Criticisms of the Canadian indigenisation program, therefore, revolve around issues of political containment and social control. It is our contention that similar arguments can be made for the New Zealand context.

As stated earlier, the recent history of State/Maori relations in New Zealand has been characterised by a continual (re)evaluation and repackaging of state policy; which was influenced in part, by the radicalisation of Maori politics. This development signified a legitimation crisis for the New Zealand State. Indigenisation, therefore, represents but one element within its program of institutional response.

Considering this point, we might best describe the development of family group conferencing under the 1989 Act as an *incorporation* of Maori justice practices through the

hybridisation of New Zealand's juvenile justice system. Havemann (1988:90) describes hybridisation as 'the mixing of formal with informal justice and social service with order maintenance'. The family group conferencing process as practiced in New Zealand, can be viewed as a hybridised social control mechanism on the part of the state, because it involves the mixing of formal (European) with informal (Maori) justice processes, within a forum that severely restricts Maori judicial autonomy.

The restrictive nature of the government's indigenisation project is further demonstrated by the Waitangi Tribunal. The Tribunal was instituted with the passing of the *Treaty of Waitangi Act 1975* and, at first glance, appears to signal a fundamental shift in the way the government deals with Maori Treaty grievances in particular, and Maori discontent in general. When first established, the Tribunal was composed of three members, the Chief Judge of the Maori Land Court (also the Chairman), a person recommended by the Minister of Justice, and a person of Maori descent (Sharp 1997). The focus of the Tribunal at this stage was to advise the government on 'any policy or practice adopted by or on behalf of the Crown and for the time being in force or...proposed to be adopted' that may prejudice Maori rights under the Treaty of Waitangi (section 6, *Treaty of Waitangi Act 1975*). The Tribunal was empowered by this section of the Act to consider only those Maori claims pertaining to breaches of the Treaty *after* 1975 and the establishment of the aforementioned body. Controversially, for Maori, this meant that historical claims dating back to the signing of the Treaty of Waitangi were exempt from the Tribunal's jurisdiction (McHugh 1991; Sharp 1996).

Even more limiting for Maori was the fact that the original legislation severely restricted the ability of the Tribunal to affect both policy and law-making. The Tribunal was confined to making recommendations to the government who would decide whether or not to act upon them. Initially therefore, the Tribunal was essentially powerless and subsequently it was not much heard of until 1983 (Oliver 1991). Despite its subsequent history being one characterised by an expanded membership (from 3 to 6, and then 17) expanded legal powers and an increased capacity to operate, it has largely remained an ineffective body for those Maori seeking redress for Treaty violations.

The fact that both significant examples of the New Zealand government's indigenisation program have so far failed to adequately address Maori demands for a significant measure of jurisdictional autonomy and 'Treaty justice', should come as no surprise. It should be remembered that we are relying on a neo-colonial state to dispense *justice*, when a central element of its historical development has been the disempowerment of its indigenous population (Jackson 1995). Nor should we be surprised at the willingness of various New Zealand governments to employ Maori cultural philosophies and values to (re)legitimise their institutional practices within the justice arena. For as Kelsey (1996:185-186) argues, the overall aim of much of the government's institutional practice and policy throughout the 1980s was 'the co-option of Maori intellectual and cultural property for cosmetic purposes by "non-Maori" government departments'.

Conclusion

The New Zealand indigenisation program that occurred throughout the 1980s, enables us to employ a wider definition of indigenisation than previously. Indigenisation of the justice system, or any other state controlled or sponsored institution, does not simply mean more brown-faces working within or for the current system. It must also refer to the ideological and practical (re)legitimation of the state's legal system. This is attempted through the implementation of legislation and justice initiatives that, while appearing on the surface to

empower First Nations, merely incorporate their justice philosophies and practices within hybridised judicial forums.

Olsen, Morris and Maxwell (1995) conclude that the family group conferencing process in New Zealand provides evidence for the ability of indigenous justice processes to adapt to modern times and successfully modify Western justice models. Some Maori, however would view the situation differently. The inability of the system to deliver on many of the promises of the 1989 Act represents for them, a continuation of the New Zealand government's historical ambivalence toward their cultural practices, except for when they can be of use to the state justice ordering. Some Maori want more than the spirit of their processes and philosophies to be 'recognised'. They want them respected, which necessitates allowing Maori to employ these processes as they see fit. Instead, what we have at present is a forum that utilises Maori processes while restricting how they may apply them. For some Maori commentators this 'solution' to the problem of cultural insensitivity and institutional racism is inadequate. Jackson (1995:34), for one, argues that the implementation of this type of forum in the New Zealand context '...will merely maintain the co-option and redefinition of Maori values and authority which underpins so much of the colonial will to control'.

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