

***colonial mind, colonised  
body: structural violence and  
incarceration in Aotearoa***

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The Aotearoa New Zealand prison structure, like many other Western institutions, is fundamentally an oppressive state enterprise that serves to marginalise Indigenous peoples both as a symptom and as a mechanism of colonisation. As of June 2018, there are 10,435 prisoners in New Zealand jails, and just over half of all prisoners are Māori, with the second majority (31%) being European, and the third majority (11%) being Pasifika peoples.<sup>1</sup> When we compare these numbers to the New Zealand demographics—14.9% Māori, 7.4% Pasifika, and around three-quarters being of NZ European descent—there is strong evidence to demonstrate that racial inequalities, and attendant histories of colonialism and dispossession, play an important part in shaping the New Zealand carceral justice system.<sup>2</sup> While some prisons have Māori Focus Units and Māori Therapeutic Programmes, this article argues that the prison structure as a totality remains a fundamental part of a settler colonial project. In particular, the carceral system is an extension of wider practices, wherein the New Zealand government forces upon Māori a Pākehā<sup>3</sup> worldview and perpetuates Māori alienation from people and place through forced assimilation.<sup>4</sup> As Chris Cunneen and Juan Tauri have argued, settler colonialism is “actively created and maintained through processes of dispossession, and policies of disenfranchisement and social and economic exclusion,”<sup>5</sup> and for my purposes in this article, the focus will be the logics of dispossession that shape patterns of Māori incarceration.

The first section draws on Lorenzo Veracini, Jared Sexton and Patrick Wolfe to discuss some of the specific features of settler colonialism, and then turns toward Nelson Maldonado-Torres' and Lewis Gordon's respective works on coloniality to consider the ways in which Western epistemologies perpetuate harms against Indigenous peoples. In discussing different perspectives, I then begin to outline what Māori worldviews look like according to prominent Māori thinkers such as Moana Jackson, Ani Mikaere, Juan Tauri, Tracey McIntosh, and Margaret Mutu. In the final section, I offer a brief discussion on the Treaty of Waitangi (*Te Tiriti o Waitangi*) and consider the implications of decolonial thinking for the carceral justice system in Aotearoa New Zealand.

## THE TREATY OF WAITANGI AND THE COLONIALITY OF BEING

An important entry-point to New Zealand's colonial history is the Treaty of Waitangi and its legal, political and social legacies for Māori communities. This treaty between Māori and colonial British settlers, signed in 1840, signified a partnership between the two parties.<sup>6</sup> The agreement guaranteed active protection for Māori, entailed in the concepts of *kāwanatanga* and *rangatiratanga*, which loosely translate as “governorship” and “chieftainship,” respectively.<sup>7</sup> Despite the treaty, the British colonial appetite for land led to the brutal conflicts of the New Zealand Land Wars, which lasted from the 1840s through to the 1890s. Māori land continued to be confiscated by the British Crown well into the twentieth century, and the Māori population was significantly diminished: by 1896, the number of Māori in Aotearoa had declined by at least 150,000, the result of both direct combat and disease brought by settlers.<sup>8</sup> The violence against Māori communities since the Treaty of Waitangi has slowly been acknowledged in provisional ways. The Waitangi Tribunal was established in 1975 as a “permanent commission of inquiry that makes recommendations on claims brought by Māori relating to Crown actions which breach the promises made in the Treaty of Waitangi.”<sup>9</sup> This history has enduring implications for understanding the carceral logics of coloniality in the present, to which I will return later.

The British Crown invasion of Aotearoa New Zealand and consequent practices of colonial expansion bear an enormous responsibility for continuing harms against Māori peoples. To understand these harms, we must distinguish between settler colonialism and classical colonialism. Patrick Wolfe famously argues that settler colonialism, as distinct from other practices of warfare or conflict, is “premised on the elimination of native societies... the colonizers come to stay—invasion is

a structure not an event.”<sup>10</sup> In Aotearoa New Zealand, the colonisers never left. Instead, the colonisers have invaded Indigenous space and hold Māori captive through neo-colonial means of oppression and marginalisation. As Jared Sexton writes:

‘You, go away’ can mean the removal of the native population, its destruction through direct killing or the imposition of unliveable conditions, its assimilation into the settler colonial society, or some combination of each... settler colonialism may exploit the labour of the colonized en route, but the disappearance of the native is its *raison d’être*.<sup>11</sup>

As part of this horrific “logic of elimination,” Wolfe argues that forced assimilation is a key facet of settler colonialism and identifies a range of pressures colonisers create for Indigenous peoples to adopt settler way of being.<sup>12</sup>

A key facet of settler colonialism is the British Crown’s legal presumption of *terra nullius* (Latin for “a land without people”), such that strong Māori expressions of sovereignty and autonomy have been historically significant in fighting against the colonial project in New Zealand.<sup>13</sup> As Arena Heta of Ngā hapū o Kāingapiipiwai (a Māori community) puts it, “Te Tiriti [the Māori version of the Treaty] allowed Pākehā to immigrate, to live amongst us, and to trade. There is nothing in Te Tiriti that gave them the right to govern us or be our sovereign.”<sup>14</sup> At the same time, Ani Mikaere notes that the response to public debates about sovereignty from Pākehā communities has involved “selective amnesia... denial and distortion of the truth... an obsession with looking forward rather than back... and the determination to cast oneself in the role of victim.”<sup>15</sup> Rather than acknowledging the fundamental instability of British Crown claims to sovereignty in New Zealand, many Pākehā cast themselves as victims, making claims that Māori have been overcompensated for historical wrongs and that affirmative action policy disenfranchises non-Māori peoples.

There have been important, although certainly limited, efforts to challenge the colonial logics of assimilation. To illustrate, let us consider the 1987 Māori Language Act. Under the New Zealand legal system, the British Crown (and the government that legislates on its behalf) had initially attempted to prevent Māori from speaking Te Reo Māori. Policy and legislation gradually began to change to support biculturalism in the 1970s and 1980s: by 1987, Māori was registered by the government as an official language of New Zealand, and in 2018, Māori language

week is celebrated widely.<sup>16</sup> In many respects, such celebrations are important for strengthening the relationships between Māori and non-Māori communities, and at least superficially appear to acknowledge the need to repair the historical harms of colonial dispossession. However, policy change is no substitute for significant institutional overhaul, and does not necessarily signify any government commitment to decolonisation. While on one hand, the Māori Language Act is enormously positive in enabling language rejuvenation and rehabilitation, on the other hand it can sometimes serve to undermine Māori sovereignty, by placating the majority non-Māori public with narratives of State-driven bicultural harmony. As Tracey McIntosh, Dominic Andrae and Stan Coster note, “Māori as *tangata whenua*<sup>17</sup> have always resisted the pressures of colonial, post-colonial and Settler-state policies—once assimilationist; then bicultural and allegedly autonomous—and have sought to demonstrate and give fully independent voice to their own social, political, economic and cultural viewpoints.”<sup>18</sup> In this context, State-driven bicultural initiatives remain necessary, but never sufficient, for engaging issues around Māori political autonomy, if the State is unable to acknowledge its own foundational complicities in colonial dispossession.

How can we make sense of this dual tendency of the State to both deny Māori political autonomy and affirm the specificity of Māori cultural identities? In thinking about the historical transmission of settler colonial violence in New Zealand, Lorenzo Veracini makes an analogy between viruses and colonial relationships. In Veracini’s view, colonial relationships, like viruses, “can be reproduced vertically (one is born into it—colonized people can only give birth to colonized offspring)” as well as “horizontally (through the colonial ‘encounter’ and the resulting subjection of colonized peoples).”<sup>19</sup> Viruses, like colonialism, mutate and can be highly resistant to antiviral treatments because of their changing shapes and forms. In this sense, coloniality persists because of its ability to adapt and change to work against new forms of resistance. Part of this adaptation involves reframing the enduring instruments and institutions of colonial rule as non- or post-colonial: “Most importantly, colonial ideologies often see colonialism as something intrinsically temporary, a system of unequal relationships that will run its course until it will itself establish conditions appropriate for its supersession.”<sup>20</sup> Fantasies of untroubled progress notwithstanding, coloniality continues to function as a virus, invisible but for its symptoms, operating silently at the very core of being. This invisibility is what allows seemingly benevolent acts of a colonial government, such as the expansion of rights or the promotion of cultural diversity, to be (mis)read as signs that colonialism itself has disappeared from the political horizon. To

understand the ways that coloniality may still shape a range of institutions in New Zealand, I turn to what Nelson Maldonado-Torres refers to as the “coloniality of being.”

As already indicated, “coloniality” can be understood as distinct from colonisation. For Maldonado-Torres, coloniality “refers to long-standing patterns of power that emerged as a result of colonialism, but that define culture, labour, inter-subjective relations, and knowledge production well beyond the strict limits of colonial administrations.”<sup>21</sup> Expanding this meaning, the “coloniality of being” allows Maldonado-Torres to illuminate the ways in which the long-term impacts of colonisation manifest in the daily experience of both colonisers and colonised peoples. He traces the intellectual problems around coloniality through René Descartes, whose Cartesian meditations form the basis of a wider historical Western phenomenology that considers body and mind as separate entities. Maldonado-Torres highlights and argues that “a certain scepticism regarding the humanity of the enslaved and colonized sub-others stands at the background of the Cartesian certainties and his methodic doubt.”<sup>22</sup> The Cartesian division between mind and body, of reason over physicality, as Maldonado-Torres puts it, “[provided] a new model to understand the relationship between the soul or mind and the body; and likewise, modern articulations of the mind/body are used as models to conceive the colonizer/colonized relation, as well as the relation between man and woman, particularly the woman of colour.”<sup>23</sup> To extend the aforementioned metaphor, coloniality is the viral form of colonisation, the disease that seeps noxiously into everything around it. If colonialism is the colonial government and its tools of repression, the viral coloniality of being prevents or obscures efforts to question the wider historical circumstances and legacies of colonial repression. To the extent that this violence remains unquestioned, the logic of elimination is left unchecked.

The coloniality of being has implications for knowledge production, both in relation to academic scholarship and in relation to other forms of institutionalised, bureaucratic knowledge. When coloniality is not examined, and when “methodological approaches to knowledge construction are treated as inherently ‘value neutral’ and ‘apolitical,’” colonial institutions are able to hide the structural biases that reproduce systematic harms.<sup>24</sup> Consider the example given by Kukutai and Walter:

Indigenous population statistics and the categories that inform them are

not value neutral. Such data emerge from, and are given meaning through, the dominant frameworks of the settler state societies that produce and use them. Decisions on what data are collected, on whom, when, how, and in what format, are not simply matters of administrative choice. Rather they are social, cultural and political artefacts with the power to define and exclude. This claim is more than semantics. Official statistics have a lived impact for Indigenous peoples in both Aotearoa and Australia; from perceptions of who we are, to the policy outcomes derived from those statistics.<sup>25</sup>

While gathering data on human flourishing is useful for determining whether policies are working, it is important to be wary of the ways in which that data is collected, phrased and presented. Many programs that purport to assist Māori communities are coordinated around Pākehā ideals, which means that while these programs and policies attempt to improve Māori affairs, they may unwittingly be exercises in recolonisation and assimilation. This is particularly important when governmental norms around employment or vocational ‘success’ ignore or exclude participation within Māori communities, as Ani Mikaere highlights:

A person of Māori descent who is healthy, prosperous and well-educated but who does not participate in Māori society could not be regarded as a success in Māori terms. To the extent that assimilated Māori generally do not identify as Māori at all, they move to the Pākehā side of the equation and represent the ultimate success of the colonisation project.<sup>26</sup>

The conflict between Pākehā institutions and ways of understanding wellbeing, and those of Māori communities, becomes acute in the case of the carceral system, which is the final focus of this article.

## COLONIALITY, INCARCERATION AND TIKANGA MĀORI

In more ways than one, the coloniality of being shapes the contexts through which Indigenous and minority groups of oppressed peoples are incarcerated (examples can also be found in Australia and the United States).<sup>27</sup> The replication of Western colonial carceral systems across the world has caused enormous devastation to Indigenous groups, and in many ways, simply extend the more ‘spectacular’ forms of violence associated with frontier conflict and invasion. For Cunneen and Tauri, “criminalisation and punishment [are] central to the operation of the

colonial state in its governance of Indigenous peoples,” and “open warfare [has been] replaced by more regulatory forms of control.”<sup>28</sup> Prisons in New Zealand demonstrate a neo-colonial commitment to the oppression of Māori in dividing and separating *whanau* (extended family) and communities. One example of this is the Māori Focus Units and Māori Therapeutic Units. Riki Mikaere has investigated the effectiveness of these units, which are presented by the Department of Corrections as a way to prevent Māori reoffending by demonstrating a commitment to the Treaty of Waitangi. The language around reporting on the Māori Focus Unit programmes is cold, clinical, and strongly dependent on normative psychological profiling.<sup>29</sup> Western psychometric testing and therapy is employed in the units despite the commitment to *tikanga Māori* (broadly translated as ‘Māori law’), including a “Psychological Inventory of Criminal Thinking Styles,” which is “a self-report measure designed to assess thinking styles understood as supporting criminal lifestyles.”<sup>30</sup> This metric presupposes that the incarcerated individual has some inherently criminal disposition, and draws attention away from the social and historical variables that lead Māori to be overrepresented in New Zealand prisons.

Like many state mechanisms, the metrics and surrounding assessments fail to appreciate the colonial circumstances and wider institutional failures which lead to disproportionate Māori incarceration. The Department of Corrections claims that inmates involved in their Māori Focus Unit programmes are “expected to lead pro-social, non-offending lifestyles following release from prison,” but the same institution acknowledges that there has yet to be any “research evidence which confirms the linkage between these intermediate and longer-term outcomes.”<sup>31</sup> Furthermore, practices such as solitary confinement can be actively detrimental to any future rehabilitation. A report by Sharon Shalev for the New Zealand Human Rights Commission report found that there was an “overrepresentation of ethnic minority groups in solitary confinement and restraint incidents,” with Māori and Pasifika peoples comprising 80% of solitary confinement.<sup>32</sup> In this way, Māori prisoners are likely to experience the most deeply traumatizing facets of incarceration, a fact acknowledged in a 2017 Waitangi Tribunal report, which found that “the Crown has a Treaty responsibility to reduce inequities between Māori and non-Māori reoffending rates in order to protect Māori interests.”

The dynamics of privatised incarceration further exacerbate these issues. A man who wishes to be known only as “Dave” has spent 15 years total in New Zealand prisons across 40 years, and describes solitary confinement at Mt Eden Correc-

tions Facility,<sup>33</sup> one of the largest and oldest prisons in the country, in the following way:

There were rats, cockroaches. you just sit there... it's really challenging psychologically. They feed you but it's not the same as in the general prison population; I would get half a cabbage, raw, two potatoes, a piece of bread and a mug of water. They'd send you there for 7 to 14 days... some guys get taken out of the after three days because they're just [too messed up]. You hear them all night, screaming and the rest of us... would be shouting out '...kill yourself.'<sup>34</sup>

During its period of privatisation, Mt Eden Corrections Facility attracted criticism due to a range of high profile incidents. In 2015 a man “was beaten up by four prisoners and dropped off a balcony while in jail... he [sued] Serco [a private prison operations company] for \$500,000, alleging gross negligence on their part.”<sup>35</sup> The government resumed control over Mt Eden Corrections Facility in recent years, after further stories like this emerged from the prison. People Against Prisons Aotearoa, a prison abolitionist movement, criticizes Serco for their active complicity in violence as part of the company's efforts to capitalize on incarceration.<sup>36</sup> Privatising and monetising incarceration can create a dangerous conflict of interest in the way that prisoners are treated, especially if the result is a decrease in money spent on each prisoner to ensure safety and wellbeing. The privatisation of prisons and the corresponding lack of adequate services for rehabilitation has disproportionate impacts on Māori communities,<sup>37</sup> private companies such as Serco have no mandate to address the issues around social and historical justice that shape patterns of Māori incarceration.

In 2015, Tom Hemopo filed an urgent statement of claim to the Waitangi Tribunal because of the disconcertingly high reoffending rates by Māori. He also raised issues around the prejudice and difficulty Māori families and communities face as a result of high incarceration rates.<sup>38</sup> The Tribunal found that the Crown and the Department of Corrections was not fulfilling its obligation to Māori under the Treaty, which was supported by the fact that Corrections had “no specific plan or strategy to reduce Māori reoffending, no specific target to reduce Māori reoffending, and no specific budget to meet this end.”<sup>39</sup> Hemopo argued in his statement of claim that:



The normalisation of the disproportionate number of Māori offenders causes social harm by reproducing inter-generational inequalities. The prejudice to Māori caused by the high rate of Māori reoffending extends to the offenders' *whānau*, *hapū*, *iwi* and, particularly, to their children.<sup>40</sup> [Hemopo] submitted that the high rate of Māori imprisonment also leads to the normalisation of this situation and the perpetuation of the stereotype that Māori are inherently criminal.<sup>41</sup>

In this context, it becomes important to engage with Māori perspectives of coloniality and justice to further critique settler colonialism and the prison system in New Zealand in connection with Indigenous worldviews. The notion of *tikanga Māori* describes a body of “values developed by Māori to govern themselves—the Māori way of doing things.”<sup>42</sup> Mason Durie, a prominent Māori lawyer and leader, argues that *tikanga Māori* as a value system enables a flexible, mutable adherence to principles that are adapted across time:

While custom has usually been posited as finite law that has always existed, in reality customary policy was dynamic and receptive to change, but change was effected with adherence to those fundamental principles and beliefs that Māori considered appropriate to govern the relationships between persons, peoples and the environment.<sup>43</sup>

Further to this, Hirini Moko Mead explains that *tikanga* are:

... tools of thought and understanding. They are packages of ideas which help to organise behaviour and provide some predictability in how certain activities are carried out. They provide templates and frameworks to guide our actions and help steer us through some huge gatherings of people and some tense moments in our ceremonial life. They help us to differentiate between right and wrong and in this sense have built-in ethical rules that must be observed.<sup>44</sup>

Mead gives the example of “purify[ing] oneself through cleansing with fresh water following proximity to death,” where breaching *tapu* instead might involve a supernatural punishment.<sup>45</sup> Underpinning this approach is the pervasive concept of *whanaungatanga*.<sup>46</sup> Far from aiming to separate people from their communities and the outside world, *whanaungatanga* instead “embraces whakapapa (genealogy), and focuses on connection, understanding and relationships.”<sup>47</sup> A law com-

mission report into Māori justice worldviews notes that:

In traditional Māori society, the individual was important as a member of a collective. The individual identity was defined through that individual's relationships with others. It follows that tikanga Māori emphasised the responsibility owed by the individual to the collective. No rights endured if the mutuality and reciprocity of responsibilities were not understood and fulfilled.<sup>48</sup>

Western societies tend not to emphasize community and connections between people in this way, and therefore pursue justice through individualising carceral practices. Mass incarceration is clearly at odds with *tikanga Māori*, and particularly with the concept of *whanaungatanga*. Families of all kinds may be separated by the prison system—prisoners are, after all, husbands, wives, mothers, grandparents, fathers—and this disturbance in family structure may further cycles of trauma and poverty, which perpetuates Māori disenfranchisement.

A well-known Māori proverb reads as follows: “Hütia te rito o te harakeke, kei hea te kōmako e kō? Kī mai ki a au, ‘He aha te mea nui i te ao?’ Māku e kī atu, ‘He tāngata, he tāngata, he tāngata.’” This is commonly translated as, “*If the heart of the flax is pulled out, where will the bellbird sing? What is the most important thing in the world? It is people, it is people, it is people.*”<sup>49</sup> In continuing to separate and oppress by dividing Māori from communities, culture and land, the coloniser pulls out the heart of the *harakeke*.

## CONCLUSION: PEOPLE AS PROBLEMS AND PEOPLE FACING PROBLEMS

White colonial powers have cast Māori communities in New Zealand as ‘problems’ to be solved. Lewis Gordon writes of the process of colonisation:

New kinds of people came into being, while others disappeared... they are Indigenous to a world that, paradoxically, they do not belong to. These people have been aptly described by Du Bois as “problems.” They are a function of a world in which they are posited as illegitimate although they could exist nowhere else... Such people are treated by dominant organisations of knowledge... as problems instead of people who face problems. Their problem status is a function of the presupposed legitimacy of the

systems that generate them.<sup>50</sup>

In this context, we can understand New Zealand prisons as colonial institutions that serve to generate ‘problem people.’ Cunneen and Tauri note that “colonialism can be considered criminogenic to the extent that it actively produces dispossession, marginalisation and cultural dislocation.”<sup>51</sup> In the previous section, I drew upon Gordon, Cunneen and Tauri to reinforce the notion that colonialism creates disenfranchisement and cultural dislocation. Western settler colonial systems and methodologies do not adequately cater to Māori, and in this sense government institutions have failed Māori communities. As part of this neglect, settler colonial Pākehā power structures have created and perpetuated a myth surrounding Māori as ‘problem people.’ Rather than considering the ways in which coloniality and invasion have impacted Indigenous peoples, Pākehā narratives and discourses across public institutions perpetuate the notion that Māori have failed to assimilate into settler colonial culture. For example, Moana Jackson writes that:

Reasons for non-normative behaviour by members of the minority culture, the Māori, are sought in instances of non-assimilation, or in specific cultural mores of the Māori, they are not sought in the cultural norms of the Pākehā which are impacting upon Māori people. Thus an explanation of the high rate of Māori theft was sought, albeit incorrectly, in an alleged Māori value. It was not sought in a questioning of the relevant Pākehā values or systems.<sup>52</sup>

While there are indications that legislation and policy in Aotearoa is moving towards biculturalism, the failure to afford Māori the power promised under the Treaty of Waitangi, especially in relation to justice and incarceration, tells a different story. For this reason, I have argued throughout this article that the carceral justice system in New Zealand has served and continues to serve as an extension of settler colonial values which oppress Indigenous peoples to perpetuate Pākehā privilege. For future research, we may benefit from understanding coloniality not simply as a set of overt commitments to colonial projects, but as a viral movement that works its way through the epistemological and institutional formations of settler colonial society in Aotearoa New Zealand.

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