

UNLEASHING THE CARCERAL IMAGINATION: MOVING BEYOND  
CONCEPTUALISATIONS OF RISK AND SAFETY TO IMAGINE AN  
AOTEAROA WITHOUT PRISONS

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## ABSTRACT

In recent years, both Labour and National governments in Aotearoa New Zealand have recognised prison as a moral and fiscal failure. Nevertheless, both parties still invest in policies that promote the use of incarceration. Public safety remains a strong rationale for both the continued use of prisons and the demand for even greater use of carceral responses. Ultimately, risk logics, safety logics, and carceral logics intersect to dominate our responses to harm. Through these logics, the priority continues to be exclusionary and punitive approaches to harm, which restrict the ability to develop sustainable and collective safety. Prison abolitionist scholarship highlights the destructive consequences of prison and promotes the rebuilding of life-giving institutions, thus rendering the prison and the carceral state obsolete.

This thesis examines contemporary conceptualisations of risk and safety in Aotearoa New Zealand, focusing on understanding how they may contribute to responses to harm. Drawing on semi-structured interviews with 16 people who work or advocate in the criminal justice sector, conceptualisations of risk and safety and criminal justice responses to harm are critically examined using reflexive thematic analysis. Participants in this project had a broad range of experiences and semi-public positions; Parole Board members, ex-police officers, victims' advocates, justice advocates, a judge, a politician, a member of local government, the Secretary of Justice, and the Department of Corrections National Commissioner.

The analysis of the findings shows that the justice system functions as a site of both power and pain. While Aotearoa New Zealand's justice system may benefit some people, it primarily operates as a wheel of failure that continually perpetrates harm. This thesis also suggests that contemporary conceptualisations of risk and safety can promote exclusionary and Othering approaches that operate *for* or *against* specific communities. These conceptualisations promote punitive and carceral responses to harm, which

in turn (re)produce more harm and pain in society. Reconceptualisations of risk and safety are offered through the notions of ‘humanising risk’ and ‘safety from presence’.

This thesis contributes to current conversations about the need for transformative change in responses to harm in Aotearoa New Zealand. The findings from this thesis provide an important platform for continued interrogation of how contemporary conceptualisations of risk and safety can be reimagined to envision an abolitionist reality.

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*For my grandma, Margaret Joan Gordon.  
Your compassionate and caring nature has always been an inspiration.*

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## GLOSSARY

iwi	tribe
kanohi ki te kanohi	face to face
kaupapa	philosophy, topic, matter for discussion
kaupapa Māori research	Māori approach, topic, principles, ideology
kōrero	to speak, conversation
mahi	work, job, employment
Māori	Indigenous person of Aotearoa New Zealand
mokopuna	grandchild
Pākehā	English, New Zealander of European descent
tangata whenua	Indigenous people, people born of the land
tangata tiriti	People of the Treaty
Te Ao Māori	Māori world view
Te reo Māori	Māori language
Te Tiriti O Waitangi	Te reo Māori version of The Treaty of Waitangi
Tikanga Māori	correct protocol, custom, practice, protocol
wāhine	female, women
whakapapa	genealogy, lineage, descent
whakawhanaungatanga	process of establishing relationships
whānau	extended family, family group

Source: <https://maoridictionary.co.nz/>

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## CHAPTER ONE: INTRODUCTION

This project arose from my growing interest in challenging and criticising carceral responses to harm. Decades of scholarship have highlighted the ineffectiveness of punitive responses to harm and the violence and pain experienced within prisons globally (Andrae, McIntosh, & Coster, 2017; Critical Resistance Abolition Toolkit Workgroup, 2004; Davis, 2003; Jackson, 1988; Lamusse & McIntosh, 2021; Mathiesen, 1974; Scott, 2020). The period between the mid-1980s to 2017 saw exponential growth in the prison population in Aotearoa New Zealand, with Māori consistently constituting around half of the people in prison (Ministry of Justice, 2021a). Since 2018 there has been a downward trend in sentenced admissions to prison in Aotearoa New Zealand. While at face value this seems a promising overall reduction in the prison population as a whole, within the last three years, the percentage of people in prison that are on remand has grown from 34.3% to 38.9% (Department of Corrections, 2019a; 2022). This growth in the remand population, when viewed alongside the overall decline in the sentenced prison population, raises questions about whether the downward trend is something that will be sustained long term, something which is difficult to forecast. Indeed, it may only be temporary under the current government and policies, and the pandemic is likely to have influenced the reduction of people in prison (Ministry of Justice, 2021b). Despite the reduced prison population, there is a concentration in the complex needs and experiences of people in prison.

For this project, the concept of the ‘carceral state’ and ‘carceral logics’ will be used to identify how policing, prisons, and punishment pervade our society (Beckett & Murakawa, 2012). The carceral state recognises the extensive reach of punitive responses to harm. As Gottschalk (2015) poetically states, “a tenacious carceral state has sprouted in the shadows of mass imprisonment and has been extending its reach far beyond the prison gate”

(p. 31). Moving beyond just considering the structures and institutions that are carceral-like, the ‘carceral state’ portrays the ideologies, logics, and belief systems that uphold it. The carceral state, therefore, extends our focus from the problem of mass incarceration to conversations around racial injustice, employment, policing, neoliberal ideology, and Othering (Brown & Schept, 2017).

When embarking on this project, I recognised that challenging carceral responses to harm required grappling with and unpacking notions of risk and safety. Prisons are often justified to remove and confine people that pose a risk to society in the name of public safety. Public safety remains a strong rationale for the continued use of prisons and demanding even greater use of carceral responses. A public opinion poll conducted in Aotearoa New Zealand found that 67% of survey participants believed prison kept “the public safe by securely containing offenders” (Colmar Brunton, 2014, p. 11). A further 18% of respondents provided a ‘neither agree nor disagree’ response. These results demonstrate that the public highly correlate keeping people in prison with increased public safety (Colmar Brunton, 2014).

Carceral logics, which provide the foundations for how we punish, have become entrenched in Aotearoa New Zealand. Kaya Naomi Williams (2017) poignantly notes that our “conversations about crime are held captive by logics of public safety and risk” (p. 38). The choice of language she uses here is important for two reasons. Firstly, it recognises that our current carceral imagination is restricted to the language that reinforces our reliance on incarceration. Secondly, Williams (2017) identifies that the current lexicons of justice have strengthened the chains of captivity and confinement. Carceral logics demonstrate the insidious nature of the carceral state and how its shadow clouds our ability to move outside of a carceral framework.

## **HYPER-INCARCERATION IN AOTEAROA NEW ZEALAND**

When I started this project in February 2019, the number of people in prison (including those serving sentences and individuals on remand) in Aotearoa

New Zealand was 10,053 (Department of Corrections, 2019a). The most recent statistics from March 2022 highlight a significant reduction of the prison population, which is currently 7,669 (Department of Corrections, 2022). As a result of this reduction in the number of people in prison, the incarceration rate has reduced from 203 people per 100,000 to 150 people per 100,000 (Department of Corrections, 2019b; 2022; Statistics New Zealand, 2019; 2022). However, the most recent rate of incarceration for Māori is 468 people per 100,000 (Department of Corrections, 2022; Statistics New Zealand, 2021), which highlights the racial disproportionality in our justice system that negatively affects Māori (McIntosh & Workman, 2017). Additionally, recidivism rates have remained static for Māori (The Salvation Army Social Policy and Parliamentary Unit, 2022). Therefore, a reduction in the prison population should be viewed with caution when disaggregating these figures by ethnicity.

The alarming rate at which Māori are imprisoned has called for the utilisation of Wacquant's (2010) term 'hyper-incarceration' (Curcic, 2019; Martin, 2021). Wacquant's theorising of hyper-incarceration demonstrates that in the United States "one particular category, *lower-class African American men trapped in the crumbling ghetto,*" have been targeted into the justice system. Simultaneously, "the rest of society – including, most remarkably, middle- and upper-class African Americans" are left "practically untouched" (Wacquant, 2010, p. 78 emphasis in original). Māori hyper-incarceration acknowledges that the:

over-representation of Māori in the criminal justice system is not understood as an independent issue, much less a criminogenic problem, but as a wider social harm issue that has been in the making by various historical and structural processes of dispossession (Curcic, 2019, p. ii)

In addition to having a high incarceration rate, Aotearoa New Zealand maintains high recidivism rates. In the 12-months following release from prison, 33.9% non-Māori and 43.1% Māori were re-convicted in 2021 (The Salvation Army Social Policy and Parliamentary Unit, 2022). The re-conviction rate rises to 51.5% (non-Māori) and 63.9% (Māori) for people released from prison 24-months prior. These re-imprisonment figures are considerably

higher for young people, Māori, people with gang affiliations, and people serving sentences shorter than two years (The Salvation Army Social Policy and Parliamentary Unit, 2022). When comparing recidivism rates between people who served a prison sentence and those who served a community sentence, the recidivism rates for the latter are considerably lower. Re-conviction rates for the 12-month and 24-month period following a community sentence were 21.2% and 35.3% respectively (Department of Corrections, 2021). This demonstrates that the recidivism rates of those who experienced a prison sentence is almost double than those who served a community sentence.

Re-imprisonment rates demonstrate the cyclical nature of imprisonment. Post-release from prison, individuals are often placed into worse conditions than before incarceration. Stigma, unemployment, lack of stable housing, and reduced social capital are just some of the many conditions that people and their whānau may experience after incarceration (Clear, 2007). Prisons exacerbate the conditions that contribute to engaging in harmful and criminal behaviour. The arguably criminogenic and harmful conditions of prisons can demonstrate the argument that using prison as punishment may weaken public safety (Dolovich, 2011). As Danielle Sered (2019) argues, the criminogenic quality of prisons can create more and longer lasting damage to communities.

## **RESEARCHER REFLEXIVITY IN THIS PROJECT**

Within this project I hope to demonstrate my commitment to self-reflexivity in my role as researcher. As discussed in more detail in *Chapter Four*, research of this kind can never be unbiased or objective. Reflexivity, according to Braun and Clarke (2021a), “involves a disciplined practice of critically interrogating what we do, how and why we do it, and the impacts and influences of this on our research” (p. 5). It is important to understand how my positionality as a prison abolitionist may have influenced or shaped this research.



Growing up, I was fortunate to be socialised into a world where I did not think about the justice system or related social issues. I lived a sheltered life, and it was only once going to university that I was exposed to the injustices and pain within the justice system. Once I became aware of how unequal and unjust the system is, I desired to learn more. In my final year of undergraduate studies, I completed a criminology course taught by Dr Rob Webb (my doctorate secondary supervisor) called *Indigenous and the Global*. This course critically exposed me to the ongoing legacy of colonisation and introduced me to counter-colonial and Indigenous criminology literature (Agozino, 2003; Cunneen, 2005; Tauri, 1999). The following semester I was taught by Professor Tracey McIntosh (my doctorate primary supervisor) for a sociology course, *Doing Time: Incarceration and Punishment*. Through completing this course, I became familiar with critical prison scholarship that highlighted the consequences of incarceration as a societal response to harm (Davis, 2003; Reiman & Leighton, 2017; Wacquant, 2002). Completing these two courses encouraged my interest in continuing and developing my knowledge in this area, leading me to undertake postgraduate criminology studies.

During my honours year I volunteered for JustSpeak – a youth-led organisation committed to changing the conversation around criminal justice issues. In my four years with this organisation, I began expanding my networks, working alongside those that are viewed as leaders in the movement towards transformative change. For one of my honours courses, I wrote a research report on responding to Māori youth offending in Aotearoa New Zealand, drawing heavily on Moana Jackson’s ground-breaking contribution, *He Whaipāanga Hou* (1988). During this period, I was grateful to hear him kōrero on multiple occasions, with his calm but passionate call to action. Moana Jackson was courageous, hopeful, eloquent, and thought-provoking and made such a large contribution to te ao Māori, tino rangatiratanga, and abolition. He has paved the way for many and has been hugely influential in my work. In doing this work, I stand on the shoulders of many giants, and his contribution is likely to remain the most significant and long reaching.

My Master's project moved further into a critical perspective, in which I explored 'conflict ownership' – a concept derived from Nils Christie's (1977) observations on the needs for alternatives to the formal justice system – and how this applied in restorative and community justice practices in Aotearoa New Zealand. After completing my Master of Arts, I was a Professional Teaching Fellow for two courses that focused on prison and punishment. In this role, my theoretical stance was informed by Indigenous criminologists (Cunneen & Tauri, 2016; McIntosh & Workman, 2017; Tauri, 2017; Webb, 2017) and prison abolitionists (Davis, 2003; Gottschalk, 2015; McLeod, 2015; No Pride in Prisons, 2016)<sup>1</sup>. These theoretical influences inspired me to be increasingly critical and interested in the failures of the prison system as an institutional criminal justice response to social harm. Therefore, I knew I wanted to focus my doctorate project on potential alternatives to prison. Initially, I was interested in decarceration movements that aim to reduce the prison population, however, I quickly transitioned my thinking into alignment with prison abolitionists.

In 2021, I found community within the prison abolitionist group People Against Prisons Aotearoa (henceforth, PAPA). After reading their report, Abolitionist Demands (2016), and attending a few meetings I recognised that I aligned with their kaupapa. PAPA works towards a fairer, safer, and more just Aotearoa and is committed to the following principles: anti-capitalism, decolonisation, prison abolition, alternatives to prison, equality, and solidarity. Being involved in PAPA solidified my positionality and political ideology as a prison abolitionist. Indeed, the mahi I have been involved in with PAPA in my current role as Advocacy co-coordinator has heavily shaped my thinking and perspective. In this role, I regularly communicate with people in prison, who have continuously opened my eyes to the pain, isolation, and mistreatment within prison. These voices have motivated me to shed light on, and rectify, these injustices.

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<sup>1</sup> Abolitionist Demands is a report written by No Pride in Prisons in 2016. This organisation changed their name to People Against Prisons Aotearoa (PAPA) in 2017 (Lamusse, 2021).

As part of my reflexive practice, I utilised a written journal and voice notes throughout my doctoral project. These served as a “repository for documenting and storing thoughts for subsequent reflection, interrogation, and meaning-making” (Braun & Clarke, 2021, p. 19). Having this space to share my thoughts, reflect on why certain things were of interest to me, and to gain clarity, was necessary. It served as a place for me to work through the trickier and more complex parts, but also allowed me to celebrate some amazing moments and accomplishments. There were moments where I relied heavily on my reflexive process, and other times where a month would go by without writing in the journal. Now that I know the benefit of a reflexive journal, it is a habit that I want to continue to prioritise.

Through my reflexive practice I frequently explored what it means to be a Pākehā scholar doing this work. When I first approached this project, I held a lot of guilt around my colonial ancestry. This guilt produced a lot of discomfort in doing research of this kind, which is often experienced by Pākehā who position themselves in decolonial spaces (Bell, 2004; Tolich, 2002). My experience of sitting in this discomfort is extensively detailed in *Chapter Four*. Being supervised by leading Indigenous scholars, and engaging with Indigenous scholarship through the project, grounded my thinking within the ongoing legacy of colonisation. Thus, while I draw on prison abolitionist scholarship globally, the motivation behind exploring alternatives to punitive responses to harm overlaps significantly with decolonisation movements. In identifying as a non-Indigenous ally, it is important to engage and work collectively with Indigenous people.

Like most doctoral projects, this project transformed as it progressed. In the first half of 2021, and towards the end of the field work component of this project, I was introduced to a book by Zach Norris called *Defund fear: Safety without policing, prisons, and punishment* (2021a). This was foundational to the framing of this project. Indeed, it shaped a lot of my thinking around safety, and features heavily in my literature review of safety logics in *Chapter Three*. The literature on prison abolition is ever-growing, and many important books have been released during this project (Davis, Dent, Meiners, & Richie,

2022; Norris, 2021a; Schenwar & Law, 2020; Scott, 2020). So, while this project initially focused on *prison*, the final product focused more broadly on alternatives to policing, prison, and punishment.

Alongside my doctoral project I have gone through a significant self-reflexive journey. Soon after the COVID-19 pandemic began, I was fortunate enough to be supported by a life coach for 20 months to do some much-needed inner work and healing. Through this journey, I worked through unpacking thought patterns, my privilege, and uncovering my passions and purpose. In doing this inner work I developed a true passion for my project. As I developed a connection with myself and embedded compassion and care into my daily life, this influenced how my project unfolded. It is no coincidence that what I needed for myself (care, compassion, and connection), I realised I wanted more of in the world. I hope that this project demonstrates my passion for creating more of these things with the world around me.

## **IMPORTANCE OF RESEARCH**

It is widely debated in criminal justice spaces in Aotearoa New Zealand whether we have a perpetrator or victim centred justice system. We in fact have neither and instead seem to be consumed by a punishment centred justice system (Te Uepū Hāpai i te Ora, 2019b). Aotearoa New Zealand has high incarceration and recidivism rates and is often unequipped to satisfy the needs of victims, perpetrators, and communities. Throughout this project, the harms of the carceral system are explained at length. For these reasons the need to think of alternative solutions to harm, that do not involve lengthy prison sentences, is vital.

In Aotearoa New Zealand, both Labour and National governments have recently recognised that prisons are a moral and fiscal failure and yet still invest in policies that continually promote incarceration (Fisher, 2018a; Lomas, 2011). However, the current political climate demonstrates the openness to new and innovative conversations, and national public meetings on justice reform were initiated by the Labour government through the

Ministry of Justice. Following the Criminal Justice Summits in 2018<sup>2</sup>, Te Uepū Hāpai i te Ora<sup>3</sup> and Te Ohu Whakatika<sup>4</sup> were formed. The six reports – *He Waka Roimata, Ināia Tonu Nei, Strengthening the Criminal Justice System for Victims: Survey Report, Hōkai Rangī, Strengthening the Criminal Justice System for Victims: Te Tangi o te Manawanui Recommendations for Reform* and *Turuki! Turuki! Transforming our Criminal Justice System* – all released in 2019, provide a comprehensive and layered approach to criminal justice issues which is a testament to the willingness and desire for change. This research therefore comes at a crucial time as conversations around transforming our justice system are developing. It is hoped that this project can advance this conversation by exploring ways in which we can ensure collective safety with less reliance on the carceral state.

## **SITUATING THE RESEARCH**

Throughout my criminological studies, I have been perplexed by the reliance on incarceration as a response to crime, despite the myriad of research that demonstrates the flaws of this approach (Alexander, 2010; Chesney-Lind & Mauer, 2003; Critical Resistance Abolition Toolkit Workgroup, 2004; Curcic, 2019; Davis, 2003; McIntosh & Workman, 2017). It is evident that we have a large reliance on incarceration as a response to crime and, based on high recidivism rates, this ‘solution’ is clearly limited in effectiveness (Department of Corrections, 2019c). Aotearoa New Zealand’s high recidivism rate calls into

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<sup>2</sup> The Criminal Justice Summit hosted 600 people from a range of backgrounds between 20 – 22 August 2018 to discuss transformative change within the justice sector (Hāpaitia te Oranga Tangata, 2018).

<sup>3</sup> Te Uepū Hāpai i te Ora (the Safe and Effective Justice Advisory Group) were a specialist advisory group commissioned in 2018 by the Minister of Justice at the time, Andrew Little. The aim of Te Uepū Hāpai i te Ora was to work alongside Justice Sector agencies and engage with the public on perspectives of the justice system (Little, 2018). Former National Party politician, Chester Borrows, was the chairperson and worked alongside the following group members: Julia Whaipooti, Ruth Money, Shila Nair, Dr Carwyn Jones, Dr Warren Young, Professor Tony Ward, Professor Tracey McIntosh, Dr Jarrod Gilbert, and Judge Quentin Hix.

<sup>4</sup> Following the Crown’s Criminal Justice Summit in August 2018, and through acknowledgment of a lack of Māori voices, Te Ohu Whakatika were formed. This group was responsible for organising a Hui Māori which was held in Rotorua in April 2019, which lay the foundation for the *Ināia Tonu Nei – We lead, you follow* report (Tebbutt, 2019).

question both the efficacy and effectiveness of prisons to engender greater levels of sustained individual and community safety.

A common narrative reinforcing the public's desire for incarceration is that prisons are needed to ensure public safety. This project seeks to identify how this narrative is (re)produced and who benefits from this narrative. In commencing this research, I noted that the concepts of risk and safety may influence our reliance on punitive measures. Therefore, I saw a need to explore how these words are conceptualised and how they may contribute to punitive responses to harm. There are three primary research aims for this project:

- To explore the harms and consequences of the justice system in Aotearoa New Zealand
- To consider how risk and safety are conceptualised in Aotearoa New Zealand and how this may contribute to punitive responses to harm
- To imagine how risk and safety may be reconceptualised without a reliance on punitive measures

By underpinning this project with these research aims, I am interested in drawing attention to, and critiquing, the belief that prisons and police make our society safe. Inspired by the Critical Resistance toolkit (2004), this project challenges the notion that carceral approaches to harm (for example, punishment, police, and prisons) make communities safe. My intention for this research is to contribute to a vision of safety that does not rely on controlling, removing, excluding, and caging people. This project recognises the importance of having a strong understanding of the way risk and safety are understood and implemented in criminal justice narratives and policy and legislative responses. Within this project the concepts of risk and safety feature heavily, however, the discussions are often supplemented by an analysis of security and protection. Risk, safety, security, and protection can have significant overlaps in their meanings and interpretations, and so all four words were explored in this project.

This project aims to understand how our responses to harm in Aotearoa New Zealand may have been held captive by risk, safety and carceral logics. To envision movements towards decarceration and prison abolition it is imperative that we unlock our minds from these logics. The challenge for any transformative justice movement is that it must go further than simply reducing the prison population. Instead, this research seeks to inform a deliberate combination of evidence-based policies and practices that seek to replace incarceration with life giving institutions and services (McDowell & Fernandez, 2018).

## **REFLECTIONS ON COVID-19**

It would be near impossible for me to complete this project without discussing the effects that the COVID-19 pandemic has had on me, the community, and this research. A large portion of the project – all the field work and most of the writing – has been carried out during a pandemic. Below are my reflections of the challenges I have personally faced, as well as some broader commentary on how the pandemic may have affected our social landscape in Aotearoa New Zealand.

### *CHALLENGE OF UNDERTAKING A PHD IN A PANDEMIC*

Undertaking a PhD has its challenges for many; however, these were intensified and exacerbated by the fact that most of this project was done during a global pandemic. There were three significant interruptions and challenges that I faced within this project: the need to reframe the methods used and consider alternative approaches to accessing participants; isolation from supervisors and other postgraduate students; and trying to write from a hopeful place with deepening social divisions.

I began my doctoral journey in 2019 and by early March 2020 I proposed a mixed method research project in my provisional year review (PYR). Initially, when envisioning this project, I had selected two methods: semi-structured interviews with people in a public profile role and focus groups with laypeople.

Combining these two methods would be effective as they would supplement each other and provide a potential comparative aspect to the analysis. I received supportive feedback from the PYR panel and was excited to embark on the field work component of this research. However, shortly after my PYR the global pandemic reached the shores of Aotearoa New Zealand<sup>5</sup>. This resulted in the need to restructure the research design to make the project feasible given the restrictions to in-person contact. Therefore, the decision was made to remove the focus group component from this project and prioritise semi-structured interviews.

Like many people, the uncertainty that came with the pandemic made it difficult to proceed with this project, especially in those first few months. At the time that Aotearoa New Zealand went into Level 4 COVID-19 restrictions<sup>6</sup> on March 25 2020, I was tutoring at the University of Auckland. The requirement to pivot to online teaching and learning was challenging for everyone to process at such short notice. Concern for students' wellbeing, as well as my own, meant that progression in this project stalled. I lost a lot of confidence during this period and made assumptions that people would not be interested in being interviewed for this project. In June 2020, I began reaching out to people who may be interested in the project. Over the following year, amongst two additional periods of significant COVID-19 restrictions, I conducted interviews, albeit not without issues (which are discussed in more detail in *Chapter 4*).

The second hinderance on my project due to the pandemic was on the social distance and isolation it enforced. Doctoral projects are frequently referred to as isolating and lonely periods (Bendemra, 2013; Mewburn, 2010). Jackman and colleagues (2021) note that the pandemic has exacerbated and intensified these feelings, which highlights the importance of addressing these issues. During the first year of the pandemic, especially, I found the social distance

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<sup>5</sup> In response to the global pandemic, the New Zealand government instilled a nationwide lockdown and 4 levels of restrictions and rules. Aotearoa New Zealand completely shut its borders to non-New Zealand citizens (which was only fully lifted in July 2022).

<sup>6</sup> Level 4 was a government enforced stay at home lockdown, and all public gatherings were prohibited (covid19.govt.nz, n.d.).



from supervisors and other students challenging. While I was able to resort to Zoom meetings and check-ins which provided an important outlet for communication with the academic community, these were not always ideal. Webber and colleagues (2021) conducted research on a doctoral networking group in Canada containing eight postgraduate students, who frequently met virtually during the pandemic. Their research demonstrates the importance and benefit of collaborative and supportive networks during a doctoral project. Indeed, peer-relationships, socialisation and connectivity are recommended to build a sense of community (Webber, et al., 2021).

During the last year of this project, I was fortunate to experience the benefit of a supportive network group that Webber and colleagues (2021) research promotes. In August 2021, Aotearoa New Zealand went into its fourth Level 4 COVID-19 lockdown restrictions. During that time, two friends of mine – Ti Lamusse and Kirsten Gibson (who are both involved in PAPA and are also criminology doctoral students) – suggested we start a daily ‘shut up and write’<sup>7</sup> group to help with productivity. All three of us are doing projects with a focus on prisons, and so we thought it would be helpful to share our ideas with each other. We envisioned that this would involve Zoom sessions over a few weeks and then would slowly dwindle down once restrictions ease.

The sessions were so supportive for us all, and thus we have continued them on. In January 2022, we also had Dr Samantha Keene, an early career feminist criminologist, join us on our daily sessions. While she has completed her doctoral project, she contributed well to our growing collective group. At the time of writing this, almost a year since its inception, our daily Zoom sessions are still going. There have been several benefits of this collective group: we have shared writing advice, talked through imposter syndrome, highlighted the difficulty with deadlines and juggling multiple projects, supported each other through burnout, expressed care and compassion for each other, encouraged rest, encouraged writing, checked in on each other, and celebrated each other’s wins. Ti, Kirsten, and Sam have witnessed and

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<sup>7</sup> Shut up and write sessions are a common technique for postgraduate students and academics (Aitchison, 2020; Allen, 2020)

supported me through the high and lows over the last year and I will be forever grateful for their friendship.

The formation and support of this collective has highlighted the importance of collaborative and caring relationships. In their latest book, *Abolition. Feminism. Now.*, Davis, Dent, Meiners, and Richie (2022) demonstrate why collectivity is crucial to transformative projects. As they share, “[t]his work is never a solo project. Individuals tire, fade. Movements deepen and continue” (Davis, Dent, Meiners, & Richie, 2022, p. 13). Gatherings, whether ad hoc or formal, “create insurgent sites of political education that build relationships, share language, strategy, tools, and analysis, and create opening for people to learn and to practice” (Davis, Dent, Meiners, & Richie, 2022, p. 13). A special part of the relationships that we formed was that our kōrero and connection would often go far beyond talking about our respective projects. Indeed, the strength in our collective was the genuine care, compassion, and kindness that we have for each other.

The third obstacle I faced was while writing one of my final analysis chapters. *Chapter Seven – Visions of change* – was by far the hardest chapter to write. During the beginning of writing the first draft of this chapter, the numbers of people with COVID-19 in Aotearoa New Zealand was surging, the tension between anti-vaccine mandate protesters at parliament and the police were rising, and the Russian invasion of Ukraine had begun. As I attempted to write on the potential for change and the need for social bridging, the world was exposing deeply ingrained social division and tension. The order for social distancing during the pandemic (as a health response to discourage the spread of the virus), has deepened social divisions amongst Aotearoa New Zealand. It was heart-breaking to see all of this unfold as I was writing that chapter.

The deflation I felt when writing on transformation change is not an experience I feel alone. Decades of research has shown how flawed our current justice system is in Aotearoa New Zealand, and yet any change that has occurred has been marginal and slow. Throughout discussions with whānau

members, friends, and the broader public during this project, there was little resistance from people when I said that prisons are flawed. In fact, a lot of people I spoke to as part of this research acknowledged that the justice system fails in its rehabilitative efforts which results in a lot more harm to our society. This speaks volumes to how ingrained and trapped we are by carceral logics. Towards the conclusion of this project, it was crucial for me to hold onto hope and having a strong vision for the change I want to see in the world.

### *REFLECTING ON THE PANDEMIC*

Through the global pandemic, there were several themes and messages that stood out to me as a criminology student. They were 1) institutional carceral language, 2) narratives of ‘community’, and 3) messages of safety. These will be discussed below in turn.

The language that we used in our everyday life has the power to shape our realities. It also has the potential to act as a “lexical social glue” that binds us together through a cultural reference point (Lawson, 2020). Throughout our COVID-19 experience, the use of carceral language and logic was heavily prevalent. Word choices such as ‘lockdown’, ‘quarantine’ and ‘containment’ have a direct connotation to the carceral system. This shifted to people on social media to liken their current situation to being in prison. They would reach out to their followers by calling them inmates, complain about being confined in a small space and then associate the feelings they were experiencing to what it must be like to be in prison. I can appreciate that these were difficult times for us all, but our circumstances were far different from what people experience behind bars. Conditions in prison are far from our lockdown restrictions. To liken our restrictions to prison is minimising the carceral environment that is predicated on the loss of autonomy and dignity, and being subjected to coercive control.

Notions of community and collectivity can be either ruptured or bound closer during significant periods, such as a pandemic. Throughout the pandemic response, phrases such as “we’re a team of 5 million” and “we’re all in this together” were regularly used by the government when implementing public

health messages and measures. These phrases reinforce the notion that the pandemic is something that we are collectively experiencing. However, you only need to look at our neoliberal, panic-buying individualistic tendencies to see through this romanticised narrative of community. When an announcement about a move to an increased COVID-19 level restriction was made, people flocked to the stores to stock up on groceries. These actions, induced by fear and panic, demonstrated a purely neoliberal and competitive mentality; that *my* need for groceries is of greater importance to someone else's. In doing so, many people disregarded the government's calls for two-metre distances between people. Therefore, the thing that they thought they needed to be safe – enough groceries so they would not need to go to the supermarket for two weeks – actually made them unsafe.

The use of terms related to safety rose exponentially throughout the global pandemic. A quick browse of the covid19.govt.nz website and listening to the daily 1pm updates<sup>8</sup> can demonstrate the importance of safety messages being delivered to the public. Narratives that have been delivered to New Zealanders display ideas that we need to stay in our bubbles to keep our society safe. Safety has been used to justify practices to keep our society protected from a pandemic (framed as a health hazard), but its use has also reinforced ideas of the carceral state. That is, to stay safe from COVID-19, exclusionary tactics such as social isolation and 'lockdown' have been utilised. Do practices like these reinforce our society's acceptability towards prison to maintain safety? Is during a pandemic, where public fear and anxiety is high, the perfect scenario to reinforce the link between safety and locking people away? While this is not explored in this project, I am intrigued as to whether these messages of safety reinforce our society's acceptability towards prison to maintain safety.

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<sup>8</sup> During most of the first 18 months of the pandemic, there were daily 1pm updates, in which a combination of Prime Minister Jacinda Ardern, Minister of Health Chris Hipkins, Director-General of Health Dr Ashley Bloomfield, and Director of Public Health Caroline McElnay would livestream a 30-60 minute update on COVID-19 related issues.

## **METHODOLOGY**

To address the research aims, and to investigate the complex meanings of risk and safety, this project was approached through qualitative methodologies and methods. I approached the research aims by collecting and analysing qualitative narratives from 16 people that advocate or work in the criminal justice sector in Aotearoa New Zealand. Semi-structured interviews were chosen as they provided flexibility in the flow of the interview, and enabled participants to share their ideas in rich detail (Terry & Hayfield, 2021). Those that were purposely selected to be interviewed held a range of positions: parole board members, ex-police officers, victims' advocates, justice advocates, a judge, a politician, a member of local government, the Secretary of Justice, and the Department of Corrections National Commissioner. My preference for interviews was to do them *kanohi ki te kanohi* (face-to-face); however, due to the pandemic minimising travel and social contact the research approach was redesigned (MacLean, Rahman, Turner, & Corbett, 2021), and most were conducted through Zoom. Reflexive thematic analysis was used to analyse the interviews (Braun & Clarke, 2021a). Further discussion of the methodological framework and methods used is provided in *Chapter Four*.

## **THESIS OUTLINE**

This thesis is composed of eight chapters. *Chapter One* serves as an introduction to the project and the researcher. A short, but important, chapter that provides an overview of the research questions and begins to situate the project. *Chapter Two* introduces the reader to scholarship which theorises the rise of the carceral state. Four explanations are offered regarding the increase in prisons as a response to crime: punitive public attitudes (Pratt, 2007), crime control policies and the new penology (Garland, 2001; Feeley & Simon, 1992), capitalism and neoliberalism (Davis, 2003; Rusche & Kirchheimer, 2003 [1939]), and systemic and institutional racism (Jackson, 1988; McIntosh & Workman, 2017; Wacquant, 2002). The consequences of the carceral state are explored, which demonstrates a need to explore

alternatives. This chapter then critically interrogates how reformist reforms (Ben-Moshe, 2013; Davis, 2003) have further entrenched the carceral state. To counter this movement, prison abolitionist scholarship is introduced, drawing heavily on work by international (Davis, 2003; Davis, Dent, Meiners, & Richie, 2022) and Aotearoa New Zealand-based abolitionists (Buttle, 2017; 2021; Lamusse, 2021; Lamusse & McIntosh, 2021). Specifically, this chapter outlines abolitionist perspectives and movements that have shaped my positionality as a prison abolitionist.

Risk and safety logics are explored in-depth in *Chapter Three*. First, I demonstrate the importance of language, and how it can function in a 'loaded' way (Bourse, 2019; Macagno, 2014). Beck's (1992) 'risk society' thesis and Furedi's (2002) 'culture of fear' are introduced to explain the rise of risk in our social and political consciousness. The rising domination of risk logics within the justice system is then interrogated through the development and prioritisation of actuarial risk assessments. Critical scholarship is drawn upon to highlight the racialised consequences of risk assessments (Cunneen, 2020; Werth, 2019). Moving to safety logics, the importance of safety in relation to crime, and many other social factors, is identified as paramount for the government. The prevalence of crime control practices which campaign to maximise 'community safety' and 'public safety' are examined. Here, these concepts are criticised for their exclusionary and Othering consequences (Taylor, 2011; Van Swaaningen, 2005). In-depth analysis is provided to argue the need of moving away from 'fear-based safety' (Norris, 2021a) and 'safety from absence' (Jackson & Meiners, 2011). 'Care-based safety' (Norris, 2021a) and 'safety from presence' (Jackson & Meiners, 2011) are offered as alternative approaches that will maximise sustainable safety for all.

*Chapter Four* details the methodology and methods that underpin this research. Researcher positionality and epistemology are thoroughly investigated to provide a deeper understanding between the researcher and this research. This chapter justifies and explains the research method (semi-structured interviews) and introduces the reader to the 16 participants that contributed to this research. Next, the data analysis method (reflexive

thematic analysis) is outlined, followed by an in-depth account of the process. To conclude, this chapter identifies ethical considerations and limitations for this project.

*Chapter Five* is the first of three analytical chapters, which share the prominent themes from the interviews. Titled '*Sites of power and pain within the justice system*', this chapter highlights participants' concerns and criticisms of the justice system. Here I examine criminal justice processes and agencies as 'siloes of power', in which the agency of individuals and collectives is taken away. The seven sites of power identified are government, media, police, court, remand, prison, and parole. Given that this project is interested in critiquing the use of prisons as a response to harm, closer examination of the normalisation of prison is provided. Importantly, the permanency and pervasiveness of prisons within Aotearoa New Zealand is exposed. Moving back to the bigger picture, the justice system is framed as a 'site of pain' to demonstrate how it fails for victims, perpetrators, and the broader community. Finally, the justice system is classified as a "wheel of failure", due to the widespread harm and pain it causes.

Having built a thorough understanding of the failure of the justice system, *Chapter Six* captures participants' conceptualisations of risk, safety, security, and protection. All four of these words are recognised as being inclusionary or exclusionary, and therefore can be operationalised in an oppressive manner. Utilising a sword or shield analogy (Ewert, 2007) from the interview with Khylee Quince, I propose that risk, safety, security, and protection function as "sword-based phenomena" against certain populations in Aotearoa New Zealand. Specifically, the Armed Response Trials between 2019 and 2020 are used as an exemplar to demonstrate how the operationalisation of these words can be unbalanced.

Moving to a more hopeful space, *Chapter Seven* examines participants' visions for change. Reconceptualisations of risk and safety are offered, through the concepts of 'humanising risk' and 'safety from presence' (Jackson & Meiners, 2011). Following on from this, the potential for change is explored, firstly

through acknowledging the widespread appetite for change. A variety of suggested changes to the justice system is offered, which highlights the breadth and diversity in desired changes. Finally, this chapter contends with participants' thoughts on prison abolition, and raises questions around how to respond to the 'dangerous few'.

*Chapter Eight* functions as a culmination of arguments from the three analytical chapters and draws conclusions from the material discussed throughout. Tying together arguments from *Chapter Five* and *Chapter Seven*, I argue that the siloed nature of the justice system restricts the potential for transformative change, so that any alterations to the system are minimal or incremental. Additionally, I demonstrate that risk and safety can be addressed through non-punitive measures, but this requires reallocation of values, priorities, and resources. This thesis closes with highlighting transformative possibilities and opportunities for further research. Due to the influence of my prison abolitionist politics, I leave the reader with my hopes and dreams for a brighter, and more compassionate, Aotearoa New Zealand.



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## CHAPTER TWO: RISE AND FALL OF THE CARCERAL STATE

This chapter explores and discusses scholarship relating to prisons as punishment and the consequences of incarceration. To begin, it recognises the wide-reaching nature of the carceral state and how it permeates through society. As prisons are a core feature of the carceral state, four theoretical perspectives will be discussed to explain the use of prisons as punishment: punitive public attitudes, crime control policy and the new penology, capitalism and neoliberalism, and systemic and institutional racism. Some of the widespread and long-term consequences of incarceration are highlighted, namely the way it reshapes citizenship, the intergenerational effect, and the economic and social cost.

In acknowledgment of these consequences, several reforms have been offered to reduce the harms of the carceral state. Carceral humanism and carceral feminism are examples of these attempts; however, they are often argued as reforms that further entrench the carceral state (Schenwar & Law, 2020). To explore these tensions, a discussion of the difference between reformist reforms and abolitionist reforms is provided. To conclude, this chapter recognises the potential to free our carceral imagination through prison abolition, transformative justice, and police abolition.

### **PART I: THE RISE OF THE CARCERAL STATE**

#### **THE WIDE REACH OF THE CARCERAL STATE**

To preface this section, it is important to recognise the distinct forms of violence and dehumanisation that individuals and collectives experience. Physical and explosive forms of violence within, and outside of, prison are harmful; however, there are also structural, slow, and incremental forms of violence too (McIntosh & Curcic, 2020). Contrary to speculation of a decline

in violence enacted by the state, violence has become less identifiable or hidden (Chartrand, 2015). Therefore, more subtle forms of violence permeate throughout society, particularly within the prison.

Literature that is critical of prisons can often go to the extreme of identifying that many things can be analogous to a prison. As Schenwar and Law (2020) note, “it is not just a locked door that prisonizes a place” (p. 19). Beth Richie’s (2012) concept of ‘prison nation’ and Brett Story’s (2019) ‘prison land’ demonstrate the extensive ways prisons permeate through society. The notion of social control, punishment, and surveillance occurring in the wider society is not a novel contribution. Over four decades ago, Foucault’s (1977) ‘carceral archipelago’ and Cohen’s (1979) ‘correctional continuum’ exemplified how carceral practices extend beyond the physical structure of the prison. Collectively, these scholars demonstrate the overlapping structures in many societies that result in marginalised communities being continuously “locked up and locked out” (Schenwar & Law, 2020, p. xiv).

Angela Davis (2005) recognises an ‘imprisonment binge’ that has used a punitive approach as a response to broad social issues: “Instead of building housing, throw the homeless in prison. Instead of developing the educational system, throw the illiterate in prison” (p. 37). To extrapolate further on her analysis, it is fair to say that instead of giving people access to employment, we throw the poor in prison. Instead of providing meaningful healing to those who have been harmed, we throw hurt people in prison. Prisons are used as a method to remove disposable and dispensable populations. While prisons are effective in disappearing people, they do very little in responding to the social problems that these people experience (Davis, 2005). Therefore, the carceral state as a “solution to a broad swath of social ills fails to address the root causes of harm and violence, and often serves to inflict more violence on vulnerable communities” (Davies, Jackson, & Streeter, 2021, p. 3096).

## **THEORISING PRISON AS PUNISHMENT**

The rise in incarceration has attracted significant scholarship to theorise its causality. As it is a complex social phenomenon it is difficult to pinpoint one

core driver of the rise in prison as punishment. There are four main theoretical perspectives that will be discussed respectively: punitive public attitudes, crime control policies and the new penology, capitalism and neoliberalism, and systemic and institutional racism.

### *PUNITIVE PUBLIC ATTITUDES*

There are multiple theories that explore the relationship between punitive public attitudes and punitive criminal justice policy. Most scholars recognise that there is indeed a relationship between the two; however, there is a lack of consensus in the literature regarding the direction and influence of the relationship (Frost, 2010). The three most popular theories are democracy-at-work (Roberts, Stalans, Indermauer, & Hough, 2003), penal populism (Pratt, 2007) and the elite manipulation thesis which will be discussed, respectively. In these theories, the core ideas of ‘public initiative’ or ‘public receptivity’ demonstrate debates around whether the public are *actively* punitive or *responsive* to punitive thinking.

The democracy-at-work thesis suggests there is a unidirectional relationship between public opinion and criminal justice policy. As the public become more fearful of crime, and often demand more punitive responses, they pressure their respective governments to make policy and legislative changes to ensure the safety of the public (Roberts, Stalans, Indermauer, & Hough, 2003). This theory recognises that the implementation of criminal justice policy is largely a response to public pressure. Criticism of this theory suggests that it is simplistic and that it does not recognise the complexities of public opinion or the formation of criminal justice policy (Frost, 2010).

Penal populism, derived from Anthony Bottoms’ (1995) notion of populist punitiveness, acknowledges that politicians use popular punitive sentiment to advance their political agenda. Like the democracy-at-work thesis, the public gains punitive attitudes on its own accord. However, the reason for punitive policy differs. In penal populism, the politicians implement punitive policies in a ploy to gain public support and votes (Pratt, 2007). Thus, the rise in punitive policy is for political gain, which does little to value evidence-based

reasoning, and became prevalent in the neo-liberal countries of the United Kingdom, United States, Australia, and Aotearoa New Zealand. This can be compared to the Scandinavian countries with a stronger emphasis on experts advising on penal policy, and lower imprisonment rates (Pratt & Eriksson, 2012).

These two theories demonstrate that the public initiates the punitive attitudes and the politicians respond to them. However, the elite manipulation thesis instead places the origin of punitive attitudes in politicians and the public then becomes responsive to them. Tracing back to the 1960s, Katherine Beckett (1997) recognises how political elites framed crime in such a way to bring punitive attitudes to the forefront. With the media playing an intermediary, political elites have manipulated the public to favour punitive crime control ideology. It is important to note that the relationship between public punitiveness and punitive policy is complex and contradictory. It is not as simple as suggesting that one influences the other as public opinion and policy is constantly changing.

Irrespective of the direction of the relationship between public opinion and policy change, it is important to recognise that these factors interlink. A 2018 victimisation study in Aotearoa New Zealand found that 71% of the population were not victims of crime in the last 12 months, and almost half the crime (47%) is experienced by 4% of people (Ministry of Justice, 2019). Despite most people having no interaction with the justice system, there are still deep-seated punitive ideas on the most effective way to prevent crime. Punitive responses from the public are often triggered by an increase in the *fear* of crime, irrespective of actual crime rate trends (Frost, 2010).

### *CRIME CONTROL AND THE NEW PENOLOGY*

The immediate decades following World War II produced rising societal angst about insecurity and uncertainty about the increasingly changing world. This sparked the beginning of what David Garland (2001) identifies as the ‘culture of control’ in the US and the UK. The culture of control is characterised by the rise of “control-oriented” punishment (Hogg, 2002, p. 226) and “risk-

crazed governance” (Carlen, 2008, p. 1). This resulted in an attempt to respond to crime through increased control over criminal behaviour, rather than attempting to rehabilitate or reform individuals (O'Malley, 2010). The desire for control prioritised widespread surveillance and punitive responses, which premised the rise of the carceral state. The introduction and expansion of CCTV demonstrated a form of surveillance technology that was utilised not just to control the ‘dangerous’, but all of society (McCahill, 2008).

The rise in pre-emptive solutions to risk, such as preventive detention, have resulted in more people being held in prison for longer. These practices are a symptom of what Feeley and Simon (1992) define as the ‘new penology’, which emerged in the US during the 1980s due to rising prison populations. The old penology focused on diagnosis and rehabilitation of individuals, as well as identifying guilt and responsibility. In contrast, the new penology is concerned with controlling and managing populations in the most cost-effective way. Feeley and Simon (1992) identify three ways in which the new penology has changed the way we think about punishment and our justice system: a new discourse, new objectives, and new technologies. Firstly, the language that was employed during the shift towards the new penology had a “managerial perspective” and prioritised language such as risk rather than individual responsibility (p. 454). Secondly, the new penology brings about new objectives, primarily the goal of “identifying and managing unruly groups” (p. 455). Lastly, new techniques, such as electronic monitoring and the increased use of probation, were employed to expand the number of people that could be controlled. As a result of the new penology, individuals that are being processed through the justice system are not punished based on their offending, but instead their level of dangerousness or risk to the society (Dimock, 2015).

The culture of control (Garland, 2001), the new penology (Feeley & Simon, 1992) and the risk society (Beck, 1992) have given rise to the use of actuarial data in the justice system to ‘predict’ a person’s risk level and dangerousness. For example, in Aotearoa New Zealand the *Public Safety (Public Protection Orders) Bill 2014* enables the High Court to detain a person in a secure facility

once their prison sentence is completed if they pose a serious threat to the community. That is, they are identified as dangerous and as a precaution are detained. It is important to be critical of how dangerousness is framed. The concept of dangerousness means different things for different people and is therefore an ambiguous concept (Floud, 1982). Human behaviour is often unpredictable so it can be difficult to identify who is dangerous and who is not.

Risk assessment technology classifies certain behaviours and people as 'dangerous' and because it can be hard to predict future behaviour, there can be severe consequences if someone is misidentified as being dangerous. Ti Lamusse's (2017) critical work on deaths in custody demonstrates the lengths that correctional officers (when taking guidance from the Prison Operations Manual) will take in Aotearoa New Zealand to mitigate risk that 'dangerous' individuals pose. For example, at-risk units, segregation, and tie-down beds have been justified for the purpose of confining individuals that are identified as a risk to themselves or others. Unfortunately, in some cases this has led to the death of the confined person (Lamusse, 2017). The justification of these approaches by Corrections are framed through 'care', 'human rights', and 'health' of the person in prison. However, Stanley (2017) rightly acknowledges these processes as torture.

The Office of the Ombudsman provides an external and independent review of prisons in Aotearoa New Zealand frequently. There have been many reports conducted that speak of mistreatment and degrading conditions in prisons. For example, a 2019 Ombudsman review of Northland Region Corrections Facility (Ngāwhā Prison) found that people in prison were confined to their cells for extended periods to manage risk. However, this prevented appropriate access to toilet and water, which the Ombudsman ruled as "degrading treatment and a breach of Article 16 of the Convention against Torture" (Office of the Ombudsman, 2019, p. 2).

### *CAPITALISM AND NEO-LIBERALISM*

While Karl Marx did not write much directly on punishment and crime, his theoretical perspectives are useful in understanding the economic motive for

sustaining the use of prison. From a Marxist perspective, prisons function to maintain the existing social order that is embedded in capitalist and neoliberal ideology. Althusser's (2014) conceptualisation of Repressive State Apparatuses and Ideological State Apparatuses demonstrate the way in which the ruling class manage and control the working classes. The former includes institutions such as the police and prisons that are owned and work in favour of the ruling class. On the other hand, the latter work in more subtle ways to transmit capitalist and neoliberal ideology. The use of prisons as the primary mode of punishment coincided with the rise of capitalism (Davis, 2003). Capitalism is reliant on "expanding and deepening human exploitation" for it to develop and grow (Davis, 2005, p. 21). Simultaneously, neoliberalism has encouraged governments to increasingly make policy and legislative changes that prioritise economic growth over the benefits to wider society (Cooper, 2008). Therefore, prisons do not function to protect the public or rehabilitate individuals, but instead provide a "geographical solution" where social problems can be removed and ignored (Gilmore, 2007, p. 14).

Scholars have identified a two-tiered justice system based on class (Clarke, 2010; Downes, 2001; Wacquant, 2009; Taibbi, 2014). These two tiers demonstrate that there is one justice system for the poor and powerless, and one for the rich and powerful. As Smith and Hattery (2006) acknowledge, "every system of oppression has as its reflection a system of privilege" (para. 4). While corporations are responsible for causing a significant amount of harm, they are often immune from punishment. That is, these businesses are "too big to fail [and] too big to jail" (Taibbi, 2014, p. 63). In contrast, harsh punishment and policing is imposed onto the powerless, and their poverty becomes criminalised. This distinction between the parallel class-based justice systems in the US is eloquently highlighted by the title of Reiman and Leighton's (2017) book *The Rich get Richer and the Poor get Prison*.

Rusche and Kirchheimer's (2003 [1939]) book *Punishment and Social Structure* demonstrates the parallels between the use of prison as punishment and changes in the labour market. They identify that when labour is scarce, and therefore becomes more valuable, punishment becomes less severe.

However, when there is an abundance of labour and high unemployment rates, the private prison system in the US is utilised to provide cheap labour. While most prisons in the US are public, private prisons provide the potential for forced and coerced labour (Davis, 2003; 1998). That is, global companies are profiting off caging people. In a study in the US, it was noted that prison labour is “like a pot of gold” for private businesses as there are no strikes, no holiday pay, no unions, and they can be obliged to do any form of work (Evans & Goldberg, 2009, p. 13). To understand this further, the concept of the prison-industrial complex will be explored.

The prison-industrial complex, influenced by the term military-industrial complex, demonstrates the confluence of political and economic motive for prison expansion in the US. Prominent prison abolitionist Angela Davis (2003) defines the prison-industrial complex as “an array of relationships linking corporations, government, correctional communities, and media” (p. 84). The prison-industrial complex merges interests between government and industry that uses control, surveillance, and punishment as a response to political, social, and economic problems (Schlosser, 1998). Huge profits can be made by those companies that service the prison industry. For example, large companies in the US have been contracted to produce security measures such as tactical gear and weaponry, despite limited evaluation of their efficacy (Schmidt, 2022; Sudbury, 2004). The media also has a role in maintaining the prison-industrial complex. It is vital that the media feed the public with images of the ‘dangerous’ Other and something to be fearful of so that longer prison sentences can be justified (Davis, 1998).

Another core issue related to the prison-industrial complex is the privatisation of prison. Private prisons arose due to concerns of prison over-crowding (Harding, 2001). Global multi-billion-dollar companies in America began to bid to build prisons cheaper and faster. As more prisons began to be built, there was a financial incentive to fill them. This resulted in people being funnelled into prisons (Smith & Hattery, 2006). An example of the horrid outcomes this causes is the ‘Kids for Cash’ scandal that broke out in Pennsylvania in 2008. Two judges were imposing harsh punishment to



undeserving young people, and in return were accepting kickbacks from the companies that owned the juvenile detention centres (May, 2014).

Public support for prison expansion can also be driven by the prioritisation of job security. Rural communities in particular fall into the fallacy and illusion that building prisons in their communities will fix their broken economies and provide jobs for those in the area (Gottschalk, 2015; Huling, 2002). Similarities can be seen locally for economically depressed regions seeking to attract industries for employment. In Aotearoa New Zealand, there was significant support for the proposed Waikeria mega-prison build in 2018 from the neighbouring community in Ōtorohanga, in the hopes that it would provide economic stability for the region. This demonstrates how prison expansion can be driven by political and economic motive. Research by Huling (2002) identified that when prisons were built in American rural areas, it was not guaranteed that the job opportunities would go to locals. In fact, the study demonstrated that the economies where prisons were built were no better off in terms of employment rates per capita. These Marxist perspectives demonstrate that prisons provide an ideological function, in which it hides and masks social problems associated with capitalism such as unemployment (Davis, 2003; Downes, 2001).

#### *SYSTEMIC AND INSTITUTIONAL RACISM*

Incarceration is a social phenomenon that is not experienced equally by the public. The effects of incarceration are concentrated amongst ethnic minorities, the unemployed, and young people (Kilgore, 2015). In recognising that increased incarceration is targeted towards racialised groups, Wacquant's (2010) term *hyperincarceration* will be utilised in this section. In Michelle Alexander's book *The New Jim Crow* (2010) she convincingly, yet sombrely, argues that the hyperincarceration of poor people of colour in America has resulted in the formation of a new caste system. Throughout her work, she likens today's prisons system to that of the Jim Crow laws, in the sense that they both subject African Americans to a life filled with stigma, segregation and oppression. Alexander (2010) demonstrates that prisons, and

the associated institutions, laws, and policies, operate as a “well-designed system of racial control” (p. 4). This contribution illustrates the impact of systemic racism.

Alexander (2010) draws heavily on the War on Drugs to demonstrate how conservative leaders, such as Nixon and Reagan, produced a political discourse of ‘colourblindness’. By this, she argues that the War on Drugs did not explicitly have a racist agenda, but it cleverly synthesised the image of drug crime with African Americans. The *Anti-Drug Abuse Act (1986)* had a detrimental impact on the number of African Americans that were incarcerated. Despite crack cocaine and powdered cocaine being chemically similar, the people that were caught in possession were treated markedly differently (Kilgore, 2015). The former – a drug commonly used by African Americans, low-income and less educated individuals – had a five-year prison sentence for possession of 5 grams. On the other hand, powdered cocaine, commonly used by rich, white Americans and symbolising luxury, had a five-year prison sentence for possession of 500 grams. This demonstrates a 1:100 discrepancy that unfairly targeted crack cocaine users. This disparity was slightly rectified by the *Fair Sentencing Act (2010)*, which reduced the ratio to 1:18 between powder and crack cocaine (Kilgore, 2015). Through this legal framework, racism is embedded into the laws, which then justifies over-policing and punishment of certain communities.

Loic Wacquant (2002) looked deeper into how hyperincarceration is rooted in the historical institutions that have defined, confined, and controlled African Americans. Wacquant (2002) identifies four ‘peculiar institutions’: Chattel slavery (1619-1865), the Jim Crow system (1865-1968), the Ghetto (1915-1968), and the Hyperghetto-Carceral Complex (1968-present). This demonstrates that “slavery and mass imprisonment are genealogically linked” and therefore any theoretical framework of mass incarceration in America must acknowledge slavery as a starting point (Wacquant, 2002, p. 41). The prison and the ghetto are intricately linked as both institutions seek to physically and virtually cage African Americans. That is, they “are transferred from their prison cells to a much larger, invisible cage” (Alexander, 2010, p.

181). The ghetto acts as an “ethnoracial prison”, while the prison operates as a “judicial ghetto” (Wacquant, 2002, p. 51). Both are founded on the following four elements: stigma; constraint; territorial confinement; and institutional encasement (Wacquant, 2002).

While Aotearoa New Zealand and the United States have different social histories, the former has adopted similar racialised carceral policies from the latter. While the war on drugs has been utilised to control African American communities, neo-colonial carceral logics have been used for the social control of Māori. Drawing on the context in Aotearoa New Zealand, Māori are vastly disproportionately represented in all aspects of the justice system (McIntosh & Workman, 2017). Scholars attribute the hyperincarceration experienced by Māori to the intergenerational and long-lasting effects of colonisation (Jackson, 1988; Tauri, 2014; Tauri & Webb, 2012; Curcic, 2019). Moana Jackson (1988) argues that the colonial context is often omitted when discussing Māori offending. As a result:

the Māori offender has merely been defined as an urban misfit, a cultural maladept, an educational retard, or the victim of behavioural labelling, while the socio-cultural forces underlying such descriptions have been largely unrecognised (Jackson, 1988, p. 26)

Many scholars from various fields of study argue that the two centuries of deprivation and oppression due to colonisation result in Māori having higher rates of alcohol and drug abuse, unemployment, poverty, violence, and crime (Andrae, McIntosh, & Coster, 2017; Axelsson, Kukutai, & Kippen, 2016; Paradies, 2016; Tauri & Webb, 2012). These scholars emphasise the importance of acknowledging how colonisation has shaped the current social position of Māori. Western democracies have justice systems that are founded on the notion of individual responsibility. The consequence of this is that people that are incarcerated can then feed into the self-fulfilling prophecy that the source of their behaviour is their own fault. This blatantly ignores structural and historical conditions such as colonisation, intergenerational trauma, socioeconomic status, and reduced educational opportunities. Additionally, it dismisses Indigenous practices of redressing harm that draw on collective, rather than individual, responsibility (Quince, 2007).

Widespread criticism of the justice system in Aotearoa New Zealand highlights the differential treatment of Māori. Unconscious bias in the New Zealand Police has been acknowledged by the two most recent Police Commissioners as a contributing factor to differential treatment in policing (Forbes, 2020; Harley, 2015). However, Workman (2021a) asserts that “the individualistic portrayal [of unconscious bias] is problematic because institutions and systems greatly contribute to reinforcing and reproducing inequality” (p. 324). Cunneen and Tauri (2016) investigate issues of racialisation and racism by interrogating experiences of Indigenous populations in Australia, Aotearoa New Zealand, Canada, and the US. In their work, racism is understood to be embedded into institutions, which discriminates and disadvantages Indigenous populations (Cunneen & Tauri, 2016).

‘Institutional racism’ can be a useful term in understanding the influence of racism at an institutional level. The term is expressed in two foundational reports released in 1988. Firstly, Pūao-Te-Ata-Tū critically examined the Department of Social Welfare (DSW) and the State institutionalisation of Māori (Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare, 1988). The report concluded that institutional racism was evident within the DSW, and that this form of racism is the most “insidious and destructive”. Institutional racism is defined in the report as:

the outcome of monocultural institutions which simply ignore and freeze out the cultures of those who do not belong to the majority. National structures are evolved which are rooted in the values, systems and viewpoints of one culture only (Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare, 1988, p. 19)

In his seminal report *He Whaipanga Hou: Maori and the Criminal Justice System: A New Perspective (Vol 2)*, Moana Jackson (1988) similarly acknowledges that that monocultural stereotypes and approaches in the justice system operate in an institutionalised way. More recently, the *Abuse in Care Royal Commission of Inquiry* in Aotearoa New Zealand shows the insidious nature of systemic and institutional racism within government organisations. In their detailed report, Savage and colleagues (2021) attribute Māori over-representation in State Care between 1950-1999 to the “enduring structural and systemic racism across multiple settings (social welfare

settings, health and disability settings, educational settings, transitional and law enforcement settings, including prisons)” (p. 13). Within these settings, systemic racism emerges through “adherence to dominant values, systems and procedures that exclude Indigenous people” (Anthony, 2013, p. 68). Institutional and systemic racism therefore offers a useful framework for understanding how Indigenous populations are continually marginalised and disproportionately represented in prison populations globally (Cunneen, 2019; Cunneen & Tauri, 2016; Webb, 2017).

## **CONSEQUENCES OF INCARCERATION**

There is an extensive list of consequences that are associated with the carceral state. This section will acknowledge the following three consequences respectively: reshaping citizenship, intergenerational incarceration, and the system is economically and socially costly.

### *RESHAPING CITIZENSHIP*

Talking to the American context, Marie Gottschalk (2015) argues that incarceration has resulted in millions being sentenced to a “civil death” (p. 32). By this, she means that individuals with a criminal record can be temporarily or permanently disenfranchised. Therefore, the carceral state determines who is valuable enough to partake in democratic society. Further, a criminal record can leave many ineligible to apply for public housing, food stamps or student loans (Gottschalk, 2015). Once released from prison, a person has experienced triple exclusion, through the loss of cultural capital, being excluded from public financial aid, and barred from political participation (Wacquant, 2002). Irrespective of how long a person spends in prison, it is the fact that they have *been* to prison that enables their ‘civic death’. As Alexander (2011) states, it is the “prison label, not prison time” that the system relies on (p. 15). In Aotearoa New Zealand the voting rights of people in prison has been a controversial topic. The voting ban for those in prison, established by the National government in 2010, was reversed in 2019 for those who were serving sentences less than three years (Christian, 2019).

The carceral state is a blunt tool to ostracise certain groups politically, economically, and socially from society.

### *INTERGENERATIONAL INCARCERATION*

Increasingly, literature identifies incarceration as a “collective experience” (Kilgore, 2015, p. 140). For every person that is imprisoned, there is often a network of partners, parents, children, and whānau that are left behind in the community. Some scholars describe their experiences as “collateral consequences” of imprisonment (Chesney-Lind & Mauer, 2003), a “second sentence” (Mlinac, 2016), and as “invisible victims” (Cunningham & Baker, 2004). At any given point in time there are an estimated 23,000 children who have a parent in prison in Aotearoa New Zealand (Pillars, n.d). In the UK context, Joseph Murray (2007) identifies seven forms of social exclusion that may be caused by parental imprisonment: “pre-existing disadvantage, loss of material and social capital following imprisonment, stigma, linguistic exclusion, political exclusion, dynamic exclusion and administrative exclusion” (p. 57). Obviously, not all children of prisoners will experience all forms of social exclusion, but the extensive research in this area demonstrates that parental incarceration leaves children in a particularly vulnerable position. It is therefore important to recognise that by punishing a person by placing them in prison, there are severe and long-lasting effects on their whānau.

### *SYSTEM IS COSTLY*

Many scholars and activists have identified the economic and social costs of incarceration. The large financial costs associated with incarceration are highly criticised (Henrichson & Delaney, 2012; Mai & Subramanian, 2017). A 2018 government report by the Chief Science Advisor highlighted that in Aotearoa New Zealand the “total cost of prisons has doubled since 2005, and tripled since 1996” (Gluckman & Lambie, 2018, p. 12). The report concluded that the high rate of incarceration is a waste of taxpayer money (Gluckman & Lambie, 2018). In 2018, the Minister of Corrections, Kelvin Davis, stated that

it costs taxpayers about \$100,000 per year to imprison a person (Fisher, 2018b). The costs of prison extend far beyond the fiscal amount. The social and human costs need to be acknowledged, as incarceration can restrict a person's future potential and opportunities. Additionally, as discussed above, these social costs of incarceration extend further than the incarcerated person.

Beyond the financial costs of incarceration, the social costs acknowledge the harm and destruction caused by the experience of prison. Cunneen and colleagues (2013) argue that incarceration may lead to a "loss of employment and income, loss of housing as well as a breakdown of families and relationships", which may contribute to "an increased likelihood of re-offending" (p. 16). Indeed, the cyclical nature of incarceration traps people within the carceral state. From the perspective of a prison abolitionist, David Scott's (2020) scholarship shines a light on the physical and mental brutality that people face within prison. This is expressed in Sim's (2020) foreword to Scott's book, where he shares the following sentiment:

The prison dismembers prisoners, hollowing out their capacity to be human, creating bereft husks and further fragmenting their subjectivities as the brutal, discretionary power that is exercised within the institution further traumatises the already traumatised (Sim, 2020, p. 22).

Denying the rehabilitative potential of prisons, and going beyond that to explicitly state the harm *caused* by prisons, Scott (2020) asserts that prisons are immoral institutions. He argues that the prison cannot "produce the life-affirming positive changes to human character that its proponents have longtime claimed" (p. 138). The rupture to human relationships that people in prison often experience limits the capability for healing and the rebuilding and repairing of lives. Thus, the "prison is a morally questionable state institution steeped in violence, suffering and death" (Scott, 2020, p. 138).

Strip searches within prison have been condemned by many, and rightly identified as a form of sexual violence (Chartrand, 2015; Davis, 2003; 2005; Scraton & Moore, 2005). Not only is it a degrading and dehumanising way to treat a person, but for many people, especially women, it can be

retraumatising. McCulloch and George (2009) explain the negative psychological and physical impacts of strip searches in women's prisons globally:

The coercive removal of prisoners' clothes amounts to a symbolic enactment of the stripping of rights that accompanies imprisonment. It is particularly resonant as an identity-stripping and negating act for women who so often have their identities and rights stripped through sexual assault outside of prison. That the state through its practice of strip searching maintains and extends the experience of sexual abuse for women prisoners is a demonstration of Pat Carlen's (1988: 10) observation that prison incorporates and amplifies all the oppressions women, particularly poor women, Indigenous women and non-white women, face outside prison. (McCulloch & George, 2009, p. 122)

Violence and pain are also evident in prisons in Aotearoa New Zealand. Ti Lamusse's (2017; 2018) critical work on prison deaths and solitary confinement exposes the pain and harm that people inside prison experience. As evidenced by the recent report *First, Do No Harm* (Shalev, 2021), and Inspectorate reports (Office of the Inspectorate, 2021a; Office of the Inspectorate, 2021b) there are several harmful practices – such as pepper spray and solitary confinement – that are used within women's prisons in Aotearoa. These reports garnered public interest after the story of Mihi Bassett, Karma Cripps, Paris Reed and Tarina McClutchie<sup>9</sup> were covered heavily in the mainstream media (Espiner, 2021; Hori Te Pa & Gordon, 2021). In an interview discussing their case, Tracey McIntosh (2021) acknowledges prisons as “anti-therapeutic environments”, which lack trauma-informed care. The institutional cruelty that was imposed upon these wāhine demonstrates the dehumanising processes that many people face.

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<sup>9</sup> On October 14 2019, Mihi Bassett, Paris Reed and Tarina McClutchie set a fire in C Wing of Auckland Region Women's Corrections Facility (ARWCF). Their actions were a form of resistance to their conditions within prison. They “felt their basic needs were not being met” and on several occasions they were subjected to Cell Buster pepper-spray extractions (Hori Te Pa & Gordon, 2021, p. 51). The three wāhine, as well as Mihi's partner, Karma, were all placed on D wing which is known as “the pound”. During their trial for the arson Judge McNaughton ruled the treatment of the wāhine as ‘cruel and inhumane’ (Espiner, 2021). Following the trial, the Office of the Chief Inspectorate conducted a Special Investigation into the management of these wāhine. The investigation found a “systemic failure of oversight” and recommended a robust review and redesign of management of wāhine in prison (Office of the Inspectorate, 2021b).



## **PART II: MOVEMENTS TOWARDS REFORM AND ABOLITION**

Due to greater understanding of the harms of incarceration and punitive responses to harm, there have been several attempts at reducing the harm. Additionally, for as long as there have been prisons, there have been calls for alternatives (Davis, 2003). Different avenues of reforms are interrogated below, beginning with an examination of the difference between reformist reforms and abolitionist reforms. Reformist reforms, such as electronic monitoring or carceral humanism, are presented as unfavourable as they further entrench reliance on the carceral state. Thus, abolitionist reforms, which promote incremental change with an end goal of prison abolition, are introduced as sustainable and more humane alternatives.

### **FURTHER ENTRENCHMENT OF THE CARCERAL STATE THROUGH REFORMIST REFORMS**

In their book *Prison by any other name*, Schenwar and Law (2020) demonstrate the way in which continuous reforms of the prison system have broadened our reliance on the carceral state. When something is re-formed, it often uses the same framework (white supremacy, violence, oppression) and the same approaches (surveillance, control, isolation, punishment). Schenwar and Law (2020) track how recent alternatives to incarceration and policing in the United States – such as electronic monitoring, psychiatric treatment, neighbourhood policing, and drug courts – have expanded those that are subjected to confinement, control, and punishment.

#### *SOMEWHERE ELSE AND SOMETHING ELSE*

Mariame Kaba, an American anti-prison and anti-violence activist, believes that if we don't dismantle the carceral state, then there will always be a 'Somewhere Else' that marginalised people will go (cited in Schenwar and Law, 2020). The fact that our society is fixated on replacing prisons with Somewhere Else demonstrates an "imprisonment of our imaginations"

(Schenwar & Law, 2020, p. 56). Our contemporary society is locked into the idea that we cannot imagine a world that responds to harm without the carceral state. Not only does the concept of Somewhere Else entrench our reliance on the carceral state, but it also results in net-widening of those who are captured by the carceral state. Somewhere Else, such as electronic monitoring or enforced drug treatment, mean that more people are subjected to state control, surveillance and punishment (Schenwar & Law, 2020). Sex offender registries or mandatory drug treatment also operate in a similar way as a “wall-less institution” (Schenwar & Law, 2020, p. 103).

Forms of Somewhere Else are often done ‘in the community’. However, due to them being reliant on control, isolation, and surveillance, the people subjected to them often feel far from being ‘in the community’ (Schenwar & Law, 2020). Being ‘in the community’ should foster images of mutual care, collectivity, coming together, and inclusion. But when it is paired with aspects of the justice system (e.g. community policing, community corrections) it relies on the same isolation and exclusionary tactics that the justice system is founded on. Therefore, rather than bringing people together, it creates further divisions in our society (Schenwar & Law, 2020).

It is possible to extend Mariame Kaba’s concept of Somewhere Else to Something Else. Policing practices have also been the source of critique, with Community or Neighbourhood policing being suggested as a Something Else. Community policing promotes the idea that policing is a method in which community problems and harm can be dealt with. What this does not recognise, however, is that in certain communities the police and their practices of policing perpetuate harm (Schenwar & Law, 2020; Law, 2014). Therefore, not only do carceral institutions lack the potential to provide safety for certain groups in society, but that they are actively “sites of violence” (Law, 2014, para 5).

### *CARCERAL HABITUS, CARCERAL FEMINISM, AND CARCERAL HUMANISM*

The way in which our society is fixated on forming Somewhere Else or Something Else demonstrates how conditioned and reliant we are on the

carceral state. Drawing on Bourdieu's concept of 'habitus' – collective practices, norms, and worldviews that are acquired through socialisation – Schept (2013; 2015) explores the notion of 'carceral habitus'. Carceral habitus provides an analysis into the pervasiveness of the carceral state in our responses to harm. Mass criminalisation, exclusion, punitive action, and policing are deemed as 'common sense' ways to respond to harm (McDowell, 2019; Meiners, 2016). Due to our conditioning, carceral habitus restricts our collective ability to think beyond carceral approaches to safety. Even those who are critical of the carceral state, or who have been subjected to violence by the carceral state, seem bound to carceral-based solutions (Schept, 2013; 2015).

Carceral feminism is one example of how a critique of the current carceral system is restricted by carceral habitus. Its core focus is around increased criminalisation and punitive action as a response to violence against women. In doing so, carceral feminism extends the reliance on the carceral state, and fails to address the root causes of violence against women (Law, 2014). Punitive laws and approaches often blind us to the true sources of violence that harm communities and limit our ability to provide long-term healing (Meiners, 2016). Small steps in the 'right' direction, by creating alternatives to policing or prisons – such as electronic monitoring and community policing – can further embed our reliance on the carceral state to achieve safety (McDowell, 2019).

Similarly, carceral humanism is another type of reform that seeks to reframe carceral logics but is still bound by carceral habitus. Heiner and Tyson (2017) define carceral humanism as "a discursive strategy of rebranding or repackaging carceral control under the caring provision of social services" (Heiner & Tyson, 2017, p. 4). Carceral humanism is a strand of thinking that insists that the problems associated with prisons can be fixed by improving the system. This approach can be achieved through changes in the prison, by branding them 'restorative', 'healthy', or 'healing' prisons (Jewkes, 2018; Jewkes, Moran, & Turner, 2020). Alternatively, carceral humanism has also seen the rise in practices such as electronic monitoring as a replacement for

putting people in prison. However, as promising as this may sound, carceral humanism functions to rebrand carceral logics and further entrench them (Carlton & Russell, 2018). These reforms continue to expand and legitimise the carceral system and often results in a shift of cost and burden to whānau. Instead of reframing carceral logics, carceral humanism instils these logics further into our culture and imagination (Kilgore, 2014).

### *REFORMIST REFORMS VS ABOLITIONIST REFORMS*

People who oppose the prison are often placed in two positions: reformist or abolitionist (Ben-Moshe, 2013; Davis, 2003). This has led to the delineation of proposed reforms that are reformist or abolitionist in nature. Reformist reforms, or ‘positive reforms’ (Mathiesen, 1974) attempt to make changes in the prison system, but they deepen or widen the scope of punitive responses to harm. Lamusse and McIntosh (2021) convincingly demonstrate the difference between the two:

Prison reformers believe that prisons must play a key role in the criminal justice system, and that they can be reformed to be more humane and effective. Abolitionists, however, can see the strategic use of certain types of reform as a tool to achieve a different end goal: the abolition of prisons. This means that while the strategies of reformers and abolitionists sometimes overlap, they also diverge. Abolitionists distinguish between reforms that bolster the prison system and abolitionist reforms ‘which do not legitimize the prevailing system, but gradually diminish its power and functions’ (Knopp et al., 1976, p. 24). (Lamusse & McIntosh, 2021, p. 295)

Things like diversity hiring or body cameras have been identified as reformist reforms, as they “still support the extractive mission of these coercive institutions to siphon resources and cull ‘disposable’ individuals out of the community” (Davies, Jackson, & Streeter, 2021, p. 3100). Abolitionists criticise reformist reforms, with Sim (2020) going as far to say it “is not part of the problem, it *is* the problem” (p. 23 emphasis in original). They function as a problem, as they fail to “address the structural character of carceral racism” (Davis, Dent, Meiners, & Richie, 2022, p. 62). To counteract and address the criticisms of reformist reforms, abolitionist reforms, also referred to as ‘negative reforms’ (Mathiesen, 1974) or ‘nonreformist reforms’ (Gilmore,

2007), have been suggested. A reform is abolitionist “as long as it does not strengthen, reify, or extend the state’s footprint of harm” (Brown, 2019, pp. 81, emphasis in original). The remainder of this chapter will illustrate examples of abolitionist reforms and the broader goal of prison abolition.

## **IMAGINING ALTERNATIVES**

Carceral logics suppress and constrict our ability to think beyond the prison. As Tracey McIntosh (2018) attests, the “shadow of prison colonises our landscapes and for far too many people colonises their future” (p. 290). If we do not make the transformative change now, then it is future generations that will continue to suffer. To imagine our future possibilities, it is crucial that we learn from our past. McIntosh (2022) draws on the concept of mokopunatanga to provide the driving force for her vision. Mokopunatanga is “the belief that we must live in a time where our grandchildren’s grandchildren will flourish” (Pranteau, McIntosh, Anthony, & Chartrand, 2022, p. 87). This encourages hopefulness, and that we need to imagine transformative possibilities for future generations.

Abolitionist alternatives vary significantly, and there are a “constellation of alternative strategies and institutions” that abolitionists pose (Davis, 2003, p. 106). Theoretical foundations of abolitionism are introduced below, before acknowledging abolitionist movements that are currently happening. While this chapter primarily focuses on prison abolition, police abolition is also discussed briefly to identify overlaps within these movements.

### *PRISON ABOLITION*

The prison abolition movement has been present since the birth of the prison; however, the contemporary emergence can be traced back to Norwegian sociologist Thomas Mathiesen. Most known for his work *The Politics of Abolition* (1974), Mathiesen acknowledges that prison abolition requires a radical shift in capitalist power structures and ideology. For many, the road

to prison abolition is a process of unknowing. Anti-carceral discourse means unpacking the language of carceral logics and not reifying it for continued consumption. As mass incarceration was created by humans, “it is in our power to uncreate and replace it” (Epperson & Pettus-Davis, 2017, p. viii). The report *Turiki! Turiki!* calls for change in Aotearoa New Zealand that is bold, transformative, and sustainable (Te Uepū Hāpai i te Ora, 2019b). We need a new view; one that prioritises compassion, inclusion, and healing.

While the idea of imaging an Aotearoa without prisons sounds utopian, it has been that way in the past. Prior to colonisation in Aotearoa New Zealand, Māori dealt with harm in quite a different way to the ethos of individual responsibility that underpins modern criminal justice. The communitarian nature of Māori culture recognised that “it was a collective group that was identified as the victim and a collective group that was deemed responsible as the perpetrator” (Quince, 2007, p. 8). As Moana Jackson (2017a; 2017b) poignantly reminds us; Māori never had prisons prior to colonisation. Jackson (2017a; 2017b) argues that Aotearoa New Zealand can learn from how harm was historically approached by Māori and invest in more meaningful and long-term solutions that promote healing.

Lamusse and McIntosh (2021) outline key pragmatic and political arguments to highlight the need for prison abolition. The first of four pragmatic arguments demonstrates that prisons are “non-therapeutic environments” and therefore fail to rehabilitate people (Lamusse & McIntosh, 2021, p. 291). As a result, existing health problems are exacerbated, and new health problems may arise. Secondly, prisons do not deter crime, and some studies have shown that prisons may have a criminogenic effect (Lambie & Randell, 2013). Lamusse and McIntosh (2021) discuss the limited potential of prisons in maintaining safety. Prisons are “sites of intensified violence” and can therefore produce a harmful experience for people inside prison (Lamusse & McIntosh, 2021, p. 292). Additionally, there is a large disparity between victimisations and imprisonment numbers, which demonstrates that containment is not an effective way to maintain safety. The final pragmatic

reason for prison abolition is that the justice system as it currently operates fails victims of crime (Lamusse & McIntosh, 2021).

The three political reasons for abolition that Lamusse and McIntosh (2021) offer are the incompatibility with tikanga Māori, the embedded inequalities and injustice, and the pain caused by the system. Firstly, it is important to note that the justice system in Aotearoa New Zealand is “the product and legacy of the colonial imposition of the British system on Māori” (Lamusse & McIntosh, 2021, p. 293). This coincides with arguments that Moana Jackson (2017a) has made over the last four decades, in which he highlights that isolating and confining someone after harm has occurred is “culturally incomprehensible” (para. 6). A related political reason for abolition is the inequalities and injustices that prisons reproduce (Lamusse & McIntosh, 2021). As noted above, Māori are disproportionately affected by our justice system, and this perpetuates cycles of poverty and marginalisation. Lastly, prison abolitionists believe that imprisonment causes more pain in society, through the dehumanising treatment of people in prison, isolating people from their social networks and loved ones, and further harming rather than healing (Lamusse & McIntosh, 2021).

Dismantling carceral logics, and all the institutions that are associated with it, is a hefty task. The following quote from Angela Davis (2003) demonstrates how captivated we are by carceral logics:

Prison abolitionists are dismissed as utopians and idealists whose ideas are at best unrealistic and impracticable, and, at worst, mystifying and foolish. This is a measure of how difficult it is to envision a social order that does not rely on the threat of sequestering people in dreadful places designed to separate them from their communities and families. The prison is considered so ‘natural’ that it is extremely hard to imagine life without it. (Davis, 2003, pp. 9-10)

However, as carceral logics are so broad there are many avenues in which we can push for change (Norris, 2021a). For as long as prisons have existed, there have been people who have imagined a world without them. Davis (2005) calls for ‘abolition democracy’: “the abolition of institutions that advance the dominance of any one group over another” (p. 14). An important part of the imaginative project of abolition is to ensure that it is not simply dismantling

a system and replacing it with another oppressive system (Schenwar & Law, 2020). The abolition of the death penalty in certain states within the United States, for example, resulted in the preferred alternative to be a life sentence without the possibility of parole.

An abolitionist movement therefore needs to address the social problems – upheld by white supremacy, capitalism, and the patriarchy – that filter people into the justice system. When reformers are faced with the proposition of prison abolition, they often respond with the question of ‘but, what would replace it?’ It’s very easy to get fixated on creating humanising alternatives to the carceral state. However, Schenwar and Law (2020) remind us that sometimes the best thing to do is *nothing*. Not everything that is dealt with in the criminal justice system requires a response of consequences and punishment. Instead, we need to build up communities in a way that enables prison unthinkable. Rather than fixating on punishment and control, we can create the opportunity for people to thrive and flourish in their own communities.

While the prison abolitionist movement has a longstanding history, calls for police abolition and defunding the police are more contemporary (McDowell & Fernandez, 2018). The Black Lives Matter movement, which started in 2013 following the death of Trayvon Martin, has criticised the oppressive justice system, as well as the mistreatment and disregard for black lives (Black Lives Matter, 2021). Police abolitionism and the Black Lives Matter movement converged and gained traction in the United States after the murder of Mike Brown and Eric Garner by police officers. The slogan “disempower, disarm, and disband” encapsulated the demands and strategy fundamental to police abolition (McDowell & Fernandez, 2018; Unity and Struggle, 2014). The murder of George Floyd in 2020 by police officers in the city of Minneapolis progressed the movement of police abolition on a global scale (Davies, Jackson, & Streeter, 2021). Police abolition is a process and practice “of reallocating resources, funding, and responsibility away from police and toward community-based models of safety, support, and prevention” (Interrupting Criminalization & Project NIA, 2021, p. 1). In Aotearoa New



Zealand, calls to abolish the police have been made by PAPA, with the shift towards promoting transformative justice solutions which are discussed below (No Pride in Prisons, 2016).

#### DISMANTLING AND REBUILDING

The prison abolition movement does not deny that there will still be harm and violence in our world. Instead, it recognises that punitive measures such as policing, prisons, and punishment are not an effective means of responding to harm (Meiners, 2016). Prison abolition is not simply about dismantling steel bars of a prison. It is about fighting a culture and system that is embedded in pitting people against one another (Schenwar & Law, 2020). White supremacy, patriarchy, capitalism, and heteronormativity that are prevalent in our society work to uphold the status quo. Prison abolition provides us with the opportunity to unleash our imagination to create new dialogue and logics of safety that do not rely on the carceral state (Meiners, 2009). In doing so, we can imagine a safe society that does not rely on punishment, prisons, and policing (Schenwar & Law, 2020).

Du Bois's (1935, cited in Davis, 2005) vision of 'abolition democracy' highlights that for abolition to be sustainable, new social relations, institutions, and practices need to be formed. The emphasis in building up new services and institutions is to ensure that they are "*life giving*" (McDowell & Fernandez, 2018, p. 385). On discussing the purpose of prison abolition, Moten and Harney (2013) state that it is about "the abolition of a society that could have prisons, that could have slavery, that could have the wage, and therefore not abolition as the elimination of anything but abolition as the founding of a new society" (p. 42). Bassichis, Lee, and Spade (2015) share their vision of abolition:

Abolition is not just about closing the doors to violent institutions, but also about building up and recovering institutions and practices and relationships that nurture wholeness, self-determination, and transformation. Abolition is not some distant future but something we create in every moment when we say no to the traps of empire and yes to the nourishing possibilities dreamed of and practiced by our ancestors and friends. (Bassichis, Lee, & Spade, 2015, p. 42)

Speaking to the abolitionist potential in Aotearoa New Zealand, Lamusse and McIntosh (2021) state that we need a new set of “societal structures which create the conditions that allow freedom from poverty, freedom from inequality, freedom from racism and practices of discrimination and marginalisation, and free from harm” (p.289). Abolition is a movement of expansion, which provides the opportunity to reimagine what our society looks and functions like (Davies, Jackson, & Streeter, 2021).

Through the reimagining of new approaches, institutions, and responses to harm and safety, there is the potential to render prisons obsolete (Davis, 2003; 2005). A core feature of the abolitionist movement is reconceptualising concepts such as safety and accountability (Brown, 2019). Reconceptualising opens new potential avenues, approaches, and options:

[Safety] is reconfigured as accountability through relational logics of care and support but also the very real and serious acts of intervention, raising a host of questions that are foreclosed in dominant constructions of safety. The naturalized logic of the police as the singular resources for public safety in the United States makes the rethinking of security central to abolitionist accounts” (Brown, 2019, p. 77)

Even if we are trying to change the conversation around crime and justice, we cannot do so effectively if we are using the same language. Using the same language will just result in the same conversations and solutions. McDowell (2015) acknowledges the restrictive nature of binary and dichotomous categories that are used in relation to the justice system. Common binary categories are guilty or innocent, victim or perpetrator, criminal or law-abiding; however, these trap us into placing people into one category or the other (McDowell, 2015). New lexicons of justice that seek to explore healing rather than harm can allow us to free our captive imaginations. The change in our use of language will also require a fundamental cultural change (Te Uepū Hāpai i te Ora, 2019b).

The language of colonisers, which dominates our discourses and logics, has been used to continually oppress and marginalise Indigenous populations. Stanley and Mihaere (2019) make connections between the New Zealand state’s engagement in international human rights processes and the

continued high incarceration rates of Māori. They highlight that human rights ritualism has maintained the state's narrative in human rights reporting and utilises certain discourses which deflect from the problem of Māori incarceration (Stanley & Mihaere, 2019). International human rights processes favour individual and neo-liberal rights, which undermine collective rights that are prioritised by Indigenous populations. Therefore, Māori incarceration “has been normalised within political, media and institutional discourses as part of colonial and neo-colonial processes” (Stanley & Mihaere, 2019, p. 12).

#### ABOLITION HAPPENING NOW

Prison abolition is often assumed to be a utopian, hypothetical hope for the future. However, there are already grassroots and transformative projects that function to respond to harm and provide safety without relying on the carceral state. While the United States has the highest rate of incarceration in the world, there are some innovative projects that have come to fruition recently. Critical Resistance, one of the mostly widely known abolitionist organisations, has been fundamental in disrupting ways of thinking, doing, and being, by bringing abolitionist visions to the forefront. Activists have also sometimes worked in collaboration with non-activists, and even conservative partners, to achieve abolitionist alternatives. Abolition will be most likely achieved when there are a variety of actors contributing towards the movement.

In the last two decades there have been some interesting shifts in public policy and incarceration rates in states such as New York, New Jersey, California and Texas. All four states substantially reduced their prison population without negatively affecting public safety (Brooks, 2019; Ghandnoosh & Mauer, 2014). These case studies have demonstrated the movement towards what Epperson and Pettus-Davis (2017) term ‘smart decarceration’. Decarceration aims to build social capacity to reduce incarceration rates in ways that are effective, sustainable, and socially just. Three stages are required for decarceration to be successful: 1) changes in law, regulation, and policies in the criminal justice system, 2) increased education and

mobilisation of a wide range of communities and organisations on the issues, and 3) reallocation of resources away from corrections (Kilgore, 2015).

A well-established alternative to retributive justice is that of ‘innovative justice, including restorative justice and community justice’ (Daly & Marchetti, 2012). Innovative justice processes have their strengths, in that they can provide a voice back to victims, perpetrators and communities (Gordon, 2017; 2019). However, the principle of restoration that underlines these processes assumes that the conditions prior to a harm occurring should be restored. These processes “often focus on the restoration of the *status quo* and ignore the challenge of transforming the conditions of social, economic, and political injustice that are the context for, and cause of, violence” (Kershner, et al., 2007, pp. 21, emphasis in original). Additionally, there are criticisms on the state involvement of restorative and community justice process (Blagg & Anthony, 2019; McDowell, 2015; Tauri, 2014; 2022).

Transformative justice (TJ) addresses this critique by highlighting and addressing the systematic injustices and root causes of offending. It simultaneously responds to harm through a process that prioritises healing and aims to transform the environment and conditions that contributed to the harm (Law, 2021). Therefore, it is a responsive practice of dealing with harm, but also a future-focused preventative project that seeks to stop harm occurring (Davis, Dent, Meiners, & Richie, 2022). A core feature of transformative justice is to address harm without reliance on police or prisons (Brown, 2019; Kim, 2021), and instead mobilises local resources and agency (Robins & Gready, 2014). Community accountability is a fundamental element of transformative justice, and the solutions, where connection and compassion are prioritised over retribution (Kim, 2021).

Ruth Morris, a Quaker abolitionist, coined the term transformative justice in the mid-1990s. She defined TJ as:

Transformative justice sees crime as an opportunity to build a more caring, more inclusive, more just community. Safety doesn’t lie in bigger fences, harsher prisons, more police, or locking ourselves in till we ourselves are prisoners. Safety and security – real security – come from building a community where because we have cared for and included

all, that community will be there for us, when trouble comes to us. For trouble comes to us all, but trouble itself is an opportunity. (Morris, 2000, p. 21)

Since its inception, the practice of TJ has become increasingly popularised and prevalent in many communities. In the early 2000s, women of colour in the United States collectivised to push against punitive responses to domestic and sexual violence (Kim, 2021). The activist organisation INCITE! Women, Trans and Gender Non-Conforming People of Color Against Violence (INCITE!) was formed during this period and collaborated with Critical Resistance to demonstrate how oppressive social structures are directly linked to sexual and domestic violence. Thus, criticising the neo-liberal, simplistic, and punitive approaches by the justice system (Davis, Dent, Meiners, & Richie, 2022). Building on this movement, GenerationFIVE was created, whose vision is to end the sexual abuse of children in the next five generations. They utilise a TJ approach, with seven principles underpinning their work: liberation, shifting power, safety, accountability, collective action, honouring diversity, and sustainability (GenerationFIVE, 2017).

Safe OUTside the system (SOS) was formed by the Audre Lorde Project (ALP) in New York to create community-based solutions to violence. They connected with organisations in the local area and designated them as safe spaces for trans and queer people of colour (Schenwar & Law, 2020; Audre Lorde Project, n.d.). The source of safety was through community members and the presence of an affirming environment where people felt like they belonged. This movement demonstrates the embodiment and praxis of police and prison abolition. Restore Oakland is another initiative that reimagines what community safety can look like. The design of the community hub was done with continuous consultation with the community to ensure it met their needs (Ella Baker Centre, n.d.; Norris, 2021a).

While it is useful to draw on these transformative projects for inspiration, it is also important to recognise that there is not a one-size-fits-all model of non-carceral responses to harm and safety (Kim, 2021; Law, 2021). Instead, these projects need to be created and built based on the specific context and need of the community they are serving (Schenwar & Law, 2020). As a Chicana

(Mexican living in the US), Lena Palacios (2016) shares her personal experience of violence and incarceration. In sharing her story, she highlights the potential of transformative justice:

By developing community responses for support, intervention, healing, and accountability that do not rely on the state, these grassroots movements are building capacity to address multiple forms of structural and institutional violence. (Palacios, 2016, p. 94):

## **CONCLUSION**

This chapter has established the necessity of dismantling the carceral state, and to rebuild a society that will allow everyone to thrive and flourish. Significant pain and harm caused by the carceral state, which is concentrated amongst poor, non-white communities. The carceral state seeks to trap people into it, while simultaneously exclude people out of communities (Schenwar & Law, 2020). Whilst reformist reforms have been introduced to alleviate the harm of the carceral state, they continue to entrench our reliance of punitive solutions to harm (Ben-Moshe, 2013; Davis, 2003). Therefore, prison abolitionist framing encourages us to look beyond carceral responses and prioritise the building of life-giving institutions and social conditions (McDowell & Fernandez, 2018).

Collectively, the four theoretical frameworks of prisons as punishment discussed in this chapter demonstrate the entrenched nature of prison as a response to harm. Rather than standing at odds with each other, these explanations of prisons intersect on multiple levels. Capitalism and neoliberalism, and systemic and institutional racism can be understood to work alongside each other in highlighting *who* is subjected to mistreatment and marginalisation within the carceral state. Crime control policies and punitive public attitudes can then be used to understand *how* certain populations are managed and controlled, and how this has manifested a society fixated on punitive approaches. As these explanations are integrated, they sustain each other which makes dismantling the carceral state considerably harder. Achieving an abolitionist future requires untangling and addressing these sustaining forces of prisons as a response to harm.

Additionally, as will be discussed in the following chapters, grappling with contemporary logics of risk and safety that uphold the status quo is necessary.

The subsequent chapter introduces literature on risk and society logics. It demonstrates the prevalence of these logics and how they have shaped and framed punitive responses to harm. Risk logics are evident through the rise in risk assessments, which are argued to be tools of “inclusion and exclusion” (Hudson, 2003, p. 76). Factors that are used to determine risk, such as criminal history and substance and alcohol abuse, are devoid of the historical and societal context that traps certain communities into these social conditions. In relation to safety logics, the next chapter draws heavily on critical scholars who seek to reimagine safety (Jackson & Meiners, 2011; McDowell, 2019; Norris, 2021a). Contemporary approaches to safety rely on banishment and exclusionary techniques which do not produce sustainable safety for all (Van Swaaningen, 2005). Therefore, a care-based approach to safety is presented to promote prevention, inclusion, and compassion (Norris, 2021a).

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## CHAPTER THREE: RISK AND SAFETY LOGICS

This chapter explores how responses to harm are framed by a society's approach to risk and safety. To begin, it will firstly explore the way in which language can be loaded with socialised understandings, meaning, and emotion which shapes the way we interpret and respond to the world around us. The formation of risk logics will be discussed, informed by Beck's (1992) 'risk society' thesis and the 'culture of fear' (Furedi, 2002). A closer examination of risk logics within the justice system is offered. Specifically, the prevalence of risk assessment tools, and the racialised consequences of them (Cunneen, 2020; Werth, 2019).

Next, the rise in safety logics in Aotearoa New Zealand generally, and more specifically in relation to the justice system, will be examined. Two opposing approaches to safety will be identified and explored: fear-based safety and care-based safety. Fear-based safety relies on architects of anxiety to sustain a 'framework of fear' (Norris, 2021a) which results in 'carceral safety' (McDowell, 2015; 2019). On the other hand, care-based safety draws on a 'culture of care' (Norris, 2021a) to produce 'insurgent safety' (McDowell, 2015; 2019).

### **LOADED LANGUAGE**

Language is rarely neutral. The language we use is often underpinned by an "implicit argumentative value" (Bourse, 2019, p. 5), which means that certain words can trigger a specific response from a reader or listener. For post-structuralists, language is a "socially shaped resource, steeped in culturally and historically sedimented attitudes, values, and assumptions, which precedes and exceeds any single individual" (Mason & Clarke, 2010, p. 176). Language that evokes a specific response may be identified as emotive, suggestive, persuasive, provocative, or loaded (Matthews, 1947). For the



purpose of this project, the term ‘loaded language’ will be used. For example, this project examines whether words such as ‘risk’ and ‘safety’ can be understood to be a form of loaded language that informs the way our society responds to harm and justice related issues.

The way certain words are used and framed can arouse certain emotions and influence peoples’ judgments and decisions (Macagno, 2014). Charles Stevenson (1937) documented how certain words have a “magnetic” effect (p. 16). By this he means that words are connected to a pre-packaged set of values, ideas and meaning. When specific words are heard or read, they elicit a particular meaning, image, or idea. Drawing on Stevenson’s (1937) work, Macagno (2014) identified that certain words can have emotional valence. Emotional valence refers to language that instantly triggers a specific emotion that could lead to a particular response or action. Words such as risk, safety, security, and protection tend to incite notions of uncertainty or danger, thus fuelling fear and anxiety (Boholm, Möller, & Hansson, 2016; Bourse, 2019).

Emotions are critical in facilitating human interaction and turn a “thinking being into an actor” (Frijda, Manstead, & Bem, 2000, p. 3). That is, an emotional impulse is needed to enable a person to move from a thought to an action. Emotions and beliefs are both mental states that are intricately linked. If these mental states are manipulated, they may become dangerous as they can have more influence over a person’s action than evidence-based knowledge (Frijda, Manstead, & Bem, 2000). As emotions require very little processing by the individual, an emotion-driven belief may lead to a hasty and irrational conclusion. Thus, emotions can create a reality that does not need to be supported by evidence or rationality (Macagno, 2014). As a result, when language is loaded with a specific emotive response this can result in an irrational response. It is therefore crucial that we scrutinise the language that we use when discussing any social phenomenon. Of interest to this thesis is the idea that the use of certain language can influence the public’s beliefs about how we should respond to harm. When the public’s views on the justice system are intertwined with their emotions in can be difficult to make any evidence-based social or legislative changes.

Public narratives, based on collective worldviews, form the way in which our society operates. These worldviews “shape what change we believe is possible and necessary, the policies we support, and the way we take in and interpret data” (National Criminal Justice and Public Health Alliance, 2018, p. 4). The language that dominates our public narratives, discourses and logics is reflective of the most prevalent and pressing issues. When words such as risk, safety, protection, and security dominate conversations around the justice system, this influences our response and attitude towards harm. These logics can be restrictive in the sense that they limit our imagination. It is necessary to unpack how the carceral state is sustained by exploring risk logics, safety logics, and carceral logics respectively. These logics provide the underlying rationale of, and further legitimise, the carceral state.

## **RISK LOGICS**

Prior to 1990, Garland (2003) recognises that the term risk “had a marginal place in the vocabularies of social thought or cultural commentary and was rarely discussed outside of scientific journals” (p. 49). However, risk logics, based on insecurity, discontent and uncertainty, have exponentially grown in our everyday discourses. Furedi (2002) searched the use of the term ‘at risk’ in UK newspapers and found that it rose from being used 2,037 times in 1994 to 18,003 times in 2000. The prevalence of the language of ‘risk’ demonstrates the public’s inclination to view the world around us as dangerous, or at least a risk that needs to be managed (Wilkinson, 2001; Douglas, 1985; Beck, 1992). This, Beck (1992) argues, demonstrates that our consciousness of risk has expanded. The term risk is commonly defined as the likelihood of injury or damage that can be associated with a hazard (Merriam-Webster Online, n.d). Risk logics are pervasive and permeate our society in multiple ways, as will be discussed below.

## *RISK SOCIETY*

Ulrich Beck’s (1992) ‘risk society’ thesis is valuable to understanding the pervasiveness of risk logic. For Beck (1992), risk is defined as “a *systematic*

*way of dealing with hazards and insecurities induced and introduced by modernizations itself*" (p. 21, emphasis in original). Risks are associated to the manufactured uncertainties posed by humans rather than nature. These risks are novel, increasing and extending (Beck, 1992; 2002). The main concern is that these uncontrollable risks demonstrate spatial, temporal, and social "de-bounding" (Beck, 2002, p. 41). For example, risks such as climate change and pollution extend beyond national borders. A criticism of Beck's work is that there is limited discussion about the material conditions that produce risks (Kemshall, 2003).

Beck's (1992) work explores the movement from a class society to a risk society. He identifies that the former was based on values relating to equality, whereas in the latter the overriding value is societal safety. Risk society refers to the political, social, cultural, and economic conditions that are driven by the logic of manufactured uncertainty. In the risk society, solidarity is created through the "*commonality of anxiety*" (Beck, 1992, pp. 49, emphasis in original). This has inevitably shaped involvement and control by the government when responding to social conflict. In the risk society, policy makers are concerned with risk management and alleviating anxiety. Policies are often guided by the "precautionary principle" (Denney, 2005, p. 149) in the hopes that risks can be minimised. Therefore, a risk society is often defined by "a desire to control and predict the future" (Mythen, 2004, p. 14). The implications that the risk society thesis has on the justice system will be discussed in detail further in this chapter.

### *CULTURE OF FEAR*

Many of the widespread fears that are currently surfacing are not experienced first-hand by many in society. Obsessive concerns about risk and safety have created a 'culture of fear' and insecurity within many Western societies (Furedi, 2002; Glassner, 1999). The core feature of the culture of fear is the collective *belief* that we live in a society that is riddled by dangers and hazards. Common phrases such as 'be careful' and 'better to be safe than sorry' reflect how safety has become a fundamental value in many Western societies.

Additionally, the idea of ‘stranger danger’ has created a world where people act in a certain way based on the fear of a dangerous encounter occurring.

Risk society has become politicised and big business. Glassner (1999) notes that money spent on things such as prison and police it is often “[p]anic-driven public spending” (p. xvii). In America, and many other Western societies, increased public spending on prisons and police is often justified by governments stating that they are responding to the public’s concern around crime and their associated fear. However, research demonstrates that more police and prisons have the opposite effect and instead instils more fear within society (Donziger, 1997). Fear of crime stems “from the cultivating of our deep-seated anxieties by those institutions that benefit economically and politically when fear is inflamed” (Donziger, 1997, p. 28).

The exponential growth of technology and mass media has enabled new information to travel widely and swiftly. As a result, public consciousness of potential risks and dangers has risen. While disasters and catastrophic events have always occurred, our contemporary reaction is driven by risk-aversion (O'Malley, 2010). Our response to an event is often embedded in trying to point blame at something we can become fearful of (Young, 2008). The rapid pace in which information is absorbed by the public has simplified our discourses. Media stories commonly substitute a comprehensive and complex take on crime and punishment for a catchy, clickbait title. In the process of doing this, the information that is delivered to audiences is simplified, uncritical, and often misleading (Chen, Conroy, & Rubin, 2015). These continuous images and messages of risks feed into our collective anxiety (Giddens, 1991).

### *RISK IN THE JUSTICE SYSTEM*

As identified in the previous chapter, the justice system over the past four decades has largely been driven by a fixation on risk management and aversion (Feeley & Simon, 1992; Pratt, 2020). The rise in risk logics in the justice system coincided with the development and prioritisation of neoliberalism (O'Malley, 2008). As a result, the responsibility for managing

risk was placed onto individuals, indicating a move towards the “individualization of risk” (Furlong & Cartmel, 2007, p. 6) and ‘responsibilisation’ (Gray, 2005). The supposed intention of this move was to empower individuals to make their own decisions and have agency over their own life outcomes. However, the attempts at empowerment are short-lived, as the structural barriers and obstacles that some segments of society face are ignored through this framing (Furlong & Cartmel, 2007; Gray, 2009).

As people become responsible for managing their own risk, a simultaneous process of ‘deresponsibilisation’ occurs (Hannah-Moffat, 2016). Decision makers in the justice system – such as police, lawyers, judges, and members of the Parole Board – evade the responsibility of their decisions due to the emphasis on individual responsibility for risk management. Lamusse’s (2019a) critical interrogation of the Parole Board identified the board “as a crucial cog in the machine of institutional racism and mass incarceration of Māori and Pacific communities” (para. 4). Analysing figures from 2018, Lamusse (2019a) demonstrates that 58% of the people who served a full sentence were Māori. Concerningly, the disproportionality for Māori women is worse, as they made up 84% of all women who served a full sentence. Pākehā were also more likely than Māori to be released on their first appearance in front of the Parole Board (16.8% and 8.8% respectively).

The Parole Board had a right of reply to the claims Lamusse (2019a) made, and Sir Ron Young (Chairperson of the Parole Board) stated that they make “public safety decisions based on risk, not race” (Young, 2019, para. 20). However, Young (2019) then goes on to say that “many Māori offenders appear before the Board with some or all of the following risk factors: gang affiliation, violent offending convictions, a higher number of prior prison terms, shorter time between the most recent and any prior prison terms, higher statistical risk scores (as measured by the RoC\*RoI model), maximum or high security classification in prison” (Young, 2019, para. 20). What this does, however, is individualise a range of social conditions that are affected by structures of oppression (Cunneen, 2020).

“Risk-crazed governance” (Carlen, 2008, p. 1) has produced a rise and reliance on risk assessment tools as a method of determining levels of risk in a person. Earlier developments of risk assessment relied on clinical judgment, in which psychiatrists or psychologists would provide their personal thoughts on level of risk (Werth, 2019). However, concerns of the inconsistency of these assessments, and the potential for human error, saw the decline of clinical judgment in countries such as the US, UK, Australia, and Aotearoa New Zealand. In opposition to the unpopularity of clinical judgment, actuarial and technology-based risk assessments were seen as more objective and accurate (Werth, 2019). In Aotearoa New Zealand, there is a range of information that is used by the New Zealand Parole Board to support their decisions on risk:

the Offender Detail Record (ODR); Offender’s RoC\*RoI score (risk assessment undertaking by Department of Corrections); judicial sentencing notes; police summary of facts/indictment, pre-sentence reports; full criminal history; and prior Board decisions. In addition, the Corrections Department routinely provides a detailed Parole Assessment Report (PAR) on every offender appearing before the Board, outlining the offender’s progress within the institution and detailing the offender’s release plan. Other relevant reports may include psychological, psychiatric and youth offender reports. Written victim submissions may also be considered in appropriate cases. (Brookbanks, 2017, p. 146)

In risk assessments, a combination of static factors (e.g. criminal history) and dynamic factors (e.g. lack of prosocial leisure activities) are utilised to identify a person’s risk level (Miller, Campbell, Papp, & Ruhland, 2021). The range of different risk factors differs between countries; however, the ‘central eight’ are commonly used. The “central eight” includes the following: criminal history, procriminal attitudes, procriminal peers, antisocial personality patterns, family/marital status, school/work performance, substance abuse, and prosocial activities (Heffernan, Wegerhoff, & Ward, 2019).

Despite the intended objectivity of risk assessments, there is limited acknowledgement that indicators of higher levels of risk are connected to the social conditions of marginalised communities. Risk factors such as having a parent(s) in prison, school expulsion, and substance abuse, are individualised and therefore “treated as discrete ‘facts’ devoid of historical and social context” (Cunneen, 2020, p. 528). Thus, the long-standing continuity and legacy of

colonisation, marginalisation, and oppression that influences these social conditions are ignored. Criminal history is often marked as a strong determinant of higher risk levels (Werth, 2019). However, scholars have continuously criticised the use of criminal history in risk assessment, due to the biased nature of the justice system (Cunneen, 2020; Goddard & Myers, 2017; Harcourt, 2015; Tonry, 2019). Due to the continued disproportionate levels of engagement in the justice system for Indigenous populations and ethnic minorities, these social groups are more likely to have elevated risk levels. Therefore, criminal history can operate as a “proxy for class and race”, that leads to more punitive and coercive control over certain groups within society (Werth, 2019, p. 9).

There are many negative consequences of a person receiving a high risk level. Risk management practices are “strategies of inclusion and exclusion” (Hudson, 2003, p. 76), in which people identified as high risk are deprived of their humanity:

[People] are deprived of their rational humanity and become determined creatures of statistical risk-assessment systems; instead of being flesh and blood, inconsistent, unpredictable humans acting out of their own interests and desires, free to change their perceptions of these and their moral cognitive sets at any time in the present and future, they become the predictable embodiment of databases, for whom the behavioural uncertainty of actual choices in actual situations is replaced by the statistical certainties of factorial calculations. (Hudson, 2003, p. 76)

In Aotearoa New Zealand, the Department of Corrections introduced the Integrated Offender Management (IOM) framework in the late 1990s to 2000s as a method of assessing risk. Alongside this was development of the criminogenic needs index (CNI), in which risk and need became intertwined (Hannah-Moffat, 2005; 2016). Recent scholarship has highlighted concern for the deficit model approach within risk assessment tools, and how this is detrimental to Māori (Tauri & Webb, 2012; Webb, 2018; Gordon & Webb, 2022).

## **SAFETY LOGICS**

Risk logics and the rise of the risk society have generated a society that prioritises maintaining safety. Be it personal safety or public safety, the way ‘safety’ is utilised in our daily discourses demonstrates its pervasiveness. Public safety is often positioned as paramount for government agencies such as the New Zealand Police, Ministry of Justice, and Department of Corrections. For example, public safety is a core principle of the *Corrections Act 2004*, and the New Zealand Police have the slogan ‘Safer Communities Together’. However, safety logics extend far beyond the criminal justice system, and have permeated multiple aspects of society; the workplace, transport, housing, and sports to name a few.

Safe Communities Foundation New Zealand (SCFNZ) is a non-profit organisation established in 2004 that builds local partnerships and collaborative relationships in an attempt to foster safer communities. The Accident Compensation Corporation (ACC), the Ministry of Health (MoH) and the Health Promotion Agency (HPA) jointly fund SCFNZ which demonstrates the investment in safety that the government is currently making. Their website defines a safe community as a place in which:

all sectors of the community work together in a coordinated and collaborative way to promote safety: forming partnerships; managing risk; educating and informing; increasing community well-being and the overall safety especially for its most vulnerable; and reducing their fears of harm (Safe Communities Foundation New Zealand, n.d.).

This definition of a safe community demonstrates that the scope for safety extends far beyond simply responding to crime. However, the way in which safety discourse has been used in the context of the justice system has often resulted in banishment and exclusionary tactics (Van Swaaningen, 2005).

When discussing safety in a crime control context, words such as ‘neighbourhood safety’ and ‘community safety’ are often utilised. The romanticised notion of ‘community’ commonly resembles collectivity, togetherness, and unity. However, Marilyn Taylor (2011) recognises the ‘dark side’ of community. She argues that community can “be both oppressive and exclusive” (Taylor, 2011, p. 66). When community safety coincides with



punitive responses to harm you are left with many people becoming banished and excluded from the community. Van Swaaningen (2005) argues that banishment is driven by the “fears of the law-abiding citizen” and is embedded in the politics of safety (p. 303). The exclusionary nature of safety logics has resulted in communities and societies becoming polarized and divided. Gated communities are an example of this. The primary function of gated communities is to meet the desired outcome of security and exclusivity (Button, 2006). Further, neoliberal policy has made individuals responsible for their own safety as surveillance and security have become commodified.

Safety logics are synthesised with punitive, exclusionary responses. The justification for the carceral state and punitive responses to harm is that public safety is secured. By this logic, the United States should be the safest country in the world as they confine a quarter of the world’s prison population (Sered, 2019). Unfortunately, this is far from the truth. The assumption within these safety logics is that if we incarcerate certain people this will result in less crime in society. That is, incarceration rates are often perceived to reflect crime rates within a society. However, the connection between these two is often disputed, as several studies have demonstrated that there is little evidence to prove that there is a relationship between the two (Mazerolle, Rynne, & McPhedran, 2018; Stemen, 2017). Instead, incarceration rates merely reflect a society’s fixation on punishment and policing behaviour.

Safety logics reinforce power differentials within society. Those in a position of power in society can identify what it is that society needs to be kept from. Harm perpetuated by the racialised poor, and crimes of poverty, are often depicted in the media as something we should be fearful of. However, in drawing our attention to these harms, environmental and white-collar harm – which is often committed by the ruling class and large, profit driven corporations – become side-lined (Norris, 2021a). These logics are often used to justify caging and confining certain populations that pose a threat to the status quo.

## *FEAR-BASED SAFETY*

Zach Norris, Executive Director of the Ella Baker Centre for Human Rights (Oakland, US), and author of *Defund fear: Safety Without Policing, Prisons, and Punishment* (2021a), identifies two ways of approaching safety: fear-based and care-based. His book tracks the multiple ways that America has invested in a framework of fear that has extended the pervasiveness of the ‘punishment dragnet’. A fear-based approach to safety relies on three connected elements: an Us vs Them mentality, architects of anxiety, and a framework of fear (Norris, 2021a). To supplement Norris’ (2021a) fear-based safety, the concepts of a “control approach to safety” (Jackson & Meiners, 2011) and “carceral safety” (McDowell, 2019) are utilised to demonstrate safety being conceptualised through absence.

## US VS THEM

The criminal justice system, by nature, operates through binaries: innocent vs guilty, victim vs perpetrator. These extrapolate on existing divisions – based on gender, class, ethnicity, sexuality – that present themselves in society (Norris, 2021a). By having a society that is overwhelmed with binaries and divisions, there will always be winners and losers. This is often portrayed through a narrative of Us vs Them. Collective pronouns, such as us, we, or them, enable the categorisation of certain people into an in-group or out-group (Perdue, Dovidio, Gurtman, & Tyler, 1990). This categorisation empowers the process of Othering to occur. A core feature of Othering is the power imbalance and perceived superiority, in which a person or group are identified as different to another individual or group, in an exclusionary way (Ajil & Blount-Hill, 2020; Rohleder, 2014).

The Us vs Them narrative has been used to justify the demonisation, marginalisation, and oppression of certain people within society. Many different groups have been the subject of Othering, in a form of “musical chairs of oppression, where powerful white men set the tune and the last marginalized group standing is the first one scapegoated” (Norris, 2021a, p. 8). Punitive approaches to harm, through the use of policing, prisons, and

punishment, are tolerated by wider society because it “is performed on *them*, and not on *us*” (Davis, 2005, p. 12 emphasis in original). This mentality, strongly embedded in white supremacy, restricts our ability to imagine alternatives to modern social, economic, or political conditions (Davis, 2005). In the process of Othering, those deemed to be ‘criminal’ are seen to be disposable and dispensable. By doing so, their punishment, banishment, isolation, and violent conditions become accepted in the name of public safety (Davis, 2005).

#### ARCHITECTS OF ANXIETY

Norris (2021a) identifies architects of anxiety as key drivers of the Us vs Them mentality. Architects of anxiety engage in fearmongering and often gain profit or power through turning the public’s attention towards a target enemy. Politicians and media organisations play a large role in creating and perpetuating ideas around fear and safety (Law, 2021). These architects of anxiety are accompanied by ‘fear foot soldiers’ and ‘fear by-standers’ (Norris, 2021a). Fear foot soldiers are members of the public who accept the rhetoric driven by the architects of anxiety and then produce feelings of fear and hatred. Fear by-standers are the large majority who remain silent, and therefore complicit, when narratives of fear are portrayed (Norris, 2021a).

What makes the architects of anxiety so powerful is how threats and danger can be used to easily manipulate the public. Our brains are wired in such a way that when a threat occurs – whether real or perceived – detection and removal are almost natural instincts (Norris, 2021a; Sussman, Weinberg, Szekely, Hajcak, & Mohanty, 2017). Any decision or action in response to a threat often happens instantly and without rational consideration. Architects of anxiety can therefore operate to help us fill in the gaps of what the most effective way to respond to a threat or danger is. In terms of the fear-based approach, we have been taught that policing, prisons, and punishment are the most effective approaches to increase feelings of safety.

Architects of anxiety are powerful people that alert us to certain anxieties and then swiftly promise a contingency plan to maintain safety (Norris, 2021a).

For example, in 1971 Nixon declared drug abuse as “public enemy number one” and then preceded to identify solutions such as mandatory prison sentencing for drugs and heavy police enforcement (Coyne & Hall, 2017). As a solution was rapidly identified, the public were quick to support the War on Drugs regardless of the potential consequences of it. The same can be said for claims of superpredators, welfare queens, and gangs threatening American society (Hendrixson, 2004; Norris, 2021a; Wacquant, 2010). All three of these identified groups demonised African American communities, and the solution proposed was a policy response that prioritised an increased use of prisons (Robinson, 2016). This is particularly troubling, as it resulted in the caging and dehumanisation of young people. The consequences of these approaches to safety are still prevalent today, with some serving life sentences without parole (Norris, 2021a).

Norris (2021a) identifies Donald Trump as the archetype of contemporary architects of anxiety. He drew strongly on a ‘politics of hatred’ – divisions of Us vs Them – and during his presidency made it national policy. Former President Trump drew on historical tropes and rhetoric through his continuously repeated campaign slogan (Bonikowski & Stuhler, 2022). Through manifesting fear of ‘Them’, Trump has used this to push an agenda of dehumanisation. Whether it be through rising tensions between white supremacists and Black Lives Matters activists, building a wall between America and Mexico, or forcibly separating children from their parents and locking them in overcrowded cages. With these narratives, the public are informed of *what* to fear and how to *respond* to that fear. Regarding the issues described above, architects of anxiety dictate that safety is achieved through punitive measures such as heavy surveillance, increased police presence, and lengthier prison sentences (McDowell, 2015).

In scapegoating certain communities as problematic, architects of anxiety manage to conceal the most pervasive harms. With a heavy focus on petty criminals and immigrants, our capacity to recognise real threats is restricted (Norris, 2021a). Real threats to our society are not individuals committing harm on an individual level. Instead, powerful institutions and societal

ideologies such as capitalism, white supremacy, and patriarchy provide a much larger threat. Capitalism by nature, through its prioritisation of people over profits, creates and reproduces inequality. White supremacy is embedded in a belief system that implies superiority of white people over all other people. Patriarchy, much like white supremacy, claims the dominance of heteronormative males over women and those in the rainbow community (Norris, 2021a). It is important to continually question what harms architects of anxiety are ignoring, and which ones are they highlighting. A direct consequence of this is who they are protecting, and who they are blaming (Norris, 2021a).

With architects of anxiety focusing on punishing individual crimes and people, it is often forgotten that these people have experienced trauma and violence prior to their offending. As Sered (2019) notes, “almost no one’s entry point into violence is committing it” (p. 158). Violence and trauma can also be experienced indirectly and is often handed down through generations. If trauma remains unaddressed, as it so often is for certain communities, it can limit cognitive functioning and a person’s ability to appropriately respond in certain situations. This means that people can become trapped in repetitive behaviour, and they can have a heightened sense of dangerousness (Norris, 2021a).

#### FRAMEWORK OF FEAR

The framework of fear is based on four components: deprivation, suspicion, punishment, and isolation. Collectively, these components ostracise people who are feared by society, and ensures that they are kept away from the rest of society. Architects of anxiety suggest that following these ‘common-sense’ approaches will keep society safe (Norris, 2021a). However, a framework of fear, which is premised on an Us vs Them mentality, results in unjust criminalisation and dehumanisation of entire communities. As it is designed to keep certain people in an oppressed and marginalised position, it does not manage to keep all people in society safe. Therefore, there is an embedded

hierarchy in the framework of fear that prioritises the needs of certain communities over others (Norris, 2021a).

The first component, deprivation, highlights the government's reluctance to invest in communities. The government's investment priorities, instead, are often focused on funding punishment through increasing police numbers and building more prisons. In Aotearoa New Zealand, several political parties have campaigned and made promises to funnel more money into the carceral state. Since the early 1970s, "criminal-justice costs have grown twice as fast as any other category of Government spending" (Gluckman & Lambie, 2018, p. 12). A direct result of this is the disinvestment in institutions like education, housing, health, and employment that would enable communities to thrive (Norris, 2021a). The element of suspicion demonstrates how the framework of fear prospers in a climate of mistrust. Suspicion is portrayed in multiple ways: surveillance cameras, compulsory drug testing, and through metal detectors in airports and schools. Perhaps the most unnerving part of this is the way in which communities are encouraged to monitor and spy on each other through groups such as Neighbourhood Watch. A society that is fixated on suspicion "leaves us being the catchers and the caught" (Norris, 2021a, p. 55).

Punishment is the third component of the framework of fear. The common approach to public safety is to heavily punish any person that demonstrates a threat to public safety. Prisons are one method used to punish someone for harm that they have caused. Punishment extends beyond responding to those who commit criminal offences and can feed into the way many social ills are dealt with. 'Problematic' children in schools, immigrants, and homeless people are increasingly being punished for their behaviour (Norris, 2021a). The final component for the framework of fear is isolation. This is demonstrated in the popularity of excluding people from society through barbed wire, large fences, and gated communities (Norris, 2021a). The extent of isolation is not just physical barriers that keep people locked out, but also through the stigma and difficulties of reintegration that people face when they return to the community. The isolating effects of criminality can bar people

from voting, gaining employment in certain industries, and applying for loans (Norris, 2021a).

#### SAFETY THROUGH ABSENCE

Safety is often described as being achieved through an absence from negative stimuli; for example, absence of threats, danger, discomfort, violence, or fear (Jackson & Meiners, 2011). When the safety of a place or person is determined by absence, this initiates a “control approach” to safety (Jackson & Meiners, 2011, p. 278). Through a control approach to safety, the aim is to remove any negative stimuli, predominantly through the means of exclusion, surveillance, confinement, or control. This method, however, does not distinguish between perceived and actual negative stimulus. In relation to crime, the control approach to safety helps to explain why we are so quick to use police and prisons as a solution (Jackson & Meiners, 2011).

McDowell (2019) classifies mainstream approaches to safety as ‘carceral safety’. Like the ‘control approach to safety’, ‘carceral safety’ demonstrates the way in which exclusion, mass criminalisation, and punishment are commonly used as tools to increase safety. Carceral safety relies on state-run institutions, such as police and prisons, as the only legitimate mechanisms for safety. Many societies are riddled with harm and violence, and therefore find appropriate methods of achieving safety is important. However, when we prioritise carceral safety and control-based approaches to safety, then we are creating “damage plus damage” (Norris, 2021a, p. viii). That is, there is the initial harm that is caused, and then there is continued harm through prioritising policing, prisons, and punishment.

Norris (2021b) challenges us to consider where we source our safety from. In contemporary society, we have become normalised to the notion of ‘He’ keeps us safe, rather than ‘We’ keep us safe. ‘He’ refers to an authoritarian figure that thrives off the patriarchal idea that ‘men need to keep women safe’. This mentality, that sources safety in the hands of the state, encourages society to deny trusting in their neighbours and the potential of finding safety in the hands of the community (Norris, 2021b). Public belief in the need for

professionalisation of crime control increases the propensity to rely on police to achieve safety. Contrastingly, a ‘We’ keep us safe mentality prioritises approaches that promote community-based and collective power in responding to harm.

In Aotearoa New Zealand, there has been increased use of neighbourhood policing models, that apply Norris’ (2021b) notion of ‘we keep us safe’. However, these solutions are often heavily partnered with the New Zealand Police and show an aversion to seeking safety without the support of professionalised control. Concerningly, neighbourhood policing has also encouraged the rise in vigilantism and using citizens to monitor others in their community. While not all neighbourhood policing results in these practices, the self-governing approach can create a binary of ‘insiders’ and ‘outsiders’ (Schenwar & Law, 2020). The source of safety has a profound impact on our solutions and approaches to safety. The care-based approach to safety, discussed below, demonstrates a commitment to sourcing safety from the community.

### *CARE-BASED SAFETY*

To counteract the fear-based safety described above, Norris (2021a) argues for the investment in a culture of care that provides a social safety net. Care-based safety recognises that the answers to safety lie within the community and can be unleashed through community empowerment and flourishing. The concepts of ‘insurgent safety’ (McDowell, 2015; 2019), safety through presence, (Jackson & Meiners, 2011) and belonging (powell, 2019) are utilised to demonstrate the potential of a care-based approach to safety.

### *CULTURE OF CARE*

A culture of care begins by determining how we can care for ourselves and then extend that care to others around us (Norris, 2021a). It is fundamentally a culture in which individuals overcome divisions to work and care for each other. A culture of care rejects the components of a framework of fear, and instead prioritises the following four elements: resources, relationships, accountability, and participation (Norris, 2021a). By prioritising these four



elements, a social safety net is formed, which engages in a focus on prevention of harm. These four elements work in direct opposition to the elements of the framework of fear. Therefore, to enact real safety a move from deprivation to resources, from suspicion to relationships, from punishment to accountability, and from isolation to participation must occur (Norris, 2021a).

It becomes clear that the priorities of a government and society are based on where they spend their money. As it has been discussed above, there is heavy investment in punishment, policing, and prisons. However, devoting and providing resources to communities enables a preventative approach to crime. Government investment in providing universal access to warm housing, accessible healthcare, education, and employment opportunities will drastically improve wellbeing for many communities (Norris, 2021a). Additionally, moving from suspicion to relationships enables the strengthening of collective responsibility to each other. Rather than turning on each other, we must focus on communal care of each other. Safety is not based on “our capacity to watch our neighbors, but rather based on our capacity to truly look out for one another” (Norris, 2021a, p. 91). This shift in prioritising takes out the ‘Them’ in Us vs Them, and just leaves ‘Us’.

The third shift in focus – moving from punishment to accountability – demonstrates the importance in changing how we respond to harm and conflict. Punishment instantly creates a power imbalance, between the punisher and the punished. Punishment is therefore something that is done *to* someone (Norris, 2021a). On the other hand, real accountability provides agency to the wrongdoer to learn from their mistakes. By portraying qualities of a partnership, accountability is done *with* someone (Norris, 2021a). The two core features of accountability are acknowledgement and consequences, which involve communication between community members. Acknowledgement is backwards looking, as a person takes responsibility for the harm caused. On the other hand, consequences are forward looking, as they encourage a person to change their behaviour moving forward (Norris, 2021a). Accountability will only be effective if people feel a connection or a relationship with those that are helping through the accountability process.

A shift from isolation to participation is premised on the idea that we all have the right to participate. Participation involves engagement, inclusion, and agency (Norris, 2021a). The current framework of fear causes severe harm, whereas participation enables communities to heal from their collective trauma.

Norris (2021a) draws on the story of DeVone Boggan's influence in Richmond and his approach to safety that resembles a culture of care. In 2007, Boggan was responsible for forming the Office of Neighborhood Safety, as a response to Richmond's high violence and gun crime. Boggan recruited people who had been formerly incarcerated to reach out to individuals who were responsible for lethal gun violence in Richmond. It was estimated that 30 individuals were responsible for 70% of the firearm violence in Richmond (Wolf, Del Prado Lippman, Glesmann, & Castro, 2015). Once these individuals were identified, they were invited to participate in an innovative eighteen-month program that provided stipends, travel opportunities, daily positive contact, educational and employment opportunities, substance abuse treatment, and much more (Norris, 2021a).

The program, the Peacemaker Fellowship, encapsulates all four elements of the culture of care: resources, relationships, accountability, and participation. After the program was introduced, violent crime significantly reduced in Richmond, which demonstrates the power of approaching safety through non-punitive and non-carceral approaches (Corburn, Boggan, & Muttaqi, 2021; Wolf, Del Prado Lippman, Glesmann, & Castro, 2015). Boggan has expanded the Peacemaker Fellowship, which is conducted through the organisation Advance Peace, to create significant reductions in gun violence in multiple areas. Since the inception of Advance Peace, they expanded beyond Richmond, and adapted the model in Stockton, Sacramento, Fresno, Salinas, and Woodland (Boggan, 2022). Advance Peace is partially funded by city allocation budgets, as well as through state and federal grants, foundations, and individual donors (Corburn & Fukutome, 2019; Sanchez, 2019).

## INSURGENT SAFETY

McDowell's (2015) work on the *(Re)imagining Public Safety Project* demonstrates the possibilities that open when safety is reimagined through the eyes of the community. In this project, participant-generated photography, interviews, and participant observation were used to capture abolitionist approaches to safety that did not rely on the carceral state. According to McDowell (2015; 2019), abolitionist approaches to safety – what she terms “insurgent safety” – are not about having prescribed solutions that can be reproduced across different communities. Instead, what is important is opening spaces for communities to identify the specific solutions that are desirable and supportive to a particular community. Regarding her research, insurgent safety was demonstrated through the following components: ‘public ethic of care’, ‘counter-carceral communication’, and play (McDowell, 2015; 2019)

Firstly, a ‘public ethic of care’ prioritises interdependency and mutual care. This rejects individualism and greed, which are encouraged through capitalism, and instead focuses on relying, trusting, and supporting those around you. This project recognised that the language we use can influence the way we understand the world around us. Regarding safety, it is suggested that what is needed is the formation of ‘counter-carceral communication’ (McDowell, 2015). For example, by opening communication to encourage new ways of expressing and holding space for emotions that are commonly felt when harm is caused. Thinking beyond the carceral framework will enable alternative methods of safety to flourish. The final component is play, joy, and communion. Here, safety is reconceptualised as a sensory experience, which is manifested through laughter, self-expression, and kinship (McDowell, 2015; 2019).

In considering an alternative way of approaching safety, Jackson and Meiners (2011) present the idea that safety can be achieved through positive stimuli, rather than absence. ‘Safety through presence’ (Jackson & Meiners, 2011). recognises that strong relationships, resources, pleasure, healthy environments, and opportunities to thrive can have a positive effect on a

person's feelings of safety. The emphasis in this approach to safety is to be proactive in providing and encouraging communities to have the resources, skills, and relationships they need to flourish (Jackson & Meiners, 2011).

## BELONGING

To move beyond narratives of Us vs Them, we need to recognise that the health of our community is only as good as the health of the most oppressed in our communities (Norris, 2021a). The creation of a social safety net requires collective responsibility and commitment from all members of the community. By coming together and prioritising belonging, it is possible to create the conditions for everyone to flourish and thrive. Norris (2021a) draws on John Powell's work on moving beyond policies and practices of Othering and towards belonging. Belonging is the process of being seen and being heard and celebrating our interconnectedness. It is more than just being included in a community, but also having the agency to help co-create the community (Powell, 2019; 2021). Belonging fosters feelings of being 'at home' and feeling 'safe' (Yuval-Davis, 2006). If we focus on ensuring that everyone feels like they belong to a space and a community, it will allow relationships between each other and the Earth to be restored.

## CONCLUSION

Contemporary risk and safety logics have informed punitive and carceral responses to harm. Risk logics often present themselves in the justice system through risk assessments, which can have detrimental effect on a person's experience of the system. Certain social conditions that are a result of colonisation, racism, and social oppression are determined as risk factors, that filter poor, non-white people further into the justice system. Carceral and fear-based approaches to safety have produced a heavy reliance on police and prisons as a response to harm. 'Care-based safety' (Norris, 2021a), 'insurgent safety' (McDowell, 2015; 2019), and 'safety from presence' (Jackson &

Meiners, 2011) offer non-punitive ways of approaching safety in a more sustainable and inclusive way.

Dominant logics of risk and safety operate in tandem to sustain each other. Punitive approaches to safety - such as 'fear-based safety' (Norris, 2021a) 'safety from absence' (Jackson & Meiners, 2011), and 'carceral safety' (McDowell, 2015; 2019) – draw on similar notions of Othering that are embedded in risk logics. With contemporary risk and safety logics, there is a preoccupation with a deficit-focused and punitive lens, that largely works to exclude and marginalise certain groups. Additionally, risk and safety logics are both reliant on emotions such as fear, uncertainty, and anxiety as a driving force. Emotions having such an integral part in these logics makes them more challenging to change.

*Chapter Four* turns to examining the methodological framework and method approaches that were utilised within this project. Commencing with a discussion on positionality, the following chapter reflects on my journey prior to, and during, this research and how that has shaped this project. Semi-structured interviews are justified as an appropriate method for this project, alongside a brief introduction to each participant. Reflexive thematic analysis (Braun & Clarke, 2021a) is explained as the analysis approach, and ethical considerations and research limitations are acknowledged.

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## CHAPTER FOUR: METHODOLOGY, METHODS AND REFLEXIVITY

This project entails a critical exploration of the use of punitive approaches in response to harm within Aotearoa New Zealand. Of interest to this project is understanding how certain terms such as ‘risk’, ‘safety’, ‘protection’ and ‘security’ are conceptualised. With this understanding, the intention is to explore how these conceptualisations may influence responses to harm. The long-term hope of this project is to consider how these words may be reconceptualised so that non-punitive responses to harm can be promoted. With these priorities in mind, it is evident that a qualitative approach is appropriate and necessary.

This chapter encompasses six sections to examine the methodology and methods used within this project. Firstly, the positionality of myself as the researcher will be highlighted, followed by the epistemological stance and methodology used. The discussion explores the importance of positioning myself within this qualitative project, and how my background has shaped and influenced my motivations and approaches to this research. Subsequently, there will be an explanation of my experience of completing a doctorate during a global pandemic. The project was completed during the emergence of the COVID-19 pandemic, and this section explores the adaption of methods and fieldwork as a necessary consequence to the crisis. This will be followed by a description and justification of semi-structured interviews as the data collection method for this project. Next, the 16 participants that contributed to this project are introduced and the reflexive thematic analysis (RTA) process is explained as the analysis method (Braun & Clarke, 2021a). To conclude, ethical considerations and limitations are discussed.

## **POSITIONALITY**

In any research endeavour such as mine, it is imperative that I reflect upon my positionality. Acknowledging my positionality is important in this field, as it directly impacts why I am doing this project and shapes how this project is produced (Bourke, 2014; Manohar, Liamputtong, Bhole, & Arora, 2017). Additionally, being supervised and mentored by Indigenous scholars, as well as engaging with the scholarship of Indigenous leaders, has informed my appreciation and necessity for whakawhanaungatanga. At the start of my second year, my primary supervisor, Tracey McIntosh, invited her PhD students to gather at a wānanga to draw on the strength of the collective. When doing whakawhanaungatanga, she asked each of us to identify why we are where we are. At face value, it seems like a straightforward question, but is deeply important. Therefore, I share some personal journeys below as a way of inviting the reader into my world and learning more about how I came to this research.

During this project, I have had many reflective moments that have enabled me to delve deeper into my positionality and question why this research is important. In all the moments when I have doubted if my project is 'good enough' or if I'm the 'right person' to be doing this research, I resorted back to questions of *why* I am doing this research. England (1994) highlights the significance of researcher self-reflection in the production of research:

I believe that we need to integrate ourselves into the research process, which admittedly is anxiety provoking in that it increases feelings of vulnerability. [...] We need to locate ourselves in our work and to reflect on how our location influences the questions we ask, how we conduct our research, and how we write our research. (England, 1994, p. 87)

The purpose of this section on positionality is twofold; firstly, to reflect on my motivations for carrying out this project, and secondly, to highlight my recent journey into confronting my Pākehā ancestry that is deeply rooted in the colonial history of Aotearoa New Zealand.

In my formative childhood years, I lived a relatively sheltered and naïve life, and I was not challenged by the injustices within the criminal justice system. I have lived in Tāmaki Makaurau (Auckland) my whole life, and grew with my

parents, David and Jenny, and older brother, Michael. We have always been a close-knit family and are continuously supportive of each other's passions. Sport and music were big features in our lives, with my parents supporting me and my brother through our many extra-curricular activities. It was not until experiencing the benefit of tertiary studies that I gained an appreciation of wider global justice issues. Through my involvement in studying criminology, and my volunteer experience with JustSpeak I became strongly motivated to further understand and rectify these injustices.

In acknowledging my positionality, I must recognise my privileged position of being a Pākehā, abled body, well-educated, middle-class, heterosexual, female. Peggy McIntosh's scholarship offers insights into understanding privilege. White privilege, according to Peggy McIntosh (2020 [1988]), is "an invisible package of unearned assets" (p. 17). In her work, McIntosh identifies 46 elements of unearned advantage within her daily life that often go unchecked. McIntosh (2020 [1988]) concludes her piece with a challenge about what white people can do with the knowledge of their unearned advantage and power:

As we know from watching men, it is an open question whether we will choose to use unearned advantage to weaken invisible privilege systems and whether we will use any of our arbitrarily awarded power to try to reconstruct power systems on a broader base. (McIntosh, 2020 [1988], p. 26)

An understanding of white privilege provides an opportunity to unpack the "invisible knapsack of white privilege" (McIntosh, 2020 [1988], p. 22). During an online conference in 2020, Julia Whaipooti<sup>10</sup> and Jen Margaret<sup>11</sup> facilitated a webinar titled *0800Haumi: Allies in Action* (Margaret & Whaipooti, 2020). In their kōrero, they share what partnership and allyship means for

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<sup>10</sup> Julia Whaipooti (Ngāti Porou) is a passionate Māori lawyer and activist for systemic change. Her current role is the Head of Te Tiriti Engagement for Abuse in Care Inquiry New Zealand. Previously she was a member of Te Uepū Hāpai i te ora - Safe and Effective Justice Advisory Group, Senior Advisor at the Office of the Children's Commissioner, and Spokesperson for JustSpeak, amongst many other important roles.

<sup>11</sup> Jen Margaret (Pākehā) is an advocate and educator for Te Tiriti o Waitangi. In 2010 she received the Winston Churchill and Loxley Fellowships, which enabled her to conduct research on the work of non-indigenous allies in North America, Australia, and Aotearoa. This research informed her book titled *Working as allies: supporters of indigenous justice reflect*.



tangata whenua and tangata tiriti. Margaret (2020) recognises that Te Tiriti O Waitangi provides a guide and vision in how power-sharing and an honourable relationship can manifest. She asserts that everyone, Pākehā especially, need to be aware of challenging situations where Te Tiriti O Waitangi is not upheld. Change work and challenging racism and power structures needs to be a daily occurrence for allies (Margaret & Whaipooti, 2020). For Pākehā, this means being aware of the unearned advantage that is afforded to us and ensuring that we do not reinscribe unequal and discriminatory power structures. Jen Margaret (2020) shares that the discomfort that may arise in doing this is necessary to disrupt the ongoing legacies of colonisation.

Over my postgraduate studies I have endeavoured to place myself within spaces where I identify as a non-Indigenous ally. Part of my journey has been to ensure that as a Pākehā criminologist I do not continue to silence Indigenous voices or experiences. Instead, I aim to recognise that movements towards decolonisation need to be collective and Māori or Indigenous-led. Moments that have been fundamental in shaping my perspective have been the 2018 Sister's Inside conferences and the 2017 and 2018 visit from leading decolonising scholar Biko Agozino.

In 2018, I had the benefit of attending the Sister's Inside conference in Brisbane with other students from the University of Auckland. Sister's Inside is an Australian organisation that advocates and supports women who are incarcerated. Their 9th International Conference in 2018 was aptly named *Imagining Abolition...A world without prisons*. Angela Davis, a prominent prison abolitionist, was a keynote speaker at this conference and provided a thought-provoking presentation. During your PhD you are often encouraged to present at multiple conferences. However, I knew that my place at this conference was purely to listen. The most powerful moment of the conference was a panel discussion called "Nothing about us without us", where women with lived prison experience were invited to share their stories. Their narratives were understandably heart-breaking and powerful, clearly demonstrating the way in which society had failed them. The educative and

emancipatory power that came from these women when they shared their stories has encouraged me to strive towards transformative change.

The second formative moment was the two months across 2017 and 2018 where Professor Biko Agozino visited the University of Auckland. Dr Robert Webb had applied for funding for him to visit and appointed me as a research assistant to organise events for the public and University of Auckland staff and students. Having read some of Agozino's (2003; 2004; 2010) work in my undergraduate studies, I was thoroughly excited to meet him. The wisdom that he imparted on me in both of his visits is a reminder of the importance of decolonial work. In one of his presentations, he talked about the way in which we often frame Indigenous models of justice as 'Alternatives'. In doing so, we are alienating any attempt at decolonisation with the assumption that colonial structures and practices are 'Original'. Thus, Agozino challenges us to consider Indigenous values, ideas, and processes as 'Original'.

#### *CONFRONTING MY PĀKEHĀ IDENTITY*

The last five years has been a struggle trying to find my place in the world and to confront my Pākehā identity. In my secondary school education, I was taught what I can now determine as a very Westernised view of Aotearoa New Zealand's history. I vividly remember learning about the Treaty of Waitangi – Te Tiriti was never referred to – and how proud I was to be maternally related to Henry Williams. At the time, due to my Pākehā-centred history, I felt honoured to be connected to what I thought was a celebrated part of history. At the time, my understanding was that the Treaty was a peaceful document that symbolised harmony between two groups. Henry Williams was heavily involved in translating the Treaty of Waitangi to Te Tiriti – where wrongful translations continue to have deeply rooted ramifications and consequences in contemporary society. Writing this now, knowing more about the pain that has endured since colonisation, I am ashamed to admit my naivety.

It was at the MASS conference (Māori Association of Social Sciences) in November 2016 when I was heavily confronted with my past. Dr Aroha Harris began the conference by encouraging us to be mindful of how history is

framed. The starting point of Aotearoa New Zealand history often begins with ‘Cook’s map’, but there is a prior history that often gets untold. Tasmin Hanly’s work reiterates this, and she argues that the inaccurate ‘standard story’ of a colonial history continues the amnesia our country has for our true history. James Belich’s (1988) scholarship on the New Zealand Wars between 1845–1872 demonstrates how history in Aotearoa New Zealand, like most colonial histories, is written from the viewpoint of the coloniser. Thus, there is a portion of history that remains untold or forgotten. Hanly has dedicated the last decade to creating a Curriculum Programme Resource (CPR) titled *A critical guide to Māori and Pākehā histories* (Hanly, 2020). Her resource provides teachers with the knowledge to share the true history of our country – something I know I would have benefitted from during secondary school.

In the early months of my PhD, I felt plagued by guilt and shame of my ancestry. I have always believed that the research I am doing is important, but I have constantly questioned whether I am the right person to be doing this research. I am very conscious that the criticisms I have of the justice system are deeply rooted in colonial project. Therefore, I do not want this project to have a similar effect. This experience of guilt is not unique, and there are many Pākehā researchers who have acknowledged feelings of guilt. ‘Pākehā paralysis’ has consumed Pākehā social science researchers, and has been used as an excuse to opt out of research and responsibilities (Tolich, 2002). Avril Bell (2004) explores three ways in which guilt can be expressed by Pākehā. Firstly, guilt can be rejected, through Pākehā today distancing from the action and behaviour of their ancestors. This, Bell (2004) argues, results in a ‘cultural politics of refusal’ (p. 92). Through a cultural politics of refusal, historical discussions are often side-lined, and responsibility is dismissed. On the other hand, if Pākehā are overwhelmingly consumed by guilt, this can also be counter-productive. In Pākehā holding onto guilt so tightly, this “keeps the focus of attention on Pākehā themselves, diverting attention away from the issues of historical injustice and present-day relations” (Bell, 2004, p. 99). Bell’s (2004) third expression of guilt, is that it should be acknowledged, and “accepted as one aspect of the Pākehā historical

legacy but not the sum total of that legacy” (p. 101). Thus, while feelings of guilt may be present, these need to be underpinned by a sense of responsibility (Bell, 2004).

For a few years I was in a space of being consumed by guilt, until I came to a place of understanding the unproductivity of such a position. I relate heavily to Crawford’s (2016) journey in claiming and embracing their Pākehā identity and moving from a place of guilt to hope. Pākehā need to be attentive to their discomfort and work collaboratively with Indigenous scholars. There was a turning point in my experience of embracing my position as an effective ally, which occurred in a kōrero with Khylee Quince at the end of my interview with her. I am grateful for the wisdom that she shared with me, and it was a moment that I frequently reflected on when writing this thesis. The following excerpt highlights the learnings I gained through that kōrero:

Khylee Quince: On my business card, or on my gravestone, I would like to have something like “effective Pākehā whisperer”. [laughs] And by that, I mean to get people that aren’t like you to care about things that don’t necessarily affect them.

Grace Gordon: Well, I think that’s where my part comes into this. I’ve spent the first year of my PhD thinking I’m not the right person to do this. And I was coming from a place of guilt, and it just was really ineffective. Like who am I to be doing this work?

Khylee Quince: Effective allies and translating.

Grace Gordon: That’s exactly it. I need to take on my share of talking to my relatives who just made up these assumptions about the justice system. I feel like I need to do a lot more of that, those challenging conversations because we all need to play a part in this whole thing.

Khylee Quince: Yeah, that’s right. And there’s that insider-outsider thing where they’ll just shut off if see all these Māori radicals or whatever. But when you have an insider that is an effective ally, that’s incredibly powerful.

Grace Gordon: I’m on the path to finding more of my voice. Yeah. Again, it kind of just comes back to fear and like not wanting to take the space. But I can’t just leave it to people like yourself or like Emmy, for example, who just take the reins every single time, because that’s a heavy burden to put on someone else. [...] I’ll hold onto this conversation and feeling I’m getting for a long time because it is really important.

My ancestry gives me a sense of urgency and passion to right the wrongs of our colonial past and present. This has formed my positionality as a non-Indigenous ally with a commitment to decolonial work.

Confronting my past, my heritage, and my identity has been no easy feat. In fact, it is a process that I think I will be moving through in the years to come. To begin my process into confronting my past I scoured the internet for information on the history of Te Tiriti and Henry Williams. There was an abundance of different sources and historical accounts that ranged from blogs, videos, to academic articles. I gathered some of the information, but felt I was lacking a personal touch. I knew my Mum had a range of books around this history and so decided to sit with her to go through it. My Mum and I had never sat down and talked through this before, so I was uncertain of how she would respond to my critical inquiry. However, she validated my feelings by acknowledging that she had gone through her own journey when she was a similar age to me. This was reassuring to hear and meant that I could be fully vulnerable with my feelings through this process. There is still much more for me to unpack, process, and reflect on, which will be a continuous journey throughout my life.

### *REFLEXIVITY*

Throughout this project, researcher reflexivity was an important process. This was often done on an ad hoc basis and through a variety of methods. Research diaries, or a place to store personal reflections, are a useful way to keep a record of your thought process and how certain ideas unfold throughout a research project (King & Horrocks, 2012). Indeed, this is a fundamental feature of reflexive thematic analysis, which was utilised in this project and is detailed further below (Braun & Clarke, 2021a). For this project, my most common reflection process was a 'brain dump' or journal entry (either typed or handwritten), doing voice notes on my phone, or debriefing with other students. This was a useful process in helping me develop my thinking and process any difficult emotions. My reflection process was used in the lead up

to, and after, every interview, as well as during any pivotal moments in the reading or writing phases. I also used this process to reflect on my increasing involvement with People Against Prisons Aotearoa (PAPA). Moving into the decolonial and abolitionist space has been uncomfortable, challenging, and confronting. But it is through reflexivity that I have recognised the importance of sitting with the discomfort.

### *A TALE OF TWO REALITIES*

Reflecting on my childhood, one moment where I experienced an instance of criminality comes to mind. I would have been about six or seven and was enjoying an afternoon at my house with my family and family friends. My overall recollection of this is quite hazy, but I vividly remember seeing two Māori girls (aged 14 or 15) running through the park next to our house with bulky items. My dad and family friend called out to them and once they realised they had been spotted, they threw the items (one of which was a stereo) over our neighbour's fence. As the two girls ran past our place, my dad and family friend hastily jumped over our fence and caught them. The two girls retaliated – by spitting, swearing, and kicking – and the Police were called. My dad and family friend held the girls until the Police arrived. After the Police had taken the girls away, my parents were concerned that our house may become a target, as the girls had threatened this while they were waiting for the Police. Nothing eventuated from these threats, and shortly after this event it just became a story we would tell others of our interaction with the Police.

I can understand my parents' rationality in calling the police during that circumstance. They recognised the behaviour as wrongful, were legitimately fearful that our family might be harmed (after the threats and retaliation from the girls) and identified the police as an institution that promotes and upholds public safety. However, something that I can imagine that was not considered was the safety of those two girls. Some would argue that their safety should not be paramount, as they have broken the social contract through their behaviour. But crime does not occur in a vacuum. There are often a range of

social, political, and economic conditions that shape a person's life experiences and behaviour.

I have reflected on this day with my parents as an adult, and they have provided me with further context and their perspective. My parents have shared that when the Police arrived, the girls were well known to them. This demonstrates the continuous interaction that these girls had with the Police. While they may have engaged in wrongful behaviour that day, and perhaps before and after too, there may have been accumulative blocked opportunities that led to this behaviour. The intention of asking these questions, and reflecting on that day with my family through open dialogue, is not to excuse the behaviour that the girls engaged in. Instead, I raise these questions to explore how differing social conditions may have led them to act in that way.

Having now done my criminology study, I often think about the life trajectory of those two girls. There is a sharp juxtaposition between my lived reality with what their realities may look like. I have completed almost 10 years at university and have been afforded many scholarships and employment opportunities. That is not to say that these opportunities have arrived in a vacuum, but it would be naïve to not recognise that I am in a position where resources and opportunities become accumulated; the more you have got, the more you are able to get.

## **EPISTEMOLOGICAL STANCE AND METHODOLOGY**

My epistemological stance and framework for this project are largely shaped by the decolonial scholars I have been fortunate to interact with. People that have been fundamental in shaping my thinking have been Dr Moana Jackson, Dr Juan Tauri, Professor Biko Agozino, and my two supervisors Professor Tracey McIntosh and Dr Robert Webb. These scholars consistently acknowledge the ongoing legacy of colonisation and are staunch advocates for Indigenous rights. Their activism and scholarship have greatly influenced my understanding of the direct link between colonisation and the contemporary

marginalisation and oppression of Indigenous people globally. To move towards decolonialisation and rectifying the injustices of colonisation, it is imperative that Indigenous people and non-Indigenous allies work collectively and collaboratively.

This project predominantly sits in the realm of a critical epistemological framework but is also informed by social constructionism. Social constructionist epistemology is focused primarily on the role of language, and how language shapes and influences the world around us (King & Horrocks, 2012). Social constructionism calls for researcher reflexivity and argues that the positionality of the research plays an important role in the production of knowledge and meaning (King & Horrocks, 2012).

### *CRITICAL SOCIAL SCIENCE*

The intention with critical research is to not just critique institutions and practices within our justice system, but to find ways to advocate for change. In their book *Indigenous Criminology*, Cunneen and Tauri (2016) recognise the importance of critical research being embedded in the “historical and contemporary conditions of colonialism” (p. 1). That is, to know how the social world currently operates, it is important to consider historical, political, and social conditions and contexts (Henn, Weinstein, & Foard, 2006). Critical research generally will have goals of emancipation and aims to provide a voice for oppressed or excluded groups. That is, it works closely with marginalised communities to promote action against oppressive conditions (Esterberg, 2002; Strega, 2005). Critical research is therefore active, rather than passive.

While my research does not provide a voice for oppressed people, its primary focus is to encourage social change that will affect the lived realities of these groups to allow them to flourish and thrive. It is important that this project does not remain in the ‘ivory tower’ of academia. Activist academics have the potential to resist the “ivory trap” by producing “knowledge with the intent to inform action and speak directly to current social, cultural, or physical realities of the world in a manner that improves society and benefits others”



(Glasser & Roy, 2014, p. 90). Despite this thesis being written for an academic audience, my hope is that the knowledge produced will transform beyond this piece. For me personally, this means being the change I want to see in the world. Rather than simply write the work, I strive to live the work.

A way in which this intention presents itself is through engaging in projects outside of my doctorate. At the beginning of my third year of my PhD I decided to get more involved in the organisation PAPA. There had been a desire in me to want to share my energy and anger for injustice in a positive and meaningful outlet. In February 2021, I joined PAPA's National Organising Committee (NOC) as an Inside-Outside Committee Coordinator for the Ngā Ringaringa E Rua strategy. Within this strategy I was tasked with connecting with people inside prison to support them in campaigning for their collective rights. I transitioned into the Advocacy team in July 2021 as one of two Advocacy co-coordinators. Within this role I engaged with providing one-on-one advocacy support for people in prison who needed it. This involved communicating regularly with people in prison, or with their whānau on the outside. Over the last decade I have been engaged in thinking and criticising the justice system. However, it was within this position that I was faced with the reality of what people in prison experience. It is a challenging and heavy role, but it serves as a constant reminder of why transformative change is needed. Any moments in the final year where I questioned the purpose of this project were quickly overshadowed by the urgency for change.

### *CRIMINOLOGY AS A 'CONTROL-FREAK DISCIPLINE'*

Critical research is important in any discipline, but it is imperative in criminology. Due to its deep connection to the criminal justice system, it has operated as what Biko Agozino (2010) identifies as a 'control-freak discipline'. By this, Agozino recognises that criminology largely functions to serve the state and extend its power and control over certain populations. Both criminology and the criminal justice system have operated as a 'muscle of colonisation' (Gordon, 2017). Antje Deckert's (2014) research demonstrates the way in which the discipline of criminology has been complicit in the

reproduction of neo-colonial epistemologies. This in turn has justified the response by the criminal justice system to control and confine certain populations.

For me, personally, I have grappled with my position as a criminologist for the last few years. Knowing the way in which criminology has operated to justify strategies of confinement, control, and punishment deeply unsettles me. I have researched, tutored, and lectured in this discipline, and I have a great love of all of that. However, there has often been a part of me that has struggled with the fact that I position myself in the criminology department. I am aware of the disciplines' "complicity in the carceral continuum" (Schept, Wall, & Brisman, 2014, p. 97) and conscious of the tacit reproduction of workers for primary roles in crime control practices. Brown and Schept (2017) acknowledge the role that criminology has played "as an intellectual prosthesis for the state, providing both material and ideological support and legitimacy for expansions and exercises of police power and mass imprisonment" (p. 442). Thus, critical criminology and an abolitionist stance are imperative to envision a society without reliance on prisons and policing.

There has been a significant amount of debate on the place of criminology and whether critiquing *within* the discipline is effective (Van Swaaningen, 1999). The recent surge in scholarship around Indigenous criminology demonstrates this shift (Agozino, 2018; Cunneen & Tauri, 2016; Webb, 2017). This literature prioritises Indigenous experiences, knowledge, and methodologies and is decolonial in its focus. Blagg and Anthony (2019) pose the idea that a movement towards prison abolition should also be accompanied by the abolition of criminology. Disappointed by the criminology discipline, Tauri (2017) has also suggested to "set up our own tent" outside of criminology (p. 780). This replicates moves towards post-disciplinary research that critiques the Westernised lens, methodology, and knowledge that has dominated criminological thinking (Blagg & Anthony, 2019).

Whether it is done within or outside the criminology discipline, it is imperative that critical social inquiry is done to highlight the connection between

colonisation and our contemporary justice system. Therefore, rather than engage in research aims and questions that maintain the status quo, this project seeks to challenge commonly held beliefs abouts our justice system. Our current justice system, with an emphasis on police, prisons, and punishment, has been upheld by justifying certain approaches in the name of public safety and associating certain populations with risky behaviour. It is hoped that this project will challenge the conceptualisations of risk and safety and think beyond the discipline to identify avenues for transformative change.

### *QUALITATIVE RESEARCH*

As I am interested in unpacking conceptualisations and how people make meaning of certain words, a qualitative approach was preferable (Davies & Francis, 2018). My experience with teaching and researching has often revolved around dialogue and communication and therefore it was clear from the outset that a qualitative methodology would be selected for this project. A qualitative project allows me to delve deeper into peoples' lived experiences, realities, and narratives (Davies & Francis, 2018; King & Horrocks, 2012; Neuman, 2014; Ormston, Spencer, Barnard, & Snape, 2014). The narratives in the following chapters therefore aim to shed light on the voices of those who have generously given their time to this project. The benefit of qualitative research is that it enables the presentation of complex ideas in the format of extensive quotes.

### **A PHD IN A GLOBAL PANDEMIC**

Working through a doctorate is challenging enough in 'ordinary' circumstances; however, the COVID-19 pandemic presented some additional challenges. 2020, 2021, and 2022 were tumultuous years. It would be hard for me to complete this research project and not consider the impact that a global pandemic has had on Aotearoa New Zealand. While this period will be a time remembered as a health crisis, there are many ripple effects that have

endured. Concerns about an economic crash (and rising unemployment that comes with that), disability and health inequalities widening, and our justice system potentially becoming an epicentre. COVID-19 has drastically impacted the way our prison system operates. Visiting rights for people in prison stopped, people were kept in their cells for 23 hours a day, and there was limited contact between people within the prison. However, there were some opportunities for video conferencing (AVL) with whānau, and some prisons added in additional phones and provided phone cards each week (Office of the Ombudsman, 2020). While there is an acknowledgement of attempts at making communication with loved ones easier for people in prison, my personal interaction with people in prison over the last year demonstrates concerns about inadequate access.

#### *AN EMANCIPATORY PROJECT THAT COULD HAVE BEEN*

As noted previously, the COVID-19 pandemic also affected my research schedule. I completed my provisional year review in March and then was set to start my interviews soon after. However, the Level 4 restrictions that were put into place at the end of March put a dent in those plans. While I could have organised to do some interviews over Zoom, I would have preferred to do them face-to-face. Additionally, as everyone's world had drastically changed, there would be little interest in participating in research. I used this opportunity of space and time to realign myself with my purpose of doing the research. My supervisors were thankfully very supportive in giving me the space to work through this gradually during this time.

It was towards the middle of 2020 when I started thinking about the role of this project and where I wanted to take it. At the start of my project, I had anticipated that I would use two methods: semi-structured interviews with people in a public profile role and focus groups with laypeople. Throughout the Level 4 restrictions, I thought at length about how the project could be reframed so that I could do the project justice. I made the decision to focus on extending the number of interviews I would conduct and cutting the focus groups. While I think the contributions that laypeople would make to this

project would be important, I think this is a project for another time. Interviews were chosen over focus groups to capture public discourse around risk, safety, protection, and security.

Throughout my PhD I became increasingly disappointed in my decision to not interact with people ‘on the ground’ for this project. There was real emancipatory potential in the initial proposal, in which people most effected by the justice system could share their voice. While I see the true potential in this sort of research, I think the timing would not be ideal following a global pandemic. Vulnerable communities and those living on the margins are already becoming increasingly stretched due to the increasing inequities the COVID-19 has brought Aotearoa New Zealand. Reaching out to them, when some of them are barely surviving, would not be the best thing in unprecedented times.

## **DOING THE RESEARCH**

In reframing my project, the decision was made to just do semi-structured interviews. The rationale and description of semi-structured interviews will be discussed below, as well as explaining the variety of approaches used to facilitate the interviews (face-to-face, Zoom, telephone, and written). Purposive sampling was chosen for this project, so the processes of reaching out to potential participants is outlined. Lastly, this section identifies the benefits and challenges to consider when doing research with people in a powerful position, and then introduces the 16 participants that contributed to this project.

### *SEMI-STRUCTURED INTERVIEWS*

Interviews were selected over other methods such as questionnaires or focus groups to tease out the nuances in participants’ perspectives (Magnusson & Marecek, 2015). As the project was focused on conceptualisations of certain words, the interview method allowed for follow-up questions to be asked to

generate rich narratives. Additionally, the interview method gave participants the opportunity to explore their ideas in significant detail (Terry & Hayfield, 2021). Semi-structured interviews were chosen for this project, as this method provides stability, but more importantly flexibility, in the way questions are asked (King & Horrocks, 2012; Roulston, 2010; Yeo, et al., 2014). An interview guide was created prior to the interviews and had a total of 14 questions (see Appendix 3). These questions were split into three sections: Understanding of the justice system, Defining concepts, and Potential for change. Most of these questions were open-ended to encourage the participant to delve deeper with their responses.

The interviewing process was an iterative one. This is strongly advised in qualitative projects, as the “insights you gain in the process of carrying out your first few interviews should inform subsequent ones” (King & Horrocks, 2012, pp. 37-38). Qualitative research is often exploratory, and therefore the field work may progress into a direction that was not initially intended. Roulston (2010) recognises that reflecting on interview transcripts is a useful tool in improving the researcher’s interviewing skills and practice. I realised after a few interviews that some of the questions were too broad and not as open as I would like. After each interview I would reflect on how each question worked and adapted before the next interview if needed. Upon reflecting on my first few interviews, after listening to the transcript, I realised there were some moments where I had a habit of needing to fill a silence. In some cases, this meant I rushed through certain questions, or interrupted the participants’ thought process. Giving participants enough time to reply to questions they are hearing for the first time is important in qualitative interviews (Yeo, et al., 2014). Due to there often being long periods between interviews, I had the opportunity to adapt and learn from these early hiccups.

A semi-structured format also gave me the freedom to prompt the interviewee with questions based on their expertise (King & Horrocks, 2012). For most of the participants, their viewpoints on certain issues of interest were explicitly noted in publicly available information (i.e. newspaper articles, books, or podcasts). This enabled me to get a brief sense of their stance prior to the

interview, which helped me in two ways. Firstly, if I knew that information was already available, I tried to use the time of the interview efficiently to move quickly through those questions. Secondly, this prior knowledge of interviewees meant that I could direct the conversation into areas that I knew they were familiar with. This meant that there were certain topics that participants were specifically probed on based on their area of expertise.

### *CONDUCTING INTERVIEWS*

For this project, 16 semi-structured interviews were conducted between July 2020 and August 2021 with people that advocate or work in the criminal justice sector. Interviews ranged from 35 minutes to 80 minutes, with most of them being completed just over an hour. There were a range of different approaches that were undertaken for conducting the interviews. The intention was to conduct as many face-to-face interviews as possible; however, this became increasingly difficult with the COVID-19 restrictions. Interviews were conducted face-to-face (seven interviews), through Zoom (seven interviews), through telephone (one interview), and written format (one interview). Each of these interview formats will be discussed below respectively.

Face-to-face is often recommended in qualitative interviews due to the benefits of rapport building and to create a space in which the participant feels comfortable sharing freely. Additionally, the interviewer can recognise and take non-verbal communication, such as body language and hand gestures, into account (Yeo, et al., 2014). Locations for the interviews were selected by the participants, with four taking place in their workplace, and the remaining three in their home. Most of these spaces allowed for a peaceful space where we could kōrero openly – there were a few exceptions with pet interruptions, but I am a big cat and dog fan and so these interruptions were welcomed! Three of the interviews were based in Wellington, three in Auckland, and one in Waikawa Beach.

Due to the COVID-19 pandemic minimising travel and social contact during the period of the research, the research approach was redesigned (MacLean,

Rahman, Turner, & Corbett, 2021) and half of the interviews were done remotely by Zoom. One benefit of COVID-19 was that it made communicating through technology more commonly used. With global lockdowns we collectively had to adapt to video-calling as the main form of communication with people outside of your 'bubble'. For some participants, a Zoom interview seemed less burdensome on their schedule and therefore was more appropriate. Zoom interviews also meant that they could be conducted at a time of utmost convenience and there were no travel costs for myself or the participants (Yar, 2018). I am always conscious of the generosity of those giving up their time to have a kōrero with me.

The interview with Helen Algar was scheduled as a Zoom interview, but there were complications with the technology, and so we promptly decided to move the conversation to a telephone interview. Helen's background and purpose for the research differed significantly from the other participants. All the other participants had justice-adjacent backgrounds, however, Helen was selected to be part of this research because of the work that she does with Safer Waitaki (now renamed Strong Waitaki). The purpose of interviewing Helen was to provide an alternative approach to safety, that heavily influenced the framing of *Chapter Seven*. Telephone interviews are generally characterised as being more "task-focused" than face-to-face interviews, due to lack of non-verbal cues (King & Horrocks, 2012, p. 82; Yeo, et al., 2014). On reflection, I think it would have been beneficial to reschedule the Zoom interview, rather than hastily move to a phone interview. As a result of my unpreparedness of audio recording through phone interviews, there were issues with the recording (discussed below), which is noted to be more difficult with telephone interviews (King & Horrocks, 2012).

At the request of one participant, their 'interview' was pre-written, and I intended to follow this up with a 15-minute phone call. Unfortunately, I was unable to organise a follow-up phone call and so had to rely on the asynchronous written interview (Yeo, et al., 2014). There was some miscommunication during this process, where I had sent the interview guide (with 14 questions) and the participant information sheet (that included my



four research questions for my project). The participant responded to the four overarching research questions, which meant that the nuance and rich detail that was encouraged through the interview questions was limited.

In thinking about this project as being framed through a decolonial lens, I wanted to ensure that I was not restricted with Westernised notions of how research could be done (Cunneen & Tauri, 2019). Therefore, when a participant identified that they would prefer to draft up their answers and write them in a time that was convenient to them, I was open to this suggestion. In doing this research, I did not want participants to conform to an 'ideal' way in which research should be done. Instead, I wanted participants to feel empowered in this process and give them agency to participate in a way that was appropriate and preferable to them.

#### *AUDIO-RECORDING AND TRANSCRIBING*

All interviews, with the approval of the participants, were audio-recorded. The Zoom interviews were automatically audio-recorded through the software, and the in-person interviews were recorded on two devices (my phone and an audio-recorder). The rationale for audio-recording was that it meant I could remain attentive during the interviews and was not pre-occupied with writing perfect notes (King & Horrocks, 2012). I would occasionally jot down some words or phrases during the interview, as this reminded me to prompt the participant later in the interview. Additionally, if the participants made hand gestures to explain something I would write notes of this to capture the sentiment of their body language. I was grateful for my note-taking practice during interviews, because in my 12<sup>th</sup> interview the full audio recording did not work. Upon finishing the interview, I realised that there was no sound on the audio recording, and so I had to rely on summarising the interview based on my memory and interview notes. Thankfully, this was the interview in which I took the most notes. I spent the next 30 minutes after the interview was completed typing up a summary of the interview, and then I emailed it to the interviewee for review. This participant kindly reviewed the summary and then provided additional information or context to what I had provided.

As is commonly noted in qualitative research, the transcribing process was lengthy and draining (King & Horrocks, 2012). While it is time-consuming, it did provide me with the opportunity to patiently connect further with the data before and during the analysis process. Listening to, and transcribing, the interviews is a useful way to begin the data analysis process (Braun & Clarke, 2006). Verbatim transcripts were initially done, in which every word a participant said was captured (King & Horrocks, 2012). While this was time consuming, it was useful to identify how individuals phrased certain things, and where there may have been pauses in their responses. Braun and Clarke (2012) acknowledge that using verbatim transcripts when doing data analysis is useful; however, the quoted material when presenting the data may be “edited for brevity” which involves “removing any words or clauses that are not essential for understanding the overall meaning of a data extract” (p. 60). During the writing phase of this project, it was decided that intelligent verbatim transcription would be utilised (Golota, 2021). Intelligent verbatim transcription removes repetitive sentences or words, to improve the clarity of what is said.

One notable finding when writing up the transcripts was the frequency of the phrase “you know” in the interviews. Initially it seemed like a trivial phrase, but as I began reflecting on how often it was used, I recognised the power that those two words had. The phrase “you know” implies that the person saying it assumed that there is a shared understanding of what they were talking about. Perhaps this was because they knew there was a lot of publicly available information on their viewpoints, and therefore assumed that we were on the same page. Additionally, participants may have assumed I was knowledgeable in this area because I am doing my PhD on it. Due to the decision to use intelligent verbatim transcription, the phrase “you know” will not appear in the subsequent chapters.

One of the downsides of using Zoom for interviews was that the audio was not always clear. For example, in my fourth interview, I had difficulty transcribing parts that were inaudible, or that had a lag in the sound. For this participant, I sent them the transcript and asked if they could add in any words, they

would think would be appropriate when I had gaps. If the sentence did not make any sense, due to severe inaudibility, I would remove that section from the transcription.

### *SAMPLING*

For this research, the non-probability sampling method of purposive sampling was utilised (Hennink, Hutter, & Bailey, 2020). This meant that individuals were specifically selected as potential participants due to their experience or relevance to the research project (Bryman, 2012; King & Horrocks, 2012). I aimed to get a variation of people who had different backgrounds, experiences, and perspectives. The interview questions were created with the expectation that I would communicate with people who would be suited to answering such questions. My intention for this project was to gather a range of different perspectives regarding risk, safety, security, and protection.

For this project there was no optimal number of interviews that I wanted to do. Firstly, I was tremendously grateful for anyone that was willing and interested in taking part in this project. Secondly, with COVID-19 happening directly when I was set to begin interviews, I needed to adapt my focus. Initially, I was very hesitant to email and reach out to potential participants. I knew the research was important, but after the COVID-19 restrictions and disruptions during 2020 I did not want to burden people. In early 2021, I began gaining momentum and reached out to a broader range of potential participants. Having more participants would improve the potential of this project. At the same time, the more interviews I did, the more information there was to transcribe and analyse. Research projects tend to suspend sampling when 'saturation' occurs (Tolich & Davidson, 2011). Saturation occurs when there is no more original or relevant data being collected, or when the data demonstrates significant variation (Bryman, 2012). Nearing the end of the data collection period, I would consider what perspective was missing and recruit accordingly. Also, my recruitment was influenced by time restraints as I wanted to have the majority of my interviews completed by August 2021.

Those that were purposely selected to be interviewed held a range of positions: Parole Board members, ex-police officers, victims' advocates, justice advocates, a judge, a politician, a member of local government, the Secretary of Justice, and the Department of Corrections National Commissioner. These participants had varied experiences and perspectives of the justice system and were selected to capture multiple viewpoints. Most participants involved in this project are widely known in the justice sector. The relevance of interviewing people in public profile roles lies in the fact that these people are often decision-makers and are partially accountable for disseminating information about criminal justice issues to the public. Often these individuals make decisions based on what they think is important to the public and are therefore a useful source of information about conceptualisations of risk, safety, security, and protection.

Gaining access to participants, for any project, may be difficult (King & Horrocks, 2012). As I was wanting to connect with people in the public profile role, I expected there to be difficulties reaching out to people with busy schedules. I was fortunate that my primary supervisor, Tracey McIntosh, had existing connections with people who would be suitable to be interviewed. In these cases, Tracey initiated the conversation with people she was familiar with, and then if they were interested, I would send a follow-up email. The benefit of using established connections is that people may be more likely to get involved with the research if it is related to someone they know. However, a concern is that this may exert pressure on people to participate, thus undermining the ability for voluntary participation (King & Horrocks, 2012). That being said, there was no pressure placed on anyone that Tracey contacted, and therefore they had the choice to participate or not. For those where there were no established connections, participants were contacted through email, which included an outline of the project and asked if they would be interested in participating.

## *RESEARCH WITH THE POWERFUL*

A significant amount of advice is given in research methods textbooks regarding power dynamics within an interview setting, with a particular focus on the ethical considerations of doing research with vulnerable populations (King & Horrocks, 2012; Scott, 2018; Webster, Lewis, & Brown, 2014). Speaking broadly, people conducting social science research often focus their research on people who are on a less powerful social standing. This justifies the wide variety of information on approaching that sort of research. With this project, however, interviews were done with people in a semi-public role. Moreover, many of the roles that participants currently hold (or previously held) are positions with a considerable power.

Petintseva, Faria and Eski (2020) encourage more criminologists to ‘research up’ by “interviewing powerful criminals, as well as powerful decision makers in the institutions of social control” (p. 2). The actions, decision-making, ideologies, and practices of the powerful have a significant impact on the social conditions and lives of the powerless. Therefore, exploring and understanding their viewpoints can be useful in critical social science (Petintseva, Faria, & Eski, 2020). Utilising Petintseva, Faria and Eski’s (2020) definition of ‘the powerful’, this project identifies participants as “individuals, groups or institutions that engage in moral enterprises [and can] impose their values upon other members of society” (p. 17).

Gaining access to participants can be identified as a barrier to doing research with people in a position of power (Mikecz, 2012). Accessing participants can be difficult if they are not done through the right avenues, and researchers may need to be flexible to meet the preferred time and location for an interview. I was fortunate in that my supervisor Tracey McIntosh is well regarded and connected in the justice sector, and therefore provided access to some participants. People in a powerful position are “usually known for being busy people with limited time to spend”, and therefore clear and constant communication with participants is necessary (Petintseva, Faria, & Eski, 2020, p. 70). There was one experience where scheduling and interview

provided some challenges. On one occasion I flew down to Wellington for an interview, and upon arrival at the interview location I was told that I had no scheduled time due to a miscommunication. In the moment, this concerned me as I thought of having to reschedule a new time and book flights to Wellington again. Thankfully, time was made for the interview on the following day before my flight back to Auckland.

There are several benefits of interviewing people that have a public profile. For most participants I had a good level of detail about their work and perspectives on the justice system. Some I already knew personally or was familiar with their history and work. Other participants were suggested through my supervisor, Tracey, and while I may have been less familiar with them, there was often information that I could publicly find before the interview. By having a rough understanding of their viewpoints of the justice system I was able to prompt and probe certain topics that were familiar to the participant (King & Horrocks, 2012). Additionally, as I only aimed to have 60-minute interviews, I could move through questions that could be answered through public information quicker.

A downside of reading material about a participant prior to an interview was that it meant that I made several assumptions about what their answers were going to be. This meant I may have approached interviews with pre-set biases and views about the interview (King & Horrocks, 2012). A common feature of interviews with the powerful is the expectation that the researcher is acquainted with updated and relevant knowledge in the area (Petintseva, Faria, & Eski, 2020). In preparation for interviews, I felt pressure to have extensive knowledge on the person I was going to interview, and any topics they may cover. As most participants have had lengthy careers in the justice sector, they had a lot of knowledge to share in the interviews. While over-communicative participants are not necessarily problematic, it did mean that sometimes I did not manage to finish all the interview questions if they went onto tangents (King & Horrocks, 2012). However, any tangents that participants did go down were also thoroughly enjoyable and informative.

As it got closer to writing up the findings for this project, I became increasingly aware that I did not want to misrepresent the viewpoints and ideas from each of my participants. Additionally, there were some perspectives in the interviews that were contrary to my own position, and so I needed to reflect on my own biases. Within this project, I wanted to uphold the kaupapa Māori principle of allowing participants if they so desired to be named in the research (McIntosh, 2011a). The rationale for this is discussed below in the ethical considerations section. All participants selected to be named, which demonstrates their own perceived authority in this area, and their familiarity with being named due to working in a public or semi-public role. However, knowing that participants were going to be named in this project added another layer of concern when ensuring I was representing participants thoughts accurately. One participant requested that I received their approval before including specific quotes from them in the research. As they had approved their quotes, this gave me more confidence in my representation of this person in my research.

### *INTRODUCING PARTICIPANTS*

In doing this research, I am truly honoured to have had the opportunity to meet and kōrero with all participants in this project. Several people involved in this project are people that I have huge respect and admiration for. There were moments leading up to the interviews, during the analysis, and through writing where I had ‘pinch me’ moments. While there are many differing perspectives that my participants hold, they all hold a shared vision of moving towards a safe and just Aotearoa. Everyone that engaged in this project are contributing meaningfully to their communities and those they care for. I have tremendous respect for them, and I am so grateful that they made time for this project. They not only made time to kōrero with me, but a lot of them were hugely supportive of my project and would offer to meet again if I needed to clarify something with them. As noted, all sixteen participants agreed to be named in this project. Articulated below is a summary of each participant to provide some context to their positionality and the mahi they are engaged in.

As some participants hold a range of current and previous positions they are listed below alphabetically.

*Andrew Kibblewhite* is the Chief Executive of the Ministry of Justice and Secretary of Justice, a position he has held for the last four years. As part of his role as Secretary of Justice, he is chair of the Justice Sector Leadership Board. Andrew demonstrates a strong commitment to collaboration of justice-adjacent agencies to make improvements to the system across the board. His career demonstrates a commitment to public service through the previous roles he has held: Chief Executive of the Department of the Prime Minister and Cabinet (DPMC) for seven years, Deputy Chief Executive at Treasury, Director of the Policy Advisory Group at the DPMC, and General Manager Strategic Development at the Ministry of Research, Science and Technology.

*Chester Borrow*s is a social commentator on justice issues and has had an extensive career in the justice sector. Throughout his career he has progressed from morally conservative to more liberal views due to his exposure to different information and people with lived experiences. Chester served as a police officer for 24 years across multiple regions (Auckland, Wellington, The Hutt Valley, Nelson, and Taranaki). He then worked as a defence lawyer, before moving into parliament as a member of the New Zealand National party. In his 12 years in government, he held many justice-adjacent portfolios, but most notably was Minister of Courts and Associate Minister of Justice between 2011 and 2014. More recently, he was appointed Chair of Te Uepū Hāpai i te Ora (Safe and Effective Justice Advisory Group).

*Emilie Rākete* (Ngāpuhi, Te Rarawa) is a staunch Māori communist and prison abolitionist. Emmy is currently the Press Spokesperson for People Against Prisons Aotearoa (PAPA) and is also one of the founders of PAPA (previously named No Pride in Prison). Through this mahi, Emmy has become a leading voice in criticising the justice system and regularly provides media engagement and engages in direct action on this kaupapa. She also contributed to the publication of *Abolitionist Demands* (2016). Emmy is



currently undertaking a PhD at the University of Auckland exploring the political economy of prisons in Aotearoa.

*Fa'anānā Efeso Collins* is currently one of two Councillors in the Manukau Ward for Auckland Council. Having grown up in the Otara community in South Auckland, he has a strong connection and commitment to that community. Efeso is of Samoan and Tokelauan descent, and he speaks fondly of his two daughters. His drive for local government is due to his “ongoing frustration around how the political representation for people in South Auckland was usually older white men”. Efeso has been outspoken on many issues, particularly around policing behaviour (such as the Armed Response Teams and the TV show *Police Ten 7*). At the start of 2022, he announced his candidacy for the Auckland Mayoralty, in the hopes to use his voice and platform to inspire all members of society to feel included.

*Golriz Ghahraman* is an Iranian-Kiwi refugee who is a Member of Parliament for the Green Party. She holds a range of portfolios (Corrections, Courts, Ethnic Communities, Human Rights, Justice and more), which demonstrates her passion for social issues. Prior to her involvement in government, she was a lawyer in New Zealand and in United Nations tribunals in Africa, The Hague, and Cambodia. In May 2022, Golriz's *Electoral (Strengthening Democracy) Amendment Bill* was drawn for the ballot, in the hopes to make the electoral system accessible to more people. This includes advocating for extending voting rights to people in prison serving a sentence of more than three years.

*Helen Algar* is a Community Development Manager for the Waitaki District Council. In 2021, Helen was awarded a Safe Community Award by the Safe Communities Foundation New Zealand, to recognise her commitment to the Waitaki community. As part of her contribution to the community, Helen has been involved in ‘Stronger (Safer) Waitaki’, which is a Council and Community initiative. Helen offers a unique perspective from other participants in this project, as the basis of her mahi does not focus on the justice system. Her contribution to this project lies in the grassroots perspective on community building, to strengthen safety, community health, and well-being.

*Jess McVicar* is the National Spokesperson for the Sensible Sentencing Trust (SST), an organisation that advocates for victims of serious violent crime and lobbies for change in our justice system. Her main role is to ensure that victim's rights are upheld through the court or parole process and that they feel supported. Jess is the youngest daughter of the SST founders Garth and Anne McVicar, who raised her with what she calls a "common-sense approach" and the "ABCD: Accountability, Boundaries, Consequences and Discipline". This has informed her positionality and is instilled in her daily work. Her goal is to "have a safe New Zealand for the future generations".

*Associate Professor Khylee Quince* (Ngāpuhi, Te Roroa, Ngāti Porou, Ngāti Kahungunu) is Dean of Law at Auckland University of Technology (AUT), specializing in criminal law, youth justice and Māori and the law. Criminal law was a path she wanted to follow since the age of 11 and academia was "happenstance". Khylee is a board member for the NZ Drug Foundation and is a member of the Parole Board. She is passionate about change in the justice system, which is evident through her regular media and organisational consultation and engagement. In 2021, Khylee joined the New Zealand Police Independent panel and research team.

*Tā Kim Workman* (Ngāti Kahungunu and Rangitāne) has had extensive engagement within the criminal justice system, as a public servant initially, then as a service provider and then laterally as an advocate for change. Among the many roles Kim has had, he has been in the Police, the Office of the Ombudsman, and Head of the Prison Service. From 2000 to 2008, Kim was Director of Prison Fellowship, and during that time formed the 'Rethinking Crime and Punishment' strategy which later morphed in JustSpeak. Tā Kim is viewed by many as a kaumātua in the justice space and he claims he is "more inclined these days to take a more passive role". Despite that, he is still actively engaged in many expert advisory groups (Police External Advisory Group on Te Pae Oranga/Iwi Community Panels; Panel Chair for the Police Independent panel and research team; Māori expert advisory group to the Suicide Prevention Office), the Parole Board, and regularly makes public commentary on justice issues.

*Paula Rose* holds a range of governance positions; Deputy Chief Commissioner of Te Kāhui Tātari Turi (Criminal Cases Review Commission); Deputy Chair of Worksafe New Zealand; Commissioner of Transport Accident Investigation Commission; member of the Broadcasting Standards Authority; member of the St John South Island Regional Trust Board. She is a former Police superintendent and held the position of National Manager Road Policing. Paula is a current member of the Parole Board, a position she has held since 2014. She has a special interest in safety, but her experience and interests are wide-ranging.

*Judge Philip Recordon* has an extensive career in the court system in Aotearoa New Zealand, with a particular interest in family law, mental health and disability law, and youth law. Phil practiced as a lawyer in South Auckland for 30 years, before moving to the District Bench in 2003. He was also District Inspector for Mental Health for 20 years and is still heavily invested in widening the scope of mental health and disabilities in the court process. Phil is active on a range of trusts and boards; namely the SafeMan SafeFamily, which seeks to end family violence, and he is on the board of the Maungakiekie-Tamaki Pacific Warden Trust.

*Rachel Leota* is the National Commissioner for Ara Poutama Aotearoa (Department of Corrections). Within that role she is responsible for all frontline operations within 18 prisons and 120 Community Corrections sites across the country. Rachel has worked at Corrections for almost 20 years and has contributed to developing and implementing policy initiatives across the organisation and the wider justice sector. She shared for vision for Aotearoa New Zealand and believes that there is a “real opportunity to do things differently”.

*Ruth Money* came from a corporate background and is a passionate independent advocate for survivors and for the last decade has helped survivors navigate the justice system. While she supports a range of victims, many of them are survivors of serious violence, including sexual violence. She was appointed as a member of Te Uepū Hāpai i te Ora (Safe and Effective

Justice Programme Advisory Group) and provided the important perspective of victims within their reports. She defines herself as an “empathetic wee soul” and dedicates a lot of her time to supporting others. When asked how she manages this mahi while balancing her emotions, she shared “I do it because I meet the most amazing people...and I never miss my morning meditation or my yoga”.

*Shila Nair* is a Senior Advisor & Counsellor for a not-for-profit community organisation, Shakti. Shakti provides culturally competent support for women, children and families of Asian, African, and Middle Eastern origin that need family violence intervention or prevention. Across her two decades of work in this organisation, she has contributed to managing crisis services, and then became Shakti’s National Coordinator. Shila has been an advisor for the New Zealand Family Violence Taskforce and was also a member of Te Uepū Hāpai i te Ora (Safe and Effective Justice Programme Advisory Group).

*Tania Sawicki Mead* was the Director of JustSpeak between 2017 and 2021, and now works as a Senior Advisor at the Mental Health and Wellbeing Commission. Tania has moved between research and policy spaces prior to her involvement in JustSpeak and she is passionate about human rights and flourishing. JustSpeak is a youth-powered movement for transformational change of criminal justice towards a fair, just and flourishing Aotearoa. JustSpeak was formed in 2011, and for the first four years operated as a youth branch of Rethinking Crime and Punishment. They have been fundamental in pushing multiple changes in the justice system (e.g. Raising the age of the youth justice system and halting the Waikeria mega-prison build).

*Tim McKinnel* is a private investigator and Director of Zavést, a firm that provides investigation and forensic services. Tim started his career in the justice system as a Police Officer, moved into the Criminal Investigation Branch, and has more recently been heavily involved in miscarriage of justice and wrongful conviction work. In 2020, Tim joined five others in the Establishment Advisory Group for Te Kāhui Tātari Ture (Criminal Cases

Review Commission). His most notable case was the work he did in overturning Teina Pora's wrongful convictions and most recently the quashing of the conviction of Alan Hall. Teina Pora spent 20 years in prison and Alan Hall spent 19 years in prison.

#### *PEOPLE WHO WERE NOT PART OF THE PROJECT*

There were many people that were contacted and invited to participate in this research that did not reply or could not participate due to limited capacity. Among these people were justice-adjacent Ministers from multiple political parties and journalists. These would have been useful perspectives for this research for different reasons. Firstly, Ministers are responsible for introducing and upholding legislation and therefore control a lot of outcomes in the justice sector. It would have been beneficial to engage in a kōrero with people who are responsible for legislative change. On the other hand, journalists have control of messages that are given to the public. Several participants in this research alluded to the impact that the media has on public perceptions. The perspective of media personnel would have helped to explore how conceptualisations of risk, safety, security, and protection are reproduced through media outputs.

There was one interview with someone who has a legal background that was scheduled kanohi ki te kanohi (face to face) for February 2021, but this had to be postponed due to the abrupt COVID-19 level 4 restrictions that were put in place. After the restrictions were lifted, I reached out to this person to check if they still wanted to participate. I did not receive a response, and as consistent communication had been difficult due to the person's limited capacity, I decided to leave that person out of the research.

One perspective that I thought of throughout my data collection process was the voices of formerly incarcerated people. A fundamental element of transformative change is about following the lead of those with lived experience of the justice system (Davis, Dent, Meiners, & Richie, 2022; Te Uepū Hāpai i te Ora, 2019b). There are many doctoral students who take an

emancipatory approach and draw on those with lived experience. Maja Curcic (2019) completed her PhD in 2019 where she collaborated with people who had experience of incarceration to critically understand Māori hyperincarceration and the violence continuum. More recently, Kirsten Gibson and Grace Low are two current doctoral students sharing the narratives of women's post-prison experiences. There is also research completed by those who have been incarcerated, such as Rawiri Waretini-Karena (2014) and Michelle Richards (2014) who draw on their own lived experience. Additionally, many people have dedicated their contributions to engaging with, and sharing the expertise of, people who have lived experience (Andrae, McIntosh, & Coster, 2017; Bevan & Wehipeihana, *Women's Experiences of Re-offending and Rehabilitation*, 2015; George, et al., 2014; McIntosh & Coster, 2017; Webb, Suaalii-Sauni, Wright-Bardohl, & Tauri, 2022; Wirihana & Smith, 2019).

There were many avenues that could have been taken to get this perspective. Some participants suggested that they could reach out to formerly incarcerated people on my behalf, and my primary supervisor, Tracey McIntosh, engages with current and formerly incarcerated people. Despite these connections, there was part of me that wanted to refrain from reaching out to formerly incarcerated populations, given the broader social context of COVID-19. Engaging in research with vulnerable populations requires building trust and rapport in the relationship, and I was concerned with my ability to do this during constant changes to alert levels due to COVID-19. Uplifting the voices of those with lived experiences is something that I am committed to and will be an important feature of any future research I am involved in. Currently, I see my work as complementary to the aforementioned scholarship that is deeply embedded in lived experiences.

## **REFLEXIVE THEMATIC ANALYSIS**

Reflexive thematic analysis (RTA) was the selected method of data analysis for this project. In the last year of completing this project, Braun and Clarke

(2021a) thankfully published a renewed version of their approach to RTA. They published numerous supplementary resources (Braun & Clarke, 2019; 2021b; Braun, Clarke, & Hayfield, 2019), and so did their colleagues (Terry & Hayfield, 2021; Terry, Hayfield, Clarke, & Braun, 2017). A core feature of these resources is their accessibility, depth, but also light-heartedness; Braun and Clarke succeeded in making RTA a *fun* process! What follows in the next section is a detailed account of my approach in analysing data, that was inspired by the six recursive phases of RTA that Braun and Clarke (2021a) outline.

Analysis of the data was conducted through multiple mediums – Nvivo, hard-copy, whiteboards, post-it notes, and mindmaps. Braun & Clarke (2021a) recognise the value of using different mediums to conduct the analysis, as ideas may be inspired through one avenue and not another. Using a range of techniques also moved me into different physical and mental spaces which enabled creative flow when needed. To familiarise myself with the data – the first phase of RTA – I thoroughly read each transcript, re-listened to snippets of the interviews, and reviewed my reflective notes from the interview. In doing so, I gained “intimate knowledge” of the dataset, and also began critically engaging with what was being shared in interviews (Braun & Clarke, 2021a, p. 42)

After being immersed in the data, I initiated the coding processes, which was primarily done through the computer software NVivo. Within this second phase of RTA, the purpose is to “identify segments of data that appear potentially interesting, relevant or meaningful for your research question, and apply pithy, analytically-meaningful descriptions (code labels) to them” (Braun & Clarke, 2021a, p. 35). NVivo primarily works using ‘nodes’ (Hilal & Alabri, 2013). Nodes function to gather similar material from the interview transcripts and place it into one location. To do this process, I read through each transcript individually and highlighted key words or phrases and allocated them to an appropriate or relevant node.

The codes and themes formed in this project had a blend of deductive (research-driven) and inductive (data-driven) orientation. Given that the

analysis approach of RTA was selected for this project, researcher subjectivity has a strong influence on how the analysis is conducted (Braun & Clarke, 2021a). Most of the themes presented in *Chapter Five, Six, and Seven* are shaped by “existing theoretical constructs, which provide the ‘lens’ through which to read and code the data and develop themes” (Braun & Clarke, 2021a, p. 10). Therefore, previous literature provided the “interpretative lens” that was used “to code and make meaning of the data” (Braun & Clarke, 2021a, p. 57). For example, in conceptualising and reconceptualising safety in *Chapter Six and Seven*, Jackson and Meiner’s (2011) notions of ‘safety from absence’ and ‘safety from presence’ were used to frame participants’ narratives. However, some of the themes in this project had more of an inductive orientation and reflect the information that participants shared in their interviews. That is, they were “grounded in the data” and were driven by participants’ perspectives (Braun & Clarke, 2021b, p. 331; 2021a). An example of inductive coding is evident in Khylee Quince’s contribution of the sword vs shield analogy that underpinned conceptualisations of risk, safety, security, and protection in *Chapter Six*.

A total of 345 codes were created and were categorised into subheadings based on the interview schedule. For the amount of data collected, this number of codes was extensive, however, there were many codes that had a limited number of references across the dataset and were therefore ‘let go’. Most of the codes, especially initially, were semantic and reflected the “explicitly-expressed meaning” that the participant gave (Braun & Clarke, 2021a, p. 58). Some codes captured more implicit levels of meaning, and therefore were latent codes.

As suggested by Braun and Clarke (2021a), I did a quick second round of coding once I had finished and did this in a different order to my first coding. This was done to disrupt the “familiar flow” from the first round of coding, and to ensure that each interview had equal time and energy (Braun & Clarke, 2021a, p. 70). Through this coding process, I began curating what I call my “goosebumps document”, where I would store key quotes or things people shared that stuck with me in a Word document. This was a document I would



frequently look through as a source of inspiration for this project. Having a document like this also served as an opportunity for me to be reflexive – where I could question *why* I was drawn to those specific quotes, and *how* that influenced the story I would eventually tell in this thesis.

Once the coding phase came to an end, I printed off a coding summary that had everything that was coded, which was made up of 460 pages, and began the third RTA phase – generating themes (Braun & Clarke, 2021a). Themes are used to “capture a wide range of data that are united by, and evidence, a *shared* idea” (Braun & Clarke, 2021a, p. 36). To identify potential themes, I went through each page and highlighted quotes to determine where they were best placed. Several quotes were coded at multiple codes (there was a lot of complexity and nuance in several interviews) and so this process helped me to identify how they could be best used to tell the story I wanted to tell with this project. This process was time consuming, but the use of hard copy paper meant I was not confined to the computer and so did this process around the house and outside, which provided a nice change of environment. The use of mindmaps, highlighters, post-it notes, and a whiteboard was particularly useful in this phase to help craft a broad representation of how the codes interacted with each other.

At this stage of the process, I had six overarching topics in which I wanted to create themes under (ineffective justice system; safety; risk; protection; security; and new justice system). I identified what codes had the most references across multiple interviews and considered how codes could be clustered into themes. This process was time-consuming and challenging, as I was constantly moving between phases three (generating initial themes), four (developing and reviewing themes) and five (refining, defining and naming themes). This iterative process is a core feature of RTA, as you are “moving along a trajectory from dataset to developed analysis, but that *often* involves going sideways, backwards, and sometimes even around in circles, as you move from the start to the end of the process” (Braun & Clarke, 2021a, p. 36 emphasis in original).

It was upon the final phase of writing up the three analysis chapters that the themes become clearly defined and named. In particular, when writing up the final chapter, I realised that what I thought were themes were more like ‘topic summaries’ and the chapter operated more as a summary of information gathered from each interview (Braun & Clarke, 2021a). There was a lack of thematic orientation when first writing it, which prompted me to re-read Braun and Clarke’s (2021a) book to revise my themes for this chapter. This was a confronting process; I was months away from wanting to get my first full draft to my supervisors and had to jump back into reviewing and revising themes. In doing this process, I identified that what I thought may have been an incoherent mixture of ideas, ended up being a core theme in the final chapter (that is, incoherence across interviews was an important finding). I was comforted by being reminded that the RTA is in no way linear, and that by going back to review themes improved my academic rigour.

In the data analysis and write up stages, I noted myself being drawn to certain interviews more than others. While all the participants provided fruitful and interesting narratives in their interviews, there were some who delivered their narratives in a powerful and compelling fashion. Methodological textbooks identify that it is easy to lean heavily on “only the ‘colourful’ accounts or the views and explanations of particularly cogent or articulate participants” (White, Woodfield, Ritchie, & Ormston, 2014, p. 383). Braun and Clarke (2021a) discourage people from doing this, as drawing heavily on a few participants’ narratives means that the researcher is not demonstrating patterns *across* the dataset. To ensure that I was not overly or under reliant on specific participants’ narratives, I regularly looked through the frequency of quotes for each participant while I was writing up my analysis chapters.

Reflexivity is a fundamental feature of Braun and Clarke’s (2021a) RTA process, which involves “a subjective, situated, aware and questioning researcher” (p. 5). Being reflexive acknowledges research as an “active and interactive process” (King & Horrocks, 2012, p. 174). Thus, a core practice in doing this project was continuous critical self-reflection and acknowledging how my positionality impacts this research. Reflexivity invites a researcher to

consider how their social position, personal experiences, disciplinary knowledge, and ideological commitments shape their perspective. My role in this research is as an active and “subjective storyteller” (Braun & Clarke, 2021a, p. 6), in which my own perspectives shape how this thesis unfolds. Examining how reflexivity may operate in qualitative research, Berger (2015) shares the following definition of reflexivity:

It means turning of the researcher lens back onto oneself to recognize and take responsibility for one’s own situatedness within the research and the effect that it may have on the setting and people being studied, questions being asked, data being collected and its interpretation. As such, the idea of reflexivity challenges the view of knowledge production as independent of the researcher producing it and of knowledge as objective. (Berger, 2015, p. 220)

Jill Stauffer’s (2015) book, *Ethical Loneliness: The Injustice of Not Being Heard*, shines a light on the failure to listen to people who have experienced harm and violence. In this context, she shares the importance “for those who listen to reflect on the limits to what they already know and *how that affects what they are able to hear* (Stauffer, 2015, p. 8 emphasis added). The relevance of this to RTA, is that it demonstrates how our current knowledge and experiences influence how we interpret new knowledge. Similarly, King and Horrocks (2012) identify that through research “we are inevitably offering an interpretation and therefore our style of writing and how we describe and depict people, events, literature and theory all impact on what we produce” (p.138). Within this project, I actively interpreted the narratives that my participants shared, which had an influence on the analysis and core findings of this research.

## **ETHICAL CONSIDERATIONS AND LIMITATIONS**

In March 2020 I was granted ethical approval by the University of Auckland Human Participants Ethics Committee [UAHPEC] to conduct this project. Following ethical approval, I emailed potential participants a copy of the Participant Information Sheet (see Appendix 1) and Consent Form (see Appendix 2), inviting them to participate in the research.

A primary ethical concern was that participants had informed consent (Neuman, 2014). To ensure informed consent, participants were sent a detailed Participant Information Sheet when they are first approached to take part in the interview. The Participant Information Sheet informed the potential participants of the research and detailed their expected role and rights as a participant. They then had the opportunity to ask questions about the research and have them answered prior to signing and returning a Consent Form. Participants were also informed that they had the opportunity to withdraw any of their information from the research, without a reason, up until one month after reviewing their transcript.

Additionally, participants had the right to be named in the research outputs or to have their identity confidential. It was important for me that participants had the option to be named in any outputs related to this research. Ethical considerations from a Western lens often prioritise confidentiality and anonymity in the research process. However, Tracey McIntosh (2011a) in Kaupapa Māori research it is noted that people may actively choose to be named so that their meaningful contribution is recognised. All participants chose to be named in the research project, which demonstrates the importance of appropriate recognition for their contribution. To uphold University of Auckland Ethical Standards, all documentation was stored on a password protected computer and stored in a locked filing cabinet at the University of Auckland.

### *LIMITATIONS*

As with any research, there are methodological limitations to this project. Due to the small sample size for this research, the results are limited in the sense that they are only a reflection of the perspectives of those who participated in this research. However, the intention with this project from was not representational generalisability of the findings, as I was seeking to gain the perspectives of the specific people that were interviewed (Lewis, Ritchie, Ormston, & Morrell, 2014). Additionally, I did intentionally seek out a range

of different perspectives for this research, to ensure it was as balanced as it could be.

Upon reflection, the interview schedule for this project could have gone through more rigorous revision before beginning interviews. As I am early in my research career, most learning is done through trial and error. After conducting a few interviews, I realised that some of the questions worked better than others. For example, some questions weren't as open as I would have liked, which resulted in me having to probe for further detail. A benefit of the semi-structured interview method was that I could ask additional questions that weren't on the interview schedule. Through identifying some minor flaws in the interview schedule early, I was able to adapt the questions dependent on who I was interviewing.

A further limitation with this project is that it does not directly engage with those who are most affected by our current justice system. Other projects overseas, such as the *(Re)imagining Public Safety Project* (McDowell, 2015), demonstrate the emancipatory potential of engaging with people on 'the ground' to help envision what safety could look like without a reliance on the carceral state. It would be interesting to replicate a similar project in Aotearoa that provide a platform for those most marginalised to have a voice. Although the limitations mentioned above do restrict the potential of this project, they provide me with ideas for future research endeavours.

## **CONCLUSION**

This project draws on a critical social science epistemological stance and a qualitative methodology to meet the research aims. The current chapter highlighted the positionality of the researcher, identified the sampling methods used and introduced the participants to the reader. The use of semi-structured interviews was explained and justified as the appropriate data collection method for this thesis. Following this was a discussion on the use of thematic analysis as the tool for analysing the data from the interviews. Lastly, ethical considerations, as well as limitations, were examined.

In the following three chapters, this project turns to explore participants' narratives in relation to the three research aims. *Chapter Five* addresses research aim one, which is to explore the harms and consequences of the justice system in Aotearoa New Zealand. Participants' narratives identify 'sites of power' (government, media, police, courts, remand, prison, and parole) where decision-making power drastically effects the experience of the people who go through the system. Prison as a 'site of power' is interrogated in detail, as well as acknowledging the normalised place of prison in Aotearoa New Zealand. The following chapter concludes by identifying the justice system as a site of pain, by highlighting how it functions to further harm those who have been harmed, and those who harm.

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## CHAPTER FIVE: SITES OF POWER AND PAIN IN THE JUSTICE SYSTEM

*Chapter Two* examined literature that shines a light on the pain and harm caused by incarceration and the broader justice system (Davis, 2003; Lamusse, 2018; Scott, 2020; Shalev, 2021). The purpose of this chapter is to explore participants' perspectives on the failings of the justice system in Aotearoa New Zealand as it currently operates. This chapter is a culmination of three parts; justice system as siloed sites of power; prison as the 'answer'; and justice system as sites of pain.

Beginning with a broad lens of the justice system, participants' criticism of different sites of power are offered. Sites of power that participants identified are the government, media, police, courts, remand, prison, and parole. Here, the exercise of power over the powerless by institutions, and the people that work within them, is examined. The accumulative effect of power within these sites leaves certain people trapped in the justice system, and out of society. McIntosh's (2006) explanation of marginalisation is introduced to demonstrate how these sites of power socially exclude and marginalise certain communities. A strength of these sites of power is their siloed nature, in which finger-pointing and blame can be placed on other agencies in the justice system.

Part II then moves to interrogate the prison more closely. In doing so, the permanency and contradictions of prisons in Aotearoa New Zealand is acknowledged. A recognition of the clashing goals of prisons – punishment, containment, deterrence, and rehabilitation – is provided, with a particular focus on rehabilitation as an unachievable collective goal in a prison environment. While some people may have access to Special Treatment Units that provide rehabilitative support, the rehabilitative ideal is not achieved for most people that experience incarceration (Cook, 2021). Due to the incompatibility of rehabilitation in prison, rehabilitation is identified as a

tacked-on goal. This section speaks to the normalised nature of prison as a ‘status quo institution’.

Part III examines the experiences of the justice system from the perspective of those who have been harmed and those who have harmed. The language of harm is intentionally used to move away from a crime focused lens, and to go beyond a victim and perpetrator dichotomy. Here, different elements of the justice system are identified as sites of pain. For people who have been harmed, the justice system contributes to pain through processes that revictimise, retraumatise, and side-line people. For people who have harmed, prison is identified as a site of pain that dehumanises people within it. Drawing back to arguments made in Part II, the limited ability of prison to address the root causes of offending is discussed, which results in future pain. This chapter concludes by arguing that the system operates as a “wheel of failure” that causes widespread harm for many.

## **PART I: JUSTICE SYSTEM AS SILOED SITES OF POWER**

This section recognises and speaks to the sites of power within the justice system. Government, media, police, courts, remand, prison, and parole are all identified as sites of power, due to their ability to influence a persons’ experience through the system. These sites operate simultaneously as sites of power – that enhance the ability to have power over people – and as sites of disempowerment – that take away the agency of individuals and collectives. There are many layers of power, be it social, economic, cultural, political, or legislative, that are evident in these sites of power. Power is exercised by the institution itself, as well as through individual actors. Decision-making is often viewed as an avenue to exercise power. In these sites of power, power is largely directed at those who are relatively powerless and marginalised.

These sites of power function to socially exclude and marginalise certain communities. Marginalisation, McIntosh (2006) argues, is “a socio-political process” that involves “the peripheralisation of individuals and groups from a



dominant, central majority” (p. 46). Power relations are embedded in processes of marginalisation, in which people in a position of power can promote their moral, economic, social, and political agendas (Ugwudike, 2015). Andrae, McIntosh, and Coster (2017) share Stan Coster’s life narrative, where the Settler state and policies have continuously excluded and disenfranchised him. Weaving in contextual explanations for Māori marginalisation into Stan’s narrative, they demonstrate the accumulative power that the state, and its associated institutions, have:

The state amplifies and consolidates its powers of control and domination over the individual through an array of systems, policies, judgements and processes. As the powerful and most central institution in Aotearoa/New Zealand, the state has been, and continues to be, involved in regulating and changing the lives and activities, and hence life pathways of the collective and thus the individual (Andrae, McIntosh, & Coster, 2017, p. 123)

Participants’ narratives on these sites of powers are shared and are initially explored as individual aspects. This is done to demonstrate how participants spoke of them as distinct, siloed parts. The term silo is used defined as “a hierarchical organization which seeks to maximise vertical coordination at the expense of horizontal coordination” (Scott & Gong, 2021, p. 20). This results in an inwards focus on an organisations’ own purpose and goals, which reduces communication and relationship building with other organisations. Additionally, viewing the sites of power as siloed enables finger-pointing, buck-passing, or pointing blame onto other agencies. The complexity of the justice system means that fault can easily be directed to someone else when something goes wrong. Contrasting this view of siloed sites of power is an acknowledgement that for those that go through the justice system, there is often no distinction between any aspect of the whole system. That is, it is *the* justice system. While this section is critical of different elements of the justice system, it is important to recognise the unrealistic expectations that are placed on these different agencies.

## **IDENTIFYING SITES OF POWER**

Not all participants discussed every site of power identified above. Due to the diverse range of experiences and perspectives of those that participated in this research, most of them spoke to the dimensions of the system that they are most familiar with. Some people do have a comprehensive view of the system, but for the most part there is a specialised interest in a certain site of power. For example, the interview with Judge Phil Recordon focused significantly on the court system, while other interviews focused less on this area of the justice system. Similarly, for Rachel Leota there was a large emphasis on the prison system and Corrections more broadly. This speaks to the specialist nature of these sites, and the different regulatory and legislative powers that operate within them.

This section could be an entire thesis in and of itself, so there are only brief insights into participants thoughts on these sites of power. The sites of power – government, media, police, courts, remand, prison, and parole – are discussed in that order to represent the accumulative effect of decisions made within these sites. Through exploring failure and harm that is created within the justice system, it is acknowledged how these sites of power operate to continuously control, isolate, and exclude people. Tania Sawicki Mead shared the following commentary into how the justice system entraps people through the power it holds:

A lot of the things that drive people into the system are through no fault of their own. It's poverty, alienation, the criminalisation of drug and alcohol addiction, the criminalisation of poverty, and welfare and just straight up racism. And straight up manipulation of an existing series of very intractable set of laws and regulations that entrap some people in a system that's pretty indifferent to the outcome (Tania Sawicki Mead)

### *GOVERNMENT*

The government has significant power and domination over people “through an array of systems, policies, judgements and processes” (Andrae, McIntosh, & Coster, 2017, p. 123). When discussing the role that the government has on the justice system, many participants were critical of the tough-on-crime

mentality that often dominates. There is extensive literature that defines a tough-on-crime rhetoric in Aotearoa New Zealand (Gluckman & Lambie, 2018; Pratt, 2011; Pratt & Clark, 2005; Wijesingha, 2019; Workman & McIntosh, 2013), but participants commonly identified it as crime being “used as a hot-button issue” or a “political football” that is used to earn party votes. Chester Borrows provided the following criticism of a tough-on-crime mentality:

One of the most disappointing things for me, as a former National Party MP is to see the way that the National Party going into opposition have just completely slotted back to the rhetoric and the fact that a number of the conservative or new MPs coming in for National Party are very conservative. And so, they’ve got this incredibly rhetorical commentary going on and its rubbish, and they’re prepared to deny what they know evidentially for political gain, and I find that abhorrent (Chester Borrows)

Kim Workman recognised that tough-on-crime rhetoric is not limited to right-wing parties and has been gradually building since the 1980s. The 1987 general election, commonly referred to as the law-and-order election, sparked the pervasiveness of tough-on-crime rhetoric. Since then, criminal justice has become a core part of government agendas. As Kim Workman mentioned in the subsequent quotes, this rhetoric has been encompassed by many political parties since the late 1980s:

It didn’t matter whether you came from Labour or National, the agenda was let’s get tough on crime because there’s votes in that.

National and Labour were busily outdoing one another in terms of coming up with [policies] because there was a significant crime problem at that time in the mid-80s, and it was getting quite bad. And so, there was a lot of talk about more severe sentences and taking a tougher line on people. The police were being pressured to be more aggressive in their policing and so on. And then the realisation by politicians that the tougher you go, the more votes there were, and so from 1987 onwards, every election was the same. They were just competing to outdo one another with their ferocity and vengeance themes. (Kim Workman)

The government can control the agenda of the justice system, through the formation of legislation and deciding what behaviours are criminalised. Kappeler and Potter (2017) argue that the government is “one of the most powerful mythmakers in the crime production enterprise” (p. 13). Indeed, the

government can manipulate definitions of crime to ensure that groups who pose a threat to the existing social order are disempowered. A focus on ‘crime’, without addressing the central problems of poverty, racism, unemployment, and ongoing colonisation, enables the continual control and confinement of certain groups within society. Several participants noted that government spending gives an insight into where the key priorities are. Regarding government spending on justice related issues, Ruth Money shared the following thought:

I understand from a political perspective with a three-year cycle, and no one wants to go ‘here’s a budget for the next 10 years and this is how we’re going to apply it’. [...] And when we talk about justice, you can’t just unpack stuff, right. So, without a doubt it links to education, and health, and there’s so many other social services that you can’t just go ‘this is the justice budget’. (Ruth Money)

As the government has influence over policy and practices, a tough-on-crime rhetoric can have devastating impact. The development of the independent Justice Advisory Committee, Te Uepū Hāpai i te Ora (Te Uepū), in 2018 shows promise towards movements away from a tough-on-crime mentality. The Minister of Justice at the time, Andrew Little, was very forthright about his position on criticising the justice system by labelling it as ‘broken’ (Small, 2019). He also criticised the tough-on-crime mentality that had plagued the justice system over the last three decades (Fisher, 2018a). Similarly, using the same phrase as Bill English, Prime Minister Jacinda Ardern acknowledged that prisons are a ‘moral and fiscal failure’ (Fisher, 2018b). Despite these efforts, Ruth Money, who was part of Te Uepū and involved in developing the reports on transformative change, argued that they are potentially going to be shelved due to a change in Minister of Justice. This indicates the temporality in funding workstreams. Transformative change is based on significant structural, cultural and regulatory change and relies on both sustained funding and effort. The fact that a change in Minister from within a party can disrupt progress demonstrates the fragility of justice initiatives.

## *MEDIA*

The media were also recognised by participants as a site of power, due to their influence over public opinion on justice matters. Decisions around what images to portray, and how those stories are told, reflect the power that the media hold (Gilmour, 2021; Pratt, 2007). Speaking from her experience on the Broadcasting Standards Authority, Paula Rose revealed that media prioritise “impact stories”. The emphasis is placed on producing a story that will receive more attention, rather than ensuring a balanced view is told. Wright Monod (2017) identifies nine values that are used to determine whether a particular story is ‘newsworthy’: violence, proximity, risk, extraordinary, personification, emotion, spectacle, children, and shareability. These values influence what is shared in the media, which is often crimes of the powerless.

The media’s influence on the public’s understanding of crime is not unique to Aotearoa New Zealand. Havemann’s (1988) study into crime stories in three Canadian newspapers found it was “stories which pander to the fear underlying the ‘law and order’ discourse” that were frequently shared (p. 55). International analyses on ‘moral panics’, such as Stanley Cohen’s (1972) and Goode and Ben-Yehuda’s (2011) literature, offer further explanation of how the media can operate as a site of power. A moral panic can be described as a “condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests” (Cohen, 1972, p. 9). The threat is often exaggerated, and used as a scapegoat, to instil anxiety and fear into the public (Goode & Ben-Yehuda, 2011). Vulnerable and marginalised groups within society are more susceptible to be the focus, or the perceived threat, of a moral panic.

A recent example of a moral panic in Aotearoa New Zealand is the rise in media coverage of ram raids by youth in April and May 2022 (Donnell, 2022; Todd, 2022). Ram raids can cause financial, physical, and emotional harm, particularly for dairy and small store owners. Stories shared by these communities demonstrates the harm they have experienced (Morton, 2022a; 2022b; Pearse & Gabel, 2022). The genuine panic arising out of these events is then manipulated through media representations that pushes for quick

solutions to entrenched complex issues. The Minister of Police at the time, Poto Williams (2022), committed \$6 million to respond to the issue of ram raids, and prioritised security measures such as bollards, alarms, and fog cannons in stores. However, Aaron Hendry (2022a; 2022b), who works closely with youth through his role in the Lifewise Youth Housing Service, argues that wraparound, preventative solutions will be more effective than harsh punishment.

The influence of the media and government go hand-in-hand. Politicians often react to the pressure of public opinion, which is influenced by the media that the public has access to. Tim McKinnel shared how media stories are sensationalised and can encourage politicians to resort to a tough-on-crime mentality:

It's clickbait in the media, it's politicians on a three-year cycle. I mean, the greatest fear and greatest story for a type of journalist is that a soft-on-crime attitude or approach leads to some violent crime of somebody that should've been in prison and that it can be sensationalised, it's taken out of context, and that is a politicians greatest fear and in the absence of an analysis of proper evidence, it drives how the system works and any changes that are made are tinkering and incremental and I think that's hugely frustrating. (Tim McKinnel)

Additionally, Emilie Rākete spoke of the power that the media has in helping set the agenda on what is politically possible. The rise in 'infotainment' platforms demonstrates that media coverage of crime prioritises entertainment and profit over information (Muzzatti, 2012). Media companies that are underpinned by capitalist priorities, and therefore are driven by profit, continually produce images and stories that ensure their interests are upheld:

The limits of acceptable political discourse are in large part set by the capitalist class. Whether through media outlets, which are for the most part in this country owned by capitalists, refusing to take seriously the opinions of people who stand in opposition to the interests of the capitalist class, or through the kind of general permeation of capitalist ideology through all of society, marking revolutionary attitudes as being outside of the acceptable bounds of political wisdom. (Emilie Rākete)

Efeso Collins acknowledged that media representation of his community in South Auckland, and more broadly of Māori and Pasifika, is "poor, biased,

and prejudiced”. He has publicly criticised programmes like *Police Ten 7*, as they reinforce racialised stereotypes for the sake of entertaining the public (RNZ, 2021). Collins’ comments created a public stir, that had influenced a rebranding and reframing of the show. It is too early to determine whether the rebranding will make much of a change in the infotainment business (Latif, 2021; Sowman-Lund, 2022). To take control of the narrative and to counteract mainstream media stereotypes, Efeso admitted that his media profile is extremely important. Having a community leader like Efeso Collins enables him to use his voice to “put a life into the idea that our young people aren’t born criminals”.

### *POLICE*

The police were commonly recognised as sites of power by participants. Four participants are former police officers and highlighted several concerns with the practices and policies that are conducted by the New Zealand Police. These concerns are 1) the intimidatory nature of the police, through increasing armament and livery, 2) institutional racism, and 3) limited potential to change peoples’ lives.

Chester Borrows, who worked in the New Zealand Police for 24 years, acknowledged how resources rapidly increased in the time he worked in the Police, and the time since. When he first joined, he had access to a baton, a notebook, and sometimes a radio. During his time in the New Zealand Police this escalated to pepper spray, and shortly after leaving tasers were introduced. This significantly contrasts to current commentary about arming the police force (New Zealand Police Association, 2021; The Detail, 2021). Recent discussions on police armament, such as the armed response team (ART) trial and tactical response model (TRM), are explored further in the next chapter. The intimidatory nature of the police uniform and livery was acknowledged to symbolise power and authority:

Why do police need to be in a militaristic uniform? The Police would say that it’s because they’ve got to have an air of authority about it, and all that stuff. In actual fact, if it’s only about identifying people as police, they could wear a pink sportscoat and be very identifiable and people

would know who they were and that they had authority. Know they could arrest, and know they have powers. So, it's not about identifying them as police, it's about trying to have some sort of intimidatory nature (Chester Borrowes)

Khylee Quince demonstrated how wedded the public are to visible policing. Livery and symbolisms of policing, such as “people in uniform on the streets in marked vehicles” is recognised as being important. In contrast, Paula Rose acknowledged that “the carrying of weapons, the carrying of tasers, the carrying of anything like that is very confrontational”. This is demonstrative of different perspectives of the Police. Reflecting on the police uniform, Khylee Quince shared her experiences and how that may differ from other peoples' experiences:

The public seem to be quite wedded to the idea of visible policing and the Commissioner made several comments about visibility last week. And that means visibility of people in uniform on the streets in marked vehicles. So, they have all the livery and symbolism of policing, as opposed to just being there for safety. Some people take comfort from that, [...] but like every Māori person I sweat and feel uncomfortable as soon as I see a cop car, as soon as I see an officer in uniform (Khylee Quince)

The two most recent Police Commissioners, Mike Bush and Andrew Coster, have admitted that there is unconscious bias within the police force (Forbes, 2020; Harley, 2015). However, some scholars go further to suggest that institutional racism is embedded in the New Zealand Police, which influences who the police use their power against (Brittain & Tuffin, 2017; JustSpeak, 2020). The tension between the Police and Māori and Pasifika is widely noted (Hill, 2008; Norris & Tauri, 2021; Te Whaiti & Roguski, 1998; Workman, 2021a). The following excerpt demonstrates the hostile relationship and institutional racism that reinforces that tension:

So, we know that Māori and Pacific men are many times more likely to be stopped by police, and if stopped many times more likely to be charged, and if charged many times more likely to be convicted, and if convicted many times more likely to go to prison for doing the same or similar acts to Pākehā. So, you know there's definitely a group of people we see as perpetrators and that group know it. Like you walk down the street as a 10-year-old Māori boy, you probably look a bit older or whatever, you'd like learn it really quickly right, like people are constantly seeing the police as harassers (Golriz Ghahraman)



Tim McKinnel considered how quickly he moved away from frontline police due to his limited ability to enact change at a broader level. While there are structural and broader social issues that may influence criminality, a lot of the intervention done by the Police is done at a micro and individual level. Speaking of the potential for incremental positive action, but limited social change, he noted:

You were helping individuals in individual circumstances for a moment in time but making very little difference in the churn of fractured family lives and broken people really. (Tim McKinnel)

It was evident through the interviews that the Police symbolises different things for different people. For some individuals, police make them feel safer. For example, in their interviews Ruth Money and Jess McVicar spoke of the mostly positive impact that police have on the victims that they advocate for. They identified that victims often feel more protected or safer when they can see a police officer in the court room with them. However, this is by no means universally experienced, as several participants expressed their concern over policing practices. Differing opinions of police and public safety will be explored in more detail in the next chapter.

## *COURTS*

The court system is responsible for making many decisions that will affect the experiences people have. Remand and sentencing decisions are both made through the judicial process, and judges are responsible for weighing up competing sentencing objectives (Oleson, 2021). The *Sentencing Act 2002* governs court decisions, and judges have the power to make a sentencing decision based on any of the following eight goals:

- to hold the offender accountable for harm done to the victim and the community by the offending;
- to promote in the offender a sense of responsibility for, and an acknowledgment of, that harm;
- to provide for the interests of the victim of the offence;
- to provide reparation for harm done by the offending;
- to denounce the conduct in which the offender was involved;
- to deter the offender or other persons from committing the same or a similar offence;
- to protect the community from the offender;

- to assist in the offender’s rehabilitation and reintegration

Many conversations with participants regarding the court process involved a discussion on judicial discretion. Judge Phil Recordon expressed that he feels like he has discretion through the entire judicial process. He argued that this is a benefit of the system because individual judges are flexible to make decisions that they think are right. This argument is supported by Judge Phil Recordon’s criticism of three strikes law and other populist sentencing interventions which restrict discretion. Recordon’s perspective reflected the flaws of mandatory sentencing made by other legal scholars (Brookbanks, 2016; Oleson, 2015; 2017). There are also appeal processes, so people can ask for a reconsideration if they are not satisfied with the decision. Judge Recordon, however, also recognised that “judge shopping is alive and well in New Zealand”, which highlights how people will experience different outcomes based on who they have as their judge.

Historically, the judiciary was dominated by Pākehā men; however, there have been movements towards diversifying this profession (Quince, 2021). More Māori and female judges, as well as Judge Heemi Taumaunu’s appointment as first Māori Chief District Court judge, demonstrate a commitment to accurately reflecting the diverse population in Aotearoa New Zealand. However, speaking to the experience that Māori have with judicial discretion, Khylee Quince recognised that this can often have negative consequences for Māori:

You know, we never do well with discretion. Discretion is a bad word. [...] The other thing is that the way that the law is always framed in technically neutral terms, and it’s never, ever applied in neutral terms and neutral ways. And so, things that talk about use of discretion to filter people in and out, it’s never going to go well. (Khylee Quince)

Kim Workman reflected on a conference he attended with judges, where a concern for the variation of daily caseloads was raised. Two judges shared contrasting accounts about the amount of support they can provide for the people that come through their court. A judge in New Plymouth, who averaged seeing six cases on a Monday morning, would have low rates of people being remanded in custody. This is due to the judge’s ability to take the time and

effort to point the individual in the right direction to guarantee support for things like housing. Conversely, a judge from Manukau District court can have approximately 40 cases in a day, and therefore processes cases promptly. This demonstrates vastly different experiences based on the specific court that a person may go through. Similarly, Jess McVicar argued that the judicial system is inconsistent in the sentences that it gives to people going through the court. This speaks to the court as a site of power, as it can have several consequences based on the decisions that are made within the court processes:

It's so inconsistent. So, we've got people being imprisoned for lower scale crimes that can be dealt with in other ways rather than filling up the prisons. And then we've got people for serious violent crime that are getting home detention because our prisons are being filled. (Jess McVicar)

Recently, specialist courts, or problem-solving courts, have been introduced globally to promote therapeutic jurisprudence (Quince, 2021). In Aotearoa New Zealand, the following specialist courts have been trialled and developed: Matariki Court, Ngā Kōti Rangatahi, Te Kooti o Timatanga Hou (The Court of New Beginnings and the Court of Special Circumstances), Sexual Violence Court, The Alcohol and Other Drug Treatment Court (Te Whare Whakapiki Wairua). These courts generally offer a more personalised and tailored processed and have been positively evaluated (Quince, 2021). Despite the promising rise in alternative court processes, they are limited in their ability to support all people going through the justice system, based on restricted resources and location of courts. The inequity in access to specialist courts is referred to as “postcode justice” or “justice by geography” (Richardson, Thom, & McKenna, 2013; Thom & Black, 2018). This means that people who live in rural areas may be unable to access problem-solving courts. In Australia, this is particularly concerning for Indigenous populations who are more likely to live in remote locations (Coverdale, 2011; Richardson, Thom, & McKenna, 2013). To combat the issue of postcode justice in Aotearoa New Zealand, Te Ao Mārama is a court initiative to mainstream the specialist court model into all courts (Mills, Thom, Black, & Quince, 2021; Taumaunu, 2022).

## REMAND

A common concern for participants is the burgeoning remand population in prison. Following the introduction of the *Bail Amendment Act 2013*, more people have been remanded in custody and applications for bail are frequently opposed (Ministry of Justice, 2018). As of March 2022, 39% of the prison population were on remand sentences (Department of Corrections, 2022). This figure raises to 49% when considering people on remand in women's prisons. Concerningly, a high proportion are Māori, poor, or homeless (Lamusse, 2019b). When reflecting on the remand prison population, Judge Phil Recordon insisted "there are so many people who just sit on remand in prisons that shouldn't be there". Similarly, Rachel Leota argued that the number of people is too high. She expanded further about current movements to change the number on remand:

10-12 years ago, we were well under 30% and so I think that is an area that we're working very closely with our colleagues in the Ministry of Justice and also judiciary as well, about improvements to the criminal process. How we can speed that up, not only for the people who are going through it, but of course for victims as well. (Rachel Leota)

Judge Phil Recordon discussed how risk averse the Police have become when making decisions about bail following the *Bail Amendment Act*. In doing so, they leave the decision to remand in custody or on bail to the judiciary. With the judiciary reluctant to have a repeat scenario to Christie Marceau's death<sup>12</sup>, there are higher numbers of denied bail, and thus more people on remand. Kim Workman shared a similar argument on the police opposing bail:

Then you get the police opposing bail because they know that under the current law, prisoners have to be able to satisfy the court that they don't present a risk, and a lot of them are unable to do that because they aren't articulate, they don't know what's expected of them, often they are moving from one home to another, they have mental health issues, and so the court has no obligation to help them to find alternative

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<sup>12</sup> Christie Marceau was kidnapped and assaulted by Akshay Anand Chand in September 2011. While awaiting trial, Chand was bailed to an address 300m from Christie's house. In October she was stabbed to death by Chand. Following Christie's death, her parents started a campaign with Sensible Sentencing Trust to introduce more stringent bail legislation. This resulted in the *Bail Amendment Act 2013* which extends the list of serious violent and sexual offences that qualify a defendant for reverse burden of proof (Davidson, 2013; Mills, *Penal populism, crime and criminal justice in New Zealand*, 2018). It has been argued that the *Bail Amendment Act 2013* has been a contributor to rising remand population (Black, et al., 2017; Ministry of Justice, 2018; Walters, 2020).

accommodation or anything of that kind. So, they just whip them through that process, put them into remand. The numbers of remand have risen by 1500 or so in the last three years alone... it's just out of control. (Kim Workman)

A contributing factor in making the decision to remand somebody in custody is the lack of appropriate housing prior to arrest (Black, et al., 2017). Rachel Leota reflected on the devastating impact that remand in custody can have:

Extended periods of time on remand can be difficult for someone, and actually the risk may have reduced significantly and any time that people spend away on remand have quite devastating impacts for themselves, for their family, for their jobs, maybe for their housing, and if the police decide not to continue with their charges or invariably they might get sentenced time served, that's a lot of time kind of lost. (Rachel Leota)

Most participants suggested changes to the way in which bail is decided. Jess McVicar, who was one of the few participants that was staunch in the position to not want law changes to bail decisions, recognised that lack of programmes available to remand prisoners was a flaw. While Jess McVicar recognises that people on remand are technically innocent until proven guilty, she believed it was still important to give them access to things like drug and alcohol treatment, violence prevention, and mental health support. The recent spike in the remand population has meant that there are more people in prison without access to programmes.

## *PRISONS*

A discussion on prisons is given later in this chapter, and so this section engages with commentary specifically on the position and responsibilities of the Department of Corrections (Ara Poutama Aotearoa). While the Department of Corrections is responsible for people inside prison and community corrections, the focus of this section is on people inside prison. Rachel Leota commented on the expectations that are placed on the Department of Corrections, and while she thinks they are valid expectations, it is also quite hard to meet all of them:

What is asked from us from the community and from the government is to receive someone who has been sentenced to a crime that they have committed, and the expectation is that we assist that person to address

the needs that they have that led them to that crime, and clearly also the judiciary have said that the person who gets a sentence of imprisonment, that there's a public safety element to that, and of course we also accommodate people on remand, so before they have gone to trial or before a sentence is entered (Rachel Leota)

Conversely, Tim McKinnel directly challenged the name of the Department of Corrections, by suggesting that it does little at 'correcting' behaviour:

We call it corrections, but it's not really corrections when the pathway of anybody who has spent any time in prison. There are exceptions. It does have a positive effect for some people, but for the vast majority prison is a complete and utter failure (Tim McKinnel)

There was concern that individuals are being held in prison for longer due to lack of rehabilitation courses available. While COVID-19 has put restrictions on the ability to have in-person programmes, it is still within Corrections' remit and control to decide how many programmes they offer (Whitten, 2021). Kim Workman shared his concern for people being held in prison for a longer period than necessary, simply because of lack of access to rehabilitation programmes:

In recent years when people were being held for an extra year because corrections couldn't provide the required rehabilitation programme. In turn imprisonment was being driven by the lack of responsiveness of the department (Kim Workman)

Several participants expressed outrage at the disproportionate representation of Māori within prisons. While the Department of Corrections does not control who is directed into their services, they do still have a commitment to addressing the needs of people within prisons. The following sentiment highlights how the Department of Corrections, and the broader justice system fails Māori:

The system fails in terms of its part of the Crown's responsibilities under Te Tiriti, and that starts long before the justice system. Obviously, it starts in care and protection, if we are talking about agency responsibility and all the way through to Corrections, but I think it fails more at a fundamental level about commitments to tino rangatiratanga and to Māori sovereignty, and as Moana [Jackson] would say, Māori never gave permission for the Crown to take our people and to put them in to prisons. And the harm that is done to that relationship, and to those communities, and those whānau by a failed system, is harmful in and of itself (Tania Sawicki Mead)

As deprivation of liberty is a core feature of imprisonment, prisons are fundamentally sites of power. The ability to control the everyday movements of people in prison, and the consequences of this, can be understood through Goffman's (1961) theorising of total institutions. Goffman (1961) defines total institutions as a location "where a large number of like-situated individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life" (p. xiii). The totalitarian features of prison, restrict the movement and control that people have over their own lives, which fosters a volatile environment that may lend itself to violence (Scott, 2020; Snacken, 2013). Elizabeth Stanley's (2018) scholarship shows her commitment to understanding how incarceration and the punitive carceral state restricts access to, and violates, human rights:

Incarceration never alleviates the harms that it purports to deal with or prevent. [...] The use of carceral institutions also makes social problems worse. [...] These impacts are not individualised. They reach across generations, so much so that incarceration and its effects are normalised in some communities. In short, carceral sites indicate and perpetuate violations of human rights for vast numbers of people (Stanley, 2018, pp. 1-2).

Speaking to the power dynamics imbedded in prisons, Tracey McIntosh (2011b) argues that prisons "are institutions that in their architecture, systems and policies articulate the power of the state over the individual and within them prisoners are likely to experience a profound unfreedom" (p. 273). Similarly, Scott (2020) identifies the prison as a coercive institution, where the alienating and hostile environment disempowers the people subjected to confinement:

The prison place deepens a sense of powerlessness and inevitably puts discipline and security above consideration of human rights or meeting needs. Prisoners are treated as devalued people, deprived not only of liberty, but also many taken for granted goods and services; heterosexual relationships; truly voluntary decision-making; independent choices and personal autonomy/freedoms; as well as a sense of safety and security. (Scott, 2020, p. 101)

## *PAROLE*

Four participants of this research are currently on the New Zealand Parole Board. For members of the parole board, a significant role they have is to

determine whether a person poses an ‘undue risk’ (New Zealand Parole Board, n.d.). Under s7 of the *Parole Act 2002*, the “paramount consideration for the Board in every case is the safety of the community” when they are considering the decision to release a person from prison. Decisions made by the Parole Board, and their processes of determining risk, are discussed at length in the following chapter and so are only briefly discussed here.

Paula Role identified two factors that are being considered when making decisions on the Parole Board: likelihood and consequences. Firstly, consideration is made around the likelihood of repeated behaviour. This process helps to identify whether there is evidence of the same, or a similar, risk happening again. The second thing that is considered is what the consequences of the behaviour being repeated in the future are. Paula Rose acknowledged the difficulty of her role on the role board. She shared that there are obvious and easy decisions – whether a person is released or remains in prison – but then the scope of complex decisions “is only as big or as small as you choose to make it as a Parole Board member”. Her intention is to keep the scope as wide as possible to give enough time and energy to be thorough in the decisions she makes.

Recently there has been concerns raised by the Parole Board about people being denied parole due to their limited access to rehabilitation programmes while in custody (Cook, 2021). A person’s parole dates therefore may be affected based on whether they have had access to the support and programmes inside prison:

Really commonly, people will not be eligible for parole based on their inability to complete courses in prison. Now again, that’s making our communities less safe because eventually that person will serve their entire sentence and we’ll have to release them, and they haven’t done the necessary courses. (Golriz Ghahraman)

This has led to arbitrary detention, according to Golriz Ghahraman, who made the argument that we are not letting people out on parole due to lack of programme resourcing:

The judge has sentenced you to the full sentence that you have, with the understanding and on the basis that you will be eligible for parole at that date. Now if you’re not eligible for parole, for reasons that are



not related to the Sentencing Act that are actually to do with prison resourcing, that's arbitrary detention, because you were sentenced on that basis. So, I mean what we can do about that as to make courses vastly more available, or we have to just release people when they are first made eligible for parole. (Golriz Ghahraman)

Speaking of her experience as a recent appointee to the Parole Board, Khylee Quince explained how she has tried to implement cultural reports in the parole process. Quince has worked extensively on promoting cultural reports in the sentencing process, in which they have been willingly received by judges. However, the same enthusiasm is not expressed in the parole process, where the Parole Board is heavily “wedded to the psych model”.

As a victims' advocate, Ruth Money spends a significant amount of time in front of the Parole Board. She shared how difficult it is for victims of serious crime to go through the parole process. Additionally, Ruth Money acknowledged her concern for the people that make up the Parole Board. While she alluded to recent appointments of Māori on the Parole Board, she also criticised how disconnected these people are to those that go through the justice system:

I mean seriously they are not a representation of the community. Most of them are old white men who used to be judges. They don't come from a world that you, me or these defendants, or survivors come from. They come from a very elite justice world, and they've now been given a wee cushy job to sit on the Parole Board. It's completely dysfunctional. It's just madness that they're making these massively important decisions. (Ruth Money)

## **SILOED SITES OF POWER**

From an outsider perspective, the criminal justice system is often viewed “as a unified entity with agencies working effectively towards a single purpose” (Kelty, Julian, & Ross, 2013, p. 8). However, there was a consensus amongst participants that the sites of power described above are regularly viewed as siloed or distinct. Research on the siloed nature of organisations within Aotearoa New Zealand identifies the consequences of such an approach:

Silos are organisational units where there is a breakdown in communication, co-operation and co-ordination with external parties.

Silos can arise within organisations, a result of silo mentality. Or organisations themselves can become siloed if they unduly limit their connections with other organisations. Silos are often detrimental to the resilience of organisations and communities. (Fenwick, Seville, & Brunson, 2009, p. ii)

This can be defined as a ‘justice silo effect’, where there is “an absence of meaningful and regular communication between experts” within and between organisations (Kelty, Julian, Bruenisholz, & Wilson-Wilde, 2018, p. 26). Operating in this way, enables blame of a wrongful decision to be pointed at another agency or site of power. The following commentary from Emilie Rāketē demonstrates the widespread practice of finger pointing:

The Parole Board isn’t *not* part of Corrections, which isn’t *not* part of the Courts, which isn’t *not* part of the Police, but they’ll all point at each other and say, “it’s that guys fault that everything is bad”. Cops will say “I just enforce the law, if you have a problem with law talk to Parliament”, and then courts will say “we just sentence people who get given to us by the Police, and if the conditions are bad in prison you need to talk to prisons”, and prisons are just like “well we just put people away who get sent to us by the courts, so you really need to talk to courts or the government if you’re upset about the law”. And then Parole Board just says, “we just say what someone needs to do if they’re going to be a safe person on the outside, and so if there’s no programmes that’s really Corrections’ fault”. It’s like, you are all the same, you are all part of an integrated system. For people who go through it, it’s entirely integrated, from beginning to end, there’s no stop, there’s no gap. It’s all seamlessly integrated together, when it’s convenient to make things function this way, and as soon as anyone points out that the machinery is oiled by blood then they all say, “oh no you can’t criticise prison conditions, this problem is caused by courts, or police, or the laws of this country (Emilie Rāketē)

Similarly, Andrew Kibblewhite shares the following sentiment about the complexity of the justice system and the ability to point blame elsewhere:

[P]olice, the courts, judiciary, corrections, iwi, the profession, community groups. All of these different players have a role and at the moment one of the great shortcomings of the justice system is that it’s so complex that everyone can always blame someone else for the problems that are actually there (Andrew Kibblewhite)

Advocates of decarceration acknowledge that the siloed nature of the justice system can function as a barrier to transformative change (Pettus-Davis & Epperson, 2014). Despite the segmented institutions that make up the justice system, they have a cumulative and knock-on effect on each other. Therefore,

change is required within all sites of the justice system to ensure sustainable transformation:

The criminal justice system typically operates in a siloed fashion, wherein certain components do not coordinate with others to create efficient and effective processes. Despite the lack of systematic coordination, each component of the system is linked to and exerts influence upon the other. [...] Each branch of the system has unique problems to address, and each branch holds a unique portion of the solution for smart decarceration to be achieved. While it may be unrealistic to expect that the entire system will run synergistically, a holistic approach that engages all levels of the criminal justice system is needed for meaningful decarceration to be sustained. (Pettus-Davis & Epperson, 2014, p. 7)

## **PART II: PRISONS AS THE ‘ANSWER’**

This section shares how embedded the prison is in our psyche as a response to crime. The permanency and the contradictions embedded in the foundations of the prison are acknowledged. Four justifications are usually given for the use of prison: punishment, containment, deterrence, and rehabilitation (Oleson, 2021). Participants recognised the first three as core justifications of prisons but spoke of rehabilitation as a tacked-on goal. That is, attempts at rehabilitation in a prison setting are secondary in priority. To conclude this section, the normalisation of prison is discussed and how this has led to prison being used as a ‘status quo institution’.

### **PERMANENCY AND CONTRADICTION**

A significant feature of this project is understanding the purpose and place of prison in Aotearoa. The following section speaks to participants’ perspectives on the goals of incarceration. In the literature on the purposes of prison, the four justifications are often identified as retribution, deterrence, incapacitation, and rehabilitation (Alschuler, 2003; Oleson, 2021). While most participants resonated with the first three as being core purposes of prison, there was a distinct way in which they talked about rehabilitation. Rehabilitation was often identified as a tacked-on goal, rather than a

foundational goal. The people interviewed for this project are deemed as experts in the field, but even they had difficulty articulating the goals of the justice system clearly.

There were three foundational goals that were identified and discussed in participant interviews: punishment, containment, and deterrence. Firstly, punishment was recognised as a core function of prison and is seen as an appropriate consequence for immoral behaviour. In the following excerpt, Khylee Quince acknowledged the retrospective nature of punishment:

the English focus of criminal law is backwards looking. Always. It's backwards looking in relation to an individual offender. [...] So, traditionally criminal law is backwards looking, which is why it's retributive. And that's why you do the crime, you do the time. That is all backwards focused. (Khylee Quince)

While participants talked significantly about the normalisation of prisons (as discussed below), there was little discussion about containment or incapacitation as a *purpose* of prison. However, the normalisation of prison and the public's desire to use prison as a response to crime demonstrates that an element of incapacitation is important. There is also a strong emphasis on the belief that containment creates a safer society. This is a core feature of this project, and so is discussed at length in the next chapter. The subsequent commentaries demonstrate the priority of containment:

I would say that the containment aspect of prison [...] is obviously still very relevant, that people are just like "where else do we put people when they are at risk of hurting others?", so that remains part of the kind of architecture of peoples' thinking around it. (Tania Sawicki Mead)

The public have an expectation that people are safe, that they're sent to prison, that they stay in prison until it's time for them to be released. (Rachel Leota)

Participants often noted that the public believe strongly in the deterrent effect of prisons (Hāpaitia te Oranga Tangata, 2019), irrespective of any literature that discounts that view (Lamusse & McIntosh, 2021; Scott, 2008). While there is a belief that prisons achieve the goals of punishment and containment, there is limited evidence that prison deters crime:

I think probably people weigh the deterrent effect of prison much more strongly than evidence would suggest works (Andrew Kibblewhite)

Our justice system should be an evidence-based system and there's no evidence that deterrence is something that's achievable through lengthy sentences of imprisonment (Golriz Ghahraman)

In contrast to the other three purposes of prison, rehabilitation was often viewed as a tacked-on goal. The goal of rehabilitation operates more as an aspirational and idealistic goal, rather than being achievable. This is exemplified by the sentiment from participants below:

rehabilitation is again a tacked-on goal, onto a foundation that is grounded in control and punishment. (Tania Sawicki Mead)

I would argue that there is no kaupapa, there's no policy that sets out any normative idea of rehabilitation. I think we kind of tack that on at the end, but I don't think that's how it started. (Khylee Quince)

While the public highlights a desire for rehabilitation to occur in prison (Hāpaitia te Oranga Tangata, 2019), there is limited evidence that demonstrates whether rehabilitation can be achieved within prison. Rachel Leota spoke highly of the specialised rehabilitation programmes that are offered by Ara Poutama Aotearoa (Department of Corrections) in prison. However, access to high intensity programmes, such as Kia Marama<sup>13</sup>, is limited and so can result in “relatively overall minor changes for large numbers of people” (Rachel Leota). Although some people in prison access rehabilitative support through Special Treatment Units, the current resourcing does not fully achieve the potential rehabilitative ideal for most people. The constraints on access to these programmes means that numerous people in prison are not receiving the better resourced and focused interventions. Speaking on the complexity of rehabilitation for most people in prison, Rachel Leota shared the following sentiment:

But in order for them to be effective, people have to be ready. They have to have sufficient time and they have to have quite a lot of wraparound support, so not all of those stars align all at the same time and we often see people's motivation to change, their readiness to change can fluctuate over time and it might be a third or fourth time that they

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<sup>13</sup> Kia Marama was introduced in 1989 as the first specialised prison treatment programme for rehabilitating convicted child-sex offenders in Aotearoa New Zealand (Pearson, 2014). Kia Marama delivers cognitive behavioural therapy and social learning theory in a group-based setting. Evaluations of this programme found an 11% reduction in recidivism in comparison to control groups (Durrant & Riley, 2021).

actually can be more successful in a programme, so it does take time.  
(Rachel Leota)

Participants commonly referred to prison as not being a place that is conducive to rehabilitation. Having worked as a Head of Prison Services previously, Kim Workman acknowledged that the prison “environment doesn’t lend itself to rehabilitation”. As prison is fundamentally a coercive environment, this inhibits the potential to create positive and healthy relationships which are necessary for effective rehabilitation. As David Scott (2020) argues, the “polarised and deeply entrenched divisions between captors and captives, ‘us’ and ‘them’ mentalities and the antagonism and hierarchies they reproduce, constantly undermine feelings of security and safety” (p. 38). Tania Sawicki Mead contributed a similar argument regarding the incompatibility of attempts at rehabilitation in a coercive environment within prison:

Tacking on rehabilitation as a goal of the corrections system, but obviously delivered in an environment of fear, control, removal from community, whānau, and society, where people are often simultaneously having the worst experience of their lives, and they are asked to grow and learn and look inside themselves and figure out what it is that is going on for them and how they address those issues (Tania Sawicki Mead)

Despite the focus of her energy and time being on the victims of crime, Ruth Money is disheartened by the lack of rehabilitative support offered to people in prison. Although she acknowledged that some people in prison have caused significant harm, she also recognised that “we also owe it to them to at least offer them the chance to make good. And I don’t think we’re doing that”. Additionally, Money shared that many of her survivors believe that it is the duty and job of the Department of Corrections “to help these people rehabilitate and [they’re] not doing that”. Scott’s (2020) scholarship into the harm caused by prison sheds a light on why rehabilitation may be an unattainable collective goal. Scott (2020) identifies that a rehabilitative and healing environment requires openness, life-affirming relationships, and the ability to be vulnerable. He argues that prisons can never be a place of rehabilitation, due to the hostility and dehumanisation within them:

The pathologically negative and dehumanising characteristics of the prison place can result in the destruction of the self, the weakening of important human bonds and ties and the creation of alienation, powerlessness, violence, exploitation and estrangement. [...] [The prison] erects numerous blockages to being vulnerable that cannot be undone and therefore prevents the very incorporeality and intersubjectivity that is necessary for human growth and wellbeing (Scott, 2020, p. 136)

There are a range of factors that influence a person's likelihood of reoffending. The ineffectiveness of rehabilitation efforts within prison can contribute to people leaving prison unchanged. Desistance scholars, such as Fergus McNeill (2009) in the UK context, highlight the importance of rehabilitative programmes in prison, as well as wider social support once they leave prison. McNeill (2009) demonstrates that the development of social and cultural capital in the community is required to transition away from criminal behaviour. Going beyond the amount of support that a person receives inside or outside prison, there are some scholars who argue that the prison itself reproduces criminal behaviour (Cid, 2009). The negative criminogenic and psychological effects of the prison environment can lend itself to perpetuating more harmful behaviour once people are released from prison (Lambie & Randell, 2013; Scott, 2020). This argument is developed further in the next part of this chapter.

## **STATUS QUO INSTITUTION**

When discussing the use of prisons in Aotearoa, participants spoke of its normalised nature. Khylee Quince argued that prisons are something that “we are socially conditioned to accept as necessary and normal”. Efeso Collins shares a similar sentiment by acknowledging how our “national psyche” is consumed by using prisons. While the use of prisons as a main form of punishment is relatively new, it “shows how quickly they’ve become embedded in our sort of social consciousness as normal” (Khylee Quince). Despite extensive research that speaks to the flaws of prison, there is still a strong push towards using incarceration. Andrew Kibblewhite noted that this is due

to a “naive trust overall that prisons will do stuff that it doesn’t”. Discussing why the public relies on the prison to respond to crime, Paula Rose shared the following comment:

But I think the community calls out for incarceration because they don’t understand how else a system could work to provide them the level of protection that they as individuals are seeking (Paula Rose)

Alongside the normalisation of prison, is the consistent narrative from participants that prisons are significantly overused. The consistent and overwhelming use of prisons has resulted in a lot of money being used to incarcerate people. Several participants noted that this is largely wasted money and reflects Tracey McIntosh’s recognition of prisons as a “fully funded failure” (Borrows, 2019). The normalisation of prison has led to what Golriz Ghahraman refers to as a “status quo institution”. A status quo institution is something that is taken for granted, unquestioned, and accepted. With the belief that prison is the best solution to harm, Emilie Rākete argues that it contracts our “horizon of possibility”. A fixation and reliance on incarceration demonstrates the public’s reluctance to imagine alternatives. The justice system remains as it is because it is hard to imagine anything else as an alternative. This sentiment is shared by Tania Sawicki Mead below:

I think because it is comforting that if we have punishments and unpleasant outcomes, or coercive outcomes from behaviour, and if we accept that those don’t work and change people then that is quite scary, because I think that removes a tool we think we have to control peoples’ behaviour or incentivise behaviour. So even though it doesn’t work we cling to it because otherwise it is quite scary to think that we can’t keep everyone safe. (Tania Sawicki Mead)

Influenced by her staunch critique of capitalism, Emilie Rākete recognised that the entrenchment of prisons is to uphold capitalism. This reflects arguments made by scholars such as Reiman and Leighton (2017), who provide a critical Marxist analysis of the US prison system. Capitalist ideology underpins the prison as a status quo institution, as indicated in the following quote:

The ideas of the ruling class are the ideas that are put into practice, and prisons, for all that all of us hate them, are immensely useful for achieving the goals of the capitalist class, and so they’ll be continued to be used as long as the capitalist class is the class that’s in power. (Emilie Rākete)



Members of a society have different interactions or views of status quo institutions, depending on their life experiences and upbringing. Khylee Quince reflected on the social distance that people have with the justice system. According to Khylee Quince, social distance is the “gap between people in terms of their experiences and knowledge”. In Aotearoa New Zealand there are small segments of society that are constantly in close proximity to the prison. Rachel Leota spoke of the intergenerational impact of incarceration and how multiple generations are affected by the justice system:

We have a small group of New Zealanders who spend a lot of their life with us, and their family and whānau are intertwined with us, and we have generations of the same whānau going through our system, so they know us very well (Rachel Leota)

The proximity to the prison is particularly marked for Māori and Pasifika communities. For Māori, the prison is a significant feature in their lives, having either lived experience of the justice system, or having whānau members caught in the system (Curcic, 2019; Martin, 2021; McIntosh & Workman, 2017). The following quotes provide examples of the lack of social distance that Māori and Pasifika communities experience with the prison:

Māori people don't have that privilege of separation, physical or emotional or any of that. And so, we do think about [prisons] differently because they are just part of our everyday life (Khylee Quince)

I try my best to avoid thinking about prisons to be honest, probably because deep down there's an emotional anguish over why we have them and why so many of our Māori and Pasifika young men end up in those institutions (Efeso Collins)

Additionally, the language that is used demonstrates the pervasiveness and damage that the prison causes for certain communities:

We even have awful synonyms and sort of casual language to describe [prison]. In my family, we all refer to the prison as the hīnaki, you know, the eel trap. You get in until you can't [get out], we casually talk about these really horrendous phenomena around prisons as if it's completely normal and acceptable (Khylee Quince)

Golriz Ghahraman has little faith in certain status quo institutions, such as the prison and police, because of lack of positive interactions with them. This sentiment is indicative of how the siloed sites of power discussed in the previous section work for, or against, certain populations. Discussing Muslim

and Māori communities, Golriz Ghahraman stressed how status quo institutions within the justice system work against these communities:

I don't think about status quo institutions, any of those types of things as having the effect of protecting *me* or people like *me*. [...] Here in New Zealand, we've just found out that despite five years of systematic reporting on hate crimes against the Muslim community, the police ignored that and we're in fact surveilling that same community as possible perpetrators until the community was the victim of the biggest hate crime in living history<sup>14</sup>. We know that Māori are the victim population of the biggest historic, and living, hate crimes in our system and they are overrepresented in our systems. So those institutions don't feel protective to people like us (Golriz Ghahraman)

In contrast, most people in Aotearoa New Zealand are socially distanced from the prison and the justice system more broadly. These people often have little direct engagement with the justice system and therefore can often be separated from the lived realities. Khylee Quince reflected on her experience as a law professor and how many of her students have limited experience of the justice system:

Law students tend to be people from quite privileged backgrounds. And by privileged, I mean they would never have been to a prison. They don't know prisoners. It's all NIMBYism [Not In My Backyard] stuff to them. It's removed from them. (Khylee Quince).

A 2018 study in Aotearoa New Zealand found that 71% of the population were not victims of crime in the last 12 months, and almost half the crime (47%) is experienced by 4% of people (Ministry of Justice, 2019). This demonstrates a high concentration of victimisation within certain communities. Rachel Leota highlighted the gap between beliefs and lived experiences of the justice system that most people in Aotearoa have:

I think the majority of New Zealand have very little contact with us directly. So, whilst there will be a lot of media about us and all sorts of things, the majority of New Zealanders have never been to a prison, they probably don't know anyone who has been in prison, but have opinions about us nonetheless. (Rachel Leota)

When asked why the public have a strong affinity for prisons as a response to harm, Golriz Ghahraman shared the following:

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<sup>14</sup> On March 15 2019, 51 people were killed and 40 people were injured in a terrorist attack at Al Noor Mosque and Linwood Islamic Centre in Christchurch, NZ (Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019, 2020).

I can very barely relate to where the instinct for supporting imprisonment in the justice system comes from. But I know that for a lot of people because they've had no interaction with anything ever that has been a status quo institution that hasn't served good purposes that they wouldn't question it. (Golriz Ghahraman)

The lack of questioning the prison highlights how embedded, unchallenged, and normalised prison is as a status quo institution. This section has alluded to different people having different lived experiences of the justice system, dependent on their social distance to the system. The following section explores the experiences of those who have the closest proximity to the prison and the broader justice system.

### **PART III: JUSTICE SYSTEM AS SITES OF PAIN**

This section speaks to the way in which the justice system is dominated by a lack of humanity for those who have experience going through it. It begins by exploring how the justice system does not serve those who have been harmed or those who harm. In doing so, the harm done *by* the siloed sites of power is highlighted. Within this section I intended to limit the words 'victim' or 'offender' (unless I am sharing a direct quote or contextualising information from participants where they used those words) to push against the dichotomy in this categorisation. This was particularly difficult, given how ingrained these words are in justice discourses. Additionally, Jess McVicar and Ruth Money use the terms 'victim' and 'survivor' respectively when talking about who they support, and so I also want to honour their choice in words too. To conclude, this chapter acknowledges that the justice system operates as a "wheel of failure" which causes significant harm. The justice system suffers from short-termism, where it favours short-term benefit and often results in long-term harm and suffering. It is hoped that this section recognises the humanity of those that have lived experience of the justice system.

## **EXPERIENCES OF THOSE WHO HAVE BEEN HARMED**

This section draws heavily on the interviews with Jess McVicar and Ruth Money, due to their extensive experience advocating for victims of serious harm within the justice system. Firstly, acknowledgment is given to the significance of the harm that people experience, and the ripple effects of their victimisation. This is followed by a discussion of how people who have been harmed are side-lined and revictimised through the justice system. Throughout this section, the heavy reliance on volunteers, such as people like Jess McVicar and Ruth Money, to support people who have been harmed is highlighted. It is important to note that we are all distorted by our own experiences. Jess McVicar and Ruth Money both provide important support for victims and survivors of violent and serious crime. However, most defendants going through the court are there for less serious crime (Ministry of Justice, 2022).

People who are harmed are not all treated equally. Nils Christie (1986) examined how the ‘ideal victim’ is socially and culturally constructed, which determines who is viewed as a deserving or undeserving victim. People harmed through state abuse, such as abuse in state care or within prison, are not often viewed in the same lens as ‘ideal victims’ (Stanley, 2016; Stringer, 2021). For many people in prison, especially women, their victimisation is a core driver of their criminal behaviour that led them to prison. However, their criminal behaviour often trumps their victimhood, and they are not seen as worthy of empathy or compassion. Therefore, beyond what is shared below, there is a need for more critical understandings of victimhood in Aotearoa New Zealand (Stringer, 2021).

The support that McVicar and Money provide to victims varies from simply being cc’d in an email, explaining the court process, sitting with victims in court or during parole hearings, or providing ongoing support for victims and their whānau. Additionally, they frequently get involved when victims’ rights have been breached, and the person has not been given the access to information that they are entitled to. Within their interviews, they often

referred to victims experiencing the unimaginable turmoil of having their lives turned upside down:

Until you work with them or become a victim, it's hard to know and it's hard to imagine, but this person's life has been turned upside down in one split second by the selfish actions of one person (Jess McVicar)

In her interview, Ruth Money shared many stories of survivors she had advocated for. The ripple effect of being harmed is widespread. Survivors and their whānau often experience some, or all, of the following: anxiety, health issues, inability to work, taking out large loans to pay lawyer fees, or self-harming behaviour. There was a particular emphasis on the concern for self-harming behaviour of those she works with, noting that she gets “messages around self-harm at least three times, probably four or five times a week”. The following sentiment from Ruth Money demonstrates the cycle of harm:

Like the whole hurt people hurt people, some of my survivors, then turn to hurting themselves or hurting others because of what's happened to them [...] Their lives are utterly destroyed, they can't work, so they lose their house. They go on the benefit. They use their 30 counselling sessions. They start self-harming. They might get some ACC help. They go on to medication. They ignore their children and so their children's learning is compromised. So, this destruction just keeps on coming (Ruth Money)

Ruth Money shared vivid experiences of how people express their emotions while they were going through the justice system. Finding the words to explain their experiences was often difficult, and so “there's lots of physical emotions that come as a result of just the actual turmoil that's going on for people”. The turmoil manifests itself through nauseousness, and on some occasions, Ruth has had people vomit on her. This demonstrates the devastating impact of being harmed; be it physical, social, psychological and/or economic consequences. Part of the reason for the turmoil people experience is due to the trauma of the crime, but also because of the lack of support from the system. Jess McVicar reflected on how those that she advocates for often feel like they are a burden on the system:

They feel like there is no one there for them. They feel left alone, they're in the dark, and they're dealing with a situation. But then on top of that, they are trying to rebuild their home, they might be having to bury a loved one, they may not even know where their loved one is that has been killed. Quite often the location hasn't been disclosed yet, so they

haven't actually had that closure. They're having to deal with all of the emotions that we go through. The anger, the grief, they're having to deal with all of those, amongst being misguided in the system. (Jess McVicar)

Khylee Quince recognised the role that the state or the Crown has on acting on behalf of the victim through the justice system. While this may be the case, Jess McVicar and Ruth Money argued that victims are consistently side-lined. The Crown may not always have the person who has been harmed best interests in mind through the court process. By being side-lined, the system *adds* harm to people that have already experienced trauma. People who have been harmed are side-lined through lack of a voice and lack of communication. Similarly, Te Uepū Hāpai i te Ora (2019a) found that the justice system fails victims, as the process can be alienating and re-traumatising.

Victim impact statements are one way in which victims can have a voice in the justice system. However, Jess McVicar is critical of how these are often edited, or sections are redacted. Here, she notes that victim impact statements are often “the only opportunity that they get to speak their mind, and that gets taken away from them”. Jess McVicar shares the following commentary about how people feel when their voice is limited or silenced:

They get thrown into the justice system at a time of trauma, that their heads just all over the place, and then they're getting thrown this information, but then also getting told that they don't have a say. They don't get an option. And that just absolutely throws them back, they're like “Well this is happening to me, why do I not have a say? Why do I not get an option? Why am I not updated?” (Jess McVicar)

Similarly, Ruth Money noted the impact of a young person experiencing revictimisation through being side-lined. The trauma of being harmed is significant, but the delays and lack of care from the justice system add another layer of harm:

And you know her potential to be a leader in New Zealand has just completely gone. She can't function. And it's not because of actually all those rapes, it's because when she was brave enough to disclose the system kind of went yeah, yeah, we'll get to you. And she's still waiting for us to get to her. (Ruth Money)

The lack of communication that people get regarding the court case can be difficult to process. Without communication, Ruth Money recalled how a lot of the people she advocates for often fill in the gaps themselves. For example, a person was told by the Parole Board to expect a call on a certain day. When the call was delayed by several days, that person was thrown into turmoil as she imagined and overthought what they delay meant. Additionally, some victims express being misguided through the information they are given. Ruth Money acknowledged that several people are thrown off guard when a Parole Board hearing occurs significantly earlier than they expected. This is due to miscommunication about sentence lengths and minimum parole periods:

Why say this person is sentenced to nine years when we all know it's not nine years? It won't be three, because most of them don't get out on the first one, but you don't know that as a survivor. Why do you say nine? Why shouldn't you say six to nine? Like even that stuff just drives me wild, that we don't apply common sense to help people on the journey (Ruth Money)

Additionally, Jess McVicar and Ruth Money find themselves having to do a significant amount of translating legal jargon and explaining what the process involves. Paula Rose criticised the lack of accessibility of the justice system, insinuating that the court system is not open for laypeople that go through it. Her analogy of the theatre of the court demonstrates that the main actors – judge, lawyers, and court officials – all know the script. For most defendants and victims, the court system is overwhelming, and they are not familiar with the script. In some cases, they have a minor or forgotten role in the theatre of the court. The following excerpt affirms how the court system functions as a site of power, and how that power is exercised in the courtroom:

It's a system where the main participants are all in the club. The main participants know the language, know the theatre. It's a bit like going to a foreign country, and even though you might speak the language, you don't. You might think you understand the customs, but you don't. So, I think it's a closed group. And the higher you go up the system, the more of an elite enclosed group it is (Paula Rose)

Similarly, Andrew Kibblewhite acknowledges the alienating nature of the justice system. His current focus is to “make the justice system a less culturally foreign place to a lot of people who come into it and use it”. Andrew Kibblewhite noticed a priority to make it culturally appropriate for Māori, but

also identified that others may find the process unfamiliar. However, this perspective – to make a foreign justice system culturally appropriate – has been highly criticised by scholars such as Tauri (1999) and Havemann (1988). More recently, the demands expressed in the Ināia Tonu Nei report state that current approaches are “tinkering around the edges”, and instead power sharing between Māori and the Crown is required to uphold Te Tiriti O Waitangi (Te Ohu Whakatika, 2019, p. 12).

Nils Christie’s (1977) literature demonstrates that conflict is the property of those that experience it. Christie (1977) argues that through formal justice processes, professionals such as judges and lawyers ‘steal’ the conflict by speaking on behalf of victims and perpetrators. The following sentiment from Jess McVicar resonates with Christie’s (1977) notion of conflict being the property of those most closely connected to it:

So, my view of justice is ensuring the victim is treated with respect, and ensuring the victim is cared for, because after all it is them that the crime has been committed against. It is them whose life has been turned upside down forever (Jess McVicar)

Jess McVicar reflected on a recent experience where the prosecutor and victim reacted very differently to a specific outcome. A person was given a sentence of two and a half years in prison and the victims were ecstatic because the person was held accountable for their actions. On the other hand, the Crown found this sentence unsatisfactory and were disappointed with the result. This anecdote provides the foundation of understanding that all people have different needs, experiences, and expectations around what is required to achieve justice. The following excerpt demonstrates the different perspectives of justice for victims:

It’s different for everyone, like I said, no one can ever tell a victim how they are going to feel or not going to feel. No one is ever going to tell a victim if they’re going to forgive or if they’re not going to forgive. There is no handbook on how to deal with a serious violent crime, whether it’s your child murdered, or whether you’ve been raped, or anything like that. Every single person is different. And every single person has a different view of justice (Jess McVicar)

While this section so far has highlighted the negative experiences of the justice system, it is also important to recognise that for some people, the justice



system is a meaningful avenue of achieving justice. Participants acknowledged that some people benefit from the way in which the current justice system operates. Paula Rose highlighted the different experiences of the justice system that people have:

I think for some people, the New Zealand criminal justice system is fantastic, and it provides them all the checks and balances, the ability to be heard, the ability, whether they're a victim or an offender, and I think they have a great experience. But unfortunately, that's only a small section of the community. I think, at times, our criminal justice system operates well, but other times, and for particular groups of people, whether that's because of background, ethnicity, or at points in time in their life, or depending on what player they are in the criminal justice system, whether they're a victim or an offender, whether they're a family member or a support person, or involved in interest groups. It can be both a sweet or a sour experience. (Paula Rose)

The commentary explored in this section demonstrates the harmful effects of victimisation, and how the justice system functions to revictimise people. The following section explores how the system fails for people who have caused harm and experience incarceration as a result.

### **EXPERIENCES OF THOSE WHO HAVE HARMED**

This section begins by unpacking participants' thoughts on prisons as cages that have limited capacity to show humanity and compassion to those that are inside them. Recognition is given to the violence and abuse that is experienced within the justice system. Additionally, the dichotomy of victim and perpetrator is challenged, suggesting that these two groups are not mutually exclusive. Lastly, this section explores the limited opportunity for prison to address the root causes of harmful behaviour, which feeds into the justice system as a wheel of failure.

There was a consensus amongst participants about the limited benefit of a prison sentence for most people. As recognised above, it is often unsuccessful at rehabilitation for the majority of people in prison, and so it fails at one of its proposed goals. Tim McKinnel and Khylee Quince were blunt in their description of prisons, by explaining them as cages for holding humans.

Several participants drew on what Tracey McIntosh (2020) refers to as the waste of human potential that prisons cause. Efeso Collins explains the way in which the prison system blocks human potential and peoples' ability to flourish:

Tracey McIntosh described [prisons] as warehouses of human potential or of youth potential and it's exactly what they are. We just lock up all this potential at a time where they're still developing as young men in particular. Where all that potential and that talent is just being stored away for nothing, gathering dust. And for me I have an emotional entanglement around that because I want to see young people flourish (Efeso Collins)

He argued further, particularly noting the erosion of potential for young people who serve prison sentences:

I don't know all the kids and young people – I should call them kids because that's what they are – in prison, but damn it, I know they've got the capacity to love, and to nurture, and to reach out, and to encourage, and to be great, and we are wasting that talent because society hasn't got the time to walk alongside them (Efeso Collins)

A core concern that participants expressed about the use of prisons is the lack of humanity afforded to those within them. Chester Borrows referred to this as a “lack of willingness to understand that these people are human and need to be treated as such”. The following commentary explains how social distance to other people allows a lack of understanding and empathy for others:

If we don't have to like them or understand the people who offend, then we don't have to look after them in prison. There are so many people in need in prison who aren't getting their needs met, from things as basic as hearing aids and eyeglasses, down to mental health care and counselling. (Chester Borrows)

Tim McKinnel attributed the dehumanising of people in prison to a fear drive. The fear of others, and embracing an Us vs Them mentality, decreases a person's ability to demonstrate compassion (Norris, 2021a). Moving further than a lack of compassion, is treating people disrespectfully. This is exemplified by a recent comment made by Peter Dutton, an Australian politician, who referred to deporting people to Aotearoa New Zealand, most of whom had received a prison sentence, as “taking out the trash” (Murphy &

Hunt, 2021). The lack of compassion and respect for those in prison is demonstrated in the following quote:

I do consciously and consistently remind myself that most people have the luxury of conveniently not knowing anything about prisons. And they are fearful of not only of the institution but of the people in there. They think that they are scary, bad, terrible, you know, like Peter Dutton referring to people as trash. How could you refer to any human being as trash? And that is what lots of people think about prisoners (Khylee Quince)

Associated with the experiences of dehumanisation, is a lack of trust that is afforded to people in prison. Kim Workman discussed the shift in physical security within the prison system over the last three decades. He asserted that since the mid-1990s, the increase of security mechanisms reflects a broader mistrust of people inside prison and a rise in the securitisation industry. Aotearoa New Zealand has a low level of escapes from prison, and the rate decreased in the period from 2007-2016 (Department of Corrections, 2016). However, countries with low levels of escapees, such as Aotearoa New Zealand, have ramped up investment in extremely expensive perimeter fencing and more gear for control, restraint, and cell busting:

They put double fences around all the prisons. Before then there was only razor wire around Paremoremo, now it's in every prison. And the searches of prisoners continue unabated, it's sort of everyone gets searched all the time. [...] So the lack of trust, the lack of opportunity for prisoners to exercise initiative, has been affected (Kim Workman)

There was a consensus amongst participants about the limited effectiveness of prison sentences. Andrew Kibblewhite mentioned on how the prison system fails those who go through it:

[F]or most people, prison is a big, industrialised thing that doesn't work very well in making them less dangerous. (Andrew Kibblewhite)

Not only does prison not make people better, but it can also actually do more damage and harm. Emilie Rāketē labelled the justice system as an “ouroboros of violence” in which we treat a person bad because they have done something bad. This sentiment is shared by Kerman (2019), author of *Orange Is the New Black: My Year in a Women's Prison*, who recognises that rather than solve the issue of violence, incarceration causes *more* violence. In an Aotearoa New

Zealand context, Maja Curcic (2019) explains how ‘the violence continuum’ is intricately connected to colonisation and Māori hyper-incarceration.

Participants acknowledged that violence experienced in prison is not often a reason for public concern. This is either due to the public being oblivious to its occurrence or believing that those that are subjected to violence in prison deserve it. Scott (2020) explains the difference between who is afforded moral inclusion or moral exclusion in society. People who are morally excluded are “perceived as undeserving, expendable, and therefore eligible for harm” (Opatow, 1990, as cited in Scott, 2020, p. 99). People in prison are frequently morally excluded, where their suffering and pain is made invisible. Prison, Scott (2020) argues, “creates an emotional dam where human kindness [has] stopped flowing” (p. 115). Speaking of the violence within prison, the following sentiment highlights the disconnection between public perceptions of prison and the reality:

[P]rison is awful, it’s really violent, it’s peopled with people who have been really damaged by that system already. [...] People think you just go to prison, and you learn your lesson. And it’s just a bit shit, it’s just a bit uncomfortable, you’ve got a hard bed to sleep on, but it’s this horrifically abusive, violent place. (Golriz Ghahraman)

Additionally, Chester Borrows illustrated that many people he engages with claim that prison is equivalent to a “holiday camp”:

I’ve done lots of public talks on justice issues, and I used to say “I was in a prison last week, I was standing in a cell that had double bunks, and the only place you could eat was to fold a table down over the toilet where your cell mate who you hate just had a big shit five minutes ago. If you think it’s a holiday camp, I don’t want to go on holiday with you”. Firstly, they’re shocked that it’s actually like that, and then they recover, and they say, “Well bugger them, they don’t have to be there”. (Chester Borrows)

The lack of compassion for people in prison extends beyond the public and is manifested through the behaviour and actions of prison officers. Kim Workman spoke of the changes that have been made since he was Head of the Prison Service in 1989. He argued that since then, people in prison have become objectified, and there is little emphasis on relationship building between prison staff and prisoners. The appropriate training and inclination

to show compassion has waned over the last few decades, which Kim shared he is concerned about:

To exercise compassion and to start helping people sort their lives out requires a lot of energy. And a lot of them don't have the skills to do that, and a lot of them don't have the inclination, so it goes by the wayside (Kim Workman)

It is widely recognised that those who experience incarceration have often experienced victimisation themselves (Ashton-Martyn & O'Connell Rapira, 2019; Bevan, 2017; Gluckman & Lambie, 2018), and this is particularly marked for women (Day, Casey, Gerace, Oster, & O'Kane, 2018; McIntosh & Workman, 2017; Stathopoulos, Quadara, Fileborn, & Clark, 2012). A study in 2017 found that 77% of people in prisons in Aotearoa New Zealand were found to have been exposed to violence prior to their incarceration (Bevan, 2017). Noting the high levels of victimisation amongst our prison population, Shila Nair insisted on the need to be empathetic and compassionate:

Considering that the majority of those in prison and those who offend were victims of violence and abuse at some stage in their lives, the emphasis needs to be on preventing people from becoming victims in the first instance. The justice system needs to be empathetic in orientation rather than operating from a simple stance of crime and punishment (Shila Nair)

On top of the high levels of previous victimisation, is the concentration of mental health issues amongst those that experience incarceration. 91% of people in prison in Aotearoa New Zealand have a lifetime diagnosable mental illness or substance-use disorder, with 62% of people diagnosed in the past 12 months (Gluckman & Lambie, 2018). Childhood trauma correlates with poor mental health, which demonstrates the struggles many people in prison have experienced in their lives. Additionally, youth involved in the justice system are 10 times more likely to have a psychiatric disorder than children in the general population (Gluckman & Lambie, 2018). Golriz Ghahraman reflected on the number of people with mental health issues in prison:

So, we know that an overwhelming majority of who we imprison are mental health sufferers, and when we talk about mental health sufferers, I mean serious diagnosable mental illness. Lifetime diagnosis of PTSD, so people who have been victims themselves (Golriz Ghahraman)

Tania Sawicki Mead acknowledged that our current justice system reproduces harm through lack of healing. As a result, “people’s trauma, or experiences that they have gone through tend to fester and play out over generations, rather than be healed” (Tania Sawicki Mead). This resonates with a phrase Tabitha Mpamira-Kaguri gave in her 2019 TedTalk; “Trauma not transformed is trauma transferred”. In the talk, Mpamira-Kaguri (2019) highlights how we are each passed batons from previous generations that for some may hold privilege, and for others it may hold suffering and trauma. Trauma, oppression, and suffering is transferred onto the next generation if it is not healed. Many people that experience incarceration have not had the opportunity to be healed from intergenerational trauma (Mpamira-Kaguri, 2019).

The dichotomy of perpetrators or victims can lead to an oversimplification of those categories. Binary categories of victim and perpetrator mean that the victimisation that a person may experience prior to harm they impose on other people is diminished or forgotten. Chester Borrows explained this occurrence:

The fact that you are a victim and then you’re offending may be a manifestation of your victimisation means nothing to anybody. When I’ve spoken to politicians or to victim support groups and ask them how they respond to victims who have then gone to offend, as a result or symptomatic of their victimisation, they basically say we don’t work with victims once they become offenders. And I even had one justice spokesman say to me, they have a choice, so we don’t see them that way (Chester Borrows)

Similarly, Kim Workman recognised that this dichotomy results in “a view that all victims are good people, and all offenders are bad”. Balancing the distinct needs of these ‘binary’ groups proves difficult, and has had detrimental effect on policy:

The way to address the needs or the issues for victims was to rebalance the rights of victims to the rights of offenders, and the assumption was that offenders have far too many rights. So rather than addressing the actual needs of victims, the government instead put its energy into punishing offenders and prisoners, making it more difficult for them to be released (Kim Workman)

An example of the ‘balancing’ between victim and offender rights is evidence in the 1999 Citizens Initiated Referendum in Aotearoa New Zealand (Pratt &

Clark, 2005). The question that was asked, which received 92% in favour, was fundamentally flawed due to it being a two-pronged statement that only allowed the public to provide a single answer:

[S]hould there be a reform of our criminal justice system placing greater emphasis on the needs of victims, providing restitution and compensation for them and imposing minimum sentences and hard labour for all serious violent offences? (Pratt & Clark, 2005, p. 305)

The large support in favour of the referendum resulted in the *Sentencing Act 2002*, *Parole Act 2002*, and *Victims' Rights Act 2002*, which produce longer and more punitive sentences for those that go through the justice system (Pratt & Clark, 2005). Knee-jerk policy is common following harrowing victimisation, and because of the dichotomy between 'victims' and 'perpetrators' there are often knock-on consequences of such prompt policy change. A consequence of these Acts is that more people have been subjected to prison sentences, which resulted in a peak of 10,645 in prison in March 2018 (Department of Corrections, 2018).

Participants spoke at length on the limited ability for a prison sentence to prevent or address the systemic issues that drive harmful behaviour. Speaking broadly, Chester Borrows asserted that the people that are in prison are often those who have been "failed by every other social agency". Stan Coster is one of many individuals in which Chester Borrows' comment applies. Stan experienced confinement and coercion from the state through foster care, boys' homes and prison (Andrae, McIntosh, & Coster, 2017). Elizabeth Stanley's *The Road to Hell* (2016) and The Abuse in Care Royal Commission of Inquiry demonstrate a recent commitment to understanding the link between abuse in state care as a child and experiences of incarceration.

Golriz Ghahraman reflected on illiteracy within prisons, particularly those within juvenile facilities. She sees this as a direct failing of the education sector, which is also highlighted by scholars that investigate the school-to-prison-pipeline. Many people within prison have been excluded from education institutions, which contributes to high levels of illiteracy (Gluckman & Lambie, 2018). Golriz advocated for more investment to be

placed in inclusive education, which would be a better investment than the prison system:

We're not investing what we invest on prisons into our education system and seeing those things as being related. Like we're not seeing inclusive education as related to our criminal justice system and we're not investing even like remotely similar rates of money and human resources into inclusive education, as we do into prisons (Golriz Ghahraman)

A significant concern for participants was the way in which prison sentences isolate individuals from their community and social networks. As acknowledged in *Chapter Two*, the consequences of incarceration are collectively experienced by whānau of people in prison (Kilgore, 2015). Judge Phil Recordon mentioned that a prison sentence often takes a person away as a breadwinner (whether through illegitimate or legitimate means). Additionally, Tania Sawicki Mead explained how isolating and excluding people from their community and loved ones is a flawed approach to responding to harm:

People are dehumanised and often removed from the socialising factors or relationships that might help them to address the things that led to their offending. Particularly, connection to whānau in a sense of being part of a community and one's obligations to, and within, that community. So, I think it fails in that respect of removing people from society and then expecting them to learn how to live in society better (Tania Sawicki Mead)

Another common driver of harm is substance or alcohol abuse. While there are programmes and courses available in prison for those that seek support, these are not widely available and often have a punitive approach to those who do not follow the rules (Brooking, 2011). Chester Borrows reflected on anecdotal evidence that demonstrates the lack of a harm reduction approach to drug issues:

But we have stupid rules that are risk adverse rules, which prevent us doing the most basic and sensible things. If you get caught taking drugs in prison, they'll take you off a drug course or programme. And they won't let you on until you've then tested clean on a number of occasions. Now that just seems to be totally counterintuitive, doesn't it? If you have got a drug problem, why would anyone be surprised that you had drugs in your system and so need some rehabilitation around drug use. And we basically offer zero help or hope unless they've done that. (Chester Borrows)



As noted above, participants acknowledged the criminogenic nature of the prison. Within the prison environment, people are in close proximity with other people who have engaged in criminal behaviour. The following excerpts demonstrate that the prison can be a place where people are encouraged to communicate with anti-social peers, which may influence future harmful behaviour:

I don't think locking low level crime up in prison is the answer because in prison you obviously meet some pretty bad people, and they get put in the wrong direction. (Jess McVicar)

I think prison probably means that many people who go through it are more likely to actually be worse off and be more harmful on the far side of that experience. You know whether they are recruited into gangs or other associations that perpetuate or amplify whatever criminality, or harmful behaviours, they may have otherwise been engaged in. (Andrew Kibblewhite)

This section has demonstrated the way that people who go through the justice system are dehumanised, and their experiences of victimisation are often forgotten or ignored. Additionally, the lack of appropriate support services within prison has resulted in a continuous “wheel of failure”, which is discussed below.

## **WHEEL OF FAILURE**

Inspiration for the framing of this chapter came from the interview with Tim McKinnel. His description of the justice system as a wheel of failure underpins several points of discussion in this chapter:

But it's a vicious circle in that what happens in prison is that they are not rehabilitated, they often come out in worse shape than when they went in. And so, you end up on this wheel of failure (Tim McKinnel)

Most participants were aware that many people that are in prison will eventually be released back to the community. Thus, while a prison sentence “might give an immediate increase in safety” it may well result in “a long-run decrease in safety” (Andrew Kibblewhite). Similarly, Tim McKinnel notes that the justice system suffers from “short-termism”. The lack of effective rehabilitation and limited resources into reintegration services results in high

rates of recidivism (McNeill, 2009). Speaking of the limited success of current rehabilitation and reintegration efforts, Ruth Money recognises the system as a “recycle” of people continuously going in and out of it. This sentiment is shared by Efeso Collins:

It just comes back to bite us on the bum when a lot of those young men come out and I think they reoffend quickly because we don't have the structures to reintegrate them into a society that rejected them in the first place. So actually they just coming back to what rejected them in the first place, which is why they end up back in prison (Efeso Collins)

Similarly, Rachel Leota explained the difficulties of reintegration people face when released from prison, due to public perceptions of people who have experienced incarceration:

The reintegration back into the community can also be challenging, because New Zealand is, I think, fairly judgemental and when people find out that people have criminal convictions, there are some terrific New Zealanders who really want to support people, but there are others who will go to large lengths who don't want them to live near them, who don't want to employ them, who don't want to associated with them, and when people feel marginalised in society, that can cause other issues and actually is a driver back into crime (Rachel Leota)

Participants recognised the lack of humanity for most of the people that have lived experience of the justice system. Indeed, there are some instances where the needs to people in prison are not met. Andrew Kibblewhite acknowledged that this lack of humanity, and lack of needs being met, may be a result of the system prioritising processes over people:

I think our processes get in the way of people's needs. They're all set up to protect people's rights and needs in different ways, but the net result of them is that we have a system that feels foreign and disconnected to citizens – or to participants, rather than citizens because they might not all be citizens – in whatever part they're playing, be it offender or victim (Andrew Kibblewhite)

Ruth Money, who spends a large portion of her time advocating for victims, recognised the widespread ineffectiveness of the justice system. Her experience on Te Uepū Hāpai i te Ora, where the advisory group toured the country to listen to lived experiences of the justice system, has shaped Ruth Money's perspective. Throughout the interview, she alluded to the “mass

destruction” of the justice system. The following commentary demonstrates the widespread nature of mass destruction:

Like the justice system doesn't serve anyone. Like no one. Taxpayers, offenders, victims, you name it, it was completely dysfunctional for everybody in my humble opinion and experience (Ruth Money)

The justice system as it currently operates, fails for those who have been harmed, those who have harmed, and for the broader society. To make sustainable, long-term safety for all, it is imperative that we move off the “wheel of failure” and encourage compassion and care for all members of society.

## **CONCLUSION**

Government, media, police, courts, remand, prison, and parole are recognised as sites of power, that exercise power over the powerless. Each of these sites of power function in a siloed and isolated manner, which enables pointing blame at other agencies when something goes wrong. Of the four main goals of prison (retribution, deterrence, containment, and rehabilitation), rehabilitation is identified as a tacked-on, and unachievable collective goal. The prison operates as a status quo institution, which further entrenches its normalised use within Aotearoa New Zealand. Lastly, this chapter identified how the justice system operates as a site of pain, in which those who have been harmed, and those that have harmed, are side-lined, retraumatised, or dehumanised.

While the siloed nature of the sites of power has been explained, there is a connecting thread between them all. Risk and safety logics are used to underpin and sustain the sites of power. The network of different agencies and organisations that operate as sites of power all have elements of risk aversion and rely heavily on promoting punitive approaches to safety. With these logics having such an integral part, the sites of power become perceived as meaningful ways of managing risk and safety. As they become ingrained as responses to harm, this enables the ignorance of harm and pain that is

caused by the sites of power. The failings of our responses to harm are overlooked in favour of prioritising punitive risk and safety logics.

The following chapter explores participants' conceptualisations of risk, safety, security, and protection. While significant differences between these words are identified, there is also a consensus in the Othering and exclusionary tendencies in the operationalisation of these concepts. Utilising the sword vs shield analogy introduced by Khylee Quince, the following chapter explains how the operationalisation of these words work *for* or *against* certain communities. As a case study, the Armed Response Teams trial is discussed to demonstrate how risk, safety, security, and protection are promoted through punitive and exclusionary approaches.

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## CHAPTER SIX: CONCEPTUALISING RISK, SAFETY, SECURITY, AND PROTECTION

Understanding conceptualisations of risk and safety, and how they influence punitive responses to harm, is one of the three core aims of this project. Within this chapter, the conceptualisations of two additional words – security and protection – are also interrogated. While they feature less in the overall project, they can often be used in replacement of, or an alternative to, safety. Therefore, this chapter unpacks how participants conceptualise risk, safety, security, and protection.

To begin, this chapter explores participants' conceptualisations of risk, safety, security, and protection. They are placed in this order as risk provides the foundations of identifying what behaviours and people that the participants perceive as needing to be made safe, secure, or protected from. Safety, security, and protection are words that highlight actions or mechanisms that are put in place to address or mitigate risk. These three words may be seen as synonyms of each other and therefore there are some overlapping ideas within the discussion of each of these. There are consistent themes of 'Othering' within the operationalisation of these words. However, there are some significant differences in how these three words are expressed that will be delineated in this chapter.

In exploring participants' conceptualisations of these four words, it is recognised that not everyone within society experiences them equally. For some people, the current policies and practices that are utilised as a means of minimising risk, and maintaining safety, security, and protection, are effective and beneficial. On the other hand, there are segments within society that experience the States' operationalisation of risk, safety, and security, and protection in oppressive ways. That is, the State's approaches at minimising risk, and maintaining safety, security, and protection, such as the use of police and prisons, are often punitive and exclusionary. In the context of this

project, Māori were identified as a community that were more likely to be subjected to this oppressive operationalisation. This reflects an analogy that Khylee Quince shared of the distinction between a sword and a shield. This analogy is frequently used in legal scholarship, to recognise how law can function as a protective or oppressive measure (Ewert, 2007; Tulkens, 2011). Regarding this chapter, the way in which these four words are operationalised can be used *against* (as a sword) or *for* (as a shield) certain people.

A discussion of the sword or shield metaphor is provided at the end of this chapter, through an analysis of participants' perspectives of the Police in Aotearoa New Zealand. Policing was frequently alluded to when exploring how different people seek out safety, security, or protection. The Armed Response Team (ART) trials is used as a case study to highlight how policing can be used to protect or oppress different segments of society. These four words can operate as what Khylee Quince calls "sword-based phenomena" for certain people or social groups within Aotearoa New Zealand.

## **PART I: CONCEPTUALISING RISK, SAFETY, SECURITY, AND PROTECTION**

### **CONCEPTUALISING RISK<sup>15</sup>**

Most participants had a critical response to the word risk, with Tania Sawicki Mead noting that the concept and its connotations as being "brittle". Risk was conceptualised by some participants as something that can be measured and documented. It can be quantified in a rigid way and is often done by categorising a risk level based on a person's behaviour or an event. Once that has been done, there is action that can be taken to mitigate or minimise risk. Jess McVicar recognised that the scope of risk is wide-ranging and is not limited to the justice system:

I think everything in life has a risk, but there are either risks that you're willing to take to achieve, or there is a risk that you're going to take that

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<sup>15</sup> This section is adapted from Gordon & Webb (2022)

could possibly put you in danger. And there's the balance of trying to figure out which one is the good one to take. (Jess McVicar)

### *RISK ASSESSMENT AND RISK AVERSION*

A common interpretation was to relate risk to data and risk assessment. Risk assessments are deemed to be data-based, and quantifiable ways in which risk can be measured. Risk assessments have become an increasingly common tool to assist in risk decisions by criminal justice agencies (Pratt & Anderson, 2020). The following perspective of Tania Sawicki Mead demonstrates a focus on risk as data, and the criticisms of such an approach:

I think of risk as algorithm or risk as data, something that is data driven, where I think about the ways in which risk has been reduced to assessments of the likelihood of things based on what has happened in the past, and in a past where people have had very little control over what has happened to them. (Tania Sawicki Mead)

The rise in risk assessment simultaneously came with the increase in managerialism within prison (Feeley & Simon, 1992; Werth, 2019). As discussed in the literature review, the 'new penology' (Feeley & Simon, 1992) and the 'culture of control' (Garland, 2001) replaced rehabilitative efforts in favour of managing risk subjects (O'Malley, 2010). Considering the impact of managerialism in Aotearoa New Zealand, Kim Workman recognised that "we pride ourselves on running our prisons like factories, and we pride ourselves on our police operations being based on military precision". By this, he referred to the justice system refining a person to a number on a risk scale. This aligns with Pat O'Malley's (2004a; 2004b) scholarship on risk-based governance. Risk-based governance aims to identify and separate "risky subjects" (O'Malley, 2004b, p. 334). This indicates a shift away from individualised approaches to justice (Binns, 2020), to increased risk identification, prediction, and aversion (O'Malley, 2004a). The risk category that a person is categorised into can have widespread consequences on what they have access to. A further discussion of this is provided later in this chapter regarding security classifications.

Risk assessment tools prioritise supposedly accurate measurements of riskiness and were recognised by participants as being impassive and lacking

emotion. Through this process, emotions are stripped away and are not encouraged in the decision-making process. Tania Sawicki Mead concluded that this was due to a preoccupation with data informing risk decisions, and that “the idea that our emotional responses should underpin how we do things has become unfashionable”. Tim McKinnel had a positive association with risk, as it allowed him to measure and define risks, rather than judge something “based around fear”. He reflected on using a risk matrix to assess risk, to ensure he was operating in an evidence-based manner. Similarly, Golriz Ghahraman noted the lack of emotions when thinking about risk due to the legal and definable nature of risk. She elaborated further by noting: “I immediately step out of myself and how I feel”, which enables her to think about risk objectively.

While risk assessment tools seek to remove emotionally charged thinking, the premise and fixation on risk often comes from a place of fear. Tania Sawicki Mead identified fear as an important driver in our obsession with risk. Furedi (2002; 2007; 2018) explores how ‘the culture of fear’ has coincided with the rise in risk assessment tools. The prominence of fear has prioritised efforts to remove or reduce fear. Additionally, Lupton (2013) recognises that risk “has come to stand as one of the focal points of feelings of fear, anxiety and uncertainty” (p. 18). In the following sentiment from Tania Sawicki Mead, she acknowledged how fear influences our preoccupation with risk:

I think risk, and particularly when we talk about conceptions of risk in justice, are about fear of ourselves and fear of our neighbours, our family, and friends, like people fear of others and what they are capable of, what they are not capable of. (Tania Sawicki Mead)

In the justice system, participants noted that the aversion of risk has become the dominant preoccupation. Risk aversion, in terms of policy and practice, is often an avoidance of complexity and expense. Many positive alternatives to risk management are both complex and costly. Rather than being concerned with providing effective rehabilitation and reintegration services, the prioritisation is on minimising and eliminating risk. The following excerpt from Kim Workman demonstrates this view:

And in prison, ever since the psychological division started to up its ante, it has tended to dominate. It has moved away from being available



to counselling and support, to people who have mental health issues or drug and alcohol issues, just to being a monitoring agency and it has become so called experts at risk assessment and avoidance. (Kim Workman)

The intention of risk assessment is to try and mitigate biases in decisions around who or what is determined to be a risk. Therefore, it is suggested that risk assessment is evidence-based. Through using risk assessments, human thinking is often suppressed in favour of algorithmic thinking. As Kim Workman revealed, “the judiciary and others were reluctant to make decisions based on their own judgments and relied instead on these instruments that determine risk in a sort of quasi-scientific manner”. The favouring of risk assessments highlights the belief “that humankind does not possess the knowledge that is necessary for the calculation of probable outcomes” (Furedi, 2018, p. 157). Risk assessments are utilised to practice uniformity and transparency in decisions on risk (Eckhouse, Lum, Conti-Cook, & Ciccolini, 2019). The following commentary explains the reliance on certain forms of data to facilitate decisions on risk:

The sets of information that decision-makers are given about a person to make a decision about their risk, to make a decision about where the harm came from. Then you will tend to get sort of hard science answers or psychological or psychiatric reports, or you tend to get files from government agencies (Khylee Quince)

The risk, needs, responsivity model, which was seen by clinicians to be scientifically capable of validation and that one could develop algorithms and systems that would scientifically predict or determine the level of risk that people presented. And so, judgments were made increasingly on the basis of those tests, and often those tests were ramped up by the clinicians so that the risk was often, the recorded or determined risk was often greater than the actual risk. (Kim Workman)

Participants were concerned about decisions that are made in the justice system, as the algorithms used to determine risk levels are arbitrary and fundamentally flawed. This resonates with arguments from Tonry (2019), who highlights the discriminatory consequences of risk assessment tools. Arbitrary risk decisions, and a risk averse mentality, has resulted in many “increases in people being turned down for work release, for home leave, for compassionate leave, for parole, refused bail. So, we saw a huge increase in the number of prisoners on remand” (Kim Workman). Kim Workman reflected

on an example of how risk assessments affected decisions on who was eligible for work release. He shared that prior to 2007, prison staff made judgments based on trust and familiarity with the people in prison to identify who could safely go into the community to mow lawns, build playgrounds, and chop firewood. Based on their judgments, 16 men were eligible for work release. However, when risk assessment tools were introduced, they applied the assessment to the 16 men, and only two were deemed eligible for release. This demonstrates how the discrepancy between human judgment and algorithm-based approaches to risk can produce profoundly different outcomes.

### *CRITICISMS OF RISK ASSESSMENT*

Several participants shared their concern for our justice system being too strongly wedded to risk assessment tools. Criticisms arose from risk assessment tools using biased and flawed data, which reinforces stereotypes and the status quo. Tania Sawicki Mead highlighted that risk assessments “largely rely on ‘neutral’ assessments that aren’t particularly neutral”. This parallels criticisms from scholars of the supposed ‘neutrality’ of risk algorithms (Cunneen, 2020; Werth, 2019). If risk is based on biased data, then it is likely that the results will be disproportionate. Khylee Quince and Emilie Rākete scrutinised how racist behaviour in processes such as policing could influence data used in risk assessment tools. Shared below are their insights into the cyclical nature of risk:

The aphorism is that, you know, the best predictor of future behaviour is past behaviour. I don’t know that that’s necessarily true, if that past behaviour and the past action of actors and systems or agencies and the system is racist, then you’re just going to replicate that behaviour in your future policies of policing or imprisonment (Khylee Quince)

The Crown will, on one hand, say “we will acknowledge to you that Ngā Pirihiimana o Aotearoa, the New Zealand police force, has discriminated against Māori in the past”. And then on the other hand they’ll take all of that data that was gathered by the people they just acknowledged were white supremacists and then use it to determine where police should go, risk management profiles to build these algorithms. It’s tainted, it’s all covered in blood (Emilie Rākete)

This parallels arguments from Mayson (2018), in which the problematic nature of risk is not based on the use of actuarial risk-based tools, but reliant

on the process of using past behaviour to determine future action. Any method of predicting future events on past behaviour is likely to be flawed:

[T]he source of racial inequality in risk assessment lies neither in the input data, nor in a particular algorithm, nor in algorithmic methodology per se. The deep problem is the nature of prediction itself. All prediction looks to the past to make guesses about future events. In a racially stratified world, any method of prediction will project the inequalities of the past into the future. (Mayson, 2018, p. 2218)

A person's criminal history does not always paint a full picture. For example, when police lay charges there is the potential that they are charged with a more serious offence than what occurred. The behaviour that the Police decide to charge a person with, can have long-term consequences on a person's risk level. Kim Workman shared how "police do lay charges that are over the odds", where a person may engage in common assault, but be charged with aggravated assault. As a result, Workman argued that a person's "history sheet looks a lot more serious than it is" and they may receive harsher punishment. If the past decisions made by those who determine risk are prejudiced and unfair, then present and future decisions regarding risk will also be flawed.

While a range of factors are used in risk assessment tools, heavy weight is given to criminal history as a determinate for future offending. Extensive scholarship has criticised the use of criminal history as a risk factor (Cunneen, 2020; Goddard & Myers, 2017; Harcourt, 2015; Miller, Campbell, Papp, & Ruhland, 2021). The criminalisation process of racial minorities and Indigenous populations, and institutional racism, leads to higher levels of engagement in the justice system. These social groups are subjected to heavy policing and severe punishment, which elevates their risk score. This, in turn, justifies and legitimises police presence and high incarceration rates of those communities (Goddard & Myers, 2017). Thus, risk assessment tools lock the justice system into a cycle of repeating previous statistical and data patterns to determine future events (O'Malley, 2015).

According to Emilie Rākete, risk assessment tools can be a method of "encoding the bias" within justice system processes. Through this process, correctional risk assessment tools and processes are the "evilest

manifestation of what risk looks like” (Emilie Rākete). These tools are used to determine risky subjects or high-risk locations, that in turn justify investing more criminal justice resources. Factors that are used to determine risk levels are not often selected by the wider public. Instead, they are generated by powerful people who make the decisions about what behaviour is a risk, or who may engage in risky activities. This is demonstrated by the following contribution from Tania Sawicki Mead:

I really think of risk as something that is not actually generated by the collective in the way that it’s used now, but generated by individuals or power structures, so you know we talk a lot about what the risk is and who bears the consequences of that risk, and who makes the decisions about who is a risk or may engage in risky activities. (Tania Sawicki Mead)

Emilie Rākete insisted that the justice system serves an ideological function and reinforces colonial interests. Risk assessment tools are one example of justice policy and practice that is used to justify disproportionate policing and punishment of Māori. To maintain their legitimacy, risk is used to continue the oppression and marginalisation of poor and Māori communities. Risk profiles and data are then used to determine what communities require high police presence or observation. Thus, the cycle of disproportionate experiences of the justice system continues. This parallels findings from an American study, which argued that predictive policing systems that are influenced by “dirty data” will continue the legacy of biased policing (Richardson, Schultz, & Crawford, 2019).

Risk management and control paradigms are “strategies of inclusion and exclusion” (Hudson, 2003, p. 76), in which people labelled as dangerous or risky are deprived of their humanity. In Aotearoa New Zealand, it is predominantly Māori who bear the burden of the consequences of risk control paradigms, as they are more likely to be socially excluded. Contemporary conceptualisations of risk can be viewed as a dehumanising process:

[People] are deprived of their rational humanity and become determined creatures of statistical risk-assessment systems; instead of being flesh and blood, inconsistent, unpredictable humans acting out of their own interests and desires, free to change their perceptions of these and their moral cognitive sets at any time in the present and future, they become the predictable embodiment of databases, for whom the behavioural

uncertainty of actual choices in actual situations is replaced by the statistical certainties of factorial calculations. (Hudson, 2003, p. 76)

Similarly, Simon (1988) argues that risk assessment tools “unmake people” (p. 792). That is, people deemed as risky have their personhood removed and become recognised only by their risk classification. Additionally, risk assessment tools gather generalised information of groups and apply them to individuals. In doing so, their individual circumstances and experiences are disregarded for the sake of group classification and management (Dagan & Dancig-Rosenberg, 2020). This echoes O’Malley’s (2008) argument that risk management “strips away identity, and treats individual cases as members of risk categories” (p. 66). As Khylee Quince argued, “risk is risky”:

We have to live with risk. That guy might come and stab you in the street, any day of the week. You might get hit by a bus. You might, you might, you might. But there are things that we have to live with as risky and we can’t step over the line to live our lives on the base of risk and paranoia when you don’t personally have really solid evidence to begin to encroach upon people’s privacy, freedom, movements, and association (Khylee Quince)

This quote demonstrates the consequences of risk seeping too far into our responses to harm and our everyday lives. McNeill (2009) similarly notes the difficulty of risk, as risks are not always predictable, and harms are not always preventable. Therefore, the long-term effect of a risk aversion mentality, and risk assessment tools, such as the encroachment of people’s rights, needs to be considered.

## **CONCEPTUALISING SAFETY**

An interesting distinction between participants’ thoughts on risk and safety is that the former was conceptualised as a quantifiable and precise measurement, however, safety was often discussed or described as a *feeling*. Therefore, participants recognised that safety could differ significantly for different people, and that there is a difference between perceived and real safety. This is articulated by Helen Algar who claimed that “safety looks and feels different to different people”. Additionally, this resonates with the following sentiment by Rachel Leota:

I think safety is a little bit in the eyes of the beholder. I think different people have different perspectives of what safety means, which can be a little bit difficult I think in our organisation, about what that means. One person's safety could be another person's threat (Rachel Leota)

Participants identified three core features that facilitated feelings of safety which are discussed respectively below: relationality, predictability, familiarity.

### *RELATIONALITY*

Out of the three words (safety, security, and protection), safety had the strongest emphasis on relationships as a foundational feature of increased feelings of safety. Tania Sawicki Mead acknowledged that feelings of safety are “grounded in relations between people”. Relationality involves feeling included, equally valued, supported, respected, and a sense of belonging. Contrasting the conceptualisation of risk above, which featured exclusionary and Othering processes, the ideal of safety prioritises social inclusion and relationships. The following commentary from Efeso Collins highlights the importance of interconnectedness in his personal life in relation to safety:

Where I know my neighbours. Where we can hang out late into the night, like the days I used to walk on the streets of Otara and I kinda knew every third or fourth house.

I live next door to the pools and the library in Otahuhu and it's got a playground as well, and all of us kind of know who the parents are because we all kind of turn up with our prams and stuff, and the kids play, but the parents get to know each other as well. And for me, public safety is the ability to engage with people at that level, so that you can have conversations and the kids are running around and you kind of feel like they're okay. There's not just one, my set of eyes on them, but all of us are looking out for each other's kids (Efeso Collins)

Efeso Collins also reflected on public engagement done by Auckland Council on their public safety and nuisance bylaws. In the research they surveyed Aucklanders to ask what makes them feel safe. The following ideas were shared:

[P]eople talked about connectedness, knowing where our playgrounds are, knowing that we can hang out, and having a place to stay. (Efeso Collins)

Similarly, Tania Sawicki Mead explained how relationships influence her feelings of safety. An element of “feeling connected to other people” and “knowing who is around” increases trust, which fosters feelings of safety. While having relationships with people around you were identified as important by participants, there were additional elements that affected safety. Helen Algar shared her experience in the Safer Waitaki Coalition and identified feeling equally valued and included in the community as important features of feeling safe. This is exemplified by the subsequent quote from Golriz Ghahraman:

I think it is maybe about feeling like there's other people like me. We look for indicators of safety and you kind of go okay, so this space is safe for people like me. [...] when you walk down the road and you see people and they're like you and you know that you're included and safe and that way. (Golriz Ghahraman)

Another relational feature was the mutual support and nurture from those around you. Tania Sawicki Mead highlighted that “being held by others and holding others in return” fostered feelings of safety. In her role, Rachel Leota recognised that she is responsible for the safety of people in prison (both Corrections staff and prisoners). To ensure the safety of her staff, Rachel Leota explained that providing them with the support, training and resources is required:

So, safety from a staffs' perspective is giving them the correct training, ensuring that they are confident and capable of doing their role, to ensure that there is great support, to ensure that whatever technology and other equipment that they have is appropriate for them. To routinely refresh that training, to ensure that they feel supported by their leaders as well in terms of the work that they are doing (Rachel Leota)

Regarding safety of non-staff within prison, Rachel Leota mentioned that if one group within the prison environment feel safe, then everyone should feel safe:

If one group feels safe, then all groups should feel safe. It shouldn't be at the expense of another. So, often when we talk about our own approaches to staff safety, we think if our staff feel safe then the people in the prison environment, for example, should feel safe also. When there are groups where safety isn't seen as a priority, then that's when people can start to actually feel unsafe (Rachel Leota)

Kim Workman reflected on his engagement with Corrections and Police regarding their safety policies. He shared that these organisations tend to prioritise concern for their own staff, rather than attempting to increase safety through improving relationships:

When you think of Corrections and Police and some of their policies, they are driven by a lack of commitment to offenders and their families, and a primary concern with their *own* safety. One of the things that struck me was in 2011 when the Corrections department decided to carry out a major review of prison safety, and the terms of reference when I got them (I was part of a group that was invited to comment) shocked me, because it was totally focused on the safety of prison staff and had nothing, no reference at all, to the safety of prisoners. And we submitted a report pointing out that everywhere in the world, that the main ingredient of safety within prisons was the relationship between prisoners and staff, and to simply look at it from the view of one of those groups was counterproductive. (Kim Workman)

Two interviews reflected on the COVID-19 response, and the narrative that staying at home, social distance, and isolating is necessary for safety. While there is scientific evidence to prove the benefit of this, it is interesting to question how the pandemic may influence our understanding of safety. Reflecting on the importance of relationships for safety, Helen Algar noted that “safety is not being isolated”. Khylee Quince shared a similar sentiment, by acknowledging that being isolated is “absolutely anathema to a Māori way of being”, as Māori are “fundamentally externally oriented”. Quince expanded on this further:

If there was one phrase to describe what being Māori is, it’s to be connected, right. I am, because we are. That Ubuntu thing. And so to narrow that down, or even just to change your gaze to be inwardly looking, and to think of that as a means of safety, is really quite problematic. (Khylee Quince)

### *PREDICTABILITY*

The second feature that participants identified as facilitating feelings of safety was predictability. This was a sense that an action, behaviour, or experience was planned or expected. An element of personal control, or trusted people in control, in your environment was linked to higher levels of safety. Additionally, action can be taken to make your situation more predictable. Khylee Quince



reflected on setting up her “environment in the way that you think isn’t asking for trouble”. Similarly, Tim McKinnel highlighted the importance of awareness of your environment and those who are around you in order to gain more control of your reality. Visibility and light were also identified as elements that increased safety, as they provide the ability to control and predict your surroundings easier. The following commentaries demonstrates how a perception of predictability increases feelings of safety:

That when I bank my money or I do online shopping, I know that my transactions not going to be interfered with. When I park my car, it’s going to be there when I return in the state it was. When I close my door to my home at night or to my family’s home that nobody else who’s unwelcome is going to come in. So, they’re the sorts of things that I think about safety, both from a personal and a broad sense. (Paula Rose)

I think the things that make me feel safe are things like knowing that people who are in charge of the government or of the community or have leadership roles in the community are secure in themselves, so safety in knowing how others are going to react to situations, there’s some predictability or a pattern to that (Tania Sawicki Mead)

Contrastingly, Chester Borrows reflected on how an unpredictable and uncontrollable situation makes him feel less safe:

I don’t feel safe when I’m in a situation that I can’t control. That might be I can’t control the behaviour of someone else, and so I feel intimidated by them. (Chester Borrows)

This raises questions around who can control the environment around them, and therefore how much influence they can have on their feelings of safety. Social and structural inequalities resulting in poverty, racism, and sexism provide a set of social conditions for people that make them more susceptible to uncontrollable, and therefore unsafe, environments (Wood, et al., 2008). For example, people living in transitional or temporary living spaces, or those who are forced into precarious employment, have less control over their environments. An Australian study on homelessness, marginalisation, and wellbeing identified that safety was important, but hard to achieve, for people who are homeless (Thomas, Gray, & McGinty, 2012). Indeed, the ability to control a person’s own environment and social conditions is associated with privilege.

## *FAMILIARITY*

The third feature that increased participants' feelings of safety was familiarity. Several participants noted that being in a familiar setting, such as home or their neighbourhood, made them feel safer. Familiarity comes from your previous experiences in a particular environment or behaviour being identified as safe:

[I]t is actually about familiarity and comfort where I am. I feel safer in Wellington than I do in Auckland, because I just know, there is a sense of familiarity and confidence that you get. And it does go to your own personal sense of wellbeing and confidence. (Andrew Kibblewhite)

Participants also shared scenarios where their lack of unfamiliarity affected their feelings of safety. Reflecting on her role as a mother, Rachel Leota shared that she would not let her children "walk around in a neighbourhood I wasn't familiar with if I hadn't been there before myself, if they were unattended and that type of thing". Compounding experiences of lack of relationships, unpredictability, and unfamiliarity, Golriz Ghahraman shared how as a woman, she would feel "less safe walking into like a sports bar late at night, where people are drunk and they're all male". Literature and perception of safety surveys frequently demonstrate the gendered nature of feelings of safety (Bridgman, 2017; Ministry of Justice, 2021c; Ministry of Social Development, 2016; Ouali, Graham, Barron, & Trompet, 2020; Polko & Kimic, 2022).

## *SAFETY THROUGH ABSENCE*

It is interesting to note that initially participants identified strong relationships and inclusion as necessary for safety, however, they frequently resorted to a 'safety from absence' mindset. As discussed in the *Chapter Three*, 'safety through absence' is a process in which perceived or actual safety is achieved through the removal of a negative stimulus; through absence of fear, violence, threat, intimidation (Jackson & Meiners, 2011). When safety is framed in this way, the response or solution attempts to remove or control the negative stimulus. Most participants framed their conceptualisations of safety in this way, by recognising safety as being achieved through 1) absence of

harm, or 2) absence of a person. This framing of safety helps to explain why we have such a high reliance on police and prison to provide feelings of safety.

Firstly, safety was identified as being achieved through absence of harm or intimidation. Andrew Kibblewhite explained that safety is “about exposure”, and therefore attempts at increasing feelings of safety can be done through “protection from harm or risk”. Expanding on this, Chester Borrowes described safety as “free from danger” or not having a crime committed against you. Speaking of her responsibility for safety of people in prison, Rachel Leota recognised that a priority is ensuring absence of any form of abuse. This is required to maximise safety of both the prison staff and prisoners:

We want our staff to be safe, you know, so in that sense that means that we want them to be safe from physical assaults, safe from abuse, safe from any psychological abuse that the job may entail for them.

For people that are in prison we want them to be safe from anybody else that might present threats to them, we want them to be safe in terms of any harm they could do to themselves (Rachel Leota)

However, as noted in the previous chapter, there is a significant amount of harm that is done within the prison. Thus, the attempt of achieving safety through absence is often not successful in producing sustained safety. Andrew Kibblewhite shared an experience of being in the presence of intimidatory behaviour, and how that affected his perception of safety. His commentary around intimidatory behaviour connected the aspects of predictability, familiarity, and relationality. Adding nuance to his explanation of safety, Andrew Kibblewhite recognises that safety is a scale based on how many actions or measures you need to put into place to achieve safety. For example, he shares that he may feel safer if he has locked his house, but he “would be safer if [he] didn’t need to lock my house”.

Safety from absence of a person explored how exclusion or banishment of a person, or group of people, increased perceptions or feelings of safety. The politicisation of safety has been framed in such a way, that it “means getting all those people off the street that threaten the general public’s feeling of safety” (Van Swaaningen, 2005, p. 291). This correlates to Norris’ (2021a) identification of isolation as a feature of fear-based safety. Isolation is a form

of social or physical exclusion, that is embedded in an Us vs Them mentality (Norris, 2021a). From the perspective of the victims they advocate for, Ruth Money and Jess McVicar shared how having a perpetrator removed from their community and distanced from them made them feel safe. Conceptualising safety through the absence of a person can be viewed as an ‘Othering’ process, in which the person who is removed is viewed in a negative light. Othering happens when a person or group of people are set apart from another individual or group, which is generally caused by perceived superiority ( Ajil & Blount-Hill, 2020; Rohleder, 2014). Othering can occur on many different levels – interpersonal, institutional, or structural – but the core component of a power imbalance is always present. This process of Othering is reflected in the following sentiments:

For most of my people, safety is that the person has either been in prison and isn’t being released from parole or hasn’t been given bail. And I don’t need to worry until the trial, and then they’ll be sentenced so I’ve got some time to be safe. They’re not in my community. (Ruth Money)

For me safety is knowing that our system is doing everything they can to keep us safe by keeping the baddies away from the public, from society, from our own little bubble. (Jess McVicar)

The phrase “keeping the baddies away” demonstrates judgment that is afforded to those who are identified as needing to be removed. Within this framing is also the expectation that the justice system is the preferred mechanism to ensure safety.

While safety from absence frames a lot of approaches to safety, there were some participants that expressed concern over this. Efeso Collins is critical of this conceptualisation of safety in the national psyche, in which the belief of “you’re over there and don’t come near me” is reinforced. Despite relationality being identified by participants as an important element to safety, the fixation on achieving safety through absence undermines this. Paula Rose noticed the public being misinformed as they commonly believe that “protection for themselves or being safe is being distanced from others by a physical barrier or barriers”. Tania Sawicki Mead reflected on how safety through absence

reinforces a fear mentality of people who we have identified as being dangerous or risky.

When we treat people like animals, when we Other people, then we become fearful of the thing that we have created. [...] To me it's no surprise, of course, if you tell yourself that people are monsters, and that the only way to deal with them is to lock them away, that you then begin to fear them even more, and that leads you to more and more risk averse, securitised ways of dealing with social problem and with people experiencing distress, or people whose behaviour we don't agree with (Tania Sawicki Mead)

### *'PUBLIC' SAFETY: SAFETY FOR WHOM?*

A discussion of safety evoked questions around 'public safety', and a concern for the lack of nuance around what those words mean. For most participants, public safety had the potential for a hierarchal, or "Us vs Them", mentality to safety. Participants noted that achieving safety was often a case of competing needs and tensions. Dominant neo-liberal thinking has also encouraged desires of people wanting to increase "security to protect themselves, their possessions and their family", often at the expense of others (Button, 2006, p. 127). Participants recognised that there are self-interested tendencies that can be expressed or prioritised, which results in certain people in the population being excluded. In relation to reintegration of people leaving prison, communities can frequently express their concern for people returning to their neighbourhood (Anderson, 2021). Kim Workman explained how this scenario might play out:

Respectable, middle-class families or communities like Epsom or whatever might say to themselves, "well I wouldn't want this guy hanging out around where we are, I'm thinking it would be a risk to us" (Kim Workman)

Questions around public safety often evoked discussions around who is identified as the public. Khylee Quince acknowledged that "terms like public and society are intended to be democratic, and they're intended to apply to everybody, and clearly they don't". The public are represented as taxpayers, and citizens that are symbolically white; while beneficiaries, minorities, criminals, and the poor are presented in binary opposition, whose presence and culture are portrayed as an attack on 'democracy'. This correlates to the

numerous consequences of racialised assimilation policies in Aotearoa New Zealand, which have branded the ‘We are one people’ movement. Most notably, Don Brash (2004) and Trevor Mallard (2004) have uttered similar phrases to this, which demonize the Māori culture and favour assimilation. An elaboration on this in the following commentaries demonstrates how public may not apply to everyone:

I think public safety often denotes the idea of the public as a collective excluding the people who might put them at risk. (Tania Sawicki Mead)

The public I guess is everybody. Maybe other than those who would deliberately be doing harm at the time that they’re doing harm. (Andrew Kibblewhite)

Being more explicit in his recognition of who is excluded, Efeso Collins noted that “the mainstream perception of public safety is that you can have your neighbourhoods, but they’re minus people who look like me”. This refers to the stereotypical make-up of certain suburbs in Auckland, and how ethnic minorities may be excluded from locations that have a high density of middle-to upper-class Pākehā. In the Auckland Council research on their public safety and nuisance bylaws what made people feel unsafe was “if you engage with a tall male who’s brown and wears a hoodie” (Efeso Collins). Hoodies have become symbols for young, brown men. In citizen and police shootings of black men, wearing a hoodie has become an aggravating feature and a rationale for the shooting (Jones, 2017; Kahn & Davies, 2017). Following the murder of Trayvon Martin, media commentary criticised his choice to wear a hoodie, noting that it was emblematic of criminality. However, relating to what Efeso Collins shared above, Bonilla and Rosa (2015) argue that “hoodies are only signs of criminal behavior when they are contextualized in relation to particular racialized bodies” (p. 8).

Speaking of the American context, Williams (2017) argues that public safety and risk logics “presume the public as white, safety as a right that inheres in white bodies, and risk as a measure of violent threat that inheres timelessly in bodies that are black, brown, and poor” (p. 38). Through this, it is evident that the term “public” is exclusionary, and the participants’ discussion above

gives similar concerns about conceptions of public safety in Aotearoa New Zealand.

## **CONCEPTUALISING SECURITY**

Security had quite negative connotations for participants, with associations such as “oppression” and “paranoia” being used frequently. Similar to risk, Tania Sawicki Mead labelled it as a “brittle” word. While participants overwhelmingly had a negative view of the word security, there are many contradictions associated with it. For example, most had a positive connection to financial security. Feeling secure was also associated with feelings of calmness or being able to relax. Golriz Ghahraman noted that security means “having your mind set at rest because you’ve taken care of the risk or you’re in a familiar space, so you feel secure”. Additionally, Efeso Collins recognised that being in his home or around family and friends makes him feel secure as he can relax and speak freely.

### *SECURITY AS AN ‘ADD ON’*

Actions, barriers, or measures were commonly identified by participants as correlating to security. Jess McVicar reflected on how she ensures security for herself and those around her. McVicar discussed that the number of security-based actions that need to be done have exponentially increased:

[S]ecurity is something that is having to happen more and more. We are having to put so many different measures in place. Even just locking your car. I lock my car everywhere I go. I stash my computer every time I go out. Because I feel like I have to because this is where we’ve come to in society that people are taking things that aren’t theirs. Because they think they can, because they think they have the right to. And a lot of that has become because there are no consequences and accountability for people’s actions. So we’ve literally got to that point where everyone is having to up the security in their life, no matter where that is, whether it’s just your home, your car, walking down the street or anything like that. Everyone is just having to maximise security at the moment. (Jess McVicar)

In a neo-liberal consumer society, the acquisition of material items, and the protection of those items, becomes paramount. Indeed, the prioritisation and

individualisation of property security has promoted the rise in gated communities, video cameras and alarms (Blandy, 2018; Button, 2006; Low, 2001). Participants identified certain practices or behaviours that can be done to maximise security. The subsequent narratives explain and highlight the similarities and differences of property security, personal security, and institutional practices of security respectively:

Sometimes it's putting security type things in place so that you don't end up exposing people to risk. Which might be the things like closing, locking the door, it might be the things like using a bank rather than your mattress to put your money under. Locking away firearms rather than leaving them out so that someone can get them. (Paula Rose)

[I]n some situations, I might feel more secure, with the door shut or the door locked, you know I might feel more secure in my car with my seatbelt on (Chester Borrowes)

[Security] can be done through many different means, it can be physical structures, types of restraints – handcuffs for instance – it could be the number of staff that we have with someone, it could be the type of activities that are appropriate for someone, it could be a type of vehicle that we transport someone in, the type of prison cell that we hold someone in (Rachel Leota)

As evidenced in the commentary above, security is conceptualised as a measure, barrier, or action that is enacted to keep things or people away from others. Therefore, like safety, the more control people have over their environment the more secure they are likely to feel. However, security becomes an 'add on', rather than a way of being. Adding complexity to Rachel Leota's identification of 'add ons' above, although they are supposed to increase security within prison, they may escalate hostility and harm. Referring back to the experiences of Mihi Bassett and Karma Cripps at Auckland Region Women's Corrections Facility (ARWCF), greater security measures and 'add ons' created conditions that escalated insecurity. The security 'add ons' are used to reinforce and reproduce who is identified as the 'dangerous Other'.

Emilie Rākete referenced Loic Wacquant's (2009; 2010) scholarship to explain how neo-liberal policy produces insecurity. The retrenchment of the welfare state under neo-liberalism in the 1980s exacerbated social insecurity. Racialised minorities in inner-city locations in the United States are



particularly vulnerable to the welfare state dismantling, which forces them into precarious lifestyles riddled with unemployment. The expansion of policing, prisons, and punishment have been the state response in many Western countries to manage these populations and reinforce their precarious position (Wacquant, 2009; 2010). Wacquant (2001) argues that reliance on the carceral state “is not a destiny in advanced societies but a matter of political choices” (p. 85).

In settler-colonial societies, Tauri (2014) asserts that social problems are often “projected ‘out from’ Indigenous communities, on to the state” (p. 26). Reflecting Wacquant’s arguments, Tauri (2014) acknowledges that this enables state control and violence to be continued through the dominance of institutions such as prisons. In a society that is becoming increasingly insecure, pressure falls on “the state to wheel out these institutions such as the police and prisons” to restore security (Emilie Rākete). This, Rākete argued, demonstrates the “strength of state power” and the way the state chooses what mechanisms to use to reduce insecurity.

### *SECURITY WITHIN INSTITUTIONS*

Discussions on security were often conflated with risk, and prison security was heavily featured. Security was therefore seen as something that was necessary based on the amount of risk that your environment poses. Kim Workman spoke of on the rise on risk aversion tendencies and how this has influenced the inclusion of more security measures:

[W]ith the avoidance of risk regime coming in, if you look at what happened in the prisons, the physical security around 1995/1996 increased significantly. They put double fences around all of the prisons. Before then there was only razor wire around Paremoremo. Now it’s in every prison. (Kim Workman)

### *SECURITY CLASSIFICATIONS*

Another way in which risk and security collide is through security classifications. Security classifications are given to people in prison, based on their risk level. In Aotearoa New Zealand there are five security classifications: minimum, low, low medium, high, maximum. Rachel Leota explained the two

sets of criteria that are used by the Department of Corrections to assess security classifications:

One set of criteria is around your internal risk, so your risk of harm to others around you, in the prison context, which is made up of a number of dimensions: the seriousness of your crime, your potential risk of escape or your history of escape, your attitudes and things that you are doing, whether or not you've had internal misconducts, if you've been found with drugs or you've assaulted staff in the past. And then we've got the external risk, so if you were to escape or be released in the community, what's your risk of harm to others. (Rachel Leota)

Chester Borrowes identified how certain attributes are likely to increase your risk level, and therefore your security classification:

[The Department of Corrections] will apply security classifications, which are about risk, in unilateral ways as well. So, for instance, often if you're young, you're given a higher security classification because you're likely to be impetuous. If you are subject to a deportation order, they will give you a higher security classification because of the risk of flight. (Chester Borrowes)

Extending on Emilie Rākete's criticisms of risk assessment tools, security classifications are measured through risk assessment and data algorithms. Rākete shared her concern for how security classifications are determined and what they mean for the daily life of those in prison. Thus, the riskier a person is considered, the higher their security classification, and the more security measures that are put into place:

The idea that someone has a high risk and so we put them in high security classification, meaning that their access to programmes, employment, counselling, seeing the sky, all this stuff is heavily restricted or outright taken away, which means that their outcomes are worse and they're less likely to become the kind of person who doesn't perpetrate the social harm that they probably did. (Emilie Rākete)

Similarly, Chester Borrowes argued that the determination of security classification often traps people in a cycle of behaviour and makes any rehabilitative effort difficult to achieve. For example, you are only able to get on certain rehabilitative courses or release to work if you have a minimum-security classification (Department of Corrections., n.d.). The lack of access to programmes that people with a higher security classification have means that their needs and root causes of offending are unaddressed. Thus, "in order to address risk", by giving a person a high security classification, you are

“maintaining a risk” (Chester Borrows). This can have significant consequences with parole hearings, as lack of access to programmes can result in being turned down for parole. The Department of Corrections has recognised that two thirds of people had not had access to any programmes at their first opportunity to apply for parole (Cook, 2021).

Rachel Leota stated that reassessments of security classifications are frequently done to ensure that a security classification is appropriate. The Department of Corrections has goals for people in higher security classifications to move through to lower security classifications. For people between maximum and low security, they are reviewed every six months, unless there is an event-based review. Rachel Leota explained the event-based review process further:

An event-based review could be for something really positive, like you’ve completed a programme and so we need to review your classification because it might be time for you to come down now that you’ve got these skills. And then if something has happened, an adverse event, if there’s been an assault, if there’s been drug use for instance, or some other kind of negative event, we will also review the security classification.  
(Rachel Leota)

Rachel Leota shared that most people in prison in Aotearoa New Zealand are minimum security prisoners, and so their security classification will only be reviewed if there is an adverse event. Kim Workman, however, challenges the frequency of security classification reassessment. He argued that “the usual system is to tie people down to a high-level security, and *then* if they keep on complying with that to lower it”. The Department of Corrections is consumed by avoiding risk and is therefore more likely to over-estimate a person’s risk level.

#### SECURITY PERSONNEL

Several participants also discussed security personnel, and how that influenced their level of security. Speaking to his experience in the court setting, Judge Phil Recordon discussed the presence of security guards during trial proceedings. For most judges, their preference is to have security guards visibly present in the court room, and often to stand beside or near them. On

the other hand, Judge Phil Recordon shared that he relies less on security personnel, as he recognised that by having them too readily available feeds into paranoia. His viewpoint is expressed below:

Within the courts, security is very much spoken about and there are some judges who refuse to sit unless there's security for them and security for their staff and the public. [...] Most judges have security guards sitting next to them, and I always sit in a semi-circle and have the security as far away as possible out of sight. For me, that's security and just being there if need be (Judge Phil Recordon)

Judge Phil Recordon also stressed his concern for security personnel embracing the power that is afforded to them through the uniform and security badge. Much like Zimbardo's Stanford prison experiment (Carnahan & McFarland, 2007), the control that is afforded to security personnel can result in them more likely to exert power over others:

[T]here are some security people who, in various parts of society where they basically wind people up, get aggressive and think that they're macho and should be, if they haven't punched someone every time they go on duty they're not doing their job (Judge Phil Recordon)

In contrast, Ruth Money argued that for the victims she advocates for, security guards in the court room increase their feelings and perception of security. Ruth shared that the visible presence of security guards "brings a lot of peace of mind to the survivors". Regarding victims in a court setting, security guards can operate as a protective factor. In contrast, Golriz Ghahraman expressed her negative perception of security personnel:

I thought of security when you said it as being like a police force enforcing something against me, like I didn't think of it as me being secure. [...] I guess the way that I relate to the word security is like as that word been weaponised against me (Golriz Ghahraman)

This speaks to how security can be felt individually and contextually. Indeed, their different lived experiences and social standing influences their interaction and perceptions of security personnel. As a white woman, Ruth's perspective differs heavily from Golriz, who is an Iranian refugee. Their lived experiences and perspectives on security personnel are varied and may also shift depending on the specific context.

Ruth Money reflected on how she prepares people for the experience of going into court by explaining its similarities to an airport. In saying that, Ruth is

also concerned by the way that the Civil Aviation Authority (CAA) and Aviation Security Service (Avsec) treat people who go through their security system. Ruth shared how security personnel can enforce power and control in a way that can be retraumatising for victims:

When you walk through airport security as a woman, let alone as a rape survivor, and you get told to “take your jacket off!” [in a hurried way], get frisked down, like really? There is such a better way to do that. I get it’s your job and I get you probably get paid 20 bucks an hour or whatever you’re getting paid. I think you know just say “hey sorry madam, do you mind? The new system is sensitive, and your jacket needs to be on in that bin”. [said kindly and slowly] (Ruth Money)

Part of the negative association that participants had with the word security was around certain people controlling others through the guise of security. Security evokes a desire to control and monitor others, which is often done by the state as an “arbiter of security” (Tania Sawicki Mead). The following commentary demonstrates how security correlates with control of populations:

I think of security and control in my mind as words that go together very closely. So, I think of barriers being put up, I think of cages and bars and separation of people, rather than collectives of people. (Tania Sawicki Mead)

Like conceptualisations of safety through absence, notions of security, and a desire for control and power, can also be underpinned by an Othering process. Tania Sawicki Mead explained how national security evokes an Othering process by fixating on “keeping others out”. This can also manifest itself through increased security measures when dealing with certain communities, which is often premised on stereotypes of ‘dangerousness’. Khylee Quince reflected on how the word security can be operationalised in a way that works against Māori through discriminatory practices:

I think of being surveilled and I think of being under surveillance, being watched. Yeah, it has negative connotations for me. [...] If I was to like play word association with security, I would think of uniforms, badges, cops. I would think of personnel. Which then opens the door to the discrimination in surveillance aspect. (Khylee Quince)

## CONCEPTUALISING PROTECTION

Protection was acknowledged as something that can occur at an individual or collective level. There was an emphasis on human rights in relation to protection, which fostered a more positive association to the word than risk or security. Similar to safety and security, participants identified practical and proactive measures that could be put into place as protection. Speaking broadly, Paula Rose and Andrew Kibblewhite identified that protection often involves a physical impediment or obstacle that is introduced to increase distance from a threat:

[Protection is] some sort of barrier to keep an individual feeling safe, feeling secure or being secure, and minimising risk. [...] So some of the barriers are our laws. And then our law enforcement agencies, whatever they might be. Some of our protections are around the use of prisons. I'm not saying they're necessarily the right ones, but they are used. Even within the prison itself, the many barriers between prisoners who are incarcerated, the staff there, and the world outside. If we're looking at things like on the computer being able to have secure websites where you can do financial transactions. So, that's what I'm thinking about in terms of protections. Some form of barrier, some form of action, or thing, that increases either the feeling of safety or safety itself. (Paula Rose)

Specific things that are in place to protect me or to create some distance between an immediate threat of harm and me. So, protection is my seatbelt. Protection is my ability to lock myself away from someone that might do me harm. Protection might be the presence of law enforcement, police on the streets, and all of that sort of stuff. Protection I probably perceive in a more immediate way. (Andrew Kibblewhite)

### PROTECTION IN THE JUSTICE SYSTEM

Regarding the justice system, supervision orders, meaningful bail conditions, or protection orders were frequently mentioned as mechanisms of protection. For the family or sexual violence victims that Ruth Money advocates for, protection was achieved through protection orders. Protection orders ensure that specific people are subjected to non-violence or non-contact conditions (New Zealand Police, n.d.-a), which can increase feelings of safety or protection:

I think the physical distance gives them a mental distance. [...] If a survivor can get physical distance, that's when they start to heal. They'll

never forget, but they can heal and then help themselves on their journey. So, they do, they need to get that breathing space really and the physical breathing space allows for the mental breathing space, and that's the key. The mental breathing spaces that actually makes a difference. (Ruth Money)

Furthermore, Jess McVicar expressed her desire for electronic monitoring to be tightened to ensure more protection for the community. She also identified that there are inconsistencies in who receives a prison sentence or a community sentence, which concerns her and the victims she advocates for. Jess argued that the current resourcing for electronic monitoring is limited, and that “there needs to be better communications with things [between the] community, Corrections and Police”:

There needs to be better options for people who have got protection orders. There needs to be better monitoring of people on electronic monitoring and people who have got protection orders on them. Because at the moment Corrections are trying to do all they can, but they are outrun. There's just not enough manpower on the ground to the people that are out on the electronic monitoring. (Jess McVicar)

To add nuance to this argument, Rachel Leota explains how electronic monitoring may act as a protective factor for people who are subjected to those conditions. For example, if a person on electronic monitoring is wrongly accused of committing an offence, their GPS tracking can be used in their favour as evidence of their innocence.

#### THE 'PROTECTOR' AND 'PROTECTED'

Protection holds relevance in many settings, and several participants shared their thoughts on protection beyond the justice system. For participants, protection often evoked feelings of responsibility or duty of care for others. There was a sense of collectivity embedded in discussions around protection. Tania Sawicki Mead argued that protection can be viewed as “an act of care and love” that we can provide for each other. The word ‘vulnerable’ was frequently utilised and would refer most commonly to victims or young people but could also extend to family members or people in prison. The word protection therefore fostered images of a vulnerable person in need of support or care. For Golriz Ghahraman, vulnerability also coincided with people who

are marginalised. The following commentary demonstrates how protection is focused on vulnerability:

I think protection generally for me means that there is some other vulnerable person, so we want to protect the vulnerable people, and that could be children, for instance, it could be victims, it could be anybody, for any particular reason (Rachel Leota)

Most participants that conceptualised protection in this way saw themselves as the “protector”. They resonated with the role of protector, and the responsibility that was associated with that

I’ve spent my life seeing myself as the protector, I suppose. So, I feel like protection is something that is applied to you. (Chester Borrows)

I saw myself as more the agent in that. So, I wasn’t thinking, what would I feel if I felt protected. I felt more like Oh, how would I protect? So, would be like a responsibility that I’d have, like a responsibility to protect. (Golriz Ghahraman)

Similarly, this resonated with Rachel Leota as she felt a sense of responsibility for protecting her staff. Protection was viewed interchangeably with support, in which Leota needed to provide support in a myriad of ways to ensure protection of others:

I think the protection that I provide is support to my team and staff. The provision of resourcing, the provision of training, the provision of all the things they need to do to do their job well, support when things aren’t going well, you know, protecting them and protecting the morale to ensure that our staff operate with dignity (Rachel Leota)

Speaking of his daughters, Efeso Collins recognised them as young and impressionable, which also evokes perceptions around vulnerability. While ensuring that they feel protected in their home, he also acknowledged that he needed to provide them with the tools to protect others. Thus, the ‘protected’ and ‘protector’ categories are not mutually exclusive:

I want them to feel protected and in making them feel protected and knowing protection in this house they might seek to protect others, and hopefully Mum and Dad are giving them a language to assist in how we protect them at all levels (Efeso Collins)

Efeso Collins shared a story in which his daughter demonstrated an act of protection for her friend. This narrative demonstrates the complexity of Collins providing protection for his daughter, but also his daughter taking on the role of a protector:



When we introduced her to Weet-bix<sup>16</sup> she stopped eating two and we would save one. I remember asking her, “why are you saving one?”, and she said, “Well Dad, you said that we’ve got to look after everybody. Well, I’ve got a friend and she was telling me that they don’t have much food, so if I eat one, then I can give my other one for her if she’s hungry” (Efeso Collins)

Tania Sawicki Mead reflected on how the language that is used in relation to young people differs from how we talk about adults. This is reflective of their presupposed vulnerability and that young people need protection. The comparison between young people and adults is especially evident in policy and government language use:

Things like protection, security, and safety take on different terms when we are talking about young people who’ve committed harm, compared to adults where I think that language very quickly gets jettisoned. I find that really interesting obviously, as well as the kind of different policy choices that we make after that arbitrary age of 18. When people turn 18, we talk about them really differently. So, we talk about young people being protected from bad influences, or young people being protected from the circumstances that they might be living in (Tania Sawicki Mead)

There were concerns about the paternalistic nature of conceptualising protection in this way. Tania Sawicki Mead identified that divisions of ‘protector’ and ‘vulnerable people in need of protection’ can be disempowering for the people deemed to be vulnerable. Discourses of vulnerability merge with risk, whereby people identified as vulnerable are perceived to be ‘at risk’ of harm or may present ‘as risk’ to society (Stanley & Monod de Froideville, 2020). This labelling justifies greater government involvement and control over people, particularly Māori. There were some expressions of concern regarding connection to the child protection system (Oranga Tamariki – Ministry for Children). The negative and damaging experiences of Oranga Tamariki removing children from their whānau under the guise of care and protection has been widely examined (Alexander, 2021; Keddell, Fitzmaurice, Cleaver, & Exeter, 2021). Successive governments have failed to protect those most vulnerable, while simultaneously protecting abusers from accountability or scrutiny (Stanley, 2016).

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<sup>16</sup> A type of breakfast food

This systemic failure is not unique to Aotearoa New Zealand. Indeed, many Indigenous populations have shared this experience. State abuse has regularly occurred in the name of ‘protecting’ Indigenous populations. The Stolen Generations in Australia and the residential schools in Canada are vivid examples of this and have only recently become recognised as state crime (Cunneen, 2007). Relating back to Aotearoa New Zealand, Emilie Rākete shared how the government’s agenda of ‘protection’ does not constitute long-term and sustainable protection:

[I]n child care and protection, you’ll see destitute families coming from backgrounds of extreme deprivation and trauma, with no support, protection to them looks like taking their children away, right. Which would be funny actually, if it wasn’t genocide. I guess just the barren cynicism of the idea of protection, when in almost all manifestations of so-called protection it’s immensely harmful and it’s targeted at the lowest strata of the proletariat, right. If you’re protecting people by taking their kids away, or by putting them in prison indefinitely, or by preventing from seeing the sun, I think that we can see that protection does not mean keeping people safe. It means keeping the operation of capitalism in working order, regardless of the harm that it does to people (Emilie Rākete)

Much like safety and security, protection has an unbalanced element to it. Providing protection to one person, or to a group of people, may infringe of someone else’s level of protection. Thus, a person may become more protected through a certain mechanism, but this may be done at the expense of someone else. Tim McKinnel shared how social structures operate as a barrier for some people to receive appropriate protection. Therefore, not all communities have the same access to protection:

I think economic resources and time allow those that are better off in society to be protected, undoubtedly that’s true. But not only at an individual level, but also a community level in terms of the layout of communities and the way they are designed, and all of those sorts of things are operating across different strata of society. (Tim McKinnel)

## **PART II: OPERATIONALISATION OF RISK, SAFETY, SECURITY, AND PROTECTION: SWORD VS SHIELD**

The sword or shield analogy is frequently used in legal scholarship but is rarely defined (Ewert, 2007; Tulkens, 2011). Lowell Ewert (2007), a Canadian

scholar in Peace and Conflict Studies, argues that the law can be a sword or a shield. The law can function as a shield as it protects “the less powerful from abuses by the more powerful” (Ewert, 2007, p. 4). However, the law can alternatively be “horribly misused to dominate, oppress, and abuse”, and therefore functions as a sword against people (Ewert, 2007, p. 4). Therefore, the law may be used to protect people, or people may need to be protected *from* the law<sup>17</sup>. Over 50 years ago, Herbert Packer (1968), in his book *The Limits of the Criminal Sanction*, acknowledged the use of power in responses to crime. He concludes by arguing the dual function of criminal sanctions, which produce disparate consequences:

The criminal sanction is at once prime guarantor and prime threatener of human freedom. Used providently and humanely it is guarantor; used indiscriminately and coercively, it is threatener. (Packer, 1968, p. 366)

In her interview, Khylee Quince introduced the sword or shield analogy to explain how the operationalisation of risk, safety, security, and protection is not experienced equally. Her commentary is supported by the insights and arguments mentioned by other participants in this chapter. The way in which these four words are conceptualised can operate as a shield or a sword. For some segments of society, the framing and operationalisation of these words serves to ensure their interests are prioritised. However, there are some people within society that experience the operation of these words as swords. That is, the process and practices that are put in place to uphold these words and what they value are used against people. This results in certain people being control, monitored, punished, oppressed, and isolated – enacted through a sword – in order to shield others. Therefore, there is a process of Othering and hierarchy at play when these words are utilised. Prior to, and during, the interview period the Armed Response Teams (ARTs) were a hotly contested

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<sup>17</sup> An example of the law functioning as a sword can be evidenced through the unintended consequences of recently introduced legislation to respond to cybercrime. The rise in ‘sexting’ and image-based sexual abuse has resulted in legislation change in the *Harmful Digital Communications Act 2015* (Meehan, 2021). The intention of these legislative changes was to protect young people from child exploitation material. However, in some circumstances people who have consensually sent images of themselves to other people have been criminalised (Levick & Moon, 2010; Meehan, 2021).

issue. Therefore, the ARTs are discussed below to demonstrate the sword or shield analogy.

### **POLICE AND ARMED RESPONSE TEAMS TRIAL: SWORD OR SHIELD?**

Policing was frequently alluded to when exploring how different people seek out safety, security, or protection. For some sectors of society, the Police are a symbol of protection and increase those peoples' feelings of safety. It was acknowledged by participants that some people take comfort from having police presence, whether they are victims of crime or segments of the general population. For the victims that Ruth Money advocates for, "they feel safe when the police are in the courtroom". If a court process is lengthy – which is often the case of serious or sexual violence cases – there may be a "friendship that evolves" between Police and victims, which makes them feel "warm and protected" (Ruth Money). Emilie Rākete reflected on why certain segments of the population refer to the Police as a mechanism of safety or protection:

When the cops say 'Safer communities together' a lot of people believe that. For a lot of people, the existence of the police fulfils a really important ideological and emotional need in their lives. They need to know that there is something that is being done about the very real trauma, and problems, and pain in their lives. And if the cops are what the solution is, then they'll cling to that, in the same way that when you're a kid and when you're lost in the supermarket, you'll hold on to any adults' hand (Emilie Rākete)

Research carried out in West Auckland in 2017 examined levels of safety in the community, and the different perceptions experienced by different community members (Bridgman, 2017). Pākehā members of the community were strongly in favour of more police patrols, and a tough-on-crime approach to safety. Conversely, Māori and Pasifika people were more interested in promoting a collaborative and relationship building approach amongst community members. The research found that Māori were most likely to experience abuse and aggression, and Pasifika people were likely to be isolated from their neighbours. On the other hand, Pākehā were identified as the least vulnerable group, but had higher levels of fear of crime and lower tolerance levels (Bridgman, 2017). This demonstrates that one approach to

safety (i.e. more police) may operate as a shield for certain communities. Given what is known about institutional racism and discriminatory policing, it is likely that this same approach would operate as a sword against Māori and Pasifika communities (Workman, 2021a).

The Armed Response Teams (ARTs) in 2019 and Tactical Response Model (TRM) in 2021 exposed the competing tensions of safety, security, and protection. ARTs were trialled between October 2019 and April 2020 as a response to the 2019 Christchurch terrorist attack. They were introduced in Christchurch, Waikato, and Counties Manukau Police Districts, which were identified as high-risk locations through the Police Gun Safe programme (New Zealand Police, n.d. -b). The trial was introduced under the guise of public safety, however, there were several debates that highlighted how some communities felt unsafe due to the ARTs (Bradley, Stanley, & Lindsay, *Policing: Past, Present, and Future*, 2021; Buttle, forthcoming). There was significant pushback and concern from the community, especially in Counties Manukau – a region with a high population of Māori and Pasifika populations – as the trial had disproportionate effects on certain populations (Dunlop, 2020; Norris & Tauri, 2021).

The ARTs were mentioned frequently in interviews, as debates regarding the ARTs featured discussions around risk, safety, security, and protection. Participants' narratives of ARTs are supplemented with media coverage and the Police evaluation documents below to demonstrate a case study of risk, safety, security, and protection. A significant amount of the discussion below centres around narratives of safety, in particular challenges to the commonly utilised phrase “public safety”.

#### CRITICISMS OF THE ARMED RESPONSE TEAMS TRIALS

Participants were concerned with the selection of suburbs for the trial, and that the Christchurch terrorist attack was an invalid justification for the placement of the trials in Counties Manukau and Waikato. The views of participants are also supported by the criticisms of others (Bradley, Stanley, & Lindsay, *Policing: Past, Present, and Future*, 2021; Norris & Tauri, 2021).

The selection of these regions reinforced and perpetuated stereotypes of certain populations being deemed as dangerous or risky. Tim McKinnel and Efeso Collins were both very vocal about this in the public (1News, 2019), but also in their interviews:

Arming a roving police unit to go to predominantly poor areas, given everything we know about how policing is done, was a flawed approach to it. (Tim McKinnel)

[Arming police] feeds into the stereotype that operates at our national psyche level. So, we just think your people in South Auckland are dangerous, so the police want to arm themselves and the world looks in and thinks yes, actually that's a really good thought, because the media have for the last 100 years helped us understand just how dangerous it is in South Auckland. No evidence, no logic whatsoever (Efeso Collins)

The lack of communication between the Police and the community prior to the ART trial demonstrates a lack of commitment to the public. The New Zealand Police's slogan and promise of 'Safer Communities Together' seems to not be upheld through this lack of communication, as there is a lack of 'togetherness'. This has been publicly criticised (Bradley, Stanley, & Lindsay, 2021; Checkpoint, 2020), and the following participants supplemented these arguments:

The ARTs were an approach that lacked consultation with community. If the community is feeling unsafe you talk to the community about what would make them feel safe. You don't propose an armed unit. (Tim McKinnel)

If you look at what the police were doing, they got people who were part of the armed offenders response team to be equipped and ready to go. That sends a really poor message to the community. So, you're not building trust. (Efeso Collins)

Chester Borrows argued that any consultation period by the Police operates more as a tokenistic effort, rather than as a genuine effort to involve the community:

I think that the police talk about 'Safer Communities Together', but they want to run it. So, they don't want to be answerable to the communities. They will have, sort of consultation, telling the community what's going to happen. And the community actually want to have a lot more of a say about how communities are policed. (Chester Borrows)

Police have made steps to improve on their communication with the public in 2021 with their Tactical Response Model (TRM). The TRM had three key

features: “enhancing frontline training; improving frontline access to specialist capability, and strengthening risk-based deployment and technology” (New Zealand Police, n.d. -c). While similarities between ARTs and the TRM were identified, there were some differences in the approaches that were proposed (Small, 2021). In September 2021, the Police opened a four-week consultation period with the public for feedback on their TRM (New Zealand Police, n.d. -c). As part of the consultation process, the Police held 570 engagement sessions with community members, and received 214 responses from others (New Zealand Police, 2021). However, the length of this consultation, and the limited amount of information about the TRM available to the public during this consultation, was heavily criticised by groups such as People Against Prisons Aotearoa (PAPA) (2021).

Reflecting more broadly on Police engagement with the public, Paula Rose acknowledged the importance of open communication. When Paula was involved in running an armed offenders training at Police College, she was surprised to see them doing it “fully armed in all their black, scary kit”. With a mixture of humour and honesty she suggested they held onto wooden “firearms” to put the public at ease. Paula initiated a survey of the nearby community to gather their input. The responses they received were understanding of the training needs of new recruits, but the community wanted to be informed of when it was likely to take place. As a result, regular letter drops began to take place prior to a training so that the surrounding community were prepared to see armed police walking around. This speaks to the connection between feelings of safety and predictability of behaviour, that was illustrated earlier in this chapter. With the community knowing when to expect armed offending training, they could predict that fully armed police officers would be present in their community at a certain time.

#### POLICE ARMAMENT: COMPETING TENSIONS OF SAFETY

PAPA were a large driving force in rallying public pushback against the ARTs. PAPA’s coalition, Arms Down highlighted the disproportionate impact of the ARTs as well as police armament more broadly (Molyneux, 2020; People Against Prisons Aotearoa, 2020a). The campaign also drew on the murder of

George Floyd by police officers in Minneapolis that sparked the Black Lives Matter movement (People Against Prisons Aotearoa, 2020b). Emilie Rāketē reflects on why there was such an upsurge in public pressure in Aotearoa New Zealand to police armament:

I think most of the opposition to the Armed Response Teams trial was from communities who are materially affected by the national exploitation of Māori and Pacific people in this country. Most people who I saw talking about this were a part of these communities, were from working class, brown, Pacific, Māori communities, who were opposed to it, not because of what armed police would say about race relations in New Zealand, but because of what armed police would mean for the possibility that they would get shot in the head. So, I think the driving force of the pushback against the Armed Response Teams was a recognition by these communities that policing is a fundamentally colonial and illegitimate project. (Emilie Rāketē)

Although the ART trial ended in April 2020, the death of police officer Matthew Hunt while on duty in June 2020 reignited the debate on police armament (Donovan, 2021; New Zealand Police Association, 2021). A core driver of arguments in favour of police armament was police safety. John Buttle (forthcoming) studied the deaths of police officers in Aotearoa New Zealand between 1887 and 2011, and found that more fatalities were due to accidents rather than acts of violence. Additionally, there are many other industries with higher risk of fatalities and thus policing is not the most dangerous occupation in terms of potential workplace death (Buttle, forthcoming). Participants acknowledged that there is justification for the police to be concerned about their own safety. However, they recognised the nuanced debates, and that arming police officers does not increase police safety, or the safety of the wider community:

[T]he principal reason for being armed is for their own safety. Now, acknowledging what are known as the 501 gangs, gangs that have been formed as a result of the Australian's coming back to New Zealand, has ramped up the gang scene significantly. These guys do carry arms routinely, they're often semi-automatics, so the police, in a way, have every reason to be worried. But their response has been 'We want routine arming'. Well, all the evidence we know of says that when you do that, the killings increase. And it's not only the gang members that are murdered, but it's the police. And so, it doesn't [increase] safety at all. (Kim Workman)



I think that the safety issue that they rightly wanted to address was the safety of police officers. I think there is a problem with firearms and certain sectors of society's access to them, and their use of them. (Tim McKinnel)

For an increasing number of firearms within the general population and within the criminal population, a response back is understandable from the perspective of keeping officers safe. (Paula Rose)

I want our boys, to be safe. Because that's important aye. And when I talk about our boys, I'm talking about my relatives who are cops. But I think there are there are better ways to do it. (Efeso Collins)

There has been a rise in discussion of whether police armament increases police safety. Farmer and Evans (2021) did a comparative analysis of four countries with different approaches to police armament. They found that there was "insufficient empirical evidence to support the expectation that routinely arming police officers increases community safety" (Farmer & Evans, 2021, p. 1082). Additionally, Mackenzie, Bradley, and Lindsay (2019) present the 'mutual escalation argument', in which arming police increases the public's desire for gun ownership. The ARTs exposed the competing tensions between different peoples' safety. These tensions are between police safety, and the safety of different segments of the public, depending on their pre-existing relationship with the Police. The following sentiments from Tim McKinnel and Efeso Collins demonstrate their thoughts on the competing tensions of safety below:

[T]here are tensions, competing tension in society, and solutions too often have favoured the powerful, and the Police are regarded as a powerful institution. They have powers that are relatively well resourced, and they have political backing. So, the Armed Response Teams were an artifact of power in society, that the tension and care was given to police officers, frontline police officers, not necessarily undeservingly, but it was placed ahead of community safety. (Tim McKinnel)

I think it's important that we understand, no one is saying your safety is more important than someone else's. We all want a safe community. A safe community means the police are safe when they're at work because you want them to be able to go home to their families, but in the same way, our community needs to be safe. And you look at the overseas interactions between black or migrant communities and the police and they're always negative, and my view was that we're heading down that path if we were to have more guns held by police on our streets. (Efeso Collins)

Efeso Collins publicly criticised the ARTs and was concerned for what they would mean for his community in South Auckland. ARTs were introduced to ensure safety for police officers and the public. However, Efeso Collins believed it “was a complete farce and completely misleading” for the Police to say that it was “in the interest of public safety”. He expanded on this point further:

Our connection with the Police has historically been poor and it sends a really poor message to my community if we then say well for everyone to feel safe, even though you’ve had really bad relationships with us over the years, we’re just going to give our cops guns and they are going to be available to come out and to respond to kind of highly intense type situations and I don’t accept that. (Efeso Collins)

Similarly, Emilie Rākete noted how certain segments of society benefit through practices that are introduced for the purposes of serving the needs of the ‘public’. Neo-colonial policies are deployed by the state and may not engage with the multicultural diversity of the population. This, in turn, maintains an unequal status quo. This is due to fundamental differences in what is best to serve the needs of a community. The commentary below illustrates how approaches of seeking justice between Pākehā and non-Pākehā differ:

I think a lot of the time, what we call the public is actually riven with these internal contradictions between different populations that have different interests or are affected in different ways by these things. I think the most obvious one is between Pākehā and non-Pākehā responses to the justice system, because in my experience at least, the responses of Pākehā and non-Pākehā – especially Māori – towards justice issues are really different. I think that when talking to Māori, which is where I am my most comfortable, it’s much easier to get people to understand that [prison] literally does not work and was never intended to work for the purposes that we’ve been told that it’s for. And it’s not hard from there to say, “well the white man lied to us, and robbed us last time, the Crown is lying to us and stealing from us now”, because the historical precedent is there, and we all live with it every day. So, I think kind of drawing on the history of these contradictions is an important part of like helping people understand, but not everyone stands in that history, not everyone feels it, and so I don’t think that this strategy is going to work every time (Emilie Rākete)

These competing tensions raise important questions around whose safety is prioritised over the safety of another. Here, the Othering process is demonstrated through protection not being equally applied to everyone. Tania

Sawicki Mead and Khylee Quince questioned who is being protected by the Police and their policing behaviour:

[P]olicing is often justified on the basis of protection. Protection from others and from harmful situations, but in practice that is obviously much more complex. Who gets to decide how they feel protected, and by whom? We don't get a lot of say in that I don't think when it comes to the justice space. (Tania Sawicki Mead)

Police being there to protect and serve, but to protect and serve who? (Khylee Quince)

#### POLICE: A SOURCE OF SAFETY OR HARM?

Participants explained that a history of negative interactions with the Police – either through personal or collective experience – can shape how you view the Police or other justice institutions. Across several decades the relationship between the New Zealand Police and Māori has been fraught (Bradley, Stanley, & Lindsay, 2021; Workman, 2021a). For example, Paula Rose mentioned how a person's perception of the Police may be influenced by whether they or their whānau had experienced the Dawn Raids. During this period, police were displaying aggressive and intimidatory behaviour that was “racist, discriminatory and unfair” (Workman, 2021b).

There is extensive research that speaks to the institutional racism within the Police (Bradley, Stanley, & Lindsay, 2021; JustSpeak, 2020; Norris & Tauri, 2021; Tauri, 2005). Given this reality for Māori and Pacific communities, the ARTs and the Police more broadly do not resemble safety. This can be problematic when the solution to safety that the Police offers involves armament for Police:

So, then you get told that the same people who see you as a criminal are going to be regularly carrying guns in your community. Like are you going to feel safe? Like does that sound like a good safety protective mechanism for *you*? The ‘criminal’. Like that's what you already know they think of you as. And if not you, then, your son, your nephew, your cousin. So that's what those communities were experiencing, and I don't think anyone can really understand that if they look at a cop, and they go “oh that's what I would call if my house got burgled” because that's not what everyone has experienced. (Golriz Ghahraman)

For some people, the Police do not just make them feel less safe but can also be identified as a source of harm (Te Whaiti & Roguski, 1998; Workman,

2021a). The following commentary from Khylee Quince speaks to the negative collective experience that many Māori face regarding the police.

I'm not going to commit any major crimes, but like every Māori person, I sweat and feel uncomfortable as soon as I see a cop car, as soon as I see an officer in uniform, and most people take comfort from that. And yet big sectors of the community don't. So, when we're talking about public, you're talking about certain demographics, but really large chunks of young people, brown people, minorities, you know, people that are likely to be targeted or have histories of quite difficult interface with the police and prison systems don't have that feeling of safety, quite the opposite.

Are you fearful when you see an officer in uniform? Yes, I am. Have I ever been arrested? No, I haven't and I'm not likely to be, but I still don't like them because of the shared collective experience. And if that was different, we would feel differently about it. (Khylee Quince)

Policing by consent is a style of policing that is informed through garnering legitimacy and trust from the public (Hinds & Murphy, 2007). This is the preferred approach from the current Police Commissioner, and he notes that it is important to maintain a policing by consent agenda (Bradley, Lindsay, & Stanley, 2022; Cooke, 2021). Khylee Quince (2021) has recently expressed a challenge to "policing by consent". In her interview, she shared that it is not policing by consent when not everyone is treated equally and fairly by the Police:

Consent from whom? Who gives it? What's the nature of that consent? How informed are people? And obviously that comes back to the Armed Response Trials. So, the idea is supposed to be democratic, and yet the people that it applies to, the people that benefit from it, and the people that are harmed by, the people whose lives are affected and intruded by practices that are meant to protect the public or to prioritise public safety is not democratic (Khylee Quince)

Workman (2021a) similarly argues that policing by consent materialises through predominantly protecting white middle class. Examining policing practices in Aotearoa New Zealand, Richard Hill (2008) identifies that it is often done through coercion rather than consent. The nature of policing encourages coercive and control-based approaches. Police officers "are authorised to employ coercion routinely, on a daily basis, against those seen to be violation 'order and regularity'. They are engaged in social control on behalf of the state" (Hill, 2008, p. 41). Additionally, increases in police

armament and militarisation of police forces reduces public confidence and trust in the Police, thus hindering chances of policing by consent (Mackenzie, Bradley, & Lindsay, 2019). This argument demonstrates how difficult a policing by consent model is, despite potentially good intentions.

## **CONCLUSION**

Understanding conceptualisations of risk, safety, security, and protection are important as they shape responses to harm. Risk and security were perceived the most negatively by participants, due to their supposed impartiality. Safety and protection, on the other hand, emphasised relationships and obligations to others. Despite these differences, all four concepts demonstrated an element of Othering or exclusion which ostracised and marginalised certain segments within society. The Armed Response Team trials and Tactical Response Model introduced by the New Zealand Police demonstrated how the conceptualisation of each of these words can be weaponised against communities. Within Aotearoa New Zealand, participants recognised that Māori were more likely to experience the operationalisation of these words in a negative manner.

It is evident that many state agencies are intertwined with risk, safety, security, and protection, which operate as 'loaded words' (Matthews, 1947). The state is continuously legitimised as being responsible for mitigating risk and maintaining safety, security, and protection. From security personnel, the police as a means for 'safety' or 'protection', or the Parole Board determining who is 'risky', it is hard to conceptualise these words without acknowledging the state. State institutions, then, become affirmed as managers of risk, safety, security, and protection. Relying on the state can be detrimental, given what is known about the injustice, oppression, and violence that can occur in the name of risk or safety. Golriz Ghahraman's vision of "safety as being with our communities" provides an opportunity to critique how much we rely on the state. This aligns with Norris' (2021) idea of

'We' keep us safe, which draws on the collective, rather than the state, as a response to harm.

Moving into a more hopeful outlook, *Chapter Seven* explores participants' visions for change. Within this transformative viewpoint, reconceptualisations of risk and safety are offered, through the concepts of humanising risk and 'safety from presence' (Jackson & Meiners, 2011). Through these reconceptualisations, relationships and wellbeing are placed at the forefront to counteract the Othering and exclusionary tendencies of contemporary conceptualisations of risk and safety that were explained in *Chapter Six*. Widespread appetite for change from participants is discussed, and a variety of suggested changes to the current justice system are identified. Despite promising suggestions towards change, participants' views of prison abolition are examined, with many finding discomfort regarding the 'dangerous few'.

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## CHAPTER SEVEN: VISIONS OF CHANGE

While the previous two chapters have highlighted the shortcomings and harms of the justice system in Aotearoa New Zealand, this chapter is written from a place of hope. The purpose of this chapter is twofold: to provide reconceptualisations of risk and safety, and to share participants' visions for change and provide some suggestions for what change should be prioritised. In Part I, risk is reconceptualised through the notion of 'humanising risk'. Humanising risk was inspired by the kōrero with Khylee Quince, and similar sentiments were also highlighted across multiple interviews. This reconceptualisation demonstrates a move away from managerial and algorithmic thinking regarding risk, and instead places people in the forefront on decisions about risk. Safety is then reconceptualised by drawing on Jackson and Meiner's (2011) notion of 'safety from presence', which provides an alternative to 'safety from absence'. Safety from presence emphasises providing people with the relationships, resources, and healthy environments to enable them to flourish. This section draws heavily on Helen Algar's interview and experience with *Stronger (Safer) Waitaki*, where she emphasised "wellbeing as a prerequisite to safety". Social bridging, and getting to know the people around you, are highlighted as important elements to enhancing wellbeing and safety.

The second part of this chapter explores the potential for change. Firstly, participants' reflections on the appetite for change are mentioned, with an acknowledgement that most people are in favour of a less punitive justice system. Next, a 'smorgasbord of visions' is outlined, which speaks to the variety of suggestions that participants identified. Here, the broad range shows many promising areas for change, but also highlights the overwhelming nature of transformative change. Changes suggested by participants included public education around injustice in the system, addressing root causes that lead to offending, and responding to harm collectively. To conclude, this

chapter contends with the question of the use of prisons in Aotearoa New Zealand. Participants' discomfort with prison abolition is noted, with a discussion on the common concern around the 'dangerous few'. Despite this positionality, most participants were strong supporters of reducing the prison population and investing in alternatives to incarceration.

## **PART I: RECONCEPTUALISING RISK AND SAFETY**

Risk, safety, security, and protection are currently conceptualised in such a manner that means they can operate in an exclusionary way. This led to participants suggesting ways in which some of these words may be reconceptualised. The following section focuses on reconceptualising risk and safety, as these were the dominating concepts that participants drew on when discussing the potential for change. While security and protection featured in the previous chapter, they will not be discussed in this chapter. This allows more room to critically imagine how risk and safety can be reconceptualised. That being said, there is some relevancy of security and protection in the reconceptualising safety section. Similar to the previous chapter, reconceptualisations of risk are offered first, followed by a discussion of reconceptualising safety.

### **RECONCEPTUALISING RISK: A HUMANISING APPROACH<sup>18</sup>**

As noted in the previous chapter, contemporary conceptualisations of risk, that prioritise risk aversion through risk assessment tools and algorithms, can result in people being classified as risky, and treated in a dehumanising way (Dagan & Dancig-Rosenberg, 2020; Simon, 1988). 'Humanising risk', a theme derived out of Khylee Quince's interview amongst others, offers a reconceptualisation of risk which centres people and human relationships at the forefront of risk decisions. There are two aspects that are considered through this reconceptualisation of humanising risk. The first is to recognise

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<sup>18</sup> This section is adapted from Gordon & Webb (2022)



the people who make subjective decisions around the development and application risk, with a particular focus on the power associated with their position. The second, and arguably more importantly, is to acknowledge the humanness of the people who are identified as risky.

Khylee Quince reflected significantly on her role on the Parole Board, and the importance of the decisions the Board makes regarding risk. While the Parole Board are provided with a myriad of documents to assist in their decision making, Khylee Quince highlighted the importance of witnessing people ā tinana (in person) and kanohi ki te kanohi (face to face). A person's physical presence and their ability to engage can offer further insight than what is provided in a data-based risk assessment. Oral evidence, from both a person and their whānau, can provide an alternative measure of a person's risk level. Bringing a sense of human connection and an emphasis on relationships is useful to identify whether the risk assessment is an appropriate depiction of a person. Khylee Quince noted that having the ability to "say no to the computer" and override or underwrite risk data can be very useful:

Our job is to take the material, which is hundreds and hundreds of pages of psychological babble, which comes up, spits out all, you know, all these numbers and all this risk profile, but then you talk to the person, and you test the data. So, this says your risk, your risk areas and your high risk situations are X, Y, Z. You talk to me about how you've mitigated that risk, or how you plan to mitigate that risk. And then we make a human judgment (Khylee Quince)

Qualitative reflections of a person's experience of the justice system and their changes in behaviour or attitude can provide more detail than risk assessment tools. An alternative to using algorithms and data to measure a person's risk level could be drawing on the perspective and thoughts of their whānau. Paula Rose acknowledged how whānau of people in prison can provide more context to how a person's behaviour has changed, and how that may affect their risk level. She shared how this is useful when she is making decisions on the Parole Board:

[I]f I think about my criminal justice experiences with the Parole Board, part of that is also about the oral evidence that you get from participants. Like family members, whānau coming along to the Parole Board and I'll often ask a question such as "have you seen any changes and your boy or your girl?" That tells me a lot. Especially when you get

them to say, “Well, what are those changes? How have you seen them?” And when they start saying “Well, if I rang them a year ago, they’d hang the phone up, but now they’ll talk to me and they’ve told me about what’s happening”. So, when we talk about evidence, I think for me it is far broader than perhaps some more narrow, court admissible evidence. (Paula Rose)

Cultural reports were implemented under Section 27 of the *Sentencing Act 2002* to recognise cultural needs in sentencing and have become increasingly popular (Martin, 2021; Radio New Zealand, 2021). They operate to push against the deficit lens of risk and to provide personalised context that helps to humanise the person. They are backwards looking, which tells the whakapapa of a person, and forward looking, by recognising the protective factors that are currently in their lives or need to be reinforced to produce positive outcomes. Recognition of protective factors and identifying what is contributing positively to a person’s life is useful. At the time of her interview, Khylee Quince had completed over 150 cultural reports since 2017. These have predominantly been in the court process, where judges recognise the importance of cultural reports to provide more detail. Khylee Quince acknowledged that the uptake has been less enthusiastic in the Parole Board setting, but that her and Kim Workman are working hard to implement them more. The rationale for cultural reports is that they widen the gaze beyond risk assessment data:

I think it’s a means of pushing back on that narrative about a person. And, also on pushing back against the individualistic focus of ‘here’s the pathology of this particular person, what’s wrong with him or her’ and [cultural reports are] about what has happened to him or her and who are they. And so, it’s widening the gaze. (Khylee Quince)

Tania Sawicki Mead argued that to be transformative, risk policy and practices need to be “grounded in emotions that help us see each other and forgive each other and feel for each other and have empathy”. This reinforces the care-based approach that Norris (2021a) advocates for, which prioritises strengthening relationships with people around us. Tania continued, stating “I think it’s very hard to hold onto the empathy while you are feeling fear, and anger obviously, and guilt”. Therefore, when clouded by emotions such as fear and anger, the distance between people is spread further. Prioritising more inclusive emotions, such as forgiveness and empathy, is more likely to result

in outcomes that provide long-term and sustainable healing when harm occurs.

Both Tania Sawicki Mead and Efeso Collins acknowledged that risk policies and practices that reinforce social exclusion are ineffective. Instead, it is crucial that respectful and compassionate relationships are established and maintained. To be bold and transformative with the way we approach risk, there needs to be a change in how we interact with each other. Humanising risk therefore enables us to see each other as people, rather than as risks to be managed:

We have to talk more about outcomes and responses grounded in emotions that help us see each other and forgive each other and feel for each other and have empathy. I think it's very hard to hold onto the empathy while you are feeling fear, and anger obviously, and guilt (Tania Sawicki Mead)

I think it's the way we manage the risk, and some people just talk about risk and say we need more cops, arm them, and build more prisons. Or there's people like me who acknowledge there's a risk, but I'm more interested in how we build an inclusive society, so that we all know each other. (Efeso Collins)

Relationship building is crucial in making transformative changes in the justice system in Aotearoa New Zealand. Internationally, this idea of community relationship building is supported by desistance scholars. Fergus McNeill (2009) shares his vision of tackling crime, which “requires that we nurture the collective efficacy of communities” and “that we are also all part of the solution” (p. 23). Strengthening community connections and relationships is a core element to achieve community safety. An emphasis on fostering community networks and encouraging pro-social relationships is argued to produce better outcomes than current risk conceptualisations (McNeill, 2009).

Beyond seeing the humanity of those that experience risk management scrutiny, humanising risk acknowledges how social histories of place and wider dimensions of social class, gender, and ethnicity have become entangled in the risk management process. This must include an acknowledgement of colonisation, and the related effects of removing rights from Indigenous people. Cunneen (2011) acknowledges the differences between Westernised

and Indigenous risk programmes and interventions. Western notions of risk prioritise individualised, blame-focused interventions. On the other hand, Indigenous programmes focused on the collective context and experience:

Indigenous programs start with the collective Indigenous experience. Inevitably that involves an understanding of the collective harms and outcomes of colonization, the loss of lands, the disruptions to culture, the changing of traditional roles of men and women, and the collective loss and sorrow of the forced removals of children. (Cunneen, 2011, p. 321)

A humanising, and decolonial, approach to risk means acknowledging historical, social, political context and the collective context and experience of Indigenous populations. Humanising risk in Aotearoa New Zealand requires the Crown to uphold its responsibilities under Te Tiriti o Waitangi. Tania Sawicki Mead recognised this in the following passage:

Māori never gave permission for the Crown to take people and to put them into prisons. And the harm that is done to that relationship, and to those communities, and those whānau by a failed system, is harmful in and of itself, and also is part of the wider issues around Māori sovereignty. (Tania Sawicki Mead)

To move towards humanising risk, the engagement and restoration of human and collective rights is required, rather than entrenching a status quo of denying them. Stanley and Mihaere (2019) assert that international human rights processes have been utilised to maintain state legitimacy, and the continued marginalisation and incarceration of Māori. The signing of the Treaty of Waitangi in 1840 progressed land confiscation, resultingly leading to Māori resistance. British forces used incarceration and violence to quash this resistance, while simultaneously maintaining control by the Crown (Stanley & Mihaere, 2019; Webb, 2017). Marginalisation of Māori is sustained through the ‘human rights ritualism’, whereby the government engages in international human rights processes as a “tick-boxing formulaic commitment to ideas and norms but with the complete lack of true commitment” (Stanley & Mihaere, 2019, p. 5).

## **RECONCEPTUALISING SAFETY: SAFETY FROM PRESENCE**

‘Safety from presence’ functions as an alternative to ‘safety from absence’ that was discussed in the previous chapter (Jackson & Meiners, 2011). Paula Rose acknowledged that there is a significant amount of “miseducation and misinformation that the public think protection for themselves or being safe is being distanced from others by a physical barrier or barriers”. This represents a flaw in conceptualising safety from absence. Thus, rather than removing something or someone, safety is achieved through a meaningful addition in a person’s life. Safety through presence recognises that strong relationships, supportive environments, and opportunities to thrive can have a positive effect on a person’s feelings of safety. The emphasis in this approach to safety is to be proactive in providing and encouraging communities to have the support and relationships they need to flourish (Jackson & Meiners, 2011). Norris’ (2021a) elements of the culture of care (resources, relationships, accountability, and participation) are also useful in understanding participants’ visions for safety. Two core features of safety from presence were prevalent in participants’ narratives: “wellbeing as a prerequisite for safety”, and the importance of “social bridging”.

### *WELLBEING AS A PREREQUISITE FOR SAFETY*

Helen Algar was purposively interviewed for this project to contribute to reconceptualisations of safety. After 10 interviews I realised that the project needed an alternative perspective of safety, that was not confined to current safety mechanisms such as the police and prisons. Through supporting her network at Stronger (Safer) Waitaki and community, Helen is committed to a proactive approach to safety. Thus, she differs from most other participants in this project whose work is deeply rooted in criminal justice issues.

Helen Algar was steadfast in her belief that “wellbeing is a prerequisite to safety”. Stronger (Safer) Waitaki aligns themselves with the government’s four areas of wellbeing: social, economic, environmental, and cultural (Mahuta, 2019; Safer Waitaki, 2020). Safety is not just about providing resources to a community but provides a holistic approach to wellbeing and inclusion. This

relates to Norris' (2021a) prioritisation of resources and participation within care-based safety, where people feel that they can contribute to their society. According to Helen, safety requires equipping communities with the tools to manage their own wellbeing and ensuring that Maslow's hierarchy of needs is met. Maslow's five needs in order of priority are physiological, safety, belongingness, self-esteem, and self-actualisation (Rouse, 2004). Tania Sawicki Mead recognised that meaningful safety requires the "complex interweaving of needs being met, lives being lived, and beliefs and rights being respected". Andrew Kibblewhite similarly noted the importance of a sense of wellbeing on feelings of safety:

I'm sure people who have had a good week, a good day, who have succeeded in their job, they'll inevitably just walk a little taller and you feel a bit more confident. And so, I'm sure that kind of general sense of wellbeing actually influences how safe you feel too (Andrew Kibblewhite)

Approaches to safety, through improving collective and individual wellbeing, will look different across communities. Therefore, localised solutions to the issues that a community are facing are important. Helen Algar expressed that it may be beneficial to draw on national services, but it is important to adapt them through a localised approach. Continuous communication and collaboration with the community is essential to ensure solutions are embedded in the needs of the local community. For example, the Waitaki community recognised family violence and methamphetamine use as the greatest concern and therefore as a collective group they channelled their energy into addressing those issues. Stronger (Safer) Waitaki is based on the collective impact model (Collective Impact Forum, n.d.), which identifies five core foundations:

1. Shared vision for change (a collectively identified problem and solution that is co-designed with all members of the community)
2. Shared measurement (consistency in collecting data and holding everyone accountable in the creation and sharing of information about the community)
3. Mutually reinforcing activities (joint plan of action that is undertaken by various people in the community)
4. Continuous communication (that enables trust and relationships to build)

## 5. Backbone support from an organisation

In addition to prioritising wellbeing, being supporting and supporting other people was an important feature of safety from presence and care-based safety. While fear-based safety focuses on suspicion of others, Norris (2021a) promotes relationships within his theorising of care-based safety. Building and strengthening relationships enables communal love, support, and care for those around us. The following commentary reflects the importance of being supported:

I think a positive definition or conception of safety would be one in which you know communities have what they need, that they are supported, and that the foundations upon which the community is based and grow from are solid, and different across different communities. And that the foundations are not rigid. That they have flexibility to be able to adapt, whether difficult times and difficult behaviours and differences between people, so it is safe in the sense that it is sustainable (Tania Sawicki Mead)

But for us as a family, it's knowing that we come home to a network of support, and home, perhaps is the concept I'm thinking of here and that there's parents in the house who are loving, who aren't as stressed as my parents were when we were growing up, with money that needed to go to church or Samoa and they were both working factory jobs and never had enough. And so that's probably what I think of when I think safety. (Efeso Collins)

Emilie Rākete shared a quote by Joseph Stalin, former leader of the Soviet Union between 1922 until his death in 1953, and an influential Georgian philosopher, political economist:

It is difficult for me to imagine what “personal liberty” is enjoyed by an unemployed person, who goes about hungry, and cannot find employment. Real liberty can exist only where exploitation has been abolished, where there is no oppression of some by others, where there is no unemployment and poverty, where a man is not haunted by the fear of being tomorrow deprived of work, of home and of bread. Only in such a society is real, and not paper, personal and every other liberty possible. (Stalin, 2020 [1936], pp. 12-13)

Rākete's reflection of Stalin's quote is that this is an argument for what safety is. To achieve safety, people must be supported in a way that structurally prevents harm from occurring:

That real, actual safety only exists where we are structurally provided for, where the structural causes of interpersonal harm don't exist, where the drivers of all of the stuff that we are worried about are dealt

with socially, collectively, and through an organised plan for the management of society that doesn't rely on just letting the market figure stuff out (Emilie Rākete)

Safety from presence reflects a sentiment shared by prison abolitionist Ruth Wilson Gilmore, in which she argues “abolition is presence, not absence” (cited in Davis et al., 2022). Additionally, drawing on the DuBoisian view of abolitionist democracy, Davis (2005), recognises abolition not as the “negative process of tearing down, but it is also about building up, about creating new institutions” (p. 69). Thus, to achieve safety, the building of new social structures that ensure the presence of support, loving relationships, and wellbeing is required.

### *SOCIAL BRIDGING*

The concept of social bridging was prevalent in the interviews with Khylee Quince and Efeso Collins but were implicitly referred to by other participants. Social bridging is the process of building connections – or bridges – between the people around us who may have different lived experiences, or who are outside of our normal social connections. It demonstrates a commitment to other people and fostering relationships. Their commentary can be understood through the notion of ‘bridging social capital’ (Putnam, 2000). Bridging social capital increases generalised trust, collectively responsibility, and increased tolerance within a diverse community (Claridge, 2018; Hughes, 2020).

According to Robert Putnam (2000), social capital “refers to connections among individuals – social networks and the norms of reciprocity and trustworthiness that arise from them” (p. 16). Social capital can manifest in two ways, through bonding (exclusive) or bridging (inclusive). Bonding social capital is “inward looking and tends to reinforce exclusive identities and homogeneous groups” (Putnam, 2000, p. 22). Alternatively, bridging social capital is outward looking and prioritises building connections between people from different social groups (Putnam, 2000). Both forms of social capital are important, however the dominance of bonding social capital can



contribute to “the formation of fragmented, exclusive groups” (Agnitsch, Flora, & Ryan, 2006, p. 40).

Khylee Quince spoke of the social distance between people and the difficulty of getting people to care about things that do not directly affect them. Social distance, as defined by Khylee, is the “gap between people in terms of their experiences and knowledge”. As our society becomes increasingly diverse and siloed, this increases our social distance from each other. The following excerpt reflects how society, and our connection to those around us, has changed:

People pretend that they know and have relationships with diverse groups of people, and they really don't. We've become more and more sort of siloed, whether it's by where you live in terms of your income, all of those things, where you go to school. But even the social things like, you know, 30 years ago, people could say that they played rugby or cricket, or, you know, their social lives were intertwined with people they didn't necessarily have professional relationships with. But a lot of those things have gone by the wayside. So we need to change that in terms of the social distance that people have from one another. (Khylee Quince)

Efeso Collins commented on his role as a “community connector” and the importance of building bridges with people in his community. Throughout his interview, Efeso spoke of several scenarios that demonstrated his commitment as a community connector. On occasion there have been street-based sex workers, drunk people, or people with mental illness making noise at a bus stop near his house at early hours of the morning. As part of ensuring they feel included, Efeso often goes and talks with them to foster rapport and a relationship with them. The behaviour that Efeso Collins models, for his daughters but also for his community, demonstrates how we can treat others with care, love, and respect. This shows his commitment to building an “inclusive society, so that we all know each other”.

## **PART II: POTENTIAL FOR CHANGE**

As this project seeks to be hopeful, it is necessary to provide a platform for the potential for change. Rebecca Solnit's (2004) book *Hope in the dark* and Ruth Levita's (2013) *Utopia as Method* offer useful insight into hopefulness.

Solnit (2004) highlights moments of historical and contemporary despair, where it feels “as though not only the future but the present is dark” (p. 2). While reflecting on pain and destruction globally can make the world feel dark, this struggle and resistance against such darkness can propel hopefulness forward:

Without a minimum of hope, we cannot so much as start the struggle. But without the struggle, hope, as an ontological need, dissipates, loses its bearings, and turns into hopelessness. And hopelessness can become tragic despair. Hence the need for a kind of education in hope. (Freire, [1994] 2014, p. 3)

It is imperative to be radical with our hopefulness for the future and progress care and flourishing for everyone (Levitas, 2013). As Solnit (2004) asserts, we must have “hope for the realization of our own dreams, [and] also to recognize a world that will remain wilder than our imaginations” (p. 2).

In this chapter, participants’ overwhelming appetite for change and hopefulness is expressed, as well as a recognition of praise for changes that have recently occurred. Suggestions on how values, priorities, and resources can be reallocated is offered. A move towards an empathy-based system that prioritises healing and accountability without punishment is recommended. Additionally, it is argued that any policy changes that are made need to be supported by appropriate resourcing. Following this, is a discussion of tangible things that participants identified as a priority for next steps. Ensuring root causes of harm are addressed, public education, and responding to harm collectively are all addressed. Finally, participants’ thoughts on the place of prison in Aotearoa New Zealand are analysed. Participants were overwhelmingly in favour of a reduction in the prison population. However, most appeared apprehensive about envisioning a prison abolitionist future due to the current climate.

## **APPETITE FOR CHANGE**

All participants had a strong desire for change and believed that this is shared with most people in Aotearoa New Zealand. This provided participants with a

sense of hopefulness and encouragement around making change in the justice system. The collective energy that has been growing amongst government, non-government organisations (NGOs), and the broader public has encouraged a sense of optimism. The following sentiments demonstrate the power of collective energy:

And I absolutely have hope, because there's that many organisations out there now trying to make change for the justice system, that somethings got to give, something has to happen. And like you say, we're all in it for the same thing at the end of day. End goal is no crime, less victims, no offenders, no prisons, and that would be the ultimate goal. That's awesome! (Jess McVicar)

When everyone's playing their bit, there's major potential for change, and you will help shift the narrative and when we start to shift the narrative, we shift the resource, we shift the expectations, and so something good happens so. (Efeso Collins)

Participants recognised a growing consensus in the discomfort of using prisons as punishment. This reflects why there is widespread support and desire for change from people with differing political perspectives. Increased public understanding around the ineffectiveness of incarceration in reducing harm has contributed to this cultural shift. The commentary from participants below highlights how perspectives on punishment, and the use of prison, has changed:

I think obviously we have become less and less comfortable as a society, even though obviously there's huge difference within public attitudes about what we want out of our justice system. I think the tide has turned on being wedded to, and celebrating, the idea of prisons as punishment (Tania Sawicki Mead)

I think even the most staunch advocates for a "tough on crime" approach will concede that we incarcerate a lot of people in New Zealand and wouldn't it be better to do things that would mean less offending so we would have to incarcerate less. I think most people think that prison is not a that effective a solution. (Andrew Kibblewhite)

The most recent public attitudes survey conducted by the Ministry of Justice demonstrated that rehabilitation was highly rated as the main thing that a prison sentence should achieve (Hāpaitia te Oranga Tangata, 2019). While Tania Sawicki Mead said she'd want to "laugh bitterly" at the ability to do that, it shows progression as the "fervour with which people kind of clung to the idea of punishment and deterrence have perhaps waned a bit". Some

participants acknowledged that the appetite for change may differ between different generations. Praise was given to the rise in young leadership and how that has encouraged alternative conversations regarding criminal justice issues:

We have people talking about racism and we have people prepared to engage in the conversation. So, you know, we've got people like the Police Commissioner attending the vigil at Wellington for George Floyd and being there with Black Lives Matter people and having those difficult conversations. So, we've got a leadership in the Ministry of Justice with Andrew Kibblewhite, and Andrew Coster now in the Police, and people like Ashley Bloomfield in Health. Of young people who are not conditioned by the past and are prepared to engage in a new future. And a Prime Minister that allows you to do that stuff. So yeah, there is some hope out there. (Kim Workman)

Kim Workman continued, by acknowledging that this new energy from young leaders has brought about positive change in the justice system. Most notably, the recent reduction in the prison population has shown how important bold leadership is:

When Andrew Little came out in 2017 saying the criminal justice system is stuffed and we're gonna fix it, and racism is rife throughout the system and then we had a whole body of reports that came out – by Corrections, by the Ministry, by Police – basically agreeing with all of that and we could start to see a move forward. And there has been some positive signs of that, that the prison population has gone down to 9,200, where the previous government anticipated, or predicted, that it would be about 12,500 by now. So, you know, it has done very well in that area (Kim Workman)

The new leadership in positions of power have provided momentum for transformative change, which puts Aotearoa New Zealand in a promising position to demonstrate global leadership. Rachel Leota shared her pride in the Department of Corrections, and how they are providing inspiration on a global scale:

I think New Zealand has real opportunity to do things differently. I mean we are seen in the international Corrections community as trying new things and doing well. I think often New Zealand generally looks to other countries, and feel like we're not good enough or what have you, but you know, a lot of jurisdictions look to us for innovation and for doing things differently. (Rachel Leota)

The cannabis referendum in 2020 showed promise in how conversations around drug decriminalisation are changing. While the referendum did not

pass, it did demonstrate a drastic increase in support for decriminalisation. In 2017, support in favour of cannabis decriminalisation was 28%, which jumped to 48.4% in 2020 (NZ Drug Foundation , 2020). Participants such as Khylee Quince, who worked hard on the campaign to decriminalise, were disappointed that changes were not made, despite the results of the referendum being frustratingly close. However, Tim McKinnel praised the shift in the conversation due to the hard mahi that was done during the referendum campaign:

There is reason for optimism, there's cause for optimism, I think. Even if you look at the debate around cannabis, and how that played out, I think there is a growing realisation, and I think that some of this is generational, that we can listen to, and understand, the research and the evidence, rather than this fear-based approach. (Tim McKinnel)

Similarly, Chester Borrows recognises that this is a phasing out of conservative politics and viewpoints in relation to justice issues:

The people who sit in the middle of politics, who are the people who are prepared to change the vote and decide elections, those people are more understanding of criminal justice system than their predecessors were, because those people have now aged out. (Chester Borrows)

Despite recognition of appetite for change, it is still an overwhelming task to achieve. Many participants argued that it is a massive undertaking to encourage transformative change in conversations and practices. Transformative changes in the justice system often need to be embedded in broader cultural shifts, which can be slow and gradual. Shila Nair speaks of how imagining transformation in the form of prison abolition, requires a significant amount of cultural change:

To imagine an Aotearoa without prisons, one would have to imagine an Aotearoa with a justice system that is free of discrimination and racism. To enable that, we need to have a society that is free of discrimination and prejudice. As of now, this can only be aspirational. (Shila Nair)

Emilie Rākete discussed the difference between reformist reforms and abolitionist reforms (Ben-Moshe, 2013; Davis, 2003). Indeed, there are changes that can be made “within the electoral democracy that are abolitionist steps” (Emilie Rākete). Her argument for why we must push for change outside of that is continued below:

[P]rison abolition is a rupture, right, a break with the world that exists now, and that cannot be achieved using mechanisms solely dependent on the existence of the world as it is now. I don't think that we're ever going to see any of the bourgeoisie democracies abolishing prisons. (Emilie Rāketē)

Numerous scholars and activists have thought at length about who should be leading transformative movements. Davis and colleagues (2022) recognise the importance of having the voices of people with lived experience of the justice system at the forefront. In Aotearoa New Zealand, the outcome of a Māori Hui in 2019 was the report *Ināia Tonu Nei – we lead, you follow*, was steadfast in its assertion that Māori need to be driving any decisions on change. Khylee Quince boldly supports Māori taking a leadership role, but in the same breath noted the importance of having effective allies who can help lift this heavy mantle. Khylee acknowledged that non-Indigenous allies are more likely to be effective in promoting the messaging of transformative change to their communities. Similarly, Efeso Collins explained that it is the responsibility of Pākehā to criticise how current structures reinforce their privilege and position within Aotearoa New Zealand:

I think there's an onus that falls on white people, Pākehā in particular, because in a way, the structures fit their world and when they are showing, and leading, and modelling kindness and compassion, then they're the ones who have to dismantle a prison system that is only filled with people that look like me. (Efeso Collins)

## **A SMORGASBORD OF VISIONS**

There was a myriad of suggestions that participants provided in terms of tangible things that could be changed within the justice system. Due to their wide-ranging expertise and interest, participants emphasised things that were important to them, but that may not have been addressed in other interviews. For example, Tim McKinnel explained the importance of drug decriminalisation to effect change in the justice system. However, while I think many participants would have agreed with him, because it was not discussed in other interviews, this topic (and many others that were only covered in one or two interviews) will not be mentioned. The main suggestions that were presented by participants have been categorised into four themes: reallocating

values, priorities, and resources; addressing the root causes of offending; public education; and responding to harm collectively.

### *REALLOCATION OF VALUES, PRIORITIES, AND RESOURCES*

When discussing values that the justice system in Aotearoa New Zealand should be based on, several participants identified empathy and respect as core values. Shila Nair recognised that a justice system that is “empathetic in orientation” is likely to be more effective than a system based on a “simple stance of crime and punishment”. Reflecting on her upbringing, and what she hopes to instil in others, Jess McVicar noted the importance of respect for others:

I was raised with respect, and that’s just always carried throughout my life, and I even raised my stepdaughter to be exactly the same. Because I think if that’s instilled in you, then everybody has a hope, or a chance to be able to sort of step in the right path, but obviously we’re missing that in society a lot.

Put respect back in for our elders, respect back in for your children, respect back in for other people (Jess McVicar)

Participants acknowledged that a shift in values and priorities is not easy and requires a significant amount of commitment. Indeed, it requires a cultural mindset shift to make meaningful change:

Investment needs to be made in changing the narratives of people operating the justice system, and that encompasses the facilitation of a paradigm shift in thinking about crime and criminals: This shift will need to begin with instilling a change in the mind-sets of those involved with the system and to then correct the systemic anomalies that continue to propagate incarceration as a culture towards addressing crime. (Shila Nair)

Kim Workman spoke of the reluctance of some prison staff to exercise compassion. He argued that they may not be given the support or skills to be able to do this, and so it is not a priority. However, if empathy and compassion is prioritised in our responses to harm, this could produce more meaningful experiences:

To exercise compassion and to start helping people sort their lives out requires a lot of energy. And a lot of [prison staff] don’t have the skills to do that, and a lot of them don’t have the inclination, so it goes by the wayside. But when you provide an environment in which those things

are possible, and people are given the support necessary to make it happen, then you can see change (Kim Workman)

An essential feature of transformative change is providing resources to enact the change. Khylee Quince was the only participant to use the phrase ‘justice reinvestment’; however, many other participants portrayed features of this approach. Justice reinvestment aims to redirect funding spent on the carceral state to community-based initiatives tailored to the community’s needs (Stanley, 2020). The idea of justice reinvestment has gained momentum since its introduction in the early 2000s, although it is yet to achieve its full potential (Sabol & Baumann, 2020). Khylee Quince acknowledged that justice reinvestment is a useful way to promote decarceration, particularly for “middle ground, middle class” New Zealanders as it is likely to ease them into a conversation about to need for change.

Judge Recordon celebrated recent legislation change that has occurred recently but was disappointed that resources were not provided to support the change. Enacting legislative change is proven to be challenging when it is not properly funded. This is particularly evident in the mental health sector, where necessary policy changes have been made, but were not resourced:

They’re talking about changing the mental health system and mental health law, and they’ll probably do that without changing what happens on the outside and the people who actually work in the system. And they did that when they brought in the 1992 legislation [Mental Health (Compulsory Assessment and Treatment) Act 1992] and they got rid of the institutions. The institutions should have gone, but they weren’t ready for it. They hadn’t prepared and they’re still not really properly prepared in the community (Judge Recordon)

Similarly, in the victim advocacy space, Jess McVicar has welcomed the Justice Ministers raising the need for more support. In her words, McVicar believes the justice system “needs to be more victim-focused, because they need to be looked after”. In 2015, the role of Chief Victim’s Advisor was formed, and the position has been held by Dr Kim McGregor since its inception (Little, 2019). While this shows promise and commitment to increased resourcing to supporting victims, Jess McVicar suggested that a lot of this is “all this talk and there’s been no action at all”. However, it must be noted that the period shortly before and after the interview with Jess McVicar



a myriad of reports were released by the Chief Victim’s Advisor, which shows a commitment to victim’s rights (Chief Victims Advisor to Government , 2019a; 2019b; Paulin, Paipa, & Carswell, 2021; Randall, 2021). Similarly, Ruth Money is a strong advocate for more support and resources for victims. She noted that while more funding would be beneficial, there could be more resourcing for psychiatric assistance and supporting people with ACC claims, so that they do not have to continue “to prove to ACC that [they’re] still mentally hurt by what happened to [them]”.

### *ADDRESSING THE ROOT CAUSES OF OFFENDING*

There was an overwhelming consensus amongst participants that addressing the root causes of offending, and using a preventative approach, is beneficial. Tania Sawicki Mead stated that many efforts towards preventative measures are tokenistic and a “cart before the horse” tactic. A more sustainable approach would be to fully invest in prevention as Sawicki Mead explained below:

[T]he energies that goes into maintaining the justice system as it exists could be so much more effective with prevention. It can do so in a way that was really collaborative, more grounded in communities’ needs, and with more autonomy and sovereignty in some cases for communities, where communities were able to identify what it was that needed to be prevented (Tania Sawicki Mead)

Emilie Rākete acknowledged that efforts to “structurally prevent harm from occurring” are required to achieve meaningful safety in Aotearoa New Zealand. Similarly, Shila Nair suggested we “need to look at what drives crime, instead of who drives it”. There were many root causes of offending identified by participants; however, collectively they represented a need for greater stability and support for people. Many of these issues discussed below are what Tania Sawicki Mead calls “systemic drivers of harm” and therefore social structures need to be transformed to address them. People who are experiencing social conditions such as alcohol and substance abuse, lack of education, or poverty and often just trying to survive. Therefore, wrap-around, preventative support is needed to provide some stability in these people’s lives.

## STABILITY AND SUPPORT

Of the many root causes identified, the most common ones that participants acknowledged were alcohol and substance abuse, mental health, education, poverty (and associated issues of unemployment and housing), lack of role models, and violence. While each of these are discussed below, it is important to note the multi-layered interaction between these social conditions. That is, most people prior to offending experience a range of different negative life conditions that accumulate.

Substance abuse, particularly of alcohol, was acknowledged by Judge Phil Recordon as a big contributing factor to criminal behaviour. He suggested greater investment in the development of drug and alcohol facilities, which will enable people to go in a supportive environment such as Higher Ground or Odyssey House instead of prison. Additionally, Judge Phil Recordon was disappointed in the lack of access to mental health support as a preventative measure, and for people within the justice system. Similarly, Chester Borrows highlighted that fetal alcohol spectrum disorder is highly prevalent in our prison population, and this is related to a lack of social, emotional, and economic support for people while they are pregnant:

I want to live in a society where actually everybody has the ability to eat, everybody has self-esteem within them. That we don't see people written off with fetal alcohol disorders, we don't see all the other things that happen, because people are supported enough, that they don't abuse alcohol while they're pregnant. (Chester Borrows)

Dr Ian Lambie, Chief Science Advisor for the Justice Sector, conducted research into the correlation between brain behaviour and involvement in the justice system (Lambie, 2020). He found there are high rates of people with brain and behaviour issues (e.g. traumatic brain injuries, fetal alcohol spectrum disorder, autism spectrum disorder, cognitive impairment/intellectual disability, attention-deficit/hyperactivity disorder) within the justice system. A recommendation from his research was that early intervention is imperative “to help families, health and education providers do better – and ultimately, to prevent the first steps onto a pathway into offending” (Lambie, 2020, p. 5).

Golriz Ghahraman also shared a concern for lack of mental health support, particularly for young people. When she entered Parliament in 2017, she recalls a statistic that has stayed with her: 90% of young people that are excluded from society through juvenile facilities have a “serious learning disability”. Demonstrating a cumulative effective of multiple failures, she shared that “education is failing us, mental health care is failing us, and the healthcare system is failing us”. Ghahraman argued that these are all areas “where we can intervene to make somebody’s life better, not just because we want to make their life better, but because that would have kept our entire community safe”. Thus, investing human resources and money into making healthcare and education more inclusive will have a variety of benefits. Inclusive education utilises a strengths-based approach and believes that every learner can make a valuable contribution in Aotearoa New Zealand (Ministry of Education, n.d.). Efeso Collins would like to have a “schooling system that understands the cultural capital that our young people bring into the classroom”. Through valuing students in the classroom, and providing an inclusive space, people will be more likely to have the education they deserve.

Several participants acknowledged the impact that employment, poverty, and housing have on criminal offending. Paula Rose argued that employment is “a huge scaffolding in terms of safety” as it helps “keep people occupied”. Similarly, Chester Borrows recognised that equal access to social and economic support is important, but that is not often the case. He shared that emphasis needs to be on ensuring “people do get jobs, and people do have enough money to live on, and people do have health care and it’s not [given] out by postcode”. The stigmatisation of a criminal record continues well after a prison sentence, with many people being locked out of employment in certain industries. Emilie Rāketē shared her frustration on this:

It’s legal to discriminate against previously incarcerated people, and so prisons work to create a massive labour underclass of people who can be forever more be discriminated against in employment. You know all this stuff works to drive the bargain power of working people down. And you just meet people who have been in shit jobs forever because they got locked up on, you know, driving when they were 19. You know, never paid the fine, oh did a lag. But then they’re fucked, like forever.

Efeso Collins spoke of the reality of those living in poverty and their limited access to warm, affordable, and stable housing. He shared that there are whānau who are “shifting from state house to state house, and where we’ve got families all caught up together trying to support one another by living in the garage, or the car, or caravan, and the house”.

Efeso Collins discussed how a lot of young people experiencing complex social issues, such as poverty or exclusion from school, results in them “looking for a sense of family” or for someone to “walk beside them”. This perspective illustrates why people may involve themselves in gangs, or engage in criminal activity, to seek belonging. This parallels recent research on youth gangs in Aotearoa New Zealand that identifies gangs providing a “proxy family unit” (Bellamy, 2019, p. 6). The following commentary expressed by Efeso Collins and Rachel Leota affirms this research:

[O]ur prisons today are filled with our young people because I think society hasn’t recognized that perhaps they need a someone, a dad in their life, a father figure or friend who is always going to be there to walk alongside them, to play rugby alongside them, or whatever it is just so that they can get some of those feelings out. (Efeso Collins)

[T]he issue of entrenched criminal behaviours in gang whānau, for instance, and the key to that is understanding why they are in a gang in the first place. Because they are feeling, or have felt, for generations, felt excluded and marginalised and not included and have found fraternity in that way. And one can only expect that if you are going to say that that lifestyle is not appropriate, you have to compliment it with an equally fulfilling lifestyle somewhere else. And you know, New Zealand has not got that sorted out yet. (Rachel Leota)

Identifying exclusion or absence is important and it is critical that this is done in a way that recognises the strength of present and protective factors in collective life. Thinking about protective factors can help foster a strength-based approach (Butts, Bazemore, & Meroe, 2010). In his interview, Chester Borrows reflected on what a person’s lifestyle may be like if they have positive role models and have a sense of belonging. In framing his thoughts through protective factors, the focus turns to ensuring people’s needs are met rather than focusing on what they lack:

When you see kids that come from criminal families and there’s six kids and five of them go to jail and one of them doesn’t, what are the protective factors around that one who didn’t? He was good at

basketball, and so he's taken under the wing of the coach who was a bit protective, and he was playing basketball when his brothers were out committing crime, and that led to his self-esteem and he got public adulation and all those sorts of things and didn't get into trouble. Well, wouldn't it be neat if we cared for everyone in society like that? (Chester Borrows)

Reflecting on her experience with supporting people through domestic violence, Shila Nair noted that victim prevention “needs to start at a young age and cut across ages and stages”. By this, she refers to a multi-pronged approach that factors in what specific support is needed for the person that needs it (to ensure it is culturally and gender appropriate). She continued further to explain why prevention of harm and supporting those who suffer abuse is imperative to reducing further harm:

Considering that the majority of those in prison and those who offend were victims of violence and abuse at some stage in their lives, the emphasis needs to be on preventing people from becoming victims in the first instance. (Shila Nair)

Efeso Collins shared that he mentors and supports a lot of young men to vent out any feelings they need to. His belief is that high rates of violence in marginalised and poor communities are a result of lack of appropriate outlets to vent. Collins explained that this was particularly noticeable during the COVID-19 lockdown periods, where he received calls from his friends who were finding it difficult spending so much time in their household with family and being unable to work. On several occasions, Efeso would meet them and go for a walk with them to encourage them to get some exercise and to vent their thoughts and feelings through a positive outlet.

Mirroring the discussion above on providing safety from presence, Andrew Kibblewhite recognised that “the best way of reducing risk is to reduce the propensity of people to offend and that's where you would start with thinking about wellbeing”. Many participants noted the multi-layered impact of experiencing numerous negative social conditions. This sentiment was captured well in the following long, but detailed, commentary from Shila Nair:

If we are to reduce offending, we need a holistic, integrated wrap-around approach that would examine family dynamics and address issues that keep family members caught up in the vicious circle of poverty and abuse. Poor housing and or homelessness, racial bias, impact of

colonisation, mental health, addiction issues, family violence, poor schooling, poor budgeting, lack of food, emotional nourishment, warmth and care are deficits that get internalised in potential offenders over the long term. People living in such circumstances, where even basic needs are not met on a day to day basis, develop worldviews born out of their lived experiences. Such worldviews that are founded on deficit thinking and poor social connectedness can lead members towards pathways that make a life of crime look encouraging. Therefore, improving living conditions and social inclusion is important if we are to seek changes in behaviour and outlook of those who perpetrate violence or who could potentially commit crime. (Shila Nair)

### *PUBLIC EDUCATION*

Chester Borrows shared how the information we have, or the assumptions we make, can distort and shape our views of the world. He gave an example of public engagement he was involved in when enacting legislative change in relation to solo parents and the assistance they receive. When discussing how many people in that community were solo parents on a benefit, many people in that community would overestimate the number. The same exaggeration can be said for estimations of people who have engaged in violent or serious crime in a particular community:

If you went into the same thing and said, “what portion do you think are serious criminals living in your town”, and they would think they are everywhere. And we almost encourage that because we tell people to lock up their homes and lock up their cars and all that sort of stuff. (Chester Borrows)

To address these miscalculations in perceptions, participants recognised balanced storytelling, clear messaging, and education as important. This can be done through academics, the media, government, NGOs, or simply in a *kōrero* between *whānau* and friends. Tim McKinnel specifically acknowledged the role that academic plays “in being more open and more available and less inward looking”. Speaking of education more broadly, Khylee Quince recognised how crucial primary and secondary school education is in influencing future generations:

[C]ompulsory, mandatory education of New Zealand history is going to be a massive game changer. If you get people to learn about the invasion of *raupatu* [confiscated land] and the harm done to Māori, that is the long story of incarceration, of hyper-incarceration, and overcriminalization. That will change people’s minds (Khylee Quince)

Additionally, balanced storytelling by the media is imperative to change the hearts and minds of people around justice issues. Andrew Kibblewhite acknowledged how some media outlets recently have made more effort in disseminating “evidence-based journalism”. A positive outcome of this is that we are “getting a different kind of understanding into the minds of the public” which may be influential in changing policy (Andrew Kibblewhite). The stories of people changing and living fulfilling lives after committing crime need to be shared more within the media:

You know there’s some people serving life sentences, who at one point in their time committed horrible offending, but now are contributing members of the community, with families, with livelihoods, who you know it is very unlikely that they would not offend again, or if they did it might be something minor. We don’t hear those stories very often as a society (Paula Rose)

Similarly, Chester Borrows explained how access to more information, both research and personal stories, enabled him to change his opinion and make different decisions than he may have otherwise made without enough information. During his time as a politician, and more recently with his experience as the chair for Te Uepū, his perspective on many issues has shifted. He shared his experience of changing his position on a range of views while in government:

I found when I went to parliament, for instance, I changed my mind on all sorts of things, because I had more information. I went into parliament, campaigned on some strongly held views, and then I got into parliament and found out I was wrong. And had to change my mind, and then had to come out and try and justify it to the reporters and my constituents, they thought I was a turncoat bastard. But in actual fact, I just had more information. (Chester Borrows)

Public education on justice issues, or any issue for that matter, can be difficult because most people who are strong in their opinions are uninterested in listening to new ideas. However, Tim McKinnel recommended that through “education, exposure and responsible research that’s well publicised”, conversations can be had where “you get to talk to people and explain to them the realities of it”. He continues, by noting that “people aren’t incapable of understanding, they just don’t have the opportunity to properly understand”.

Through her role in JustSpeak, Tania Sawicki Mead has done some research with the Workshop<sup>19</sup> on messaging around social issues and connecting with people who may think differently. In their guide *How to Talk About Crime and Justice* (Elliott & Berentson-Shaw, 2020), they found that storytelling and connecting to people's values enables them to be more open to new ideas and conversations. By approaching conversations about crime and justice in this way, Tania Sawicki Mead acknowledged that it "helps people go from fast-thinking to deep, slower thinking, and thinking grounded in values that they hold, like benevolence and compassion". Similarly, Paula Rose highlighted that the language that is used when discussing justice issues is one of "the most important things of achieving change" and taking people on a journey towards transformative change.

Emilie Rākete reflected on social movements over the last few decades, and how hesitant those on the political left may be in telling people how and what to think. This hesitation stems from criticisms of authoritarian modes of disseminating information; however, Rākete explained that sharing knowledge and advice on what to do can be viewed as a gift. PAPA, which Rākete is the press spokesperson for, has been focusing on the strategic work for movement building and organising, to build the "right messaging strategy". Rākete reflected on the Arms Down campaign that she helped drive and recognised the benefit of messages to the public that offered direct action steps that they could take. Part of the widespread success of the campaign was sharing personal stories and providing tangible action that people could take. The following commentary explains the benefit of sharing strategies to include more people in social movements:

I don't think we can count on the 5 million people in this country all independently determining what it is that we need to do to fix the situation. I think we should just recognise that as parts of these communities, which we are, and as the most ideologically advanced parts of these communities – which I feel comfortable saying we are – we have a responsibility to share that understanding with everyone else.

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<sup>19</sup> The Workshop is a research organisation in Aotearoa New Zealand that produces communication and public narrative advice and guides. Their vision, which informs the work they do, is for an inclusive and just Aotearoa.



Share our strategy of what we need to do with everyone else and tell them how to get involved. (Emilie Rākete)

Part of the movement towards change, is also reliant on changing who we decide to listen to and whose voices are centred. As Tracey McIntosh frequently notes, people with lived experience are “experts of their own condition” (McIntosh & Curcic, 2020, p. 236). Thus, greater effort must be made to centre their experiences and voices. Efeso Collins shared that his drive to enter local government was to have a “more real, more relevant, and more honest voice for people in South Auckland”. He utilises his platform to share lived experiences of people like him, to provide a space for marginalised voices, and to challenge stereotypes about Māori and Pasifika communities. The following commentary from Collins highlights the importance of amplifying different voices:

I thought it was time that we saw someone who is Samoan, who grew up an Otara, went to all Otara schools, lived in a state house, I thought that lived experience was important to the political voice that we had because I’ve realized now even more now that I’m in a local government that politics is all about the fight for resources and power and influence and when our people aren’t at the table, then you get very little voice when it comes to those things. (Efeso Collins)

### *RESPONDING TO HARM COLLECTIVELY*

Part of the purpose of a justice system is to devolve decision making power of how to respond to harm after it has occurred. Tania Sawicki Mead highlighted that the essence of this is necessary because people who have experienced harm, or who have harmed others, can be in a highly emotive and volatile mindset. The following commentary demonstrates Sawicki Mead’s viewpoint:

There has been some honesty and conversations around what the emotional responses are to situations of harm that we reckon with. So, we don’t pretend that we can respond without emotion to those situations or to people who have hurt us, but we find a way of balancing our need to devolve responsibility of how to respond to that back to the collective. [...] [P]eople who are in the immediate aftermath of something that’s happened to them, or that they’ve done, are not often in a good place to decide how as a collective we respond to it, and we want to take that burden off them because of our emotional response, because of those natural feelings of anger, revenge, and guilt and hurt that comes as a result of that (Tania Sawicki Mead)

Several participants acknowledged that decisions around how harm is responded to need to have a collective focus. For Tania Sawicki Mead, a “collective focus on what the long-term outcome is for everyone involved” is required so that the outcome is “good for the community, as well as good for the people at the heart of it”. Paula Rose promoted a collaborative approach in order to respond to harm. She proposed that through a commitment to each other, we can collectivise about how we want to respond to harm:

If you’re doing crime prevention through environmental design, they often talk about a capable guardian and actually society are full of capable guardians. So, part of that would be empowering those people to act, not as a payoff nark or I’ve dobbed you in or something like that, but actually, this is about us working together so that you stay in the community (Paula Rose)

At first glance, this response could encourage more surveillance and suspicion of those in our neighbourhood. As Zach Norris (2021a) warns us, movements towards Neighbourhood Watch groups can have negative consequences, in that they turn people on those in their community and can have an ostracising and exclusionary effect. That being said, Paula Rose’s argument here is intended to foster inclusion through accountability, rather than as an exclusionary or Othering process.

There has been commitment from different government agencies to think of alternative ways of doing things. Andrew Kibblewhite acknowledged Te Ao Mārama<sup>20</sup> in the courts, Te Pae Oranga<sup>21</sup> in Police, and the Hōkai Rangi<sup>22</sup> strategy in Corrections, as envisioning change across the board. A core element of these initiatives is to identify how the government can pass over

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<sup>20</sup> Te Ao Mārama is an initiative introduced by Chief District Court Judge, Judge Heemi Taumaunu in 2020. Te Ao Mārama aims to extend the “solution focused judging approach” that is currently utilised in the specialist courts into all District Court proceedings in Aotearoa New Zealand (Taumaunu, 2022, p. 95).

<sup>21</sup> Te Pae Oranga are Iwi Community Panels that currently operate in 20 locations in Aotearoa New Zealand (New Zealand Police, n.d. -d). The restorative justice approach involves a participant appearing in front of three community members to talk through their criminal behaviour. The Police can refer a person to Te Pae Oranga if they are 17 years or older, the offence carries six months’ imprisonment or less and if the participant admits guilt (Community Law Canterbury, n.d.).

<sup>22</sup> Hōkai Rangi is the strategic direction for Ara Poutama Aotearoa (Department of Corrections), introduced in 2019. The six areas of focus identified are Partnership and leadership, Humanising and healing, Whānau, Incorporating a Te Ao Māori worldview, Whakapapa, and Foundations for participation (Department of Corrections, 2019d).

influence and action over to the community. Andrew Kibblewhite shared his desire to integrate different elements of the justice system into the community. He explained that the “courts have historically distanced themselves over time from the community, as they need to be objective”, but in the same breath argued that “we get a much better solution [when] we bring the community into the court process”. The intention with bringing the community into decisions around justice is to recognise where the greatest potential for healing and resolution comes from:

I think the government is often not well placed to actually bring solutions to individual lives. That will much more likely come from whānau, from community networks, from things that government might have a role in directing or mandating or requiring sometimes, but the actual healing and resolution will come through community. (Andrew Kibblewhite)

Sharing a similar sentiment above from Helen Algar on the importance of localised solutions, Emilie Rākete explained that different solutions and approaches are necessary. Opening the door for different solutions is one way in which the community can be more involved in decision making around how to respond to harm:

I think the reality is that we’re all experimenting all the time with different strategies and trying different things that will work. And I think there’s not one answer, because there’s not one population. (Emilie Rākete)

## **THE CONTINUED PLACE OF PRISON**

Most interviews closed with a version of the questions: *Can you imagine an Aotearoa without prisons?* or *How does prison abolition make you feel?* This section addresses these questions and demonstrates that despite a desire to change the prison system, most participants fail to commit to a prison abolitionist position. Indeed, this reflects arguments made in *Chapter Five* which acknowledge the supposed permanency and normalisation of prisons within Aotearoa New Zealand. Despite the discomfort amongst participants regarding prison abolition, there was a consensus that a secure housing unit

is necessary for the ‘dangerous few’, which is in-line with some abolitionist thinking (Ben-Moshe, 2013).

### *LESS PEOPLE IN PRISON*

Overwhelmingly, participants demonstrated consensus for a desire to reduce the current prison population. For Paula Rose, the prison population “should be a lot less than what we’ve got now, by the thousands”. In discussing low level crime, Jess McVicar argues that we shouldn’t “be clogging our prisons up with them”. This was particularly the case for people who are on remand, as Rachel Leota shared in the excerpt below:

For men I think a significant reduction in the number on remand. We should be getting remand numbers down significantly and then those who need to be remanded would most likely go on to serve long custodial sentences. It is less than ideal to have people on long periods of remand, only to be released on time served, where no opportunity for treatment was available. (Rachel Leota)

Prison abolition appears to be more imaginable for the “non, non, nons” (non-serious, non-violent, and non-sexual) (Gottschalk, 2015, p. 41). However, a fixation on decreasing punishment for certain convictions has solidified the ‘need’ for incarceration for people who do not fit this category (Gilmore, 2015). Within prison abolitionist scholarship, these people are usually referred to as the ‘dangerous’ few. Carrier and Piché (2015) acknowledge that “abolitionists have not satisfactorily confronted some critiques that have been forwarded to prison and penal abolitionism, including the irresolution [...] of the problem of the ‘dangerous few’” (para. 5). Prison abolitionists are often plagued with questions around the ‘dangerous few’: *What about the murders and sex offenders?:*

Penal abolitionists seem split on this question; some advocate for transformative justice and healing practices in which no one will be restrained or segregated, while others believe that there will always be a small percentage of those whose behavior is so unacceptable or harmful that they will need to be exiled or restrained, when done humanely and not in a prison-like setting. (Ben-Moshe, 2013, p. 91)

Despite the consensus from participants for the need to reduce the prison population, there was still a desire for some form of removal for the protection and safety of the public. Similar questions around the dangerous few were

raised by participants, with an acknowledgement that certain people needed to remain in a secure and contained location. Judge Phil Recordon explained that in his perspective, the ‘dangerous few’ is about 2-3% of the current prison population. According to recent statistics, this amounts to between 153 to 230 people, as opposed to the 7,669 people that are in prisons in Aotearoa as of March 2022 (Department of Corrections, 2022):

[F]or a few people, and those are the two or three in every hundred or so, you need to have some sort of safe, security place for them to go, for a sort of a timeout type thing and whether that was a place in the community monitored, which would effectively be a prison, but just somewhere secure where they could be watched and protected from themselves. (Judge Phil Recordon)

Several participants reflected on their personal interactions with people they would classify as the ‘dangerous few’. Due to these personal experiences, there is a strong emphasis on some sort of barrier that is required between the public and the people who are deemed to be dangerous. Thus, containment, banishment, or exclusion is identified as the most viable response, given our current climate and prison population. The following commentaries demonstrates their perspectives:

I’ve dealt with, you know, sexual offenders and murders for a couple of decades now and there are very few that I would say need to be locked up and never let out. I would say that there would be a few hundred at the most of people in that category that are so dangerous to the wider society that something must be done with them. (Tim McKinnel)

[T]here are some people that I cannot think of another way of keeping others safe from their activities. I’ve had a lot of experience dealing with very violent people in the community, as well as inside the prison environment, who for a whole raft of reasons cannot manage themselves. Now I’m not saying that people should be in maximum security etc. in lockdown 23 hours a day, because that’s a bit a whole different gambit of issues. But I don’t see that in every member of the current prison population, I don’t think there’s an alternative necessarily for them. (Paula Rose)

There are some evil people out there and they have no intention of ever being a good person. We’ve seen many of them. We come across them a lot. There’s some with hundreds of previous convictions, and they just laugh every time they get caught. So, prisons are needed, but there just needs to be better rehabilitation. (Jess McVicar)

To express his perspective on the dangerous few, Chester Borrows commented on the notorious case of Graeme Burton.<sup>23</sup> He also identified that the public often overestimate the number of cases and people we have like this in Aotearoa New Zealand:

So, when you talk about the abolition of prison what do you have in mind for the sort of person like Graeme Burton, you know the extremely violent people that we're all justifiably scared of. Because I'm not sure that you can just, you know, love them back to rehabilitation and a similarly minded responsible citizen. So there needs to be some way in dealing with the people who are extreme violent offenders, but I'm sure the public thinks that there's far more out there than there really are. (Chester Borrows)

Many participants suggested that people who are deemed dangerous could be placed in a secure, community-based centre, rather than prison. For Paula Rose, this means “re-dreaming” or “re-thinking” what our possible alternatives could be for community-based sentencing. Similarly, Tim McKinnel suggested the places we house the ‘dangerous few’ could be “security units, rather than prisons as a default position”. There was an emphasis on the preference being a community-based setting or centre where people could be contained, but within their communities. Rachel Leota explained that she would like to see fewer people in prison so that people can stay better connected and cared for by their community:

Whether we get to complete no prisons I'm not sure that that is completely realistic. I think there will always be a need for a smaller footprint, and I think there is absolute requirement to have more rehabilitation, support and care in the community, and keep people in their communities and keep people connected and I think that's a much more uplifting way to keep families together, to support families. (Rachel Leota)

The Scandinavian model of prisons was recommended by some participants as something that Aotearoa New Zealand could look towards in terms of improving our prison system. In this approach, there are a set of arrangements that keep people separated from wider society but operates quite differently from what we currently have. Shila Nair suggested the potential of the Bastøy island-prison approach in Norway, where “loss of

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<sup>23</sup> Burton was one of New Zealand's most notorious murderers, with over 100 convictions for violence (Te Ara, n.d.)

liberty is their greatest punishment they receive and where they can lead almost normal productive lives without feeling incarcerated”. Bastøy island-prison includes people convicted of rape, murder, and drug crimes, and is applauded for having the lowest reoffending rates in Europe (James, 2013). Treating people humanely and giving them the skills to support them once released from prison, has a strong likelihood of reducing future harm. Kim Workman discussed the difference in average sentence lengths between Aotearoa New Zealand and a Scandinavian country like Finland.

While it is useful to look to other countries for inspiration and the potential alternatives, it can also reinforce carceral humanism approaches that were explained in *Chapter Two*. Taking inspiration from Critical Resistance, their stance is that prison abolitionists can acknowledge the harm that is done, whilst also recognising that “the “need” to lock people up is a false need” (Critical Resistance Abolition Toolkit Workgroup, 2004, p. 28). Additionally, as McLeod (2015) asserts, when confronting and addressing the question of the dangerous few, “justice is not meaningfully achieved by caging, degrading, or even more humanely confining, the person who assaulted the vulnerable among us” (p. 1171). Therefore, when grappling with how to respond to serious and violent harm, it is important to move beyond our current limited scope of options.

### *POTENTIAL FOR AN ABOLITIONIST FUTURE*

Golriz Ghahraman shared her confliction with the language of prison abolition. While she acknowledged her abolitionist position, she recognised that the communication from prison abolitionists could be improved. The term prison abolition conjures up stereotypes and emotions that make people less open to a conversation about envisioning change. Therefore, Golriz encouraged the adoption of a new approach to communicating an abolitionist agenda:

I wish we had a different term for it. [...] I think sometimes that the left has really bad PR and a really bad way of using words and communicating our perspectives, and the right has really good ways of doing it, and I think prison abolition is one of them. Because we're not like 'oh my God we just want to shut all the prisons'. It is about all of

the things that we were just talking about which is to say that prisons are a failed system that is making our communities less safe and we want our communities to be safe. And that means we've got to invest in all of these other things that will bring down crime. That means we have to provide mental health services, and addiction services, and keep people in the community, rather than exclude them from the community, and provide for prisoner voting. But what we're saying is we want to bring down the rates of anti-social, harmful behaviour. Like that's what we want. We don't want to just shut prisons tomorrow, I mean for many people who are in prison, that should happen, and we could immediately house them in a different way. But that's not... yeah... so I think I get uncomfortable with the term prison abolition, but only because I know that when I use it, I'm misunderstood (Golriz Ghahraman)

The Critical Resistance Abolitionist Toolkit (2004) offers reassurance to the perspective of Ghahraman above, through acknowledging the difficulty of having conversations about prison abolition. Instead, they suggest framing arguments about abolition in a way that speaks to the hopeful potential of prison abolition, or that does not explicitly use the word abolition. Alternative ways of talking about abolition could be through talking about building safe communities, or through redefining safety without punitive measures (Critical Resistance Abolition Toolkit Workgroup, 2004).

Tania Sawicki Mead and Emilie Rākete shared their visions of abolition, and how that might include a form of restriction for those who have harmed people in the community. This challenges the public's common misconception of prison abolition that Golriz Ghahraman explained above, as wanting to just open the doors of the prison and let everyone out:

And some people are not safe to be in the community at some point in their lives. I don't think anyone, even those of us who are abolitionists, might agree that not everyone is always appropriate to be [in the community]. There are different ways that we might manage some people's behaviour, where they live and who they connect with at different points in their life. And I don't think that's inconsistent with a theory of abolition, particularly in the short term. (Tania Sawicki Mead)

I am fundamentally not an anarchist, and I don't think that the solution to prisons is communities just 'We'll learn to be nice one day'. Maybe that's the case, but I don't think we should plan on a fundamental change in human character as a precondition of prison abolition. I want prison abolition soon, with people as they are now, and that means that we need to have structures in place that we proactively use to manage society, manage the people in society, and ensure that we don't harm



one another, and when we do it's taken care of. These institutions, these state institutions, these community institutions, these proletariat institutions, these are the presence [that Mariame Kaba's quote "abolition is presence, not absence" speaks to]. (Emilie Rākete)

Several abolitionists have demonstrated that an abolitionist agenda goes far beyond the dismantling and crumbling of prison walls. Indeed, it is reliant on building the support networks that people need to flourish and thrive. As Critical Resistance argue:

At its core, abolition isn't only about throwing all the prison doors open wide. It is also about creating new models for living. Imagining a future based on abolition means totally shifting how we think about living with each other. We must create stable communities for people to come home to even as we work to shut down all the prisons. (Critical Resistance Abolition Toolkit Workgroup, 2004, p. 27)

Allegra McLeod (2015) provides an analysis of a 'prison abolitionist ethic' and how this can be implemented as a framework towards promoting change. She explains that the limited support for prison abolition shows a "failure of moral, legal, and political imagination" (p. 1156). It is likely that the public's reactionary response to prison abolition is due to a misunderstanding in what the movement and vision entails:

If prison abolition is conceptualized as an immediate and indiscriminate opening of prison doors – that is, the imminent physical elimination of all structures of incarceration – rejection of abolition is perhaps warranted. But abolition may be understood instead as a gradual project of decarceration, in which radically different legal and institutional regulatory forms supplant criminal law enforcement. (McLeod, 2015, p. 1161)

Some participants did demonstrate agreement with some abolitionist perspectives; however, there was some apprehension to identify with the label of prison abolitionist. Chester Borrows explained how habilitation centres may be a better alternative to prison. 'Habilitation' is increasingly promoted in criminological literature in replacement of rehabilitation. Re-habilitation implies returning to a previous condition, therefore assuming that a person had suitable social circumstances prior to engagement with the justice system (Hāpaitia te Oranga Tangata, 2018; Moreland-Capua, 2019). Becker (2012) defines habilitation as "equipping someone or something with capacities or functional abilities" (p. 2). In the following commentary, Chester Borrows

showed how his viewpoint is in alignment with abolitionist perspectives that promote alternatives to prison:

I can't imagine a society without the ability to detain people for the purpose of public safety. I can certainly imagine a country that doesn't have huge prison and doesn't see the need for them. And I can, because it seems to me that when activists talk about abolishing prisons, what they are not abolishing is habilitation centres. So, what they're really saying is, we're seeing people who need to have some constraints put on them, but we're going to see that in a more therapeutic way. And I don't have any problem with that whatsoever. I can certainly entertain that. (Chester Borrowes)

Similarly, Andrew Kibblewhite shared a similar vision, where the prison population is reduced in favour of community-based alternatives:

I could see a world where the state shares responsibility for protecting society from some individuals. I can see a world where even if we are requiring people to undertake activities as part of a sentence that they don't happen within prisons, or not prisons like we've got now. We've got a big heavy infrastructure in prisons now, where the main emphasis is on incarceration. I can see a whole range of options of more community-based, community-oriented facilities and arrangements, because they might not even be facilities, they might be arrangements where we're still working with people who have offended and who have work to do to become fully functioning, engaged and constructive members of society. Prisons will inevitably be part of the mix, at least in the foreseeable future. But, you know, there's a lot of different ways of doing that (Andrew Kibblewhite)

These comments demonstrate the potential for abolitionist thinking to be more mainstream than what is currently presumed. While there is only one prison abolitionist organisation in Aotearoa New Zealand – PAPA – the perspectives shared by participants demonstrates hope towards an abolitionist future.

## **CONCLUSION**

To address the negative outcomes of Othering and exclusion associated with contemporary conceptualisations of risk, safety, security, and protection, this chapter has offered reconceptualisations of risk and safety. Humanising risk counteracts the racialised consequences of risk assessment processes, and instead recognises the humanity of people identified as risky. Moving beyond

actuarial data, humanising risk acknowledges that relationships and rights should be placed at the forefront of risk decision making. ‘Safety through presence’ (Jackson & Meiners, 2011) is reintroduced from *Chapter Three* to demonstrate how safety may be conceptualised in an inclusive and sustainable way. Through this reconceptualising of safety, wellbeing is prioritised, and notions of social bridging are offered to explain safety from presence.

Participants overwhelmingly agree that change in the current justice system is necessary and therefore offered a variety of opportunities in which change could be made. Addressing the root causes of offending, public education, and reallocation of values or resources were mentioned as important areas of change. Questions around prison abolition were raised, with many participants sharing their preference of the ‘dangerous few’ remaining contained within a secure unit. While participants were in favour of reducing the prison population, many still desired some form of exclusionary practice or confinement of some people. A move towards more community-based habilitation centres was preferred; however, there is still tension with committing to a prison abolitionist identity.

Despite the appetite for moving beyond harmful and oppressive institutions, the tight grip of the carceral state still confines our imagination and potential for transformative change. The expectation that risk and safety can, and should, be managed through state institutions remains omnipresent. Indeed, exclusionary risk and safety logics continue to plague the mindset of even those who are most encouraging of change. It is therefore difficult to understand the potential of the reconceptualisations of risk and safety if state institutions and contemporary logics continue to linger in our visions for change. As contemporary risk and safety logics have dominated our responses to harm, a ‘jailbreak of the imagination’ (Kaba & Hayes, 2018) is necessary.

The final chapter of this project connects the main research findings explored in *Chapter Five, Six and Seven* to the research aims outlined in *Chapter One*. To close this project, a commentary is provided to examine key messages that

are pertinent to the purpose of this project. Additionally, transformative possibilities and further research are recommended to demonstrate how this project can contribute to the broader movement of transformative change in Aotearoa New Zealand. Lastly, limitations of this research are identified and a final reflection on this project is shared.

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## CHAPTER EIGHT: IMAGINING AN AOTEAROA WITHOUT PRISONS AND POLICE

In this thesis, I critically challenged the narrative that punitive responses to harm, such as prison and police, make all of Aotearoa New Zealand safe. To counteract this dominant narrative, I proposed an alternative framing of risk and safety. I came to this project with a prison abolitionist positionality, in the hopes to contribute to scholarship that highlights the harms of the justice system and to shine a light on the potential of non-punitive responses to harm. To do this, I examined the perspectives of 16 people in a public profile position who have extensive knowledge of the justice system in Aotearoa New Zealand. Participants came from a range of different backgrounds: Parole Board members, ex-police officers, victims' advocates, justice advocates, a judge, a politician, a member of local government, the Secretary of Justice, and the Department of Corrections National Commissioner. Through sharing these perspectives, it is hoped that this project can contribute to the movement towards transformative change, which enables everyone to thrive and flourish.

In closing this project, I return to the three research aims introduced in *Chapter One* and explain how the key themes explored in *Chapters Five* through *Seven* of this thesis address these. In addition, I offer some suggestions on how this research has contributed to critical criminological scholarship and the potential it has to encourage actionable change. Next, I outline some limitations of this current project, and how future research may develop on the methodological approach and findings. To conclude, I reflect on my experience of doing this research. In particular, I share the knowledge I have learned throughout this project and the experience of completing a doctoral project during a pandemic.

## **HARMS CAUSED BY THE JUSTICE SYSTEM**

The first research aim of this project was to explore the harms and consequences of the justice system in Aotearoa New Zealand. Despite participants having a diverse range of perspectives and experiences, they were all critical of how the justice system currently operates. Participants' narratives in *Chapter Five* identified seven sites where power may be exerted and exercised to disempower people.

Operating at a wider scope beyond the justice system, the first two sites exercise power by setting the agenda and focus of the justice system. Firstly, the government can be viewed as a site of power, as it sets the laws that inform the justice system agenda. The tough-on-crime agenda that has been at the forefront over the past few decades has driven punitive beliefs and punishment. Although participants acknowledged that this agenda is waning, there remains strong pressure from the public to remain punitive in our approach to crime and harm. Media is the second site of power participants identified, and often plays a role in influencing the actions of government. 'Newsworthiness' is a core driver of what stories are shared in the media and can therefore distort the public's perception of crime if certain crimes are disproportionately presented (Wright Monod, 2017).

Within the following two sites, power is demonstrated in the discretionary decision-making of whether to divert people away from, or further into, the justice system. Police operate as the third site of power, where institutional racism influences which communities are more likely to be policed and arrested. Additionally, physical power is exerted through the rise in weapon use such as tasers, and more recently, guns. As highlighted in *Chapter Six*, the Armed Response Team trial exercised power in their decision to have the trial in certain communities. The fourth site of power discussed by participants was the court process. In making sentencing decisions, judges are provided with eight distinct goals which can produce inequities. Judicial discretion and inconsistencies in the length of time for a trial can influence sentencing outcomes. Additionally, some regions do not have access to specialist courts, or they are processed quickly in the court room. Therefore,

people may experience differential treatment dependent on their accessibility to certain courts and judges.

The final three sites of power relate to experiences within the prison system. Participants collectively had a concern for the rising remand population, and therefore identified this as a site of power. Lack of access to rehabilitative programmes while on remand can be disempowering and disruptive. As highlighted in *Chapter Seven*, Rachel Leota shared her disappointment with people being released from remand on time served and without access to any programmes prior to release. A discussion of prisons as a site of power features heavily in this project. Prisons by nature are about deprivation of liberty, and therefore exert power through consistent monitoring, coercion, and surveillance of the people within prison. As Māori make up over half of the people in prison this makes many Māori disempowered. The final site of power identified by participants was the parole process. Due to the limited access to supportive reintegration programmes in prison, many people are being denied parole and therefore spend more time in prison. Golriz Ghahraman acknowledged that this is leading to arbitrary detention of those who spend prolonged periods in prison.

Harms of the justice system were examined in *Chapter Five's* discussion of the system as a site of pain. Here, participants spoke of how the system causes pain to those who have been harmed, and to those who have harmed. For victims and survivors, the justice system operates as a site of pain by a process that side-lines and retraumatises people. Two participants specifically, Jess McVicar and Ruth Money, highlighted that the justice system is usually an alienating process and that it provides limited voice to people who have been harmed. The justice system can therefore *add* to the pain they may already be experiencing.

Participants identified that for those who have harmed others, and are subjected to a term of imprisonment, many experience harm and pain within the prison. Violence and abuse within prison is prevalent, and most people that are within prison have also experienced victimisation prior to their criminal behaviour. Additionally, the limited potential of addressing the root

causes of criminal behaviour due to restricted access to intensive rehabilitation programmes heightens harm. Indeed, the criminogenic nature of prison perpetuates what Tim McKinnel labels a “wheel of failure”, with many people cycling in and out of prison. As I argued in *Chapter Five*, the collective goal of rehabilitation is often unachieved, leaving people in prison and wider society susceptible to more harm and pain.

## **CONCEPTUALISING RISK AND SAFETY**

The second research aim was to consider how risk and safety are conceptualised in Aotearoa New Zealand and how this may contribute to punitive responses to harm. *Chapter Six* explored participants’ conceptualisations of risk, safety, security, and protection. While the second research aim only specifically mentioned the first two concepts, security and protection often feature as synonyms for safety and so were included to determine whether there were any conceptual overlaps.

For most participants, risk was conceptualised as an Othering process (Rohleder, 2014) and risk assessment tools were understood as an opportunity to label certain people as risky. Risk aversion was noted by participants as a core driver of criminal justice policy. Participants were critical of the supposed neutrality of risk, instead suggesting that it encodes biases prevalent within society. Therefore, determining someone as a risk often leads to exclusionary and punitive approaches. Safety was conceptualised by participants as having three features: relationality, predictability, familiarity. Here, participants provided a conceptualisation of safety that prioritised inclusion and connection with people around you. Despite this initial perspective, the discussion in *Chapter Six* demonstrated that many participants reflected what Jackson and Meiners (2011) label a ‘safety from absence’ mindset. Therefore, there was an identification with safety being achieved through the removal of a threat or person, which is at odds with initial conceptualisations.



Participants' conceptualisations of security and protection help to further understand how safety and risk may overlap with these words. The concept of security was understood in an oppressive way and reinforced neo-liberal ideology. Parallels between security and risk were evident in security classifications within prison. People deemed a higher risk were categorised into a higher security classification, and this justified more punitive barriers and restrictions of movement. Security presented an exclusionary process, which mirrors the conceptualisation of safety from absence logic. Protection had an element of relationality within participants' conceptualisations, which reflects a similar attribute to conceptualisations of safety. However, there is often a power imbalance associated with protection through 'protector' and 'the protected', the latter label often depicting vulnerability. The identification of vulnerable people has been used to justify State 'care' of Indigenous and marginalised populations, which often does more harm than good.

An element of Othering (Rohleder, 2014) was evident in participants' conceptualisations of all four words. Through this Othering process, certain people and groups within society are excluded, demonised, or ostracised in the interests of someone else. This is evident in the analogy of the sword or shield (Ewert, 2007) by Khylee Quince, who demonstrates that these four words can be used against, or for, a person or group of people. The Armed Response Teams (ARTs) trial exemplifies how safety was used as a rationale for the introduction of the ARTs, however, they manifested in such a way that certain segments of society felt more unsafe. In responses to harm, these four words are used to justify more punitive and tough-on-crime solutions. As evidenced in *Chapter Two* and *Chapter Five*, punitive and carceral responses to harm produce more harm and pain in society.

## **REIMAGINING RISK AND SAFETY**

Finally, this project aimed to imagine how risk and safety may be reconceptualised without a reliance on punitive measures. 'Humanising risk' was presented in *Chapter Seven* as a way to reconceptualise risk. Contrary to

relying heavily on biased actuarial risk assessment, humanising risk places people at the forefront of decision-making. Most importantly, it highlights the detrimental effect risk assessment has on people, and that humanity and compassion should drive justice policy rather than risk aversion. To offer reconceptualisations of safety, participants resembled features of Jackson and Meiner's (2011) notion of 'safety from presence' and acknowledged the importance of relationships being at the forefront to achieve safety. Social bridging and wellbeing were identified as tools for preventing harm from occurring and therefore need to be prioritised over punitive responses.

Many participants were supportive of the need to make changes in the justice system, noting a high level of appetite for change across society. Despite participants acknowledging the desire to reduce the amount of people in prison, few could embody a prison abolitionist perspective due to the 'dangerous few' argument. Here, participants' conceptualisation of safety being driven by strong relationships that was presented in *Chapter Six* was challenged. Thus, the 'dangerous few' argument was framed through a 'safety from absence' mindset and trapped participants in risk and safety logics that promote punitive and carceral approaches to harm. This demonstrates how contemporary conceptualisations of risk and safety act as obstacles to transformative change.

Another barrier to change is the siloed nature of the justice system. The smorgasbord of visions presented in *Chapter Seven* shows how wide-ranging suggestions for change are. While having multiple avenues of change presents itself as a positive sign, it can mean that tension can arise within abolitionist movements about where to focus energy. Indeed, the magnitude of the justice system, and that it operates as siloed sites of power, might result in less collaborative and cohesive movements towards change. Clarity and cohesion are required so that more people can be included and contribute to transformative possibilities.

## **POSSIBILITIES FOR TRANSFORMATION**

James Baldwin, American activist and writer, identifies his purpose for writing is to “change the world” (Romano, 1979, para. 50). He shares that the “world changes according to the way people see it, and if you alter, even by a millimeter, the way a person looks or people look at reality, then you can change it” (Romano, 1979, para. 50). My intention with this project is not for it to be read by a handful of people and gather dust at the University library. Indeed, I want to ensure that the ideas shared in this thesis have some impact on the ground. Below are some suggestions for how this thesis can influence change.

Prison and police abolitionist movements have promoted policies and practices that do not rely on punitive institutions to achieve safety. An example of these is the website *dontcallthepolice.com*, which provides a directory of alternative numbers to call in the United States instead of 911 calls to the Police. This initiative acknowledges that many calls to the Police for things such as homelessness, mental health distress, or substance abuse are escalated through calling 911 (Don't Call The Police, n.d.). Instead, alternative organisations that provide de-escalation and intervention are promoted. In Aotearoa New Zealand, the Police have noted a recent rise in calls from people experiencing mental health distress (1News, 2022). This raises questions about how we may adopt an alternative approach that ensure people are given the most appropriate support.

In the last three months, I have been fortunate to be in a conversation with others based in Central Auckland to discuss creating a counter-narrative to tough-on-crime responses to safety in the city. The collective group involves a range of people, from Lifewise, the Drug Foundation, PAPA, and the New Zealand Nurses Organisation to name a few. While the collective is still developing, our long-term vision is for a replacement service for 105 police calls for people in mental health distress. Collaborative action between invested individuals and organisations will help propel a vision of a safer Aotearoa New Zealand without reliance on punitive responses.

This project has demonstrated how crucial it is to interrogate the language that is used in relation to justice issues. *Chapter Seven* demonstrated the tension between visions of change and the terminology of prison abolition. To fully achieve the transformative possibilities of prison and police abolition it is imperative to have collective and widespread support. Therefore, a reimagining of how prison abolition is communicated to the public is necessary. Dylan Asafo, Law Lecturer at the University of Auckland, recently published in the *New Zealand Herald* on the need for prison abolition (Asafo, 2022). Within the article, he challenged the common perceptions and fears that correspond to the phrase ‘prison abolition’ and provided some compelling arguments in support of abolitionist thinking. Greater emphasis is needed on clearly communicating the ideals and principles of prison abolition in a matter that garners more public support.

As acknowledged in this thesis, our vision for the transformative possibilities of justice systems is “unnecessarily limited by our current realities” (Epperson & Pettus-Davis, 2017, p. vii). As a result, the carceral imagination has been held captive by logics of safety and risk. To envision movements towards prison and police abolition it is imperative that we unlock our minds from these logics. While this thesis aimed to challenge the way our current justice system operates, the call for transformative change goes far deeper than that. We must address inequalities experienced in housing, health, employment, and education. Moreover, we must address inequalities that are purposefully sustained by capitalist, neoliberal, patriarchal and white supremacist ideologies (Davis, Dent, Meiners, & Richie, 2022). To ensure sustainable change in the way we respond to harm we must engage in anti-colonial, anti-capitalist, and anti-patriarchal conversations. Therefore, any change that is implemented must uphold these values and be collective in its approach.

In Aotearoa New Zealand, responsibility for risk management and the maintenance of safety is mostly placed in the hands of the state. The sites of power examined in *Chapter Five* demonstrate how state-run organisations are maintained and legitimated because they are believed to be integral to risk

and safety. However, non-punitive approaches to safety, such as ‘care-based safety’ (Norris, 2021a) and ‘safety from presence’ (Jackson & Meiners, 2011), allow us to think beyond being dependent on the state to achieve safety. While the state may have a role in providing resources to communities who currently live in precarious positions, an abolitionist future may draw on the expertise of community members.

As our risk and safety logics are so intricately connected to the state, it may be difficult to move beyond these logics while still using the same institutions and social structures. Transformative justice and abolitionist movements have wrestled with the state’s role in responding to harm. In his examination of abolitionist thought, Lamusse (2022) details questions that need to be addressed in order to move toward an abolitionist future. One area of contention is around state involvement in responding to harm. Rather than work towards an anarchist abolitionist vision, Lamusse (2022) suggests a devolved system of justice, but where the state has the role of upholding human rights.

### *SHOULD WE RECONCEPTUALISE OR DISREGARD RISK AND SAFETY?*

This project has given significant attention to promoting reconceptualisations of risk and safety as a way of transforming the justice system. However, given their flawed and exclusionary contemporary framing, it is worth considering whether we can ever move away from this. Therefore, the question of whether these concepts can be redeemed or whether they should be disregarded needs to be addressed. Is it enough to unsettle, disrupt, and challenge our current conceptualisations of safety and risk, and then move forward with reconceptualised concepts? Or, do we need to problematise them and then disregard them because they are unredeemable as loaded words?

Early into this project, there was an intention to use and promote alternative words to safety. ‘Collective security’ has been used by one of my supervisors, Tracey McIntosh, over the past few years in an attempt to move away from using the concept of safety. However, this project identified integral qualities

of safety, such as the importance of relationality, that make it useful in discussing movements toward transformative change. Indeed, there is a place for reconceptualising safety and keeping it within the lexicons that are used to talk about justice and harm. When conceptualised by participants at a broad level, safety fostered images of relational care for one another and was deeply embedded in the humanity of those around us. For reconceptualisations of safety to be meaningful and sustainable, these values need to be the core focus.

Contrastingly, risk is a more problematic concept, and its deficit-focused origins and racialised implications make it less redeemable as a concept. However, there is value in moving towards ‘humanising risk’, especially in the short term to improve the tools and processes we currently have around risk decisions. The concept of risk can still contribute to an abolitionist framework, although it needs to be separated from actuarial and predictive models that determine risk. While this project has maintained a focus on reconceptualising risk at an individual level, there is potential for further research to explore institutional and collective risk in greater depth.

#### *RECOMMENDATIONS FOR FUTURE RESEARCH*

There are multiple avenues for future research that could use this project as a springboard. Most importantly, the secondary method that was intended for this project in its early stages could be fulfilled. As explained in *Chapter Four*, due to the global pandemic this project was restructured and the focus group with laypeople element was removed from this project. It would be interesting to build rapport with different communities across Aotearoa New Zealand and gather their perspectives on what ‘safety from presence’ may look like. This proposed research could utilise a range of different method techniques; focus groups, interviews, or ethnographic accounts.

Research like this could draw inspiration from Megan McDowell’s (2015) study, in which participant-generated photos and observations were used to drive the emancipatory research. With this research, current state-

determined safety practices were disregarded and identifying what made communities feel safe was done from the ground-up. Similarly, in Aotearoa New Zealand, Geoff Bridgman (2017) completed research on community safety with members of the West Auckland community. Creating more grassroots research, which is embedded into communities, would provide an alternative view of safety that may further inform legislative and transformative change.

Future research in this area should also prioritise sharing the voices of people with lived experience of the justice system to unpack and understand their visions of safety. In discussing abolitionist perspectives within academia, Davies, Jackson, and Streeter (2021) identify the importance of “community-centered or co-produced” research which “amplifies the lived experiences and collective knowledge of policed communities” (p. 3099). It is not just important to include these voices, but also to “make space for them as co-producers and beneficiaries of the research” (Davies, Jackson, & Streeter, 2021, p. 3099). Additionally, working closely with abolitionist organisations that centre the voices of people with lived experience, such as Sisters Inside, is valuable and necessary (Kilroy & Quixley, 2022).

## **LIMITATIONS OF THE STUDY**

Within this project, I made every effort to include a range of different perspectives to make sure competing narratives were shared. However, I do think this project fell short of including a contemporary perspective from the New Zealand Police. As the project offered critical insights into policing, it may have been beneficial to have more current perspectives of the police. While a quarter of the participants in this project were previously in the New Zealand Police, their perspective of the police was shaped from their distance from that experience, the different reasons they may have had on leaving the police, and their experiences pertaining to the criminal justice system since leaving the police. Therefore, it would have been useful to speak to serving police. That being said, the Police as an organisation use the media as their platform, and

they have a dominant view that sets the crime control agenda. An invitation to participate in this research was offered to the current Commissioner of Police, Andrew Coster, and while his office did acknowledge receipt of this invite, there was no follow-up to express interest. In hindsight, I could have sent further emails to confirm whether the Commissioner wanted to be in the research, which may have resulted in his participation.

Unfortunately, this project was unable to achieve its intention of including perspectives of laypeople, due to the pandemic forcing a restructure of the methods. More importantly, part of this feature of the project was going to draw on the experiences of people who are most effected by our current justice system. It would be beneficial to include the voices of people with lived experience, to help envision what safety could look like without a reliance on the carceral state. Despite these voices not being included in this project, this opens the door for future research to do a more thorough examination of these perspectives.

## **CONCLUDING THOUGHTS**

Throughout this thesis I have shared many moments of self-reflection and have put in as much of me as I can. I want to conclude by honouring my commitment to reflexivity by sharing how I hope to continue to contribute towards transformative change in Aotearoa New Zealand. In the final few months of finishing this project I was offered a lecturing position in Criminology at the Auckland University of Technology. Within this role, I hope to further understand and promote alternative visions of safety that do not rely on punitive and carceral responses to harm.

Activism is a core feature of abolitionist thinking, and therefore situating myself as an activist-scholar is deeply important to me. Though I see the value in research and promotion of prison abolition and transformative possibilities, there is also a need to support people who are currently living in a marginalised or precarious position. My current contribution within PAPA as an Advocacy Co-coordinator utilises my empathetic and caring nature to



support people currently incarcerated. In future, I commit to remaining connected to grassroot organisations and people with lived experience.

Reflecting on this doctorate journey has been emotional. Within the pages of this thesis, I carry with me the pain and hurt experienced by those trapped in the carceral state. But there is also hope and passion for a brighter, more compassionate future. My vision for Aotearoa New Zealand is for collective safety and healing. Our current responses to harm narrow the trajectory and life outcomes of vulnerable and marginalised communities. Therefore, it is imperative that we reimagine what safety, accountability, and healing may look like without a reliance on the carceral state. The vision for transformative possibilities does not start or end here. We must remain bold in our vision for change.

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## **PARTICIPANT INFORMATION SHEET (Interview)**

**Project title:** Freeing the carceral imagination: Moving beyond contemporary conceptualisations of risk and safety to imagine an Aotearoa without prisons

**Researcher:** Grace Gordon, Doctoral candidate, University of Auckland

**Supervisors:** Tracey McIntosh, Professor of Indigenous Studies, University of Auckland and Robert Webb, Senior Lecturer in Criminology, University of Auckland

### **Project introduction:**

I am a student from the University of Auckland who is currently undertaking a Doctorate in Criminology under the supervision of Tracey McIntosh and Robert Webb. My research involves a critical exploration into the use of prisons into Aotearoa/New Zealand. Of particular interest to this research is how certain conceptualisations of terms such as risk, safety, protection and security may have resulted in policy and legislative change in Aotearoa/New Zealand.

The research questions for this project are as follows:

- *How are risk and safety conceptualised in Aotearoa?*
- *How are these conceptualisation (re)produced and legitimated?*
- *Is there a relationship between mass incarceration and conceptualisations of risk and safety in Aotearoa?*
- *What alternatives to incarceration can be introduced to maximise sustained collective security?*

As part of this project, I would like to undertake a face-to-face interview with you to understand your views on prison and what certain terms such as risk, safety, protection and security mean to you. By consenting to this interview, you will greatly contribute to advancing the conversation around transformative justice to enable collective security and flourishing.

### **Project procedures**

Your participation in this research is entirely voluntary. If you agree to be interviewed, I will ask you to sign the consent form and email it back to me with

a convenient interview time. The interview will take approximately 60 minutes. You can stop the interview at any time without giving any reason.

If you agree, this interview will be audio recorded, however, you have the opportunity to stop the recording at any given time without needing to provide a reason. Following the interview, I will transcribe the audio recording and provide you with a copy. As a participant you will have the right to review the transcript from your interview. If you wish to do this, you will be sent a copy of the transcript after the interview and asked to make any alterations within two weeks. You may also choose to receive a summary of the research findings once the research has been completed. Koha will be given to the participant through the form of a \$30 grocery or petrol voucher. Interviews will take place between July 2020 and April 2021.

### **Data storage/retention/destruction/future use**

The handwritten notes and interview schedules will be kept securely in a locked cabinet in the researcher's office at the University of Auckland. Audio recordings will be stored on the researcher's password protected laptop. Consent forms will be stored separately from the data in the supervisor's office. Only the researcher and their supervisor will have access to this information. All data will be kept for a minimum period of six years in line with the University of Auckland's data storage policy. After this time participants may choose for the recordings to be destroyed (deleted) or dealt with in a way that is culturally appropriate. The research will be used to inform the researcher's doctoral thesis. The anonymised data is likely to be used in conference presentations and in subsequent publications. A summary of findings from the doctoral thesis can be distributed to you through email once the thesis is completed.

### **Right to withdraw from participation**

You are free to withdraw participation at any time without giving a reason, and you can withdraw any traceable data from the study up until one month after being sent the interview transcript.

### **Right to confidentiality**

All information that you provide that you wish to remain confidential will not be discussed to others by the interviewer. You have the right to choose to keep your identity confidential in the research outputs if you wish. If you would prefer to be named in the thesis then the researcher will honour this preference as long as this does not compromise the anonymity of other participants. Given the scale of New Zealand society and the inter-relationships between people working in this area it is always possible that people may be identified.

### **Are there any risks of participating?**

It is unlikely that you will experience adverse effects from your participation in the research. In the unlikely event that our discussion of some of the issues and themes (around safety and risk) does make you unsettled, then confidential support can be found by contacting Lifeline: call the free service 0800 543 354 (0800 LIFELINE) or free text 4357 (HELP).

## Contact Details

If you have any questions, please contact me, my supervisors, or the Head of Department. Contact details are below:

Researcher:

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For any concerns regarding ethical issues you may contact the Chair, the University of Auckland Human Participants Ethics Committee, Office of Strategy Research and Integrity, University of Auckland, Private Bag 92019, Auckland 1142. Telephone 09 373-7599 ext. 83711. Email: [humanethics@auckland.ac.nz](mailto:humanethics@auckland.ac.nz)

Approved by the University of Auckland Human Participants Ethics Committee on 19 March 2020 for three years. Reference Number 024208





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### **PARTICIPANT CONSENT FORM (Interview)** **THIS FORM WILL BE HELD FOR A PERIOD OF 6 YEARS**

**Project title:** Freeing the carceral imagination: Moving beyond contemporary conceptualisations of risk and safety to imagine an Aotearoa without prisons

**Researcher:** Grace Gordon, Doctoral candidate, University of Auckland

**Supervisors:** Tracey McIntosh, Professor of Indigenous Studies, University of Auckland and Robert Webb, Senior Lecturer in Criminology, University of Auckland

I have read the Participant Information Sheet, have understood the nature of the research and why I have been selected to take part. I have had the opportunity to ask questions and have had them answered to my satisfaction.

- I agree to take part in this research.
- I understand that my participation is voluntary and that I am free to withdraw any data traceable to me up until one month after being sent the interview transcript without giving any reason.
- I do/ do not agree to my interview being audio-recorded
- I understand that any audio-recording will be transcribed by the researcher.
- I wish/ do not wish to request a copy of my interview notes for review. I understand I will have two weeks to return them to the researcher.
- I wish/ do not wish to be named in the research outputs.
- I understand that if I do not wish to be named in the research outputs, that the researcher will ensure all steps are taken to make me unidentifiable or named in any of the research publications, however, due to the small scale of New Zealand it is possible that I may be identifiable in the research.
- I understand that data (digital and hard copy) will be kept for six years in a locked cabinet in the researcher's office or in a password protected computer at the University of Auckland, after which they may be destroyed.
- I wish/do not to receive a summary of findings, which can be emailed to me at this email address: \_\_\_\_\_.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date \_\_\_\_\_

Approved by the University of Auckland Human Participants Ethics Committee on 19 March 2020 for three years. Reference Number 024208

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## APPENDIX 3

### Interview schedule

#### Understanding of the justice system

1. Describe your involvement in/connection to the justice system in Aotearoa New Zealand
  
2. Do you think the current justice system is effective? Why/why not?
  
3. What are your thoughts on prison?
  
4. What are the main justifications for having prisons in our society? What is your view on that?

#### Defining concepts

5. What is the first thing that comes to your mind when you hear the word safety?
  - a. What does it look like?
  
  - b. What makes you feel more/less safe?
  
6. What is the first thing that comes to your mind when you hear the word risk?
  - c. What does it look like?
  
  - d. What do you think is needed to minimise risk?
  
7. What is the first thing that comes to your mind when you hear the word security?

- e. What does it look like?
  - f. What makes you feel more/less secure?
8. What is the first thing that comes to your mind when you hear the word protection?
- g. What does it look like?
  - h. What makes you feel more/less protected?
9. Is there anything you can think of that might influence your conceptualisation of any of these words?
10. What emotions arise when you think of words such as safety, risk, security and protection?

### **Potential for change**

11. When you hear the words 'prison abolition' how does that make you feel?
- i. Why do you think it makes you feel that way?
12. Can you imagine what a society without prisons would look like?  
Why/why not

### **Closing comments**

13. Do you know of any others that would be willing to be interviewed for my research? If so, can you pass on my contact details to them?
14. Do you have anything else to add or ask me?