



Content downloaded/printed from

[HeinOnline](#)

Mon Nov 18 12:01:26 2019

Citations:

Bluebook 20th ed.
15 Y.B. N.Z. Juris. iii (2017).

ALWD 6th ed.
15 Y.B. N.Z. Juris. iii (2017).

APA 6th ed.
(2017). Yearbook of New Zealand Jurisprudence (Gaunt), 15, iii-iv.

Chicago 7th ed.
, " Yearbook of New Zealand Jurisprudence (Gaunt) 15 (2017): iii-iv

OSCOLA 4th ed.
, " (2017) 15 YB NZ Juris iii

Provided by:
University of Michigan Law Library

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at

<https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your license, please use:

[Copyright Information](#)

Use QR Code reader to send PDF to your smartphone or tablet device



**Yearbook
of
New Zealand Jurisprudence**

Special Issue
**Indigenous Access
to Justice**
Volume 15 2017

Editors: Valmaine Toki and Elcna Marchetti

The *Yearbook of New Zealand Jurisprudence* is published annually by the University of Waikato, Te Piringa – Faculty of Law. Subscription to the Yearbook costs NZ\$40 (incl gst) per year in New Zealand and NZ\$45 (including postage) overseas. Advertising space is available at a cost of NZ\$200 for a full page and NZ\$100 for a half page. Communications should be addressed to:

The Editor
Yearbook of New Zealand Jurisprudence
Te Piringa – Faculty of Law
The University of Waikato
Private Bag 3105
Hamilton 3240
New Zealand

North American readers should obtain subscriptions directly from the North American agents:

Gaunt Inc
Gaunt Building
3011 Gulf Drive
Holmes Beach, Florida 34217-2199
Telephone: 941-778-5211, Fax: 941-778-5252,
Email: info@gaunt.com

This issue may be cited as (2017) Vol 15 *Yearbook of New Zealand Jurisprudence*.

All rights reserved ©. Apart from any fair dealing for the purpose of private study, research, criticism or review, as permitted under the Copyright Act 1994, no part may be reproduced by any process without permission of the publisher.

ISSN No. 1174-4243 (Print)
ISSN No. 2253-363X (Online)

Published with assistance of the New Zealand Law Foundation.





Content downloaded/printed from

[HeinOnline](#)

Mon Nov 18 12:00:33 2019

Citations:

Bluebook 20th ed.

Linda Hasan-Stein; Valmaine Toki, Reflections from the Roundtable: Access to Justice: How Do We Heal Historical Trauma, 15 Y.B. N.Z. Juris. 183 (2017).

ALWD 6th ed.

Linda Hasan-Stein; Valmaine Toki, Reflections from the Roundtable: Access to Justice: How Do We Heal Historical Trauma, 15 Y.B. N.Z. Juris. 183 (2017).

APA 6th ed.

Hasan-Stein, L.; Toki, V. (2017). Reflections from the Roundtable: Access to Justice: How Do We Heal Historical Trauma. Yearbook of New Zealand Jurisprudence (Gaunt), 15, 183-204.

Chicago 7th ed.

Linda Hasan-Stein; Valmaine Toki, "Reflections from the Roundtable: Access to Justice: How Do We Heal Historical Trauma," Yearbook of New Zealand Jurisprudence (Gaunt) 15 (2017): 183-204

McGill Guide 9th ed.

Linda Hasan-Stein & Valmaine Toki, "Reflections from the Roundtable: Access to Justice: How Do We Heal Historical Trauma" (2017) 15 YB of New Zeal& Jurisprudence (Gaunt) 183.

MLA 8th ed.

Hasan-Stein, Linda, and Valmaine Toki. "Reflections from the Roundtable: Access to Justice: How Do We Heal Historical Trauma." Yearbook of New Zealand Jurisprudence (Gaunt), 15, 2017, p. 183-204. HeinOnline.

OSCOLA 4th ed.

Linda Hasan-Stein and Valmaine Toki, 'Reflections from the Roundtable: Access to Justice: How Do We Heal Historical Trauma' (2017) 15 YB NZ Juris 183

Provided by:

University of Michigan Law Library

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at

<https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your license, please use:

[Copyright Information](#)

Use QR Code reader to send PDF to your smartphone or tablet device



REFLECTIONS FROM THE ROUNDTABLE: ACCESS TO JUSTICE – HOW DO WE HEAL HISTORICAL TRAUMA?

BY LINDA HASAN-STEIN AND DR VALMAINE TOKI*

*E pā tō hau he wīni raro He hōmai aroha
Kia tangi atu au i konei He aroha ki te iwi
Ka momotu ki tawhiti, ki Paerau, Ko wai e kite atu
Kei hea aku hoa i mua rā
I te tōnuitanga?
Ka haramai tēnei ka tauwehe Ka raungaiti au, e*

*The blowing wind from the north brings sorrow
I weep for the loss of my people
who have departed to the spirit world
Who will ever know their grief?
Gone are the loved ones from the days when we knew prosperity
This has led to us being ripped apart
and I am shattered to my core
(Te Rangiāmoa, Ngāti Apakura, 1864)*

I. INTRODUCTION

An overriding theme from the papers presented at the 2017 Roundtable: Accessing Justice is *injustice*. Central to that injustice is the colonisation of Indigenous peoples. Any discussion on the colonisation of Indigenous peoples quickly deviates into a history lesson; a history lesson steeped in historical trauma.

The following discussion considers the parallels used to construct definitions of historical trauma, the impact historical trauma has had on the current lived experience of many Indigenous peoples around the world, and ways in which those affected can be assisted to heal.

* Dr Valmaine Toki is an Associate Professor at Te Piringa, Faculty of Law, University of Waikato, New Zealand. Linda Hasan-Stein, LLB(Hons), MSc, is a research assistant at Te Piringa, Faculty of Law, University of Waikato, New Zealand. We would like to thank Daniel S Press for his encouragement in writing this paper. The material he provided us ignited a much larger discussion that forms a significant contribution to this Roundtable publication. Many thanks Dan, Valmaine and Linda.

II. DEFINING HISTORICAL TRAUMA

Individual trauma reverberates across communities but also across the generations.¹ Recent years have seen the rise of historical trauma as a trope to describe the long-term impact of colonization, cultural suppression, and historical oppression of many Indigenous peoples² including Native Americans in the United States, Aboriginal peoples (First Nations, Inuit and Métis) in Canada, Aboriginal and Torres Strait Islander peoples of Australia, and the Indigenous Māori of New Zealand. In its most colloquial form, the concept is used merely as a synonym for postcolonial distress.³ Trauma research in the field of psychology developed in the 1980's when Vietnam War veterans were first diagnosed with post-traumatic stress disorder.⁴ Other proponents of this construct have made explicit analogies to the Holocaust as a way to understand the transgenerational effects of genocide.⁵ Thornton for example makes one such comparison:

For them [Indians] the arrival of the Europeans marked the beginning of a long holocaust, although it came not in ovens, as it did for Jews. The fires that consumed North American Indians were fevers brought on by newly encountered diseases, the flashes of settlers' and the soldiers' guns, the ravages of firewater, the flames of villages and fields burned by the scorched-earth policy of vengeful Euro-Americans. The effects of this holocaust of North American Tribes was, in a way, even more destructive than that of the Jews, since many American Indian peoples became extinct.⁶

One function of making these historical parallels has been to recognize and valorize Indigenous peoples as victims of violent oppression at the hands of European colonizers and their regimes.⁷ However, the social, cultural, and psychological contexts of the Holocaust and the Vietnam War and that of post-colonial Indigenous "survivorship"⁸ differ in many

-
- 1 Aboriginal and Torres Strait Islander Social Justice Commissioner *Social Justice Report – Report of the Aboriginal and Torres Strait Islander Social Justice Commissioner* (Australian Human Rights Commission, Sydney, 2008) at 155.
 - 2 L Kirmayer, J Gone and J Moses "Rethinking Historical Trauma" (2014) 51 *Transcultural Psychiatry* 3 at 300.
 - 3 At 301.
 - 4 J Briere and C Scott *Principles of Trauma Therapy: A Guide to Symptoms, Evaluation and Treatment* (Sage, London, 2006).
 - 5 Above n 2, at 299.
 - 6 R Thornton *American Indian Holocaust and Survival: A Population History Since 1492* (University of Oklahoma Press, Oklahoma, 1987) at xv-xvi.
 - 7 Above n 2, at 303.
 - 8 G Viznor *Manifest Manners: Narratives on Postindian Survivorship* (University of Nebraska Press, Lincoln, 1999).

striking ways.⁹ Without doubt, many Indigenous populations were victims of intentional killing through conflict¹⁰ and some groups, like Newfoundland's Beothuk First Nation, were entirely eliminated through low-intensity conflict and starvation.¹¹ However, defining trauma research around the Holocaust and the Vietnam War emphasises individual and actual events allowing for clear and succinct diagnostic utility, yet it fails to account for long-term chronic and complex individual and collective trauma.¹² While the Holocaust was a time-limited series of events covering about a decade, the events that constitute historical trauma for Indigenous peoples in the United States, Canada, Australia and New Zealand lasted hundreds of years and still exists today.¹³ Furthermore, comparisons do not allow for experiences of historical trauma due to assimilative colonial practices. Jews who survived the Holocaust were able to return to unbroken religious and cultural traditions.¹⁴ Indigenous peoples, on the other hand, had their livelihoods decimated by cultural suppression,¹⁵ land alienation¹⁶ and forced removal of children.¹⁷ These comparisons suggest that the persistent suffering of Indigenous peoples "reflects not so much past trauma as ongoing structural violence."¹⁸

9 Above n 2, at 299.

10 J Belich *The New Zealand Wars and the Victorian Interpretation of Racial Conflict* (Auckland University Press, Auckland, 1987); See also the Cape Grimm massacre in 1828 and the Black War 1828 – 1832 genocide that occurred in Tasmania, Australia, decimating the Indigenous population.

11 Above n 2, at 306.

12 R Wirihana and C Smith "Historical trauma, healing and well-being in Māori communities" (2014) 3 MAI Journal 3 at 198.

13 Above n 2, at 305.

14 At 305.

15 The Tohunga Suppression Act 1907.

16 R Boast "Te tango whenua – Māori land alienation" (2015) Te Ara – the Encyclopedia of New Zealand at 4 <<http://www.TeAra.govt.nz/en/te-tango-whenua-Māori-land-alienation>>

17 Human Rights and Equal Opportunity Commission *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Human Rights and Equal Opportunity Commission, Sydney, 1997) at 651; C Wesley-Esquimaux and M Smolewski, *Historic Trauma and Aboriginal Health* (Aboriginal Health Foundation, Ottawa, 2004) at 4; J Miller Shingwauk's vision: *A history of Native residential schools* (University of Toronto Press, Toronto, 1996). It is also noted that programs seldom address the "unique needs of Aboriginal and Torres Strait Islander peoples including the forcible removal as a child and intergenerational trauma." See Submission to the Senate Inquiry on the Indefinite Detention of People with Cognitive and Psychiatric Impairment "Aboriginal and Torres Strait Islander Perspectives on the recurrent and indefinite detention of people with cognitive and psychiatric impairment" (First Peoples Disability Justice Consortium April 2016) at 58.

18 Above n 2, at 301.

In an attempt to ameliorate these comparative problems many Indigenous theorists and academics have examined how historical exposure to long-term chronic, complex and collective trauma has impacted on their communities.¹⁹ Maria Yellow Horse Brave Heart was one of the first Indigenous scholars to describe historical trauma, stating that:

Historical trauma (HT) is cumulative emotional and psychological wounding over the lifespan and across generations, emanating from massive group trauma experiences; the historical trauma response (HTR) is the constellation of features in reaction to this trauma. The HTR often includes depression, self-destructive behaviour, suicidal thoughts and gestures, anxiety, low self-esteem, anger, and difficulty recognizing and expressing emotions. It may include substance abuse, often an attempt to avoid painful feelings through self-medication. Historical unresolved grief is the associated affect that accompanies HTR; this grief may be considered fixated, impaired, delayed, and/or disenfranchised.²⁰

Effectively, the experience of historic trauma and intragenerational grief can best be described as “psychological baggage being passed from parents to children along with the trauma and grief experienced in each individual’s lifetime...it is continuously acted out and recreated in contemporary Aboriginal culture.”²¹

Historical trauma offers an explanation for the continuing inequalities experienced by Indigenous peoples when accessing justice. Here in New Zealand, seeking ways to define historical trauma allows Māori the opportunity to examine their own experiences of colonial oppression, a process that has become “integrated into the psyche and soul of Māori.”²² Duran, Firehammer and Gonzalez described historical trauma as a soul

-
- 19 Above n 2, at 299; N Mohatt et al “Historical trauma as public narrative: A conceptual review of how history impacts present-day health” (2014) *Social Science & Medicine* 106 at 128; K Walters et al “Bodies don’t just tell stories, they tell histories: Embodiment of historical trauma among American Indians and Alaska Natives” (2011) 8 *Du Bois Review* 1 at 179; P Pokhrel & T Kukutai “Historical trauma and substance use among Native Hawaiian college students” (2014) 38 *American Journal of Health Behaviour* 3 at 420; L Whitbeck et al “Conceptualizing and measuring historical trauma among American Indian people” (2004) 33 *American Journal of Community Psychology* 3 at 119; J Gone “We never was happy living like a Whiteman: Mental health disparities and the postcolonial predicament in American Indian communities” (2007) 40 *American Journal of Community Psychology* 3 at 290.
- 20 M Yellow Horse Brave Heart “The historical trauma response among natives and its relationship with substance abuse: a Lakota illustration” (2003) 35 *Journal of Psychoactive Drugs* 1 at 7.
- 21 C Wesley-Esquimaux and M Smolowski, *Historic Trauma and Aboriginal Health* (Aboriginal Health Foundation, Ottawa, 2004) at 3.
- 22 T Turia “Keynote address to the New Zealand Psychological Society Annual Conference, Waikato” (The Bulletin, The New Zealand Psychological Society, Wellington, 2000) 99 at 28.

wound which, if healing did not occur, would transfer across generations indefinitely.²³

III. THE ORIGINS OF HISTORICAL TRAUMA FOR INDIGENOUS PEOPLES

The devastating effects of historical trauma are echoed in the Indigenous communities of Australia, New Zealand, Canada and the United States. For Indigenous people, “mental (and physical) health issues are often intimately tied to intergenerational trauma flowing from colonial and postcolonial practices and policies”.²⁴ Sherwood notes:

Trauma is a normal and predictable response to overwhelming distress resulting from an event which is left untreated or, at worst, ignored. It leads to intergenerational hopelessness and unresolved grief ... Reviewing the evidence, it is clear that it has not been just one act; it has been a sustained and merciless process. Acknowledging the deeply etched impact the last 200+ years of colonisation has had on the health and well-being of Indigenous Australians, the significance of this process can begin to be appreciated.²⁵

A central and common trauma to these communities is the confiscation of land. For example, land loss affected the well-being of Australian Aboriginal communities because of the intimate spiritual and physical relationships they sustained with the land.²⁶ Similarly so for Māori who experienced “large-scale land confiscation and alienation through the process of legal imperialism and colonization which legitimized the Crown’s actions of acquiring three million acres of Māori land for Pakeha settlers.”²⁷ The loss

23 E Duran, J Firchammer and J Gonzalez “Liberation psychology as the path toward healing cultural soul wounds (2008) 83 *Journal of Counseling and Development* 3 at 288.

24 J Sherwood “Colonisation – it’s bad for your health: the context of Aboriginal health” (2013) 46 *Contemporary Nurse* 1 at 28 cited in Senate Standing Committees on Community Affairs “Submission to the Senate Inquiry on the Indefinite Detention of People with Cognitive and Psychiatric Impairment: Aboriginal and Torres Strait Islander Perspectives on the recurrent and indefinite detention of people with cognitive and psychiatric impairment” (First Peoples Disability Justice Consortium, Canberra, 2016) at 52.

25 Sherwood, above n 24, at 36.

26 B Raphael, P Swan and N Martinek “Intergenerational aspects of trauma for Australian Aboriginal People” in Y Dancili (ed) *International handbook of multigenerational legacies of trauma* (Plenum Press, New York, 1998) at 327. The Māori term for land is “whenua” which translates to not only land but also afterbirth or placenta. When a child is born their placenta is returned to the land. Subsequently indicating the importance of “land” to Māori.

27 R Walker “The role of the Pakeha press in defining perceptions of the Māori” in P Spoonley and W Hirsh (eds) *Between the lines: Racism and the New Zealand media* (Hicemmann Reed, Auckland, 1990) at 38.

of customary land title under the Native Lands Act in 1862 undermined Māori societal structures resulting in “rapid Māori land loss and consequential impoverishment.”²⁸ These European imposed legislative measures only served to undermine the core principles of tikanga Māori, intentionally disrupting the principle of collectivism and predicating the destruction of the whānau.²⁹

Women traditionally played a central role within the Aboriginal family, within Aboriginal government and in spiritual ceremonies. Men and women enjoyed considerable personal autonomy and both performed functions vital to the survival of Aboriginal communities.³⁰ However, these traditional roles of Māori women, for example, have been directly challenged by European male dominance,³¹ marginalising the leadership, organisation and nurturing roles that they had previously held.³² The colonial concept of individual land ownership and the role of men as property owners ignored Māori women’s relationship with the land.³³ The imposition of colonial standards, such as marriage in accordance with the English common law, subordinated Māori women and devalued their contribution to Māori society, leaving them vulnerable with little support either materially, spiritually, or collectively.

Within extended family arrangements, Māori children were traditionally, nurtured and protected with *aroha* (love), a principle of tikanga Māori.³⁴ The Native Schools Act of 1867 directed Māori children to be physically and emotionally abused for speaking Māori language in school.³⁵ These colonial practices of physical abuse to reinforce discipline had a detrimental effect on Māori.³⁶ This was also the situation in Australia, Canada and the United States, where students were prohibited from, and punished for, speaking their Indigenous language. Corporal punishment

28 R Boast “Te tango whenua – Māori land alienation” (2015) Te Ara – the Encyclopedia of New Zealand at 4 <<http://www.TeAra.govt.nz/en/te-tango-whenua-Māori-land-alienation>>

29 A Mikacre “Māori Women: Caught in the Contradictions of a Colonised Reality” 1994 2 WLR at 133.

30 The Aboriginal Justice Implementation Commission *Report of the Aboriginal Justice Inquiry of Manitoba* (Statutory Publications Office, Manitoba, 1999) at chap 13.

31 G Burt “What about the wahine?” (2011) WLR 206 at 209.

32 J Tolmie “Crime in New Zealand over the last ten years: A statistical profile” in J Tolmie and W Brookbanks (eds) *Criminal Justice In New Zealand* (LexisNexis New Zealand Ltd, Wellington, 2007) at 56.

33 Law Commission *Justice: The Experiences of Māori Women* (New Zealand Law Commission Report 53, 1999) at 12.

34 *Ibid.*

35 *Above n 12*, at 200.

36 *Ibid.*

was a normalised response to ensure only English would be spoken. Walker finds that the “damaging aspect of this practice lay not in corporal punishment, but in the psychological effect on an individual’s sense of identity and personal worth.”³⁷ The introduction of health legislation further compounded the marginalization of Māori well-being.³⁸ The Tohunga Suppression Act of 1907 restricted the use of traditional Māori medicine and healers in favour of western-trained doctors,³⁹ subverting Māori methods of healing by forcing Māori healers underground.⁴⁰

Indigenous peoples of Canada and Australia suffered similar disruptions to their societal balance due to state policies that facilitated the removal of Aboriginal children from their families further exacerbating the trauma associated with land loss.⁴¹ The transmission of trauma across generations resulted in land dislocation that had long-term negative implications, as connections to the land were also essential for economic as well as cultural and social stability.⁴²

Thus, the origins of historical trauma can be understood in terms of imperial-based self-vindicating ideals encircling politics, public discourse and structural violence. Farmer describes structural violence as:

... one way of describing social arrangements that put individuals and populations in harm’s way ... The arrangements are structural because they are embedded in the political and economic organization of our social world; they are violent because they cause injury to people ... neither culture nor pure individual will is at fault; rather, historically given (and often economically driven) processes and forces conspire to constrain individual agency. Structural violence is visited upon all those whose social status denies them access to the fruits of scientific and social progress.⁴³

Tracing the origins of historical trauma assists in developing an understanding of how these imperial ideals, and linking political processes, impact on the individual experiences that shape the lives of Indigenous peoples and their ability to access justice.

37 R Walker *Ka Whawhai Tonu Matou: Struggle Without End* (Penguin, Auckland, 1990) at 147.

38 Above n 12, at 200.

39 H Came *Institutional racism and the dynamics of privilege in public health* (Unpublished doctoral thesis, University of Waikato, Hamilton, 2012) at 70.

40 M Duric *Whaiora* (Oxford University Press, Auckland, 1998) at 45.

41 M Walls and L Whitbeck “The intergenerational effects of relocation policies on indigenous families” (2012) 33 *Journal of Family Issues* 9 at 1272.

42 Above n 12, at 199.

43 P Farmer “An anthropology of structural violence” (2004) *Current Anthropology* 45 at 305.

IV. THE IMPACT OF HISTORICAL TRAUMA ON INDIGENOUS PEOPLES

Historical trauma has had serious implications for Indigenous communities worldwide, with colonial contact having a detrimental effect on Indigenous identity.⁴⁴ Land alienation, poverty and loss of traditional lifestyle, have eroded the maintenance of traditional Indigenous identities.⁴⁵ Although, history veils an abundance of brutal acts of aggression, dislocation, alienation, cultural suppression, all motivated by racist ideologies and political will, “much of the destruction experienced by Indigenous peoples was not the result of a deliberate policy of extermination but a by-product of colonial expansion and expropriation.”⁴⁶ Infectious diseases spread unintentionally by settlers, for example, killed enormous numbers of Indigenous American peoples who had no pre-existing immunity to virulent strains bred in European cities.⁴⁷ Māori suffered similarly, when colonisers arrived in New Zealand. Lange describes how:

Very large increases in the European population from 1840 to 1900 meant Māori across the country were continuously exposed to new diseases. Many Māori children died in their first year of life, often from pneumonia and respiratory infections. In addition, many adults and older children suffered from epidemics of viral disease and typhoid fever, as well as from tuberculosis, a chronic disease that often ended fatally. Relatively high death rates combined with low birth rates saw a rapid decline in the Māori population between 1840 and 1878, with a slower decline from 1878 to 1891. Between 1840 and 1891 the Māori population may have halved. The population continued to decline until the century was nearly over.⁴⁸

-
- 44 T Mocke-Pickering “Māori identity within whānau: A review of the literature” (Waikato University, Hamilton, 1996) <http://researchcommons.waikato.ac.nz/bitstream/handle/10289/464/content.pdf>.
- 45 J Liu and J Temara *Leadership, colonisation, and tradition: Identity and economic change in Ruatoki and Ruatahuna* (1998) 22 *Canadian Journal of Native Education* 1 at 138.
- 46 J Gone “Colonial genocide and historical trauma in Native North America: Complicating contemporary attributions” in A Woolford, J Benvenuto & A Hinton (eds) *Colonial genocide and indigenous North America* (Duke University Press, Durham, 2014) at 273.
- 47 K Kunitz and J Stephen *Disease and Social Diversity: The European Impact on the Health of Non-Europeans* (Oxford University Press, New York, 1994); C Cook and D Nobel *Born to Die: Disease and New World Conquest, 1492-1650: New Approaches to the Americas* (Cambridge University Press, New York, 1998).
- 48 R Lange “Te hauora Māori i mua - History of Māori health - Health devastated 1769 to 1901” (Te Ara - the Encyclopedia of New Zealand, online, 2017) at 2 <<http://www.TeAra.govt.nz/en/te-hauora-Māori-i-mua-history-of-Māori-health/page-2>>

This early history of decimation of Indigenous populations by infectious diseases gave way to a process of struggle with settler society and incorporation into the emerging nation state.⁴⁹ This, in turn, led to specific acts, which predicated cultural oppression and resulted in Indigenous peoples being repeatedly alienated from their land to the margins of society.

For Māori, disconnection from their land perpetuated the decline of Māori language and cultural practices and precipitated the colonisation of indigenous values and knowledge.⁵⁰ In turn, loss of land, language, and economic stability had long-term adverse effects on Māori health,⁵¹ with researchers confirming that exposure to historical trauma can lead to the development of chronic and persistent physical illness for many Indigenous peoples.⁵² In addition, research into the epigenetic effects of historical trauma on the health and well-being of Indigenous peoples illustrates how exposure to environmental trauma can be passed down across generations.⁵³

Farrelly et al found that current suicide rates, poor health statistics, and the heightened risk of exposure to violence and abuse within Māori communities was a reflection of the trauma of colonisation transmitted, as trauma often is, through generations.⁵⁴ In Canada the most widespread and longstanding forms of oppression involved the national system of residential schools designed to eradicate Indigenous languages and cultures.⁵⁵ Indian residential schools were first established in Canada in the mid-1880s, mandated by the federal government but run by the Christian churches⁵⁶ offering a general education and basic vocational skills. More

49 Above n 2, at 303.

50 T Smith "Aitanga: Māori precolonial conceptual frameworks and fertility – a literature review" in P Reynolds and C Smith (eds) *The gift of children: Māori and infertility* (Huia, Wellington, 2005) at 3.

51 J Reid K Taylor-Moore, G Varona Taylor-Moore and G "Towards a social-structural model for understanding current disparities in Māori health and well-being (2014) 19 *Journal of Loss and Trauma* 6 at 1.

52 K Walters et al "Bodies don't just tell stories, they tell histories: Embodiment of historical trauma among American Indians and Alaska Natives" (2011) 8 *Du Bois Review* 1 at 179.

53 Above n 51; R Yehuda and L Bierer "The relevance of epigenetics to PTSD: Implications for DSM-V (2009) 22 *Journal of Traumatic Stress* 5 at 427.

54 S Farrelly, T Rudegair and S Richards "Trauma and dissociation in Aotearoa (New Zealand): The psyche of a society" (2005) 4 *Journal of Trauma Practice* 3 at 203.

55 J Miller *Shingwauk's vision: A history of Native residential schools* (University of Toronto Press, Toronto, 1996); C Wesley-Esquimaux and M Smolewski, *Historic Trauma and Aboriginal Health* (Aboriginal Health Foundation, Ottawa, 2004) at 3.

56 J Milloy "A national crime: The Canadian government and the residential school system, 1879 to 1986" (University of Manitoba Press, Winnipeg, 1999).

than 140,000 Aboriginal children in Canada have been subjected to an education that systematically denigrated their Indigenous languages, culture, and spirituality as well as disrupting community and family ties.⁵⁷

Australian Indigenous researchers have also demonstrated the connections between the historical experiences of colonisation and the forcible removal of children to the disadvantage of today's Indigenous peoples and communities.⁵⁸ Many of the problems in Indigenous communities, be it alcohol abuse, mental health problems, family violence or criminal behaviour, are symptomatic of the effects of this unresolved trauma reaching into the present day.⁵⁹ The Australian Social Justice Report of 2008 found that:

This unresolved trauma is not limited to the forcible removal of children from their families. Trauma can occur in response to exposure to family violence, sexual assault, child abuse and neglect, substance misuse and other forms of experience that can harm an individual's sense of self and wellbeing. These traumas also find their way to influence subsequent generations to come.⁶⁰

Atkinson suggests that trauma becomes expressed as anger, violence and criminal behaviour, where rage turns inwards, but cascades down the generations, growing more complex over time.⁶¹

V. UNDERSTANDING TRANSGENERATIONAL TRAUMA

Ka kōhi te toi, ka whai te maramatanga
If knowledge is gathered, enlightenment will follow

Examining the roots of historical trauma provides a mechanism for developing an understanding of the possible transgenerational effects of such trauma. However, establishing definite causal linkages across generations in the case of historical trauma is exceedingly difficult,

57 Government of Canada "Report of the Royal Commission on Aboriginal Peoples: People to people, nation to nation" (Government of Canada, Ottawa, 1996).

58 Above n 1, at 155.

59 J Atkinson *Trauma Trails Recreating Song Lines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex Press, North Melbourne, 2002) at 82; Senate Standing Committees on Community Affairs "Submission to the Senate Inquiry on the Indefinite Detention of People with Cognitive and Psychiatric Impairment: Aboriginal and Torres Strait Islander Perspectives on the recurrent and indefinite detention of people with cognitive and psychiatric impairment" (First Peoples Disability Justice Consortium, Canberra, 2016).

60 Above n 1, at 156.

61 J Atkinson *Trauma Trails Recreating Song Lines: The Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex Press, North Melbourne, 2002) at 82.

perhaps even impossible.⁶² Studies are fraught with difficulties including limited retrospective, possibly bias, laden data. Whitbeck et al⁶³ developed measures of conscious re-experiencing of thoughts, feeling, and symptoms that were reportedly tied to historical trauma, and used these to establish links between the lived present and the ancestral past, but this methodology met with critics highlighting the complexities facing researchers.⁶⁴

Nonetheless, Indigenous peoples the world over have and continue to experience the devastating effects of colonialism including loss of life, land, language, culture, identity and health.⁶⁵ For example, Indigenous peoples suffer disproportionately from many health risk factors including an increased risk of substance use.⁶⁶ Undeterred by the methodological complexities of studying historical trauma, other studies have proposed quite tentative connections between one generation's experience and the next. Nutton and Fast describe the historical trauma attributed to colonial policies as offering a potential pathway to explain the disparity in rates of substance use among many indigenous populations.⁶⁷ In support of these findings, Felitti found that the current concept of addiction is ill founded.⁶⁸ Felitti's study of the relationship of adverse childhood experiences to adult health status in over 17,000 persons shows addiction to be a readily understandable although largely unconscious attempt to gain relief from well-concealed prior life traumas by using psychoactive materials.⁶⁹

Felitti's findings emerged from the Adverse Childhood Experiences (ACE) Study, one of the largest investigations ever conducted to assess associations between childhood maltreatment and later-life health and

62 Above n 2, at 307.

63 L Whitbeck, G Adams, D Hoyt and X Chen "Conceptualizing and measuring historical trauma among American Indian people" (2004) 33 *American Journal of Community Psychology* 3-4 at 119; L Whitbeck, X Chen, D Hoyt and G Adams "Discrimination, historical loss and enculturation: culturally specific risk and resiliency factors for alcohol abuse among American Indians" (2004) 65 *The Journal of Studies on Alcohol and Drugs* 4 at 409.

64 Above n 2, at 308.

65 J Nutton and E Fast "Historical trauma, substance use, and Indigenous peoples: Seven generations of harm from a "Big Event" (2015) 50 *Substance Use Misuse* 7 at 839.

66 M Catto and N Thomson "Review of illicit drug use among Indigenous people" (2008) 8 *Australian Indigenous Health Bulletin* 4, art 1.

67 Above n 65, at 839.

68 V Felitti "The Origins of Addiction: Evidence from the Adverse Childhood Experiences Study" (2003) 52 *Praxis der Kinderpsychologie und Kinderpsychiatrie* 52 at 558.

69 At 547.

well-being.⁷⁰ The ACE Study findings suggest that certain experiences are major risk factors for the leading causes of illness and death as well as poor quality of life in the United States.⁷¹ This study assists in developing an understand how some of the worst health and social problems for Indigenous peoples can arise as a consequence of adverse childhood experiences.

Furthermore, researchers are beginning to provide an insight into how severe psychophysiological trauma can have intergenerational effects.⁷² The work of Yehuda et al supports the idea that environmental factors can affect the genes of children. They claim that genetic changes stemming from the trauma suffered by Holocaust survivors are capable to of being passed on to their children. When analysing the genes of children of Holocaust survivors who were known to have increased likelihood of stress disorders, and comparing the results with Jewish families who were living outside of Europe during the war, any gene changes in the two groups of children could only be attributed to Holocaust exposure in the parents.⁷³ This demonstrates that one person's life experience can affect subsequent generations. Yehuda's work provides a significant example of "epigenetic inheritance" in humans.

However, epigenetic inheritance goes against the idea that "inheritance happens only through the DNA code that passes from parent to offspring."⁷⁴ The idea that environmental influences such as smoking, diet and stress can affect the genes of your children and possibly even grandchildren is controversial as scientific convention states that "genes contained in DNA are the only way to transmit biological information between generations."⁷⁵ Nonetheless, recent findings, including the work of Yehuda, cannot be ignored as they provide examples of heritable changes that cannot be explained by direct agency of the DNA molecule. These phenomena are classed as epigenetic inheritance systems that are causally or independently evolving over genes,⁷⁶ which appears to suggest

70 V Felitti, R Anda, D Nordenberg D et al "Relationship of childhood abuse and household dysfunction to many of the leading causes of death in adults: The Adverse Childhood Experiences (ACEs) Study" (1998) 14 *Am J Prev Med* 4 at 245; Centres for Disease Control and Prevention "Adverse Childhood Experiences (ACEs) Study—major findings" <www.cdc.gov/acc/findings.htm>

71 *Ibid.*

72 R Yehuda et al "Holocaust Exposure Induced Intergenerational Effects on *FKBP5* Methylation" (2016) 80 *Biological Psychiatry* 5 at 372.

73 *Ibid.*

74 H Pearson "Genetics: what is a gene?" (2006) 441 *Nature* 7092 at 398.

75 B Alberts, A Johnson, J Lewis et al *Molecular Biology of the Cell* (4th ed, Garland Science, New York, 2002) chap 4.

76 E Jablonka and G Raz (2009). "Transgenerational epigenetic inheritance: Prevalence, mechanisms, and implications for the study of heredity and evolution" (2009) 84 *The Quarterly Review of Biology* 2 at 131.

that a parent's experiences, in the form of epigenetic tags, can be passed down to future generations.

More than 20 years ago in Barker's ground breaking book *Mothers, Babies and Disease in Later Life*,⁷⁷ the author proposed an association between birth size and later adult diseases. Since this publication epigenetics has been proposed as a potential mechanism for the development of these adult diseases through environmentally induced changes in gene expression. There is now compelling evidence from animal studies that environmental factors such as altered nutrition lead to epigenetic changes and altered gene expression,⁷⁸ leaving epigenetics as the major focus of attention for developmental biologists in establishing mechanisms that link adverse early life events with later adult disease.⁷⁹

There are a wealth of studies proposing connections between one generation's experience and the next. Some examples include: males born to Dutch women who were pregnant during the severe famine at the end of the second world war had an above-average risk of developing schizophrenia and depression;⁸⁰ antenatal depression occurring during pregnancy increases the future risk of depression in the gestating offspring;⁸¹ and exposure of the maternal lineage to adverse life events has been correlated with the development of schizophrenia and autism in the next generation.⁸² One of the most significant examples of the influence of the in uterine environment on the biology of the gestating generation in humans comes from the work of Yehuda and colleagues and their study of pregnant women who experienced the 11 September 2001 (9/11) terrorist attacks.⁸³ Babies that were in utero at the time that their mothers

77 D Barker *Mothers, Babies and Disease in Later Life* (British Medical Journal Publishing Group, London, 1994).

78 W Cutfield, P Hofman, M Mitchell and I Morison "Could epigenetics play a role in the developmental origins of health and disease?" *Pediatric Research* (2007) 61 at 68.

79 At 75.

80 H Hock, A Brown and E Susser "The Dutch famine and schizophrenia spectrum disorders" (1998) 33 *Social Psychiatry and Psychiatric Epidemiology* 8 at 373.

81 S Goodman and I Gotlib "Risk for psychopathology in the children of depressed mothers: A developmental model for understanding mechanisms of transmission" (1999) *Psychological Review* 106 at 458; V Warner, M Weissman, L Mufson and P Wickramaratne "Grandparents, parents, and grandchildren at high risk for depression: A three-generational study" (1999) 38 *Journal of the American Academy of Child and Adolescent Psychiatry* at 289; P Lewinsohn, T Olino and D Klein "Psychosocial Impairment in Offspring of Depressed Parents" (2005) 35 *Psychol Med* 10 at 1493.

82 J van Os and J Selten "Prenatal exposure to maternal stress and subsequent schizophrenia: The May 1940 invasion of The Netherlands" (1998) *Br J Psychiatry* 172 at 324; D Kinney, K Munir, D Crowley and A Miller "Prenatal Stress and Risk for Autism" (2008) 32 *Neurosci Biobehav Rev* 8 at 1519.

83 R Yehuda, S Engel, S Brand, J Seckl, S Marcus and G Berkowitz "Trans-generational effects of posttraumatic stress disorder in babies of mothers exposed to the World Trade Center attacks during pregnancy" (2005) 90 *J Clin Endocrinol Metab* 7 at 4115.

directly experienced the 9/11 attacks and who consequently developed Post Traumatic Stress Disorder (PTSD) as a result of this exposure had lower cortisol levels at age 1 year, compared with a comparable group of babies whose mothers had not experienced these attacks, cortisol being the steroid hormone associated with stress.⁸⁴ In another study, Flory et al described how maternal PTSD as a result of the Holocaust was associated with poorer emotional and physical health and higher use of psychotropic medications in adult offspring.⁸⁵ In the US, scientists trained male mice to fear the smell of cherry blossom by pairing the smell with a small electric shock, eventually causing the mice to shudder at the smell even when it was delivered on its own, as did their offspring despite never having encountered the smell of cherry blossom.⁸⁶ These are the very beginnings of understanding how one generation responds to the experiences of the previous generation,⁸⁷ and the beginning of understanding how at a cellular level, stress from one generation can be carried to the next generation.⁸⁸

Each human catastrophe has its own history, social dynamics, and corresponding patterns of individual and collective response rooted in culture and context.⁸⁹ Specifically, epigenetics may explain why latent transmission of trauma becomes manifest under stress.⁹⁰ Such transgenerational programming of stress responses and pathologies has important societal consequences as it could provide a biological explanation for the generational persistence of human behaviors in populations exposed to adversity.⁹¹ Increasingly, understanding how the role of historical events affects present-day inequities has become a dominant narrative among Indigenous communities. In effect, the ability of Indigenous peoples to access justice is constrained by their embodiment in historical trauma, compounded by the link between law and trauma.⁹²

84 R Ychuda and L Bierer “Transgenerational transmission of cortisol and PTSD risk” (2008) *Prog Brain Res* 167 at 121.

85 J Flory, L Bierer and R Ychuda “Maternal exposure to the Holocaust and health complaints in offspring” (2011) *Disease Markers* 30 at 133.

86 S Jones, D Choi, M Davis and K Ressler “Learning-Dependent Structural Plasticity in the Adult Olfactory Pathway” (2008) 28 *Journal of Neuroscience* 49 at 13106.

87 M Pembrey quoted from H Tomson “Study of Holocaust survivors finds trauma passed on to children’s genes” *Guardian* (United Kingdom, 25 August 2015) at 1 <<https://www.theguardian.com>>.

88 Above n 51, at 179.

89 Above n 2, at 301.

90 N Kellermann “Epigenetic transmission of Holocaust trauma: can nightmares be inherited?” (2013) 50 *Isr J Psychiatry Relat Sci* 1 at 33.

91 S Matthews & D Phillips “Transgenerational inheritance of stress pathology” (2012) 233 *Experimental Neurology* 1 at 95.

92 Melanie Randall and Lori Haskell “Trauma-Informed Approaches to Law: Why Restorative Justice Must Understand Trauma and Psychological Coping” (Fall 2013) *The Dalhousie Law Journal* at 503.

VI. INDIGENOUS WELL-BEING AND HEALING – WHAT CAN NEW ZEALAND LEARN FROM THE CANADIAN EXPERIENCE?

*Whāia te iti kahurangi, ki te tuohu koe me maunga teitei
Pursue that which is precious, and do not be deterred by
anything less than a lofty mountain*

Understanding the impact of historical trauma is vital for policy makers. This enables the policy maker to identify the causes that underpin historical trauma and assign responsibility. The process acknowledges the struggle for Indigenous peoples and formulates a more effective state response that embraces an opportunity for healing. However, “healing can be hard to define and consequently often not well understood.”⁹³ This undermines the complexity of the healing process and can ultimately diminish the credibility of Indigenous focused healing programmes.

The Aboriginal and Torres Strait Islander Social Justice Commissioner holds that:

Indigenous concepts of healing are based on addressing the relationship between the spiritual, emotional and physical in a holistic manner. An essential element of Indigenous healing is recognising the interconnections between, and effects of, violence, social and economic disadvantage, racism and dispossession from land and culture on Indigenous peoples, families and communities.⁹⁴

A more concise definition describes the Canadian and Native American experience of healing as a “spiritual process that includes therapeutic change and cultural renewal”.⁹⁵ Similarly, traditional methods of healing in Māori communities were developed on the basis of the interconnected relationships between spiritual, physical, social and psychological processes.⁹⁶ All of these definitions include a spiritual as well as a strong cultural element. Spirituality and culture are intrinsic aspects of healing. They are central “to healing because it is a way of expressing and accessing the deepest part of the self that has suffered and needs to be made whole again.”⁹⁷ Indigenous healing that combines spirituality and culture allows individuals to move beyond the impact of traumatic harms.

93 Aboriginal and Torres Strait Islander Social Justice Commissioner *Social Justice Report 2007* (Human Rights and Equal Opportunity Commission, Sydney, 2007) at 52.

94 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004* (Human Rights and Equal Opportunity Commission, Sydney, 2004) at 57.

95 G Phillips “Healing and Public Policy” in J Altman and M Hinkson (eds) *Coercive Reconciliation: Stabilise, normalise, exit Aboriginal Australia* (Arcna Publications, Victoria, 2007) at 142.

96 Above n 12, at 203.

97 Above n 1, at 152.

The Australian Social Justice Report of 2008⁹⁸ states the daily realities of abuse, suicide and mental illness, alcohol and substance abuse and sky rocketing incarceration rates among Indigenous communities, all point to the imperative for community wide healing. All Indigenous peoples have been touched by trauma in some way. All Indigenous peoples deserve the opportunity to work through this trauma to heal.⁹⁹

The Treaty of Waitangi (Tiriti o Waitangi) is a treaty first signed on 6 February 1840 by representatives of the British Crown and various Māori chiefs from the North Island of New Zealand, guaranteeing certain rights for Māori. Two texts of the Treaty, an English and Māori text, were signed. The Māori text was signed by over 400 Māori, whereas the English text approximately 40. Nonetheless it is the English text where Māori cede sovereignty to the Crown that is referred to.

The English text requires the Crown to work in partnership with Māori, with Article Two of the Treaty obliging the Crown to protect all treasures of Māori including health and cultural concepts, a constitutional obligation that extends to healing. Notwithstanding this obligation, in 2006, Te Rau Hinengaro report¹⁰⁰ suggested that Māori have a higher level of mental health need than non-Māori. This is manifested in the over representation of Māori within forensic mental health facilities.¹⁰¹ Māori are also disproportionately represented in the prison population with more than half the prison population identifying as Māori.¹⁰² The incidence of mental illness within the criminal justice system is also disproportionately high.¹⁰³

For Māori these statistics are tragic, indicating that there is an unacceptable percentage of Māori experiencing the criminal justice system with a corresponding higher incidence of mental illness. These statistics indicate that the government is failing in its duty to protect the well-being of Māori and suggests that consideration and clearer articulation of the obligations contained within the Treaty together with Treaty principles such as partnership and active protection are required.

Against this backdrop of disproportionate criminal justice statistics and Treaty obligations it is of value to look to the successes of other

98 At 152.

99 At 157.

100 J Baxter, J Kokaua, E Wells, M McGee and M Oakley Browne "Ethnic Comparisons of the 12 month prevalence of mental disorders and treatment contact in Te Rau Hinengaro: the New Zealand Mental Health Survey" (2006) *Australian and New Zealand Journal of Psychiatry* at 905.

101 At 905.

102 B Morrison, N Soboleva and J Chong "Conviction and Sentencing Offenders in New Zealand: 1997–2006" (Ministry of Justice, Wellington, 2008) at 118; M Rich "Census of Prison Inmates 1999" (Department of Corrections SAS Policy Development, Wellington, 2000) at 43.

103 Above n 100, at 905.

jurisdictions. New Zealand is not the only country in the world with a history of dispossession and violence towards their Indigenous population. Although New Zealand is seen to lead the way in its provision of redress for historical and contemporary traumas,¹⁰⁴ there is still a great deal that New Zealand can learn from the progress of other countries with regard to Indigenous healing.

The Canadian model of healing was developed in response to the 1996 Royal Commission on Aboriginal Peoples, which gave special urgency to addressing the impacts of abuse in residential schools. Similar to Australia, generations of Aboriginal children were removed from their families. Many of these children suffered physical and sexual abuse, as well as the loss of family, community and cultural connection. It is estimated that there are approximately 86,000 survivors of the residential schools alive in Canada today and 287,350 people are estimated to have been intergenerationally impacted.¹⁰⁵

In 1998 the Canadian government issued a “Statement of Reconciliation” and the “Gathering Strength – Canada’s Aboriginal Action Plan”, a one-off \$350 million grant for healing programmes to address the physical and sexual abuses that occurred in the residential schools, which in turn led to the development of the Aboriginal Healing Foundation (AHF). The AHF was established as an independent, Aboriginal run corporation separate from government. The AHF developed robust representation and governance structures made up of 17 Aboriginal board directors peoples, many of whom are either survivors or family of former residential school students and also represent the main Aboriginal groups across Canada.¹⁰⁶

The AHF is accountable through its Funding Agreement with the Canadian government, which requires full annual reporting and independent audits. To date, the AHF has managed large amounts of money in a transparent and accountable way and has become a model of good governance in Aboriginal organisations in Canada.¹⁰⁷

104 L Archibald, *Decolonization and Healing: Indigenous Experiences in the United States, New Zealand, Australia and Greenland* (Aboriginal Healing Foundation, Ottawa, 2006); Aboriginal and Torres Strait Islander Social Justice Commissioner *Social Justice Report – Report of the Aboriginal and Torres Strait Islander Social Justice Commissioner* (Australian Human Rights Commission, Sydney, 2000) at 177 gives an overview of the principle of reparations in international law and examples from overseas jurisdictions. This included examples of Indigenous healing initiatives undertaken in countries such as Canada, New Zealand and South Africa.

105 Aboriginal Healing Foundation *Final Report of the Aboriginal Healing Fund, Summary of Key Points* (Aboriginal Healing Foundation, Ottawa, 2006) at 26.

106 Aboriginal Healing Foundation *2007 Annual Report* (Aboriginal Healing Foundation, Ottawa, 2007).

107 M Castellano *Final Report of the Aboriginal Healing Foundation, Volume I, A Healing Journey: Reclaiming Wellness* (Aboriginal Healing Foundation, Ottawa, 2006) at 14.

Although the research arm of the AHF is only small, with only three core employees and an additional three contract workers, the impact and output of their research has been significant. The AHF has undertaken innovative research on issues related to healing such as suicide, addictions, foetal alcohol syndrome, family violence, elder abuse and perpetrator programmes. The AHF research on healing is unique and utilised internationally to support healing initiatives with Indigenous peoples.¹⁰⁸ Evaluation has been built into all AHF processes and the activities have been extensively evaluated as part of the final report in 2006.¹⁰⁹ These evaluations describe how the healing process can be supported and improved, with a strong focus on healing as a long-term process that needs to be funded commensurate with the level of need.¹¹⁰

The Canadian experience of healing is not without complexity and not easily grafted onto the New Zealand experience. However, there are valuable lessons that can guide New Zealand's social, political and economic context. Although the focus of AHF was on the physical and sexual abuse suffered in residential care, New Zealand should consider healing in its broadest terms. Furthermore, the AHF had a limited term. Although the initial period was extended until 2012 that is still a relatively short period of time given the magnitude of the healing needs. The AHF research suggests an average of 10 years is required for a community to "reach out, dismantle denial, create safety and engage participants in therapeutic healing",¹¹¹ and this is just the beginning of the process. In Australia, Aboriginal and Torres Strait Islander people's community-driven collective healing programmes have shown signs of success, indicating that such programmes are cost-effective and have an important role in addressing the effects of trauma.¹¹² Similarly, in New Zealand there is a need to repair nearly 200 years of trauma, which will require a significant commitment over a lengthy period of time if healing programmes are to be successful.

108 Above n 1, at 177.

109 Aboriginal Healing Fund *The Aboriginal Healing Foundation: Summary Points of the AHF Final Report* (Aboriginal Healing Fund, Ottawa, 2006).

110 *Ibid.* This approach is similar to restorative justice that seeks to right the wrong. See Melanic Randall and Lori Haskell, above n 92, where also they state "A trauma-informed approach to a restorative approach to law provides precisely this necessary starting point" at 533.

111 *Ibid.*

112 Senate Standing Committees on Community Affairs "Submission to the Senate Inquiry on the Indefinite Detention of People with Cognitive and Psychiatric Impairment: Aboriginal and Torres Strait Islander Perspectives on the recurrent and indefinite detention of people with cognitive and psychiatric impairment" (First Peoples Disability Justice Consortium, Canberra, 2016) at 63.

The success of the AHF is largely due to its independence from government and its community control. This is an expression of self-determination that all Indigenous communities call for,¹¹³ and an essential step in the process of healing. Perhaps one of the most significant outcomes of the AHF has been the adoption of healing as a legitimate approach to a wide range of problems stemming from the experiences of historical trauma. Government agencies have adopted healing approaches in their polices based on the success of AHF healing programs and the evidence that supports them.¹¹⁴ For example, the Stan Daniels Healing Centre is a federal correctional centre based on Aboriginal spirituality and healing models and also accepts non-Aboriginal residents. Here in New Zealand, the Te Kooti marae-based youth courts¹¹⁵ have a similar capacity to heal while being successfully integrated into mainstream criminal justice services, also accepting non-Māori. However, these examples are but the beginning of healing and “restoring the balance where wrong has been done”.¹¹⁶ Many more interventions that acknowledge and validate historical trauma are required to facilitate individual and collective soul healing of Indigenous peoples.¹¹⁷

VII. CONCLUSION

In my being is my end

T.S. Eliot¹¹⁸

Understanding the nature of trauma for Indigenous peoples and the pathways by which this trauma has been transmitted from one generation to the next, are critical aspects of devising more effective legal frameworks

113 United Nations Declaration on the Rights of Indigenous Peoples, art 3 Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development; M Duric *Te Mana, Te Kazuanatanga: The politics of Māori self-determination* (Oxford University Press, Auckland, 1998) at 239.

114 Correctional Service of Canada *Evaluation Report: The Section 81 Agreement between the Native Counselling Services of Alberta and the Correctional Service of Canada: The Stan Daniels Healing Centre* (2006) at <<http://www.csc-scc.gc.ca/text/pa/cv-sdhc-394-2-30/toc-eng.shtml#ack>>.

115 Ministry of Justice *Rangatahi Court: Evaluation of the Early Outcomes of Te Kooti Rangatahi* (Ministry of Justice, Wellington, 2012).

116 Above n 95, at 149.

117 E Duran, B Duran, M Brave Heart and Y Horse-Davis “Healing the American Indian soul wound” in Y Dancili (ed) *International handbook of multigenerational legacies of trauma* (Plenum Press, New York, 1998).

118 T S Eliot *Four Quartets* (Harcourt, Bracc and World, New York, 1943).

that assist Indigenous peoples in accessing justice which in turn facilitates their healing. This understanding must go beyond “colonial” conceptions of trauma “to include the collective and massive cumulative trauma experienced by generations of Aboriginal families, and the relationship between contemporary and historical manifestations of trauma.”¹¹⁹

Encouragingly, many Indigenous peoples have already begun the work of healing their communities. What is needed now is a partnership between Indigenous peoples and the state, “to ensure that the value of the healing work that remains to be done is understood and adequately resourced.”¹²⁰ There is an undisputable need for urgent healing in Indigenous communities; incarceration rates,¹²¹ levels of domestic violence,¹²² child poverty,¹²³ unemployment,¹²⁴ and Indigenous mental health,¹²⁵ are all areas that speak strongly of this need. The recognition that the violence and suffering experienced by one generation can have effects on subsequent generations provides an important insight into the difficulties in accessing justice for Indigenous peoples. Realising these connections helps us construct legal frameworks that are more likely to assist Indigenous peoples to heal and take responsibility for their own well-being.

119 W Aguiar and R Halseth “Aboriginal Peoples and Historical Trauma: The Processes of Intergenerational Transmission” (National Collaborating Centre for Aboriginal Health, British Columbia, 2015) at 1.

120 Above n 1, at 197.

121 Department of Corrections *Over-Representation of Māori in the Criminal Justice System: An Exploratory Report* (Department of Corrections, Wellington, 2007) <www.corrections.govt.nz>; A Krieg “Aboriginal incarceration: health and social impacts” (2006) 184 *Medical Journal of Australia* 10 at 534.

122 Statistics Canada “Family Violence in Canada: A Statistical Profile 2014” (Canada Centre for Justice Statistics, Ontario, 2016) <<http://www.statcan.gc.ca/daily-quotidien/160121/dq160121b-eng.pdf>>.

123 D MacDonald and D Wilson “Shameful Neglect: Indigenous Child Poverty in Canada” (Canadian Centre for Policy Alternatives, Ottawa, 2016) at 1.

124 T Karmel, J Misko, D Blomberg, A Bednarz and G Atkinson “Improving labour market outcomes through education and training: Issues paper no. 9” (Closing the Gap Clearinghouse, Australian Institute of Health and Welfare, Canberra, 2014) at 5.

125 A Simpson et al *The National Study of Psychiatric Morbidity in New Zealand Prisons: An Investigation of the Prevalence of Psychiatric Disorders among New Zealand Inmates* (Department of Corrections, Wellington, 1999) <www.corrections.govt.nz>; A Krieg “Aboriginal incarceration: health and social impacts” (2006) 184 *Medical Journal of Australia* 10 at 534; J Baxter, J Kokaua, E Wells, M McGee and M Oakley Browne “Ethnic Comparisons of the 12 month prevalence of mental disorders and treatment contact in Te Rau Hinengaro: the New Zealand Mental Health Survey” (2006) *Australian and New Zealand Journal of Psychiatry* at 905.

History tells us that models of justice that allow Indigenous peoples to heal respects fundamental human rights including the important right of self-determination.¹²⁶ In many ways, the essential aspects of such a model may have universal appeal, in that, “if we can get it right for Māori we will get it right for everyone.”¹²⁷

126 Above n 113.

127 P Jansen “If we can get it right for Māori” (Pacific Region Indigenous Doctors Congress, Cairns, 2004) quoted by R Tapsell “The Treatment and Rehabilitation of Māori” in W Brookbanks and S Simpson (eds) *Psychiatry and the Law* (Lexis Nexis, Wellington, 2007) at 419.

