

Talking Cents

September 2019

Talking Cents is an ecumenical group charged by the Auckland Anglican Diocesan Council to promote an alternative to current economic and political thought and to encourage debate within the church. People are encouraged to distribute these articles widely. This contribution is from Anton Spelman who belongs to Ngāti Hikairo ki Kāwhia. He is also a parishioner of St Matthew-in-the-City and a member of St Paul's Eucharistic Community in Auckland.

Let's think differently about imprisonment!

As the sun sets on another day in the New Zealand prison system, the cell doors clang shut on the lives and backstories of close to 10,000 of our people who have been removed from the community for committing crimes or who are 'on remand' awaiting trial. The cost of this level of community safety is high and there is little to be proud of knowing that in 2019, we occupy 5th place among OECD countries for maintaining a high rate of incarceration of our people in relation to other countries (www.statista.com).

While there are some attempts at rehabilitation in New Zealand prisons ([Al Jazeera article](#)¹), the work is complex and its value is contested by some. Notwithstanding, two overarching issues remain:

1. we have too many people incarcerated for our population size – 9,969 in June 2019 ([Department of Corrections](#)), and
2. the rate of incarceration of Māori is unacceptably high at 51.7% of the total prison population ([Department of Corrections](#)).

This problem of mass imprisonment needs to be seen in the context of New Zealand's history. Framed by Te Tiriti/Treaty of Waitangi, our history presents many challenges, the principal one being how do we engage and work with divergent worldviews, historically represented by Mana Whenua and the Crown. We have done good work to understand that original relationship through the Waitangi Tribunal process. In a contemporary setting, however, the relationship is more complex.

In the early 2000's, a Tiriti/Treaty of Waitangi Relationships Framework was developed and used by the Community Sector Taskforce to enable groups and organisations in the Tangata Whenua, Community and Voluntary Sector to come together in ways that were

inclusive of Tangata Whenua and to develop a better relationship between the Sector and Government. The Framework emphasised the value of worldview difference and made space for a diversity of cultures to work together with integrity. This provided a welcome alternative to approaches based on human rights, the law or systems thinking, all of which emphasise Western worldview perspectives as normative and which form part of the history of cultural assimilation in Aotearoa New Zealand.

A Tiriti/Treaty of Waitangi relationships approach emphasises the importance of mutuality whereby Tangata Whenua can work with the Crown and yet still exercise the power to protect, the power to define and the power to decide, important features of the practice of rangatiratanga. The approach was set out in a Community Sector Taskforce Publication *A New Way of Working for the Tangata Whenua, Community and Voluntary Sector in Aotearoa New Zealand* and while [written in 2006](#), it still has much to offer those working to reduce the size of the prison population generally and the rate of Māori incarceration in particular.

If we approach the problem of Māori incarceration via the law, rehabilitation service effectiveness or human rights, we will simply add to the list of failed initiatives in this area. If we want to reduce the prison population generally and the rate of Māori incarceration in particular, we need a proposition that rules prison out for significant numbers of people who are currently in prison. And we need to find a way to think about this possibility that is both robust and sustainable.

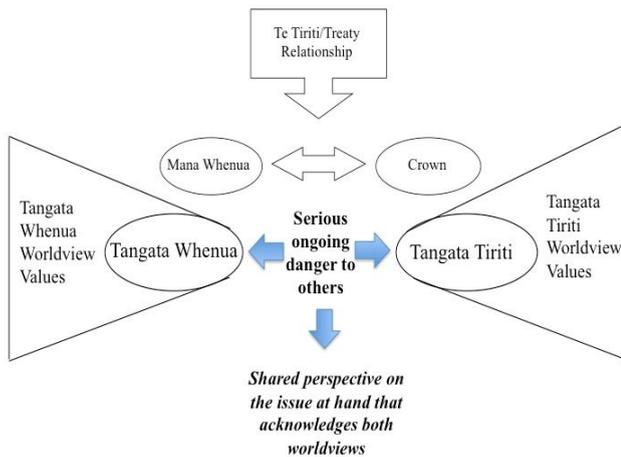
If we decided to imprison only those people who were a serious ongoing danger to others, I believe a Tiriti/Treaty of Waitangi Relationship Framework could help us think through the issues and their implications.

There are three steps; the first involves looking at the proposition from the perspective of Tangata Whenua and Tangata Tiriti values. The second asks what is the same and what is different about those values

¹ Alan Smale interviews Sir David Carruthers, Rob Woodley, Neil Campbell, Mākere Riwaka-Love who have worked with inmates in both the prison setting and in the community. Smale describes positive initiatives and outcomes for the wellbeing of offenders who will eventually be released back into the community.

statements. In the third step we ask how a set of values could be expressed across both worldviews so that each party can see an acknowledgement of their perspective particularly where there are worldview differences.

Te Tiriti/Treaty of Waitangi Relationship Framework applied to the issue of “serious ongoing danger to others”



From a Tangata Whenua worldview perspective a person who is a serious ongoing danger to others in the community is likely to:

1. demonstrate their unwillingness to practise whanaungatanga and manaakitanga;
2. consistently choose to trample the mana of others as the preferred approach to conflict resolution;
3. consistently act in ways that destroy the tapu of victims who fear for their safety.

From a Tangata Tiriti worldview perspective, a person who is a serious ongoing danger to others is likely to:

1. pose an actual threat to the safety of others through ongoing attacks on a victim;
2. cause victims serious harm and sometimes death, acting for the most part without remorse;
3. develop a track record, or the potential for repeat behaviour, that poses a serious ongoing threat to the safety of others.

From the perspective of both worldviews together, “serious ongoing danger to others” could now be understood as follows:

An individual offender:

1. rejects the relationships and accountability requirements for living with others (such as might be set out in a code of conduct);
2. is willing to impose his/her will on others outside existing accountability relationships and regardless of cost;

3. through their actions, seriously threatens physically or psychologically, the wellbeing, and the life, of another.

The elephant in the room

It is important to acknowledge, uncomfortable as it is, that a significant number of New Zealanders believe that we need more, not less, imprisonment and the very strength of that view may affect the direction or speed of change in this area. The issue is being committed to work differently. Proponents of growth in the prison service often analyse the issue in a severely monocultural fashion leading to racial bias in both the analysis and outcomes. This is a matter that needs to be worked through.

There is much work to be done:

1. We need to strengthen community relationships and build a more compassionate culture across communities. A national initiative owned by communities needs to be developed to address the current “New Zealand punishment mentality” and replace it with a “care and protection ethic”.
2. Work needs to be done to apply a Tiriti/Treaty of Waitangi two-worldview analysis of “serious danger to others” to:
 - the Sentencing Act 2002
 - the sentencing provisions in current legislation
 - the rules around bail, and
 - the conditions that apply to parole.
3. There needs to be a consequential review of the way therapeutic or restorative dimensions of non-custodial sentence administration are understood in the light of a two-worldview analysis of “serious danger to others”.
4. There needs to be a review of the accountability framework operating within State agencies to manage sentence outcomes and processes as well as advice to the Court.
5. There is also a need to improve the coordination of criminal justice issues with community development initiatives in health, housing and employment for families as well as education for children. Alongside this, a commitment by State and Community agencies is required to fund and support relevant cross-agency change initiatives and to be accountable for performance to Government.

Conclusion

The picture is a complex one for sure. But the call to think differently and act decisively is a call to justice for all of us.