

MAORI WOMEN AND DOMESTIC VIOLENCE: THE METHODOLOGY OF RESEARCH AND THE MAORI PERSPECTIVE

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I. INTRODUCTION

In 1991/92 Nan Seuffert, a lecturer at Waikato Law School, initiated a project on legal representation of women who were survivors of domestic violence. The project involved arranging group interviews of women through the Women's Refuge movement in order to ask about their experiences of legal representation and the legal system. Issues intended to be covered in the project were: the lawyer's understanding of domestic violence, the relationship between the woman and her lawyer, the woman's understanding of and control over the process, the quality of service provided by the lawyer and the woman's perception of the court process and the legal system.

The Refuge movement in New Zealand at that time ran a parallel structure with a cooperative alliance between the non-Maori and Maori refuges as the two limbs of the organisation. It was considered important that both Maori and non-Maori women were included in the research, and so interviews were arranged through both the Maori and non-Maori women's refuges. A Maori woman researcher was hired to undertake the Maori interviews and, due to my interest in Maori women's issues I agreed to write up the Maori portion of the project.¹

Cultural differences between Maori and Pakeha mean that the methodology of research must be adapted to recognise and take account of those differences. In this article some of the issues which need to be considered in designing research for Maori are canvassed. The approach and methodology used in the project was based on feminist theories of methodology and, while useful in some respects, the application of such theories to research involving Maori participants raises considerable questions. These matters together with suggestions as to different approaches that might be taken are discussed in the first part of this article.

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If the research had been designed from a Maori perspective it may be that some issues of critical concern to Maori would have been explored. To put these issues in context a traditional Maori perspective on violence towards a partner and the effects of colonisation on Maori in terms of the imposition of a foreign legal system are presented in the second part of the article. The dispossession and disempowerment of Maori throughout colonial history, and the position of Maori women who are the targets of domestic violence as clients of a legal system that is still overpoweringly monocultural, mean that legal responses to domestic violence which may be valid and beneficial for Pakeha women may be inappropriate, ineffective or worse for Maori women. However, because of the primary objectives and methodology of the project, the information that may have informed such an analysis could not be drawn out of the interviews.

II. PART ONE

1. Methodology

For this project the Maori interviewer, Robyn Rauna, was chosen by a group of Maori women law students who had expressed interest in the project being set up by the project initiator. Those students chose Robyn based on their knowledge of Maori methodology and after assessing what they believed the aims of the project should be. The writer² also expressed an interest in writing up the project because there were Maori women who were to be interviewed. Aware that there would be difficulties in carrying out research across cultures, the project initiator was anxious to ensure that the Maori interviews were carried out by a Maori and written up by a Maori. Both she and Robyn consulted with Maori women academics and refuge workers and Robyn talked to her whanau before going ahead with the interviews.

The interviews were set up through Maori women's refuges, and the interviewees were given the opportunity to be interviewed in groups or individually. They were also encouraged to have support people present if they wished. The interviewees included women from small towns and from cities, some of the women were married, some were in de facto relationships. All of the women had children. Most of the women had obtained some kind of protection order or orders; only one did not have any orders.

² Although a lecturer at Waikato law school I was on maternity leave during the period that the interviews were taking place.

The project was designed in two parts. The first part involved interviews with the women. Questions were directed towards the legal representation that the women had received from the first interview up to the court appearance, and included questions about the abuse they had suffered, the understanding the lawyer had of their situation, the way the information was presented in court, what control the women had over the process, and ending with a general question about their view of the legal system.

The second part of the project was designed to give something back to the participants. The interviewer gave them information about the protection orders that were available to them and answered any questions they might have. The project also helped the refugees to set up 'hot' and 'cold' lawyer lists so that refugees would have a better idea of which lawyers women should be referred to.

2. *Appropriate methodology for Maori research*

There is no generally agreed theory about appropriate methodology for Maori research. However, in *He Tikanga Whakaaro: Research Ethics in the Maori Community: A Discussion Paper*³ Te Awekotuku has given some strong guidelines as to an ethical framework for research into the Maori community. She emphasises the importance of knowledge in ancient Maori society, where sanctions were imposed for the protection of highly prized information belonging to a whanau, hapu or iwi.⁴ Knowledge was to be kept from discovery or abuse by hostile people. Those who would learn that knowledge were required to observe the rule holding such knowledge as secret. Betrayal or breaking of this ethical commitment usually resulted in severe punishment. The "researcher" came from the whanau and was always accountable to the chiefs or the whanau.⁵ For Maori there was none of the concept of "researcher" as an independent, neutral observer who was accountable to him/herself or the academic community rather than the community being researched.

Te Awekotuku also makes the point that up until very recently Maori were the objects of research by "dominant and aggressive [Pakeha] researchers and academics with, inevitably, an eurocentric perspective".⁶ The result has been "decades - even centuries - of thoughtless, exploitative, mercenary academic objectification"⁷ from which tangata whenua are actively

³ Published by Manatu Maori: Ministry of Maori Affairs, Wellington (1991).

⁴ *Ibid.*, 7.

⁵ *Ibid.*, 7-8.

⁶ *Ibid.*, 11

⁷ *Ibid.*, 12..

withdrawing and retrenching.⁸

For those doing research involving Maori the overriding rule is that *the researcher's responsibility is to the people studied, themselves and this transcends responsibility to sponsors*. In referring to this requirement Te Awekotuku says:

Research is the gathering of knowledge - more usually, not for its own sake, but for its use within a variety of different applications. It is about control, resource allocation, information and equity. It is about *power*.⁹

It is therefore important that the researcher be accountable for the application of research findings. The research must be of some benefit to the people being studied. In this project one of the women interviewed made it clear that she expected something to come of the research. She said:

I'm glad that we can give you a hand with whatever is going down but I think it is important for us to know what is happening with this information and that we actually see results coming out of it.

Three Maori controlled surveys evidence features characteristic of research that is generated, controlled and carried out by Maori - the MacNeill, von Dadelszen survey;¹⁰ *Rapuora Health and Maori Women*, a survey into Maori women's health carried out by the Maori Women's Welfare League;¹¹ and Moana Jackson's work in producing *He Whaipaanga Hou*.¹² One such feature was the importance of a personal approach from the interviewer to the interviewees. For instance, in the MacNeill and von Dadelszen survey it was emphasised that establishing a personal relationship between the interviewer and the person being interviewed was the most important prerequisite.¹³ In the Rapuora survey the field

⁸ Note the example mentioned in MacNeill, H and von Dadelszen, S, *Attitudes to Family Violence: A Study Across Cultures*, Report Presented to the Family Violence Prevention Co-ordinating Committee (FVPCC) (1988) 51, where a health survey was rejected "in no uncertain terms. The objection was based on the monocultural Pakeha bias, structure and approach of the research design. Disgruntled objectors stated loudly and clearly that they were sick of being studied and analysed."

⁹ *Supra* n. 3, at 13.

¹⁰ *Supra* n. 8.

¹¹ Murchie, E, Maori Women's Welfare League Inc, (1984).

¹² A report prepared for the Justice Department in 1988.

¹³ *Supra* n. 8, at 52.

teams were nominated by Maori community groups as this was a way of using the whanau concept to establish a personal relationship. Similarly, Moana Jackson has always stressed the importance of personal contact of some kind, such as holding hui at local marae and working with the people face to face.¹⁴ This relates to the importance Maori place on the researcher being accountable to the people affected by the research - it is much easier to assess the bona fides of a researcher in person and to exact accountability from those close to one in the community. It is also much more difficult for the researcher to treat the interviewee as an object if the interviewee is someone one knows. Another important feature is that active involvement in the community affected by the research is considered essential. Maori people like to see proof that the good intentions of the researcher are being carried out. Gone are the days when Maori were trusting of researchers.

Another feature of Maori research is that the research scheme must be based on culturally acknowledged practices, so that knowledge of and sensitivity to cultural values is shown. In the Rapuora survey, for example, the researchers considered that "the first and most important move"¹⁵ was to approach kaumatua to tell them about the project and to get their support. The researchers made a point of finding the true leaders in the community and not just the most public Maori. The true leaders were those with mana on the marae, regardless of their occupation in the Pakeha world.¹⁶ Such people are difficult to identify for Pakeha who have no ongoing long term connection with the particular Maori community under study.

The Rapuora survey also identified the need to use appropriate language. In the Rapuora survey a test of the language in the survey was made by first using a small group as a pilot.¹⁷ Maori and English may need to be used depending on what language the interviewee is most comfortable in.

Maori have an aversion to questionnaire type research.¹⁸ This is partly as

¹⁴ In a Maori leadership survey carried out in 1994 for the Wellington Maori Legal Service, the telephone was the medium by which people were surveyed. The telephone is still better to Maori people than being sent a letter or questionnaire.

¹⁵ *Supra* n. 11, at 20.

¹⁶ *Supra* n. 14 where the results of the Maori Legal Service survey indicated that those the participants perceived as their leaders were all virtually unknown outside their own district.

¹⁷ *Supra* n. 11, at 20.

¹⁸ *Supra* n. 8, at 53.

a result of the bad experiences Maori have had with surveys in the past and partly because it indicates a distance between the researcher and the people studied that raises suspicions about the motives of the researcher and their accountability to the interviewees. Sometimes Maori will also object to being taped¹⁹ because of fears about how the information will be used and who will have access to it.

The place where interviews are held should be one in which Maori feel comfortable and it should not be an imposition for them to come there. This could mean interviews being held in the interviewees' home or on a marae. In the Rapuora survey the interviews were carried out at the participant's home.

Underlying all these features is the requirement that Maori have control of the research from inception to the end result and that that control is located in the Maori community being researched, not in the researcher. Just as Maori have called for recognition of their status as tangata whenua, so that recognition must be given by the academic community as well as government. Autonomy must be devolved to the different Maori communities in relation to research affecting them.

3. Appropriate Maori Researchers

Autonomy for Maori means that choice of research personnel should accord with Maori custom. Ideally, interviews should be conducted by members of whanau, meaning whanau in its wider modern sense of support group as well as family. In the context of this project the researcher could be a refuge worker at the refuge where the interviewee is staying or a member of the interviewee's family. If that is not possible, at the very least the interviewee should be able to be accompanied by whanau and be able to call upon kaumatua for support.

The researcher must hold themselves accountable to the interviewees and, ideally, the interviewees should be empowered to enforce that accountability. Where the researcher is a member of the whanau of the interviewee, there may be little difficulty in effecting this, but it is a very different story where a stranger is involved. For a Maori researcher it would be the depths of shame to act in a way which lessened the mana of her whanau. Despite that responsibility, a Maori researcher will also be accountable to the project supervisor, and to others who may have taken a part in the organisation of the project - in this case the Maori women's

¹⁹ Idem.

refuges who allowed the project to be carried out through them.

These responsibilities need not be conflicting provided that those involved in designing the project are aware of them. Will a Pakeha project organiser really be able to balance all these different aspects? Maori experience to date is that Pakeha have rarely done so.

4. Appropriate aims of Maori research

From what was said above, it should be clear that those Maori affected by the research (that is, in this case, battered Maori women, Maori women's refuges and the whanau of the women) should also participate in determining what the aims of the research should be. For example, Maori may choose to use the information primarily for Waitangi Tribunal claims, or to effect law reform, or to determine whether Maori should continue using the existing legal system. These aims then determine the content of the interviews and the appropriate analytical framework for the interpretation of the material. This ensures that only the *necessary* material is gathered, and that those affected can share control of the project with the researcher. True autonomy for Maori would mean that projects would be generated from the Maori community out of the needs perceived by that community, for the purposes of that community.

5. Comparison with methodology, analytical framework and aims of the project

The domestic violence project thus at least partially fulfilled some of the requirements of research involving Maori. The interviews were carried out face to face and because the interviewer was Maori, she was fully aware of cultural values that might come into play. There were no difficulties over taping the interviews and the women were able to ask for the tape to be turned off if they wished. The interviews were held in refuges where the women felt safe and supported by the refuge workers and other women staying at the refuge. Robyn was given questions to be asked of the women but they were intended to be guidelines, a framework, and she was encouraged to ask any other questions she thought appropriate. Some immediate return was made to the participants by giving them new information about obtaining protection orders and clarifying information that they already had. The women were also promised that the report which would be produced using their information would be sent to the refuges so that they could see tangible results. That has been done and the women are entitled to ask that information they have provided be withheld from the report. So there is some Maori control of the project and some accountability to the participants.

Nevertheless, there are some worrying difficulties associated with the Maori part of the project. There were only a small number of interviewees who participated, although this was never meant to be a representative survey. The small number does limit the ability to draw general conclusions which may be valid for all Maori. However, this is less important than the *reasons* why Maori women did not take part in larger numbers. It may relate back to the reticence of Maori to be involved in any surveys because of treatment by other researchers in the past. It may also relate to the reticence of Maori women's refuges to be involved in a research project about the Pakeha legal system when they question having *any* involvement with that legal system. For example, one of the Maori women's' refuges refused to take part in the project or to allow women to be contacted through the refuge.

One of the aspects in which the project did not accord with surveys generated by Maori was that the people carrying out the project were not whanau, even in the wider sense. They were not personally known to the women participants or refuges or actively engaged in that community (meaning the community of the refuge and whanau of the participants). Carrying out that requirement in this project would have meant that a number of different Maori interviewers would have been used, each associated with the particular refuge or whanau through which the contacts with the women were made. It might also have meant that the interviews contained different questions focussed to the particular issues facing the women in that refuge. This project did have a Maori interviewer who gave reports to a Maori lecturer, but in truth the interviewer, although allowed to probe beyond the outline of questions, was working within a framework set by the project initiator and was in no real position to do so. In actuality the project originated with non-Maori women and that set the pattern of control of the project and control of the interviews, despite genuine attempts to transfer that control.

The framework set by the project initiator was based upon feminist theories of methodology. Mies' guidelines for feminist research were used.²⁰ Those guidelines include (1) conscious partiality, (2) the view from below, (3) change of the status quo (4) collectivising experiences and 5) active participation in the women's movement. Clearly the first four guidelines may have some relevance to Maori research, but their interaction with the need for Maori autonomy and control of the research process, a Maori

²⁰ See Mies, M "Towards a Methodology for Feminist Research." in Bowles, G (ed) *Theories of Women's Studies* (1983)117.

analytical framework, and a Maori cultural mindset is an untried, complicated and difficult area.

Another important influence on the project design was that provided by feminist participatory research where the objectives of the research include “empowerment of oppressed people through the development of critical consciousness of both the researcher and the research participants, direct improvement of the lives of those involved in the research and the transformation of power relationships and power structures.”²¹ Again, this accords with some aspects of Maori methodology, such as the requirement that the research be of benefit to the Maori community. However, one does have to question the extent to which “the critical consciousness” Maori should be developing can occur within a project where the need for a personal relationship between the researcher and the interviewee’s refuge community has not been met, and where the critical consciousness developed by the project initiator is from another culture. One must also question the extent to which the power relationships have been transformed for Maori participants when the attempts to transfer power are flawed at the outset. The Maori participants still answered Pakeha questions. If Maori participants really had power, research funding would go to Maori Women’s Refuge and the seat of power would have been with them rather than in academia.

The third influence on the project was Paulo Friere’s methodological framework for emancipatory adult education, which relies on dialogue between all participants in the educational process including the educators.²² This incorporates the idea of an information exchange between the parties - information flowing from the educator to the participant and from the participant to the educator. This has the effect of empowering the “learners” by recognising that they have significant knowledge which the educator does not have, instead of the educator maintaining a position of power as, supposedly, “the knower.” Again the issue of the personal or whanau relationship is raised by this methodology. Where there is a whanau relationship, the participants know in their bones that they can teach and learn from each other, and the dynamics of power within a family or support group are determined by things other than the research relationship.²³

²¹ Seuffert, N “Epistemology, methodology and methods” (Unpublished Paper held by the author).

²² Friere, P *Pedagogy of the Oppressed* (2 ed 1992).

²³ For instance, when I approach kaumatua in my whanau or hapu for information in a Maori setting there is no question that the power and knowledge resides with the kaumatua and that I am the petitioner.

However, sending a researcher, even a Maori researcher, to question those not of her whanau or with whom she has no personal relationship upsets all kinds of delicate balances. The exchange between one of the women participants and the researcher in asking the woman if she would prefer a Maori woman lawyer may help to illustrate what is meant here. Beginning with the question the interviewer asked:

- Q- [I] was really interested in you talking about not going to a Maori woman lawyer and [I was] just wondering did you have a good think about why?
- A- Yeah I did.
- Q- Because I was fascinated in the sense that you had said you really related to the Maori women at the refuge now and you got on with that Pakeha lady and I was thinking if you can put it in words...
- A- ...Well you see these women here in the refuge they do have a tendency to talk down to you, but if you let them know how you feel then they'll come eye to eye with you. But it is only just that they know that's their job, they know just a little bit more than you know...But it's still like that step down. And that's how I feel, ... with a Maori woman lawyer, it is just that I feel whakama because I wouldn't feel important, because they'd be more important than I am.

Perhaps this woman may be saying that she feels able to take power to herself where she knows the other women, but that she cannot do that with an unknown Maori woman lawyer. One then has to question how much better a Maori researcher, who is otherwise unknown to the woman, can do to facilitate a mutual learning experience and to transform the power relationship. Perhaps a very skilled, intuitive, empathetic researcher could. A better solution would be to alter the methodology so that it is less reliant on individual ability by using whanau or refuge women to carry out the interviews.

These are some of the questions raised by adopting a feminist methodology based on non-Maori theorising. Clearly the question is raised whether these methodological theories can be universally applied; whether modifications can be made to them and if so of what kind; and whether it is more appropriate to start from a different theoretical place in circumstances such as exist in New Zealand.

Whanau involvement and Maori autonomy in carrying out such a project, moreover, may appear to conflict with feminist theories based on European culture. This means there may be a shift in emphasis from the good of the individual woman to the good of the whanau. It also means that other perspectives and other interviewees would be drawn into the project. For instance, the project only reached those women who went through Refuge

but did not reach those who may rely on whanau or iwi-based resolutions to the issues.

A Maori researcher bases a methodological and theoretical framework on the imperatives of Maori culture and Maori experience. It is important that Maori not be drawn into adopting available feminist thinking wholesale because such thinking is culture specific.²⁴ Linda Smith refers to this when she says:

[I]n attempting to theorise our own lives we have frequently been caught using [white feminist] concepts as a means of understanding our own. While white feminisms may help to gain insight into “Otherness” at one level, at another level these forms of feminism may perpetuate otherness further. This tension has made it extremely difficult to reconcile the realities of Maori women’s lives with existing feminist theories.²⁵

While some of the ideas from feminist methodological theory have resonances with ideas about Maori methodology (for example the need for real improvement to come from the research), yet there is much that is different.

In fairness to the project initiator it must be acknowledged that in setting up this project there were limitations imposed by outside agencies (the University research grants committee, for example) so that the ideal of a truly Maori methodology could not have been attained. Let’s face it, that is the reality for a lot of research involving Maori because we live in a society where the power culture and the powerholders are Pakeha. Furthermore, the Maori researchers on this project have been specifically trained in the Pakeha tradition, within a framework set by the Pakeha legal system. I find myself blinkered by that training, so that integral aspects of Maori culture may not be explored even by Maori researchers. An example is in regard to spirituality - Maori were and are a spiritual people.

²⁴ In this regard I cannot help but remember Audre Lord’s words: “The master’s tools will never dismantle the master’s house.” For Maori women “the masters” have included Pakeha men and women.

²⁵ “Maori Women: Discourses, Projects and Mana Wahine” in Middleton, S (ed), *Women and Education in Aotearoa* 2 (1992) 34. See also Irwin, K “Towards Theories of Maori Feminisms” in du Plessis (ed), *Feminist Voices* (1992) 5 where she says:

[Maori women] don’t need anyone else developing the tools which will help us to come to terms with who we are. We can and will do this work. Real power lies with those who design the tools - it always has. This power is ours. Through the process of developing such theories we will contribute to our empowerment as Maori women, moving forward in our struggles for our people, our lands, our world, our selves.

Spiritual values play an important part in our conception of the world. In traditional Maori society, for instance, difficulties in a marriage such as adultery might be referred to a *tohunga*. The present legal system and legal education is shorn of spirituality and is supposedly about rationality, objectivity and neutrality. So, it was not until writing the project report that I realised that the element of spirituality was missing from the questions and from my analysis. In these circumstances this project *has* tried to answer a lot of the concerns that research about Maori issues raises.

However, of all the aspects of the methodology, the one which I find most worrying was that the content of the interviews was largely determined by an agenda which lacked a Maori perspective.²⁶ For instance, the participants were never asked, "Do you think this would have been different if you were a Pakeha?", or "How do you think the system should be changed to suit Maori women?" The result is that information that might have been obtained had the project been a Maori project was not obtained, and much information which the interviewer might have given to the women in exchange was not given.

In a Maori project, a lot of information might have been gathered which would be of use to Maori but would not be more generally disseminated at all. In a Maori project the interviewer might have probed into the race issues raised by the legal system more and might have given information about the oppressive effects of colonisation and the role the legal system had to play in that. This would have given the interviewees another way of understanding their experiences.

These concerns do not mean that the research is not useful, regardless of how it might not match the ideal. The legal representation of battered women can always be improved. Therefore, the material could clearly be used to see what improvements could be made to the legal system, improvements which might benefit *all* women.

Moreover, it is important that Maori women have their stories told, even if only partially, if progress towards creating Maori feminist theories is to be made.²⁷ I also believe that the reality for so many abused Maori women is that the legal system and Pakeha systems in general impose themselves on Maori women willy-nilly and so we are forced to engage with those systems in order to research Maori issues or to help Maori women.

²⁶ For an idea of what this might mean see Smith, *ibid.*, 39 where she says that Maori women need to control their own definitions of themselves. This "requires the seeking of knowledge which is *whanau*-, *hapu*-, and *iwi*-specific."

²⁷ Irwin, *supra* n. 25.

III. PART TWO

I. Colonisation and the Legal System

In part one the methodological theory of the project has been discussed. Part two looks more closely at the consequences for a Maori analysis arising out of that methodological approach in relation to the particular issues of colonisation and racism.

Very little research has been done on domestic violence as it affects Maori women,²⁸ and little is known about current Maori concepts of and attitudes towards such violence.²⁹ However, when starting the project I was aware that Maori women's refuges were deeply dissatisfied with the way the system operates for Maori women. One theory for the basis of this dissatisfaction is that it is related, at least in part, to issues around colonisation. Colonisation meant the introduction of a monocultural legal system which was once actively used to oppress Maori and which is still in many ways inappropriate for Maori.³⁰ It also meant that Maori ceased to perceive themselves in a purely traditional Maori way, but to a large extent through the lens of the coloniser.

One clear aim that I had in analysing the interviews was to look for signs that race and colonisation had adversely affected Maori women in the treatment they received from the legal system. However, the interviewees did not themselves analyse their experience in those terms, so there is not much direct material to work with. Indeed, the interviewees do not *think* of themselves as Maori vis-a-vis the system: they just *are* Maori. Yet intuition tells me that the effects of colonisation and racism must play some part in the experiences of the legal system that these women had.

By comparison, some women did recognise the patriarchal nature of the

²⁸ One reason why this project was still worthwhile despite its flaws.

²⁹ See, however, McNeill and von Dadelszen, *supra* n. 8.

³⁰ See the report *Te Whaingā i te Tika :In Search of Justice* Advisory Committee on Legal Services (1986) at para 1.3 where the writers say:

For many, especially Maori, that system embodies institutionalised racism, as recognised in the recent Maori Perspectives Advisory Committee report. 'The most insidious and destructive form of racism, though, is institutionalised racism. It is 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. Participation by minorities is conditional upon their subjugating their own values and systems to those of 'the system' of the power culture.'

legal system and identified it as part of their oppression. For instance, one woman said:

The Police are men, the Judges are men, and most of the lawyers are men and you are very lucky if you find a woman like [S], who is your lawyer that is helpful. Mine...have not been helpful...so what you are looking at is men...But my husband held the reigns of our marriage in that "five minutes down the road, you have got five minutes to get down the road and back again. If you are late, we will see what happens. You are not allowed to go here, you are not allowed to talk to that person." I am talking that kind of control here. When you go into the legal system it's the same thing. Because the lawyer says, well this is what's going to happen to you and then you have got to wait for a man to tell you whether you are going to get your orders, what they are going to do for you and if any of those orders get breached, you have got to go to another man who says, "this is what my man has done" and so I am still being controlled, not only by my husband, who sees his lawyer, but also the legal system itself, the justice system. I am still being controlled.

As a Refugee worker, this interviewee may be in a better position to apply that kind of analysis to her experiences. However, neither she nor any of the other women interviewed mentioned racism or the monoculturalism of the legal system as part of their experiences of the legal system. It may be that the methodology of the project was faulty. However, it may also be that for most Maori a monocultural system is "just the way it is," unnamed, so much a part of life that it passes without comment.

To put the monoculturalism of the legal system in context one cannot help comparing the position of Maori women under the present system to that which they would have enjoyed in traditional Maori society. The traditional Maori view was that violence towards your wife was an affront to her and her whanau, to be punished and compensated accordingly. These values held sway even into this century. In Ruatoki in the 1920s there was an instance of a wife who was beaten by her husband. She returned to her own people to complain of what had happened. They came as a group to Ruatoki and asked for the husband to be given over to them to be dealt with. The people at Ruatoki, who were whanau to the husband, could not give him up because of the familial responsibility that they owed to him. In the end the children of the marriage were given to the woman and her whanau and compensation of 5000 pounds was paid, an absolutely huge sum for a tiny community in those days. The man who had caused all the trouble was then dealt with by the Ruatoki community and required to repay them as best he might.³¹

³¹ This incident is recorded in Maori in the journals of Tamarau Waiari, my great-great-grandfather.

This incident implies a world view and values quite different to those of the current dominant group in society (and the current legal system). In pre-colonial Maori society, a man's home was not his castle. The community intervened to prevent and punish violence against one's partner in a very straightforward way. Different social dynamics operated to those that now operate in society in general, including the Maori community. That change is a direct result of colonisation.

One example of what this means for Maori women is shown in the area of custody and access. In the taua muru story above, custody of the children of the relationship was given to the woman and her whanau. This is because children in traditional Maori society were children *of the whanau* and the woman's people would not have left without them. By the same token, the children were also children of the man's whanau and would continue their relationship with that whanau. Yet under the Pakeha system somehow the violence which women have suffered and which their children have often suffered³² have until recently been given little weight in determining access issues.³³

Colonisation has led to the destruction of the traditional Maori way of life. Yet Maori women are imbued with both the Pakeha system and its values and remnants of their own values, which are now unsupported by the urbanised society in which most Maori now live. The issues that therefore arise for Maori women are complex and difficult. An example of these difficulties came from one of the women interviewed who said:

_____ is basically a Pakeha oriented town, so Maori people here are a minority so they slot into the Pakeha system...so they have learnt to accept it. But at home in _____ it is different there, it's Maori and two different establishments, Maori and Pakeha. And when you go there as a Maori well you take half your whanau there and the thing never gets resolved. And if you do it the Pakeha way, well you are inclined to be ostracised by Maori people, because you have gone against the grain of Maori tradition and gone straight to the Pakeha...At home you sort of confer with your in-laws and with your own family and with your extended family, you know it is quite a drawn out process. But here it is good because it is just straight to the point and you don't have this cultural clash. Treading on toes...

³² See National Collective of Independent Women's Refuges, Inc., *Treasure the Child* (1991) which found that 50% of children in refuge had been physically abused and 85% verbally abused. Of the Maori women interviewed in this project all but one reported that their abuser had also abused the children.

³³ See section 16B of recently enacted Guardianship Amendment Act 1995.

This woman at this point seems to be saying that she prefers the Pakeha system because of her impression that things get over and done with quickly. And yet at another point in her interview she describes the disaster which occurred in relation to the custody of her eldest child. She says:

Cause I only came out with five of my six kids and I wanted my eldest son here, cause he was only 15 then and [her lawyer] said, 'well you know it is not worth it cause in a couple of months time', he was sixteen in September, and he said, 'by that time he will be of an age where he is able to decide for himself whether he wants to come here or stay with his father' and I wanted the orders to cover him so that was one of my...He actually convinced me it was wise to leave _____ where he was. But in the process it was a month later when I saw my son and he came here to visit. But in that time because there had been no communication between us and he was sitting on edge...because he wasn't with his father, he was boarding with friends. It had been arranged through DSW. And because all his fears had come to the surface ... when he got here the next day he beat me up. If I had stood firmly in my decision to bring him here he wouldn't have felt that he had been severed from us all, that link had been broken.

Leaving aside the insensitivity displayed by the woman's lawyer, we should note how the legal system's solution for this woman created terrible pain for her although she blamed herself for what had happened. She does not relate this back to the destruction of Maori forms of social control or the monocultural nature of the system; this could have happened to a Pakeha woman. Yet it is also not inconsistent with an analysis which sees colonisation and the destruction of Maori forms of social control as part of the overall problem for this woman. Her relationships with her abuser, her children and her whanau are laden with values that find no expression in the solutions offered by the existing system.

Maori women's refuges have considered not using the legal system at all,³⁴ although this is not discussed in any of the project interviews. Understandable as a withdrawal from the system might be, the system perpetuates its use in its administration.³⁵ Although the police can arrest

³⁴ They have also recognised the monocultural nature of various analyses of domestic violence such as the Power and Control Wheel, and have altered it to take account of issues facing Maori women.

³⁵ See Smart, C, *Feminism and the Power of Law* (1989) 24 where she says: "...the 'law' that affects women's lives is more likely to be the administration of welfare benefits, the operation of the private law of maintenance, and the formulation of guidelines and decision-making at the level of bureaucratic operation."

an abuser for assault without the need for protection orders, in practice such orders cover a wider range of objectionable behaviour and offer much more protection than the assault law does. Social Welfare may also require protection orders before it will grant priority to a woman seeking to obtain benefits. To obtain her interest in matrimonial property a woman may be forced to go to court. Not using the system all too often requires the cooperation of the abuser.³⁶

The legal system does not and cannot help women with problems arising out of such cultural clashes. The solutions the system applies may not only fail to assist Maori women but may continue the destruction of the culture in that the involvement of other members of the whanau are not included in decisions regarding the children of such a relationship. There are no easy answers.³⁷ There is no prospect in the immediate future that the system will change, but there seems to be no other place but the system for Maori women in abusive relationships to turn.

In relation to all these issues further research developed from a Maori perspective is needed, as at present we do not have the information necessary to assist us to find bicultural legal solutions instead of monocultural ones.

2. Racism

Associated with the monocultural nature of our substantive law, court procedures, and administration is the racism that may be encountered at any level. Most lawyers and judges are white, middle class males and females. They cannot help but have stereotypes of Maori women in their minds and it is difficult for even the most sensitive person not to apply inadvertently those stereotypes (and there are always those who are deliberately offensive). Lawyering is also a profession peculiarly prone to patronising its clients. Nevertheless, none of the women interviewed

³⁶ For instance, section 6 of the Guardianship Act 1968 makes both parents of a child guardians unless the mother was not married to the father and was not living with the father "as husband and wife" at the time of the birth of the child. Effectively, this means both parents are entitled to custody of the children and an abused woman must hope that her partner is not going to contest custody or access through the courts.

³⁷ When discussing Catherine MacKinnon's analysis of the *Martinez* case, Angela Harris refers to similar difficulties. Harris, "Race and Essentialism" (1990) 42 Stanford Law Review 593. The conflict of cultures raises many questions of fundamental importance to feminism.

attributed the way they were treated to racism on the part of their lawyer. In fact, only one woman made any comment at all about racism. She said:

I had two good lawyers and they weren't...I never ever felt as if I was a Maori in front of them. I felt like a person, you know. And it was good. And they were both Europeans so...I felt good there.

This kind of statement speaks volumes about the kind of every day racism that comes to be expected (and deeply resented) by Maori as "just the way it is." It is the absence of racism that is commented upon. On the other hand it could also mean that such issues were not fully aired because of the perspective from which the project was designed. If so, it is another reason why Maori need to be empowered to carry out research based on a Maori perspective and Maori imperatives.

IV. CONCLUSION

Nine Maori women were interviewed in the project, and what we have is a collection of women's stories in all their complexity.³⁸ The individual stories of these women are compelling and instructive for those who do not have knowledge, understanding or experience of domestic violence. Stanley and Wise have argued that the standpoint of each woman, located within a specific context, has epistemological value and produces "contextually grounded truths". These stories are also important on their own account simply because they *are* the stories of Maori women, stories which we must recover if Maori women are to "be written back into the records, to make ourselves visible."³⁹

For these reasons the project is a success despite the reservations that must be entered in regard to the methodology adopted for the Maori part

³⁸ See Williams, P, *The Alchemy of Race and Rights* (1993) 10 where she says:

That life is complicated is a fact of great analytic importance. Law too often seeks to avoid this truth by making up its own breed of narrower, simpler, but hypnotically powerful rhetorical truths. Acknowledging, challenging, playing with these *as* rhetorical gestures is, it seems to me, necessary for any conception of justice. Such acknowledgment complicates the supposed purity of gender, race, voice, boundary; it allows us to acknowledge the utility of such categorisations for certain purposes and the necessity of their breakdown on other occasions.

See also Minow, "Feminist Reason: Getting It and Losing It" [1990] *Journal of Legal Education* 60.

³⁹ Stanley, L, *Breaking Out: Feminist Consciousness and Feminist Research* (1983) 12-32.

of the project. It was a brave attempt to bridge the gap between feminist research and practice and Maori cultural values. The project has taught everyone involved valuable lessons which can be used to guide us in other projects.

However, there is clearly a lot more research required if the needs of Maori women and their families are to be properly explored. Some of the gaps which are mentioned above could be dealt with if the research were generated from and controlled by the Maori community itself, so that aims, methodology and analysis based on Maori cultural values are used, as is appropriate.

In the meantime one is left to question the ability of the legal system to deal with the needs of Maori women and their children appropriately. Smart⁴⁰ refers to the view of law as “a kind of sovereign with the power to give and withhold rights” with the attendant idea, pervasive in society, that law has the power to right wrongs. She alludes to the difficulties inherent in a British based legal system for those from a culture or class different from that which developed this system when she says:⁴¹

Law is not a free-floating entity, it is grounded in patriarchy, as well as in class and ethnic divisions. Rape should not be isolated in ‘law’, it must be contextualized in the domain of sexuality. Equally, child sexual abuse is not a problem of law, except inasmuch as both sexual abuse and law are exercises of power. But they are both exercised in the masculine mode, so one is not the solution to the other. Finally women’s low pay is not a matter of equality but of segregated labour markets, racism, the division of private and public, and the undervaluation of women’s work. Law cannot resolve these structures of power, least of all when we recognise that its history, and the history of these divisions coincide.

For Maori women the situation is compounded by the operation of a monocultural system. Back in 1986 the Advisory Committee on Legal Services issued a report⁴² in which it called for legal services which reflect our bicultural heritage.⁴³ In the nine years since the report was published there has been little or no change to the legal system to reflect Maori values or concepts of justice. Yet this is the system which Maori women are expected to use to try to obtain the protection they need. Maori women deserve better.

⁴⁰ *Supra* n. 35.

⁴¹ *Ibid.*, 88.

⁴² *Supra* n. 30.

⁴³ *Ibid.*, para 2.1.