

## Does the domestic violence act discriminate against Māori?

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**Abstract:** Māori domestic violence issues were examined by consideration of convictions for assaults on females and children over the last 27 years. Assault convictions increased substantially from the mid 80s to the mid 90s, fell off, and today continues its upward trend. Māori now account for more convictions than any other ethnic group in New Zealand including Europeans. It is time to stop and reconsider the problem of domestic violence because it is quite clear that current policies aimed at ameliorating the problem may not be working. The data indicates that there are social factors that influence Māori domestic violence, factors that should be identifiable, but for the moment remain largely unknown. The progression of domestic violence as measured by convictions over the last 27 years clearly indicate that the problem is amenable to social intervention if only the right interventions can be identified. Changes in the conviction rates for violent crimes and assaults against females and children coincided with the introduction of the Children's, Young Person's, and Their Families Act of 1989, and the introduction of the Domestic Violence Act of 1995 suggesting that government legislation could have influenced the conviction rates. Following the introduction of the Domestic Violence Act in 1995 the conviction rate of Māori offenders increased substantially above that of Pākehā forcing one to ask the question summarized in the title of this paper. In addition, the Sentencing Act of 2002 coincided with an upsurge in convictions of Māori for domestic violence offenses suggesting that the higher rates of Māori convictions might be linked more to the manner in which Statutes are interpreted by the criminal justice system than to a sudden behavioural change in Māori. The data suggests the possibility of discriminatory application of the law against Māori by the courts that deal with domestic violence issues. Unemployment is another factor that was also considered, but the relationship between unemployment and domestic violence is not an obvious one and, in fact, based on the non-alignment of unemployment with violence convictions, unemployment may not be a driver for domestic violence at all. Current approaches to the problem of Māori domestic violence are at present speculative, and without understanding the driving forces behind the phenomenon those programmes may be limited in their success.

**Keywords:** Assaults on children; domestic violence; male assaults on females; Māori domestic violence; violent crimes; Domestic Violence Act 1995, Sentencing Act 2002.

### Introduction

Māori domestic violence features in New Zealand newspapers frequently, and the recent beating deaths of the twin 3 month-old boys of the Kahui family has intensified both public and political scrutiny (Koubaridis, 2008a). The father, a Māori, was accused, arrested, tried, and acquitted (Koubaridis, 2008b), thus raising the issue of who killed the boys to the level of a national scandal with even the then Prime Minister herself demanding justice (Trevett & Binning, 2008). Thus Māori domestic violence is viewed as an ever-present national concern, but the reality is that neither the justice nor the political systems appear to be very effective in dealing with the issue.

Domestic violence exists within all ethnic communities including European (Pākehā), but the level of domestic violence within Māori communities exceeds that of all others (see for example, Lievore & Mayhew, 2007). As a social issue the root causes of Māori domestic violence are complex and extremely difficult to isolate. The tendency of the public and

politicians to get emotionally involved serves only to divert attention from the root causes focussing instead on crime and punishment, healing neither victim nor perpetrator.

In this essay I have tried to establish a measure of Māori domestic violence over the last 27 years by using data from the Statistics New Zealand database (Statistics New Zealand, 2008). I have looked at the records concerning only convictions for violent crimes believing these to be a true record of proven violent acts. Arrests and apprehensions have not been included as a means of simplifying the huge amount of data currently available. I acknowledge that confining the data set to only recorded convictions does not equate to the total extent of domestic violence in New Zealand; however, it does eliminate many of the uncertainties surrounding charges of domestic violence that are founded on human emotions such as love, hate, fear, and the desire to hurt.

Simplification is a valid approach to this difficult subject provided the conclusions drawn remain in context. With this in mind I have tried to get a picture of just how serious Māori domestic violence is compared with that of the Pākehā the major ethnic group of New Zealand. The data sets presented here have not been published previously to my knowledge.

## **Definitions of domestic violence**

Domestic violence and violent crimes in general in New Zealand have been the subject of many studies, but the most comprehensive review of this area of social development is the report prepared for the Ministry of Social Development in 2007 by Lievore & Mayhew (2007). Their work is far reaching, conforming as it does, to the all-embracing definition of domestic violence as published in the “Te Rito: New Zealand Family Violence Prevention Strategy” of the Ministry of Social Development (Mahary, 2002, p8):

Family violence covers a broad range of controlling behaviours, commonly of a physical, sexual and/or psychological nature that typically involve fear, intimidation or emotional deprivation. It occurs within a variety of close interpersonal relationships, such as between partners, parents and children, siblings, and in other relationships where significant others are not part of the physical household but are part of the family and/or are fulfilling the function of family. (Mahary, 2002, p8).

This definition of domestic violence was too broad for the purposes of trying to establish trends and identifying underlying reasons. Most of the parameters listed above have little or no data available, and very little that goes back to the early 80s. As a simplification, domestic violence was defined as violence inflicted by males on females and assaults by adults on children, because data for these two parameters has been collected for over 25 years. Only convictions were considered and arrests and apprehensions ignored because convictions spoke with a degree of certainty regarding the police charges.

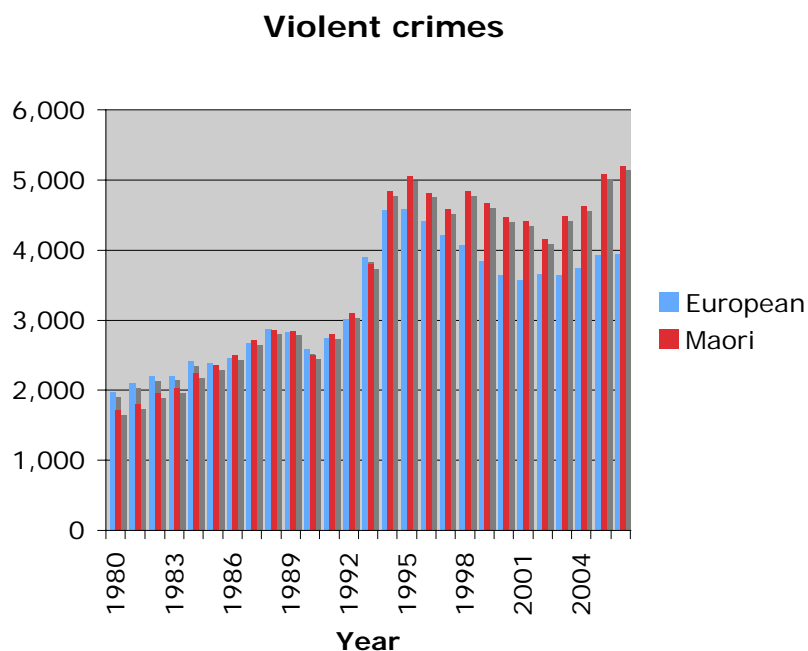
The question is whether or not the simplification of domestic violence into just two criteria is justified and whether or not it can still lay claim to being a representation of Māori domestic violence. The simplification is justified by the recognition of useful quantitative trends that might otherwise be obscured by the inclusion of unmeasurable side issues such as those associated with psychological abuses. As a representation of Māori domestic violence the simplification probably has some degree of justification because violence against partner or children is in fact that which is brought to the attention of the public most often through public trials. Finally, in recognizing the limitations of this study with regard to the definition of Māori domestic violence, also ensures the containment of any pronouncements to within the parameters of that definition.

## Violent crimes

Violent crimes committed in New Zealand consist of two major components. There are domestic and non-domestic forms of violent crimes and the relationship, if any, between the two is at this time unknown. However, an assessment of the prevalence of violent crimes in general could provide an idea as to what the general state of violence is in New Zealand and a measure of where Māori sit with regard to this general state. It is possible that Māori might show a differential specificity as compared with Pākehā when it comes to the committing of violent acts.

Convictions for violent crimes in general as shown in Figure 1, excepting for a minor blip in late 80s and a major one in the mid to late 90s, has increased almost continuously over the last 27 years for both Māori and Pākehā. This data brings us to the first major puzzle; why does the rate of violent crimes increase with time and what drives it? This question may be naïve, but the fact is that unless the growth rate of convictions for violent crimes is simply a function of population growth then the explanation is not readily apparent.

The increase showing a doubling of the conviction rate over the last 27 years for Europeans and the 2.5-fold increase for Māori also needs to be explained because in 2007 the Māori population had increased by only 64.3% over that of its population in 1981 and Pākehā by only 30.4% (data not shown). The conviction rate for violent crimes is not simply a function of population numbers since the Pākehā population of New Zealand did not double over the time period of 27 years and nor did the Māori population.



**Figure 1. Convictions for violent crimes committed by Māori and Europeans in New Zealand from 1980 to 2006.**

Note the basic similarity in the shapes of both curves. Where Pākehā convictions increased Māori showed a similar response, although perhaps not at precisely the same moment as that of Pākehā. Where Pākehā convictions peaked in 1994/95, for example, Māori peaked about a year or so later. While basically similar in form, the curves for Māori and Pākehā are not identical, with Māori convictions increasing at a greater rate than those of Pākehā. However, the point is that there are basic similarities in the complex shape of both curves which

suggests that whatever the forces are that shape criminal convictions for Pākehā they are similar to those that shape convictions for Māori.

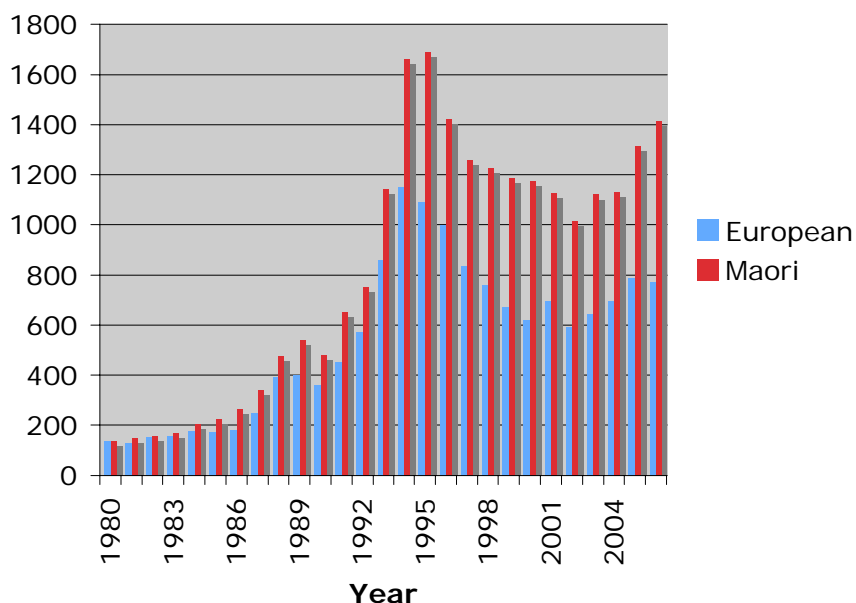
The differences lie in the precise timing of those changes and their magnitude. This similarity is important because it relates to current theories regarding Māori domestic violence that emerge from the history of New Zealand colonization; for example, Māori has experienced 160 years of being colonized whereas Pākehā has spent 160 years colonizing. These histories result in different perspectives that might be expected to show up in the response curves if those perspectives have any bearing on the issue of violent crimes. The identity of the major drivers are unknown at present although they are probably a combination of economic realities, government policies, social perspectives and biological imperatives.

Māori convictions for violent crimes equalled those of Pākehā in 1985 and maintained parity until about 1988. Convictions of Māori for violent crimes then began to move ahead of Pākehā in spite of the fact that Māori accounted for only about 12% of the total population at that time. Today, the conviction rate for violent crimes is greater for Māori than it is for Pākehā, with Māori accounting for only 14.7% of the total population. This can be explained in two ways: either Māori are committing more violent acts and getting caught, or they are being handled differently by the Criminal Justice System.

## Domestic violence

Domestic violence, for the purposes of this essay, consists of two major components; these are male assaults on females and assaults by adults on children. The conviction rates for these crimes are shown in Figures 2 and 3, respectively.

### Male assaults on females



**Figure 2. Convictions for male assaults on females committed by Māori and Europeans in New Zealand from 1980 to 2006.**

During the 1990s the number of male assaults on females (Figure 2) increased markedly for both Māori and Pākehā; however, the number of convictions against Māori began to exceed

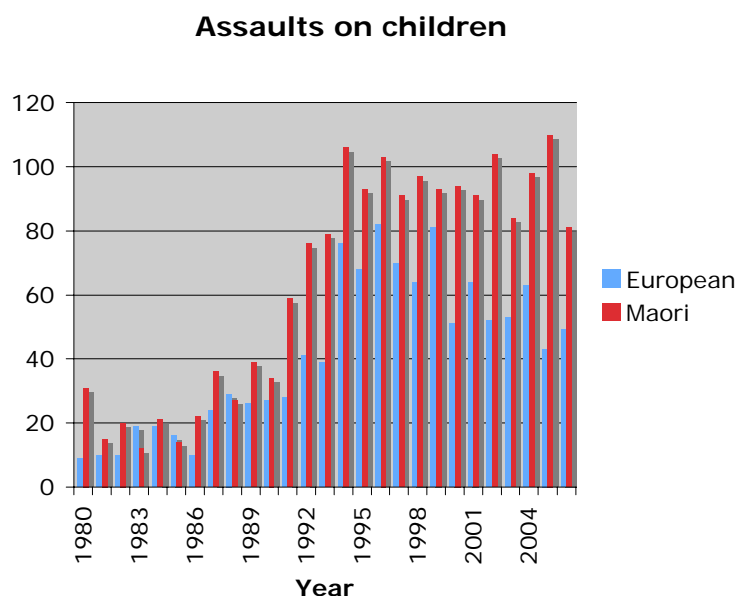
Pākehā substantially from the mid-90s onwards. From 1980 until 1994 the number of male assaults on females increased almost exponentially and then something, as yet unidentified, occurred around 1995 that resulted in breaking the trend and the conviction rate fell away. Exactly what this event was is not known but the change was remarkable; however, the fall off for Māori was not as great as that for Pākehā.

The number of assaults by males on females peaked around 1996 for Māori and around 1994 for Europeans. From 1995 until around 2002 the number of assaults by males on females tended to diminish, but in 2003 the upward trend began again. Today the number of convictions for male assaults on females is substantially higher for Māori than it is for Europeans. Again, the alternative explanation for the high rate of convictions of Māori for violent crimes is that the Criminal Justice System is dealing with Māori domestic violence issues in a manner different from that of Pākehā.

In emphasis, three important points arise from the curves shown in Figure 2:

1. Male assaults on females increased almost exponentially in the 80s to mid 1990s.
2. The escalation of domestic violence experienced in the early to mid 90s was broken by unidentified social forces that occurred around the mid 90s.
3. The upward trend in convictions for domestic violence offences for both Māori and Pākehā has reasserted itself.

Note also the basic similarities in the overall shape of the two curves. Up until the mid 90s the two curves for Māori and Pākehā were almost identical suggesting that the social forces driving those changes must have been very similar. Beyond the mid 90s the overall shapes of the two curves until today were similar although different in magnitude. This suggests that the major drivers behind male assaults on females might be similar for both Māori and Pākehā. However, the precise timing of the responses and their magnitude differs for both ethnicities and it is here that specific historical ethnic experiences might be asserting themselves. This observation has not been reported previously.



**Figure 3. Convictions for adult assaults on children 1980 to 2006.**

The second major component of Māori domestic violence is the conviction rates for the assaults of adults on children (Figure 3). The curves are not as smooth as that seen in Figure 2

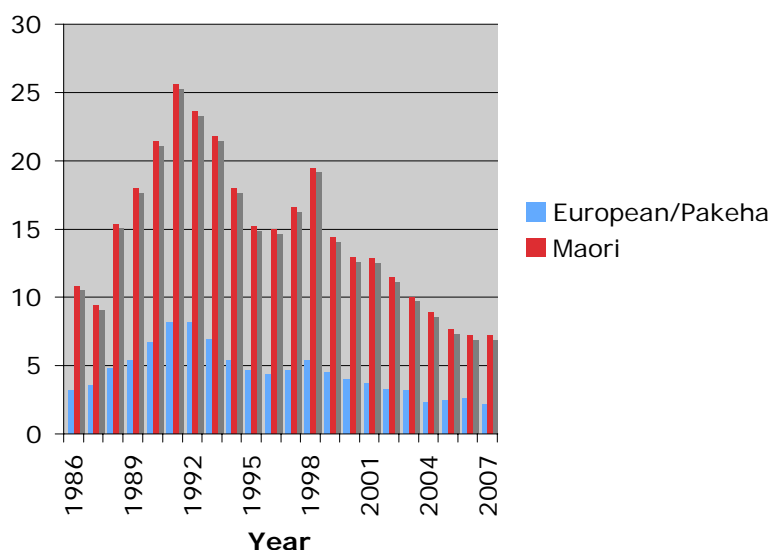
possibly because of the relatively fewer numbers of convictions involved; however, the overall shapes of the curves and their similarities are quite clear for both Māori and Pākehā. The magnitude of the responses to the social forces involved appears to be quite distinct for Māori and Pākehā. The rapid increase in convictions during the early 90s is similar to that seen for male assaults on females. The fall off from the mid 90s is also similar thus suggesting that the social forces influencing male assaults on females is similar to the social forces influencing adult assaults on children. This is as one might expect.

## Unemployment rates

It is generally expected that the incidence of domestic violence might be influenced by employment or lack thereof. Unemployment should be one of the major social forces affecting domestic violence because of the stresses involved in feeding and maintaining one's family with limited resources. The unemployment rates for the period of 1986 to 2007 are shown in Figure 4.

Unemployment for Māori during this period always exceeded that of Pākehā by a substantial margin. For a direct connection between domestic violence and unemployment one would expect to see some basic similarities in the overall shape of their graphical representations. The remarkable thing is that there is no apparent correspondence between domestic violence as measured by convictions and the unemployment rates during the period between 1986 and 2006. On the face of it one must conclude that unemployment has little or nothing to do with domestic violence because when Māori convictions were rising unemployment was falling.

**Unemployment rates 1986 to 2006**

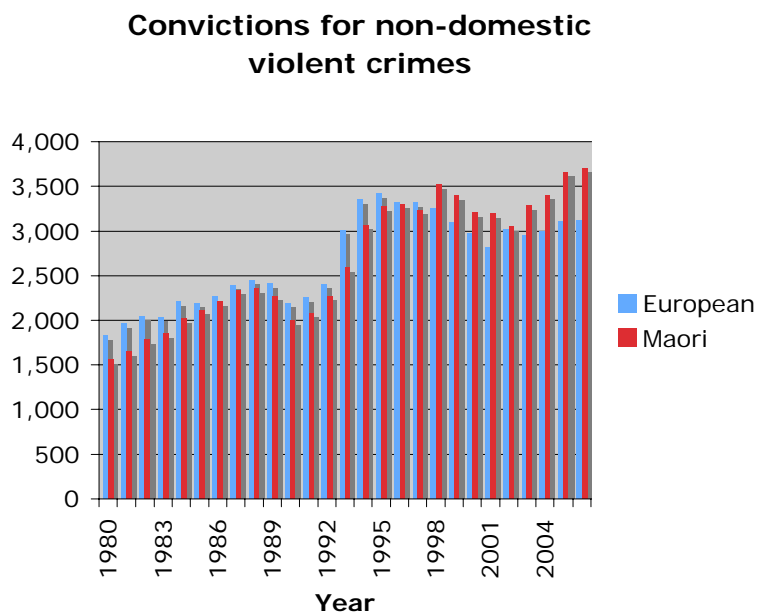


**Figure 4. Unemployment rates for Māori and Europeans in New Zealand from 1980 to 2007.**

## Non-domestic violence

Let us now consider conviction rates for violent acts that lie outside of domestic violence issues. What is the relationship between domestic violence and non-domestic violence? Does

the phenomenon of domestic violence lie in a specific category of its own, or is it driven by the same forces that drive non-domestic violence?



**Figure 5. Convictions for violent crimes minus the assault data.**

In other words, are the responses noted here for domestic violence issues over the course of 27 years simply part of a bigger picture reflecting forces that determine the levels of violence in society in general? A measure of this was achieved simply by subtracting the domestic violence element from the conviction rates for overall violent crimes (Figure 5).

Māori convictions for non-domestic violent crimes is very similar to that of Pākehā throughout the 27 year period examined although Māori convictions are increasing at a rate greater than that of Pākehā. However, most interesting is the substantial difference between the curves shown in Figure 5 and that shown in Figures 2 and 3. These differences suggest that in the main, domestic violence lies outside of the non-domestic criminal violence issues and are subject to unique social forces in their own right. Thus, while convictions for domestic violence bears some relationship to convictions for non-domestic violence, in the main, domestic violence should be treated as a distinct entity in the construction of strategies for dealing with issues of violent crimes.

A curious difference between Figure 5 and Figure 2 concerns the total number of convictions per year. In 1995 Māori convictions for assault on females began to greatly exceed that of Pākehā and yet the number of convictions for non-domestic violent crimes for Māori began to exceed that of Pākehā only in 1998.

### **The influence of government policy and legislation**

Over the years the government of New Zealand has enacted legislation designed to deal with domestic violence, its aftermath as well as attempts to forestall the violence itself and its effects on children and domestic partners. These Acts include:

- The Guardianship Act 1968 (replaced in 2004 by the Care of Children Act)
- The Family Proceedings Act 1980

- The Summary Offences Act 1981
- The Immigration Act 1987
- The Children's, Young person's and Their Families Act 1989
- The Domestic Violence Act 1995
- The Legal Services Act 2000
- The Sentencing Act 2002
- The Care of Children Act 2004
- The Domestic Violence Reform Act 2008

While all of these acts have some bearing on the manner in which domestic violence is treated within the justice system of New Zealand, the three most important in this regard are The Children's, Young person's and Their Families Act of 1989, the Domestic Violence Act of 1995 and the Care of Children Act of 2004. All three of these statutes are administered by the Family Court although breaching a protection order under the Domestic Violence Act is a criminal offence and is dealt with in the criminal courts (Boshier, 2006).

Without delving into details as to how any of these statutes actually function suffice it to say that if their presence on the world stage results in greater or lesser rates of convictions for domestic violence either for Māori or Pākehā, then that presence should manifest itself by a blip or rate change in the graphic representations of Figures 1, 2, 3 or 5. Interestingly, Figures 1, 2, and 5 show a blip that coincides with the introduction of the Children's, Young person's and Their Families Act of 1989 and major change that is close to the introduction of the Domestic Violence Act of 1995.

The coincidence of the 1995 Act with rate changes is reasonably precise and, therefore, one must entertain the possibility that government legislation had a major impact on the rates at which perpetrators were convicted for their crimes. Convictions for assaulting children also fell off markedly from 1995 onwards, coinciding with the passing of the Domestic Violence Act. However, in 1995 the rate at which Māori males assaulted females began to far exceed that of Pākehā and one must ask the question that if indeed the change in conviction rates for assault on females is attributable to the passing of the Domestic Violence Act then is that Act also responsible for the increase in the convictions of Māori versus Pākehā? In other words, has the Domestic Violence Act with its subsequent application resulted in Māori being treated differently under the law? This possibility of discriminatory application of the law must be looked at very carefully.

Another argument for racial discrimination in the application of the law considers the rate of criminal convictions for assaults on females in the early 1980s. Although the rate of Māori convictions exceeded that of Pākehā, it did not approach that seen after 1995. Did Māori suddenly become more violent after 1995 or has the justice system begun to discriminate against Māori offenders based perhaps on the self-fulfilling but mistaken perception that Māori are a violent people?

If these observed changes in conviction rates for violent crimes and assaults on women and children result from the introduction of legislation one must assume that application of those policies by the police has been effective. Curiously, one might think that application of new rules would result in increased convictions whereas what was observed was in fact a falling off of the conviction rates for both Māori and Pākehā; however, the fall off for Māori was substantially less than that for Pākehā. This could point to differences in the manner in which the police and family courts administer those new rules.

The rates of convictions for violent crimes, assaults on females and children fell from 1995 to around 2001 or 2002. Around 2002 the upward trend reinstated itself and continues to today. This change in conviction rates preceded the introduction of the Care of Children Act of 2004



and thus is unlikely to be responsible for the upward trend in convictions. However, the rate change observed in 2002 coincided with the Sentencing Act and the reinstatement of the upward trend in the curves. Could the Sentencing Act of 2002 have led to higher conviction rates for domestic and non-domestic violent crimes?

Although it is always difficult to establish cause and effect, there is a suggestion that legislation can influence the conviction rates for violent crimes especially around those concerned with domestic violence. It will be interesting to see whether the fine tuning of legislation, especially that which occurred under the Domestic Violence Reform Act of 2008, is capable of producing further changes to the conviction rates.

### **The social forces that drive violent crime**

The data presented here is a reasonable representation of domestic violence in this country, although, it must be considered minimalist. By focussing only on convictions, while providing a degree of certainty, ignores complaints, arrests, apprehensions, and requests for protection orders all of which contribute to the overall scene of domestic violence. However, the certainty of conviction avoids the uncertainties of accusation.

There are two major components that influence the data trends presented in this essay. One component is the crime itself as committed by the offenders and the other component is the effectiveness of the justice system in dealing with the crime. While much of this essay focuses on the perpetrators of domestic violence it is also possible that the trends shown could simply reflect variability in the way police handle crimes of domestic violence, especially after 1995.

Perhaps the relatively low rates of convictions seen in the early 1980s could be due to a disregard or insensitivity of the police to domestic violence issues and the ever increasing convictions seen in the 2000s arise from heightened awareness of police personnel and more efficient means of dealing with the issues. In addition, it is also possible that the ever increasing trend of Māori towards domestic violence could reflect a differential in how police deal with Māori versus Pākehā crime. Certainly, in South Africa during apartheid the convictions of blacks accused of violent crimes reflected a major racial bias of the police. It is the opinion of the author, however, that over the period from 1980 to the present day racial biases in New Zealand have diminished although it is impossible to totally eliminate all such biases especially within the infrastructures of Pākehā-driven State authorities.

The validity of ethnic identifications is also important. Ethnicities self-identified within census data may differ from that which appears in crime statistics because the police may base their identification of people entirely on how they interpret the appearance of an individual (Statistics New Zealand, 2005). In addition, it is also possible that the identification of perpetrators of domestic violence could be somewhat arbitrary when an individual can claim to belong to more than one ethnicity e.g., Māori/Samoan or Māori/Tongan.

Many theories have been put forward to explain the causes of criminality ranging from the “strain to anomie” theory of Robert Merton (Merton, 1938) to the “market societies” theory of Elliot Curry, to the emerging neo-Darwinian theories that strive to place criminality into a biological paradigm (Ellis, 1998). Perhaps the most persuasive theory and the most pertinent to Māori domestic violence, is that of Curry who claims that “market societies - those in which the pursuit of gain becomes the dominant organizing principle of social and economic life - are especially likely to breed high levels of violent crime.” (Curry, 1997).

Based on the data presented, the contention is that in order to understand domestic violence in the New Zealand context one has to understand the social forces that drive it. This idea is

totally consistent with the argument of Curry who relates violent crimes to the intensity of market economies; however, the situation is not that simple for Māori, because of the added complexities that arise from the debilitating realities of the ethnic experience. As Curry has shown, identification of social forces that stimulate violence within societies, while complicated, are not beyond careful social and political analysis. For Māori, identification of those forces within the New Zealand environment could lead to some measure of control or influence over the incidence of domestic violence.

Another important outcome of this research is the realization that the rate of convictions is not necessarily resistant to change, and that when appropriate social forces are applied change can occur very rapidly. This amenability of domestic violence to change is most encouraging because it suggests that if the right levers can be found the issue and its trends could be overcome virtually within the 3 yr-administration of a single government. The problem is identifying and applying the appropriate levers.

At the individual level theories that impinge upon the driving forces of domestic violence are highly complicated. The traditional feministic idea of male perpetrated violence underlying the oppression of all women is at odds with the observed propensity of both genders towards violence and fails to explain the origins of lesbian violence in domestic circumstance (Coleman, 1997). While male paternalism is a component of much domestic violence, in the broader context the dynamic relationships that exist within domestic arrangements speaks more to the intersections between systems of power and oppression (Bograd, 2005). The social environment in which individuals find themselves enmeshed are not static; they are constantly subject to social valuations that have social consequences. For example, within the New Zealand context there is a historically racial continuum that exists between Māori and Pākehā, one end of which is valued over the other. The intersection of that racial continuum with the family environment and the criminal justice system, colours the individual experience of domestic violence and his/her propensity towards it.

Assaults on children appear to be an important component of Māori domestic violence. This is concerning because of the theory that “violence begets violence.” It has been speculated that children who have been exposed to violence are more likely to perpetuate such acts when they become adults and have children of their own (Lievore & Mayhew, 2007, p66). The truth of this assertion is in question because of work by Widom (1989) who evaluated a number of studies directed at this homily and found the connection between childhood trauma and adult violence to be tenuous at best; of parents who were abused as children only about one-fifth continued this type of behaviour against their own children (Widom, 1989). However, this is research that must be repeated since Widom’s work was directed at groups outside of New Zealand.

### **Closing the gaps**

The Year 2000 report by Te Puni Kōkiri to the Minister of Māori Affairs described huge disparities between Māori and non-Māori in terms of employment, crime, health and life expectancies (Love, 2000). This was the identification of the “gaps” or the deficiencies that existed between Māori and non-Māori. Having identified the problem the next step would then have been to try and close those “gaps” and in the intervening years some small success has been achieved particularly in the areas of unemployment and education.

In all areas of health, employment, and education, Māori trailed mainstream. Māori even lived significantly shorter lives than the Europeans which seemed somewhat surprising because most New Zealanders always supposed that Māori and Pākehā lived similar kinds of lives. The educational and social reforms of the last 20 years were supposed to have fixed the

disparities, but the reality is that the gaps between Māori and European are not diminishing but getting wider, especially in the arena of health and violent crimes.

This study confirms the disparities between Māori and Pākehā in the arena of domestic violence and highlights the ever-widening gap between the two cultures. Unfortunately, it must also be concluded that the policies instigated by government to contain domestic violence are not working, because Māori domestic violence is at an all-time high, accounting for most of the convictions, and still rising. In addition, the evidence suggests that some of the problem might lie with discriminatory applications of the law resulting in higher conviction rates for Māori than for Pākehā.

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