Engagement and Innovation in Criminal Justice:
Case Studies of Relations between Indigenous Groups and Government Agencies

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ABSTRACT

This research aims to draw attention to the way government and Indigenous groups engage in community settings and explores the potential of this sphere of political activity as a source of innovation and reform.

Indigenous people have many good ideas about managing crime and justice in their communities, but what happens to those ideas when they are presented to an agency of the criminal justice system? To investigate the fate of Indigenous ideas and how they might be progressed through western bureaucracies, I conducted four case studies – two in New Zealand and two in the Australian state of Queensland – that represent examples of what occurs when government and Indigenous groups come together to develop a local crime and justice project. This thesis presents an empirical record of the events in each case, a comparative analysis of what occurred and my hypothesis of what might be likely to occur in other similar cases.

I found that Indigenous leaders responded to government projects by challenging the government’s intentions, venting their anger, hijacking the agenda and contesting the projects’ assumptions. My analysis of the policy background to the cases shows that although governments currently favour community ‘capacity building’ strategies, these policies mistakenly assume that Indigenous communities are capacity deficient. Indigenous leaders tend to interpret policies that encourage devolved decision-making arrangements as government support for self-determination, and ‘whole of government’ strategies continue to disappoint because the public sector is unable to coordinate its resources. Instead, successful local projects often depend on the accidental convergence of a good idea, a committed and enthusiastic leadership, some degree of political will and sufficient resources. To maximise these opportunities for reform, bureaucrats need to feel comfortable in the ‘community space’, to learn to operate within the Indigenous domain and be willing to put Indigenous ideas into practice.

The thesis concludes that Indigenous communities are highly capable of developing reform projects and effective forms of governance on Indigenous terms, but government actors are often unsure of how to utilise the expertise of Indigenous people. Effective Indigenous leaders are experts in the history, conditions and aspirations of their communities. They are also experts in the practice of consensus decision-making, can mobilise community support for a good idea and have learned to negotiate with unresponsive and uncoordinated government agencies. When government and
Indigenous groups are willing to engage, and each acknowledges the potential contribution of the other, then there is potential for a new way forward in the relationship between government agencies and Indigenous people.
STATEMENT OF ORIGINAL AUTHORSHIP

This work has not previously been submitted for a degree or diploma in any university. To the best of my knowledge and belief, the thesis contains no material previously published or written by another person except where due reference is made in the thesis itself.

Signed:

_____________________________________________________________________________________

Date:

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Taku Mihi

Ko Mamaru te waka
Ko Taipa te moana
Ko Oruru te awa
Ko te Maunga Taniwha te maunga
Ko te Poho o Ngati Kahu te whare nui
Ko Kauhanga te marae
Ko Ngati Kahu te iwi
Ko Deirdre Green taku ingoa
Tena koutou katoa

My Greeting
Mamaru is the canoe
Taipa is the sea
Oruru is the river
Te Maunga Taniwha is the mountain
Te Poho o Ngati Kahu is the meeting house
Kauhanga is the marae
Ngati Kahu is the tribe
My name is Deirdre Green
Greetings to you all

1 The watermark picture is the meeting house of my marae, Te Poho o Ngati Kahu at Peria, Far North New Zealand.
INTRODUCTION

This thesis intends to draw on the fields of criminology, political science and post-colonial studies to inform my exploration of the working relationship between the state and Indigenous communities. This dissertation presents the results of a qualitative comparative case study of how bureaucracies and Indigenous groups interact when they come together in projects to change the criminal justice system. I conducted two case studies in Queensland and two in New Zealand that provided examples of this type of engagement; each case involved the implementation of a local justice initiative.

In each jurisdiction I selected one case that concerned policing and crime prevention, and one that concerned the conditions of detention. The aim of my research was to investigate what takes place when Indigenous people seek to progress their ideas and projects through western bureaucracies. I wanted to provide information to those researching, working within, or otherwise navigating this complex and volatile domain.

Sector exploration: the reason for the research

I first became interested in the subject of this thesis in 1996, when, as a Maori community worker, I represented a community group that wanted to implement a Maori language and culture program in Brisbane’s youth detention centres.

I was the committee member who liaised between the community group and the government department to negotiate the terms of the program’s implementation. It was my task to defend the community group’s decisions about how to develop the program, especially when Maori culture-based knowledges and practices clashed with those of the detention centre. That initiative was successful, and at the time of writing, the youth detention centre’s Maori program is celebrating its thirteenth anniversary. This experience demonstrated to me that small victories are possible, that public institutions are interested in new ideas and that crime and justice initiatives can be negotiated on Indigenous terms. My experience may be viewed as an isolated case where a small ethnic group, which was

1 In 1996, the Brisbane based Maori community group Te Kohanga Ote Whenua Hou (The Language Nest of the New Land) delivered the inaugural Takahia Whakamua Puutahi (Moving Forward Together from the Crossroads) program at Brisbane’s John Oxley Youth Detention Centre.

2 Refer also to Warhaft, Palys and Boyce (1999), a Canadian case study that explored how a government and one Indigenous community responded to an initiative to address the community’s high rates of sexual abuse. That study, which I discuss further in chapter one, concluded that justice on Indigenous terms is possible.
overrepresented in the criminal justice system, gained the favourable attention of one department. It was, perhaps, not a particularly remarkable achievement to develop and implement such a program in a policy environment that strongly encouraged community groups to offer themselves as service providers, largely on a voluntary basis, to the juvenile justice system.

Nevertheless, the experience of negotiating between two cultures, an Indigenous culture and a western bureaucracy, profoundly affected my understanding of such relationships. Firstly, I discovered they existed. There were places where those representing the ethnics, the blacks, the delinquents and the incarcerated could negotiate a better deal. Secondly, I discovered that by moving into these places of negotiation, outsiders could make successful claims on the governmental domain.

I was interested in Rowse’s (1992, 2002) notion of a third Indigenous sector. If, as Rowse (2002) describes, the Indigenous domain represents a unique type of public sector activity that emerges from the interaction between government and Indigenous people, I wondered if I went into the field to search for it, how would I recognise it and what could I expect to find there? To investigate this idea further, I perceived the site at which this interaction occurs as the ‘point of engagement’ and conducted several case studies that reflected that type of activity.

I was also interested to explore the characteristics of the working relationship between Indigenous people and government agencies. Garland (1999) and O’Malley (1996) describe the enlistment and recruitment of community-based actors into broadly based forms of governance. Just as I have done as a community-based volunteer, Garland (1999) notes that there are increasing numbers of non-state actors agreeing to stand as guardians positioned between the state and offending populations (Garland 1999). I wanted to explore the importance of these positions and the relationships between the groups involved.

From an Indigenous point of view, it often seems that whenever the state seeks to impose its will on marginalised people, it almost always succeeds. Nevertheless, as all pervasive as the state might appear to be, and despite the sometimes brutal reality of its campaigns and their effect on the lives of Indigenous people, it must be the role of the critical researcher to find the gaps and consider the possibility of alternative relationships. Toward
this end, more needs to be done to catalogue the occurrence and characteristics of successful Indigenous projects and to systematically describe them as politically important events (King, Keohane and Verba 1994).

The pessimism of the left leads to arguments that appear deterministic, especially those that suggest the future holds 'more of the same' (see Garland and Sparks 2000), or that the expressed intentions of the right are shaping the landscape that lies ahead. The literature and my own research shows it is possible for Indigenous people to successfully reshape the practices of the criminal justice system in ways that give importance to the ideas and practices of Indigenous people.

Rather than taking an over determined pessimistic position, I believe that criminology must explore the engagement between the state and the marginalised before we conclude that there are no opportunities for disadvantaged groups to form productive relationships with public institutions. Unless we pay some attention to the weaknesses of the state, the possibility of unintended consequences and the gaps through which new ideas can be launched, we make the mistake of treating what is really a series of political trials and errors, fumbles and recoveries as a cohesive plan of action destined to prevail.

**The ‘Point of Engagement’: a site of interaction**

I chose the term ‘point of engagement’ to describe the focus of my study. It refers to the empirical site of interaction between government agencies and Indigenous groups; where they meet to negotiate, exchange ideas, develop new programs and improve practice. Such an engagement may take many forms, it may for example, be a series of meetings about a particular initiative or it may emerge from a more established arrangement, like a reference group, advisory committee or action group.

From my experience as a community worker, I have observed that during a period of conflict or disagreement between an Indigenous group and a government department, Indigenous people sometimes suppress rights-based arguments in the interests of working cooperatively with government. Members of an Indigenous group may complain among themselves about departmental racism for example, but refrain from raising their concerns in meetings with department staff. This type of tension can still affect the relationship whether the big problems make it onto the official agenda or not. I wanted to learn whether community-based actors continued to raise deeply felt grievances, like the history of social harm caused by colonial administrations, and if so, how government actors respond to
these claims. My case studies suggest that when negotiating new initiatives with government, Indigenous people in New Zealand and Australia sometimes want to discuss the problems caused by colonisation and dispossession, and they treat the point of engagement as an opportunity to assert their right to exercise self-determination as Indigenous people. My research also found that although these debates can be time consuming, they do not necessarily cause the project’s failure.

We are living in an era of governmentality that places high symbolic value on working ‘partnerships’ between governments and communities. During the 2000s, both the Queensland and New Zealand governments have shown significant enthusiasm for the partnerships model, especially in regard to the governance of Indigenous communities. One result is that those parts of the public sector that are responsible for Indigenous people are under pressure to engage with communities and share power. The places where these two groups engage are not just theoretical spaces, or policy-making spaces; they are also physical spaces. Government actors can find participating in these partnerships uncomfortable, professionally, culturally, ideologically, personally and sometimes physically, if for example, the meeting and accommodation facilities in an Indigenous community are not as well furnished as their own. These discomforts can lead to reluctance on the part of government actors to visit and spend time in Indigenous communities.

Community-based actors can also find these engagements challenging. For example, community groups entering discussions with a government department might find it hard to get their ideas across. A government department might ‘set the agenda’ by deciding what will be discussed and what will be placed outside the scope of the meeting. Non-government groups setting out to influence government can sometimes feel as though everything of importance has already been decided before they arrived at the table. My research project explores these and other problems.

I give more attention to the Indigenous perspective because much of the information available on the policies and practices of the criminal justice system (including information about the Indigenous sector) is produced by government agencies. This means that the policy-making environment tends to be flooded with information that reflects the government’s views (Christie 1997). To address this imbalance, I aim to contribute the views and experiences of Indigenous people to this field of knowledge, and in this way, provide new information about the nature of the relationship between Indigenous people and the criminal justice system in Queensland and New Zealand.
Thesis Questions

My research addresses these questions:

1. What happens to the ideas of Indigenous people when they set out to engage with government agencies?

2. What occurs during the interaction between Indigenous people and government?

3. How might we predict the passage of other similar projects?

Structure of the thesis

There are eight chapters to this thesis, as outlined below.

In the first chapter I weave together the relevant theoretical and empirical work on this subject. I draw from the arguments that seek to explain the ideological undercurrents driving different forms of governance in the late modern era. Authors such as Garland, O’Malley, Stenson, Blagg and Smandych are some of the prominent writers in this field.

The second chapter presents my methodology. I begin by discussing the theories that support my choice of method and then describe how I developed and applied the method to conduct the research.

The case studies are then presented in four consecutive chapters (chapters three to six). Each case represents an engagement between an Indigenous group and a government agency or agencies. I have written each case study as an historical account, and each was heavily reliant on information gathered during face-to-face interviews with those who were involved.

The format of each of these four case studies follows a pattern determined by the research method. In each of these chapters, the data are assembled into five thematic categories of information. These are 1) the ideas and visions articulated by those involved in the case, 2) the catalysts that prompted people to take action, 3) how power was shared and the agenda set, 4) the challenges encountered, and 5) the project’s breakthroughs and facilitating factors.
Chapter seven gives a descriptive comparative analysis of the four cases, and in chapter eight, I discuss the implications of my findings, compare them to other studies and attempt to typify the features of the engagement between governments and Indigenous groups.