

CAN TE WHARE WHAKAPIKI WAIRUA (THE ALCOHOL AND OTHER DRUG TREATMENT COURT) LIFT OUR SUFFERING WHĀNAU?

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Alcohol and other drug addictions are a major contributing factor to crime, and time spent in prison reinforces a spiral of poverty and offending. Māori make up almost half of the current inmate population in Aotearoa. Te Whare Whakapiki Wairua, the Alcohol and Other Drug Treatment Court (AODTC), is a specialist court that uses legally coerced treatment in order for offenders to avoid imprisonment. By critiquing the AODTC's process, this article contributes insights into how the Court can develop to lift the suffering of our whānau to the greatest extent.

1 Introduction

Addiction is a force to be reckoned with, destroying the lives of all those it surrounds. With colonisation came substance abuse, and our whānau have borne the brunt of this destruction ever since. Alcohol and other drug addictions are a major contributing factor to crime.¹ Our prison population continues to grow, and it is predominantly Māori trapped within its walls.² High imprisonment rates have a destructive impact on the functioning of whānau.³ This “reinforce[es a] spiral of poverty and offending”.⁴ As a result, Māori suffer disproportionately from precarity, and poor health and social

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1 This article will use the word “addiction” interchangeably with “substance use disorder”, although it recognises there is commentary around the appropriateness of doing so, owing to concerns around stigmatising language. See Michael P Botticelli and Howard K Koh “Changing the Language of Addiction” (2016) 316(13) JAMA 1361.

2 Katherine Doolin and Fleur Te Aho “The Alcohol and Other Drug Treatment Courts — Te Whare Whakapiki Wairua — in Aotearoa” [2018] NZLJ 334 at 334.

3 Todd R Clear “The Effects of High Imprisonment Rates on Communities” (2008) Crime and Justice 37(1) 97 at 110–114.

4 Kim Workman and Tracey McIntosh “Crime, Imprisonment and Poverty” in Max Rashbrooke (ed) *Inequality: A New Zealand Crisis* (Bridget Williams Books, Wellington, 2013) 120 at 120.

outcomes. Aotearoa owes it to these whānau to find a path to lift their suffering. Without one, we will allow generations more to endure this pain.

Te Whare Whakapiki Wairua, the Alcohol and Other Drug Treatment Court (AODTC), is a process with the potential to lift whānau, emerging as a response to these statistics. The name Te Whare Whakapiki Wairua was gifted by Tā (Sir) Pita Sharples and translates to “the House that Lifts the Spirit”.⁵ It is a specialist court that uses legally coerced treatment in order for offenders to avoid imprisonment.⁶ It aims to reduce drug use and associated offending by providing treatment programmes and life skills support.⁷ Rather than focusing on punishment and retribution,⁸ it takes a non-adversarial approach that embraces the separate sectors of justice, health and social services to focus on recovery from addiction.⁹ This has been described as aligning with therapeutic justice,¹⁰ which views the law as a means to heal relationships through compassion, restoration and empowerment.¹¹

The AODTC has been operating in the Auckland and Waitākere District Courts as pilots since late 2012.¹² It has recently been made permanent, with another planned to open in 2020 in Waikato.¹³ The literature around the AODTC to date has explored its therapeutic foundations and focused on the impact of peer support workers and the Pou Oranga (the AODTC’s cultural adviser and recovery role model). The decision to make the pilot AODTC permanent and roll out the Court to other areas of Aotearoa challenges us to explore what this means for whānau. We cannot consider the impact of the AODTC on Māori in isolation from their whānau — the success of Māori does not depend simply on the individual but also the collective. This article aims to provide an

5 Doolin and Te Aho, above n 2, at 334.

6 Katey Thom “Exploring Te Whare Whakapiki Wairua/The Alcohol and Other Drug Treatment Court Pilot: Theory, Practice and Known Outcomes” [2017] NZCLR 180 at 183.

7 Ministry of Justice *Alcohol and Other Drug Treatment Court Handbook Te Whare Whakapiki Wairua* (2nd version, 13 October 2014) at 5.

8 Te Ohu Whakatika *Ināia Tonu Nei* (Hui Māori Report, July 2019) at 21.

9 Katey Thom and Stella Black “Nga Whenu Raranga/Weaving Strands in the Alcohol and Other Drug Treatment Court of Aotearoa/New Zealand” (2018) 25 JLM 727 at 739.

10 Warren Brookbanks “The law as a healing agent” [2019] NZLJ 83 at 84.

11 At 83.

12 Doolin and Te Aho, above n 2, at 334.

13 “Alcohol and Other Drug Treatment Courts” The District Court of New Zealand <www.districtcourts.govt.nz>.

understanding of how a court within an imposed Pākehā framework can alleviate the pain endured by whānau. By critiquing the AODTC's process, this article will contribute insights into how the Court can develop to lift the suffering of our whānau to the greatest extent.

Part II explores how Māori perceive their whānau; this is important to understand the full impact of the AODTC. Part III looks at how the culmination of colonisation, addiction and imprisonment have damaged whānau and social structures, and inflicted social harms upon our whānau. Part IV considers the extent to which an imposed Pākehā system can be of benefit to these whānau. It argues that only a separate system for Māori outside the constraints of the existing framework can truly lift our whānau. Nevertheless, it is necessary to see what can be done within the current system to ease suffering in the interim. Part V outlines how coerced treatment reduces the negative impacts of addiction and imprisonment on whānau. However, this process also burdens whānau, and holistic support is needed to mitigate this. Part VI considers the extent to which the AODTC strengthens whanaungatanga within whānau and communities, and what support is required to strengthen it further. Finally, Part VII explores whether the AODTC provides a pathway to emotional restoration for whānau, increasing manaakitanga (compassion) within whānau and restoring utu. This is not a straightforward journey, and this article recommends that whānau must be supported to achieve these aims.

While the AODTC helps to lift the suffering of whānau to some extent, the Court operates within wider societal issues such as poverty, health and colonisation. Even if this article's suggestions for improvement are implemented, these issues cannot be solved through a court. Instead, drastic government action is needed. Radical changes to the welfare and criminal justice systems are necessary to overcome the social disadvantage and deprivation many whānau face.

II Who are Our Whānau?

Given the centrality of whānau to this article, it is essential to consider what *whānau* entails. In the past, policies and law reinforced a Pākehā homogenous approach

based on the nuclear family. This approach excluded the Māori conception of whānau, ultimately compounding the destruction of colonisation. It is crucial that this article considers how Māori perceive their whānau, to ensure we understand the full impact of the AODTC.

Whānau are the basic social unit of society.¹⁴ In contrast to Pākehā perspectives, Māori have a collective view of those within their whānau: children belong to the wider whānau rather than their parents.¹⁵ An individual's identity is defined through their relationship with others, and their importance rests on their membership within the collective.¹⁶ In an expert witness cultural report prepared for the Family Court, Hone Sadler describes whānau as consisting of tūpuna (kaumātua and kuia), mātua and whāea (parents, aunts and uncles), tuakana (an elder relative of the same generation), teina (a younger relative of the same generation), tuahine (a sister, as referred to by a brother), tungāne (a brother, as referred to by a sister), and tamariki and mokopuna (the youngest generation, grandchildren).¹⁷ Each of these members plays a different role.¹⁸ Whānau can expect help and support from individuals, as well as the collective.¹⁹

The concept of whanaungatanga (relationships, connection, kinship) underpins the idea of whānau and creates a sense of belonging for Māori. Whanaungatanga should be strengthened as it can be used by Māori as a tool to build social capital.²⁰ However, the destructive nature of colonisation and addiction has meant that many whānau lack a strong sense of whanaungatanga or the ability to carry out their roles within the whānau. Therefore, a subjective definition of whānau is preferable for the purposes of this article. This is particularly important when considering whānau who have complex

14 Joan Metge *New Growth from Old: The Whānau in the Modern World* (GP Print, Wellington, 1995) at 52.

15 Natanahira Herewini *Māori Communities Raising Children: The Roles of Extended Whānau in Child Rearing in Māori Society* (Ngā Pae o te Māramatanga and Michael and Suzanne Borrin Foundation, Auckland, 2018) at 8.

16 Law Commission *Māori Custom and Values in New Zealand Law* (NZLC SP9, 2001) at [130].

17 Herewini, above n 15, at 6.

18 At 11–15.

19 Hirini Moko Mead *Tikanga Māori: Living by Māori Values* (Huia Publishers, Wellington, 2003) at 30.

20 Te Puni Kōkiri *Understanding whānau-centred approaches: Analysis of Phase One Whānau Ora research and monitoring results* (2015) at 102.

and diverse relationships due to the damage of addiction. Taking such an approach will bring us closer to people's lived reality,²¹ allowing us to understand the impact of the AODTC for each whānau.

Strong whānau are integral to the success of Māori as a collective. The strength of whānau lies in its whakapapa, connecting past, present and future generations — every individual must come together to form a collective to function.²² The interconnectedness of each individual means that when one suffers so too will the collective. We cannot isolate the individual from their place within their whānau. We must ensure that whānau flourish as a whole if we want the AODTC to have a meaningful impact for Māori.

III How are Our Whānau Suffering?

Addiction spans generations, inflicting myriad problems upon whānau.²³ Colonisation was the impetus to this harm to Māori. It is crucial that this cycle is stopped. Unfortunately, in societies with large social inequities, such as Aotearoa, the more powerful tend to be increasingly interested in punishing those who offend.²⁴ There are strong correlations between addiction and offending: approximately 60 per cent of community offenders and 87 per cent of prisoners have experienced addiction issues.²⁵ This means that those who are unable to participate in the AODTC are likely to end up in prison. When this occurs, the entire whānau experiences the ripple effects of their loss, causing intergenerational trauma.²⁶ It is important to understand this devastation

21 Paul R Amato "What is a family?" *Summer 2014 NCFR Report Magazine: Early Childhood* (online ed, 2014).

22 Herewini, above n 15, at 10.

23 Charles Beekman and Jenae M Neiderhiser "Behavioral Genetic Perspectives on Substance Abuse and Parenting" in Nancy E Suchman, Marjukka Pajulo and Linda C Mayes (eds) *Parenting and Substance Abuse: Developmental Approaches to Intervention* (Oxford University Press, Oxford, 2013) 63 at 78.

24 Workman and McIntosh, above n 4, at 120.

25 Department of Corrections *Breaking the Cycle: Our Drug and Alcohol Strategy through to 2020* (March 2016) at III.

26 *Hāpaitia te Oranga Tangata, Safe and Effective Justice Programme: Summit Playback* (Ministry of Justice, September 2018) [Summit Playback] at 26.

in order to measure whether the AODTC is able to alleviate the suffering of whānau. Without alleviation, countless generations will be victim to social harms, damaged social and whānau structures, stigma, adverse life experiences, and poverty.

Colonisation denied Māori the autonomy to live in harmony with their tikanga and, consequently, harmed generations of whānau. It pushed Māori into economic deprivation and stripped them of their cultural identity.²⁷ Before colonisation, Māori did not consume drugs or alcohol;²⁸ now, they suffer disproportionately from the poor health and social outcomes of addiction.²⁹

Addiction destroys an individual's entire social and whānau structure.³⁰ Whānau members face mental, spiritual, financial and physical harm from the actions of those with addiction.³¹ This places an enormous strain on whānau relationships and is detrimental to whanaungatanga. These damaged social bonds result in tamariki lacking support networks.³² This is harmful for the entire whānau.³³

Imprisonment exacerbates this damage. Currently, Māori make up 52.8 per cent of the prison population, but only 16 per cent of the general population.³⁴ Māori have argued for the abolishment of prison.³⁵ Prisons were non-existent in Aotearoa before colonisation.³⁶ However, an imported justice system and systemic racism have resulted

27 ActionStation *They're our Whānau: A community-powered and collaborative research report on Māori perspectives of New Zealand's justice system* (October 2018) at 14.

28 Kesaia Walker *Issues of Tobacco, Alcohol and Other Substance Abuse for Māori* (report commissioned by Waitangi Tribunal for Wai 2575, 2019) at 28.

29 At 10

30 Rick Csiernik "Counseling for the Family: The Neglected Aspect of Addiction Treatment in Canada" (2002) 2(1) *J Soc Work Pract Addict* 79 at 80.

31 Heidee McMillin *Therapeutic Justice and Addicted Parents* (LFB Scholarly Publishing, Texas, 2012) at 68; Whitney Clarahan and Jacob D Christenson "Family Involvement in the Treatment of Adolescent Substance Abuse" in Jacob D Christenson and Ashley N Merritts (eds) *Family Therapy with Adolescents in Residential Treatment* (Springer International Publishing, Switzerland, 2017) 231 at 241; and Jim Orford *Addiction Dilemmas: Family Experiences from Literature and Research and Their Challenges for Practice* (Wiley-Blackwell, Sussex, 2012) at 5.

32 Oranga Tamariki *Safety of children in care: Annual Report July 2018 to June 2019* (2019) at 22.

33 At 22.

34 "Prison Facts and Statistics" (31 March 2020) Department of Corrections <www.corrections.govt.nz>.

35 Whakatika, above n 8, at 22.

36 ActionStation, above n 27, at 7.

in mass incarceration.³⁷ Prisons continue to separate Māori from whānau and perpetuate ongoing colonisation.³⁸ The rates of precarity for Māori are now almost double those for Pākehā.³⁹

Rather than being alleviated, this injustice continues to be perpetuated. A 2018 report noted that the government had spent more on locking people in prison in two years than it had in all of its Treaty settlements put together.⁴⁰ The Crown continues to breach te Tiriti by sentencing Māori to prison for acts of survival that had been forced upon them as a result of economic and cultural deprivation.⁴¹

The whanaungatanga of whānau suffers when Māori are imprisoned. While whānau can attend prison visitations, it is emotionally and mentally taxing.⁴² A 2009 study in Aotearoa found a large number of whānau were unable to visit or contact those in prison due to limited financial means.⁴³ Often, they sacrificed basic necessities in order to maintain contact.⁴⁴ As a result, some prisoners tell whānau not to visit and some whānau members prevent tamariki from visiting.⁴⁵

Prison has strong negative connotations and the entire whānau bears this. Whānau may be ostracised.⁴⁶ In a 2009 study in Aotearoa, some inmates believed this stigma resulted in whānau relationships ending.⁴⁷ For tamariki, stigma has negative impacts on their health and wellbeing.⁴⁸ It can lead to feelings of alienation, anxiety

37 At 4.

38 At 12.

39 William Cochrane and others "A Statistical Portrait of the New Zealand Precariat" in Shiloh Groot and others (eds) *Precarity: Uncertain, insecure and unequal lives in Aotearoa New Zealand* (Massey University Press, Auckland, 2017) 27 at 32.

40 ActionStation, above n 27, at 5.

41 At 14.

42 Michael Roguski and Fleur Chauvel *Māori and Addiction Treatment Services: A paper prepared for the National Committee for Addiction Treatment* (National Committee for Addiction Treatment, August 2012) at 54.

43 At 55.

44 At 55.

45 At 54.

46 Angela Dawson and others "Stigma, health and incarceration: Turning the tide for children with a parent in prison" (2013) 17(1) *Journal of Child Health Care* 3 at 4.

47 Roguski and Chauvel, above n 42, at 57.

48 Dawson and others, above n 46, at 3.

and depression, affect behaviour and impact education.⁴⁹ Alternatively, if whānau come from a community where imprisonment is not shocking, little judgement is cast.⁵⁰

Tamariki with a matua that suffers from addiction have substantially different life experiences to their peers.⁵¹ Mātua are unable to be present, often lack parenting skills and unable to fulfil their role within the whānau. As a result, tamariki can develop attachment issues, which has a significant influence on their future capabilities.⁵² Research also demonstrates a strong connection between addiction and child maltreatment.⁵³ Maltreated tamariki are more likely to suffer abuse and isolation, commit offences and have psychological problems.⁵⁴

Tamariki who experience harm may be removed through the care and protection system. While specific data for child removal is unavailable, Oranga Tamariki has reported that for tamariki in care who are placed with whānau, neglect is often related to drug and alcohol use.⁵⁵ Research continues to show the correlation between care and protection involvement and adverse life outcomes.⁵⁶ Tamariki who have been removed are often left impoverished and criminalised.⁵⁷ In one Ministry of Justice study of persons who had been in prison by the time they turned 20 years old, 83 per cent had a record with care and protection services.⁵⁸ Māori are overrepresented in state care.⁵⁹ This contributes to cycles of abuse and compounds the intergenerational trauma suffered as a result of colonisation.⁶⁰

49 At 3.

50 Stigma is dependent on normalisation within the community. See Roguski and Chauvel, above n 42, at 56.

51 Csiernik, above n 30, at 80.

52 Kenna E Ranson and Liana J Urichuk “The effect of parent–child attachment relationships on child biopsychosocial outcomes: a review” (2008) 178(2) *Early Child Dev Care* 129 at 145.

53 McMillin, above n 31, at 33.

54 David Gates “Alcohol/Drug Abuse Issues in Child Custody Evaluations” in ML Goldstein (ed) *Handbook of Child Custody* (Springer International Publishing, Switzerland, 2016) 133 at 136.

55 Oranga Tamariki, above n 32, at 9.

56 Sharyn Otene “Te Hurihanga Tuarua? Examining amendments to the Oranga Tamariki Act 1989 that took effect on 1 July 2019” (2019) 9 *NZFLJ* 139 at 139.

57 At 140.

58 ActionStation, above n 27, at 16.

59 Otene, above n 56, at 139.

60 Julia Tolmie and others “Criminalising Parental Failures: Documenting bias in the criminal justice system” [2019] *NZWLJ* 136 at 152.

Addiction and imprisonment also have an impact on childcare responsibilities, such that other whānau members may take over parenting roles. This can radically change whānau dynamics. In a 2018 study of tūpuna raising their mokopuna due to problems such as abuse and addiction, half reported that they were struggling either some or all of the time.⁶¹ A 2009 study in Aotearoa on imprisonment found that whānau undertaking childcare roles faced isolation, and emotional and financial stress.⁶²

These changes in responsibilities can strain an individual's sense of whanaungatanga. Traditionally, tūpuna offered their leadership, mentoring and constant affection to mokopuna, while it was the role of mātua to correct them.⁶³ If a matua is absent, these roles must change, and the tamariki's sense of whanaungatanga may be impacted.

Whanaungatanga cannot always be restored once offenders are released from prison. Reunification will often present a range of challenges for whānau: they must learn to live together again and deal with unresolved conflicts.⁶⁴ This readjustment can result in tamariki withdrawing from mātua.⁶⁵ Inmates can also develop a false sense of "healing" around whānau problems due to reduced and controlled contact with whānau. When inmates are then released, these problems can intensify even further.⁶⁶ Imprisonment can also cause difficulties with socialisation and interaction,⁶⁷ which can create further difficulties for rebuilding whanaungatanga.

After completing sentences, it is difficult for offenders to find employment and people become trapped in cycles of welfare dependency and imprisonment.⁶⁸ There are

61 Liz Gordon *He waka eke noa: Māori grandparents raising grandchildren* (Tangata Whenua, Community and Voluntary Sector Research Centre, 2018) at 11.

62 Roguski and Chauvel, above n 42, at 52 and 54.

63 Herewini, above n 15, at 13 and 15.

64 Rachel Condry and Peter Scharff Smith "A Holistic Approach to Families — From Arrest to Release" in Rachel Condry and Peter Scharff Smith (eds) *Prisons, Punishment, and the Family: Towards a New Sociology of Punishment?* (Oxford Scholarship Online, Oxford, 2018) 99 at 113.

65 Roguski and Chauvel, above n 42, at 51.

66 Center for Substance Abuse Treatment *Substance Abuse Treatment For Adults in the Criminal Justice System: A Treatment Improvement Protocol* (TIP Series 44, Substance Abuse and Mental Health Services Administration, 2005) at 78.

67 Camille Nakhid and Lily Tairiri Shorter "Narratives of Four Māori Ex-Inmates About Their Experiences and Perspectives of Rehabilitation Programmes" (2014) 58(6) IJO 697 at 713.

68 Te Uepū Hāpai i te Ora *Turuki! Turuki! Move together!: Transforming Our Criminal Justice System* (Second Report, December 2019) at 40.

few opportunities for prisoners to form positive social bonds within prison — their peers are also criminally-sanctioned and many of them will have violent histories.⁶⁹ When inmates are released, whānau will likely be immersed in an environment of anti-social attitudes. For those growing up in this environment, imprisonment may be normalised. This normalisation contributes to social dysfunction and weakens communities.⁷⁰ The reinforcement of poverty and offending results in countless whānau suffering from social and economic deprivation. Tamariki who grow up in this environment are more likely to experience mental health challenges, exhibit behavioural problems, develop an addiction, offend and be offended against.⁷¹ The tamariki of prisoners are nine times more likely to end up in prison.⁷²

Imprisonment does not reduce re-offending⁷³ or solve problems with addiction — the exposure to criminals and exclusion from society reinforce the problems that drive offending.⁷⁴ Participants within the AODTC reflect this — they have cycled through the criminal justice system despite punitive consequences.⁷⁵ While prisons can provide treatment for addiction issues, the damaging effects of imprisonment often counteract the therapeutic benefits.⁷⁶ In a 2013 qualitative study of Māori in prisons, participants explained that the social environment and availability of substances made it easy to develop addictions.⁷⁷ A 2009 study in Aotearoa found that when inmates did benefit from treatment, the distinct differences between life inside and outside of prison made it difficult to maintain progress.⁷⁸ If Aotearoa wishes to lift our whānau, it is apparent

69 David R Schaefer and others “Friends in locked places: An investigation of prison intimate network structure” (2017) 51 *Social Networks* 88 at 88.

70 Workman and McIntosh, above n 4, at 124.

71 Te Uepū Hāpai i te Ora, above n 68, at 40.

72 ActionStation, above n 27, at 5.

73 Te Uepū Hāpai i te Ora *He Waka Roimata: Transforming Our Criminal Justice System* (9 June 2019) at 57.

74 Workman and McIntosh, above n 4, at 123.

75 Thom and Black, above n 9, at 730.

76 Center for Substance Abuse Treatment *Substance Abuse Treatment And Family Therapy: A Treatment Improvement Protocol* (TIP Series 39, Rockville, 2004) at 194.

77 Nakhid, above n 67, at 707.

78 Roguski and Chauvel, above n 42, at 194.

that imprisonment is not the way forward. The alternative route offered by the AODTC must be explored to see the extent to which it can provide relief to this suffering.

IV Can Incorporating Tikanga Māori within a Pākeha Framework Lift Our Whānau?

Unique to Aotearoa, the design of the AODTC involves a focus on partnership with Māori.⁷⁹ The AODTC endeavours to uphold the principles of te Tiriti through the incorporation of tikanga.⁸⁰ It is necessary to consider the importance of recognising tikanga Māori and how this might impact whānau. While the AODTC offers benefits to Māori, it is not without its controversies. An imposed criminal justice system has had devastating and anti-therapeutic consequences for Māori.⁸¹ This article aims to determine the extent to which an approach within an imposed criminal justice system can offer therapeutic benefits for whānau.

Tikanga Māori translates to the “right” Māori way of doing things.⁸² It is described by Sir Eddie Taihakurei Durie as the “values, standards, principles or norms to which the Māori community generally subscribed for the determination of appropriate conduct”.⁸³ There are a number of key values that underpin the totality of tikanga Māori.⁸⁴ While not an exhaustive list, the values that are particularly adversely affected by addiction are whanaungatanga, mana tangata (authority derived from personal attributes),⁸⁵ manaakitanga (compassion)⁸⁶ and utu (balance).⁸⁷

79 At 736.

80 Thom and Black, above n 9, at 738–739.

81 Katey Thom, Stella Black and Rawiri Pene “Crafting a Culturally Competent Therapeutic Model in Drug Courts: A Case Study of Te Whare Whakapiki/the Alcohol and Other Drug Treatment Court in Aotearoa New Zealand” (2018) 3 Intl J Ther Juris 117 at 142.

82 Natalie Coates “The Recognition of Tikanga in the Common Law of New Zealand” [2015] NZ L Rev 1 at 4.

83 Law Commission, above n 16, at [1].

84 At [125].

85 At [138].

86 Timoti Gallagher “Tikanga Māori Pre-1840” 0(1) Te Kāhui Kura Māori.

87 Mead, above n 19, at 28.

The AODTC provides a pathway that avoids imprisonment and better reflects the values underpinning tikanga. Māori are strong advocates for a rehabilitative approach to offending.⁸⁸ However, barriers to accessing treatment providers have made it difficult for Māori to recover. Limited appropriate treatment options, stigma and fear of incrimination weigh more heavily upon Māori.⁸⁹ While rehabilitation is provided by the AODTC, it is unfortunate that, since 2018, the AODTC can no longer offer a kaupapa Māori treatment programme.⁹⁰ The gravity of the consequences for Māori should not go unnoted. Kaupapa Māori treatment providers have better retention rates for Māori.⁹¹ Therefore, the lack of a kaupapa Māori treatment contract with the AODTC limits the opportunity for Māori to recover.

Despite a lack of kaupapa Māori treatment providers, tikanga is incorporated into the design of the AODTC. This incorporation acknowledges past injustices Māori have faced and shows greater respect for te Tiriti. The most significant way tikanga is respected is through the role of the Pou Oranga. The Pou Oranga is responsible for cultural assessments, establishing rapport with participants and whānau, collaborating with kaupapa Māori agencies, developing collaborative relationships with local iwi and marae, and supporting and advising on issues.⁹² Whanaungatanga is strengthened by weaving together support from treatment providers, NGOs, peer support workers, support groups and whānau.⁹³

Whānau involvement also reflects tikanga. Traditionally, Māori responded to adverse behaviour by identifying a collective group as the victim or offender, and involving the whānau, hapū or iwi to develop a resolution to restore utu.⁹⁴ Māori have advocated for whānau to be engaged in the criminal justice system.⁹⁵ The AODTC actively encourages

88 Whakatika, above n 8, at 21.

89 At 104–105.

90 Ministry of Justice *Alcohol and Other Drug Treatment Court Outcomes Evaluation 2018-2019* (Summary Evaluation Report, June 2019) at 24.

91 Roguski and Chauvel, above n 42, at 5.

92 Ministry of Justice, above n 7, at 9.

93 Litmus *Final Report: Qualitative components of the outcomes evaluation of the Alcohol and Other Drug Treatment Court Pilot Te Whare Whakapiki Wairua* (Wellington, 2019) at 63.

94 Khylee Quince “Māori and the criminal justice system in New Zealand” in Julia Tolmie and Warren Brookbanks (eds) *Criminal Justice in New Zealand* (LexisNexis, Wellington, 2007) at 8.

95 Whakatika, above n 8, at 21.

and supports such engagement.⁹⁶ Whānau are welcome at events such as hui with treatment providers, Court sittings, restorative justice sessions and graduation ceremonies.⁹⁷ They can also partake in whānau therapy at the rehabilitation centres.

Importantly, the integration of tikanga provides an opportunity for Māori to connect with their culture. Culture plays an important protective function for Māori.⁹⁸ Judge Andrew Becroft has stated that “[w]hat we know is that young Māori who are connected to their identity and culture don’t offend any more than non-Māori.”⁹⁹ While prisons now provide improved opportunities for cultural connection,¹⁰⁰ such cultural connection has only reduced offending slightly.¹⁰¹ Evidence suggests that programmes outside of prison are the most effective.¹⁰² The support of the Pou Oranga helps participants connect with their taha Māori (Māori identity) and develop a restored sense of mana.¹⁰³ The cultural connection allows participants to pass mātauranga Māori and a sense of taha Māori to their whānau, which will have generational benefits. Nevertheless, these benefits can only go so far: the wider social environment must be addressed to overcome generations of enforced marginalisation through colonisation.¹⁰⁴ Whānau deserve to be lifted from such social, political and cultural devastation.

96 Condry and Smith, above n 64, at 11.

97 Litmus, above n 93, at 34.

98 Emerald Muriwai, Carla A Houkamau and Chris G Sibley “Culture as Cure? The Protective Function of Māori Cultural Efficacy on Psychological Distress” (2015) 44(2) NZJP 14 at 21.

99 Human Rights Commission *A fair go for all? Rite tahi tātou katoa? Addressing Structural Discrimination in Public Services* (Discussion Paper, July 2012) at 40.

100 Neil Campbell “The Department of Corrections’ tikanga-based programmes” (2016) 4(2) Practice: The New Zealand Corrections Journal 5.

101 Nakhid, above n 67, at 702.

102 Tracey McIntosh “Imagining a world without prisons” University of Auckland <www.auckland.ac.nz>.

103 Litmus, above n 93, at 39.

104 Tracey McIntosh and Kim Workman “Māori and Prison” in Antje Deckert and Rick Sarre (eds) *The Palgrave Handbook of Australian and New Zealand Criminology, Crime and Justice* (Palgrave Macmillan, Cham (Switzerland), 2017) 725 at 732.

Dannette Marie has criticised the theory that Māori offending is a result of colonisation and impairments to cultural identity.¹⁰⁵ Marie argues that this allows Māori to characterise themselves as victims who are not responsible for their actions.¹⁰⁶ However, those entering the AODTC are not absolved from facing responsibility.¹⁰⁷ Rather, they are given the opportunity to connect to a culture that has been stolen from them.

Nevertheless, the opportunity provided by the AODTC is contentious. The AODTC takes a therapeutic approach that aligns with the focus of tikanga on therapeutic outcomes in order to restore utu.¹⁰⁸ However, despite the similarities between therapeutic justice and tikanga, they are not the same.¹⁰⁹ Simply taking a therapeutic approach cannot be said to be designing the law in accordance with tikanga. It has been argued that a process within a legal structure that is controlled by the dominant Pākehā culture cannot be a therapeutic agent for Māori.¹¹⁰ While local Māori communities were involved in the design of the AODTC,¹¹¹ it still operates within the existing legal framework.¹¹² The fundamental inequalities that gave rise to disparities within the criminal justice system are not changed by incorporating cultural elements within a dominant system.¹¹³

Some may perceive the incorporation of tikanga within the AODTC as what Juan Tauri labels “window-dressing”.¹¹⁴ This is when the Crown offers limited autonomy without relenting any real power.¹¹⁵ For example, the Pou Oranga helps to ensure engagement

105 Dannette Marie “Maori and Criminal Offending: A Critical Appraisal” (2010) 43(2) ANZJ Crim 282 at 283.

106 At 293–294.

107 Litmus *Formative Evaluation for the Alcohol and other Drug Treatment Court Pilot* (Ministry of Justice, 2014) at 42.

108 Thom, Black and Pene, above n 81, at 144.

109 At 145.

110 At 145.

111 Te Uepū Hāpai i te Ora, above n 73, at 56.

112 Sentencing Act 2002, s 25.

113 Human Rights Commission, above n 99, at 35.

114 Khylee Quince “Rangatahi Courts” in Antje Deckert and Rick Sarre (eds) *The Palgrave Handbook of Australian and New Zealand Criminology, Crime and Justice* (Palgrave Macmillan, Cham (Switzerland), 2017) 711 at 719.

115 At 719.

with whānau, hapū and iwi.¹¹⁶ However, whānau retain no power to decide how to deal with the participant. Whānau involvement pays homage to tikanga but does not give Māori tino rangatiratanga over their peoples. It is still far from traditional tikanga processes.

It is the judge who ultimately determines the fate of participants.¹¹⁷ This is problematic. Durie has stated that “[j]udges, like all people, see the world in terms of their own upbringing and cultural experience, which, naturally, colour their thinking.”¹¹⁸ Accordingly, “[i]t would seem that there can be no true impartiality where questions of culture are involved.”¹¹⁹ The upbringing and cultural experience of judges who sit in the AODTC differ significantly from the participants’. Unconscious bias may be present in the way the judges respond to Māori, even if tikanga Māori is incorporated in the Court’s processes. The role of the Pou Oranga is crucial in reducing this bias. The Pou Oranga helps to ensure meaningful incorporation of tikanga.¹²⁰ Their expertise from cultural, recovery and treatment perspectives are also valued by the AODTC team.¹²¹ A member of the AODTC has said that “if there is one other person who is as vocal as the judge, it is the Pou Oranga”.¹²²

Issues also arise with incorporating tikanga due to colonisation having fragmented Māori society, leaving many with a lack of cultural identity. Concerns have been raised in the context of other courts that it could be damaging for people who are culturally disconnected to experience their first cultural encounter in a court.¹²³ Such an experience may create negative connotations that prevent meaningful cultural connections. These concerns highlight that the work done by the Pou Oranga is crucial to ensuring participants have positive and meaningful cultural connections.

116 Thom and Black, above n 9, at 736–737.

117 At 734.

118 Roy Perret “Dual Justice: The Māori and the Criminal Justice System” (1999) 4(2) He Pukenga Korero 17 at 23.

119 At 23.

120 Thom and Black, above n 9, at 736–737.

121 Thom, Black and Pene, above n 81, at 139.

122 At 139.

123 Quince, above n 115, at 720.

The Pou Oranga has been able to do this for many of the Court's graduates.¹²⁴ As Māori make up 46 per cent of participants within the AODTC,¹²⁵ the Pou Oranga's work can impact numerous whānau. Connecting Māori with their whānau, hapū and iwi will slowly reduce the number of Māori who enter the criminal justice system without a cultural identity.

In any case, the Pou Oranga's impact is only small when compared with the significant scale of devastation that colonisation has caused. A court is unlikely to be the best way forward for a disconnected peoples.

As the AODTC is relatively new, it remains to be seen whether generations of Māori will feel tangible benefits. A single actor, such as the Pou Oranga, cannot combat all of the problems mentioned. Moana Jackson argued that justice for Māori should not be seen as the grafting of Māori processes on a system that retains ultimate control, even if well-intentioned.¹²⁶ Instead, many advocate for a Māori criminal justice system, parallel to the mainstream one.¹²⁷ A system designed and operated *by* Māori *for* Māori that is outside the constraints of the Pākehā legal framework could provide a solution to repair the damage colonisation has inflicted on Māori, empower tino rangatiratanga and address fundamental inequalities.

The inclusion of tikanga within the AODTC helps Māori to a greater extent than the traditional criminal justice system. While a dual justice system is the only way forward for Māori to establish tino rangatiratanga, it is unlikely these cries will be answered any time soon. Therefore, it is necessary to evaluate the AODTC, which is the structure currently available, to determine what can be done to improve outcomes for whānau in the interim.

124 Litmus, above n 93, at 5.

125 Walker, above n 28, at 103.

126 Juan Tauri "Indigenous perspectives and experience: Maori and the criminal justice system" in T Bradley & R Walters (eds) *Introduction to Criminological Thought* (3rd ed, Pearson Education Auckland, 2019) at 16.

127 *Summit Playback*, above n 26, at 29.

V Coerced Treatment

The AODTC takes a less punitive approach than the traditional criminal justice system. Instead of being imprisoned, offenders undergo coerced treatment as a result of legal pressure. Pressure is placed upon participants to remain in treatment because, if they are withdrawn from or exit the AODTC programme, they will return to sentencing in the usual manner where they may face imprisonment or other punitive consequences.¹²⁸ Coerced treatment can impact whanaungatanga, mana tangata and manaakitanga by reducing the participants' time spent in prison, reducing the harm suffered from addiction and relieving the pressure felt by the participants' whānau. However, coerced treatment is not free from burdens to whānau. Indeed, this article argues that support for whānau that reduces the emotional and financial strains that the AODTC places upon them is key to lifting the suffering of whānau to the greatest extent.

AODTC participants have been cycling through the criminal justice system for years, causing their whānau significant distress and disruption.¹²⁹ The 2019 evaluation of the Court has only been able to track the progress of participants who entered before 2014.¹³⁰ Within two years of entry into the Court, there were substantial reductions in re-offending compared with other offenders. This improvement was not sustained at the four year mark.¹³¹ However, the AODTC has undergone significant changes since 2014, and a larger number of participants is needed to confirm the differences in re-offending rates.¹³² It is likely that these statistics will improve. Some AODTC graduates are adamant that without the AODTC they would have continued to cycle through the criminal justice system.¹³³ If participants do not re-offend, it will help whānau emotionally, financially and socially. If they do re-offend, the AODTC can still be seen to benefit whānau. Various stakeholders, including the Ministers of

128 Ministry of Justice, above n 7, at 15.

129 Litmus, above n 93, at 6 and 51.

130 Ministry of Justice, above n 90, at 23.

131 At 22.

132 At 23.

133 Litmus, above n 93, at 6.

Corrections, Police, Health and Justice, the Department of Corrections, the New Zealand Police, and numerous treatment providers, have suggested that re-offending is generally at a less severe level than previously.¹³⁴ By reducing the severity of any re-offending, the AODTC can reduce the time that whānau have to endure with a loved one in prison, providing an opportunity to strengthen whanaungatanga.

Importantly for whānau, the AODTC aims to reduce their loved ones' problems with addiction.¹³⁵ If participants can recover from the debilitating clutches of addiction, it is hugely beneficial for whānau — their lives are no longer riddled by the devastation that addiction brings, and they can then rebuild a strong sense of whanaungatanga. Data limitations in the 2019 evaluation mean that it is not currently possible to determine whether the AODTC reduces addictive behaviours. However, there are indications that the Court's graduates may be doing better than comparison offenders.¹³⁶

Alcohol and Drug Outcomes Measure scores are surveys used to track where people think they are in their recovery. They track key areas of change during their treatment journey. These scores were compared against comparative offenders who went through the usual route in the criminal justice system rather than the AODTC. The evidence indicates an improvement in Alcohol and Drug Outcome Measure scores:¹³⁷ graduates reported the highest level of progress to where they wanted to be in their recovery compared to a comparator group of offenders.¹³⁸ Furthermore, stakeholders, participants and their whānau believed that the AODTC resulted in transformational changes for the Court's graduates.¹³⁹ No doubt, this has significant benefits for an individual's mana tangata.

134 At 31.

135 Ministry of Justice, above n 7, at 2.

136 Ministry of Justice, above n 90, at 23.

137 At 24.

138 At 23.

139 At 24.

The whānau of participants who relapse will still reap benefits from the AODTC. Relapses are recognised as a part of recovery due to the chronic nature of addiction.¹⁴⁰ When relapses occurred, stakeholders in the 2019 evaluation believed that the impact was less severe than it had been previously.¹⁴¹ Graduates developed recovery skills and knowledge,¹⁴² such that they were more ready to restart their journey to recovery. They took responsibility for their actions, understood the drivers of their addictive behaviours, and were more honest about their reasons for using alcohol and drugs.¹⁴³ Graduates also developed an understanding of how their addictive behaviours affect their whānau,¹⁴⁴ which serves to increase the manaakitanga within whānau. The development of these skills should reduce the distrust, worry and conflict that whānau experience. Even for those who exited the AODTC, whānau members noted changes in the participants' honesty, ability to ask for help, trust, control, awareness of behaviours and knowledge of recovery.¹⁴⁵

But coerced treatment is not entirely beneficial for whānau. It is not entirely distinct from punishment — it too has a punitive aspect. The intensive nature of the AODTC imposes penalties upon participants that can have ramifications for whānau. The Ministry of Justice explains that the AODTC is “not an easy option”.¹⁴⁶ It can be more intensive than a traditional sentence.¹⁴⁷ Even after sentencing, participants continue to have intensive supervision.¹⁴⁸ Simply attending an appointment can be challenging for whānau who may need to manage the needs of their tamariki, and pool resources to access transport.¹⁴⁹ For example, whānau in the 2019 evaluation explained the burden placed on them when participants were undergoing

140 Ministry of Justice, above n 7, at 15.

141 Litmus, above n 93, at 31.

142 At 5.

143 At 27–29.

144 At 30.

145 At 44.

146 “Alcohol and Other Drug Treatment Court: Information for Victims” Ministry of Justice <www.justice.govt.nz>.

147 Doolin and Te Aho, above n 2, at 334.

148 Litmus, above n 93, at 29.

149 Family Violence Death Review Committee *Fifth Report: January 2014 to December 2015* (Health Quality & Safety Commission New Zealand, February 2016) at 31.

regular random drug testing, which occurs at least five times every fortnight.¹⁵⁰ Testing was often far away, and whānau struggled to afford transport and get time off work.¹⁵¹ These requirements burdened the everyday lives of whānau. Consideration must be given as to how to minimise the strain on whānau in complying with the AODTC's requirements. This could include having more convenient clinic locations or support with transport.

Coerced treatment differs from compulsory treatment because consent is still required.¹⁵² However, as the alternative is imprisonment, the nature of this consent has been questioned.¹⁵³ Opponents argue that coerced treatment is unjust and autonomy must be safeguarded.¹⁵⁴ As discussed, coerced treatment can impose burdensome compliance requirements on participants and their whānau. This is exacerbated if participants have little motivation to comply with the requirements. Whānau may have to force participants to attend appointments and persuade them to maintain sobriety. A lack of Kaupapa Māori treatment providers may intensify this burden as participants may feel misunderstood and unable to engage with services. The AODTC must monitor the strain placed upon whānau. If adequate support is available to help whānau handle the pressure they face to motivate participants, this burden will be mitigated.

On the other hand, coerced treatment can present benefits for whānau. Participants who are not faced with legal coercion may still face perceived coercion.¹⁵⁵ Whānau and friends can pressure an individual to enter treatment.¹⁵⁶ Whānau are often desperate

150 "The Alcohol and Other Drug Treatment Court – Information Brochure" IAWJ <www.iawj2020auckland.com>.

151 Litmus, above n 93, at 91.

152 Toby Seddon "Coerced drug treatment in the criminal justice system: Conceptual, ethical and criminological issues" (2007) 7(3) *Criminology & Criminal Justice* 269 at 271.

153 At 272.

154 Stefanie Klag, Frances O'Callaghan and Peter Creed "The Use of Legal Coercion in the Treatment of Substance Abusers: An Overview and Critical Analysis of Thirty Years of Research" (2005) 40 *Substance Use & Misuse* 1777 at 1781.

155 Anne Opsal and others "Perceived coercion to enter treatment among involuntarily and voluntarily admitted patients with substance use disorders" (2016) 16 *BMC Health Services Research* at 2.

156 At 2.

to deal with an individual's addiction,¹⁵⁷ while lacking the knowledge to do so.¹⁵⁸ Coerced treatment can relieve pressure from loved ones by placing the burden on the legal system. It may also reduce the conflict and animosity that results from pressuring a whānau member into treatment.

Unfortunately, the benefits of treatment are not felt by all whānau throughout Aotearoa. Funding and resource limitations have created a zero-sum relationship in which the whānau of AODTC participants benefit and the whānau of others with addiction lose out. The AODTC has put extra pressure on already under-resourced addiction services throughout Aotearoa.¹⁵⁹ The decrease in the availability of these services can lead to some participants being unable to access treatment or having to relocate, thus separating them from their whānau.¹⁶⁰

On one hand, those who have cycled through the criminal justice system and ended up in the AODTC have had the most destructive impact on their whānau thus far and are most in need of help. On the other hand, those participants may be the most difficult to help and the resources might be better used elsewhere. Ethical dilemmas are hard, and with little data available at present it is tricky to make utilitarian arguments. In any case, at this stage it seems only right that we are giving the most disadvantaged the chance to access treatment services that those outside of the criminal justice system have long been able to access. Looking forward, it is clear that additional funding is necessary to ensure that the AODTC does not cause undue harm to whānau outside of the criminal justice system.

VI Can the AODTC Strengthen Whanaungatanga?

The AODTC has the potential to heal the destruction that addiction causes to social and whānau structures. The focus on restoring relationships and gaining skills in coping with addiction, emotion regulation, self-awareness and effective communication helps

157 Orford, above n 31, at 5.

158 Lior Gideon "Family Role in the Reintegration Process of Recovering Drug Addicts: A Qualitative Review of Israeli Offenders" (2007) 51(2) IJO 212 at 218.

159 Thom and Black, above n 9, at 739.

160 At 739.

participants to be active members of their whānau, thus strengthening whanaungatanga and restoring utu. The support network created within the AODTC also strengthens social bonds between whānau, the community and the authorities. However, support is dependent on the prior experience of whānau, the involvement of whānau with the AODTC and whether wider whānau also suffer from addiction issues. This article argues that to rebuild the social bonds of all whānau within the AODTC, holistic support must be provided to ensure whānau have a positive experience and can receive treatment if needed.

Most AODTC participants already have complex whānau relationships before entering the AODTC.¹⁶¹ Restoring these relationships is an integral part of the graduates' recovery process in the AODTC.¹⁶² By simply allowing participants to remain within their communities rather than be separated by imprisonment, the AODTC helps participants to retain whānau connections. The AODTC also provides support to rebuild whānau relationships.¹⁶³ The AODTC helps participants to achieve a stability that allows them to provide whānau with a sense of security in their relationships.¹⁶⁴ The restoration of these relationships means that whānau who had once been unable to connect meaningfully with participants can now do so.

When looking into the AODTC, numerous stories emerge of mātua who had damaged relationships with their tamariki and, as a result of the AODTC, can now be present in their lives.¹⁶⁵ The 2019 evaluation found that parents who had once been a risk to their whānau could now play a meaningful role in the lives of their tamariki.¹⁶⁶ Participation in the AODTC helped graduates to support and provide stability for their tamariki¹⁶⁷ — they were more capable of caring for and engaging with their loved ones than they had

161 Litmus, above n 93, at 25.

162 At 27.

163 While this article has taken a subjective approach to whānau, the Alcohol and Other Drug Treatment Court should encourage the rebuilding of relationships with those who may consider the participant to be their whānau. Participants' understandings of how others may feel towards them may alter their perceptions of whānau and encourage reconciliation.

164 Litmus, above n 93, at 32.

165 At 36. See Katy Jones "Breaking a vicious cycle" *Press* (Christchurch, 6 January 2018).

166 Ministry of Justice, above n 90, at 39.

167 Litmus, above n 93, at 35.

been prior to entering the AODTC.¹⁶⁸ The growth in manaakitanga helps participants to develop strong whanaungatanga.

Being a present matua is important for tamariki because a nurturing environment helps young people to thrive.¹⁶⁹ Studies have demonstrated that having a secure attachment figure in infancy is linked to advantages in later psychological development.¹⁷⁰ But this does not mean that the treatment the AODTC offers is futile for mātua whose tamariki are older. Studies have also shown that outcomes can be altered through environmental changes.¹⁷¹ So if a person who grew up without a secure attachment figure later experiences the benefits of having a present matua, that person might experience positive biopsychosocial outcomes too.¹⁷²

Some AODTC participants have had their tamariki taken into care before they entered the AODTC.¹⁷³ This can cause familial instability and strain whānau relationships. Fortunately, the AODTC gives participants the opportunity to have their tamariki returned to their care. The AODTC has a significant, concrete and positive effect on Family Court outcomes, increasing the likelihood that tamariki will be returned to their care.¹⁷⁴ If mātua can resume their parenting roles, it lessens the pressure on whānau.

Despite the positive impact on whānau when tamariki return to the care of their mātua, the attachments formed in the time they were in the care of others must continue to be nurtured. Stable relationships are the platform on which tamariki build their lives. Instability in experiences of care can hinder the opportunity for tamariki to form secure relationships.¹⁷⁵ Therefore, whānau who have cared for tamariki should continue to play a role in their lives — this will strengthen their sense of whanaungatanga.

168 At 5.

169 Anthony Biglan and others “The Critical Role of Nurturing Environments for Promoting Human Well-Being” (2012) 67(4) *American Psychologist* 257 at 258.

170 Ranson and Urichuk, above n 52, at 134.

171 At 134.

172 At 134.

173 Litmus, above n 93, at 25.

174 Ministry of Justice, above n 90, at 39.

175 Children’s Commissioner *Stability Index for Children in Care – Phase 1: Technical Information* (April 2017) at 3.

The AODTC also helps participants to develop positive social bonds outside of their whānau. Positive social bonds are a source of social control.¹⁷⁶ For whānau members, especially tamariki, social control changes how they learn to behave and socialise. Unlike imprisonment, which isolates people from the community, the AODTC immerses participants within the community. It empowers participants to connect with friends, whānau and the community. The AODTC teaches graduates to limit their interactions with anti-social or addicted peers and whānau.¹⁷⁷ Peer support workers assist participants to build and maintain support networks throughout and after treatment.¹⁷⁸ The Pou Oranga has developed a “continuing care body” which supports a participant after graduation.¹⁷⁹ Participants are encouraged to contribute to their communities and are required to undertake community work.¹⁸⁰ The 2019 evaluation found that the skills that graduates learn, and the support they receive within the AODTC, resulted in some graduates becoming leaders within their whānau — supporting others in the community or becoming guardians for other tamariki within their whānau.¹⁸¹ Such activities increase the participants’ mana tangata. People learn behaviours by observing others¹⁸² — when the mana tangata of those who surround whānau are increased, they are more likely to follow a positive life trajectory.

Additionally, the AODTC can generate positive social bonds between whānau and authorities. For the criminal justice system to work effectively, there must be trust in its institutions, processes and people.¹⁸³ However, personal and inter-generational negative experiences with authorities have created distrust within the system.¹⁸⁴ As authorities are part of the imposed Pākehā system that has oppressed Māori since colonisation, it is understandable why distrust is present. Furthermore,

176 Yuet W Cheung and Nicole W T Cheung “Social Capital and Risk Level of Posttreatment Drug Use: Implications for Harm Reduction among Male Treated Addicts in Hong Kong” (2003) 11(2) *Addict ResTheory* 145 at 148.

177 Litmus, above n 93, at 27.

178 At 12.

179 Thom, above n 6, at 187.

180 Ministry of Justice, above n 7, at 39.

181 Litmus, above n 93, at 32.

182 Albert Bandura *Social Learning Theory* (General Learning Press, New York, 1971) at 3.

183 Kim McGregor “Putting victims at the heart of the criminal justice system” (2013) 7(1) *Practice: The New Zealand Corrections Journal* 8 at 10.

184 Tolmie and others, above n 60, at 157.

whānau members of AODTC participants have often watched the participants cycle through the criminal justice system for years. These experiences are likely to result in feelings of hostility and distrust towards authorities, which can lead some whānau members to lack respect for the criminal justice system and consider the punishments for offending to be meaningless. In communities where mass imprisonment is the norm, severe punishment has no deterrent effect.¹⁸⁵

Unlike traditional court processes, AODTC processes are both supportive and communicative. Participants talk directly to the judge and are supported by police and treatment providers.¹⁸⁶ The 2019 evaluation found that graduates and a few exited participants had changed their attitude towards the criminal justice system — they had increased trust, and were more open and honest with those in authority.¹⁸⁷ Whānau who witness these positive interactions may reconsider their prior attitudes and consider that the authority figures care and can be trusted. Throughout the AODTC process, whānau witness the participants being truthful to authorities about their mistakes and still being treated with respect. If other whānau members model this behaviour, it can transform encounters with those in authority. Whānau will be more likely to ask for help when needed, be honest with authority figures and have positive interactions with the police. It may also reverse the normalisation of imprisonment within whānau.

These reflections are based on the assumption that the experience of whānau members with the AODTC is positive. It is also possible that the intensive nature of the AODTC process and state intrusion are too onerous upon the lives of some whānau. Historically, state intrusion has failed Māori miserably, so it is unsurprising that many whānau will see the AODTC as no different. The views of these whānau about the criminal justice system may remain the same. If a participant is exited or relapses, then whānau may view the AODTC as another example of the state failing them. Studies have found that services that do not first establish whānau trust fail to help

185 Workman and McIntosh, above n 4, at 122.

186 Litmus, above n 93, at 29.

187 At 30 and 42.

whānau on an improvement pathway.¹⁸⁸ In order to avoid this, support for whānau throughout the entirety of the process is key.

One avenue the AODTC could take to ensure whānau are supported is through Whānau Ora. Whānau Ora is a public sector initiative that envisages change from the flax roots, using local solutions to empower whānau.¹⁸⁹ Whānau Ora can provide the whānau of AODTC participants with support that meets their individual needs. Evidence shows that whānau-centred approaches are effective mechanisms for improving engagement and outcomes.¹⁹⁰ The Hon Peeni Henare MP, the Minister for Whānau Ora, has stated that his vision for Whānau Ora is for it to be integral to services across government.¹⁹¹ Working alongside the AODTC should be part of making this vision a reality. Unfortunately, the current demand for Whānau Ora outstrips the resources and support available.¹⁹² For Whānau Ora to provide the support that whānau affected by the AODTC need, significant funding will need to be contributed or sourced to support the service providers.

It is important to note that not all whānau will want to be involved with the AODTC, and encouraging them to participate may place unwanted pressure upon those whānau. For participants whose whānau refuse to participate, it would understandably be frustrating to see other whānau want to. It could increase the resentment they feel towards their whānau and damage their chances at reconciliation. However, not all such offenders feel this resentment. Graduates in the 2019 evaluation acknowledged that their whānau had suffered significant pain due to their addiction and would not want to be involved in their recovery — for these graduates, restoring these relationships was a long-term goal.¹⁹³ Effective whānau support may increase the likelihood of whānau involvement, thus extending the positive reach of the AODTC.

188 Te Puni Kōiri, above n 20, at 92.

189 Te Putahitanga “History of Whānau Ora” <www.teputahitanga.org>.

190 Te Puni Kōiri, above n 20, at 94.

191 Peeni Henare *Whānau Ora – Lasting Change: Response to the Review Findings* (Cabinet Social Wellbeing Committee, 2019) at [5].

192 At [17.4].

193 Litmus, above n 93, at 35.

Additionally, whānau are sometimes not permitted to participate. If participants are not at a stable point in their recovery, it might be considered unwise for them to rebuild relationships with their whānau — particularly when whānau are in active addiction.¹⁹⁴ This is probably the case for many participants, as studies show that addiction runs in whānau.¹⁹⁵

If the AODTC assesses the needs of the participants' wider whānau, it may be able to heal whānau holistically. It has been argued that the criminal justice system should take a holistic approach, where anyone who is in contact with the system has their needs, as well as the needs of any whānau who are affected, assessed.¹⁹⁶ Whānau who struggle with addiction can reap benefits if they begin treatment alongside the participants. It has been shown that whānau treatment increases the chances of improvement in the long term.¹⁹⁷ A few whānau members of graduates did begin treatment after watching their whānau participate in the AODTC.¹⁹⁸ However, it will be more beneficial if whānau who struggle with addiction are actively encouraged to undergo treatment. If Whānau Ora works alongside whānau, it will be able to direct those who need it to support services that work for them and their whānau. However, for some, this additional state intrusion will be unwanted — they may find that it punishes their whānau even further. Despite this, the option for whānau treatment should be made available as one avenue to reduce the generational impacts of addiction.

VII Does the AODTC Help Whānau Heal?

The whānau of these offenders have usually suffered harm due to the destructive nature of addiction and, to restore utu, the AODTC should ensure that it heals this pain. This is possible if the participants acknowledge and repair the harm caused to their whānau, and their whānau develop and offer manaakitanga to those who have caused

194 At 27.

195 Clarahan and Christenson, above n 31, at 241.

196 Te Uepū Hāpai i te Ora, above n 73, at 38.

197 McMillin, above n 31, at 89.

198 Litmus, above n 93, at 35.

that harm. The journey of healing is a tough one and support from the AODTC and outside agencies must be given to whānau throughout it. Additionally, it should be considered whether further power can be given to whānau. If whānau struggle with participants exiting the AODTC or relapsing, support is essential to mitigate further suffering. However, even with this support, the AODTC is unable to heal the pain of whānau caused by macro issues such as poverty and colonisation.

Whānau are victims of the participants' addictions.¹⁹⁹ Victims naturally want a less formal process where they can participate in the case, have their voices heard, be treated respectfully, be able to request more information about their case, and have material and emotional restoration.²⁰⁰ Whānau, therefore, have a right to be involved. The AODTC provides opportunities for whānau to be heard. Participants are encouraged to acknowledge the damage they have caused and to make amends.²⁰¹ The 2019 evaluation found that graduates considered the AODTC had helped them develop empathy and understand how their behaviour affected their whānau.²⁰² Such realisations help participants to understand their offending through what is termed the "relational lens",²⁰³ through which they see that their actions have wider implications that affect their whānau's relationships with the outside world. An understanding through the relational lens helps whānau to feel heard and reach emotional restoration. If participants are able to embrace manaakitanga, they can begin a journey towards restoring utu, which may well be an emotional and difficult journey. It is important that the AODTC supports whānau throughout this journey to help them to overcome the harm they have suffered.

While the AODTC provides more whānau involvement than traditional courts, whānau still retain no power over the outcome or consequences that participants face. That power lies with case managers and the judge within the AODTC — it is the views of the AODTC that carry the most weight. Some whānau may wish to have

199 Ministry of Justice, above n 90, at 40.

200 *Summit Playback*, above n 26, at 18.

201 Litmus, above n 93, at 32.

202 At 29–30.

203 Rupert Ross "Victims and Criminal Justice: Exploring the Disconnect" (2002) 46 CLQ 483 at 484.

greater involvement and power within the AODTC in order to heal themselves. Whānau involvement should be considered when the Court's design is refined in the future.

Whānau are undoubtedly victims of their loved ones' addictions. The AODTC can highlight to whānau that participants are victims too. This can increase the manaakitanga of whānau towards their loved ones, which can help them to heal. Most participants in the AODTC do not fit the mould of the ideal victim: someone who is weak, blameless or doing something respectable.²⁰⁴ Whānau may, therefore, not view participants as victims. However, those who are most likely to be victims are also those who are most likely to be offenders.²⁰⁵ While we do not know the specific harm that participants may have endured, we can characterise each participant as a victim of their own addiction.

The AODTC primarily views addiction as a health problem.²⁰⁶ Educating whānau about addiction can help them to challenge any negative assumptions they may hold about the nature of addiction. In a comparison of AODTC participants and other offenders, each group expressed a motivation to address their addiction issues.²⁰⁷ It may be hard for some whānau to recognise this desire when their loved one repeats the same cycles. For those whānau, their past experiences have shown them that the participant cannot be trusted.²⁰⁸ Learning about the neuroscience of addiction can help whānau to understand why change is so difficult.²⁰⁹ It can move whānau away from a deep-seated belief that their loved ones' continued addiction is due to moral failings.²¹⁰ Understanding why participants continue to cause the harm they do, and developing and offering manaakitanga, may help whānau to heal.

204 Nils Christie "Revisiting the 'Ideal Victim'" in Marian Duggan (ed) *Developments in Critical Victimology* (Policy Press, Bristol, 2018) 11 at 12.

205 Workman and McIntosh, above n 4, at 121.

206 Thom, above n 6, at 181.

207 Litmus, above n 93, at 5.

208 Gideon, above n 158, at 220.

209 Clarahan and Christenson, above n 31, at 231.

210 At 234.

Unfortunately, whānau may be prevented from healing if a participant exits the AODTC. Relationships may be harmed if a participant is voluntarily or judicially exited.²¹¹ This occurs for around 59 per cent of participants.²¹² If whānau view the AODTC as giving participants a final chance, and then see the participants exit despite the support provided, it can leave whānau feeling at the end of their tether. For some whānau, despite the participants exiting the AODTC, the progress that the participants made through the AODTC may continue to strengthen whanaungatanga. The 2019 evaluation found that some whānau agreed that exited participants had more awareness of their behaviours and knowledge of recovery tools as compared to before they entered the AODTC.²¹³ However, this may not always occur, and support must be given to whānau to help them with the pain they may experience to ensure whānau are not hurt further as a result of the AODTC.

If participants relapse despite the support received, this may also lead to whānau feeling disappointed and possibly resenting the offender. In the 2019 evaluation, all exited participants, and some graduates, had relapsed.²¹⁴ Negative attitudes towards a relapsed offender may be mitigated by taking the perspective that abstinence is a long term goal.²¹⁵ Relapses are anticipated due to the chronic nature of addiction. Such a perspective can help whānau to prepare and understand that relapse is likely. Again, support to whānau is crucial throughout this experience to mitigate further harm to them.

The AODTC can help whānau to heal to some extent. However, even if whānau are given more support, the reach of the AODTC can only go so far. Since the 1980s, social inequities within Aotearoa have been increasing.²¹⁶ Whānau within the precariat suffer from employment insecurity, chronic income insecurity, and fewer civil, cultural, social, political and economic rights than those lucky enough to be outside of the

211 Litmus, above n 93, at 45.

212 At 9.

213 Ministry of Justice, above n 90, at 44.

214 Litmus, above n 93, at 5 and 31.

215 Ministry of Justice, above n 7, at 15.

216 Cochrane and others, above n 39, at 28.

precarious.²¹⁷ Such suffering can lead to a sense of relative deprivation and a consciousness of loss.²¹⁸ The prevalence of precarity amongst Māori is distressing.²¹⁹ To delve deeply into these issues is beyond the scope of this article. However, it must be noted that while the AODTC can heal some of the pain felt by whānau as a result of addiction, it is unable to lift whānau from all their suffering. Given the scope of this suffering, it is evident that utu cannot be fully restored by the operation of a court. The AODTC still operates within the context of larger issues, including socio-economic deprivation, education, employment, health and the ongoing effects of colonisation. Drastic government responses, such as a separate justice system for Māori, and significant changes to the welfare system are needed.

VIII Conclusion

Whānau are the building blocks of Aotearoa. They must be protected and empowered for Māori to flourish. The adverse effects of addiction and imprisonment permeate the lives of whānau and span generations, compounding the devastation of colonisation. Fortunately, the AODTC offers an alternative pathway that can mitigate some of this harm.

The AODTC's processes and outcomes can have a positive impact on whanaungatanga, manaakitanga, mana tangata and utu. The AODTC reduces the impacts of addiction and imprisonment through the skills learnt by participants. Coerced treatment can remove the pressure on whānau to address the complex needs of their loved ones. It can help whānau to achieve upward mobility by providing opportunities to connect with culture, assistance with finding employment and building social bonds. Participants can support their whānau and nurture their tamariki. Whānau can thus begin to heal the pain they have endured.

217 At 29.

218 At 29.

219 At 35.

As the AODTC has a cap of 50 participants, only 482 participants were admitted to the Court between 2012 and 2018.²²⁰ With the expansion to Waikato, the AODTC can benefit more whānau. It would be beneficial to expand this reach further to lift more whānau from their suffering.

However, there is potential for the AODTC to improve its social impact. Whānau involvement must occur alongside holistic support. It is crucial to develop strong relationships with whānau throughout the AODTC process to meet their needs. Whānau Ora is one possible avenue to achieve this. The intensive nature of the AODTC, changes in child care roles, wider addiction issues within whānau, and participants relapsing and exiting, can be challenging for whānau. It is essential to assess what can be done for each whānau to mitigate this strain. This will ensure that whānau have a positive experience with the AODTC and can reap its full benefits. It is also vital to address funding issues with rehabilitation providers to ensure that whānau outside of the criminal justice system do not suffer unduly.

But even with these improvements, the AODTC cannot solve all problems. Most importantly, Aotearoa must address social inequality. The AODTC is unable to do this. Radical changes to the framework of the welfare and criminal justice systems need to occur to overcome the social disadvantages and deprivation that many whānau face. Māori deserve this. Until now, they have borne the brunt of the devastation caused by imprisonment and addiction in this country. A separate justice system, outside the bounds of the Pākehā system, is the only way to genuinely heal the pain inflicted upon whānau. However, this should not diminish the work of the AODTC. The Court is a significant step in the right direction to lift our suffering whānau.

220 Litmus, above n 93, at 9.