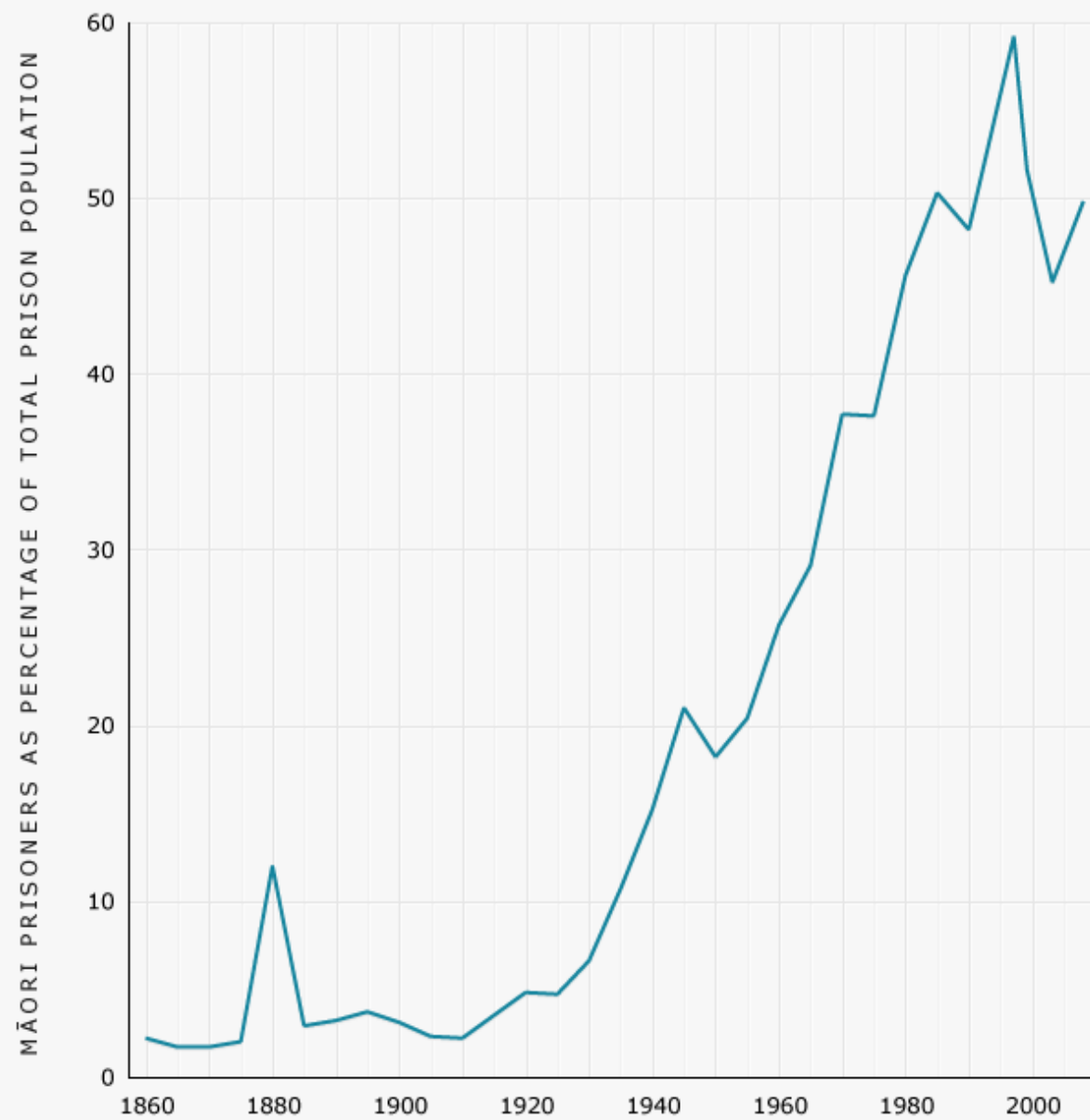






# Māori and the justice system



\* Figures up to 1965 are for prisoners received. From 1965 they are for prison inmates.

\* From 1990 prison census figures only released for 1997, 1999, 2003, 2008.



- He Whaipaanga Hou in 1988 highlighted that bias existed at all stages of the Criminal Justice system. Since that report:
  - the rate of incarceration for Māori men has not changed in 30 years (they continue to comprise approximately 50 percent of the male prisoner population)
  - the rate of incarceration of Māori women has risen significantly. Today Māori women make up 64 percent of the female prisoner population in New Zealand.
- What is the relationship between crime and upbringing?
- Royal Commission on Abuse in State Care

*Between 1950-1999, one out of every three children and young people placed in residential care by the State went on to serve a prison sentence later in life. For Māori children and young people who had been in State residential care over that time, up to 42 per cent went on to receive a prison sentence later in life.*





Berkland v R [2022] NZSC 143

**Offender may request court to hear person on personal, family, whanau, community, and cultural background of offender**

(1) If an offender appears before a court for sentencing, the offender may request the court to hear any person or persons called by the offender to speak on—

(a) the personal, family, whanau, community, and cultural background of the offender:

(b) the way in which that background may have related to the commission of the offence:

(c) any processes that have been tried to resolve, or that are available to resolve, issues relating to the offence, involving the offender and his or her family, whanau, or community and the victim or victims of the offence:

(d) how support from the family, whanau, or community may be available to help prevent further offending by the offender:

(e) how the offender's background, or family, whanau, or community support may be relevant in respect of possible sentences.

(2) The court must hear a person or persons called by the offender under this section on any of the matters specified in subsection (1) unless the court is satisfied that there is some special reason that makes this unnecessary or inappropriate.

(3) If the court declines to hear a person called by the offender under this section, the court must give reasons for doing so.

(4) Without limiting any other powers of a court to adjourn, the court may adjourn the proceedings to enable arrangements to be made to hear a person or persons under this section.

(5) If an offender does not make a request under this section, the court may suggest to the offender that it may be of assistance to the court to hear a person or persons called by the offender on any of the matters specified in subsection (1).



[125] The economic and psychological effects of this historical process persist and are utterly pervasive. They are the intergenerational sources of Māori offending today. The value of historical material and therefore its impact on the choice or length of a sentence is that it explains that contribution. When the relevant material is presented in succinct, summary and helpful form judges will identify that contribution by applying the usual combination of logic and intuition.

- Justice Williams in Berkland provided some guidance on cultural evidence, including that:
  - There must be some causative contribution of cultural background to the present offences (move away from direct cause).
  - There is no "rigid formula" to how cultural evidence may be presented before the Court. It can be through a letter from a family member or a report.
  - Succinct summaries focused on the defendant's experience and his community are more helpful than long and generalised statements.
- Section 27 is more than just a cultural report. It empowers whānau to present community supports/options to address the offending.





Te Ao Mārama

- Time of transition within the context of Te Ao Marama.
- Solution-focused justice through specialist courts.
- Greater use of te reo Māori and involvement of whānau.
- Focus on increasing access to justice through plain language.
- Participation of Iwi and Māori not as defendants or parties but as a critical group within Court process.



- Whāriki but who are the kairaranga?
  - 16% of District Court judges are Māori
  - 6% of practising lawyers are Māori
- Moving from the prison pipeline to the university pipeline
- Beyond Treaty principles and towards nation building
- Imagining a Māori legal system rather than a Pakeha legal system that includes Māori values
- Greater use of alternative dispute resolution

