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E hinemātau ana ki te whai kupu

Fitness: a Māori court report writer's
perspective

E hinemātau ana ki te whai kupu

(Prof Pou Temara)

- Hine= hinengaro
- Mātau= matatau, mōhio, mārama
- Hinemātau= kupu mahi
- Whai kupu= ka puta atu te māramatanga o te tangata
- E...ana= ka mahi tonu tērā mahi

Hei whariki

- Māori
- Māori concepts of the mind related to fitness
- Māori concepts in related laws
- Neuropsychological testing
- Kōti Rangatahi, a site for cultural expectation and support of effective participation in decision making

Māori

- Population approx 800,000
- 15% general population
- Māori population to increase by almost 30% by 2021
- Continue to be a young population
- Current mean age 23

Māori

- Māori overrepresentation in MOJ, MOE, OT, MOH
- Tamariki Māori apprehension rates 5 times greater than Pacific or NZ European,
- Māori Youth apprehension rates 3 times greater than Pacific or NZ European
- Māori appearances in Youth, District or High court are 1.6 times greater than NZ European and 4.9 times greater than Pacific
- (MOJ 2008)

Māori

- Māori less likely to receive diversion for the same offences (Maxwell, Kingi, Robertson, Morris, & Cunningham, 2004)
 - Māori offenders higher rates of conviction and incarceration than non-Māori offenders with similar offending history and socio-economic background (Fergusson, Horwood, & Swain-Campbell, 2003)
- Discriminatory application of the Domestic Violence 1995 has been shown to result in higher conviction rates for Māori than Pākehā (Raumati-Hook, 2009)

Māori and fitness

- No specific research found
 - What might such research and practice need to consider?
- Whakaaro Māori



Ngāpuhi classification system of the mind

“rua” recess, storage

Dimensional

- Rua I te horahora: spiritual knowledge
- Rua I te wanawana: thrill of learning, whakaaro kore
- Rua I te pukenga: skill, ability
- Rua I te mahara: good memory
- Rua I te pupuke: building new knowledge on what has been acquired

- Rua I te atamai: readiness of the mind, quick wit, sense of knowing
- Te whatumanawa: deep emotional mindfulness
- Rua matua taketake o Tane: parenting mind
- Rua I te whaihanga: creativity
- Rua I te kōrero: speech
- Rua I te whakaako: the ability to teach others

- Rua I te whai whakaaro: reassessment, review, making time to think things over
- Rua I te whaimātauranga: the search for knowledge
- Rua I te whakapono: truth, the sense of faith, ethical being
- Rua I te karakia: prayer, solemnity
- Rua I te matakite: instinct, vision, mental gifts
- Rua I te mōhio: awareness of knowing

- Rua I te mahaki: humility
- Rua I te hauora tangata: ability to heal people, to praise, uplift, inspire others
- Rua I te whakapakari tinana: the drive to be healthy
- Rua I te aroha: being able to give

Māori concepts in law

- CYPF Act 1989: whānau, hapū, iwi
- OT 1989: mana, whakapapa
- MHA 1992: whānau
- IDCCRA 2003: s23 provision for cultural assessments, “try to obtain views of”
“whānau, hapū and iwi”
- CPMIPA 2003: s39 2 (d), every order under 38
(1) “consult” “about subject’s condition and
treatment” “wherever practicable” with
“whānau”

What are whānau, hapū and iwi?

Hapū

The primary political unit in traditional Māori social organisation usually named after an ancestor or critical event in history

- A number of hapū with common interests, sharing adjacent territories, linked by common descent or intermarriage were usually parts of an iwi or waka (*Te Matapunenga 2013*)

Hapū

- “the term ‘sub-tribe’ has usually been dropped... as it hardly fits with the new understanding of the hapu’s perceived role as effective, independent political unit of pre-contact Māori society.”
- *Ballara, ‘Iwi’, VUP 1998*

Iwi

- Initially ‘tribe’ was conveyed by words hapū and waka, more recently ‘iwi’ has been used for “tribe”,
- “at least partly as a result of the extensive use of the word in the classification of kin groups by government officials” (*Te Matapunengā pg 100*)

Iwi

- “I have been asked to talk on what is iwi and how is it represented. That is a problem because traditionally iwi meant just ‘the people’. It was regularly used as ‘te iwi Māori, me te iwi Pākehā’, ‘the Māori people and the Pākehā people’”.

- *Affidavit John Winitana Te Waka Hī Ika o Te Arawa vs Treaty of Waitangi Fisheries Commission, High Court at Auckland CP395/93, 4 August 1998, p10*

Iwi

- “The meaning of iwi as I understand it is that it is a collection of sub-tribes who trace their descent to a common ancestor. In my view, without kinship links, no group can purport to call themselves an iwi.”
- *Affidavit of Sir Robert Mahuta Te Waka Hī Ika o Te Arawa vs Treaty of Waitangi Fisheries Commission, High Court at Auckland CP395/93, 4 August 1998, p18*

Whānau

- Origins are Proto Malayo-Polynesian: to give birth, extended to include children, offspring and family groupings
- Features are common living, very recent ancestor, and shared interest in keeping the group viable
- The primary economic unit traditional society
(*Te Matapunenga pg 521*)

Whānau

- “We acted like a whānau. It was our actions and feelings, our wairua, which knitted us together as a whānau. We made conscious, unified effort to protect Māori values, and nurture them in the urban environment.”
- *Te Whānau o Waipereira (Wai 414) Waitangi Tribunal 1998*
- ‘Kaupapa whānau’ whose members work together as if they were close kin
- The hierarchical whānau, hapū, iwi appears more complex than this model suggests

CYF Act section 5

- *a) wherever possible a child or young person's family, whānau, hapū, iwi and family group should **participate in making decisions affecting that person**...accordingly, wherever possible... with regard for the views of family, whānau, hapū and iwi.*
- *b) wherever possible the relation between a child or young person and their whānau, hapū and iwi is to be maintained and strengthened*

CYF Act section 5

- *c) Principle that consideration **must always** be given to how a decision affecting a child or young person will affect the stability of that child or young person, family, whānau, hapū or iwi*

CYFA YJ principles

- S208
- c) i) principle that measures should be so designed to strengthen whānau, hapū, and iwi
- ii) To foster the ability of ... whānau, hapū and iwi to develop their own means of dealing with offending by their C or YP
- f) Promote development of C or YP within whānau, hapū and iwi

He pātariari

- How to operationalise the concepts of whānau, hapū and iwi in a specific case?
- How to support effective participation in decision making?
- Documentation?

Proposed questions to improve s333 and 336 reports

- 1. Who are the whānau, hapū, iwi and what are their views?
- 2. How have whānau, hapū and iwi participated in decisions?
- 3. What were the identified relationship maintenance and strengthening factors between the child and young person and their whānau, hapū and iwi? How can these be enhanced?

- 4. In what ways will recommendations strengthen whānau, hapū and iwi?
- 5. How can the ability of whānau, hapū and iwi be fostered to develop their own ways of dealing with offending by C or YP?
- 6. How will recommendations promote the development of C or YP within whānau, hapū and iwi?



Neuropsychological testing

- Māori perform below Pākehā counterparts in testing (Barker-Collo 2008, Ogden 2003, Ogden McFarlane 1997, Starkey Halliday 2011)
- Cultural bias in neuropsychological protocols contribute (Feigin , Barker-Collo 2007, Ogden 1997, 2001, 2005, Ogden et al 2003)
- Māori cultural identity not investigated or included in aspects of neuropsychological assessment or treatment (Dudley 2014)

Factors influencing Māori in test performance and assessment

- Acculturation
- Education
- Reading
- Bilingualism
- Lack of normative data (Dudley 2015)

- Māori more likely to engage when the environment is 'Māori-friendly', the encounter involves tikanga (Haitana 2010)



Kōti Rangatahi

- Exemplar of a Māori court model
- A cultural mechanism for
- Collective decisional competency
- And collective effective participation



WHARARA-NUI
1886 1986
GARUE

Application

- More than 50% of Māori are connected to marae (*TPK 2010, Stats NZ and MO C and H 2003*)
- 70% Māori scored at least somewhat important to be involved in cultural activities (*Te Kupenga Stats NZ 2014*)

Māori and assessment of fitness

- Consideration of Māori concepts as part of a fitness assessment
- Need for research and better documentation of validity and alternatives in neuropsychological tests

Other legal frameworks convey imperatives to consider collective Māori decision making

- Te Kōti Rangatahi is a practical example of where collective effective participation and decision making is expected and actively encouraged
- Model for forensic court?
- Need for Kaupapa Māori fitness research





*Rukuhia te Mātauranga ki tōna
hōhonutanga me tona whānuitanga.*

*Pursue knowledge
to the greatest depths and its broadest horizons*

