

The Terror Raids:
An analysis of the criminalisation of green activism in Aotearoa

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Abstract

The objective of this thesis is to identify how criminalisation by mainstream media, police, politicians, ‘the public’ and court processes affected green activists, with specific reference to the Terror Raids of October 2007. Drawing on media analysis - covering news articles from 15 October 2007 to 15 November 2007, and 1 January 2017 to 31 July 2018 - and semi-structured interviews with eight participants (all green activists, two of whom were arrested in the Terror Raids), this research explores the issues of colonisation, activism, criminalisation, and resistance to criminalisation in detail. The research concludes that state agents and mainstream media contributed to a ‘blanket criminalisation’ of activists in the Terror Raids and that this criminalisation had significantly detrimental effects on the activists, whānau¹, and wider groups. This *intense criminalisation* was produced as a result of activists being labelled as ‘terrorists’. As a result, the Raids represented an evolution in the criminalisation of green activists in Aotearoa - from *inconsistent forms* of criminalisation (in which previous criminalising narratives had been joined by narratives relating to democratic freedom and environmental justice) to the application of *intense criminalisation* by the state and mainstream media of *all* activists in the Raids. This research demonstrates, therefore, the power of labelling. However, this thesis also identifies the power of green activism and the resilience of campaigners to this intense criminalisation. It emphasises that resistance can survive even when confronted by *intense criminalisation* and state violence. It concludes by emphasising the significant contributions green activists make to the environmental well-being of Aotearoa and to the international environmental justice movement.

¹ Each Māori term used in my research can be found with its full English definition in the kuputaka/glossary at pages v – vi.

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Kuputaka (Glossary) of Māori Terms

Aotearoa – North Island - now used as the Māori name for New Zealand.

Aroha - Love

Hīkoi – to step, stride, march, walk.

Hui – gathering, meeting, assembly, seminar, conference.

Iwi – extended kinship group, tribe.

Kia Kaha - be strong, get stuck in, keep going.

Kia Ora – hello, cheers, good luck, best wishes.

Kaumātua – adult, elder, elderly man, elderly woman, old man – a person of status within the whānau.

Kaupapa - topic, policy, matter for discussion, plan, purpose, scheme, proposal, agenda, subject, programme, theme, issue, initiative.

Kāwanatanga – government, dominion, rule, authority, governorship, province.

Mana - prestige, authority, control, power, influence, status, spiritual power, charisma - mana is a supernatural force in a person, place or object.

Mana Māori Motuhake – separate identity, autonomy, self-government, self-determination, independence, sovereignty, authority - *mana* through self-determination and control over one's own destiny.

Māori – aboriginal inhabitant, indigenous person, native.

Niupepa – newspaper.

Pākehā – New Zealander of European descent, English, foreign, exotic - introduced from or originating in a foreign country.

Rangatiratanga – chieftainship, right to exercise authority, chiefly autonomy, chiefly authority, ownership, leadership of a social group, domain of the *rangatira*, noble birth, attributes of a chief.

Tangata Whenua – local people, hosts, indigenous people - people born of the whenua.

Taonga - treasure, anything prized.

Tauīwi – foreigner, European, non-Māori, colonist.

Te Reo – Māori language.

Tiriti o Waitangi – Treaty of Waitangi.

Tino Rangatiratanga – Sovereignty.

Wānanga – seminar, conference, forum, educational seminar.

Whenua – land – often used in the plural.

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Chapter One – Introduction

At about 5.30 a.m. on 15 October 2007, 300 police executed search warrants at 41 locations around Aotearoa² (Keenan, 2008; Morse, 2010). The police forcefully entered properties, and detained and arrested activists³ and members of the public while searching for evidence of domestic terrorism⁴ (Keenan, 2008). Police executed search warrants, or were turned away from addresses, in a number of locations including Christchurch, Taupō, Whakatāne, Palmerston North and Auckland. They were also filmed forcefully entering Wellington's well-known radical community centre (128 Abel Smith Street) with the search taking place at the same moment an off-duty cameraman (with all of his equipment) happened to be walking past (Television Three, 2007; Morse, 2010).

Police arrested 18 people that day - 17 on suspicion of 'terror activities' and one for class C cannabis offending (Sluka, 2010). The 17 'terror suspects' were arrested at a number of locations in Auckland, Rūātoki, Whakatāne, Wellington, Palmerston North, and Hamilton (Rae, 2008). The Terror Raids⁵ (the Raids) had a powerful impact on green⁶ activists across Aotearoa (Keenan, 2008). The police's heavy-handed, excessive conduct during the Raids, and the years of intense

² Aotearoa is the modern-day Māori name for New Zealand. As aforesaid all Māori terms are annexed at pages v - vi.

³ Grey (2013, p. 701) has said that "Activism involves deliberately and consciously dissenting against the 'status quo' - against hegemonic discourse."

⁴ Terrorism is a method that entails the use of violence or force or the threat of violence or force with the primary purpose of generating a psychological impact beyond the immediate victims or object of attack for a political motive (Richards, 2015, p. 146).

⁵ This thesis uses the term 'Terror Raids' because it encapsulates both what happened during 'the Raids' on 15 October 2007 and in the years that followed. It also acknowledges that the term was used - nationally and internationally - as a way to emphasise that the *defining* feature of what happened was the *state's* application of terror (Rae, 2008; Sluka, 2010).

⁶ This thesis uses the term 'green' because it is broader than 'environmental' and analyses harm through a wider lens (White & Heckenberg, 2014).

criminalisation⁷ that followed, led many to conclude that rather than fighting terror the state *caused* it (Whitmore, 2012; Forbes, 2017).

Nowhere was the argument of state terror or intense criminalisation stronger than in the settlement of Rūātoki which is Tūhoe whenua⁸. Rūātoki is a small community at the base of the Urewera Valley which is all Tūhoe whenua, 20 kilometres south of Whakatāne (Forbes, 2017). During the Raids, the town was ‘locked down’ (Nippert, 2007; Morse, 2010). The police prevented access to Rūātoki – which only has one road for entry/exit - and constructed road blocks on the confiscation line⁹ (Oliver, 2002; Nippert, 2007). Police then proceeded to stop and search every vehicle, and photographed every occupant while recording their details. The residents of Rūātoki had two options that morning - to comply with the directions of armed police dressed in full black riot gear, or to be arrested (Rae, 2008; Wright & King-Jones, 2011). Armed police also detained adults and children for hours while they searched their homes, vehicles, and businesses (Wright & King-Jones, 2011).

The state’s¹⁰ actions in Rūātoki were conspicuous because of the marked disparity between what happened there and in other parts of the country. For example, no other communities were ‘locked down’ and non-forceful action was used at most other sites (Morse, 2010; Wright & King-Jones, 2011). As a predominantly Tūhoe community, the residents of Rūātoki are intimately connected to their history so the level of violence used by the police during the Raids brought

⁷ Intense criminalisation is fully defined in the next chapter following a comprehensive discussion of the phenomenon of criminalisation. Briefly, it is advanced as the *most* severe manifestation of criminalisation which can be a form of colonial criminalisation and as a form of criminalisation which should be reserved to describe actions of the state power.

⁸ Tūhoe have been subjected to intense criminalisation, state violence, and repression throughout their relationship with the Crown. Examples include: the state’s use of ‘scorched-earth’ policies; land confiscation; the murder of peace prophet Rua Kenana’s son, Toko, by the police (King, 2003; Cupples & Glynn, 2017).

⁹ The confiscation line marks where the state divided the Rūātoki Valley in 1866, seizing approximately seven percent of Tūhoe whenua and their only access to the coast (Cupples & Glynn, 2017).

back stark memories of colonial injustices¹¹. During the Raids the rights of the residents of Rūātoki were completely disregarded as the state used excessive psychological and physical force which was ‘justified’ by the ‘threat of domestic terrorism’ (Nippert, 2007).

On 10 October 2007 Detective Aaron Pascoe filed a 156-page affidavit with the District Court in Manukau, Auckland. The affidavit asked a Judge to grant police search warrants for 37 people as well as vehicles and buildings (Pascoe, 2007). The NZ Police’s fundamental allegation was that the named individuals might be domestic ‘terrorists’ and posed a ‘threat’ to the state (Pascoe, 2007). There were a number of conflicting accounts about how and when the police’s covert surveillance commenced but the police’s affidavit began with an allegation of hacking against Rangikaiwhina Kemara (Kemara) in March 2004, and then attempted to link Tauwiwi activists¹² with Rūātoki inferring a ‘sinister’ connection and the early foundations of what police would ultimately term ‘terror’ training camps (Pascoe, 2007; “Hunters alerted police to alleged terror camps”, 2007).

Police alleged that at least 60 people had attended six ‘terror’ training camps in Te Urewera, near Rūātoki, during 2006 and 2007. Their allegations were founded on investigations which used hundreds of hours of covert surveillance: bugged conversations; taped cellphone calls; intercepted text messages; and covert video surveillance (Kitchin, 2007; Steward, 2011). While the SIS¹³ denied being part of the operations on 15 October 2007 they have never commented on whether they were involved in the lengthy surveillance of the activists which preceded their

¹¹ These injustices included: The Crown purchasing a significant amount of Tūhoe whenua illegally from Rua Kenana and proceeding with the sale in spite of the knowledge that it was illegal; and the Crown confiscating significant amounts of Tūhoe whenua in 1866 as punishment for the iwi not acquiescing to government demands (these demands had actually been made of other Eastern Bay of Plenty iwi) (Oliver, 2002).

¹² Tauwiwi is a broader term than Pākehā because its definition includes colonist which therefore makes it a more appropriate term to use in the context of my research (kuputaka page vi). I identify as a Tauwiwi critical criminologist and discuss my focus on tauwiwi activists in Chapter five.

¹³ The SIS describes itself as “a public service agency that contributes to Aotearoa’s safety and security” and that “protects Aotearoa’s national security, and contributes to international relations and the well-being and economic well-being of the country” (New Zealand Security Intelligence Service, 2018).

arrests. Nonetheless, then Prime Minister Helen Clark noted, “There are a lot of agencies who have been involved in gathering the information against these people” and journalists detailed that the Raids were a multi-agency investigation with involvement of the police, as well as the SIS, military, and Government Communications Security Bureau (GCSB) (Eaton, 2007; “‘Mole’ helped agencies plan dawn swoop”, 2007). This thesis focuses on the police as the lead investigators and ‘face’ of the investigative efforts against the activists.

As a result of the investigations the police claimed that the camps were led by high-profile Māori activist, Tame Iti (Iti), assisted by Kemara, Emily Felicity Tuhi-Ao Bailey (Bailey), Urs Signer (Signer) and Tuhoe Lambert (Lambert) (Pascoe, 2007; Thorby, 2012b). The police also alleged that the camps were held in and around the Rūātoki Valley over multiple dates (17-18 November 2006; 10-13 January 2007; 27-28 April 2007; 22-23 June 2007; 17-18 August 2007; 14-15 September 2007) and that participants used grenade launchers, molotov cocktails¹⁴, and held illegal firearms (Cook, 2007; Pascoe, 2007). Further claims included allegations that participants were given IRA and Al -Qaeda manuals, and were being trained to ambush vehicles and interrogate people (Kitchin, 2007). Police also alleged that George W. Bush had been identified as a possible target and so too, had then Leader of the Opposition, John Key (Kitchin, 2007)¹⁵. Police combined all of these allegations to construct a ‘domestic terror threat’ (Kitchin, 2007; Webby, Grant & Milligan, 2015)¹⁶.

¹⁴ Molotov cocktails in this case were described as “steinlager bottles filled with a petrol/diesel mix and wicks” (“A nation divided: Inside the Urewera Four trial”, 2012).

¹⁵ The police allegations however, need to be assessed in the context of what had actually occurred. For example, then Law Commission deputy president Warren Young gave evidence at the contempt case against Fairfax Media (discussed in Chapter four) that the intercepted conversations included discussions about “assassinating the Prime Minister and taking action against George Bush, but those were expressed in extravagant and vague language. There was no evidence of any planning at all.” When Warren Young was asked to recall the details he had heard about how George Bush would be assassinated he recollected that it would be achieved by “catapulting a bus on to George Bush’s head” (Wright & King-Jones, 2011).

¹⁶ In contrast, investigative journalist Nicky Hager “wrote that some of the communications amounted to ‘an incoherent scattering of radical big talk’” and Operation 8 emphasised that much of what was recorded by the police was comical or about everyday things like food (“The Oddball Revolutionaries”, 2011; Wright & King-Jones, 2011).

Straight after the Raids a journalist from the mainstream media¹⁷ asked then Police Commissioner Howard Broad if there had been *any* suggestion that some action might be taken by the group. He replied, 'No' (Wright & King-Jones, 2011). The police's public acknowledgement that there was *no* evidence that anything was going to be done by *any* of the activists contrasted starkly with the activists' experiences of intense criminalisation outlined in this thesis.

The activists who were targeted as 'terrorists' by the police were not unified under any particular cause or fighting the same issue and were described as "a nationwide web of disparate people, including Pākehā greenies, peace activists and Māori radicals", "other stirrers known to police" was also added on to some media reports ("The Oddball Revolutionaries", 2011; "A nation divided: Inside the Urewera Four trial, 2012). The diversity of causes that the activists represented however, was minimised in the mainstream media with Morse (2010, p. 17) noting that the arrested activists included "Anti-war activists, anti-mining activists, union organisers, Palestinian Solidarity workers, feminists and animal rights campaigners".

Police were clearly particularly focused on Māori and Iti, as evident by their conduct in relation to Rūātoki for example, but they also focused on green activists, which was evident in the groups they had placed under surveillance and who police claimed posed a 'threat' to society (Wright & King-Jones, 2011; "A nation divided: Inside the Urewera Four trial", 2012). This included environmental activist groups like Peace Action Wellington, GE Free New Zealand, and Save Happy Valley (Campbell, 2011). Notwithstanding police efforts the Raids were almost immediately responded to with significant concern and criticism from a number of sources including: Tūhoe; Māori more widely, sections of the public; activists; and the indigenous media (for example, "Hundreds protest against Terror Raids", 2007; Fensome, 2014).

¹⁷ Mainstream media has been historically defined as, "... situated completely within and concomitantly co-creating the ideological norms of society, enjoy(ing) a widespread scale of influence, rely(ing) on professionalised reporters and heavily connected with other corporate and governance entities" (Kenix, 2011, p. 3). This thesis adopts this definition accepting however, that distinctions between forms of media are disappearing, and are more complicated than 'mutually-exclusive binaries' (Kenix, 2011).

The police began to publicly acknowledge some of their failings in the Raids in early 2012 but only with regards to some of the events at Rūātoki (“NZers want Ureweras explanation - police”, 2013). On 24 May 2012 then Police Commissioner, Peter Marshall, apologised for the Raids’ impact on “innocent members of the community in Rūātoki” and emphasised the police’s distinction between these people, and others who were arrested (IPCA, 2013). In 2013 the Independent Police Conduct Authority (the IPCA) released a report into the Raids which strongly criticised the police for their excessive approach to criminalisation in the case (IPCA, 2013). Over the course of five years the IPCA investigated 27 complaints about the police’s conduct during the Raids and concluded that the police had undertaken a range of serious, illegal, and unreasonable actions during the Raids, including extensive use of illegal covert surveillance (IPCA, 2013). They concluded that people were illegally detained and searched in five properties, that roadblocks in Rūātoki and the neighbouring township of Tāneatua were illegally set-up and conducted, and that citizens of Rūātoki were intimidated by police and their actions¹⁸ (IPCA, 2013). The IPCA made seven broad recommendations to improve police conduct and noted that if the Search and Surveillance Act 2012 had not been enacted they would have made *many* other recommendations (IPCA, 2013).

In August 2014, the next Police Commissioner Mike Bush travelled to Rūātoki and offered a formal police apology to those whānau affected by the Raids (Lines-MacKenzie, 2017). During that same month Tūhoe and the Crown reached a settlement on Tūhoe’s Treaty claim. The Crown apologised for 170 years of state repression and the severely detrimental impacts of colonisation and its flow-on effects on Tūhoe (Savage, 2017). Iti was specifically mentioned for his contribution to the settlement process (Shanks, 2014).

Environmental activists – while also, very much, caught up in these events have tended to be overlooked in the debates and subsequent processes of Operation 8. This thesis seeks to provide

¹⁸ In 2015 a confidential compensation settlement was paid to five whānau members of Lambert whose home in Manurewa, South Auckland was searched in the Raids. Kemara filed a claim for compensation but did not pursue it (“Family reaches settlement with police”, 2015).

the first examination of the impact of the Terror Raids, and subsequent criminalisation processes, on the green activists arrested, but also on the wider environmental justice movement in Aotearoa.

Objective and chapter overview

The objective of this thesis is to identify how criminalisation by mainstream media, police, politicians, 'the public' and court processes affected green activists, with specific reference to the Terror Raids of October 2007. Given the events detailed above, it also seeks to identify the impacts of criminalisation processes on those who are actively involved in environmental justice movements. It explores how criminalisation by the mainstream media, police, courts, politicians, and 'the public' affected green activists in the Terror Raids, but also those more broadly engaged in green activism.

The following seven chapters all build on this Introduction, and demonstrate the short and long-term impacts of criminalisation for green activists, and the flow-on effects on their work to address environmental harms. My research finds that the criminalisation of activists involved in the Terror Raids marks the emergence of a previously unseen set of criminalising practices and impacts.

Chapter Two focuses on criminalisation. While criminalisation is a process through which an act or behaviour is labelled as a crime, and then formal or informal processes flow from that, this is only one part of the narrative and Chapter Two provides the context for a more detailed analysis of criminalisation. For green activists in Aotearoa generally we can speculate about what criminalisation has meant because there have been so many diverse applications in so many different circumstances - we do not need to speculate in regards to the Raids. *All* of the activists in the Raids were subjected to intense criminalisation which means that these activists have been the target of a sustained, aggressive, and prolonged attempt by the state to silence them as examples of people who do not comply with the 'status quo'. Chapters Three and Four as well as my original findings move beyond theoretical consideration of this phenomenon and highlight what experiencing this level of suppression means as a lived-experience – historically, in the

Raids, and today. The chapter analyses what legal and socio-cultural criminalisation are before looking at the many layers of criminalisation. This gives the context of criminalisation as a phenomenon that has different applications and different expressions which are threaded throughout this thesis. The chapter also analyses newsmaking practices, labelling, and othering because they all have significant roles in the processes of criminalisation and how they impact activists. Criminalisation is about the use of power and control by dominant groups on those that have been identified as the 'other', Chapter Two is the gateway to seeing this power expressed 'in-action' throughout the subsequent chapters and lays the foundation for resistance which is discussed in Chapter Seven.

Chapter Three further expands the concept of criminalisation by analysing it in the context of activism in Aotearoa. The chapter begins with the arrival of Māori in Aotearoa between 1280 and 1300 AD and then traces the relationship between criminalisation and activism through various important sites of activism throughout Aotearoa's history. The chapter details how historically criminalisation processes have been inconsistent in response to various expressions of activism. This is important because it emphasises that the Raids were an evolution of state responses to activism and a transition from inconsistent forms of criminalisation (in which previous criminalising narratives had been joined by narratives relating to democratic freedom and environmental justice) to intense criminalisation. However, there are also particular 'turning points' in Aotearoa's history of criminalisation - Parihaka and the Springbok Tour being two, where criminalisation has trumped other narratives or processes, and these are discussed in detail.

Chapter Four presents a detailed analysis of criminalisation during, and following, the Raids. It considers the processes and impacts of legal and socio-cultural criminalisation with many examples, to emphasise that the Raids demonstrate intense criminalisation which is still ongoing. The chapter also considers sites of resistance (in the media, protests, and international community) which are locations which provided a counter-balance to the dominant discourse of intense criminalisation and which lay the foundation for further exploration of activists' resistance.

Chapter Five sets out the components of my research framework. It focuses on the method and methodology, essentially the how and why of this research. It details my use of critical research and critical methodology because of how they challenge the status quo and provide space for 'alternative voices' such as those of green activists. The chapter also outlines my methods, interviews, media analysis, and literature review. I introduce the eight remarkable green Tauīwi activists I interviewed, two from the Raids and six more broadly. I analysed the extensive data from their interviews using thematic analysis so I provide a detailed recollection of how I used Braun and Clarke's (2006) six step guidelines to 'get the most' from the data. I also outline my subsidiary approach of media analysis using Newztext databases for two time periods, the month after the Raids, and then the year and half before the end of my research and my informal use of newspapers as a data source as well as my literature review.

Chapter Six, the first findings chapter, focuses on the activists' voices. The chapter presents their experiences of legal, socio-cultural, and intersecting forms of criminalisation. In doing so, the chapter exposes several findings. It identifies the Raids as representing a new era of 'blanket criminalisation', in which *every* activist was subject to intense criminalisation as a result of being labelled as terrorists. The chapter emphasises the *state's* imposition of terror on the 'terrorists' in the Raids and how the official response to criminalisation is markedly different when activists are *not* defined as terrorists.

Chapter Seven, the second findings chapter, describes how resistance is possible even in the face of significant challenges and looks at a number of the key ways activists' were able to maintain their resilience and resist criminalisation. It does this in the context of recognising that there is a significant power imbalance between the state and activists, and that resistance is not easy to achieve when confronted by the power of the state. The chapter emphasises the possibility of resistance even when confronted with intense criminalisation and shows the practical ways in which the green activists both in and out of the Terror Raids have achieved this.

The discussion-focused Chapter Eight emphasises the importance of this research and the value of green activism in the pursuit of environmental well-being in Aotearoa. This thesis contributes

to the literature on criminalisation, environmental justice, and activism in Aotearoa by coming to a number of original conclusions about these phenomenon and highlighting a number of potential avenues of further research. The critical argument which emerges in this research is that the Raids represented a 'New Era' of criminalising activism in Aotearoa proving that when the state re-defines activists as 'terrorists' that they will be subjected to intense criminalisation for years.

Chapter Two – Criminalisation

Activists who oppose environmental harm experience different forms of criminalisation that cannot be defined easily. However, as this chapter shows, criminalisation encompasses two steps – first, an act or behaviour being labelled as a crime, and second, processes (formal or informal) that follow as a result of that label. Criminalisation is often regarded as a legal process, however a significant amount of criminalisation operates through socio-cultural spheres. In this respect, criminalisation involves labelling and ‘othering’, both of which will be explored further below.

This chapter begins with the definition of criminalisation including discussions about the many layers of criminalisation, before considering the phenomenon from two separate but interconnected perspectives: legal and socio-cultural criminalisation. Legal criminalisation focusses on legal processes and court proceedings and acknowledges that the State criminalises activism when that activism has the potential to force change. It is often framed in the law and legal studies in ways that imply that it is a completely objective and impartial process however it is also a phenomenon that functions in the social world. This means that it is affected by a number of factors which cannot be so easily categorised, for example, the social actors who contribute to the processes within the criminal justice system, and the social, cultural, and historical contexts in which legal proceedings take place. In contrast, socio-cultural criminalisation entails a much more diverse range of practices in which labelling and ‘othering’ take place. Socio-cultural criminalisation occurs at a number of sites, including in the mainstream media, political sphere, and in its application by state agents like the police. It is a political, economic, and social process through which individuals and groups are selectively policed and disciplined, and power is exercised (Scruton & Chadwick, 2012; Cunneen & Tauri, 2016). It is important to note that both types of criminalisation can intersect and conflict given that the state is not a homogenous entity and that there are a number of social actors involved in the application of criminalisation processes.

After analysing legal and socio-cultural criminalisation the chapter progresses to an analysis of newsmaking practices. This is critical because of the mainstream media's role as a significant site of socio-cultural criminalisation in modern society and because of its role in disseminating 'news' about processes of legal criminalisation. While the media landscape is constantly evolving the mainstream media's role in criminalisation remains significant and is assessed in that context. The many layers of criminalisation in this thesis are then highlighted with explanations of key terms of criminalisation which appear in this thesis and why they are important in the context of analysing the criminalisation of green activists. The chapter ends with a discussion of some of the key theoretical foundations which are integral components of criminalisation and how they impact modern society. Overall, this chapter argues that it is not sufficient to analyse criminalisation solely from a narrow legal perspective because it is a phenomenon 'in-action' not a theory without practical application. Therefore this thesis argues that criminalisation must be considered in the context that it is a process of power and control, which functions in the social world.

Criminalisation

Essentially, criminalisation is a process which determines what conduct will come to be defined/treated as 'criminal' (Duff, 2012 as cited in Brown, 2013). It lays out the framework for society to define what is 'unacceptable' (in a particular cultural, historical, and social context), and how 'unacceptable' conduct will be responded to if it takes place. Harduf (2013, p. 31) has described the criminalisation process as "chart(ing) human freedom, determining what people are not allowed to do. It affects justice, equality, legitimacy and monetary resources." It is a process where society sets the 'boundaries' for what individuals and groups *cannot* do, and lays out the consequences of non-compliance with those boundaries.

Millie (2011, p. 278) established that "Criminalisation can be regarded as the processes by which actions or omissions become defined as crimes, or certain people or uses become defined as criminal or potentially criminal." This definition is useful because it highlights many of the key aspects of criminalisation including: the use of *processes* which acknowledges that the

phenomenon has a number of informal and formal steps; the use of *defined as crimes* to describe the act of labelling which is a significant factor in the categorisation, control, and marginalisation of individuals and groups (discussed in detail below); and the use of *certain people* to describe how marginalisation and ‘othering’ only effects some individuals and groups. The definition is also broad enough to apply to legal and socio-cultural criminalisation. The power in the criminalisation process is that once the label of ‘crime’ is constructed, conduct becomes illegal, and subsequent examples of it are responded to by the criminal justice system or in other informal ways (Scruton & Chadwick, 2012). It is important at this point to acknowledge that significant processes of decriminalisation can, and do, take place. This happens when legislation which has prohibited conduct (making it illegal) is repealed, which means the conduct transitions to being legal. This often takes place in the context of significant socio-cultural change. In Aotearoa one of the most prominent recent social examples is the Homosexual Law Reform Act 1986. The Act amended the Crimes Act 1961 by “removing criminal sanctions against consensual homosexual conduct between males” giving men the freedom to engage in consensual sexual activity with other men without the fear of being prosecuted (New Zealand Legislation, 2018).

In theory, any action or inaction could be criminalised (Brown, 2013). Sometimes criminalisation is seen as a positive, something that will make society ‘better’, and it has been a part of many progressive social movements, however it is often perceived very negatively, particularly in relation to the harm that the act of criminalisation itself can cause (Tadros, 2009; Almond & Colover, 2012). An example of this harm in Aotearoa is the significantly higher rate of imprisonment of Māori compared to Tauīwi¹⁹, which has been significantly impacted by ‘colonial criminalisation’, as discussed in the next chapter. There are also tensions in what should, or should not be criminalised, which are effected by historical, cultural, and social contexts.

¹⁹ For example, while Aotearoa’s general rate of incarceration is among the highest in the OECD (Organisation for Economic Cooperation and Development) the rate of Māori criminalisation is significantly higher. The rate of incarceration of Māori men is so high (a rate of 600 to 700 per 100,000 people) that it is equivalent to the American rate of imprisonment which is second highest in the world (Pratt & Clark, 2005; Martin, 2017).

Given the above discussions it is clear that at its core criminalisation is a process through which significant power is exercised over people, with serious consequences for their future life-experiences and the identity of individuals, groups, and society itself (Tadros, 2009; Millie, 2011). It marginalises those who are criminalised by ‘othering’ them and portraying them as a threat to social norms (Almond & Colover, 2012). Morse described how it *feels* to be criminalised, emphasising that this process always take place in the social world, when she said “... being criminalised effectively means that you are shut out of any kind of normal life (“Reaction from one of the defendants”, 2011).”

This thesis is founded on the principle that criminalisation *is* a universal phenomenon which is evident in all modern Western societies²⁰. In settler states like Aotearoa it has developed through the establishment of colonial legal systems and laws, and in the context of the significantly detrimental effects of colonisation (discussed in the next chapter). Notwithstanding the universality of criminalisation, processes of criminalisation are greatly affected by the contexts in which they operate and this has significant flow-on effects to the ways in which criminalisation is actually applied (Tadros, 2009; Millie, 2011).

Different manifestations of criminalisation underline this thesis and highlight that there are many layers of criminalisation in-action, particularly in the context of a group such as green activists in Aotearoa who challenge the ‘status quo’. There are threads of different types of criminalisation and different expressions of criminalisation throughout this thesis and they are all important because they contribute to the analysis of criminalisation of green activists in the Terror Raids.

The thesis has already introduced the term intense criminalisation in the previous chapter - because of its importance it is a recurrent theme throughout the remainder of this research. As previously highlighted, the thesis defines intense criminalisation as criminalisation in its *most*

²⁰ See for example, 13th which is a documentary that critically analyses the extraordinarily high rates of criminalisation of the Black male population in America and its significant impact on modern American society (DuVernay, 2016).

severe manifestation which can be a form of colonial criminalisation and as a term which should be reserved to describe actions of state power. This is because it is all-encompassing for the 'target', it is rigorously pursued by the state, and it has serious and long-term consequences not only for 'targets' but also for much wider sections of society who see, hear, and are effected by criminalisation processes in different ways. The use of the term intense criminalisation recognises that criminalisation at its most severe has extremely detrimental, long-term impacts and is undertaken by the state, state agents, and mainstream media to suppress dissent and enforce the 'status quo'. Intense criminalisation is a process through which the silencing of 'others' is rigorously pursued by the state power. The term 'blanket criminalisation' is also used, again as a form of reinforcement of all-encompassing criminalisation which applies to *all*.

Timewise, the threads begin with the first form of criminalisation which is discussed in the next chapter and which this thesis has described as colonial criminalisation. This is examined as a building block that was used by officials in the colonisation of Aotearoa and subjugation of tangata whenua. The thesis argues that this type of criminalisation is focused on the suppression of indigenous people in the context of colonisation and that it is a severe expression of colonial control. It is critical to outline colonial criminalisation to provide the context in which green activism ultimately emerged given that activism was a direct product of colonisation and that Māori and green activism are so interconnected. White and Heckenberg (2014, pp. 190 – 191) define activism as being born of direct experience, a shared global voice, of solidarity and reciprocal empathy and of dissent over strategies. This analysis underpins the approach to activism adopted in this thesis which acknowledges this phenomenon as conscious steps to contribute to, or lead to, positive change.

The other threads of criminalisation which are important are the different expressions of criminalisation. Inconsistent approaches to criminalisation is a strong theme in this thesis and is introduced in the next chapter through multiple examples from Māori and green activism *before* the Raids. The examples range from the absence of criminalisation, to intense criminalisation when the state has had an interest it is intent on pursuing. Criminalisation is also expressed through the intersection of legal and socio-cultural criminalisation, for example, by the police,

SIS, or mainstream media. Different intersections took place in the Raids and are discussed in Chapter Four highlighting that legal and socio-cultural criminalisation are distinct but interconnected. The presence of conflict in criminalisation is also identified in Chapter Four and is important to identify because it emphasises that criminalisation is not undertaken by a homogenous state entity but rather that there are complex relationships between different actors within the processes of criminalisation.

While criminalisation is often discussed in an overly legalistic manner this thesis approaches the phenomenon from a criminological frame of reference and focuses on criminalisation in-action in the social world. The next sections expand on the definition of criminalisation by considering its legal and socio-cultural manifestations.

Legal Criminalisation

Legal criminalisation is used by academics to define criminalisation from a harm-focused perspective - traditionally this was a focus on 'public' harm in Western societies which has expanded to include what was traditionally labelled 'private' harm, in modern times. This research uses Harduf's (2013, p. 80-81) four steps of legal criminalisation in combination with Millie's (2011) definition to emphasise the 'harm-based focus' of legal criminalisation and how this works in practice.

The first step is identifying types of offensive conduct (Harduf, 2013, p. 80). Harduf (2013, p. 80) describes this as the step which asks: "Is the type of conduct in question harmful?" Sood and Darley (2012, p. 1328) define harm as "injury to a person or persons that can be clearly demonstrated". This exposes a weakness in legal criminalisation's harm analysis as its conception of harm does not include: environmental harm; non-human harm; and nor would it extend to intergenerational harm. This means that when the traditional assessment for suitability for criminalisation takes place (with the question, does that conduct cause harm?) the ambit of what might be considered has already been significantly reduced before the question is asked (Tadros, 2009). The legal analysis all ultimately comes back to the concept of the harm principle which

focuses on the use of criminalisation and criminal law *only* in situations which cause *harm* (but harm through the narrow lens discussed here) (Millie, 2011; Sood & Darley, 2012).

The second step is focused on purposiveness and preventing harm through criminal law and asks: “Can the criminal law achieve its goal and prevent this type of harm?” (Harduf, 2013, p. 80). Again this further demarcates what will, and will not be, subject of this process and emphasises the increasingly narrow sphere of legal criminalisation.

The third step is a search for alternatives to criminalisation asking, “Are there other ways to prevent harm?” (Harduf, 2013, p. 80). This is particularly relevant in the modern context where other approaches, for example regulation, might be explored given the costs of criminalisation including the expense of expanding the mechanisms of criminal law and enforcement costs. (Brown, 2013; Harduf, 2013, p. 60).

The final step is weighing up whether to proceed with criminalisation, by assessing the costs and benefits of the processes and includes asking, “Which of the available solutions is the best regulative choice?” (Harduf, 2013, p. 80-81).

Legal criminalisation therefore, is ultimately about an assessment of the harm that conduct causes using legal processes and court proceedings to define boundaries to restrict harm. The focus is on whether someone has infringed the boundaries of what society has defined as crime, and Harduf’s (2013) steps are used as a justification for the law having the role to determine what is and is not acceptable, and how unacceptable conduct will be punished, on behalf of society.

As discussed earlier criminalisation is a phenomenon in-action and this is evident in the practical application of legal criminalisation in Aotearoa. This is shown in detail in relation to the Raids in Chapter Four. Perhaps the clearest representation of legal criminalisation in-action in Aotearoa is the largest component of the criminal justice system – the district courts. Each year 175 District Court Judges at 58 courthouses deal with approximately 200,000 criminal, civil, family, and youth matters (The District Court of Aotearoa/Te Kōti ā Rohe, 2018). Many of these are criminal matters where charges have been laid by the police, Crown, or other prosecuting agencies

leading to individuals' formal engagement with the criminal justice system. As will be shown in Chapter Four legal proceedings can be extensive and take a significant amount of time, and the effects of being criminalised through the courts can also be extensive and longstanding. In Aotearoa criminal convictions, and specifically the label 'criminal', can have long-term effects on a person's life-experiences as identified earlier. For example, a person may be asked about their criminal record when applying to rent a house or flat, applying for a job, applying for various forms of insurance or applying for some types of voluntary work. This emphasises the power in criminalisation but also the control aspect - people are controlled by the boundaries within the system and then controlled by other social processes upon leaving the criminal justice system. It is also important to reiterate that criminalisation does not operate in a void and is greatly affected by the contexts in which it takes place. This ultimately leads to the differential application of criminalisation - Māori overrepresentation in Aotearoa's criminal justice system is a significant example of this and is discussed in the next chapter.

Socio-Cultural Criminalisation

Socio-cultural criminalisation also has the same foundation that criminalisation is an act or behaviour being labelled a crime and then the processes (formal or informal) that follow as a result of that label. However, unlike legal criminalisation's narrow and prescriptive harm-focused perspective, socio-cultural criminalisation is used by academics to describe broader practices that are involved in criminalisation. This essentially acts as an acknowledgment that the "system of criminal justice (is) a social construction" (Hogg, as cited in Brown, 2013, p. 609).

The more social and informal aspects of criminalisation have been identified by a number of academics. For example, Lacey (2009b, p. 957) discussed criminalisation as a "social practice, encompassing a range of actors and institutions, with divisions of professional and lay labour changing over time." Lacey (2009b, p. 957) also highlighted the "new division of labour in the practice of criminalisation" with the evolution of a more modernised criminal justice system noting that there are a number of different groups including lawyers, police officers, doctors, social workers, 'ordinary citizens', and justices who have roles "as the main administrators of the

practices of criminalisation” and that each approaches their role “with a different set of values, assumptions and interests.” In Aotearoa the role that other social actors have in criminalisation, such as the public and mainstream media has been considered by Pratt and Clark (2005). They found that lobby groups working with the mainstream media, particularly the Sensible Sentencing Trust (SST), were influential in the passage of ‘tough on crime’ legislation in 2002 – the Sentencing Act, Victims’ Rights Act, and Parole Act (Pratt & Clark, 2005). Brown (2013) also took this broader approach and analysed criminalisation in the context of “current criminal justice issues” identifying that processes of criminalisation take place at a number of sites including the political sphere, in policing and in the mainstream media. Brown (2013, p. 614-615) also identified criminalisation as legal and socio-cultural processes which encompass a number of actions such as: “the creation of new or amended substantive offences; changes to police powers; changes to evidence and criminal procedure; and massive pre-trial criminalisation and punishment of the yet-to-be-convicted.”

As indicated by these scholars, the mainstream media is a key site for socio-cultural criminalisation which is now considered in detail given its prominent contribution to modern criminalisation. News and crime news are prominent sites where labelling and ‘othering’ take place so knowledge of both is critical for an appreciation of socio-cultural criminalisation processes. ‘News values’ were first considered by Galtung and Ruge (1965) who ultimately asked, how do events become news? They were particularly interested in the actions of selecting and distorting material, and the use of negative news. They also identified the power of newsmaking processes to silence alternative voices (and nations) and contribute to significant power imbalances. They laid the groundwork for modern analysis such as Harcup & O’Neill (2017) who identified 15 features²¹ which they defined as ‘news values’ - one or more of which must generally be present for something to be defined as a news story²². This included ‘Drama’ (for

21 The 15 features are: Exclusivity; Bad news; Conflict; Surprise; Audio-visuals; Shareability; Entertainment; Drama; Follow-up; The power elite; Relevance; Magnitude; Celebrity; Good news; News organisation’s agenda.

22 They identified ten features in their original research (Harcup & O’Neill, 2001 as cited in Harcup & O’Neill, 2017).

example, court cases), 'Bad News' (for example, loss, defeat), 'Audio-Visuals' and 'Conflict'. Importantly however, Harcup & O'Neill (2017, p. 1483) noted that there also needs to be an analysis of "who is selecting news for whom, in what medium, and by what means" and that "available resources may be as important as whatever news values may or not be inherent in the potential story." Available resources may include sources who may have very specific agendas for speaking with the media or who may have a very clear narrative that they are seeking to portray. Crime news is a sub-genre of news, which is defined as the "presentation of crime as a 'specialised image' which has been constructed by the media for public consumption" (Chermak, 1995, p. 97). Chermak (1995) analysed media organisations' operations to work out how crime news is produced including: their organisational structures; resourcing; divisions of labour; and practical issues, like the space allocated for different types of news. There are also a number of discretionary decisions such as: determining 'news values'; the ease of obtaining information; framing stories to attract readers; and relationships with news sources (Chermak, 1995). So the considerations are similar to those assessed in respect of the news but from the specific lens of the media intending to create a particular image of what crime is. The news, more specifically, crime news, is also a site at which emotive stories are constructed and developed sometimes with very significant roles in developing campaigns for strengthening laws or more often, punishments for offences. In Aotearoa this has been evident in substantive changes in the criminal law following high-profile murders (Monod de Froideville, 2016)²³. The mainstream media therefore can, and has, directly contributed to the development of legal criminalisation by having a key role in constructing the narrative around events. The discussions about news and crime news emphasise the discretionary nature of what is eventually packaged as news and consumed by the public. It is critical to use this frame of reference when considering the mainstream media's role in the Raids as outlined in Chapter Four particularly when considering The Terrorism Files article. The next section considers labelling and 'othering' which is a

²³ For example, Sophie Elliot's murder in 2009, and her former boyfriend's unsuccessful use of the defence of provocation which ultimately led to the repeal of the defence in December 2009 (Monod de Froideville, 2016).

dominant feature of the mainstream media's role in socio-cultural criminalisation and which will be highlighted in Chapter Four.

Labelling, 'Othering', and Criminalisation

The theories which underline criminalisation focus on processes of labelling and 'othering', and the flow-on effects of these such as marginalisation. All of these phenomena are interconnected and together they comprise the foundations of criminalisation.

Labelling is critical to the processes of legal and socio-cultural criminalisation. Some of the earliest social thinking about labelling can be seen in Tannenbaum's (1938) work. Tannenbaum (1938, p. 19) described tagging (modern labelling theory emerged in the 1960s with Becker's work, see below) as the idea that "how society defines an individual or group not only defines how *that* individual or group behaves or engages with society, but also defines what they internalise as their own identity". Tannenbaum (1938, p. 17) used young people and their participation in gangs as his example of this process. Firstly, they engage in conduct which is fine from their groups' perspective but conflicts with society's norms in some way - he describes this as a "divergence of values" where the community reacts and "wants suppression". Initially, society labels the conduct itself as bad/wrong but over time this transitions to society's assessment that the *individual* who did the act is bad/wrong. Tannenbaum (1938, p. 17) describes this as "a transition in the community's point of view" which then leads to a change in the "individuals' point of view" and their self-identification with the label society has assigned them. They become trapped with the bad label - good conduct is simply not believed, so they adopt the bad label (Tannenbaum, 1938, pp. 17, 18). Tannenbaum (1938, p. 19-20) then said (using a thief as an example) that "his entire world is suddenly different and will remain different for the rest of his life" and most tellingly, "The person *becomes* the thing he is described as being."

The labelling perspective was developed by Becker in his work *Outsiders* in 1963. Becker critically analysed modern society by describing its hierarchal nature and highlighting power disparities between different social actors. He rejected notions of an equal social order, or natural justice

system, and emphasised that certain groups, higher up the social hierarchy, had the power to construct the law/rules which everyone is subject to, and to rigidly enforce them. Becker (1963) (like Tannenbaum, 1938), used the example of behaviour that in one context would be an integral part of a group's sub-culture, yet in another would be vilified. For both Tannenbaum (1938) and Becker (1963) social and political contexts were more important than the original conduct.

Becker's (1963) most important conclusion however, was that deviance is *not* the initial action or behaviour rather it is the process of applying labels of deviancy and constructing an 'outsider's identity'. Finally, Becker (1963) (like Tannenbaum, 1938) reflected on what happens *after* a deviant label has been assigned and found that a deviancy label can exacerbate original conduct and acts as a form of circular self-fulfillment.

In addition to labelling, 'othering' - which effectively occurs with labelling - captures the process of defining individuals and groups as outsiders which is also a key aspect of criminalisation. Othering occurs through binaries, for example us/them, which then contributes to the social construction of a powerful/powerless binary which has significant societal consequences. The other is a social construct which reaffirms the dominance of in-groups and creates fear and hostility towards those who have been labelled in that way (De Beauvoir, 1972). When De Beauvoir (1972) analysed the 'Other' she found that powerful groups define, create, and regulate others through political and ideological constructions. They use these to label others as a risk to *our streets, our communities, and our sovereign territories*.

Othering can be applied in a range of ways including treating the othered subject like they do not exist, or marginalising them through state mechanisms (Scraton, 2007). Othered individuals or groups also experience materially different treatment from those who uphold societal norms within legal criminalisation processes (for example, police, prosecutors, lawyers, judges) (Scraton, 2007). The impact of othering depends on a number of factors including who assigns the label and how that process happens (Hill & Scraton, 1981, as cited in Scraton, 2004). 'Othering' is highly prejudicial and 'effective' in many contexts. The mainstream media often has a central role in the most negative construction of others and in constructing binaries which

dehumanise through isolating individuals or groups (Jamieson & McEvoy, 2005, as cited in Gledhill, 2013). 'Othering' can result from sensationalism which the media deploy for financial gain (Young, 2007).

Historically victims of 'othering' have included people who have been labelled in a wide variety of ways but who have all been categorised as threatening social norms and decent society. Each identifying label has been used to 'justify' serious human rights abuses (Young, 2007; Sluka, 2010). The clearest example of this is the modern states' use of the label 'terrorist' and the subsequent use of people's status as other to justify repressive counter-terrorism measures. This results in the act of labelling becoming, in and of itself, an act of state terror, as was evident in the Terror Raids (Sluka, 2010).

This section has emphasised that criminalisation is intensified with labelling and othering and that these phenomena are about society demarcating individuals or groups as outsiders. This demarcation is so aggressive that the labelled potentially internalise labels like outsider and criminal which have been assigned to them. These phenomena in-action emphasise that criminalisation processes are longstanding, extensive, and powerful, which is highlighted in the extensive use of labelling during the Raids as detailed in Chapter Four.

Conclusion

Criminalisation is a process of power and control - power in the act of conduct being labelled as crime by those higher up in the social hierarchy, and both power, and control, being exercised in the processes that follow as a result of that label. Criminalisation works through legal proceedings and court processes but also through the use of labelling and 'othering' and processes in the social world. As criminalisation takes effect in the social world it is greatly affected by the contexts in which it takes place and this results in differential application – some people disproportionately experience criminalisation as strongly shown by Māori experiences of colonial criminalisation for example.

As identified earlier there are many layers of criminalisation which thread throughout this thesis - the next chapter will trace both the origins of colonial criminalisation and highlight the degree of inconsistent approaches to criminalisation throughout Aotearoa's history. It will build on the knowledge about criminalisation and consider the phenomenon in the context of the history of activism, and colonisation, in Aotearoa. Crucially it looks at two turning points of criminalising activism in Aotearoa - Parihaka and the Springbok Tour. The chapter lays the foundations for detailed analysis of the criminalisation processes in the Raids in Chapter Four which will continue the thread of criminalisation and highlight intense criminalisation and 'blanket criminalisation', as well as examples of intersections of criminalisation and conflict.

Chapter Three - Activism

This chapter develops the concept of criminalisation by analysing it in the context of activism in Aotearoa. It has a particular focus on legal criminalisation because there are very clear examples of this in each event. The chapter begins with an analysis of colonisation, activism, and criminalisation in historic Aotearoa. All of these phenomena are interconnected. Colonisation has led to activism, and this activism and challenge to the state has often been responded to through criminalisation. This chapter outlines what is argued to be the first *turning point* at which criminalising activism shifted gear in Aotearoa: Parihaka in 1881. The state violence²⁴ and intense criminalisation used by state agents at Parihaka is outlined and contrasted with the peaceful resistance of Māori. This is followed by an analysis of modern green activism in Aotearoa and then, modern Māori activism. What both types of activism highlight is the state's contradictory approaches to criminalising activism before the Raids as well as highlighting that the specific label of terrorism has not been used historically in response to activism which challenges the state in Aotearoa. Finally, the chapter concludes with an analysis of the Springbok Tour (the Tour) of 1981 which is argued is the second *turning point* at which criminalising activism in Aotearoa changed in nature. Overall, this chapter argues that historically the state of Aotearoa has had a contradictory approach to the criminalisation of activists and that at various times activists have been treated as though they are no threat whereas at other times activists have been defined as a significant threat

Colonisation, Activism, and Criminalisation

Between 1280 and 1300 AD, Māori settled in Aotearoa as tangata whenua and lived interconnected with Aotearoa's environment from that time on (Liu, Wilson, McClure & Higgins, 1999; Whaanga & Wehi, 2017). After Lieutenant James Cook 'discovered' Aotearoa in 1769, Aotearoa's make-up changed significantly with rapid colonisation primarily, though not

²⁴ Torres (2018, p. 398) defines state violence as "The use of force and/or other intimidation practices by state agents and state institutions typically for the purposes of state building" and this definition is adopted for this research.

exclusively, from Britain. The British colonisation of Aotearoa was founded on an idealised concept of making Aotearoa a 'Better Britain' or 'the Britain of the South Pacific' (Pratt, 1995; 2006). 'Better Britain' would have more opportunities, but its core tenets included entrenched characteristics of British society such as: racialism; homogeneity; patriarchy; pastoralism; capitalism; and land commodification. Aotearoa was to become *another* Britain (Pratt 1995; 2006).

Colonisation impacted all ways of human life, and caused significant environmental harm, particularly through the rapid appropriation and exploitation of Māori land (Belich, 2001). Both the Māori and colonial periods of settlement devastated Aotearoa's environment and were significant contributory factors to extensive losses of endemic species of flora, fauna, and birds (Brooking & Pawson, 2002; King, 2003). The period of English colonisation was also characterised by significant decline in the number of tangata whenua (Orange, 1987; Hill, 2012).

The colonisation of Aotearoa was solidified in two main ways in the nineteenth century. The first was in the construction of a national identity. The colonist's desire to be *better* than Britain manifested in objectives of equality, racial harmony, and the lessening of distinctions of social class and projecting these images as a national identity (Clayton, 2014). They were also reflected in a growing awareness of the environment which was a notable, distinguishing characteristic of Aotearoa (Brooking & Pawson, 2002). However, this national identity was not reflected in the *actual* construction of society. Instead rigidly-enforced social conformity developed with an over-emphasis on the values of the colonisers and maintaining the 'status quo' (Pratt, 1995; 2006).

The second was in the enactment of the Treaty of Waitangi/Te Tiriti o Waitangi in 1840 (the Treaty). The impetus for the Treaty was that Britain wanted sovereignty over Aotearoa (Orange, 1987). In the Treaty's English version the Crown obtained tino rangatiratanga over Aotearoa and consequently title over the country's land and resources (Orange, 1987; Brooking & Pawson, 2002). This is in stark contrast to the Treaty's Māori version in which tangata whenua only ceded

kāwanatanga²⁵. The Treaty was drafted, signed²⁶, and enacted, in a context in which tangata whenua were being legally, socio-culturally, and physically dominated by the state and state agents like the police and military (Orange, 1987; Wishart, 2012). The Treaty has been described as the “most contentious and problematic ingredient in Aotearoa’s national life” and non-compliance with its terms has played a critical role in the development of historic activism in Aotearoa (King, 2003, p. 157).

The state’s non-compliance with the Treaty led to the increasing alienation of Māori from their whenua and identities (Walker, 1984; Hill, 2012). In response, many of the strongest historical expressions of activism were Māori who opposed the repressive consequences of colonisation. Their activism was focused on indigeneity and survival²⁷ but also had flow-on effects on the environment because a lot of the activism was centred around land and other taonga. Two examples highlight the importance of historic activism in Aotearoa and the state’s contradictory approaches to it.

The first was the act of *not* signing the Treaty in spite of the significant pressure to do so (King, 2003). Many iwi, including Tūhoe, refused to sign the Treaty and consequently did not acknowledge it as having any relevance to them (Orange, 1987). The Crown’s response to non-signatories was severe - it seized iwi whenua by claiming it was vacant and ungoverned (Brookfield as cited in Saunders, 2005; Mills, 2009). The confiscation of Māori land was a serious form of state violence and threatened Māori survival through physical and cultural alienation. The second example was when Hōne Wiremu Heke Pōkai (Heke) (Ngāpuhi iwi) cut down the

²⁵ Sovereignty is ceded in Article One of the English version of the Treaty whereas governance is ceded in the Māori version. This distinction is significant as kāwanatanga meant that Māori would retain authority over their own interests (Orange, 2012 as cited in Te Ara – the Encyclopedia of New Zealand, 2018).

²⁶ The Treaty was signed by between 530 and 540 rangatiratanga at around 50 locations throughout Aotearoa between 6 February and September 1840 (Walker, 1984; Orange, 1987).

²⁷ Colonisation and its flow-on effects like material alteration of Māori day-to-day life, declining access to resources, and exposure to disease led to significant population decline. Between 1857/1858 and 1896 the population declined from 56,049 to 42,113 and there was a widespread belief that Māori would become extinct (King, 2003, p. 224).

British flagpole three times at Kororāreka (Russell) in 1844 and early 1845 (King, 2003). Although he was initially strongly opposed to the Treaty, Heke became the first rangatira to sign it. However, he regretted it immediately and became the first signatory to challenge British non-compliance with the Treaty's terms (King, 2003). His opposition was also evident when he attacked the British with Te Ruki Kawiti (Ngāti Hine iwi) on 10 March 1845 (King, 2003). In spite of these actions ultimately leading to a significant battle between Ngāpuhi and the Crown (the Northern War), Heke was not punished - in marked contrast to the treatment of Treaty non-signatories.

The state's non-compliance with the Treaty and Māori resistance as above, also ultimately led to what is defined in this thesis as the imposition of 'colonial criminalisation'. The foundation of criminalisation in Aotearoa is important because of its role in the establishment of what would become colonial society. Cunneen (2011b, p. 317) described criminalisation in Aotearoa as having been a "key part of the building of the nation through processes of othering and exclusion – of keeping out the moral unworthy who lack commitment to the social contract". This thesis argues that this 'othering' was facilitated by the colonial legal system and particularly by colonial criminalisation.

Colonial criminalisation, as discussed in the previous chapter, is defined as the use of criminalisation to subjugate indigenous peoples, in a context of colonisation and the repression of first peoples. There are many examples, covering a vast range of conduct in historic Aotearoa, of laws being created and then used to control Māori, for example, in regards to alcohol consumption, education, and dog ownership (Bull, 2004). Criminalisation was critical to the state's repression of Māori and in its virulent opposition to Mana Māori Motuhake and to those who opposed the state's actions (Bull, 2004; Cunneen, 2011b).

At the same time the Treaty was being signed and the transfer of British legal systems was being organised, a formal colonial police force was being established (Jackson, 1988). Police first began working in Aotearoa after Governor Hobson escorted six constables to the country in 1840. Six

years later police were armed with weapons and remained part-police, part-militia, for almost 50 more years (Jackson, 1988). Jackson (1988, p. 117) described the police as being:

... more than the most visible and accessible symbol of the authority of the state: They are also the protectors of its image, and through their policies, the guardians of its values and attitudes.

As time passed the police's mandate to deliver what the state wanted continued to be strengthened by laws which supported social conformity, the destruction of indigenous society, and the silencing of 'othered' voices (Jackson, 1988). At the same time the police were developing as an organisation of legal enforcement the colonial legal system was being established as another form of social control.

In 1841 courts began to be established around Aotearoa, refuting the existence of a Māori legal system, and beginning formal legal processes of control of Māori and 'others' through the imposition of British law. While the Māori legal system had been based on the restoration of society's balance and focused on the rights and responsibilities of the collective, the colonial legal system focused on restricting freedoms, punitiveness, and individual culpability (Pratt, 1995). As part of this system the state enacted racially-biased, oppressive laws which legalised the coloniser's position and marginalised Māori. For example, in 1863, the Crown enacted the Suppression of Rebellion Act²⁸ (Bull, 2004, p. 507), which resulted in:

any people fighting in defence of their lands being defined as being in rebellion against the Crown – a felonious act. The Act suspended the right to fair trial before imprisonment, and threatened death or prison to anyone brought before the courts.

The practical effect was that Māori were labelled traitors if they did not acquiesce to the Crown's position and suffered severe consequences if they tried to retain their land. O'Neillsen and Robyn

²⁸ The similarities between the Act and the Terrorism Suppression Act have been highlighted by a number of sources (for example, Cupples & Glynn, 2017).

(2003) noted that laws were written which allowed resources to be taken from Māori, facilitated the control of Māori, and which were focused on the pursuit of British ownership of the entire country (King, 2003). The colonial legal system had been enacted to enforce structure in society through compliance. It also gave the Crown options for oppressing non-compliant members of the population which was reflected in the Crown's subsequent extensive use of criminalisation against Māori.

Parihaka: The First Turning Point in Criminalising Activism

The state's use of legal criminalisation and violence against Māori and 'others' was undertaken to quash dissent and oppress people who opposed the 'status quo'. Significant state violence in response to peaceful dissent culminated in one of the most shameful days in Aotearoa's history - the devastation of Parihaka, in South Taranaki. This event became a first *turning point* in criminalising activism in Aotearoa, and a powerful example of peace activism in spite of the most severe state violence in Aotearoa's history.

Parihaka was founded by Erueti Te Whiti-o-Rongomai (Te Whiti-o-Rongomai) and Tohu Kākahi (Kākahi) in 1869 (Scott, 1975). The settlement was founded on peaceful principles which advocated the use of passive resistance to retain whenua and offered a sanctuary from the land wars in central Taranaki (Saunders, 2005). From 1879 the state sought to sell land at Parihaka and attempted to survey it. The community responded by sending ploughers to dig-up the survey pegs, lines, and fences (Bull, 2004). Armed constabulary arrested the ploughers and in the two years that followed the state detained peaceful activists without trial, passed a law which made it legal to detain the ploughers indefinitely, and arrested fencers (who were building fences to protect crops) (Bull, 2004). In spite of arresting every able-bodied man in Parihaka the criminalisation which had begun with the Suppression of Rebellion Act escalated with the passage of the West Coast Settlement (North Island) Act on 1 September 1880. This Act meant that "any Māori could be arrested in Taranaki without warrant on suspicion of fencing or ploughing, and jailed for two years with hard labour, with release only possible after payment of

a surety set by the court” (Bull, 2004, p. 508). Criminalisation here was about the total destruction of Parihaka and all that it stood for.

On 5 November 1881 the state ordered the arrests of Te Whiti-o-Rongomai and Kākahi (Walker, 1984). The police-led Parihaka expeditionary force - comprised of five companies of armed constabularies and 1000 volunteers - forcibly relocated 1500 people, destroyed the settlement, looted, raped women, indiscriminately arrested men, and arrested Te Whiti-o-Rongomai and Kākahi who were detained without charge for 16 months (Walker, 1984; Saunders, 2005). In a final act of state violence an indemnity bill was passed to accompany the 1880 Act which stated that “crimes against the person or property were no longer crimes if committed by volunteers or constabulary, provided the victims were Māori” (Bull, 2004, p. 509). This violence shows us that historically the state in Aotearoa was prepared to use all means available to it to completely destroy any type of activism and any form of challenge to the state’s position²⁹. This is the nature of colonial criminalisation – the subjugation of indigenous people through the state’s use of criminalisation, in the repressive context of colonisation.

Parihaka was a critical *turning point* in the criminalising of activism because it was here that the state systematically and intentionally ‘othered’ peaceful groups of Maori so that it could ‘legitimately’ confiscate land. Here, laws were changed so that the state could act with violence to enact colonisation. Parihaka also highlighted that despite the significant trauma inflicted by the state and its agents, those criminalised can and do resist. After Parihaka Māori continued to fight back against the Crown which laid the foundations for modern Māori activism that directly challenged the harmful effects of colonisation. Historic criminalisation in Aotearoa emphasised the power of the state and the level of suppression that a colonial settler state can impose through its agents and systems. In contrast, historic activism emphasised acts of resistance in

²⁹ The state took 136 years to formally apologise to Parihaka and provide a reconciliation package. This included a Deed of Reconciliation and nine million dollars to contribute to Parihaka’s development (Addis, 2017).

spite of the significant effects of criminalisation. These features persist into the contemporary context as outlined below.

Green Activism and Criminalisation in Modern Aotearoa

As discussed earlier, the environment is an integral part of Aotearoa's national identity. That being so, the state should seemingly have a benign approach to green activism and criminalisation, and it has at times. On other occasions however, it has had a very contradictory, aggressive approach. These contradictory approaches to criminalisation might be partially attributable to conflicts between different state agents, like the police and legal officials (for example Judges), which emphasise the state's lack of homogeneity.

Aotearoa's modern environmental movement began in the 1960s in response to major social changes globally and growing concern for the environment, and also emerged in a context in which colonisation had caused significant environmental harm as discussed earlier (Brooking & Pawson, 2002; O'Brien, 2017a). Modern green activism in Aotearoa has covered a diverse range of issues including: opposition to hydropower schemes; native forest logging; oil and gas exploration; genetic engineering; mining; and nuclear power (O'Brien, 2017a).

During the mid-1970s to early 1980s much of the green activism in Aotearoa was in opposition to large-scale, state sponsored developments which commodified nature for profit and were favoured by the conservative National government (O'Brien, 2017a). O'Brien (2017a, p. 267) found that "'Kiwi' environmental activism is shaped by the political context and oppositional structures that result." O'Brien (2017a) noted that green activism has risen in prominence in Aotearoa when the conservative National party has been in government, although it has still taken place when Labour governments have been in power.

Most environmental historians describe the modern Manapouri movement as the start of national-scale green activism in Aotearoa³⁰ (Wilson, 1982; Pawson & Brooking, 2002). The Manapouri movement, from the 1960s on, is significant because of the sheer number of members of the public who were involved and also because of the absence of criminalisation of the activists (Stitt & Williamson, 1980). This research has found no record of criminalisation of any activists involved in the Save the Manapouri campaign in spite of the number of people involved and the range of different forms of activism which were used in the campaign.

The modern Save the Manapouri campaign arose in response to the National government's determination to materially alter the make-up of Lake Manapouri, in Fiordland, so that Aotearoa's hydroelectric power supply could be increased. The Government wanted to raise the lake by eight and a half metres (Wilson, 1982; Whittle, 2013). There was widespread opposition to the proposal because it would cause significant environmental harm including flooding 17 of Lake Manapouri's wooded islands and destroying flora and fauna along 170 kilometres of shoreline (Warne, 1997). Opposition to these plans culminated in the 'Save Lake Manapouri' petition which was signed by almost 265,000 people, and was presented to the government in March 1970 (Stitt & Williamson, 1980; Pawson & Brooking, 2002). Ultimately, decades of activism were successful as the lake gained legal protection in 1973 and was never raised (Pawson & Brooking, 2002; O'Brien, 2015). The Manapouri movement remains Aotearoa's most popular environmental movement because of its high level of support over a lengthy period. It also created a powerful precedent which showed that the state's environmental decisions could be challenged and defeated through people power and green activism (Wilson, 1982; Downes, 2000).

Another example of the absence of criminalisation and green activism's strength in Aotearoa relates to opposition to mining on conservation land. At the beginning of May 2010, 50,000 people marched through central Auckland to oppose the state's decision to open over 7000

³⁰ The government first proposed altering the lake for commercial purposes in 1903 (Wilson, 1982).

hectares of conservation land and marine reserves for mining. In spite of a 40 year gap this activism was responded to like Manapouri with an absence of criminalisation and no arrests were made at the protests (“Huge protest says no to mining on conservation land”, 2010). They ultimately led to a complete back-down from the National government and the maintenance of these lands and reserves protected status (“Huge protest says no to mining on conservation land”, 2010; O’Brien, 2012).

Lower level criminalisation has sometimes taken place in cases where there has been an inconsistent approach to criminalisation from different state agents. This has occurred in some legal proceedings where green activists have experienced relatively lenient treatment within the criminal justice system. An example of this is the treatment of activists from Native Forest Action (NFA) in the late 1990s. In 1998 two NFA protestors were discharged without conviction for trespass on Timberlands West Coast Limited (TWCL – a state owned enterprise) property with the Judge making a point of mentioning the “noble tradition of protesting” during the sentencing (“Logging Protestors Legally Guilty, Morally Correct,” 2000). In February 1999, two more NFA activists were arrested after locking themselves onto a TWCL helicopter to prevent rimu logging (“Logging Protestors Legally Guilty, Morally Correct”, 2000). They were convicted and discharged on charges of unlawful interference with a helicopter and illegally getting in an aircraft and the Judge dismissed the prosecution’s application for \$6000 reparation (“Logging Protestors Legally Guilty, Morally Correct”, 2000). The same approach may be applied in the Anadarko (Anadarko amendment to the Crown Minerals Act) case which is currently before the courts and will be determined on 24 September 2018. Two activists from Greenpeace, Russell Norman and Sara Howell, have applied for a discharge without conviction after pleading guilty to obstructing the oil survey ship, the Amazon Warrior, in a protest in April 2017³¹. Their lawyer argued that convicting the pair will contribute to the silencing of legitimate dissent on environmental issues

³¹ On 3 August 2018 three other Greenpeace affiliated activists were convicted and fined \$750 for boarding the ship, the Mermaid Searcher, which was collecting supplies for the Amazon Warrior, on 31 January 2018. Two other activists accepted diversion (Coster, 2018).

in Aotearoa (Bradley, 2018). Originally Norman, Howell and a third activist, Gavin Mulvay, had been offered diversion³². Mulvay accepted diversion but the offer was revoked for Norman and Howell after they initially pleaded not guilty (Sharpe, 2018).

These type of responses to green activism are in marked contrast to the intense criminalisation and state violence other green activists have experienced. Experiences of criminalisation for some green activists have involved state violence and/or the police attempting to rigorously enforce laws which punish alternative viewpoints, particularly from those who are perceived to be a threat to capitalism (Diprose, Bond, Thomas, Barth & Urquhart, 2017). Recent examples of this type of criminalisation include the police's aggressive responses towards activists opposing oil exploration in Taranaki in 2011. What was described as a 'heavy police presence' stopped five Greenpeace activists from boarding oil exploration ship Polarcus Alima, police issued the activists with trespass notices and then 'chased them away from the ship' (Maetzig & Keith, 2011; Diprose et al., 2017). Another example is climate activist group 350 Aotearoa's peaceful activism outside three branches of ANZ bank in Dunedin in 2016 (Edens, 2016; Diprose, Thomas & Bond, 2016). While the police aggressively handled the activists and the mainstream media portrayed them negatively, this contrasted with an absence of arrests or trespasses because ANZ declined to do so (Edens, 2016). This also took place in a global capitalist context in which the label of terrorism has been applied to climate change activists.

The most aggressive recent approaches towards green activists have been seen in the nature of policing, use of forcible arrests, and numerous lengthy court proceedings against peace activists opposing weapons conferences around Aotearoa. For example, in Wellington in November 2015, 27 peace activists were arrested at the New Zealand Defence Industry Association (NZDIA) Weapons Conference for obstruction and trespass. 16 were prosecuted and all charges were subsequently dismissed in a Judge-alone trial in February 2017, with police later ordered to pay

³² Diversion is a police discretionary scheme where a defendant is not convicted if they complete the terms of diversion, and accept they are guilty of the offence they are charged with.

over \$3000 court costs to the activists (Irwin, 2017; “Protestors win case against police”, 2017). These examples highlight the state’s contradictory approaches to criminalising modern green activism and emphasise the significant variation in state responses. The state’s approaches to modern Māori activism, the subject of the next section, also vary significantly.

Māori Activism and Criminalisation in Modern Aotearoa

Like modern green activism, the states’ approaches to modern Māori activism are contradictory, and range from an absence of criminalisation, to intense criminalisation and state violence. However, it is particularly important to analyse this in the context of the ongoing and significantly negative effects of colonisation. Ongoing colonial criminalisation is partially responsible for at least 50 percent of the male prison population and 60 percent of the female prison population identifying as Māori at any one time (Cunneen & Tauri, 2016; Gilbert, 2016). This overrepresentation represents a fundamental and sustained devastation of the Māori population with serious long-term socio-cultural consequences (Taylor, 2012).

The range of criminalisation of modern Māori activism has included the absence of criminalisation. For example, this research has found no evidence of criminalisation of any of the activists involved in the hīkoi in the Māori Land March/Te Matakite o Aotearoa in 1975³³. During the hīkoi between 30,000 and 40,000 people (predominantly Māori) travelled 1000 kilometres and visited 25 marae over the course of a month (Belich, 2001; Harris, 2004). The hīkoi was founded on a goal of stopping the ongoing alienation of whenua³⁴ and the ongoing devastation of Māori identity (King, 2003; Harris, 2004). Hill (2009, p. 169) described the hīkoi as a “reassertion of autonomist Māori demands and aspirations at a time when the political and social

³³ However this can be contrasted with the criminalisation which occurred after the Land March when a group of activists set up tents on Parliament grounds at what would become known as the ‘Tent Embassy’. This was done to protest the lack of assurances from any of the political parties that land alienation would be stopped (“Tent Embassy continued”, 1977). 36 people from the Embassy were arrested on Christmas Eve 1975 and charged with wilful trespass (“Tent Embassy continued”, 1977).

³⁴ The March’s slogan was “Not one more acre” (Barber, 1994; Hill, 2012).

climate was becoming more receptive to them” and when the hīkoi reached Parliament Dame Whina Cooper presented a Memorial of Rights (signed by 60,000 people) calling for a halt to the alienation of Māori land (Harris, 2004; Fox, 2012). As further evidence of the state’s inconsistent approach to criminalisation on this occasion the police had agreed to protect protestors from ‘molestation’ by the public if necessary (Archives New Zealand, 1975). The Land March began a conscious movement of progress for Māori which was solidified three days after they arrived at Parliament when the Treaty of Waitangi Act 1975 was passed setting up a government funded tribunal to investigate modern land grievances³⁵ (King, 2003; Bates, 2014).

The state’s conduct during the Land March can be contrasted with the intense criminalisation and state violence which was used against Māori activists at Bastion Point (Toka-purewha), Auckland, particularly at the first occupation in 1977/1978 (Walker, 1984; Mills, 2009). This was another significant example of indigenous activism which was focused on the alienation of Māori land (Grieve, Hawke & Morrison, 1999). Ngāti Whātua sought the return of 12 hectares of iwi whenua in Orakei, Auckland and the land was peacefully occupied for 506 days on this basis (Walker, 1984; Harris, 2004). On the 507th day the police and members of the army forcefully evicted the peaceful activists and arrested 222 people (Belich, 2001; Harris, 2004). All of the activists were prosecuted for trespass at the insistence of then Prime Minister Robert Muldoon (Manson, 2016). One hundred and eleven activists were arrested at a subsequent occupation in 1982.

Walker (1984) highlighted the significant parallels in force between Bastion Point and Parihaka though ultimately, the occupations of Bastion Point were successful. They resulted in the Waitangi Tribunal upholding Ngāti Whātua’s grievances against the Crown in 1987 and their whenua was eventually returned along with compensation³⁶ (Grieve et al., 1999; Harris, 2017). The state’s ongoing contradictory approaches to modern Māori activism have been highlighted

³⁵ The tribunal’s jurisdiction was expanded to cover historical grievances in 1985 (King, 2003; Bates, 2014).

³⁶ This cancelled an unjust settlement which the state made after the first occupation (Grieve et al., 1999).

by these examples which also emphasise the ongoing effects of colonisation, and led to the activism opposing racism in the Springbok Tour of 1981.

The Springbok Tour: The Second Turning Point in Criminalising Activism

The protests against a series of Rugby Union matches between the South African national team (the Springboks) and the national team of Aotearoa (the All Blacks), in Aotearoa in 1981, are a second *turning point* in Aotearoa's history of criminalising activism. Like at Parihaka, activism would be stamped down on in new, intensified, ways. Part of this shift had to do with the nature of the activism itself. This event was the first time such a broad spectrum of the public - Māori and Tauīwi – had engaged in national-scale activism. A significant number of protestors were members of the public who had never experienced state repression, and the civil violence was described as the worst to have taken place in Aotearoa since the Depression in 1932, with comparisons drawn to Parihaka and Bastion Point (Walker, 1984; Belich, 2001). The Tour was talked about as a defining point in the criminalisation of activism - particularly the police's use of severe violence against peaceful protestors - by most of the activists interviewed for this thesis.

Opposition to Aotearoa playing rugby matches against apartheid South Africa began in the 1960s. The activism that took place throughout subsequent decades exhibited similarities to other long-term activist campaigns like Save Manapouri. It was activism that was active, well-organised, and well-supported (Mita, 1983). It included opposition to the exclusion of Māori players in the Tour against South Africa in 1960 with a petition entitled - No Māoris, No Tour (signed by 60,000 people), the Springbok Tour of 1973 being cancelled because of the exclusion of Māori players, and widespread opposition to a rugby tour in 1976 which nevertheless proceeded (King, 2003; Harris, 2004).

The opposition to the Tour in 1981 began the moment the Springboks arrived in Aotearoa with the Auckland airport runway (where they had landed) and Wellington airport runway simultaneously breached by protestors (Yska, 2011). Anti-tour activism peaked that year with 56 days of protests (Mita, 1983; Yska, 2011). The opposition to the Tour was huge - 205

demonstrations took place in 28 locations involving over 150,000 New Zealanders³⁷ (Yska, 2011). King (2003, p. 488) described the widespread opposition to the Tour as having “wrought unprecedented disruption on Aotearoa” with an incredible divide between those who wanted to watch rugby and let the Tour proceed and those who were vehemently opposed to it due to the racism and violence in apartheid South Africa (Mita, 1983).

The level of severe state violence used against anti-tour activists forced an assessment of national identity in a way that had never previously happened (Mita, 1983; Yska, 2011). The police, assisted by the military, repeatedly used serious violence against the activists to ensure that the rugby went ahead (Mita, 1983). Three protestors dressed in clown suits were almost clubbed to death by police in Auckland, and the police assaulted anti-tour protestors at *every* rugby game the Springboks played using batons, shields, and physical force (Mita, 1983; Harris, 2004). In contrast, the protestors only used force to defend themselves (Mita, 1983).

Intense legal criminalisation was also a key feature of the state’s response to anti-tour activism and over the course of the Tour 2000 people were arrested - 700 of whom were women (Mita, 1983). They were arrested for a variety of offences including: disorderly behaviour; obstructing carriageways; wilful damage; trespass; unlawful assembly; and rioting (Chapple, 2013; Consedine, 2014). At the last game at Eden Park, Auckland, more than 200 people were arrested in an incredibly violent exchange which even the police labelled a riot³⁸ (Yska, 2011; Chapple 2013). While the anti-tour activism did not result in the Tour being cancelled or stopped, it had a number of positive outcomes for Aotearoa including: increased dialogue about racism and the marginalisation of Māori; the election of a more liberal left-wing government in 1984; and much broader awareness of the state and state agent’s conduct (New Zealand Labour, 2018).

³⁷ Aotearoa’s population was under three and a half million people at that time (New Zealand History, 2018).

³⁸ Many people were pro-Tour and wanted the rugby to be played. A lot of people who had a pro-Tour viewpoint were involved in their own forms of protest and ‘battles’ with anti-Tour activists (Mita, 1983).

The Springbok Tour of 1981 was also a critical *turning point* for criminalising activism because it highlighted the combined resilience of Māori and Tauīwi activism despite the significant impacts of intense criminalisation and state violence. After the Springbok Tour activists continued to fight-back against the state and continued the momentum of challenging ‘the status quo’. Modern criminalisation of activism in Aotearoa highlights the state’s power and the suppression which state agents can impose, as well as ongoing resistance despite criminalisation’s severe effects.

Conclusion

This chapter has identified Aotearoa as a colonial state and importantly, highlighted that the criminalisation of activism cannot be separated from the country’s history of colonisation. This history continues to have significant flow-on effects which continue today, and has materially affected all expressions of activism in Aotearoa, particularly in relation to whenua. The chapter has also established that an analysis of activism, and criminalisation in Aotearoa, cannot take place without fully analysing the social and cultural contexts in which these phenomena occur.

The two turning points of activism discussed here, Parihaka and the Springbok Tour, have both emphasised the complex relationships between activism, criminalisation, and the state in Aotearoa. Both were sites of intense criminalisation and state violence, both involved different state agents, and both were resisted peacefully despite what activists and members of the public were confronted with. They are both important precursors to an analysis of the Terror Raids in the next chapter because they each mark a shift in the shape and intensity of criminalisation, and also highlight that resistance continues irrespective of barriers which are faced. The chapter has also shown that Aotearoa’s history of criminalising activism has been complex with contradictory approaches across various episodes. The state and its agents have only used intense criminalisation and state violence in circumstances in which the state has an interest it is intent on pursuing. In Parihaka, that interest was the acquisition of Māori land. In the Springbok Tour, that interest was to host the South African national rugby union team which necessarily involved ‘turning a blind eye’ to racial apartheid.

The next chapter builds on this trajectory of criminalising activism in Aotearoa with a detailed exploration of the criminalisation which took place in the Terror Raids. The Raids are a third *turning point* in Aotearoa's activist history and represent a significant step in criminalising activism. During the Raids contradictory approaches to criminalisation were replaced by intense criminalisation, whereby each activist was systematically subjected to the same practices, regardless of the fact that they were not of the same group nor fighting against the same issue. The next chapter establishes that the use of the label of terrorism was fundamental in achieving this new approach to criminalising activism, with serious consequences for those activists involved.

Chapter Four - The Terror Raids

As the introduction of this thesis outlined, 15 October 2007 is a day that is indelibly etched into Aotearoa's history. This chapter builds on the previous overview by focusing on the intense criminalisation which took place on the day of the Raids and in the years that followed. The chapter begins with an analysis of the practices of legal criminalisation by focusing on the police, terrorism allegations, and court proceedings, and then progresses to an analysis of socio-cultural criminalisation focusing on the role of the mainstream media, politicians, and police. The chapter progresses to consider the impacts of criminalisation before concluding with examples of resistance to criminalisation in the indigenous media, media partnerships between Māori and Tauīwi, and through the international community and protests.

Overall, this chapter emphasises that the Raids were evidence of another shift in the criminalisation of activism in Aotearoa. Before the Raids there were contradictory approaches to criminalisation across activist groups and issues (as outlined in the previous chapter) but the Raids represented a tangible shift to intense criminalisation of *all* activists irrespective of issue. The labels activists and green activists were replaced by labels of terror. The Raids are, therefore, a third critical *turning point* of criminalising activism in Aotearoa's history. It is also significant that the three *turning points*, that were all sites of intense criminalisation and state violence, all challenged colonial control in some way – this first becomes evident in the legal criminalisation which took place, as described below.

Legal Criminalisation - Years of Court Proceedings

In many circumstances the police are the starting point of legal criminalisation processes and they fulfilled this role in the Raids. The police were the principal state agent³⁹ responsible for initiating the investigation into the activists' conduct in the Raids. They also started the court

³⁹ The military, police, SIS, and GCSB were also likely to have been involved in the investigations into the activists (see Chapter One).

processes beginning with detaining and arresting activists and members of the public as detailed in Chapter One. While they were not the organisation that conducted the prosecution of the activists, as detailed below, they were intimately involved in every aspect of the court proceedings against the activists, including the trial.

Following the arrests two things essentially happened at the same time. The first, as outlined in Chapter One, was that the police confirmed their objective was to prosecute the activists for terrorism (Armstrong, 2007). The state could only proceed with terrorism charges, laid under the Terrorism Suppression Act 2002 (the Act), with the consent of the Attorney-General, then Dr Michael Cullen, who delegated this task to then Solicitor-General David Collins (Keenan, 2008). The second was that the activists were taken straight to court where the Crown⁴⁰ opposed bail, two were granted bail and 16 of the defendants were remanded in custody (“Bail revoked for man accused of declaring war on NZ”, 2007; Barrett, 2007a). Essentially there was very little possibility of bail given the gravity of potential terrorism charges (Morse, 2008).

On 8 November 2007 Collins announced that he was unable to authorise terrorism prosecutions because the Act was so deficient that the material in the case did not meet its threshold (Mutu, 2010; Sluka, 2010). Collins described the Act as ‘incoherent’ and ‘unworkable’ and said that hundreds of pages of intercepted communications relating to the camps were inadmissible (Stephens, 2008 and Sluka, 2010). Collins said that the law was “not created to address domestic terrorist acts” and appeared to express sympathy for the police (“Cablegate: New Zealand’s top Lawyer Throws Out Terror Charges”, 2007; Trevett & Eriksen, 2007). This emphasises that state agents will not necessarily act as a homogenous entity during processes of criminalisation – here for example, Collins’ was legally obligated to critically assess the law to see if terrorism charges could be laid, his role was not to support the police’s position of pursuing the activists’ criminalisation.

⁴⁰ In proceedings of this degree of seriousness the state is represented by the Crown. Each district has a Crown Solicitor who is appointed by warrant of the Governor-General and on recommendation of the Attorney-General (Crown Law, 2018). Ross Burns was the prosecutor acting on behalf of the Crown.

Bail was granted to the remaining defendants soon after Collins confirmed that the state would not be pursuing terrorism charges as this amounted to a material change of circumstances for their bail applications (Morse, 2008; Mutu, 2010). This ultimately meant that green activists like Bailey and Morse spent a month in prison having never done so previously⁴¹ (Morse, 2007b; Morse, 2010).

Even though terrorism charges were not proceeding 17 defendants still faced 291 charges under the Arms Act 1983 and Crimes Act 1961^{42 43} (Wright & King-Jones, 2011; Lines-MacKenzie, 2017). The charges included allegations of unlawful possession of firearms like semiautomatics, sawn-off shotguns, two grenade launchers, sporting rifles, and molotov cocktails (High Court, 2012). The Crown also pursued the remaining lead charge of participation in an organised criminal group forcefully as it had a significantly higher maximum penalty than the other offences.⁴⁴

The activists were almost prevented from having a jury trial when Justice Winkelmann ruled on 9 December 2010 that the case would be heard by a Judge (Savage & Gay, 2012). Justice Winkelmann decided this based on potential prejudice to the defendants' right to a fair trial⁴⁵ (Gay, 2011). This judgment was given in spite of defence opposition and was upheld by the Court of Appeal, however the legal proceedings changed significantly nine months later⁴⁶ ("Urewera raids: Lone Judge to decide case", 2011).

⁴¹ Morse's writing on being imprisoned details the degradation and dehumanisation of this process (for example, Morse, 2016). Bailey had no convictions, Morse had a few minor ones.

⁴² It is common for the State, through the prosecutor, to overcharge followed by substantial informal plea bargaining throughout the case.

⁴³ Rongomai Bailey's case was dismissed at a depositions hearing in October 2008 because of insufficient evidence ("Timeline: Police Raids", 2007).

⁴⁴ The maximum penalty is ten years' imprisonment pursuant to Section 98A(1) of the Crimes Act 1961.

⁴⁵ Justice Winkelmann's reasons were suppressed but one potential reason could have been the estimated length of the trial (12 weeks) (Gay, 2011).

⁴⁶ An appeal to the Supreme Court on the ruling was not resolved after it was decided that a jury trial was feasible with a much smaller number of defendants (Supreme Court, 2011b).

On 6 September 2011 all but five of the defendants were discharged and ‘free to go’ after an extraordinary number of charges were withdrawn. This followed a Supreme Court decision that the police had illegally obtained covert video surveillance in Rūātoki which made a significant amount of their evidence inadmissible (Campbell, 2011; Steward, 2011). However, the Judges also ruled that this evidence was *still* admissible and could be used in the trial of the five remaining defendants – Iti, Bailey, Signer, Kemara, and Lambert. This decision was made on the basis that they were charged with participating in an organised criminal group (unlike the other accused activists). The seriousness of this charge meant that the court decided that the evidential balancing exercise fell in the state’s favour meaning that the police’s illegally obtained evidence could *still* be used against these five defendants (Savage & Gay, 2012; Savage, 2017). All of the activists’ appeals challenging this ruling were dismissed (Savage & Gay, 2012; Savage, 2017). The state’s relentless pursuit of the court case supports the proposition that it perceived the benefits of proceeding as greater than the costs. It also meant that the state continued to assert its dominant position through labelling and ‘othering’ the activists (Armstrong, 2007).

In February and March 2012, four and a half years after their arrests - Iti, Bailey, Kemara and Signer - became the subject of the Terror Raids case in the Auckland High Court; Lambert died before the trial started⁴⁷. It is important to note at this point that Aotearoa’s criminal justice system is adversarial which meant that the court proceedings were an assessment of whether the states’ allegations could be proven beyond reasonable doubt (Lexis Nexis, 2018). This meant that the court was not trying to work out whether the state’s allegations were truthful, and nor was it attempting to resolve underlying issues between the parties (Koppen & Penrod, 2003).

The trial focused on what had taken place at the camps at Rūātoki with Crown prosecutor Ross Burns arguing that Iti was the leader of these terror training camps and that he had created Plan B - a plan to inflict serious violence on the state if Treaty negotiations between Tūhoe and the

⁴⁷ Lambert died in July 2011 while his case was still active before the court so his name was never fully cleared (“Deathbed plea by raids accused”, 2011).

Crown failed (Sojourner, 2013; Thorby, 2012b). Burns described the behaviour as guerilla or urban warfare and focused on the specific elements of the charges (Savage & Gay, 2012). He did concede however, that the Crown was unable to say that the defendants had intended to carry out a *specific* crime but argued that they had a shared objective to carry out some kind of serious violence and that this threatened Aotearoa (Thorby, 2012b). Defence lawyers acknowledged that wānanga existed (organised by Iti) but two of the lawyers argued that they were for learning skills to make the defendants more employable and for bushcraft and survival. All of the lawyers emphasised the preposterousness of the Crown's allegations (Forbes, 2007; Sojourner, 2013). They asked jurors to analyse the conduct at the camps in their historical, social, and cultural contexts and presented unchallenged evidence about indigenous activism and Tūhoe (Thorby, 2012a; Savage & Gay, 2012). While the trial focused on events at Rūātoki the defence were able to acknowledge the presence of green activists in this event in how they presented their case, and they used this to highlight the unlikeliness of the defendants having a shared objective of violence. For example, three defence witnesses testified on behalf of Signer describing him as "passionate about issues of social justice and world affairs" and as "a peacemaker" ("A nation divided: Inside the Urewera Four Trial", 2012).

The defendants all exercised their right to silence during the trial although the mainstream media implied that this suggested they had 'something to hide'⁴⁸ (Anderson, 2012). This was an example of the intersection of legal and socio-cultural criminalisation and its flow-on impact on the activists. Their right to silence was also complicated by the Arms Act charges having a reverse onus which meant that the person who allegedly had possession of a weapon was required to prove that they had it for a legitimate purpose and override a presumption they had it illegally (Thorby, 2012b).

In a five-week trial the jury heard from 44 Crown witnesses, 44 more through written

⁴⁸ For example, when then Police Commissioner Peter Marshall gave a 'measured' apology about police conduct at Rūātoki after the IPCA findings but said of the defendants, "It's up to them – there's no compulsion upon them to give an explanation but I think the time is right" ("NZers want Ureweras explanation – police", 2013).

agreements, and seven defence witnesses (Thorby, 2012a; 2012b). Iti, Kemara, and Bailey were convicted on six charges, Signer was convicted on five after the jury deliberated for 19 hours (Sojourner, 2013). All of the defendants were acquitted of participation in an organised criminal group⁴⁹ and of unlawful possession of firearms at camps in November 2006, April 2007, and August 2007 (High Court, 2012; Savage, 2017). The jury found them guilty of unlawful possession of firearms at what were described by Justice Hansen as military-style camps on Tūhoe whenua in the Urewera Ranges in January 2007, September 2007 and during the termination of the Raids on 15 October 2007. They were also found guilty of possessing molotov cocktails in September 2007 (Court of Appeal, 2012; IPCA, 2013). Iti, Bailey, and Kemara were also found guilty of unlawful possession of firearms at a camp in June 2007 - Signer was acquitted after he proved he was overseas at the time (High Court, 2012).

On 24 May 2012 Iti and Kemara were sentenced to two and a half years' imprisonment as the ringleaders of the offending (High Court, 2012; Fisher, 2017). Justice Hansen concluded that a private militia had been established and stated that, "Whatever the justification, that is a frightening prospect in our society, undermining of our democratic institutions and anathema to our way of life." People who were present at the sentencing stated that Justice Hansen conducted the sentencing as though the activists had been convicted of *terrorism* (High Court, 2012; Sojourner, 2013). Justice Hansen also acknowledged common ground namely, "that your activities were directed to the objective, in a general sense, of redressing Tūhoe grievances and more specifically, to achieve Mana Motuhake or a form of self-government for Tūhoe" (High Court, 2012). Bailey and Signer were sentenced to nine months home detention at Parihaka (Haunui-Thompson, 2017; Savage, 2017). Iti and Kemara were granted parole at their first hearings before the Parole Board after serving nine months in Waikeria and Springhill Prisons respectively.

⁴⁹ These charges (Section 98A of the Crimes Act 1961) were not re-tried after the Crown applied for a stay of proceedings which was granted (Court of Appeal, 2012).

All four defendants unsuccessfully appealed their convictions and sentences to the Court of Appeal (Court of Appeal, 2012). On 23 April 2013 they unsuccessfully applied for leave to appeal to the Supreme Court⁵⁰ (IPCA, 2013). After five and a half years of court proceedings the legal criminalisation reached its protracted end for most of the activists⁵¹. Socio-cultural criminalisation was similarly lengthy, as discussed below.

Socio-Cultural Criminalisation

Socio-cultural criminalisation is an ongoing process and is still experienced by the activists today. This section considers three of the primary means for criminalising activists in this way - through the mainstream media, political figures, and police.

The mainstream media⁵² was one of the key sites of socio-cultural criminalisation in the Raids. The mainstream media were the dominant source of news or crime news about the Raids. The most prominent example of criminalisation at this site was the front-page newspaper article with the headline *The Terrorism Files* (Kitchin, 2007). On 14 November 2007, three newspapers: the *Dominion Post*, *The Press*, and *The Waikato Times*, published material that the police had covertly obtained under this headline (Kitchin, 2007; McCulloch, 2008). The police had recorded hundreds of hours of covert surveillance, and the newspapers used their access to this material to publish quotes, without any type of context, from these bugged conversations (Kitchin, 2007).

The article used language to emphasise that there was a terrorist threat - the main headline was written in red capital letters with a black subheading, 'Get someone to assassinate the Prime Minister, the new one, next year's one. Just been in office five days, bang ... Yeah John Key ... just drop a bomb' (Kitchin, 2007). This was reinforced by another subheading, written in red capital letters - 'What the bugs revealed' - and twelve quotes (Kitchin, 2007). The image of a police

⁵⁰ This is Aotearoa's highest court after the abolition of appeals to the Privy Council.

⁵¹ Signer is liable to deportation, if he commits *any* type of criminal activity, until December 2018 (Utiger, 2013).

⁵² As defined in Chapter one.

officer holding a large gun, dressed all in black, was also used to emphasise the risk of the terrorist other. This was reiterated by the use of framing an us/them, good/bad, citizen/terrorist binary. This was created through the use of language, image, and a photograph of the journalist followed by a subheading in capital letters – ‘We say’ - which was an attempt to explain the newspaper’s decision to publish suppressed information with the newspaper stating it had “not taken lightly the decision to publish material ...” and “We believe we are acting in the public interest” (Kitchin, 2007). The courts had issued suppression orders to prevent publication of most of the material which made up the state’s case with the principal aim of ensuring the activists’ rights to a fair trial (Keenan, 2008). This story highlighted the mainstream media’s disregard of principles like the presumption of innocence, and right to a fair trial, and was unsuccessfully challenged by the activists’ lawyers (McCulloch, 2008).

The state’s response to the contravention of the suppression orders was two-fold. Firstly, the police, the organisation authorised to lay breach of suppression order charges, took no action in spite of two presiding High Court Judges commenting that they could not understand why the police were *not* pursuing those charges (“Newspapers not in contempt”, 2009). However another state agent, the Solicitor General, did take action and filed contempt of court charges against Dominion Post editor, Tim Panckhurst, and Fairfax media chief editor Paul Thompson (Peacock, 2017; “Newspapers not in contempt”, 2009). In court the editors admitted intentionally breaching the suppression orders but were still not convicted (Webby, Grant & Milligan, 2015; Peacock, 2017). Their argument was that they had acted for the good of the public, were fulfilling their duty as journalists, and that the suppression orders were not clear (Gower, 2008; Fensome, 2014). They did not acknowledge that printing out-of-context quotes from covert, suppressed surveillance, could lead to unfair prejudice to the activists or that their actions strongly implied a clear bias towards the police (Kitchin, 2007; Fensome, 2014). The contempt case can be differentiated from the Raids not only because of the absence of criminalisation but also because it is another example of state agents, and the mainstream media, taking different approaches towards criminalisation. It is also an example of the conflict which is sometimes evident between legal officials, who try to limit the worst expressions of

criminalisation, and the criminalisation processes themselves.

The mainstream media repeatedly used language and images to frame the activists as the ‘terrorist other’, to reinforce a potential threat, and to emphasise support for the state and state agents in articles that they presented as crime news. Examples included the prioritising of state agent voices who emphasised the activist’s identity as the ‘other’ like the article, “Threat to public was genuine, says senior officer”; the use of terror language and images, like the Dominion Post frontpage headline “IRA-style war plan” with a semi-automatic rifle superimposed on Aotearoa’s flag; the placement of the Raids in the global context of the ‘War on Terror’ like the editorial “NZ not removed from terror threat”; and the repeated use of unnamed sources to emphasise the threat of the ‘other’ with comments in articles like, “A source said it went off really well” (referring to the Raids in Rūātoki) and “Sources said that a paramilitary radical group had been attempting to recruit and train people in the area” (Rūātoki) (Brewer, 2007; “Exclusive: Hunters alerted police to alleged terror camps”, 2007; “IRA-style war plan”, 2007; “Māori activists caught in anti-terror raids”).

The framing was possibly a result of connections between the state and the mainstream media, or because the police were the mainstream media’s primary source of information (Chermak, 1995; Morse, 2010). There have been allegations that some journalists were ‘tipped-off’ by the police and that this is why there were almost instant media reports about the Raids, particularly in Rūātoki and Wellington (Keenan, 2008; Peacock, 2017). Māori lawyer and activist Annette Sykes, who represented some of the people in the Raids, noted that police information was leaked to the media and published *before* defence lawyers had received it (Keenan, 2008). The nature and timing of information held by the mainstream media certainly suggested the existence of a “symbiotic relationship between the media and news sources because of depending on each other” (Chermak, 1995, p. 98).

Political figures were also involved in socio-cultural criminalisation in the Raids through their use of labels which emphasised their support of defining the activists as ‘terrorist others’. They did this by publicly discussing *specific* details about the Raids while there was an active court case.

This breached the subjudice rule which makes it illegal to publicly comment on cases before the courts which could prejudice the right to a fair trial (Guest, 2008). One example was when then Prime Minister Helen Clark made allegations that camp participants were in possession of napalm⁵³. She said she had been briefed by police and stated that the people who were arrested had been “training with, at the very least, napalm, had possessed illicitly-used firearms, and had built molotov cocktails” (“PM: Activists ‘trained to use napalm’”, 2009). These allegations were not repeated by the police in the media, and were never put before the court, as the reference to napalm was ruled inadmissible after the police’s illegal covert surveillance⁵⁴. The stigmatising effect and reinforcement of the activists as ‘other’ however, was significant given the negative connotations of napalm (Kitchin, 2007; Whitmore, 2012). Another example was when a Senior MP, who would not be named, said, “This wasn’t an overnight decision, it has been meticulously planned with video and audio surveillance” which followed an allegation that the diplomatic protection squad had been given information about “suspicious activity in bushland near Rūātoki in 2002” (“‘Mole’ helped agencies plan dawn swoop”, 2007). Both examples reinforced the negative binaries discussed above, and emphasised the media’s labelling of the activists as ‘other’.

The police also contributed to socio-cultural criminalisation through their use of labelling and ‘othering’ in the Raids because of the power that their organisation holds, and the ways in which they exercise that power. An example of this aspect of police involvement in the Raids was the police’s oversight in accessing the assistance and knowledge of iwi liaison officers in the operation, particularly at Rūātoki, and the construction of a roadblock at the confiscation line, all actions which defined Māori as an ‘other’ in the Raids (Crawford, 2008). This monocultural approach to the police operation marginalised Māori by implicitly defining them as

⁵³ Napalm is a substance containing petrol which is used to make bombs that burn people, buildings, and plants (Collins Dictionary, 2018).

⁵⁴ Newspaper reports included the fact that Howard Broad had *not* made any comments alleging the use of napalm (“NZ Police raid military-style camps”, 2007; “PM: Activists ‘trained to use napalm’”, 2009) (See Chapter one).

untrustworthy and outsiders and disregarded the intergenerational effects of colonisation particularly in Rūātoki. While the police subsequently accepted some of their illegal, inappropriate, and unreasonable conduct through findings against them (see Chapter one) this research has not found any records that the police acknowledged their role in suppressing activists during the Raids. The next section considers some of the impacts of intense criminalisation given what has been discussed above.

Impacts of Criminalisation

The intense legal and socio-cultural criminalisation in the Raids led to a number of long-term impacts for the activists and member of the public who were affected by them. Some examples are outlined here to emphasise that intense criminalisation affects every aspect of an activists' life. Further examples are contained in Chapters Six and Seven.

One particularly significant impact was the financial toll of the court proceedings. These costs had very serious consequences on the social wellbeing of the activists in what was described as the “most expensive case in New Zealand history” (Savage, 2012)⁵⁵. The activists were required to pay significant legal fees even if they were eligible for the government-funded legal aid scheme which meant they were only paying a proportion of their legal bill. Annette Sykes noted that three of the last four defendants had been put under severe financial pressure after being required to make legal aid repayments, and that one of the four had “accumulated a debt of \$20,000” (“Urewera raid details remain suppressed”, 2011). Morse spoke about the financial impact of the Raids when she said:

After four years I’m pretty tired and I’m pretty broke so I’m very pleased that the case is over ... I’ve mortgaged my house, I haven’t been able to get a job ... (“Reaction from one of the defendants”, 2011).

⁵⁵ The cost for legal services was \$3.65 million at 22 March 2012 (Savage, 2012).

Iti's son, Wairere, highlighted the long term economic impacts of the Raids, a decade later, when he said:

I have cousins who are still dealing with the financial impact [legal costs] of going through the Raids and never actually being charged and they're still paying that off today ("Tūhoe still carry emotional impacts of raids", 2017).

Some of the activists' whānau were 'caught up' in the police's execution of search warrants and experienced significant emotional impacts as a result. Iti's partner, Maria Steens, reflected on this saying:

I did not wish to become a victim. I do not believe that I and the many other whānau, friends and supporters who were humiliated, raided, detained, frightened and arrested are criminals. The reality of it was that life carried on. Life carries on ... I think, Fuck them, get up and continue the day. No way will I bow to their way of thinking, of what they want me to be. I am not a victim (cited in Morse, 2010, p. 64).

Friends, colleagues, and community members were also caught-up in the police operation creating significant emotional impacts for a wider group of people. Priscilla Woods, a co-worker of Iti's and member of the Rūātoki community, noted:

Here we were, a Hauora, a health provider for the community, and we were being raided by police ... We carried on and did our work as best we could with the whānau who were still feeling the hurt and the bewilderment of the Raids. For me, I was almost in a trance while doing the work that needed to be done ... I had a lot of hatred for the police at the time it happened. I couldn't stand to talk to any of them (cited in Morse, 2010, pp. 95, 96, 97).

Morse (2010) reflected on her experience of living through the Raids in her anthology of interviews with people affected by the Raids. She said:

From time to time, in the three years since the Raids, I laugh at the absurdity of it all. At

other times, the toll that this social war has taken on me, my friends, family, comrades, and the huge mass of people who struggle against injustice every day nearly crushes me completely (Morse 2010, p. 18).

All of these examples highlight the long-term psychological pressure which people are subjected to as a result of intense criminalisation (Morse, 2010). This emphasises the significance of resistance being sustained in spite of the significantly detrimental consequences of criminalisation.

Resistance to Criminalisation

Sites of resistance to criminalisation had a critical role in mitigating the dominant discourse of intense criminalisation in the Raids. They fulfilled this role by exposing the deviance of state actors by drawing attention to their actions and by acknowledging the historical, social, and cultural contexts in which the Raids took place.

Two of the sites of resistance were in the media – indigenous media⁵⁶, and Māori and Taiuiwi partnerships. These sites challenged the labelling and ‘othering’ of the activists by highlighting the police’s oppressive conduct, particularly in Rūātoki, and the Raids disproportionate impact on Māori (for example, coverage on Marae TV) (Forbes, 2017). Indigenous media provided a space for alternative voices as shown by coverage of the Raids for example, on Māori television and Radio Waatea, and framing which challenged the terrorist discourse (for example, Keenan, 2007; Morrison, 2013). Devadas (2013) emphasised that ‘othered’ voices can be heard in other/alternative media spaces thereby providing a means through which the state’s discourse of terrorism can be challenged. Māori and Taiuiwi partnerships led to some of the strongest media representations of an ‘anti-terror raids counter-perspective’ (Wright & King-Jones, 2011;

⁵⁶ Indigenous media is defined as “journalism and other media output produced by and for indigenous or native populations” (Harcup, 2014, p. 66). Indigenous media is a powerful response to colonial violence which empowers indigenous voices and constructs space for indigenous perspectives and stories (Cupples & Glynn, 2017). This research situates Māori television as a particularly significant form of indigenous media in Aotearoa in accordance with the research of Abel (2008) and Cupples & Glynn (2017).

Webby et al., 2015). These partnerships created spaces for critical analysis of the Raids in the documentaries “Operation 8”⁵⁷ and “The Price of Peace”⁵⁸ which directly challenged the mainstream media’s framing of the Raids (Wright & King-Jones, 2011; Webby et al., 2015).

Another site of resistance to socio-cultural, as well as legal, criminalisation was through protests which supported the activists, nationally and internationally, and emphasised the activists’ legally protected rights to freedom of conscience and thought, expression, and peaceful assembly as set down in the New Zealand Bill of Rights Act 1990⁵⁹. There were many examples of this solidarity which emphasised that a significant proportion of society was questioning the state’s discourse surrounding the Raids. This included two days of strong protest action: 27 October 2007 when protests were held across 27 cities in Aotearoa and at 13 Aotearoa consulates; and 14 November 2007 when a hīkoi of 400 people, predominantly Tūhoe, marched on Parliament challenging what had happened particularly at Rūātoki, and were greeted by 200 people doing a haka in support of their actions (“Around the world, people demand freedom for political prisoners!”, 2007, “Hīkoi carries protest voice to capital”, 2007). They also marched to the Ministry of Māori Affairs and to the Police Commissioner’s offices where police officers with batons stood in a four-deep cordon without senior police in attendance (“Hīkoi carries protest voice to capital”, 2007). The protests emphasised the importance of resistance as a method of solidarity between activists’ particularly when confronted with intense criminalisation.

The international community was another site of resistance to the criminalisation which took place. Attempts to create state accountability through United Nations’ (UN) reporting processes

⁵⁷ A documentary critically examining what happened in the Terror Raids, how it happened, why, and with what consequences. It is also a detailed examination of the Raids with contributions from many people who were directly involved and from other critical parties, and was only constrained by the fact that the case was still ongoing when the documentary was finished (Wright & King-Jones, 2011).

⁵⁸ A documentary filmed over six years which presents a portrait of Iti as well as looking at the Raids and the much broader contexts of Tūhoe, Rūātoki, history, and processes of reconciliation. It includes the jury trial, sentencing, and post-sentencing (Webby et al., 2015).

⁵⁹ New Zealand Bill of Rights Act 1990 Sections 13, 14 and 16.

was exercised in respect of the Raids. By the end of 2007 Aotearoa's government had received letters from the United Nations Special Rapporteur on Counter-Terrorism, the Situation of the Fundamental Freedoms and Human Rights of Indigenous Peoples, and on Human Rights Defenders⁶⁰. The Secretary-General had also expressed concern about the potential use of the Terrorism Suppression Act to manage Māori land and political activism – Aotearoa was asked to 'please explain' (Oliver, 2008). This concern continued to be expressed by the UN throughout the years of legal criminalisation. In 2010 a government delegation presenting Aotearoa's fifth Human Rights Report to the UN's Human Rights Committee (UNHRC) was asked multiple questions about the Raids, and Aotearoa's sixth periodic report on civil and political rights (covering January 2008 to March 2015) included an update on progress in the Raids to avoid similar questions (UNHRC, 2010).

The international community's involvement did not extend beyond raising concerns with the state and no sanctions were imposed on Aotearoa. It did however, bring international attention to the criminalisation of activists in the Raids and was a method through which the state was in some way held accountable for its actions by being challenged to explain what had happened on a global platform.

Conclusion

This chapter has confirmed that the activists in the Terror Raids were subjected to intense criminalisation over a lengthy period and that they are still being criminalised today. It has also highlighted that the Raids represented a new stage in the state's approach to criminalising activists, from historical contradictory and inconsistent approaches to intense criminalisation facilitated with the use of the label terrorism. However, the chapter has also highlighted that the state is not a homogenous entity and that different state agents *do* act differently in regards to criminalisation, sometimes in conflict with each other, and that the mainstream media does

⁶⁰ Tūhoe made a complaint about the state's conduct at Rūātoki but the UN's correspondence to the government pre-dated this ("UN orders Govt to explain anti-terror raids", 2008).

likewise. The Raids are also a third *turning point* in Aotearoa's history of criminalising activism which is important not only because of the Raids' similarities to the first two turning points but also because each of these three events contribute to understanding how the three key themes underlying this research: activism; criminalisation; and resistance, shift in relation to context.

The next chapter explores the practicalities of my research process. It comprehensively sets out my approach to the research process and what steps I undertook to obtain and analyse data. The chapter connects my objective of creating activist-focused research with the ways in which I practically achieved this. It is also the first introduction to my original research and to my research findings.

Chapter Five - Method and Methodology

This chapter presents the research framework for my thesis, focusing on the methodology, and methods used to collect and analyse data as my primary research method, as well as my use of a supplementary media analysis and literature review as a secondary research method. It focuses on the practicalities of why, and how, I conducted my primary research and how this has been beneficial to my research process. While I have conducted critical research from a Tauiwi perspective I was assisted in critically reflecting on the political nature of research (at every step of my research process) by the indigenous-focused research of leading Māori academic Tuhiwai Smith (2012). In particular I have reflected on the flow-on effects of colonisation and the cultural contexts in which my research has been undertaken, and have used a critical framework to recognise these factors.

This chapter begins with a brief discussion about what critical research is and additional details about why I have chosen to undertake this type of research. The chapter then progresses to consider critical methodology, what this is, and how this approach formed the foundation of my research. I then progress to discuss the practical steps I undertook to conduct this research by discussing elements of my research including: method; data collection; and data analysis. As these are so critical to my research I outline a number of my key processes relating to recruitment, participants⁶¹, semi-structured interviews and engagement. I used thematic analysis to critically analyse the interviews and I discuss my application of this in accordance with Braun and Clarke's (2006) guidelines. These guidelines were fundamental to working *with* the data to extract the best possible material. I then briefly present a supplementary media analysis, which enabled me to develop a more comprehensive understanding of the socio-cultural criminalisation in the Raids and acknowledge my literature review as a secondary research

⁶¹ The activists I interviewed are described as 'participants' throughout this chapter because this recognises that their role in my research is as more than interviewees (Edwards & Holland, 2013). Edwards and Holland (2013) used this term to acknowledge a role in which empowerment of the 'participant' is a primary focus of the research. This is achieved through active steps which acknowledge and seek to redress the power imbalance inherent in research by attempting to construct a space of equality (Edwards & Holland, 2013).

method. The chapter concludes with a brief reflection on the personal challenges of doing this research. Overall, this chapter is about identifying the critical components of my research in a way that emphasises the importance of this research being undertaken.

Critical Research

Critical research is an academic space where fundamental concepts of the 'status quo' ('truth'; power; objectivity; and neutrality) can be challenged, deconstructed, and replaced (Tuhiwai Smith, 2012). It recognises that *truth* has many forms and its strength is that it acknowledges the power and privilege in academic research and how certain features of academia, like academic language, are emphasised to privilege academic knowledge over other forms of knowledge (Lynch, 2000). Critical research is a space where marginalised and 'othered' voices can be heard, to confront the 'status quo' or 'accepted histories' by questioning what has traditionally been framed as *true* (Scraton, 2007; Tuhiwai Smith, 2012). This is particularly important for this research as green activists challenge the 'status quo', confront the state, and threaten the state's version of what is *true*.

My critical research has been facilitated through critical methodology which provides a framework for conducting research from a perspective of those who are marginalised or 'othered'. This methodology revolves around a commitment to conduct research which challenges social boundaries (Hudson, as cited in Jupp, Davies & Francis, 2000; Tuhiwai Smith, 2012). It is founded on the concept that "research is a form of argument-construction and is assumption-based, value-laden, fallible, modifiable, evolving, and contingent" (Yanchar, Gantt & Clay, 2005, p. 38). Critical methodology challenges the 'status quo' by proactively seeking to contribute to changes in what is defined as academic research and to what knowledge is 'seen and heard' (Tuhiwai Smith, 2012).

I used critical methodology for three main reasons. Firstly, it allowed me to be participant-focused, which enabled me to intensively focus on the activists' lived experiences of criminalisation (Noaks & Wincup, 2011; Rossetto, 2014). Secondly, it enabled me to understand my role in the research process. Using critical research challenged me to critically reflect upon

some of my identities as a critical criminologist (wahine; ‘world citizen’; Tauwi; and lawyer) and how these identities have influenced my research processes. It also helped me understand why I used certain tools in this process and how I framed my research questions (Tuhiwai Smith, 2012; White & Heckenberg, 2014). Finally, I used critical methodology because of its difference to traditional research. Critical methodology challenges the knowledge that is valued by and ‘heard’ by traditional (qualitative and quantitative) research approaches by extending the parameters of research. It also acknowledges the importance of critically reflecting on the context that research is undertaken in, and at every step of the research process. It does this by rejecting the norms and boundaries of traditional methodologies and focuses more on the content and objectives of research (Yanchar et al., 2005; Tuhiwai Smith, 2012). The methods I used enabled me to research in accordance with these critical values.

Method – Data Collection

I undertook a qualitative research approach because of the benefit to my research in focusing on more intensive analysis of the experiences and viewpoints of a relatively small cohort. I wanted to have a clear focus on a small cohort so that I got the most detailed understanding I could possibly obtain of the participants’ lived experiences and what that meant in relation to both activism and criminalisation (Hammersley & Campbell, 2012; Hass, Moloney & Chambliss, 2016). I also undertook a supplementary media analysis so that I could consider the media’s involvement in the Terror Raids in more detail given the prominence of sociocultural criminalisation in the case as outlined in the previous chapter. Below, I outline the processes I used for my primary data collection and analysis. I discuss some of the preliminary work done before the interviews, the interviews themselves, and how I communicated with the participants. I then discuss how I collected and analysed reports from news media organisations.

After I was granted ethics approval from the University, I recruited and interviewed eight participants. I wanted to interview a relatively small cohort but also have a representative range of activists with diverse identities, experiences, and perspectives; however, I was also keen to interview activists who had been involved in the Raids. In the end my participant-base had green

activist experience in a number of spheres including: politics, academia, community-based, direct action and non-governmental organisations. Most participants had engaged in multiple forms of activism, sometimes at the same time, throughout their lives, and many had developed a green activist voice as a young person. The participants ranged in age from thirties to sixties, there was an equal division of men and women, and all of the activists were Tauīwi. Other distinctions included a mix of backgrounds, social beliefs, and education levels.

I consciously decided to interview only Tauīwi participants after research into decolonisation and indigenous oppression and insightful discussions with one of the participants (for example, Tuhiwai Smith (2012)). This emphasised to me that the experiences of indigenous green activists should be researched by Māori criminologists, and that I should support the development of indigenous criminology acknowledging the value of kaupapa Māori research.

I interviewed the eight participants over a five week period between 7 May and 15 June 2018. After initial contact through a friend, I interviewed two of the activists that had been arrested in the Terror Raids. I contacted four other participants by email. I purposely approached these activists because I could see that their involvement would be of significant benefit to my research, and I had some knowledge that they had all been involved in substantial amounts of inspiring green activism. The final two participants became involved after Catherine asked them if they would like to participate on my behalf. I gave the participants the option of choosing whether they wanted to be named and seven stated that this was their clear preference. Six participants are named to reflect that preference and the goal of empowerment of the participants in this process, the seventh, is not identified so that both parties who were directly involved in the raids are not named. I recognise, as did the participant seeking non-publication of their name, that their name may be discernible because of the nature of material presented.

The first interview took place at Victoria University of Wellington and the final interview was conducted via skype (Auckland-Wellington). Three interviews were in-person in parts of the North Island other than my base of Wellington. This part of the research was an incredibly

personally and academically rewarding journey - the interviews were the high-point of my research.

My first interview was with freshwater expert, ecologist, and then Massey University senior activist academic⁶² Mike Joy (he joined Victoria University a week after our interview) for an hour in Wellington on 7 May 2018. Mike is a committed scientist who uses the media to advocate strongly against environmental harm.

The second interview was with Cath Wallace who spent just under an hour and a half in Wellington with me a few days later. Cath is one of only two New Zealanders to have won the Goldman Environmental Prize for her long-term advocacy for the environment, particularly in Aotearoa and Antarctica, but also for other international work. Cath has been involved in a range of different forms of green activism for over 45 years and was an activist academic at Victoria University for three decades.

The third interview was with Participant A for two and a half hours in mid-May 2018. Participant A was one of the activists' who was arrested on the morning of 15 October 2007. Participant A is a committed and busy green activist who has spent a number of years engaged in direct action, and local and community-based activism. Participant A's long-standing green activism has essentially been silenced in the media's discourse of terrorism.

The fourth interview was with Participant B for just under two hours in mid-May 2018. Participant B was also arrested on the morning of 15 October 2007. Participant B is a committed green activist who has been engaged in direct action, local and community-based activism for several decades. They have worked extensively for national and global peace and continue to do so and have also experienced significant attempts to silence their identity - attempts to repress them continue today.

⁶² Activist academic's "bring social and political change through the production and reproduction of knowledge" (Grey, 2013, p. 702).

My fifth interview was with Catherine Delahunty. We had an interview for just under two hours in mid May 2018 and many more hours of informal discussions during my visit to her home. Catherine is a strong advocate for green, social, and indigenous justice in Aotearoa and West Papua and has been involved in a huge range of different forms of activism over almost 50 years. She was also a Green MP for a substantial period of time and maintained her community activism throughout that time.

The sixth interview was with Forest and Bird National Advocacy Manager, Kevin Hackwell, in Wellington, for just under two hours, in mid May 2018. Kevin has been involved in a range of green and social activism for almost 50 years in a range of forms including through non-governmental organisations working at local, national, and international levels to oppose environmental harm, as a scientist, and for the past 15 years as a key senior member of Forest and Bird.

My seventh interview was with archaeologist activist Gordon Jackman for about an hour and forty minutes in June 2018. He, along with partner Catherine Delahunty, has spent decades working on issues of green, indigenous, and social justice, as well as being a passionate disability advocate. Gordon has been involved in a broad range of activism as an archaeologist, and scientist, he has strong ties to Māori and Tauīwi communities in Gisborne where he is from, and is the Founding Chief Executive of the Duncan Foundation⁶³.

The final interview, which was just under an hour and a half, was in June 2018 with Sue Bradford. Sue has been an advocate for green, economic, social, and indigenous justice for almost 50 years. She has been particularly active in long-term advocacy with the unemployed workers and beneficiaries' movement but has also worked on a huge range of justice issues in a range of ways and been extremely committed to direct action. Sue was also a Green MP for a substantial period of time and continued her community activism throughout that time.

⁶³ The Duncan Foundation is a "national support service for people living with neuromuscular conditions, and the health professionals who treat and support them" (The Duncan Foundation, 2018).

A possible critique of this research is its sample size and an argument that interviewing eight participants may have resulted in a narrow lens of analysis which affected the research findings. While it is possible that a larger sample size could have been more reflective of green activists' experiences of criminalisation in Aotearoa this would have only been achievable through less detailed analysis of each activists' experiences due to the word limitation. This would have directly contradicted the goals of the research and would have therefore been inappropriate.

I chose to use semi-structured interviews because I wanted the activists' voices to be an integral part of this research. The interviews focused on the richness of the participant's voices and were conducted using an open, semi-structured framework. This meant that I used set questions but also asked other questions on matters that arose through the participants' verbal and non-verbal answers to my set questions (Noaks & Wincup, 2011; Wincup, 2017).

The first six interviews were in-person and the last two were conducted through the internet using zoom and skype. During the interviews I focused on being an active listener, showing I was actively engaged through eye contact, body language, and manner. This was quite straightforward because I was hearing inspirational, incredible knowledge from passionate participants which was fascinating, and because I had the skills from 14 years of interviewing clients in my paid and unpaid work as a lawyer to draw upon (Rossetto, 2014; Wincup, 2017). The interviews were done *with* participants all of whom had quite a lot of interview experience so I often felt that they worked to help me understand and appreciate what I was hearing – I learnt an incredible amount during every interview.

Before and after the interviews I communicated with the participants through email (predominantly), telephone calls, and text messages. They were provided with an information sheet (Appendix One) and consent form (Appendix Two). Afterwards, I sent all eight participants their transcripts; sending the audio recordings of the interviews to one participant; not naming two of the participants; having all references to two participants approved by them before the research was finalised; and reiterating my appreciation for the participants involvement in my research and for their green activist work generally.

Data Analysis

Once I had the data the next step was analysis. I used Braun and Clarke's (2006) six step guidelines to thematic analysis to critically analyse the data. The first step in thematic analysis was the process of *actively* familiarising myself with the data through transcribing (Jordan, 2001). I found that transcribing eight interviews was a time-consuming and challenging process because of the volume of data and the number of times I needed to repeat the interviews to transcribe them accurately and fully appreciate them. Yet this was extremely beneficial too, because I ended up becoming *very* familiar with the data through the process of reliving what had been said at the interviews and how it was said (Booth, as cited in Bartels & Richards, 2011).

I then moved on to the second step which was generating initial codes about what was in the data and what was interesting about it. I analysed each transcript separately and coded every word of my data set into eight broad codes, using different colour fonts to highlight the different codes. I now had over 100,000 words that were all coded. I also started to identify quotes which I thought 'spoke through' the data and were significant. I read the transcripts pulling out quotes multiple times to minimise my biases and to try and make sure I did not miss anything.

The third step involved building themes from the codes. This was a reflective process of intense immersion and analysis. I identified 32 initial themes with multiple sub-themes. I cross-referenced the themes and participants, and found that the themes divided into two groups - a third which were present in every participants' interview and the balance which were present in two or more participants' interviews.

This process of reflection, organisation, and division of data naturally progressed to the fourth step which is reviewing themes. I did this by actively reflecting on the list of themes, critically analysing whether my judgment had been exercised appropriately, and making sure that I had allowed the data to generate the themes from 'the material itself' in an inductive process (Ryan & Bernard, 2003; Braun & Clarke, 2006). This process led me to shorten the list to 20 themes and I continued to critically analyse each theme and its strengths and weaknesses. I also followed

the recommendation to move fluidly between the steps to give myself the opportunity to continue reflecting on the data's meanings (Braun & Clarke, 2006).

In the fifth step I progressed to defining and naming the themes. Again this was another period of actively 'pondering' and reflecting on the data. This continuous process led to a further reduction of the list of themes to ten. At this point I divided the themes into two major groups – those themes (six) that represented resistance to criminalisation and which positively support efforts to oppose environmental harms (speaking out; commitment; education; change agents; people power; better future) and those themes (four) that are present in the criminalisation and repression of people opposing environmental harms (attempted silencing; violence; othering; racism). The final step in the process was producing the research – my data analysis, findings, and discussion, as presented in the following chapters.

In addition to analysis of my original research I also undertook a supplementary media analysis. I did this on two occasions to develop my understanding of socio-cultural criminalisation in action. In the first quarter of my research I used the NewztextPlus database and searched using the term 'Urewera Terror Raids' from 15 October 2007 to 15 October 2014. I had to reassess my approach when this sample was 34,940 articles! At that point I realised my principal focus should be the initial period of intense socio-cultural criminalisation which had taken place so I moved to the Newztext Newspapers database and undertook the same search with a time period of 15 October 2007 to 15 November 2007. I chose this initial period because it included: the day of the Raids itself; the Solicitor General's determination that no terror charges would be proceeding; the granting of bail for the imprisoned defendants following that decision; suppressed information relating to the Raids being published by three newspapers; extensive parliamentary discussions on the Raids; and major protest action in support of the activists. The sample was ($n = 446$) and of those articles 154 were applicable 'hits' which I looked at in more detail. I limited this search to three news organisations with large circulations of printed news – the New Zealand Herald, Dominion Post, and Otago Daily Times. I also included two regional news organisations - the Whakatane Beacon, which covers news in Rūātoki (given its significance in the Raids as discussed in Chapter One) and neighbouring districts; and the Taranaki Daily News,

which reports on news in the Taranaki region where several of the activists arrested in the raids lived.

During the intervening research period I informally looked at a vast number of newspapers. I did this when they were referred to in other secondary sources or when I found them as part of my literature review or more general research. The second media analysis was undertaken towards the end of my research to ensure I had not missed any valuable data sources. I searched news articles from Aotearoa newspapers and magazines which were sourced from the NewztextPlus database. I used the search term 'Urewera Terror Raids'⁶⁴ from 1 January 2017 to 31 July 2018. I chose this period because it included time before, on, and after, the ten year anniversary of the Raids and went to the end of my research period. I chose this timeframe because I wanted to critically reflect on the difference in socio-cultural criminalisation in the media in the period immediately after the Raids compared to a decade later. The sample was (n = 330) but of those articles only two were 'hits' with fresh material. Other articles either related to the Raids but I had already worked with them in my first period of analysis, or were duplicates, or did not directly relate to the Terror Raids. Still, this secondary research approach was useful because it gave me a better understanding of the level of socio-cultural criminalisation in the Raids by giving me a deeper appreciation of how media processes and labelling operate.

I also undertook a comprehensive literature review which was integral to the construction of the earlier chapters particularly Chapters three and four. This was an ongoing process of reading, watching, and engaging with a variety of media sources including journals, books, theses, documentaries, news clips and critically analysing their content and its application to my research.

⁶⁴ 'Urewera' was used in both searches because Rūātoki is at the base of the Urewera Valley (see Chapter one).

Personal Challenges

At the start of the research I had been a practising lawyer for 12 years - over a decade as a litigation lawyer- with earlier experiences of legal work as a senior law student . While this was a significant strength because I could draw on many diverse experiences of legal criminalisation and client interviewing, it was also confronting because of my over-familiarity with the legal system as a criminal defence lawyer. It took three months of reading, writing, and reflection, before I was able to appreciate how my privilege was shaping my approach to my research and before I could really begin my research journey.

The process of deconstructing privilege is challenging and caused me to have a broad range of emotions. I explored some of the impacts of emotionality on my research by starting a private reflexive journal from the time I began approaching potential participants. I also reviewed some of the research around the importance of emotions in producing knowledge and about the emotional labour in qualitative research (for example, Hubbard, Backett-Milburn & Kemmer, 2001; Holland, 2007). Reflecting in these ways helped me deal with some of the emotions I had about being a lawyer while also being a critical criminologist.

Interestingly, this deconstruction of privilege contrasted with my reflections on my role as a researcher. While being a researcher is also a highly privileged position my participant's knowledge, experience, and familiarity with interviews and the subject material, meant that the traditional power imbalance (especially in legal interviewing) was absent. These interviews were more of an empowered exchange which accords both with the underlying tenet of critical methodology and also my personal goal of conducting activist-focused research. It also led to rich, deep interview data which in my assessment would not have been obtained in an interview process with a power imbalance.

Conclusion

This chapter has outlined the foundations of my research into the criminalisation of green activists in the Raids and presented answers about the what, why, and how, that are so

fundamental to this research. The chapter has given me an opportunity to reflect on my research practices and to ensure that the findings are presented in accordance with the objective of giving the activists' voices space to be heard.

The chapter shows that critical research creates a powerful space for the analysis of a complex issue like criminalisation because it is not constrained by the boundaries of traditional methodologies. My findings suggest that using a critical research approach leads to the construction of knowledge which might otherwise not be heard or represented and my original work in the forthcoming chapters reflects this. At its essence critical research is about reflecting on every single component of research and then striving to challenge the 'status quo' and societal constructions. In this research it has meant that I have critically reflected on the principal themes of colonisation, activism, criminalisation, and resistance, and evaluated them in their historical, social, and cultural contexts. This is an ongoing process of learning and has led to rich data as presented in the next chapters.

The next two chapters build on this introduction to the participants by presenting my original research and my analysis of material generated in these interviews. The chapters set out key findings from these interviews and how they relate to firstly, criminalisation, and then resistance to criminalisation. The material is rich and focuses on participants' perspectives, experiences, and knowledge, as conveyed in their own words.

Chapter Six – Experiences of Criminalisation

This chapter presents green activists' experiences of criminalisation in Aotearoa before, during, and after the Terror Raids. The chapter begins by identifying criminalisation as a universal experience particular to Western settler societies but also as a phenomenon that has been experienced differently. To analyse this further the chapter considers legal, socio-cultural, and intersecting forms of criminalisation, before considering the concepts of 'good' and 'bad' activists and activism. This is followed by an analysis of the 'new' othering which was evident in the Raids. The chapter also considers the recurrent theme of this thesis: the shifting approach to criminalising activists in Aotearoa. What can be seen in particular, is that criminalisation is intensified with labelling. The chapter then progresses to a further analysis of the state's efforts to deter activism and concludes with an assessment of the connection with Māori. Overall, this chapter presents a comprehensive and original overview of green activists' experiences of criminalisation in Aotearoa and highlights the sustained and all-encompassing nature of this phenomenon.

Application to Western settler societies

As discussed above, criminalisation is a universal experience which is particular to Western settler societies. In Aotearoa it can be traced back to its foundations in colonial criminalisation (as discussed in Chapter Two). *Every* green activist in this research had experienced criminalisation: All except two had experienced legal criminalisation, and all of them had experienced different types of socio-cultural criminalisation, including the intersection of legal and socio-cultural criminalisation. These findings emphasise the prevalence of criminalisation and show that it often takes place outside of the court room and legal processes. Only one of the activists used the term criminalisation however they all spoke about experiencing conduct from state agents and mainstream media which could be clearly defined as criminalisation.

While all the green activists had experienced criminalisation the nature and type of those experiences varied significantly. There was a marked distinction between the criminalisation experiences of those who had retained their identities as green activists in contrast to the

activists who had been labelled terrorists by the state and experienced intense criminalisation. This aligns with the discussion of the Raids as the evolution of intense criminalisation by the state and mainstream media in Chapter Four.

The different experiences of legal criminalisation emphasised that intense legal criminalisation is reserved for those who are perceived to be the greatest threat to state interests, and that there is a direct correlation between the assessment of the threat an individual or collective poses and how they are responded to legally. Mike had not experienced legal criminalisation and reflected on his need to avoid legal processes so that he could continue working in an activist academic space:

If I go too far and get arrested and things like that, then I can just be pigeon-holed as a crazy, and so it's really important to just keep that ability to be seen as a respected academic I guess.

At the other end of the spectrum Participant A experienced five and a half years of relentless legal processes in the Raids and contemplated the court process when they said:

... that's the fascinating thing about being involved in a court case, you are the defendant and you kind of have this idea that this revolves around you but then all of a sudden you realise that you're just not even relevant. It becomes something completely different you know - you're just some random person standing at the back of the courtroom – it happens to be your life that's being debated, and discussed, and the impacts of it could be significant, but it's not even about you anymore.

Participant A again reflected on the impact of the Raids and said:

I don't think about it every day anymore because I think if I did it would just, it's got the possibility to consume you and eat you up.

As previous chapters have shown, socio-cultural criminalisation can occur in a number of ways. For these activists, socio-cultural criminalisation had occurred principally through labelling and

the construction of 'othering'. Both of these forms of socio-cultural criminalisation are considered in detail in the next two sections of this chapter, however Participant A reflected on the socio-cultural impacts of being legally criminalised when they recalled that:

... it just became years of court, years and years of court – it was so draining in so many ways you know. Physically, emotionally, financially, it was just one big waste of bloody time, and I don't know how many weeks I spent in courtrooms because of this but it's weeks I could have done a lot more productive things for society.

As earlier chapters have indicated the boundaries of legal and socio-cultural criminalisation are not rigid and the two often intersect. At times activists have experienced both forms of criminalisation at the same time, likewise activists have sometimes experienced socio-cultural impacts when legally criminalised and the reverse. Gordon recounted his experience of being criminalised in both ways when he said:

I have been under serious blacklisting⁶⁵ and observation at times, and I was arrested and convicted, and I have a criminal record and I do believe paths open to me and good use of my talents have been obscured by that.

Spying or surveillance was a key site of the intersection of legal and socio-cultural criminalisation and in modern times is in direct contradiction to New Zealand's protection of civil and political rights in the New Zealand Bill of Rights Act 1990. From a legal perspective it can be the precursor to the police laying criminal charges, conducting arrests, and people experiencing court proceedings and this probably happened in the Raids, see Chapter one. At the same time it can also be a site of socio-cultural criminalisation through avenues like labelling, 'othering', and the reduction of opportunities to engage as a fully participating member of society. Most of the activists had been spied on, some from a young age, by the SIS. For example, when Catherine

⁶⁵ Blacklisting in the 'traditional' sense of being on a government 'list' of censored individuals. A government official told Gordon this.

and her friends set up Aotearoa's first high school student union to challenge boring curriculum and compulsory uniforms, and to create a space for students' voices to be heard, she became a subject of SIS interest. She noted:

The way I've been criminalised is an interesting way – since I've been a member of Parliament and I got my SIS file I realised that as a 15 year old the SIS were following me. So there's a whole file about me as a 15 year old which is kind of freaky.

Sue made a similar discovery as a Green MP and recalled:

... around 2009, that sort of time, I was able to get my SIS file which was heavily redacted. There's not much in there really but there was evidence that they had been tracking me since I was 15 or 16.

Spying and surveillance was also used against the activists in the Raids before and during the Raids. Participant A reflected on this before the Raids :

I believe I was already under, to some degree, some surveillance prior to my involvement in Operation 8 and that's just the reality of being at that time, a peace activist, an anti-war activist in Aotearoa.

The activist's experiences emphasised the universality of criminalisation but also the diversity of ways in which it is imposed. This reflects the shifts in the criminalisation of activism throughout Aotearoa's history. The chapter now progresses to a discussion of labelling in the context of the construction of good and bad activists and activism.

The Construction of Good and Bad Activists and Activism

As discussed in Chapter Two, and emphasised by Tannenbaum (1938), labels have the ability to influence how society defines an individual/group but can also effect how an individual self-identifies. Labels of good/bad for activists, worthy/unworthy causes, valuable/invaluable issues have had significant impacts on the state's contradictory approaches to criminalisation. Labels

and constructions of binaries effect official perception of activists and activism as well as influencing state agents and the mainstream media.

All of the activists had been labelled in different ways, either through the mainstream media, by the police, or by political figures. Many of the labels framed the activists as bad which had the effect of either being an act to attempt to silence them or at a minimum, discredit them. Cath recalled an experience of being labelled by then Prime Minister David Lange:

I woke up one morning, it must have been mid '80s I guess, to hear David Lange say, "That Cath Wallace she's misleading, misinformed, and mischievous" and then I had to go and stare down my colleagues.

Gordon was labelled in a similar way by then Prime Minister, Mike Moore:

I wrote a book in '91 called 'The Deadly Legacy' which Greenpeace published on PCP and dioxin and all the science, and a friend of mine who helped me do that wrote an article for the New Scientist called Poison Paradise ... So the Prime Minister at the time, Mike Moore, called me a traitor for exposing New Zealand's Chernobyl and when I left Greenpeace I was put on a banned list for any work with the government as punishment for what I did [exposing the PCP dumps] ... It was officially lifted ten years later.

The differentiation of activists as good and bad is most clearly evident in differing approaches to activists in the legal system as shown in Chapter three. For example good green activists may avoid legal criminalisation, or be taken to court but experience lenient treatment. This contrasts with bad 'terrorists' in the Raids who were subjected to years of legal proceedings and to severe punishments upon conviction as discussed in Chapter Four. Catherine had observed the vastly different treatment of good and bad activists within the criminal justice system:

I've been to court with people who've protected the native forest on the West Coast of the South Island who the Judge basically said "you're heroes" you know, even though they broke the law: "You're heroes". I went to court a few times to support these ones

and it was the opposite. It was like “you are terrorists” and there was a big definition of terrorism. It was an opportunity to test the Terrorism Suppression Act and it had nothing to do with the people in the dock. It was all about showing the United States that we were ready to stop terrorism in our country and we were prepared to sacrifice those people, well the government of the day was prepared to sacrifice those people, to play out what the Act was all about...

The differing approaches to good and bad activists (or activism) effects all activists as they are ‘put on notice’ by the state that if they transition from conduct which the state tolerates or identities which are tolerated to the activist ‘other’ that they will be subjected to intense criminalisation like what was experienced in the Raids.

There is also a demarcation between good and bad activism which means that activists can occupy different spaces, and be treated differently by different social actors at different times. An example is Sue, whose ten years as a Green MP and political activism in that privileged space was tolerated by the state but whose community-based activism for economic justice is vehemently opposed by the state, as shown in the police’s conduct towards her in this space. The state’s expression of opposition to activists’ manifests in intense criminalisation as well as in physical and psychological violence. Participant A identified the risk that activists and their version of a better future pose for the status quo when they said:

People who strive for a better world, people who strive for a different world, people who strive for a world for example where we have economic justice – they are perceived to be a threat to national security.

State violence has only been used as a method of repression of activism when activists have been perceived to be a threat as noted in the examples in Chapter three. When othered as bad the state has constructed a discourse to justify its conduct towards activists. Sue recounted a particularly severe incident of state violence she had experienced when she said:

One of the worst times was when the police charged us inside our own People's Centre in Auckland ... And it just got heavier and heavier so we ended up just going into demo mode and sitting on the floor with our arms linked just to protect each other, and then the next thing more cops come charging in with batons and things and charged us ...

Most of the activists had also reflected on the experiences of others when assessing their own experiences of green activism and recognised that experiences of criminalisation can vary significantly. Catherine drew on decades of activism in her assessment that:

... it's [activism] not liked, it's not supported, and it's not encouraged, but it's definitely worse if you're standing up for the wrong people.

She then went on to define who society has labelled as the wrong people and said:

I kind of think that there's a tradition that's accepted, like for example Save the Manapouri, even Save the Coromandel, Save the Native Forests. It's nice, clean, middle-class stuff and that's accepted, but as soon as you're working with beneficiaries or Māoris, with Māoris and terrorist cells in the Urewera, it's kinda like the bogeyman is there ...

The impact of good and bad labelling and the flow-on effects of being othered, particularly in relation to the concept of terrorism, are outlined below.

A 'New' Othering

As previously discussed, the Terror Raids represented a shift from the state's contradictory approaches to criminalising green activists in Aotearoa to the intense criminalisation of *all* of the 'terrorists' in the Raids. Before the Raids, activists had been subjected to intense criminalisation, but this was only one potential form of criminalisation that they were subjected to. The application of intense criminalisation of activism was reserved for bad activists who were identified as posing the most 'threat' to state interests.

Examples of activism which was identified as ‘bad’ and othered before the Raids includes the first and second *turning points* of criminalising activism, Parihaka and the Springbok Tour, as discussed in Chapter three. It also extended to anyone who challenged the state’s fundamental structures by advocating for alternatives such as Mana Māori Motuhake, or alternative economic or social structures like communism, or anarchy. Again the response to these bad activists/bad activism was intense criminalisation and/or state violence. Participant A reflected on the ‘othering’ of activists who had been targeted as challenging the status quo when they said:

... you know this guy’s [Iti] been under surveillance for 40 years - that’s the reality of being an outspoken Tūhoe activist you spend your whole adult life under surveillance.

Participant A reflected on the intersection of the ‘othering’ before and after the Raids, without identifying it as such, when they said:

They wanted Tame Iti in jail, that was the goal and they knew they were going to get it. They knew Justice Hansen was going to give jail time to Tame Iti – that’s what it was about.

Before the Raids many of the activists had experienced labelling in the mainstream media, or by police or political figures, but none of them had been called a ‘terrorist’ or experienced intense criminalisation. There had been very limited use of the term ‘eco-terrorist’, but unlike the usage in overseas jurisdictions like America or the United Kingdom, or the ‘terrorist’ label after the Raids, it was not aggressively pursued over a lengthy period, and a terrorist discourse was not constructed through negative imagery, language, and state bias⁶⁶.

Many of the activists identified a palpable shift in the nature of labelling before and after the Raids. Before the Raids labelling was used in a number of ways but after the Raids it was described as significantly more aggressive and repressive, and accompanying a noticeable

⁶⁶ Kevin talked about the police and media using the term to describe Native Forest Action (NFA) campaigners in Charleston, West Coast, in the late 1990s. He also recalled hearing the term used to describe him.

intensification of criminalisation of activists. Catherine observed the evolution in the language which was used to label the activists when she said:

... after the Raids there was 'terrorism' and that's what was putting them at risk – that labelling of 'terrorism' as opposed to just being labelled as you know - 'trouble-making', 'useless', 'layabout dole bludgers' – so it kind of went up a notch in the media.

The activists reflected on the use of labelling in the mainstream media and its role as a site of long-term socio-cultural criminalisation of activists. Mike reflected on taking some of his Massey University students out on fieldwork to meet Bailey and Signer:

It's so cool for my students to see these people that they were told through the media and stuff were these horrible 'terrorists' and then you meet them, these people, and Emily and Urs are both the most gentle, nice, caring people you know, the nicest people you could ever find.

Participant B reflected on their ongoing labelling in the mainstream media years after the Raids. Participant B is still being silenced by being labelled a 'terrorist,' even though no one was *ever* charged with terrorism in the case:

I can't be sure of this but in large part I think there is kind of essentially a media blacklist for me to talk about those issues ... So I don't ever try to talk to the media these days, by and large, I try never to talk to the media around those topics because people just go – "well you're a terrorist, how can you possibly talk about being ...?" I find that really hard.

Participant B reflected on being labelled a 'terrorist' during the court proceedings:

...in general terms what I would say is of course the police try to paint you as some sort of dangerous terrorist. They take really innocuous things and turn them into sinister things, they take political conversations and turn them into intentions for actions, or admirations for things that go on in different places in different political contexts, and they assume that that's what you mean or want, here and now.

The use of the 'terrorism' label with its connotations in a post 9/11 world had a significant impact on every activist who was involved in the Raids. It was used as a method to delegitimise the activists as one-dimensional 'threats' by the police, political figures, and mainstream media, rather than accurately portraying them as activists who had made substantial contributions to the advancement of green issues in Aotearoa. The green activists collectively recognised the repressive power of a 'terrorist' label whether used by the state, state agents, or the mainstream media. Catherine said:

...it was like there but for the grace of god go I. Any one of us could have been involved in something like that, that the government decided to call terrorism, and we were just lucky that we weren't, and so these people were our own people.

As highlighted in Chapter Two both labelling and 'othering' are powerful concepts which have the effect of challenging not only society's construction but also the identities of individuals and groups within it. The power of attempts to silence activist voices is now explored in that context.

Deterrence Efforts

Attempts by state officials, assisted by the mainstream media, to silence green activism in Aotearoa was a central theme for the activists because all of them had experienced efforts to deter them from their green activism at different times. Sue said:

What I also noticed in generation after generation being on the frontlines of activism is that waves of people get arrested in these big mobilisations like Vietnam, Springboks, GE, some of the others, but what happens is that most of those people decide that they never want to be arrested again – like, that's enough. They don't want the blot on their record, the danger to their career, danger to travel, or else they really freak out about the whole arrest process and being locked up, fingerprinting and all that stuff, so a lot of people they never do it again or never take the risk again, but some of us carry on and I was one of the ones that carried on.

This previous experience also gave the activists a clear framework through which they could analyse the Raids, particularly given the depth of their experiences. Participant A summarised the state's efforts and said:

... the effects of operations like those are, by and large, to intimidate, and not just to intimidate the people involved, not just the people raided or arrested, but to intimidate the wider community and to demonstrate again that there is only one group in charge and that's us. Don't you dare think you have some sort of autonomy or authority.

None of the activists were deterred from their green activism by either their involvement in the Raids or their exposure to them, which emphasised a collective resilience (explored below). However, the activism of those who were involved in the Raids *was* affected by the intensity of the criminalisation processes they experienced. Participant A highlighted this by emphasising the state's aggressive approach to the Raids:

Look if you speak up we'll come at you with guns – we'll lock you up. I think that is intimidating and I don't blame people who are scared, it scares me. And I don't blame people for saying that is too much I have to take a step back or whatever including myself, but I think if we give in to the point we don't do anything anymore then their tactics work and we cannot let their tactics work on us.

The intense legal criminalisation in the Raids clearly showed the state's direct and sustained attempts to deter activism over a significant period of time. Participant B explained how it felt to go through the court proceedings when they recalled that:

It was a punishing ordeal, and in some ways it made me interested in those processes and how those processes are used as a form of punishment themselves against people because it did go on for so, so long.

Indirect silencing is another serious expression of the state's power against activists. This is clearly demonstrated in how the state can act in extreme ways with state agents knowing that it will have a chilling effect. Sue reflected that:

... there was really a chilling effect that happened. In some activist circles people became more fearful about surveillance, and that's the awful thing about the Terror Raids and the aftermath, you know one of the awful things was that people became too scared to talk openly ... I know it did [visibly have a chilling effect] because I was in quite a few discussions with other people, with other activists, especially younger activists ... I was really concerned about the levels of paranoia that were being generated because I think that paranoia is one of the biggest chilling effects. If we get too frightened we don't act - we're too afraid to go on the street, we're too afraid to organise, we're too afraid to occupy and that just gives power to the enemy ...

The attempted silencing of Tauwiwi activists is also reflected in the criminalisation of Māori activists as identified in Chapter Three. This chapter now considers the connection with Māori given the contexts in which criminalising activism has taken place in Aotearoa.

Connection with Māori

As outlined above, the criminalisation of activism was a key part of the colonisation of Aotearoa and how modern Aotearoa's society was established. The effects of colonisation continue today, and cannot be separated from either green or indigenous activism because of the interconnectedness of their histories. There is significant crossover between green and Māori activists because of the significant focus both have on whenua. While many of the participants were working to have a role in mutually beneficial relationships there was a level of awareness of the role green activism itself had had in repressing Māori. Catherine said:

... it [the environmental movement] was incredibly racist, so it was all white people who knew nothing, absolutely nothing about the ground they were standing on, and no sense of solidarity with tangata whenua. No relationships with tangata whenua except ones who were

prepared to join our movement, and do it the way we want to, and that tendency still exists in white environmental groups. Māoris are welcome as long as they do what we think is the right thing to do.

The ongoing effects of colonisation on Māori emphasise the importance of Tauīwi meaningfully supporting Māori in activist spaces, in ways that Māori direct so that positive change can take place. Participant B reflected that:

... [other people's] struggles are all of our struggles but actually we are better placed in some cases to fight those struggles because other people are fighting so hard just to stay alive in racist oppressive societies.

As demonstrated previously, the first significant convergence of Māori and Tauīwi activists on a national-scale was the Springbok Tour 1981. This was a site of significant state violence and intense criminalisation and many participants spoke of their experiences during the Tour, including of violence. The activists identified the Tour as a *turning point* in the criminalisation of activism (some also spoke about Parihaka in the same way). Catherine said:

We've had some rude awakenings [that we are a particularly progressive country] like what happened during the Springbok Tour where anybody could get their head beaten in by the Red Squad. There was no differentiation, everybody got beaten up who was in the wrong place at the wrong time by the Red Squad, and that was completely legitimised by the state.

The Tour activism confronted apartheid and increased the dialogue about racism and marginalisation of Māori in Aotearoa. This was confrontational to the 'status quo' which is reflected in the intensity of state violence and criminalisation which took place during the Tour.

Catherine recounted that:

The tour was an incredible experience and it really reinforced that this is a racist country that hasn't faced its own racism, so everyone's going 'Free Mandela' - what about Bastion Point?"

Similarly, the participants in this research had also considered the Raids impact on Māori. All were very clear that the Raids were an example of the state's persecution of Tūhoe, and that the Police's conduct in Rūātoki was seriously harmful (also see above). Sue encapsulated the collective feeling about what had happened:

The way the cops acted to that Māori population was just so terrible. It was just such a reminder of that colonialist past, just the sheer oppression of it, and then on the activists themselves saying right, just watch out, we will do this to you ...

Intense criminalisation of Māori during the Raids was effected by the historical, social, and cultural contexts and the ongoing effects of colonisation. In these contexts the state and state agents' conduct had a significantly detrimental effect on Tūhoe at Rūātoki. Catherine reflected on this context when she said:

Environmental activism here, unless you're Māori, unless it's the Terror Raids, is pretty privileged.

Many of the activists acknowledged the privilege of being a Tauwiwi activist which was an important insight because it gave them a framework to deconstruct how this privilege impacted on their activism. This had a flow-on effect of empowering the activists to engage in more solidarity in activist spaces. Kevin reflected on this insight:

I'm an activist. I'm proud of that you know, I call myself one. I just happen to also be a scientist and have the advantage of being a white, Pākehā, well-educated, stropky male.

Ultimately there was an awareness of the importance of Tauwiwi activists not taking over and being complicit in the silencing of Māori activism. As Participant A said:

I think, let Tūhoe tell their story - they can. They're the ones who suffered the most and they're the ones who can tell it from their perspective.

This flows into the issue of how criminalisation can be resisted which was also extensively discussed with the participants and is considered in the next chapter.

Conclusion

Criminalisation in Aotearoa has seriously impacted green activists through legal and socio-cultural means, and has been experienced by green activists in a number of ways. The Raids represented an evolution or 'new era' in the criminalisation of green activists in Aotearoa, with this identity being replaced by the label 'terrorist'. This label as the 'other' has led to the intense criminalisation of *all* green activists in the Raids. This criminalisation has however, taken place in historical, social, and cultural contexts which mean that intense criminalisation needs to be analysed from within a framework which acknowledges colonisation and its seriously detrimental flow-on effects. The next chapter builds on this knowledge of criminalisation and considers the response to it – resistance, and the ways in which it functions to counteract criminalisation, particularly intense criminalisation. It shows that resistance is a powerful method to advance environmental well-being in Aotearoa.

Chapter Seven – Resisting Criminalisation

This chapter analyses green activist's resistance to criminalisation which is characterised by resilience, strength, and determination. It begins by analysing their commitment to activism even when confronted with intense criminalisation. It then progresses to consider advocacy which opposes environmental harms and how that creates opportunities for activists' views to be expressed. Following this, the chapter analyses an environmental justice approach and the activist's collective commitment to environmental justice views. The chapter then proceeds to consider a future orientation which is underscored by the activist's shared belief that a better future is an achievable goal, and their commitment to work towards this. The chapter concludes with discussions on solidarity and action, both of which were strong themes in all of the interviews. Overall, this chapter emphasises the power of the collective in activist spaces in resisting criminalisation and encouraging, inspiring, and developing ongoing green activism.

Commitment

One of the strongest themes of resisting criminalisation was commitment - strong commitment to the pursuit of green activism for the betterment of the environment. This was maintained in spite of what the activists had experienced psychologically, emotionally, financially, and socially and in the context that freedom of expression is supposed to be a legally exercisable right in Aotearoa⁶⁷. All of the activists had a realistic understanding of the state's power in relation to activists but all had consciously adopted a commitment to their values which emphasised their resilience and strength. Catherine said:

I think the context for a lot of people before the Raids [was] we already had an analysis of how the system worked and what the state is capable of. Horrible as it was, it wasn't a surprise that they were capable of that kind of ridiculous repression. So I think that ...

⁶⁷ Section 14 New Zealand Bill of Rights Act 1990.

you're not going to be knocked off that trajectory just because the state acts like you think it's going to act.

Participant A and Participant B remain deeply committed to green activism and to opposing environmental harms in spite of being subjected to over a decade of intense legal and socio-cultural criminalisation. Participant A summarised this:

... there's various forms of being involved in a political movement – there's heaps of things to be done. There's opportunities to do so many different things in so many forms, and yeah I'm glad that we kept being active – that's what drives us to a large degree.

Commitment to green activism is a very personal, conscious decision to maintain personal values and beliefs, and to work on continuing to advance them. Many of the activists had a long history of commitment to green activism and a passion to continue to 'make a difference'. Sue said:

We [Sue and her friends] call it the long haul - we're in it for the long haul.

Catherine emphasised the depth of this commitment:

For me I would define activism as a part of my social duty as a citizen. An essential part of a country is that people challenge things - that we support change by sometimes breaking the law ...

For the activists the feeling of being empowered by consciously committing to green activism led to increased resilience which in a practical sense meant that they had the ability to overcome adversity and continue their activism. This resilience was strong enough to enable the activists to resist harmful conduct from the state and other actors, and in the Raids they were ultimately able to use their arrests and legal proceedings to advance their activism. They did this by reconstructing the discourse around themselves and their experiences which was evidence that, at times, the process of being legally criminalised, can be inverted and used *by* activists as a means to highlight their cause and objectives. Kevin said:

... sometimes being arrested or whatever, can end up being a way of actually showing your cause. If you're strong enough to do these things and be arrested, then how you handle yourself at that point will actually make a big difference to how you're perceived and how your cause is perceived.

This does not lessen the fact that resilience against criminalisation is difficult to maintain. The state's conduct in the Raids *must* be acknowledged as inherently harmful given its aggressive approach and the immense power imbalance between the state and activists – years of intense criminalisation, as identified in Chapters Four and Six, are extraordinarily demanding. If green activists can maintain their resilience notwithstanding the pressures placed on them, the environment benefits because their work opposing environmental harms continues. Participant A emphasised this resilience when they talked about being spied on and reiterated their commitment to green activism when they said:

You don't stop, you don't accept it. It's not right, but you don't give into the intimidation cos that's what it is – it's intimidation.

The commitment to persevering with activism can be achieved by being 'change agents'⁶⁸. This research defines the term 'change agents' as the conscious belief that things can change and more importantly, that things can get better. This position confronts state defined binaries such as powerful/powerless, right/wrong, and legal/illegal by refusing to accept that they are the way 'things have to be' and proactively seeking to change them. All of the activists had an optimism and passion for positive change which persevered irrespective of the significant legal and socio-cultural criminalisation they were subjected to. Kevin summed up the activists' general perspective when he said:

Aotearoa's a small country where we as individuals can make a difference.

⁶⁸ Catherine used the term 'change agents' in her interview.

This research confirms that Kevin is right because individuals, in conjunction with others with similar beliefs, can and do, make very real differences for society and this can lead to tangible benefits for the environment.

Advocacy Opposing Environmental Harms

The theme of advocacy opposing environmental harms was also prominent. The green activists made conscious choices to resist the processes of criminalisation by engaging in advocacy. They showed that the use of advocacy when opinions/beliefs conflict with the 'status quo' can be a method of survival because activists are able to maintain their identities and mana through the act of expressing their opinions/beliefs. In practice using advocacy is an *active* process of choosing to have a voice and choosing to express it through whatever means are possible. Advocacy can manifest in different ways depending on the forum where it is expressed but at its core it is the combination of action and 'talk' irrespective of circumstances. It challenges labelling by being a key method through which alternative voices are heard.

The first step in the use of advocacy is the conscious decision to adopt certain opinions/beliefs. This is a very personal experience because the adoption of opinions/beliefs can be confronting, challenging, or overwhelming, and it is an active process of deciding what opinions/beliefs are those a person wants to adopt. Sue described undertaking this process at 15/16:

I've been a conscious activist on the street since I was 15 and in the fifth form at Auckland Girls Grammar ... I've basically been active in many groups and causes ever since, right up to now. I made a choice when I was 16 about whose side I was on, my background is white privilege but I made a choice then of whose side I wanted to be on, and I've stuck to that.

The second step is a conscious decision to express those opinions/beliefs and to disseminate them when opportunities to do so are either available or more often, created by the holder of the opinions/beliefs. Participant B said:

I think that Participant A and I had made a really conscious decision at some stage to wage a political fight and to wage a fight that for me, to some extent, meant fronting in the media.

Participant A described the work they continue to undertake for the environment and framed this as something that *needs* to be done when they said:

I'm going to keep standing up for what I believe in, for what we believe in. You know the tasks I had – climate change, environmental degradation, social injustice, the ongoing colonial regime that keeps on keeping on - those are issues that are far too important you know, we have to remain active.

The use of advocacy became a particularly powerful method of activism for Participant A and Participant B given the mainstream media's fixation on negatively framing the activists arrested in the Raids. This process gave them a way to actively oppose this 'othering' and the silencing of their activism. Participant A described the context in which they maintained their advocacy when they said:

As an activist you learn to live with the fact that the media is mostly against you – you know, that's the reality.

The mainstream media's opposition to activism contributed to Participant A and Participant B's decision that they would be very selective about their interaction with the mainstream media and ultimately have minimal engagement with it. Instead they chose to have some involvement with indigenous media, were open to participating in alternative media spaces, and Participant B constructed their own space in which activist voices could be heard. Participant A said:

The mainstream media thrives on personalised stories, on scandal to some degree, and on short sound-bites. You know, how long is a six o'clock news item? Three minutes max right. So they were not going to change for us. So that was the format and you can either choose to participate in that format or you can choose to stay away from it. So we mostly

decided not to participate because the format's stink to start with. The format's designed to - not to suit us - the format's designed to turn you into personalities and we're not interested in personality politics. We're interested in a kaupapa, we're interested in climate change, we're interested in social justice, we're interested in indigenous liberation, we're interested in a whole heap of things that we're passionate about, but we're not interested in putting ourselves first. So by and large we decided not to engage with the mainstream media - even if we wanted to it would have been difficult because of suppression orders.

Participant B consciously constructed an activist space in the independent media where an alternative discourse about the Raids could be disseminated and the state could continue to be challenged. This action was hugely beneficial as it challenged the state's silencing of the activists' voices and also connected the activists to a broader section of the public.

A number of the other activists have also actively constructed alternative spaces so that they could undertake green activism and challenge the state's dominant discourse. These spaces have included activist sites within the academic, community, and political spheres. An example is Cath who began to challenge mining in the Coromandel in the late 1970s/early 1980s, and was challenging the deficient Mining Act 1971. Cath said:

... so I set up a group called 'Mining Monitor' which was essentially researching the mining industry, who was really who of the mining companies.

Advocacy is a powerful way to show the state that activist voices are 'here to stay' and is a tangible expression of green activists' commitment to a belief in a better future.

Environmental Justice Approach

White and Heckenberg (2014) have defined three approaches to justice, rights, and harms, from an environmental perspective. They are described as an eco-justice perspective, involving environmental, ecological and species justice. Each focuses on harm from a different viewpoint, respectively: humans; ecosystems; and non-human animals (White & Heckenberg, 2014). All of

the activists expressed their commitment to environmental justice, in different ways, and held beliefs that the world should be improved for future generations of people.

The environmental justice perspective is the concept of “environmental rights as an extension of human or social rights, and the right for everyone to have a healthy environment, and environmental equity” (White & Heckenberg, 2014, p.48). It also includes the principle of intergenerational equity which “refers to ensuring that the generations to follow have at least the same or preferably better environments in which to live than those of the present generation” (White & Heckenberg, 2014, p. 41). In describing his perspective, Mike said:

I mean I guess that it's about environmental justice for me. I have some kind of over-developed sense of justice or injustice and I get really angry when I see policies or things that are taking place where individuals are profiting from you know - private gain for public loss. Especially freshwater's a classic example, where a few people get to make some money and a whole lot of others, the rest of Aotearoa, gets to lose.

The activists' environmental justice views exist in a colonial settler state, which is also a capitalist democracy, though it must be accepted that capitalism is larger than simply the state itself. The capitalist economic system has been defined as one which is “based upon the exploitation of natural resources, non-human animals and people” (White & Heckenberg, 2014, p. 22). Participant A critiqued the capitalist system's environmentally harmful nature when they said:

The cool thing for me around climate justice is it incorporates social justice and ecological justice. So it's trying to find solutions and going to the root cause of climate change, and the root cause for me is capitalism.

The fact that there are green activists who consciously adopt environmental views has meaningful benefits for society because it means that irrespective of what is taking place, a committed group of people continue to act in accordance with the belief that things *can be better* and that lays the foundation for a meaningful future.

A Future Orientation

All the activists believed that a better future is an achievable goal and all believe in this from an environmental justice perspective⁶⁹. The green activists clearly hold this belief as a core value while also acknowledging the complexities of fighting indifference, hostility, and violence from the state, its agents, and sometimes the public. The strength of this belief creates a means through which people can literally, and in an 'activist-sense', survive and achieve, in spite of being exposed to and experiencing, very harmful actions. Participant A's ongoing commitment to being an active part of the construction of a better society is evident in their ongoing green activism. Participant A said:

Name Withheld takes up quite a lot of our time so that's a community group - we've got a website, we write submissions, we organise protests sometimes, we organise public meetings around the ..., around climate change.

Participant A summarised their belief in the possibility of a better future saying:

... you do your dirty work [referring to SIS spying] and I'm going to keep organising for a better future for our kids' cos there is no way other than to keep organising for a better future.

A better future is different to what the state has held up as normal/right/how things should be and links back to the core principles of environmental justice defined above (White and Heckenberg, 2014).

The green activists commitment to believing in a better future is particularly powerful because of their awareness of the impacts of modern life on the environment, non-human animals, and humans. Several participants spoke about climate change, many spoke about peace activism, and these insights emphasised the fact that green activism leads to a much deeper awareness of

⁶⁹ Even if they did not use that language to describe it.

harms, particularly environmental harms, than the public. In reflecting on the activism he's undertaken Kevin said:

... it's a better world for me and my children but it's a better world for everybody, you know.

The environment in Aotearoa has benefitted significantly from progressive-thinking by activists like those interviewed and will continue to do so given the participants' commitment to 'keep on fighting' for a better future.

Solidarity

The one feature that most clearly distinguishes green activists from members of the public who want to do the right thing or who are 'good citizens' is that they do not just *believe* in a better future - they use their beliefs and values as a platform to lead them into tangible action for the benefit of the environment and other people, and use 'people power' to work towards a better future. People power is a method to resist criminalisation and a means through which green and other justice-based activism can be undertaken. It recognises that individuals have limited power against the state but that solidarity can lead to the creation of collectives which can use that power to lead to meaningful change. Sue acknowledged the power of collectives when she said:

I always felt, I really don't like individualism, like my politics is always about trying to collectively analyse and work with other good people. We're never strong enough on our own, it's a real mistake to think we can do it on our own.

Solidarity is a method of resistance to criminalisation in a number of ways. Activists can use it as a method to survive processes of legal criminalisation. Examples in the Raids include solidarity from supporters, and between activists during the trial. Participant B acknowledged the power of solidarity in the legal space when they discussed providing practical support to their friends during the trial. They said:

I was really engaged in doing solidarity ...

Participant A reflected on the use of collective strength within the trial itself and the defendants conscious commitment to engage in solidarity throughout that process. They said:

You know most court cases fall over because so many people rat on each other and have you know, no principles when it comes to their fellow humans, and you find with our case, with political court cases, that people by and large stand with each other despite the fact that we might disagree passionately with each other over many things, but that's a core principle on the left I believe –we stick together when faced with repression like that and we did, we got through that challenge.

Activists can also use solidarity to resist socio-cultural criminalisation in the media by maintaining commitment to other activists and their beliefs, and through a long-term process of advocacy. In the Raids this enabled the activists to shift the discourse within the mainstream media from the wholly negative terrorist discourse to examples of much more critical analysis of the state and state's agents conduct, and tangible challenges of what had occurred and whether the activists had ever *really* been any kind of substantive threat at all. Many of the participants commented on the activist's achievement in challenging their 'othering' as terrorists. Kevin noted that:

... they grew their mana in that process - all of them did I think. They did a really good job and that in itself helps change the way the world works.

Sue said:

I think that over time their [Signer, Morse, Bailey] image in the media has improved, like they've done a really good job of representing themselves, all three of those people. I've just got enormous respect for them and for how they've handled themselves in the wake of it right up to the present day ... It's a real tribute to them how they've responded and they have all remained active, they all carry on, and do really good work so kia ora to them.

Solidarity with tangata whenua in the activist space was also discussed by some of the participants and was a site of ongoing learning. Catherine was particularly clear about Tauwiwi responsibilities to support Māori as tangata whenua and said:

... when you're part of that network it's a small country and there's not that many of us, and particularly Pākehā who support Māori is quite a small group, and I mean it was sickening to think that Tūhoe were going through yet another round of this and so the question was, 'Well, what can I do to help?'

Sue also discussed her efforts to acknowledge Tauwiwi responsibilities through activism supporting Māori as tangata whenua when she said:

... I've been pretty active in supporting Māori struggles, tino rangatiratanga, and very conscious in the early days of the unemployed movement of working with Māori as an ally, as a Pākehā ally. Not taking over in any way but supporting those struggles where it's appropriate to do so.

Participant B recognised the impact of their experience of being criminalised in the Raids on their understanding of supporting Māori as tangata whenua in the activist space:

Every time somebody talks about an environmental issue my first thought is, 'What do Māori think about this? What do tangata whenua think about this? What's their take on it? How is this affecting them? What is the relationship regarding their rights, their view on this? And that probably would not have been the first place that I would have gone to in the past but now it's the first thing I think of.

The success of the activists' commitment to different expressions of solidarity is best-reflected in the fact that all of the activists continue to work, often unpaid and unrecognised, to oppose environmental harms. They consciously continue to put the environment before their own interests and in doing so advance strong environmental justice values which all New Zealanders benefit from.

Action

Another strong theme in the interviews was 'taking practical steps to educate and support others'. Practical action which led to tangible benefits for other activists was often framed as a site of power which in turn, created resilience. It could enable activism to start, continue, or overcome repression, and was based on mutual empowerment with reciprocal benefits.

One of the strongest examples of this was in the creation of activist-focused spaces of change. Examples include Participant B writing and creating work which challenge the state's dominance, and Sue being a key foundational member of Kotare Trust (Research and education for social change) which is a space for social justice research and education from a Treaty-based foundation (Kotare, 2018). Both Catherine and Gordon also have active roles at Kotare Trust and all three continue to actively contribute to Kotare's kaupapa. Catherine discussed her long-term employment with Kotare when she said:

... for ten years I ran the education programme at Kotare Centre at Hotea North and the good thing about that job was that I was teaching activism but also structural power analysis and all that stuff from a left-wing Treaty based perspective, but also Kotare totally mandated my position in stuff so if there was anything happening that involved activists I was encouraged to go and participate and build relationships. So that's how Kotare works - that was a fantastic job. Ten years of wonderful meeting activists, working and supporting activists', being part of those networks.

The other very strong example was through educating others – and ultimately self-care through individual learning, both formally and informally, to encourage the growth of activism within the self, people, and collectives. Sue said:

With the groups that I've been in we've always tried to run trainings, non-violent direct action training or specific action training. [We] try and help [them] understand and protect themselves, and understand all the stuff around keeping to the kaupapa, like not

attacking the police for example. It's not the police's fault that we've got a terrible welfare system you know, keep the focus on who the enemy is – not the police.

Many of the activists spoke about education in different ways, including their own experiences of learning, teaching, and mentoring others, and life-learning in the broadest sense. Education or exchanging knowledge (informally and formally) was a powerful method for the development of resilient activism which can resist extreme challenges. Participant B described the holistic nature of activist teaching and mentoring when they said:

... it's about trying to invite and encourage and nurture people involved in political struggles, so trying to take care of ourselves and others along the way.

Empowering one's self was also a form of resistance and was seen in activists proactively trying to engage with the criminal justice system to mitigate its effects on them. The use of 'activist-friendly' legal representation to proactively empower activists to try to counter the significant power imbalance in the court room can be a fundamental component of 'fighting back' from within the system. Kevin had an 'activist-friendly' lawyer on stand-by for his court proceedings:

Got arrested at Waihōpai ... we appeared in court three times ... we'd already had a friendly lawyer jacked up even before we did the action so we'd done the work.

In the Raids Participant A described the importance of legal representation to fight against the state from within the disempowering criminal justice system:

... the Supreme Court tells the cops – you guys are breaking the law on a daily basis in countless operations in this country and it happens to take these so called terrorists to point it out – these so called terrorists and their army of lawyers.

The activists' generosity with their knowledge (directly experienced by the researcher) and willingness to give to others was one of the research's strongest themes.

Conclusion

This chapter has shown that in spite of the significant challenges activists face in resisting criminalisation it is *possible* and can be achieved through a combination of maintaining thoughts/beliefs coupled with action. Specifically, resistance can be advanced by maintaining beliefs which align with the principles of environmental justice, most notably that a better future is possible, and a commitment to being a meaningful part of the creation of that future. It can also be maintained through action – as manifested in advocacy, solidarity, and learning.

The strength in the green activists' resilience in the Raids, in spite of the intense criminalisation they were subjected to, was reinforced by Signer when he was interviewed by Morse and said "If I get convicted and possibly even deported, I will not have any regrets. In my head and heart, I feel free" (Morse, 2010, p. 168). This emphasises that resistance to criminalisation is a powerful site of expression for green activism notwithstanding the significant power imbalance in criminalisation and its all-encompassing effects. This chapter has proven that it is possible for green activists to successfully challenge their criminalisation and that there is meaningful countering of the state's dominance in Aotearoa.

The next chapter analyses the key findings from this original research and reflects on some of the central themes which have emerged from this research. It also proposes issues which would benefit from further research and reiterates the value of this original research in adding to our understanding of critical aspects of Aotearoa's society including colonisation, activism, criminalisation, and resistance.

Chapter Eight – Discussion and Conclusion

The Terror Raids of 15 October 2007 were an act of state terror. This thesis has shown that the Raids were an example of the state targeting those who challenge their interests and employing intense criminalisation and violence. Other powerful social agents, such as the mainstream media, assisted them. The activists who experienced the Raids were arrested (often by armed police), detained in prison and threatened with being prosecuted under the Terrorism Suppression Act. They were also subjected to years of court proceedings, mainstream media stories framed from a terrorist discourse, and intensive labelling, ‘othering’ and marginalisation. This intense criminalisation of green activists sent a strong message to others: this is what will happen if you challenge powerful interests. This thesis has shown that the Raids represented a new era in the criminalisation of activists in Aotearoa. In spite of the activists not being unified under any particular cause *all* of the activists in the Raids were subjected to intense criminalisation from officials and mainstream media and *all* of them experienced legal and socio-cultural criminalisation for years.

This chapter draws together the threads from the previous seven chapters and reflects on the major themes which have been developed through my original research. The chapter does this by setting out the key aspects of my research and highlighting these aspects through examples. Further avenues of research are also proposed and focus on advancement of themes which have emerged during my research.

Activism

My findings have confirmed that green activists in Aotearoa can pose a significant ‘threat’ to the state insofar as the activists I interviewed have consistently demonstrated that they will challenge state interests in several ways. Firstly, they are a ‘threat’ because activism is a tangible demonstration that alternative beliefs, actions, ways of doing things, and ways to engage with the environment exist. In this research the 9/11 terror context - which is discussed later in this chapter - led to a government-approach of ‘high alert’ for terror threats and green activists in the

Raids being labelled, blacklisted, 'othered' and relentlessly dragged through the criminal justice system. It led to intense criminalisation and the imposition of state terror.

Green activists also pose a 'threat' to the state because their activism is palpable evidence of what people power and solidarity can achieve. In the Raids people power and solidarity were shown by other activists and members of the public supporting the criminalised activists for years. This encouraged the activists to keep fighting to resist intense criminalisation and to continue their activist work addressing environmental harms. Green activists also pose a 'threat' to the state because of their underlying beliefs in a better future coupled with their actions to achieve this. Green activists express their beliefs through *actions*, and these actions then lead to significant benefits for the environment. Some green activists also pose a 'threat' to state interests because of their intersecting beliefs in, for example, Mana Māori Motuhake, alternatives to democracy, and economic justice. These findings show the circumstances which lead to the state's use of intense criminalisation and raise the question - is it possible for green activists to maintain their activist identity but also become 'less threatening' to the state? Further research on green activists whose activism is expressed in different ways would be valuable to explore how activism can be maintained even when activists are placed under significant pressure by the state or mainstream media.

Environmental Justice

Green activists and their work opposing environmental harms are an important part of green criminology and an important part of environmental justice (for example, Walters, 2017; Brisman, McClanahan, South & Walters, 2018). My findings have shown that *all* of the green activists in this research are very focused on improving Aotearoa's environmental well-being from what can be defined as an environmental justice perspective - recognising both the importance of rights for the environment and people, and the potential to improve the experiences for both. My research has highlighted the activists: high levels of commitment to 'conscious activism' and *action*; appreciation of the interconnectivity of the past, present, and future; and strong common beliefs that things can and should be better, for the environment,

and for people. These findings confirm that the principles of environmental justice as discussed by White and Heckenberg (2014) are highly applicable in the context of Aotearoa and accurately describe a resilient green activist identity. The activists demonstrated their beliefs in a number of ways including their participation, over decades in: solidarity; non-violent direct action like protests; political movements where there is 'heaps to do'; and their commitment to fight back against environmental harms through activist sites within academic, community, and political spheres. My findings emphasise the importance of green activists maintaining environmental justice values in their ongoing commitment to the reduction of environmental harms in Aotearoa. This research also proposes that environmental justice beliefs have been consciously framed by the activists in a 'Kiwi' (Aotearoa) context with insight into issues affecting the local environment, specifically acknowledgement of Aotearoa's history as a colonial settler state and acknowledgement of the role of tangata whenua. This suggests that there may be a Kiwi 'Taiwi green activist identity' which helps individuals sustain their activism and it would be valuable to explore this further to see if it has any empirical basis.

My research has also shown that the activists in this research have tangibly expressed their green activism, notwithstanding experiencing *all* forms of criminalisation, by undertaking activism *inside* existing spaces such as academic institutions, Parliament, and non-governmental organisations, as well as by activists' *creating* spaces of activism which challenge the status quo through writing, teaching, relationship-building, and building organisations. This has emphasised the resilience of green activism and raises a question of whether green activism is more effective in spaces which are *created* by activists. If so, how can its effectiveness or 'success' be measured from the perspective of activists who are working to oppose environmental harms and not through traditional models? This would be a valuable area of further Aotearoa-focused research.

My findings have also emphasised the depth of these green activists' knowledge of harm (in the broadest possible sense) and the interconnectivity of social and ecological injustices. This has been shown by the activists' reflections on social justice, climate justice, indigenous liberation, economic injustice and, importantly, about the Raids. These findings strongly confirm the principle of environmental rights as an extension of human rights as outlined by White and

Heckenberg (2014, p. 48). The activists recognised that an individual can make a difference but practised people power by: working with other activists; working as allies; encouraging, nurturing, and supporting activists and other people; solidarity; and engaging in collective analysis and decision-making. This research suggests that the power of Aotearoa's green activism lies in the collective and this is important because it emphasises the benefits of green activists being connected to others with similar values. Further research on *how* collectives use the power of green activism in Aotearoa would be beneficial, particularly given the context of criminalisation.

Criminalisation

My research has identified the phenomenon of colonial criminalisation outlining the particularly stark example of colonial repression at Parihaka in 1881. While outside of the parameters of this research it is also evident that colonial criminalisation was firmly in effect in the Terror Raids with the lockdown of Rūātoki demonstrating this. The Raids support the proposition that when Tauīwi activists engage in solidarity/direct action with Māori they also become subject to colonial criminalisation and the 'usual' rules for Tauīwi no longer apply - as much. This finding would benefit from further research from a Maori-led criminological perspective.

Intense criminalisation is the term adopted by my research to emphasise the *extreme* application of criminalisation not only in the Raids, but also at Parihaka, and in the Springbok Tour. My research has highlighted the severity of criminalisation in all three cases, and the use of state violence. It has also highlighted the level of personal and political consequences which result from the intense criminalisation of activists. In the Raids this has been shown by personal consequences including: the financial impacts of significant legal fees, difficulty in employment, and multiple court appearances; and the emotional and physical impacts of imprisonment, labelling, and years of court proceedings. It has also been evident in political consequences including being subjected to surveillance/spying, blacklisting, intimidation, marginalisation and the theft of long periods of time which could have been used for activism. My findings have established that intense criminalisation has been used in situations where the 'threat' of activists

has been perceived to be most severe and is an important aspect of Aotearoa's history of activism. This raises the question of whether there are other sites of criminalisation in that history which would benefit from analysis from a perspective of intense criminalisation - particularly when factoring in different groups positions within the social hierarchy.

The importance of analysing criminalisation from two distinct, but interconnected, perspectives – legal and socio-cultural criminalisation, has also been highlighted by my research. The research analysed legal criminalisation, through court-based systems and legal proceedings, and emphasised the significant role these processes of criminalisation had in the Raids. This was shown through: initial investigations by the police, and probably other state agents; detention, and arrests by the police; the Solicitor-General's assessment of the grounds for terrorism prosecutions under the Terrorism Suppression Act; proceedings in appellate courts; and judicially-imposed sentences. Legal criminalisation in the proceedings conducted by the Crown included: laying criminal charges; bail hearings; legal arguments; the Jury trial; and sentencing. My findings have emphasised the extensive degree to which modern legal systems can be used against activists who challenge state interests. This confirms the repeated strong theme within criminological literature that criminalisation is the expression of *significant* power over people (for example, Tadros, 2009; Millie, 2011). The findings suggest that more research exploring the experiences of legal criminalisation of different green activists, particularly at different positions on the social hierarchy, would be extremely valuable.

My research also found that the only activists in this research who had not experienced legal criminalisation were the activist academics. An area for potential research beyond the parameters of this thesis is an analysis of the criminalisation of activist academics and what flow-on effects this has on their role as critic and conscience of society in Aotearoa and protected right to academic freedom⁷⁰. My findings suggest that the relationship between the state and activist academics in Aotearoa is under-examined and would benefit from research.

⁷⁰ Sections 162(4)(a)(v) and 161 of the Education Act 1989, respectively.

Socio-cultural criminalisation focuses on a broader analysis where individuals or groups can be targeted as acting outside of socially constructed norms in a range of ways not just through legal processes. It acknowledges the role of individuals, institutions, and a wide range of processes in the imposition of criminalisation. In the Raids socio-cultural criminalisation was imposed in a number of ways including through labelling and 'othering' in the mainstream media, by political figures and the police. The labels which were imposed included: threat; terror threat; terrorist(s); paramilitary radical group; and terrorism. The Terrorism Files article of 14 November 2007 was a particularly powerful example of the mainstream media's role in the criminalisation of the activists in the Raids and the use of language, images, and framing to construct news from a particular perspective. My findings have highlighted that socio-cultural criminalisation is particularly pervasive and enduring which is evident in its continuation today and aligns with the criminological literature focussing on the underlying principles of criminalisation (for example, Lacey, 2009). The use of labelling in particular, raises a question about the role of the mainstream media in criminalising activists in a Western colonial settler state and it would be valuable for this to be explored in significantly more detail, particularly in light of the fact that these findings have confirmed that labelling is a particularly powerful phenomenon as outlined by Tannenbaum (1938).

My research has also highlighted the intersection of legal and socio-cultural criminalisation. This has been particularly evident in the police's role in both forms of criminalisation. The police's role in the legal criminalisation of the activists has included their use of covert (mostly illegal) surveillance in investigating the activists, the application for a search warrant, the Raids on 15 October 2007, the arrests and detainment of activists and members of the public, and their work with the Crown throughout the activists' trial. From a socio-cultural perspective their role in the activists' criminalisation has included 'othering' the activists with examples like the exclusion of iwi liaison officers in the Raids, the suggestion that the police tipped-off the mainstream media during the Raids, labelling the activists in the context of a strong suggestion of a very close relationship between the mainstream media and police, and the police's refusal to apologise for their actions towards the activists in the years that have followed. It is also evident in spying or

surveillance which was used on the activists in the Raids before and during the Raids and is likely to have been a precursor to the police laying criminal charges against the activists. These intersections emphasise the power of intense criminalisation and it would be valuable to explore the police's role, and other state agents like the SIS, in labelling and marginalising activists in more detail, particularly in the context of colonisation and the social hierarchy.

Through the identification of intense criminalisation, and its manifestations through legal and socio-cultural means, my research has also identified conflicts between state agents and the state, different state agents, or mainstream media. Earlier examples were evident in the contradictory approaches to criminalising activists and in the Raids a number of conflicts were identified. This included internal conflict in the police with the exclusion of iwi liaison officers in the Raids; and conflicts between: the mainstream media and legal officials as shown in The Terrorism Files contempt prosecution, different legal officials (the police and Solicitor-General) in the contempt prosecution, police and the Solicitor-General in the Terrorism Suppression Act decision, the Crown and mainstream media regarding the activists' decision to exercise their right to silence, and the police and the IPCA regarding how the Raids were conducted on 15 October 2007 (principally at Rūātoki). My research has reinforced that the state is not a homogenous entity and has highlighted the complexity of relationships between different actors within the processes of criminalisation. This confirms the criminological literature on the diversity of social actors within criminalisation processes (for example, Lacey, 2009). It also raises the question of how these conflicts contribute to intense criminalisation and suggests that it would be valuable for these conflicts to be explored in more detail.

Resistance to Criminalisation

While the criminalisation of activists is enormously powerful and has seriously detrimental effects as shown above, my findings have emphasised that there is a strong thread of resistance

in Aotearoa. The thread of resistance is as long as the thread of criminalisation⁷¹. Each time activists have been criminalised, they have resisted. The green activists interviewed use a number of methods to resist criminalisation including: creating their own spaces for activism – in organisations/groups, media, and writing; through education – personal, group, formal/informal; through limiting engagement with the mainstream media; through relationship-building; and through building their internal resilience using commitment, advocacy, and maintaining their beliefs in environmental justice. My research found that the combination of these factors has led to a high-level of resilience in these green activists which motivates them to continue their activism notwithstanding criminalisation, or intense criminalisation. It would be valuable to further explore the relationship between intense criminalisation and resistance, ultimately to work out what factors facilitate effective resistance, with more research into this phenomenon from a criminological perspective and potential analysis of Parihaka (with Māori-led research into intergenerational resistance) and the Springbok Tour (from both Tauīwi and Māori perspectives)

My research has also established that indigenous media and media partnerships between Tauīwi and Māori are powerful sites of resistance to criminalisation. In the Raids these sites created spaces where alternative discourses could be heard, and presented valuable contextual material which was absent from the mainstream media discourse, such as the oppressive and destructive experiences of colonisation that Tūhoe were subjected to. Notwithstanding their experiences of intense criminalisation the Raids activists confronted the state head-on in alternative media spaces and refused to be silenced. They quite literally resisted by firstly, existing, and secondly, by continuing their activism in spite of the nature of what they were being subjected to. This has emphasised the strength of the green activists and their commitment to their beliefs, and would

⁷¹ White (2013) considered environmentalists' resistance to the states' environmentally harmful conduct, emphasising the strength of resistance and diversity of expressions of activism, as well as addressing the tactics employed by the state to pursue their interests. White's (2013) identification of different forms of activism and counter-activism includes acknowledgement of the use of criminalisation and other forms of suppression.

benefit from further research into how activism is supported and develops through partnerships with pro-active forms of media.

Three Conclusions

There are three conclusions which have emerged through this research. The first conclusion is that there are three critical *turning points* in criminalising activists across Aotearoa's history. As discussed previously, these turning points are: the events at Parihaka in 1881; the Springbok Tour of 1981; and the Terror Raids of 2007. At all three turning points activists were subject to violence and intense criminalisation by state agents. Despite this, activists at each event non-violently resisted criminalisation where they could. There is a connective thread running through each of these three turning points. Each challenged colonial control. Activists at Parihaka in 1881 were fighting to keep their land from being stolen, and activists in the Springbok Tour were fighting against racial discrimination. It is significant that activists in the Terror Raids were not unified under any particular cause, but they were all targeted in the Raids as terrorists nevertheless. This raises the question about whether activism on environmental harms in a colonised society evokes state anxiety about challenges by indigenous people, particularly in relation to land sovereignty. It suggests that the criminalisation of activists in colonised nations is more likely when it is connected to, or perceived to be connected to, indigenous interests. Māori-led research focusing on the intersection of indigeneity and green activism, criminalisation, and resistance, would be valuable to explore whether this suggestion has any empirical basis.

The second conclusion is that the Terror Raids ushered in a new era of criminalisation of activism that could be described as blanket criminalisation. Before the Raids the state's approach to criminalising activism had been *contradictory* with a range of expressions including: the absence of legal criminalisation; legal criminalisation but lenient treatment within the criminal justice system; and intense criminalisation. In contrast, *every* activist involved in the Raids experienced intense criminalisation from the state, state agents, and mainstream media. My findings have established that once the label of terror was applied to activists, contradictory criminalisation

approaches were replaced by the intense criminalisation of *all* activists. One issue my research did not explore in detail was whether, and how, intense criminalisation was differently experienced in relation to one's position in the social hierarchy. It would be incredibly valuable to understand criminalisation from the perspective of Māori and Māori activists in the Raids, for example.

The third conclusion is that criminalisation is enhanced by powerful labelling, as discussed in detail in Chapter Two. The label of terrorism in the Raids precipitated extraordinary practices, including: detention and arrests by armed police officers; attempted prosecutions under the Terrorism Suppression Act; extensive critique in the mainstream media; and years of intense legal proceedings. The impacts of labelling have been highlighted in the participants' own words in Chapter Six. The power of the terror label stems from a global 'War on Terror'⁷². The 9/11 Terror Attacks created unprecedented levels of fear about terrorism, and the possibility of terror attacks, in western countries aligned with America (Bush, 2011). This led to these countries, including Aotearoa, adopting policies which opposed terrorism in a way that had never previously occurred. This is the immediate background to the passage of the Terrorism Suppression Act 2002. The Act enhanced Aotearoa's state agents 'terror capacity'⁷³. Terrorism could now be much more liberally applied, state agents were tasked to find it, and penalties were now significantly elevated to punish it. What was perhaps unanticipated at the time, and my research demonstrates, is that the terror label allowed criminalisation to be achieved with unprecedented speed and might. Further research about the application of the label of terror or other labels with negative connotations on activists in Aotearoa, and the impacts of this labelling would be extremely beneficial.

⁷² The global 'War of Terror' was launched by America after the terror attacks of 11 September 2001 as the "World's fight, civilisations' fight" against terrorism (Bush, 2001).

⁷³ The SIS employed twenty new anti-terrorism staff; thirty-five extra police were tasked to national security; a twelve-person anti-terrorism strategic intelligence unit was established at Police National Headquarters; a fulltime Special Tactics Group specialising in terrorism was established; the role of Assistant Commissioner Counter-Terrorism was created; and Liaison Officers were tasked to Washington and London (Hager, 2009).

Conclusion

In 2007 the state in Aotearoa, for the first and last time, attempted to use the Terrorism Suppression Act to suppress a diverse group of activists, and make an example of them. This action failed. The state then pursued this group of activists in the criminal justice system for five and a half years – most were discharged, two were imprisoned, two were sentenced to home detention – but none of the activists were silenced. The activists were labelled and ‘othered’ in many ways, most significantly as terrorists, but again, none were silenced. Through years of legal and socio-cultural criminalisation, state officials and mainstream media sought to marginalise these activists and to suppress opposition to the status quo subjecting the activists to intense criminalisation which continues today. Ultimately, these acts failed. Eleven years after the Raids the green activists who were arrested, prosecuted, and marginalised, continue to fight for the environment and to make a meaningful difference to the environmental well-being of Aotearoa.

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Appendix One - Information Sheet for Participants



The Terror Raids –

An analysis of the criminalisation of green activism in Aotearoa

Information Sheet For Participants

Kia ora, you are invited to take part in my research. Please read this information before deciding whether or not you would like to take part. If you decide to participate, thank you. If you decide not to participate, thank you for considering doing so.

Who am I?

My name is Megan Louise Paish and I am a Masters student in criminology at Victoria University of Wellington. This research will help me to develop the argument of my thesis.

What is the aim of the project?

My thesis' objective is to identify the impact of defining an individual as a 'criminal' on efforts to address environmental harm. I am aiming to find out about how criminalisation by the media, police, politicians, 'the public' and the court processes affected activists in the raids and the work they do to address environmental harms.

This research has been approved by the Victoria University of Wellington Human Ethics Committee 0000025876.

How can you help?

You have been invited to participate because I am aware that you are an activist concerned with environmental issues that has been affected by the 'Terror Raids' and further state actions. If you agree to take part I will interview you at a café of your choosing, or at your workplace or home if you would prefer. I will ask you questions about your experiences of the Terror Raids. The interview will take approximately one hour.

I will ask you questions about your experiences of the Terror Raids. I will be asking you about what happened on 15 October 2007, in the immediate aftermath, during the court case and even today. I am interested in understanding how the Raids impacted on you, your whānau and people you are close to and your activities towards protecting the environment.

I will audio record the interview with your permission and write it up later. You can choose to not answer any question or stop the interview at any time, without giving a reason. Only my supervisors and I will read the notes or transcript of the interview. The interview transcripts, summaries and any recordings will be kept securely and destroyed on 1 August 2020.

You can withdraw from the study by contacting me at any time before 30 July 2018. If you withdraw, the information you provided will be destroyed or returned to you.

What will happen to the information you give?

I will do my best to keep your identity confidential but as the research is about a high-profile case I cannot guarantee this will be successful. You can choose to be named/represented in the final report.

What will the project produce?

The information from my research will be used in my Masters' thesis.

It will be examined by two academics, and then made available (in print and online) in the Victoria University of Wellington library.

It might also be used to produce a journal article, in book chapters, conference papers, and other written/oral outputs.

If you accept this invitation, what are your rights as a research participant?

You do not have to accept this invitation if you do not want to.

If you decide you would like to participate, you have the right to:

- choose not to answer any question;
- ask for the recorder to be turned off at any time during the interview;
- withdraw from the study before 30 July 2018;
- ask any questions about my study at any time;
- receive a copy of your interview recording;
- receive a copy of your interview transcript;
- receive a copy of my thesis by emailing me to request a copy;
- receive a copy of any written materials produced later by emailing me to confirm you would like a copy of any materials produced after my thesis.

If you have any questions or problems, who can you contact?

If you have any questions, either now or in the future, please feel free to contact me or my supervisors:

Megan Louise Paish

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Human Ethics Committee information

If you have any concerns about the ethical conduct of my research you may contact the Victoria University HEC Convenor: Associate Professor Susan Corbett. Email susan.corbett@vuw.ac.nz or telephone +64-4-463 5480.

Appendix Two - Consent to Interview



The Terror Raids –

An analysis of the criminalisation of green activism in Aotearoa

Consent To Interview

This consent form will be held for two years.

Researcher: Megan Louise Paish, School of Social and Cultural Studies, Victoria University of Wellington.

- I have read or had the Information Sheet read to me and the project has been explained to me. My questions have been answered to my satisfaction. I understand that I can ask further questions at any time.

- I agree to take part in an audio recorded interview.

I understand that:

I may withdraw from this study at any point before 30 July 2018 and any information that I have provided will be returned to me or destroyed.

The identifiable information I have provided will be destroyed on 1 August 2020.

Any information I provide will be kept confidential to the researcher and her supervisors.

I understand that the results will be used for a Masters' thesis and may be used as a journal article, in book chapters, conference papers or other written/oral outputs.

I understand that the researcher will do her best to keep my identity confidential but that as the research is on a high-profile case she cannot guarantee this will be successful.

I would like to be named in the thesis:

Yes ☐ No ☐

I would like a copy of the recording of my interview:

Yes ☐ No ☐

I would like a copy of the transcript of my interview:

Yes ☐ No ☐

I would like to receive a copy of the thesis and have added my email address below.

Yes ☐ No ☐

I would like to receive a copy of any further documents produced using data from my interview.

Yes ☐ No ☐

Signature of participant: _____

Name of participant: _____

Date: _____

Contact details: _____

