

*When The “Gaze” Meets The “gaze”:  
Medical Science And Its Normalisation  
Of The Maori Body*

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**When the “Gaze” meets the “gaze”: Medical science  
and its normalisation of the Maori body.**

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**ABSTRACT**

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Western medical science is hailed as being omniscient and is lauded as a discoverer, with the body as its trove. Recent innovations have fortified the populist belief that medical science is indispensable and that it can lead all to a grander future: indeed, other knowledge around the body, sourced in specific and local cultures, is perceived by proponents of medical science as a hindrance to its illustrious progress.

The incarnation of the 'Gaze', and its attendant normalising regard for the body as prompted by medical science, can occur through such practices as the apotheosis of the 'traditional authentic'. Thus the traditional Maori 'gaze', and its accommodation of the fluidity of the body, can become corrupted; mutual encounters of the 'Gaze' and the 'gaze', with hegemonic adoption of the former, can divest the body of its mutability. The view proposed here is that such encounters and adoptions divest the body of its traditional fluidity, rob Maori societies of their intrinsic diversities, and thus threaten to render Maori societies banal and self-colonising.

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He maramatanga to tenei whetu

He maramatanga ano to tera whetu

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## CHAPTER ONE - INTRODUCTION

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### 1.1 The inspiration to write

The inspiration to write often comes in many forms. Frequently one's family informs the 'how' and 'what' of writing. Much of my motivation for this thesis comes from my upbringing in a family which always believed in various forms of afterlife. Sometimes this manifested itself in amusing ways. Often it was expressed in bizarre, often Victorian ways – my cousins did séances for years, for example, until they received a stern, table-rapped warning from 'the other side' and ran screaming from the room! There was nevertheless a belief in wairua, however expressed. There were particular events in my family which were obviously spiritual in nature. Other Maori families have their own stories. Any suggestion that there was no such thing as 'taha wairua' or a spiritual realm was viewed with some contempt by my family, few of whom, apart from my grandparents' generation, could speak te reo or recite whakapapa.

So I started to consider, probably from about the age of fifteen when my grandfather<sup>1</sup> died, the reasons that many (not all) Pakeha disbelieved in such aspects of life. If they did believe in them, they were considered evil, irrational forces. It confused me that they did not believe in much apart from what could be seen. In considering their apparent disbelief, I traversed a number of possibilities. Perhaps the unknown was not nice and so they were in denial. I have seen niceness in operation on a number of occasions, and have talked about it with a couple of friends. From frozen smiles on fair, cultured faces, to the pressing urgency to embalm a body – these phenomena manifest the inner, subterranean drive to not offend, to retain decorum.

The 'niceness' theory struck a chord with me, having been raised a Catholic. On the one hand, you had Christ on a cross, bleeding and twisted in agony, and you were

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<sup>1</sup> Graham Mika (Te Wharekaniwha)

advised to meditate on his predicament regularly. You had to sing such songs as “Were you there when they crucified the Lord.” This particular gem laboured through the various agonies suffered by Christ – in party-stopping, lugubrious detail. My classmates and I, in a desperate attempt to lighten it up a bit, used to change the lines for entertainment’s sake. So you had a definite preoccupation with tragedy and those things which were not nice. However you were also taught manners. The kind of virtues that would have made Nietzsche pale!

The Politics of Politesse states that “it was the practice of niceness that helped to keep other values, such as fairness, at bay” (Gladwell, 2002, n.p). I figured, simplistically, that it may have pushed spirituality out of the way. I have also seen denial/niceness operate at Pakeha funerals, where spiritual metaphors referring to death are purposely upbeat, as if to deny that the person is dead, that, indeed, death exists. Such funerals are generally euphemistic and optimistic in a surreal sense. I then started to look at our own processes around death/life and the body. Are Maori into niceness/denial?

I was heartened when I attended a hui recently, at which an embalmer (Maori) was talking about her craft. Most Maori there became anxious at the mention of the removal of blood, which apparently is necessary to prevent decay. I was actually buoyed by their anxiety. The embalmer, however, was focused on the aesthetic niceness of the body, and I did notice that this opposition, felt by most Maori in the marae, set up a definite tension.

I still believe that ‘niceness’ is partially the cause of the Pakeha fear of death, and, hence, a disbelief in a spiritual world. This thesis does not explore the saccharine playground of niceness, although it would be an interesting area to develop. But there was a deeper reason – one which I needed to explore.

When I was practising law, the debacle of the foreshore and seabed arose. Lawyers attacked the issue legally; however, I was intrigued by the suggestion of the Maori

Land Act 1993 that ‘whenua’ equated to ‘land’.<sup>2</sup> I have wondered at this approximation ever since. ‘Land’ to me meant terra firma; soil; property, whereas I suspected that ‘whenua’, being immersed in a completely other conceptual framework, could not have any translation in English – especially one that referred to the topmost layer of soil! Such translations or interpretations of words and events throughout Aotearoa are not uncommon. For example, the eruption of my maunga – Ruawahia, Tarawera and Wahanga – gives rise to contestable accounts. Just before the eruption of Ruawahia, Tarawera and Wahanga<sup>3</sup> a waka wairua was seen on Tarawera moana. It was huge and was filled with people who looked like they were part dog. It was seen by some members of Tuhourangi and by some Pakeha tourists. It made its way over the moana and disappeared (Gallop, 1998).

The appearance of the waka wairua came as no surprise to my ancestors of Ngati Hinemihi of Tuhourangi.<sup>4</sup> This waka had been seen before the eruption (and has since been seen by various whanau members). It has long augured various incidents which affect Tuhourangi and Tuhourangi have accepted its appearance as being as real as the existence of the maunga it sails past and the moana it navigates.

The eruption has been immortalised by Western literature as the waka wairua was seen by Pakeha, after all; its reality could therefore be accounted for, but that account does not necessarily parallel that given by Tuhourangi. For just as Pakeha had managed to morph the three peaks of my maunga into one name – Tarawera – so they had also managed to legitimate, just by their presence at the time, the appearance of the waka wairua as a portender of death and ‘doom’.

The formation of the mountains has been described in scientific terminology – as “formed by the extrusion of rhyolitic domes and by the accumulation of pyroclastic debris ...” (Rosseel, n.d, n.p). The eruption itself has been validated by/in geological terms with facts being expressed freely and authoritatively.

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<sup>2</sup> Refer to the preamble of the Act

<sup>3</sup> Now collectively called Tarawera by those not familiar with the mountain

<sup>4</sup> I am also from Ngati Tarawhai, Ngati Tuwharetoa, Ngati Whanaunga and Ngati Tawhaki. On my father’s side I am descended from Irish and Scots.

Tuhourangi however put forward different reasons for the eruption. One concerns Tama o Hoi,<sup>5</sup> who was imprisoned in the mountains by Ngatoroirangi, and broke free from his imprisonment causing the maunga to explode. Other views relate to a significant breach of the mountains' tapu as a reason for the eruption. It is also said that my own ancestor<sup>6</sup> had a major argument with Tuhoto Ariki<sup>7</sup> and in retribution, Tuhoto Ariki brought down the wrath of the mountains on Tuhourangi, who had become a very wealthy iwi (Gallop, 1998).

These are two quite dichotomous and contradictory explanations for the same event – one an explanation of science, and the other an explanation of spiritual connection. Contemporarily it is the former explanation that is given credibility over the latter. How is it that the scientific view is given the credibility of proof and Maori the burden to prove it? At what point did science come to occupy the 'high ground', the authoritative position, the voice of truth and reason, and Maori a position of irrational sorcery? These sorts of questions highlight a binary position of normal versus abnormal, of science versus spirituality, with science the authoritative, valid, grand truth.

Again, this year, when writing a submission to the Ministry of Health on the review of the human tissues legislation, I marvelled at the ease with which Pakeha believed they could approximate words. This time, 'tupapaku' was translated as 'deceased' (Ministry of Health, 2004, para. B7.1).

Recently, then, I have felt unease at the possibility that we would, in referring to 'whenua' as land, or vice versa, become further colonised. Sapir-Whorf, with their eponymous hypothesis, believe that language is totally in context and that is what gives it its meaning (Hertzler, 1965). However, in writing the human tissues submissions, I quickly became aware of another insidious aspect; that Western law, based on scientific definition, was trying to define death, and hence life.

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<sup>5</sup> Tama o Hoi has been variously described as an atua and a tohunga.

<sup>6</sup> Aporo Te Wharekaniwha

<sup>7</sup> Tuhoto Ariki was a tohunga from Tuhourangi

For example, Mary Roach plays lambently over the area of cadaver usage and discusses some attempts by scientists to track the departure of the soul from the body, hence pinpointing the exact time of death. She cites the observations of Dr Duncan Macdougall, who weighed six patients before and after death. He believed that the soul had substance, and that the body would drop in weight at the point that the soul departed. Apparently the weight loss was  $\frac{3}{4}$  of an ounce (Roach, 2004).

Nancy Scheper-Hughes cites the example of Morisheen, a young Irish farmer from the Dingle Peninsula, who defended their long wakes thus: “It just wouldn’t be seemly to put ‘em into the hole when they are still fresh-like. You see, you never know, exactly, when the soul leaves the body” (Scheper-Hughes, 1998, n.p). Likewise, Seewald highlights the aversion of many Japanese to organ transplantation, believing as they do that the state of the body informs the soul (Seewald, 2000). It is equally difficult to imagine that Maori viewed a person as dead merely because their brain had stopped functioning.

The discovery that there were other ways of viewing the world in stark contrast to a scientific view was decisive for me. For a while I had been fascinated with the perceived superiority of medical science. Now I want to articulate why medical science is perceived as superior.

I became fascinated with grand truths, such as those espoused by science. Actually, science is a ‘grand truth’ and grand truths have also been professed by Maori. Particularly, I noticed the emergence of roles within Maori society, and the fixing of those roles. Maori men were warriors. Maori women could only do the karanga (“but nevertheless have the first say on the marae”). There were “no homosexuals among our people”. Or there “were homosexuals among our people” (“but they were repositories of knowledge” – and that was all). Being able to speak Te Reo Maori equates to being a ‘real’ Maori. These are all problematic indicators of an essentialist classification process – of forcing ourselves to be signalled and reduced.

The grand truth has also found its way into preferred research to be referred to and elevated in Waitangi Tribunal hearings. A surfeit of Western, empirical research obviated narrative research which would tell the stories of our people and their relationship to those things of which they were dispossessed. Funding of Maori research is still an issue, some claims being faced with rudimentary Maori input at best. I suspect that lack of funding was really a smokescreen for the preference of Western research over Maori research.

Underlying these examples is the notion that, somehow, Western knowledge is superior. Often when Maori spiritual knowledge is alluded to it is described as being symbolic, rather than real. It is reduced to being merely an allegory for the forces of creation, which of course we as Maori could not really describe because we did not practise science. Because our knowledge is now seated in the 'gods', I have heard some of us try to legitimate our knowledge by attempting to give it a scientific aspect. Drawing upon Western medical science is meant to lend more respectability to our forms of knowledge; some people believe that because we had tipuna who could change form in olden times, for example, we therefore practised genetic engineering. I disagree strongly.

While there is a temptation to use medical science to bolster the validity of our own cultural practices, it is dangerous to do this unproblematically. Medical science includes practices that are reductionist; it is disdainful of whakapapa, mauri, wairua. Such facets of existence change according to what is being discussed, and there is no universal description to be had of them. Medical science totalises any phenomenon and so any distinctiveness of whakapapa, for instance, is reduced down to 'genealogy'.

Of concern is whether the reductionism of science, and contestability between Maori and scientific knowledge, is changing Maori views of whakapapa. How do we view our bodies in relationship to death and the practices associated with the body? It is these themes which give rise to the context of this thesis.

This thesis examines two major themes. Firstly, that Western medical science views the body in particular ways, and that medical science regards the body from a binary position of normal/abnormal. Foucault argues that medical science normalises the body, and it is this normalisation process that the thesis examines, through the Gaze.

Secondly this thesis looks at a gaze which may have been one of many in traditional Maori societies. This gaze is one which regards the body as a whole, and, indeed, invokes a number of senses in its capability to fit the body into a relationship with diversity and fluidity. Coupled with this is the resurrection of the so-called 'traditional'. But is the contemporary construction of the body which is the 'authentic traditional', the 'tuturu', merely a re-enactment of the normalising Gaze of medical science, or at least its philosophies? And is the traditional Maori gaze thus warped through such colonising agents as Western medical science, being forced into the practice of normalisation itself?

**Chapter two - To have a cadaver: Tracking medical science's association with the dead body** is an historical outline of some of the West's dealings with the body in the medical field, especially the West's sepulchral associations with the body. This chapter provides a backdrop which emphasises the traditional struggle of the state and the church for their respective control of the body, through to more current usages of the cadaver<sup>8</sup>.

The body has been constructed as a cornucopia of 'goodies', which scientists are entitled to. **Chapter three - The mind/body split: The body and nature**, then, concerns itself with the Gaze and 'the Other'. Where I capitalise "Gaze", I am referring to a regard for the body which is specifically derived from the potential for the gaze to become the Gaze – that is, for it to become endowed with superiority.

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<sup>8</sup> In discussing the West's association with the body, I am quick to point out that I cannot cover every single documented activity. My aim is instead to highlight major events in the Western medical science/body dyad. I have had to be selective in my choices of information. I acknowledge the good that medical science can do for the body and I am also quick to indicate that this thesis is not about casting medical science as the "bad guy". It is rather about finding a place for medical science, without continuing to elevate it to sovereign status.

Where the English language only generally capitalises proper nouns, I have elected to depict the lofty regard of medical science by using the capital.

There would be a number of ways to metaphorically describe the interface of medical science with the body. I chose the Gaze because I likened the regard of the physician/scientist to a deep, instinctive and sensorial need. The Gaze intrigued me because it seemed to be borne of a primal necessity which almost could not help itself. This is in apparent contradiction to the self-control evident in the demeanour of the scientist. Also, the Gaze is a relevant function of the body, which is the topic of this thesis; however, as this chapter illustrates, the Gaze is power related, and so drags the body into power struggles

Descartes leads the ranks in establishing a foothold for the Gaze to emerge. His philosophy, which would dominate the West arguably until modern times, merits special attention. I tie in with his mechanistic view of the universe an investigation of the Other. The Gaze is then explained by Foucault as brandishing power; this brandishing occurs at a very subliminal level.

I was alerted to the possibility of referring to the philosopher Levinas in my thesis. He de-emphasises knowing - a necessary elemental of the Gaze. After having considered some of his works I imagined that there was some correlation with what could be a traditional Maori gaze. I moved trepidly into the area of constructing what I believed to be one form of the traditional Maori gaze. Note the lower case of the gaze. I do not capitalise it because I believe that any regard that Maori have for the Other is premised on a host of senses, often located at and dependent on local scenes. Thus the gaze is not supreme. There are of course various gazes which are complicit with a myriad of ways of being. I have just chosen one which I have observed.

When writing about the traditional Maori gaze I attempt to avoid the use of such terms as 'tapu', 'noa', 'ihi', 'wehi' and so on. I am personally much more capable of writing in English than in Maori, and, had I been able, would have mentioned these

words within a Maori text. Although I have used some Maori terminology, I am aware that interspersing English text with a smattering of Maori terms does little for the integrity of the Maori language. It was thus a challenge to try and describe a traditional Maori gaze in the contemporary, economic English of this thesis – a language not renowned, apart from its more archaic forms, for its ability to describe spiritual contexts.

I quickly indicate that the traditional Maori gaze may be traditional. While I suspect it is, my ambiguity in this regard also goes to the heart of this thesis, and is discussed in the concluding chapter.

**Chapter four - The metanarrative of medical science as it seeks to ‘know’ the body – New Zealand experiences**, negotiates a number of areas of interest. I have always had a very clear perception of the ascendancy of science but did not have a name to articulate it by. Lyotard provides an analysis of the meta-narrative as descriptive of this phenomenon. This chapter links the disastrous affairs exposed by the Cartwright Inquiry into the National Women’s Hospital and the Greenlane hearts debacle with the meta-narrative.

I am of the opinion that this discussion would be incomplete without an investigation into the law that is meant to protect the body which finds itself at the mercy of medical and scientific research. I have thus included an examination of the relevant statutes as they relate to both the Cartwright Inquiry and the Greenlane hearts affair. Specifically these are the Human Tissues Act 1964, the Coroners Act 1988 and the Code of Health and Disability Services, which is derived from the Health and Disability Services Commissioner Act 1994. These examples show the very rudimentary protection offered the body. The absence of proper legislative protection leads to threats specifically to Maori, and I also refer to the Human Genome Diversity Project, biological/germ warfare and patents to highlight these threats.

I opted for a discussion of these Acts rather than casting them into appendices as it could be useful information for those interested in the law/health/research triumvirate. It also provides a very real illustration of statutory inadequacy. I have heard, over time, many dismaying stories of people, particularly deceased, who have been treated just as physical objects by hospitals and by medical science in general. In appearing at a coroner's inquest recently, I was struck by the inefficacy of the legislation to cater for Maori families at many levels. This inquest sought to unravel an elderly Maori woman's death through the negligent administration of medicine. When she died, the body was released from the hospital by a junior doctor, who was not alerted to any perceived need for a post-mortem. The woman was subsequently uplifted by relatives and taken to lie at her marae. A tragic sequence of events ensued; police arrived to take the body during the course of the tangi. The coroner, unsatisfied at the way she had died, had ordered that she be retrieved for a post-mortem. It was at this starting point that the Coroners Act 1988 was unable to conceive of the wishes of such families. This particular family protested the removal of their kuia during the tangi process, but to no avail – she was uplifted and the post-mortem was performed.

Thus this chapter emphasises the disturbing inability of the law to assuage the fears of Maori in protecting the integrity of body tissues.

The stage is then set for a perversion of the traditional Maori gaze established in chapter three. **Chapter five - Perversion of the Maori gaze**, which is the concluding chapter, grapples with the phenomenon of 'auto-colonisation'. In outlining the Greenlane hearts scandal and the National Women's Hospital debacle I have set the scene for the role of the meta-narrative, and hence for the normalisation of knowledge through the rendering of the body as static object. At this stage I investigate the 'authentic traditional' which is constructed by Maori; there are many examples to draw on here. I examine whether this 'authentic traditional' resembles more closely the Maori gaze or the Gaze of Western medical science - its process of normalisation. Hence, if the desire to construct the 'authentic traditional' excludes or

discriminates the 'abnormal', it may more closely align itself with a colonised regard proximate to the Gaze.

Smith posits that: "Some scholars have argued that the key tenets of what is now seen as Western civilization are based on black experiences and a black tradition of scholarship, and have simply been appropriated by Western philosophy and redefined as Western epistemology" (Smith, 1999, p.44). I wonder if the converse may now be occurring: that Maori are now subconsciously mimicking Western philosophies in establishing what is believed to be traditional, and calling it traditional. A discussion of this possibility forms the crux of this chapter.

During the course of writing this thesis I have not encountered any description of a traditional Maori gaze, which is understandable since I am summoning it to explicate a fairly obscure yet important area. Other writers do touch on the issue of self-colonisation though: Aranga (2002) discusses the substitution of matauranga, particularly for Christian dogma. He describes Christianity as the ultimate threat to Matauranga Maori. This thesis will investigate whether the more current ideology of Western medical science, in its untempered form, should be placed alongside Christianity.

The main focus of this thesis is awareness. It is not to try and establish a concrete traditional Maori gaze; others are much better placed than I to attempt this. Although it is possible that the gaze I describe is one of many traditional ways of encountering the Other, I call upon it to try and question the source of notions of 'tuturu' or authenticity. Thus I am depicting a contrast against which the effects of the normalising Gaze might be recognised and, hopefully, countered.

This thesis does not emerge from a position of anti-science. Medical science has a place, but that place is not supremely positioned. Medical science, and indeed science in general, is just one of the many ways of understanding the world. It is not destined to lead us into a utopia, however; no one particular knowledge can, because

all knowledge is defined according to its specific context and will only work within that context.

In writing this thesis, I am aware that I am in danger of creating the very binary oppositions that I write against. I actually do not place medical science as the enemy. However, I do acknowledge that we have to identify what is wrong, concretely and intuitively, and then to do work on those wrongs. It is only through identification of the repugnant that we can progress.

## **CHAPTER TWO - TO HAVE A CADAVER: TRACKING MEDICAL SCIENCE'S ASSOCIATION WITH THE DEAD BODY**

*There is no person, let his station in life be what it may, whom, if I were disposed to dissect, I could not obtain...The law only enhances the price, it does not prevent the exhumation.” – Sir Astley Cooper, Parliamentary Speech, 1825. (Cole, 1964, p.88).*

The use of the body in medical research in the West has often resulted in the adoption of controversial positions, involving as it does the use of extremely intimate and interwoven facets of existence. Such controversy has its roots in ancient times and although specific arguments have changed and evolved, especially as medical science has advanced exponentially, the site of struggle still remains the same – the human body. It is perhaps the consistency of bodily existence, its unchanging form, and its accompanying vulnerability, which touch people deeply and can invoke resistance to any tampering with its constituents.

The focus of this chapter is on the historical ways in which medical science has regarded the body, with the emergence of the body onto a stage of central focus being key. The body's transformation from 'whole' to a 'conveyor of parts' is discussed. This chapter further discusses the role of Western medical science in overcoming the view of the body as sacred and bringing it to an object of curiosity and revelation.

### **2.1 Status of the body in the West until the fifteenth century**

The dissection of human bodies can be traced back to the city of Alexandria, in ancient Egypt. Here, Herophilus (335BC – 280BC) and Erasistratus (304BC – 250BC) performed dissections to discover the functions of the nervous system, circulatory system, genitals and the eye (Singer, 1957), under the tutelage of Ptolemy. They were the first to discover that the nerve-trunks originate from the brain and are responsible for motor and sensory impulses. One of the sinuses that convey venous blood from the head is still named Herophilus, in honour of the

discoverer (Singer, 1957), who also believed that one of the brain ventricles was the abode of the soul.

This epoch was an unfortunate span of time for criminals, who were often tendered for experimental operations as the need for surgical knowledge swelled. Herophilus and Erasistratus made many anatomical discoveries through the routine dissection of more than 600 cadavers, who were allegedly condemned criminals. The Roman scholar Celsus (c.30 B.C. - 45 A.D.) described the phenomenon. Criminals were obtained “for dissection alive, and contemplated, even while they breathed, those parts which nature had before concealed” (Persaud, 2002, n.p). According to the historian Tertullian as many as 600 living criminals were vivisected, and even fetuses were removed from the womb. He described Herophilus as “that butcher who cut up innumerable corpses in order to investigate nature and who hated mankind for the sake of knowledge” (Persaud, 2002, n.p).

Alexandria’s famous library was burned when Rome invaded in 48 BC, with the demise of 700,000 volumes. Thereafter Egypt became part of the Roman Empire and although Greek scholars still fostered medicine, it was forced to survive in a Roman environment. Thus human dissection was discouraged – a stricture that was to continue until the late Middle Ages.

Even surviving medical knowledge proved moribund; the rise of Christianity and the collapse of the Roman Empire in the early Middle Ages (Nutton, 1996), heralding the Dark Ages, spelt the general decline in the awareness and use of Western medicine. Although the Roman Catholic Church did not expressly forbid human dissections, there were specific prohibitions; certain edicts, for instance, saw the cessation of such practices as dismemberment of slain crusaders’ bodies, at Pope Boniface VIII’s command (Porter, 1997). The *Ecclesia Abhorret a Sanguine* (“The Church shrinks from Blood”) likewise displayed the Church’s aversion to dissection by proclaiming that it was wrong for a cleric of the Church to be involved in bloodshedding.

Prayer had become a standard panacea and so illnesses were attributable to a spiritual influence. Sporadic epidemics of bubonic plague and smallpox further entrenched the belief that illness was visited on those who were ungodly (Porter, 1997). Moreover, the belief prevailed that salvation depended upon the body being kept whole. The body, untainted and integrity intact, could be resurrected; the value of the cadaver could not be divorced from its wholeness in life. Therefore the person was identified with the body - "resurrection had to involve the whole body. Fragmentation of the body was a symbol of hell" (Walter, 1996, p.114). Some deterrents in the Middle Ages, such as hanging, drawing and quartering, were designed to arrest the body from attaining final rest by resurrection. This particular punishment was therefore the most severe of all, as it had repercussions even in death.

With Oxford and Paris Universities establishing medical faculties in the 13<sup>th</sup> Century the need for some anatomical knowledge became obvious (Porter, 1997). Thence most students gained knowledge of the body from the Roman physician Galen's writings. The powerful Roman Catholic Church fully embraced Galen's works (Singer, 1957), and so any alternative attempt to uncover knowledge, including corpse dissection, was prohibited (Castiglioni, 1958). His works were innovative despite their basis in the dissections of animals, the tissue of which can differ largely from that of humans.

In parts of Europe, until the fifteenth century, astrology also played a formative part in gleaned knowledge about the body and its organs. It was believed that the twelve constellations, each corresponding to organs of the body, had an influence on the health and constitution of the person (Castiglioni, 1958). The relationship between the human body and the world pertained to the microcosm, the little body of man, replicating the macrocosm or large world around him. Early images of Zodiac Man map the planets, the signs of the Zodiac, and the humours onto the human body. This belief was the culmination of six centuries of Arabic interpretation of the spheres – cyclic and circular. Relying on the works of such authorities as Pliny, Ptolemy and Avicenna, medical experts of the fifteenth century nevertheless

incorporated their bodies into the cosmos with knowledge obtained from astrology (Castiglioni, 1958).

The parts of the body, with corresponding signs, were detailed in a tome compiled by a Persian-speaking scholar of Bokara known in the West as Avicenna (Guthrie, 1960). He composed Avicenna's Canon of Medicine, which was well promulgated by the advent of printing and would prove to be highly authoritative for much European medical instruction; although not based on results of human dissection, it remained a textbook at the University of Montpellier until 1650 (Porter, 1997). Aspects of the tome were debunked, however, and a humanist return to Greek and Roman texts became the trend (Porter, 1992). In 1565 the University of Alcalá de Henares abolished instruction founded on the Canon as a number of errors had been identified.

Porter has identified that, despite ongoing autopsies of crime victims and criminals occurring for three hundred years before courts of law in Italy, there was nevertheless a lack of familiarity with internal anatomy (Porter, 1997). Even the drawings of Leonardo da Vinci (1452 – 1519) did not yield deeper detail about the internal organs. By the end of the fifteenth century, however, artists were to illuminate the way for the study of the body.

## **2.2 Anatomy becomes official**

1543 saw Belgian anatomist Andreas Vesalius complete *De Humani Corporis Fabrica, Libri Septem (On the Structure of the Human Body, in Seven Books)*; the age of corpse dissection had arrived. Macabrely, he would recover corpses from cemeteries under cover of night (Goddard, 2003). He would also encourage students to note those patients who were near death so that preparation could be made for the acquisition of their bodies, when they finally partook of glory (The greatest medical discoveries, n.d). It is said that he slept night after night with the corpses in his

bedroom. His *avant garde* works were to greatly assist those studying anatomy and have been considered one of the greatest contributions to the area (Castiglioni, 1958).

Dutch physician Nicolaes Tulp, in 1641, had meanwhile authored *Observationes Medicae*, a text which illustrated a number of pathological phenomena revealed during dissections (Aufderheide, 2003). His works were to be well eclipsed, though, by the conversion of the *Allgemeine Krankenhaus* (General Hospital) in Vienna into a hospital which would serve the poor, and which would also autopsy all deaths (Aufderheide, 2003). Its establishment had far-reaching effects in the Western world; it is from this hospital that the world's largest museum of pathological lesions was created (Aufderheide, 2003).

The eighteenth century ushered in the fascination with pathological anatomy – the study of morphological changes due to disease. However until 1780 the few dissections which were undertaken in Britain occurred in the private houses of medical men.<sup>9</sup> In 1702 policy at Saint Thomas's hospital prevented the surgeons or pupils from dissecting bodies there without the express permission of the treasurer, but by 1780 a definite dissecting-room was in existence, an example which was soon followed by Guy's Hospital and Saint Bartholomew's Hospital.<sup>10</sup>

On the European continent, in the late 18<sup>th</sup> century, there are also instances of discrete research being performed on cadavers, or parts of them. Unsure of the humaneness of the guillotine, for instance, French officials enlisted the services of physician Jean Baptiste Vincent Laborde and supplied him with the heads of recently guillotined prisoners (Roach, 2004). He performed experiments on the heads, and his studies were subsequently followed up by another physician named Beaurieux.

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<sup>9</sup> (Untitled) [http://www.fact-index.com/h/hi/history\\_of\\_modern\\_anatomy.html](http://www.fact-index.com/h/hi/history_of_modern_anatomy.html)

<sup>10</sup> *ibid*

**(a) “Resurrectionists”**

In an official sense, though, such research was rare. Consistently until the nineteenth century, at least in Britain, corpses for dissection remained scarce – largely due to a belief that a person’s remains should be left alone (MacGowan, n.d). Only executed murderers could be dissected. The practice of dissection had grown so rapidly that by about 1793, while there were 200 regular anatomy students in London, in 1823 their number was estimated to be about 1000.<sup>11</sup>

Thus the numbers of those requiring anatomical training swelled, highlighting a dearth of cadavers. As William Roughead wrote, the number of executions was:

*...wholly inadequate to meet the growing needs...and the surgeons' and barbers' apprentices had been in use diligently to till the soil and reap the harvest of what has been finely called 'Death's mailing'. (MacGowan, n.d, Chapter one).*

When it was realised that any knowledge of anatomy was basically dependent on the art of dissection, bodies were procured at any cost. The chief method was to dig them up as soon as possible after their burial. Exhumation or "body-snatching" on a large scale seems to have been peculiar to Great Britain and America, and to have been unnecessary on the European continent. In France, Portugal, Austria and Italy there appeared to be little dissent to the dissection of unclaimed and friendless bodies, providing a proper religious service was held over them.<sup>12</sup>

In Germany it was mandatory that the bodies of all people unable to pay for their burials, all deaths in prisons, all suicides and dead bodies of public women be given up.<sup>13</sup> In all these countries there was a glut of cadavers; exhumation was unnecessary and thus the cost to students of learning anatomy was not overly burdensome. In Great Britain the earlier exhumations seem to have caused very little popular concern. It is said that William Hunter (1718-1783), renowned Scottish anatomist, managed to get the body of any person he wanted (Anatomy, n.d); however the growth in student numbers soon highlighted the brisk demand for “grave-robbers”.

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<sup>11</sup> *ibid*

<sup>12</sup> *ibid*

<sup>13</sup> *ibid*

Hence was ushered in the dark and ghoulish period in English history which saw the proliferation of “resurrectionists”.

Grave robbing, then, became the norm, whilst remaining illegal. It is estimated that in 1828 about 200 Londoners were gainfully employed, at least to a part-time degree, in body-snatching<sup>14</sup>. MacGowan (n.d) cites Douglas:

*(Grave robbers) could open a grave, remove a body and restore the soil between patrols of the night watch.... Relatives of the subject could mourn by the grave the following day, unaware that their loved one was gracing some anatomy slab in Edinburgh. (Chapter One).*

The rapid increase in students in the early 19th century propelled the rapid institution of a number of private anatomy schools, and in 1828 the list of London dissecting rooms comprised those of Guy's, London, St Bartholomew's and St Thomas's hospitals, the Webb Street school of Mr Grainger, the Aldersgate school of Mr Tyrrell, the Windmill Street school and the schools of Messrs. Bennett, Carpue, Dermott and Sleigh.<sup>15</sup> These schools needed and, it seems, obtained nearly 800 bodies a year in the years about 1823 when there were estimated to be nearly 1000 students in London, and additional bodies were even sent to Edinburgh and Oxford.<sup>16</sup>

In 1810 an anatomical society was formed which sought to convince the government of the necessity for an alteration in the law. Associated with this society are such notables as John Abernethy, Charles Bell, Everard Home, Benjamin Brodie, Astley Cooper and Henry Cline.<sup>17</sup> From this society evolved a governmental select committee, whose role was to look at the merits of legalising the sale of corpses. The report of this committee led to the introduction of the Warburton Anatomy Act of 1832, but there can be little doubt that the Act's passage through the House was expedited by the recent discovery and arrest of two peculiar characters who took body-snatching to another, insidious level.

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<sup>14</sup> *ibid*

<sup>15</sup> *ibid*

<sup>16</sup> *ibid*

<sup>17</sup> *ibid*

Enter Irishmen William Burke and William Hare. Aware of doctors' and their assistants' unwillingness to question the origins of a delivered cadaver, they set about transforming the face of grave robbing. However, they pre-empted the process; instead of concerting effort to rob graves, they instead *murdered* would-be cadavers, and delivered the grisly results to Edinburgh Medical School (MacGowan, n.d).

The *denouement* to this chilling series of events is worthy of a Dahl short story. Neighbours of a victim raised an alarm; Hare gave evidence against Burke, who was subsequently executed. It is estimated that they murdered sixteen people (Porter, 1997). Perversely, Burke's corpse was donated to Edinburgh Medical School for anatomical purposes.

The Warburton Anatomy Bill, which aimed to legalise and regulate the supply of corpses for dissection, was vigorously opposed by the College of Surgeons in 1829. It was withdrawn in the House of Lords due to the opposition of the Archbishop of Canterbury, but was reintroduced in 1832. This later rendition also attracted opposition but was finally passed by the House of Lords on the 19th July 1832.<sup>18</sup>

The resurrection era does illustrate general class attitudes demonstrated by the wealthy towards the poor. It also provides an excellent example of how the government can actually create crime through poor legislation (Resurrection men, n.d). At a time when courts increasingly punished crimes of theft with death, the lower class, overwhelmingly represented, became further stigmatised with having to yield their cadavers to the upper classes. While the Warburton Anatomy Act did end predation by snatchers, it nevertheless allowed for the bodies of unclaimed paupers to be singled out – again, those of mainly poor, lower class people. Donation of one's own body was permitted by the Warburton Anatomy Act but it was not until Jeremy Bentham (Jeremy Bentham, n.d), legal scholar, donated his remains that the stigma of donation was overcome. And the courts did little to deter body snatching:

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<sup>18</sup> *ibid*

body snatchers were generally treated leniently, thus adding to the impression that the lower classes were merely ancillary to the lives of the wealthier classes.



***Memento mori*: the preserved remains of Sir Jeremy Bentham**

Meanwhile the United States also was not immune to body-snatching. Often such practices met with public rioting. Extraordinary among these instances is the New York riot of three days, which eventuated after some children peered through windows of the Society of the Hospital of the City of New York and saw medical students dissecting various cadavers. One of the cadavers was the children's deceased mother (Walker, 2000). A mob of five thousand stormed the hospital and the jail where the doctors had found safety. The riot was quelled by the military.

The poor and underprivileged, as in Britain, were targeted in the United States. Afro-American cemeteries were particularly favoured; citing Martineau, Walker states that their bodies were used for dissection as "... the whites do not like it, and

the coloured people cannot resist” (Walker, 2000, p.6). At the end of the civil war, army doctors requested the crania of Native Americans to investigate such medical concerns as arrow wounding (Walker, 2000). Thereafter the appropriation of Indian body parts became official federal policy, galvanised by the Surgeon General’s Order of 1868; the following decades culminated in the theft of more than 4000 heads, which were taken from a number of sites, including burial grounds and scaffolds. Even Native Americans who had never been buried were decapitated (Farrell, 1998).

***(b) Discrete uses of the human body***

There have also been instances of the use of cadavers to attempt to prove, scientifically, the veracity of a spiritual event. Foremost of these are the experiments conducted by Dr Pierre Barbet in 1931, who set out to prove the authenticity of the Shroud of Turin. Dr Barbet procured an unclaimed corpse from a hospital and conveyed it back to his Paris laboratory. There he re-enacted the crucifixion (or the latter stages thereof) and took measurements of the slumping body to compare the angle of the limbs and torso to the position in which Christ’s body had apparently been set (Roach, 2004). Finding it difficult to wrestle with an entire corpse, however, Barbet resorted to the use of arms only, which were nailed onto his cross so that the point of nail entry could be ascertained.

More advanced technology has seen the advent and development of plastination, opening up new vistas for gross anatomy. Plastinated specimens are those which have had 70% of tissue fluids replaced with plastic (Jones, 2002). Revolutionising the ways in which students are able to view the body, these tissues are natural structural models of the original cadaver. Medical experts, however, have expressed concern at the use of such specimens for entertainment (Jones, 2002). The emergence of ‘Anatomy Art’, and the subsequent invention of the exhibition *Koerperwelten* (Body Worlds) has in particular generated controversy. The exhibition had its premiere in Japan in 1995 and as at 2002 had toured various cities in Japan and Europe. The grisly show depicts plastinated cadavers engaged in such activities as playing chess, standing, sitting, jumping and flying. One cadaver is a

pregnant woman. The creator of this exhibition, Von Hagens, believed that an aesthetic aspect needed to be introduced to the sterility of plastinated existence, thus transforming the ‘useless’ corpse into an instructive specimen (Jones, 2002). Questions of ethicality pertaining to anatomy as entertainment have arisen, in particular focusing on the status of the human body being used in anatomical instruction.

Another method of maintaining cadavers is that of cryonics – with one major difference, however. Proponents of cryonics hope to revive frozen cadavers when cures for particular diseases are discovered (Cryonics Institute, 2002), rather than aiming to merely work on them for scientific interest. One notable who was cryogenically frozen was baseball legend Ted Williams, who remains cryonically suspended in Arizona within the fastnesses of the Alcor Life Extension Foundation. The Cryonics Institute – “Your Last Best Chance for Life – and Your Family’s” - founded in 1976 offers a minimum fee for cryonic suspension of \$28,000US, payable at death. Where other organisations allegedly have “Remote Standby Teams”, who make emergency calls if a prospective cryonic client dies,<sup>19</sup> the Cryonics Institute employs funeral directors, who can be present much more quickly.

### **2.3 Modern controversies**

Whilst cryonic suspension and preservation might seem morbidly amusing – a *deus ex machina* for the middle-class and eccentric - far less comical is the use of stillborn babies in the area of scientific research. The Human Tissue Act 1964 of New Zealand expressly excludes stillborn children from the ambit of its protection.<sup>20</sup> That the Act does not apply to stillborn children, or foetuses for that matter, deserves consideration. This exclusion has often caused consternation for scientists, who sometimes voluntarily consult a human ethics committee before using tissue derived from them (McLennan, 2004). Such concern is not without cause; in the 1950s and

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<sup>19</sup> Time is of the essence in cryonic preservation.

<sup>20</sup> Section 2(1)

1960s, for instance, bodies of stillborn British babies who died at just a few months old were used in nuclear experiments, to test how much Strontium 90 was absorbed by the body. Their bodies were thereafter cremated and the radioactivity in their remains measured, and the results were sent to the US.

The overseer of these experiments was a group of scientists, benignly calling themselves Project Sunshine, coordinated by the US Atomic Energy Commission (The Sunshine problem, 2001). Britain had become involved after Dr Willard Libby appealed for "... large numbers of bodies – preferably stillborn or newly born babies – for experiments on the effect of fallout from atom bomb Tests [sic]" (Roff, n.d, p.4). He went on to say that, "If anybody knows how to do a Good [sic] job of body snatching, they will really be serving his [sic] country" (Roff, n.d, p.4). Not only Britain participated, however. Over 15 hospitals, from Britain, America, Canada, South America, Australia and Hong Kong responded, giving 6000 bodies in total (Roff, n.d). When discussing the ethicality of these experiments, Dr J Laurence Kulp, former head of Project Sunshine, was quoted as saying "What's unethical about chemically analysing ash? There was a huge benefit for mankind" (Roff, n.d).

An argument of 'greater good' appeared to pervade the argument; propositions that the Cold War necessitated uninformed and secretive experimentation on stillborn bodies, meanwhile, highlighted a huge double standard. Despite, for example, repudiating the use of about 7000 bodies of (mainly) foetuses and stillborn infants by the Nazi regime for the development of anatomy (Roff, n.d), nevertheless Western liberal countries had insisted that the ensuing Cold War was a 'just war'. Thus such experiments as those overseen by Project Sunshine were correspondingly seen as reasonable.

Project Sunshine was examined by President Clinton's Advisory Committee on Human Radiation Experiments chaired by the ethicist Professor Ruth Faden of the Bioethics Institute of the Johns Hopkins University. Summing up its findings on the Project, it stated:

*In sum, during the 1950s the AEC [Atomic Energy Commission] promoted human tissue sampling for studies on fallout and other research, and its efforts involved secrecy and deception. The AEC evidently considered the legal aspects of 'body snatching', but there is no evidence that it sought to consider any independent ethical requirements for disclosure to the families of the subjects (or the subjects themselves, where alive) whose tissue was sampled. While further rationale for keeping the data gathering secret may have existed, in surviving documents concern for public relations emerges as the dominant motivation. At the same time, the AEC recognized that secrecy hampered the conduct of research that it believed central to the public interest.(Roff, n.d, n.p).*

However, the ethical implications of tissue retention following autopsy, especially of neonates and infants, were not discussed.

Four years after the findings of the Advisory Committee on Human Radiation Experiments, another scandal erupted, this time in Liverpool, involving the retention and storage of dead children's organs and body parts without parental consent. On December 3, 1999, it was revealed that Alder Hey Hospital had retained organs. Hospital officials subsequently admitted having collected the hearts of 2087 children. They then admitted that, as part of 851 post mortem examinations, they retained hundreds of other organs (Thomas, 2002).

The whole debacle culminated in a report on Alder Hey Hospital, written by Michael Redfern, QC, and published on January 30, 2001. Redfern found that many parents had in fact given consent for "tissue" to be removed, little realising that this could include major organs and other body parts (Thomas, 2002). The aftermath of the report saw the formal establishment of the NHS Retained Organs Commission, whose tenure was extended to 31 March 2004, to deal with inquiries by families affected by organ retention (Retained Organs Commission, 2004).

The Royal Liverpool Children's Inquiry also revealed that policy at Alder Hey was to remove every organ from every child between September 1988 and the end of 1995 (Thomas, 2002). The controversy surrounding the hitherto reputable Alder Hey gave rise to discussions about informed consent. Chief Medical Officer Liam Donaldson, for instance, opined that consent forms should contain 'details of the tissue and organs to be retained, the uses to which they might be put, and the agreed length of time for retention' (Hunter, 2001, n.p). Professor Gordon McVie,

however, suggested that it was impossible to list every breast cancer gene, for instance, on a consent form, as they are numerous (Hunter, 2001).

At the end of 1999, Professor Liam Donaldson identified that 105,000 organs, body parts, stillbirths and foetuses were held in medical schools and pathology departments in England (Department of Health, 2001). It was thereafter revealed that Alder Hey had sold some of the thymus glands removed from children during heart operations to a pharmaceutical company. As at 1999, also, the Royal Brompton Hospital and Great Ormond Street Children's Hospital had archived some 2000 hearts each (London Telegraph, 2001).

The archival of tissue took on a new dimension. Great Ormond Street Children's Hospital admitted that it had sold the organs of living children to Upjohn, a New Jersey based company, with a 'payment for processing' having been made in return (BNN Online, 2001). Following the Alder Hey scandal, Salisbury District Hospital admitted selling skin taken from about 240 patients. The skin, which was removed during breast and abdominal surgery, was used by scientists at the nearby Porton Down chemical warfare facility to test how human tissue reacted to corrosive chemicals, and also to investigate how drugs could be injected through the skin (Vasagar, 2001). It was also to be used for the development of creams which would protect against chemical attack. Consent forms signed by patients did say that the skin would be used for "medical research"; however no clarification was offered that it would be used by the defence evaluation and research agency with facilities on the Salisbury Plains. The skin was sold by the Hospital at an annual fee of 17,000 pounds (Vasagar, 2001).

Nancy Scheper-Hughes (1998) Professor of Anthropology at the University of California, Berkeley describes the activities of one of South Africa's own major players in the scientific pursuit of body parts - the "Eye Bank". In a comment which exposes this independent foundation's intimacy with commerce, she states:

*In South Africa, Mrs. R., the director of her country's major Eye Bank, an independent foundation, generally kept about a dozen "damaged" or "post dated" cadaver eyes ( and not a blue eye among them) in her decidedly informal agency's refrigerator for purposes that remained unclear. All I was told was that these "poor quality" "cornea" ( but , in fact, they were eyes ) would not be used for transplantation anywhere in South Africa. Meanwhile, the fax machine in Mrs. R's office continued to spill forth messages and requests from North Africa. (n.p)*

Scheper-Hughes then describes the horrid violation of a young man's dead body when his eyes were removed after his death. The Truth and Reconciliation Commission (TRC) of South Africa (which at the time of writing is no longer active) was considering allegations by his family that gross human rights' violations had occurred when the eyes were removed without family consent. The family of Andrew Sitshetshe, of the township of Guguletu, petitioned the TRC after four years of failed attempts to bring the matter to the attention of the Groot-Schurr hospital. The TRC proceeded its hearings on this case in 1997.

The TRC heard unsettling evidence from the victim's mother, Mrs Sitshetshe. In August 1992, 17 year old Andrew Sitshetshe was shot dead by gang members in Guguletu. While visiting a men's hostel to collect payment for a radio he had repaired for one of the residents, he was caught in the line of fire by members of the notorious Balaclava gang (Scheper-Hughes, 1998). His body was conveyed to the Salt River Mortuary and Mrs Sitsheshe was advised by the Police, after having identified him at the Police Station, to approach the Mortuary the following morning to claim her son for burial. At the Mortuary the state pathologist gave permission for Andrew's eyes to be removed and forwarded to the Eye Bank Foundation of South Africa. The pathologist consented to the removal, having been misinformed that "the body had not been identified and that there was no paper found on the body indicating that the deceased was not an eye donor" (Scheper-Hughes, 1998, n.p). Because the police had not conveyed the correct information, the Salt River Mortuary had not contacted Mrs Sitsheshe.

Finally, after some vacillation on the part of the Salt River Mortuary, the body was able to be viewed by the parents. What lay before them was disturbing. Mrs Sitsheshe expressed her distress in vivid, specific terms:

*I noticed that the blanket was covering the body was full of blood; and I discovered that he had two deep holes on the sides of his forehead and you could easily see the bone. His face was in bad condition. And I could see that something was wrong with his eyes...I started to question the people in charge and they said that nothing had happened....(Scheper-Hughes, 1998, n.p)*

After legal help, and with the assistance of an independent pathologist, Mrs Sitsheshe discovered that her son's eyes had been removed, and that the orbits had been filled with cotton wool and covered by pink plastic eye cups. The Chief State Pathologist defended its actions by saying that, in any case, contact in the middle of the night by telephone would have been impossible. Clearly, though, the Mortuary was capable of contacting the Eye Bank Foundation in the middle of the night, as the TRC heard. Andrew Sitsheshe was then buried without his eyes.

Mrs Sitsheshe was then told by the Eye Bank that her son's corneas were removed and given to two recipients and that his eyes were being kept in the refrigerator. And there they would stay. Mrs Sitsheshe, understandably distressed, retorted that: "Although my son is buried, is it good that his flesh is here, there, and everywhere, that part and parcel of his body are still floating around?" (Scheper-Hughes, 1998, n.p)

The body has thus been constructed as a site of contradiction in the history of the West. It has been moved from the position of sacred, of spiritual status, to an object capable of illuminating progress for the West. Enlightenment provided by the dissection and knowledge of the body provides a revelation for the Gaze – a regard which coldly places the body within a locus of immutability.

## **CHAPTER THREE – THE MIND/BODY SPLIT: THE BODY AND NATURE**

Much of what the body has undergone at the discretion of medical science may be attributed to ‘sight’, culminating in ‘knowledge’. Long described as the most noble of senses (Jonas, 1966), sight has traditionally enjoyed ascendancy over the other senses as the most discriminating mediator between Western man and the world (Jay, 1986). Physical observation privileges the ocular; when introspecting, reference to the function of sight abounds in language. The transference of the visual to mental speculation finds its place in metaphorical language: “in the mind’s eye”, “insight” both exemplify the overflow of observation onto the mental faculty.

The ability to imagine, also, is captured by this most wondrous of senses. Spiritual optics, a term coined to describe attempts to understand the sacred, explores the notion of images which share resonance in nature (Jay, 1986). The study of symbols, religious and spiritual, further conveys a sense of the ubiquity of sight throughout the faculties. The Gaze, borne of the primacy of the rational faculty and its separation from the physical body, is located at the zenith of perception.

This chapter discusses the surfacing of the Gaze as a metaphor for a medical scientific regard of the body. Descartes the philosopher instigated the belief that the body could be broken down into parts and that the mind was the supreme means of assessing the rational. Thus the other-ing of the body was facilitated and the subsequent normalisation of the body was assisted through the Gaze, as described by Foucault. The insistence on knowing the Other, the body, is questioned by philosopher Levinas. Finally one traditional version of the Maori gaze is attempted.

### **3.1 Descartes and the rational mind**

There would be little point in discussing the Gaze without referring to Renee Descartes, an eminent figure of the seventeenth century who is charged with being the father of modern philosophy (Boeree, 2000). At the age of twenty-three,

Descartes was seized by an inspiration; he perceived, after hours of intense concentration, the “foundations of a marvellous science” (Capra, 1982, p.57) which would not be built on any traditional knowledge but would instead build a whole new system of thought. Attempting to eliminate doubt so that truth could be ascertained, he set about the pursuit of certainty which would call into question the senses and elevate the mind.

Descartes prompted a marked divergence from mass belief. The dominant world view in Europe, before 1500, was organic (Capra, 1982). Inhabitants experienced nature collectively, based on the authorities of Aristotle and the Church. Aristotle (384BC – 322BC) theorised that all natural phenomena occurred for particular reasons and that movement, for instance, reflected the drive of the four elements of fire, air, earth and water to find their relative positions (Roberts and Wills, 1998). At this stage it was still assumed that all materiality was imbued with divine power (Cornford, 1912). The nature of science bore no resemblance to contemporary science; in medieval times it was concerned mainly with meaning and significance rather than prediction and control (Capra, 1982). The pursuit of certainty was subsumed by the purposes of various natural phenomena and their interpretation; God and the human soul were of primary importance.

Whilst the cosmos was considered to be divided between the terrestrial and celestial spheres, there existed the acknowledgement of a connection between an event and its preceding circumstances (Roberts & Wills, 1998). The evident synthesis of phenomenon and cause, however, was controverted during the 150 year period known as the Scientific Revolution<sup>21</sup>. During this period, notions of all materiality being possessed of a spiritual force were repudiated (Pepper, 1984). A precondition of objective scientific knowledge was that the object or phenomenon being studied be withdrawn from its natural environment, examined under controlled conditions

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<sup>21</sup> The year 1543 is taken as the commencement of the Scientific Revolution – see “The Scientific Revolution” <http://mars.acnet.wnec.edu/~grempe/courses/wc2/lectures/scientificrev.html> (Professor Gerhard Rempel, Western New England College)

and, within this environment, remain subject to known influences and factors (Capra, 1982).

Descartes, living in this epoch<sup>22</sup>, was a major contributor to the notion that the environment of the senses had to be discarded in order to gain knowledge. Descartes coined the famous maxim “cogito, ergo sum”<sup>23</sup>. His maxim reified the doubt/certainty dichotomy. Here he portrays himself as the pure thinking human being, capable of perceiving the world in a pristine manner, using the rational faculty to pierce obscurity, casting aside the dross of the senses so that the truth is revealed. One must doubt the body and its senses until one’s existence as a thinker is realised. Of key importance is Descartes’ notion that the universe is totally mathematical in structure. Thus the universe could be reduced to tiny parts which could be known by the mind – on condition, however, that the senses were not involved in attempting to perceive the truth. Of the senses, Descartes (1964) himself stated:

*Thus I see that both here and in many other similar cases I am accustomed to misunderstand and misconstrue the order of nature, because although these sensations were given to me only to indicate to my mind which objects are useful or harmful to the composite body of which it is a part, and are for that purpose sufficiently clear and distinct, I nevertheless use them as though they could obtain direct information about the essence and the nature of external objects, about which they can of course give me no information except very obscurely and confusedly. (p.137).*

In essence, Descartes’ ‘cogito’ made the mind more certain for him than matter. He therefore advocated separating the mind out from matter so that the two were isolated. In his subsequent assertion that “there is nothing included in the concept of body that belongs to the mind; and nothing in that of mind that belongs to the body” (Capra, 1982, p.59) he extended his dualistic approach to his view of nature. Nature, *res extensa*, or “the extended thing”, was ruptured from the mind, *res cogitans*, or “the thinking thing”. Dualism found its corporeal corollary in nature.

That most sacred of objects in the ancient era, the soul, was thought by Descartes to be connected with the body – not part of the body – through the pineal gland in the centre of the brain. In an apparent echo of Socratic belief that the soul was the seat

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<sup>22</sup> Descartes lived from 1596 - 1650

<sup>23</sup> “I think, therefore I am.”

of intelligence and character, the mind took on prominence as the residence of the soul, which was thus rational. Further schisms are evident in Platonic philosophy; in the *Phaedrus* the soul is depicted as a charioteer driving two horses. The charioteer itself is reason, and ambition and appetite its two horses (Brumbaugh, 1962).

Although the mind/body schism has often been attributed solely to Descartes, its rudiments in fact lie in the Platonic era. Plato asserted that vision connected the seer to the truth and separated the seer from matter. In this he advocates the split between the *subject* of the Gaze and the *object* of the Gaze. Descartes, in his second treatise, *Dioptrics*, extends the division by describing the eye as a passive object, which needs a second component, the mind's eye, to act as intellectual vision. Thus the physical *oculus*, and its act of seeing, was severed from the intellectual act of seeing.

This division proposed by Descartes had a fundamental effect on the dualistic philosophy of knowledge. Going further than the Platonic separation of the subject/object, it emphasised the ancillary nature of the body. The mind had become the main player in the quest for knowledge; the active knower was launched beyond the physical limitations of the body and, in turn, the eye was reduced to mere physical matter.

Any belief that the universe was merely a machine, waiting to be explored by the perspicacity of the human mind, could only have a profound effect on perceptions of nature. Capra (1982) further posits that overemphasis on the Cartesian dualistic approach has led to deleterious relationships with nature. In contributing to the man/nature separation Descartes attempted to reinvent and refine vagaries of objectivity, which required a kind of transcendent detachment on the part of humans from that being observed (nature). Separation also made nature an object of exploitation and control. Descartes sought to endow man with the capability to rule nature.

In this he was similar to his contemporary Frances Bacon who set forth the empirical method of science explicitly in England (Capra, 1982). Bacon proceeded by making

experiments and drawing general conclusions from them, so that inductive procedure could occur. Vividly, he would refer to nature in terms redolent with the witch trials of the time; nature, in his view, had to be “hounded in her wanderings”, “bound into service”. The aim of the scientist was to “torture nature’s secrets from her” (Capra, 1982, p.56). Thus the ancient concept of the earth as nurturing mother, existing since before 1500 in Europe, was radically altered by one who would have a profound influence on scientism as it presents itself currently.

Of any spiritual or metaphysical qualities existing in nature, Descartes is dismissive. Nature, as a great machine capable of being deciphered through algorithm and the rational mind, could contain no occult qualities. There can be little doubt that, in this sense, Descartes’ thought was influenced greatly by the Christian presupposition that the world was a rational order. As stated by Mead (1936):

*The conception of the world as a rational order came through the theology of the church. The doctrine was built around the gospel of Jesus and the conception of St Paul when he undertook to formulate the Jewish theory in such a form that it would be made universal.*  
(p.1).

Nature was a passive entity waiting to be known, devoid of spirit. Descartes’ *cogito* had placed man, as the ultimate thinker, at the centre of the universe. Man had become the knowing subject. Man could overcome nature, as he was the perceiver, the knower. The object, however, was no longer epistemologically equal to the subject (Markova, 1982).

Various writers have positioned nature as female. Hall comments that terrain newly discovered was often allegorised as a woman, and includes an illustration by Van Der Straet (c. 1600) which shows the woman reclining in a hammock, soaked in the currents of exoticism, witnessing a cannibal feast (Hall and Gieben, eds., 1992). Certainly Bacon, in his brutal description of man’s duty over nature, used the feminine pronoun ‘her’, and so perceived nature as female. What eventuates is a triumph of the mind over the feminine – the ‘irrational’. As Kember (1995) posits “science has symbolised nature as female and sought a privileged access to it.” (p.96).

Formerly respected for its life-giving abilities and its depth of existence, nature had become something almost reviled.

***(a) The body repugned***

Sardar, Nandy and Davies (1993) have placed the West's anguished relationship with the body at a time prior to that of Descartes. Although Descartes promulgated a mathematical relationship with *res extensa*, the individual, in private and in public, had earlier to contend with the hatred of the body propelled by Christian mass neuroses. Acting on the divorce between body and soul which was entrenched in the New Testament, the Gaze, therefore, had to turn on the *Other* "... in the vain, tragic, pathetically maintained hope of thereby strengthening weak belief and winning paradise" (Sardar et al, 1993, p.34). The *Other*, delineated by the difference in *modus operandi* from the Greek norm, had no head with eyes on their chests; had only one eye; was dog-headed. It became vital to establish an ideological demarcation line which would keep the uncivilised at bay.

The *Other* has often been described as the ancestral fear of Europe, still lurking within the memories of European civility (Sardar et al, 1993). Thus the body of the *Other* is often scorned in an effort to exorcise those memories – to reassure that it does not exist in Europe. However, the wild man, the *Other*, was always capable of lurking within individuals in the realms of Europe and so had to be either civilised or sacrificed to civilisation. There was, then, no respite from the threat of the bodily *Other*; he loomed, peripherally, at the rational *psyche* of civility.

Indigenous peoples, of course, were immediately cast as the *Other*. In the times of Pliny<sup>24</sup> and Herodotus<sup>25</sup>, the monstrous races grew in ferocity as they became geographically more distant from Italy or Greece (Sardar et al, 1993). Indigenous peoples were associated with the body which itself conjured images of fecundity and

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<sup>24</sup> Pliny the Elder authored *Historia Naturalis*, which detailed Rome's encounters with savages.

<sup>25</sup> Herodotus is often described by the West as being the father of history. He provided overly fantastic descriptions of Persians in *The Histories*, which he authored. For his descriptions see Lendering, J. (n.d.). Herodotus of Halicarnassus <http://www.livius.org/he-hg/herodotus/herodotus01.htm>.

*Other*-ness. Despite Christ's appearance on Earth within the body, his soul lived beyond the body, proving that the soul transcended the flesh. Hence legend has it that one saint would blush every time he ate or attended to his bodily needs. Indigenous peoples, as the bodily *Other*, became degenerately *Other*-ed; Pliny the Elder detailed the monstrous peoples inhabiting Ethiopia, for instance and described them fantastically.

A link can be made between the *Other*, the Gaze and the elevation of Western knowledge. Bodies of knowledge belonging to the Insider of Europe are contrasted under diffusionist epistemologies from Outside<sup>26</sup> indigenous knowledge, which has been regarded but dismissed. Europe sees its task as diffusing its historical, progressive knowledge to Outside irrational 'un-knowledge' (Blaut, 1993). The global centre of Europe spreads outwards through to indigenous peripheries in urgent need of their knowledge.

The search for knowledge which the West finds so important is justified by the classical diffusionist approach. The approach avers that progress is obtainable through knowledge, and the search for knowledge consists of various sojourns to the Outside in order to discover the Outside and then to reconstruct and educate the Outsiders in the superior knowledge of the Insiders. The civilised core is always expanding and is constantly gazing at and identifying Outside aspects which need changing.

Of course the major worry for the Inside is that Outside un-knowledge will create a backflow into the progressive, enlightened core. Enlightened knowledge may become tainted by this potential deluge; inferentially the Outside is meant to be grateful for the infusion of defined, rational knowledge. Additionally, the Outside is meant to be happily indebted to the Inside for taking this risk.

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<sup>26</sup> Blaut refers to 'outside' and 'inside' as proper nouns, using capitals.

### 3.2 The Gaze, the Body and Power – Michel Foucault

Descartes' exorcism of doubt and a Western obsession with the Other have set the stage for a particularly scientific encounter with the body, and an attendant Gaze. Is there power to be wielded in the Gaze? Michel Foucault believed so. If Foucault, in *The Birth of the Clinic*, was incredulous towards meta-narratives – if he was dismissive of a final and correct theory - he was tacitly so. However his assault on the mythology of the medical profession in providing for the disappearance of ill-health reads much like a postmodernist scrutiny<sup>27</sup>. His discussion of the Gaze and its cardinality in medical/bodily encounters acts as a backdrop to his *oeuvre*. In his postmodern scepticism, Foucault (1989) states:

*The years preceding and immediately following the Revolution saw the birth of two great myths with opposing themes and polarities: the myth of a nationalized medical profession, organised like the clergy, and invested, at the level of man's bodily health, with powers similar to those exercised by the clergy over men's souls; and the myth of a total disappearance of disease in an untroubled, dispassionate society restored to its original state of health. (p.36)*

Modernity, emerging during the Enlightenment, sought to throw off the yoke of medieval superstition (Callinicos, 1990). This it did, but it also brought into creation new myths which were wielded uncritically. Foucault maintained that one of these myths, which would have a profound effect on power relations between the body and the observer, was that around the wisdom of doctors – one of the extant myths of modernity.

Further, doctors were meant to be political in nature; they were to wage war against bad government if disease is to be thwarted. Therefore the doctor was such an adept sage that he could play pied piper from a disease ridden community to an idealised society. Foucault (1989) resisted these assertions by commenting that "... all of this is so much day-dreaming" (p.39). He went further by positing that doctors were indeed involved in the political, but not according to modernist formulae. They were

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<sup>27</sup> For further discussion on Postmodernist philosophy, see: Lyotard, J. (1993) [The Postmodern Condition: A Report on Knowledge](#). (G.Bennington & B.Massumi, trans) Minneapolis, University of Minnesota Press.

in fact embroiled in an arcanum of knowledge that stemmed from the Gaze – a Gaze that the physician would wield vicariously for the State. As he asks:

*How can the free gaze that medicine, and, through it, the government, must turn upon the citizens be equipped and competent without being embroiled in the esotericism of knowledge and the rigidity of social privilege?(p.53).*

Foucault argued that the Gaze was neither benign nor neutral. In a general sense, power had transferred from an overseeing sovereign to the micro-level. Foucault (1979) notes the presence of the spectacle of sovereign power in the classical age. In describing the torture and execution of the failed regicide Damiens in 1757, he proposes that a “theatrical representation of pain” (Foucault, 1979, p.14) was taking place. The power of the sovereign was “literally inscribed in the flesh of the dead man”(Jay, 1986, p.191).

But he notes that the classical mode expired in favour of a more localised but visually focused variation in the nineteenth century (Jay, 1986). Enter the Gaze of surveillance. Foucault draws on Bentham’s model prison to depict the shift from the sovereign regal gaze to the surveilling Gaze. Bentham’s model prison, the Panopticon, provides a central watchtower for the supervisor, who could omnipresently surveil inmates, while remaining invisible to the inmates. The Gaze thus became about the intimate control of every aspect of life.

Although not overtly about discipline and punishment, hospital wards share some similarities with the Panopticon. With the localisation of power at the prison/hospital/school stratum, all communities became bound by the surveilling Gaze. The State now exercised power through the ability of the localised Gaze. Diprose (1995) in relating current power to ‘genethics’ states that:

*Genetics is included in what Michel Foucault refers to as biopower: the technologies of power deployed with the emergence of the modern biomedical and social sciences in the nineteenth century. Without reference to law, and without displaying themselves as power, these sciences divide and assemble the body, evaluate, sort and compare. They therefore transform life by effecting distributions around a norm. The assumption of, and desire for, sameness pervades these sciences of the body. (p.171).*

(a) *Normalisation through the Gaze*

Not only is the Gaze not neutral, then, it is also intent on the act of *normalisation*. Foucault traces the Gaze as embodying the politics of both desire and surveillance. The Middle Ages saw madness, for example, as a spectacle. There was a desire to see the mad perform. Thereafter the mad were confined in asylums – unavailable now to the public regard – and were the objects of indefatigable surveillance. There is now a concomitant desire to see the mad normalised. Likewise, the hospital, the clinic, is the site within which the medical professional Gaze works; the physician walks through the ward, his veridical Gaze alights on the rows of patients, making sure that normal physiological states are maintained. Hence the physician knows and the patient is intent on taking the expert advice. Foucault, presaging a Saidian critique of dominance and covert submission, maintained that a dichotomy of power formed between the knowing expert and the patient: the dominated patient became complicit in augmenting the physician’s expertise and hence was subjugated.

A *quid pro quo* arrangement of knowledge through dissection has also been suggested as a natural consequence of anatomism. That is to say, a body of knowledge becomes possible through the dissection of the body. Sawday (1995) states:

*In medicine, anatomization takes place so that in lieu of a formerly complete “body”, a new “body” of knowledge and understanding can be created. As the physical body is fragmented, so the body of understanding is held to be shaped and formed. (p.2).*

It is as if the body is resurrected whole *post-dissection*, consolingly countering the anatomist’s hand by returning in the form of knowledge. Yet Lobanov-Rotovskiy (1997), echoing Foucault’s concern, resists such symmetry by asserting that what is in fact constituted is not knowledge, but a Gaze that further entrenches the surety of the anatomist’s subjectivity.

Foucault’s Gaze is therefore not concerned with theory – it does not involve itself with “...prolix discourses of systems” (Foucault, 1989, p.132). Indeed, theory must be discarded in order for the Gaze to be capable of alighting on the patient. As Foucault states “It is a gaze of the concrete sensibility” (Foucault, 1989, p.148); the

hospital ward creates a natural environment for the observation of similar pathologies. It provides a locus of observation and experience where the erudition of theoretical training is placed to one side. Foucault's Gaze is not merely a glance either; it simultaneously maps the open terrain of the body and reads and records. It "... spreads out over a world that is already the world of language" (Foucault, 1989, p.149). Hence anatomy engages the eye, constituting it as a form of language. Flesh is reduced to truth.

A further reduction occurs as the patient assumes the label of disease. As hospitals became more prolific in the nineteenth century, so pathology became a focus; Foucault (1989) opines that "... the hospital doctor sees only distorted, altered diseases, a whole teratology of the pathological" (p.19). The patient "... is the rediscovered portrait of the disease; he is the disease itself, with shadow and relief, modulations, nuances, depth" (p.16). Diseases, and the ways in which they played out on the body, followed basically the same path in case after case. Hospitals became sites for disease showcases, accommodating within a single location the presence of numerous illnesses; man thus disappeared within the sickness (Jewson, 1976).

Of medicine's location within the dawn of mankind, however, Foucault (1989) asserts that:

*... medicine in its entirety consisted of an immediate relationship between sickness and that which alleviated it. This relationship was one of instinct and sensibility, rather than of experience; it was established by the individual from himself to himself, before it was caught up in a social network. (p.65).*

This relationship was performed instinctively, such that each individual was both subject and object. The need for cure/care was identified by the individual; medicine was practised autonomously.

At the behest of the Enlightenment, Foucault argues, death was available to the perception provided by reason, and so the body became gradually cast open *postmortem* as a trove of knowledge. Laconically titled *Open Up a Few Corpses*, his *oeuvre* examines the heightened truth attainable through the knowledge of anatomy.

Disease similarity, after having played itself out on the surfaces of the body, could thereafter be verified at the coronial stage, in the morgue. Foucault (1989) employs some vibrant metaphor, reminiscent of the illuminative mission of the Enlightenment, to explain the use of the dead body: “Knowledge spins where once larva was formed” (p.153). Where once only darkness resided, the corpse provided a necessary scintillation which coincided with its dissection.

The ability of doctors to Gaze at the corpse may, superficially, bear little difference to a regard of the external body. But disease was now localised within specific anatomical sites and viewed as having its seat of destruction within the body. Thus the Gaze had to align itself with new dimensions; it was remodelled to plunging into the cavities and the viscera. It took on the power of a new dimension. It may implicitly subject the body, albeit dead, to greater subordination.

Foucault died in 1984, when biotechnology and its attendant wonders were relatively nascent. “Open up a Few Corpses” describes the now multi-dimensional Gaze of the medic. What would he have made of the study of genetic minutiae, however? Scrutinising the infinitesimal, being now the medical fashion, has further opened up the object patient to being known by the expert, and then classified accordingly. As the intimacies of the human body are increasingly laid bare to the Gaze, and the dimensional Gaze becomes ever more capable of translating its perception into language, so the expert scrys and imparts an apparently greater degree of Truth.

### **3.3 Knowing the body – Levinas and the ethics of the Other**

Does the Gaze really see, and therefore speak, the truth? If the answer is yes, then there is little problem; the expert is indeed omniscient, and the body is totally known. Metanarratives, suggesting that genetic engineering is a cure-all, for example, are then valid; the living patient can surrender his/her body to the expertise of the Gaze confidently and comfortably. Lobanov-Rostovsky (1997) indicates that the anatomist knows the corpse by purging his own corporeality. In his unwillingness to see himself reflected in the dissected corpse he conditions himself to “necessary

Inhumanity” (p.200), a phrase employed to describe the act of using the mind to dissect, and becoming ‘fleshless’. The Gaze, then, is constructed out of contradictions; it looks, but simultaneously threatens to look away in aversion. The mind is conditioned to deal with this dichotomy – the Gaze “... asserts a difference between the materiality of the dissected body and the eye that transforms that flesh into knowledge” (Lobanov-Rostovsky, 1997, p.200), and the corpse can then be described objectively. The anatomist is pure mind. He then knows the body. Little else need be said.

Alternatively, and more ominously, the Gaze merely perceives an illusion or, at best, captures a single dimension of bodily existence. The hubristic ‘all-knowingness’ of the Gaze must then be questioned. A Saidian illusion of perception reveals itself, committing the Gaze and its language to the chimerical. If, as Said (1978) asserts, the Orient is a word which has subsequently attracted meanings and connotations which do not directly coincide with the Orient and which relate merely “to the field of the word” (p.203), then a corresponding crisis emerges, with the body also eluding definition. If Said’s explanation, that the Orient is merely a construction borne of Western discourse, is transferable, then the body has likewise escaped definition by being merely a product of rational and creative discourse (Smith, 1998).

In the process of other-ing, the body has been set up in binary opposition to the mind and soul. Seeking to disintegrate these dualisms, writers such as Lyotard (1984) investigate the equal validity of different systems of knowledge. The objective truth which medical science lays claim to, and the humanist claims which propose that it holds total veracity, are being visited with scepticism. Clayton (2002), for instance, posits that individuals and social facts are linked. She opines that the relativity of knowledge throws into doubt the whole belief that disease, for instance, can be perceived as being separate from the individual’s environment. Citing Halberstam and Livingston, she states that “Posthuman bodies are the causes and effects of postmodern relations of power and pleasure, virtuality, sex and its consequences” (p.840). Many emotional disorders, according to postmodernist thought, manifest

themselves in the body through fear, evolving as a consequence of power relations - a reminder of the constant insecurity against which the body must mediate.

The body even takes pride of place in metaphor, symbolising the domains of power within administrative and public spheres. Consider the metaphor employed by Senator Menenius Agrippa to quell potential uprising by Rome's plebeians, who had left the city to protest against being ruled by the Patricians (Lorenz, 2000). The plebeians were meant to complete the more tedious tasks for the Patricians and their absence caused great consternation. Agrippa addressed the plebeians, representing the Patricians as the stomach of the state, digesting and passing nutrients to the other body parts, which *seem* to do all the work. He stressed the interdependence of the stomach and the rest of the body, thus alluding to the indispensability of the Patricians and the ruling class. His metaphor had the desired effect, and the plebeians returned to Rome.

The metaphor of the body can thus be applied to social situations, whereupon the social situations are endowed with the truth that accompanies medical science. Even corporations may be modelled on the brain; researchers have begun to identify the central nervous system as a parallel set of network structures which can be approximated in the corporation (Lorenz, 2000). Just as the encephalic trunk system creates "local operational units" by "the linking of neighbouring nerve cells", so can the "multifunctional workgroups" of employees in a corporation be structured. Medical science can bestow truth onto power relations and hierarchies within the state through the body.

### ***(a) Levinas and ethical encounters***

Whilst the Other and their body may thus be creating the truth for the state, French philosopher Levinas discussed a need for an ethical approach to the Other<sup>28</sup> and, upon extension, the body of the Other. Fundamental is an effort to create asymmetrical approaches to the Other. Rethinking encounters with other people,

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<sup>28</sup> Levinas refers to the "Other" in terms of being completely different and unknowable; "other" represents that which aims to be known.

Levinas aims to overcome the evocation of power, which is then wielded in contemporary encounters. Levinas calls into question the Western preoccupation of Being (Levinas, 1969). He proceeds through a number of graduations to arrive at his conclusion that the Other must exist without being known.

Levinas believed that ideas are a product of the mind (Llewelyn, 1991). Ideas do not refer to independently existing other persons, stemming as they do from mere inventions of the mind and interpretations of something. Any notion that reason exists through ideas about the other is rendered fanciful. A construction, through idea, of the other as the real person, immediately obviates contact with the real person. Thus ideas about what constitutes the other are anathema to an ethical encounter with the real Other.

Levinas concerns himself with the alterity of the Other. The Other is utterly different and cannot be reduced to a symmetrical relationship. Sameness, for Levinas, is the result of the reduction of the Other to an element capable of being known. “Ethics”, in the sense that Levinas uses the word, questions the ‘Same’. The Other is not capable of being localised either historically or temporally. Hence the Other cannot be assimilated into one’s consciousness and remains irreducible.

“Sameness” is reprehensible to Levinas because it results in violence to the Other that is the result of *totalization* (O’Connor, 1991). The totality of Being is resisted so that the Other may exist as transcendent, exterior, *alterior*. As Levinas (1969) states:

*A calling into question of the Same--which cannot occur within the egoistic spontaneity of the Same--is brought about by the Other. We name this calling into question of my spontaneity by the presence of the Other ethics. The strangeness of the Other, his irreducibility to the I, to my thoughts and my possessions, is precisely accomplished as a calling into question of my spontaneity as ethics. Metaphysics, transcendence, the welcoming of the Other by the Same, of the Other by Me, is concretely produced as the calling into question of the Same by the Other, that is, as the ethics that accomplishes the critical essence of knowledge. (p.33).*

The metanarrative, unfortunately, has expunged all such spiritual concerns to the realm of superstition, thus denying their seriousness. It is from such pretence at knowledge that Levinas reels. Levinas contends that the Other is a “relation without relation” (Levinas, 1969, p.79). Any action which attempts to reduce the Other to

the knowable, is considered to be unethical. Levinas questions the “I”, or the subject, who, to be ethical, can no longer live as the fanciful possessor of the world and hence the Other. The Other resists being enjoyed. Only through clear responsibility to the Other can the “I” and the “Other” be reciprocally free.

### **3.4 The Maori gaze and the body**

If the Gaze is a metaphor for how the ‘Other’ is perceived, in particular the body, then it might be expected to change across culture. Foucault, in addressing the Gaze, is critical of the assumed ‘truth’ behind its Western wielders. He also notes the homogenising process of the Gaze, where normalisation through surveillance is inevitable. Other cultures, while possessing a number of gazes, are far less inclined to use them in a process of normalisation and consequent exclusion; Fixico (2003) believes that “‘seeing’ is visualizing the connection between two or more entities or beings, and trying to understand the full context of things identified within a culturally based system” (p.2). Traditional indigenous perceptions of the body often resonate with the spiritual within all things. In this way, the lack of a pursuit of objective knowledge is the outcome of the traditional Maori gaze, and goes some distance in according with the ethical, knowledge-free encounter proposed by Levinas.

Foucault’s Gaze turns on the medic’s perception of the body and thus serves its purpose in explicating the power inherence of the Gaze. His *oeuvre* does not purport to describe one particular Gaze of those not of the medical profession. There may thus be a Gaze relevant to the Western consumerist; the lower classes of the West; the Western educationalist, and so on. Aware, similarly, of the diversity of gaze in Maori communities, in this chapter I am confined to discussing the interplay of the body, its whakapapa and the attempts by the gaze to fit the body that it perceives into a framework of belonging. However it is acknowledged from the outset that there a number of facets of Maori existence which also intersect the various types of gaze.

Such an approach is partially due to constraints imposed by both the nature of the written word and the finite nature of a thesis. Fortunately, by eschewing attempts to define broadly one Maori gaze, the integrity of diversity is protected and thus accords with the position of such writers as John Rangihau (1992), who advocates being Tuhoe before being Maori. Rangihau thus promotes the exaltation and relevance of local, specific forms of knowledge. In this light the idea that a group of people can shift form according to the territory that they are currently located in is one that is particularly relevant for Maori. As complex as the notion is, for the Western world, that Maori are totally constructed by all that surrounds them, for Maori any assertion that an individual, and groups, are uniformly the same regardless of their location is equally disconcerting.

Not to be confused with individualism, the specificity of knowledge and of existence according to that time, to that place, is tolerant of the myriad of explanations for creation and for being. In fact such specificity acts to bind groups together as it is often an expression of their underlying links. It therefore coheres people and is collectivising in nature. The distinct, local knowledge, as an expression of distinct yet relational whakapapa, grounds the body but the validity of other knowledge and the whakapapa of its own holders allows the body to transform horizontally when moving into other tribal areas.

A horizontality of shift across the body when it encounters other terrains reflects an essential accord striven for by the body within the relationship of whakapapa. Akin to an asymmetrical notion of balance, the body finds locality vitally important; its cadence is one which seeks to keep time with the peculiarity of the land on which it is positioned. The 'balance' sought is hence less about symmetry than accord. Indeed, such Western banalities as 'balance', when defined in terms of equivalence, are worthy of critique when describing the body's subtle and yet real changes.

It is within the realms of whakapapa that such an ability to transform becomes possible; through whakapapa the physical body becomes imbued with spiritual essence. It is whakapapa that binds an individual to the environment. Hence the

individual's body assumes the characteristics of the wider group and merges with the particular territory in which they are located. Immediately the individual's body is no longer individual *per se* but is capable of being situated within a wider relationship of mountains, rocks and waters of the area, as well as of other people who might not have accompanied the individual. The individual body is a confluence of spiritual and physical experiences which culminate in a being capable of much fluidity.

While Western scientific and legal definitions of 'body' focus on corporeality, the body as 'tinana' is something that defies Western nomenclature. 'Tinana' as a mere physical construct is a misnomer; 'tinana', the embodiment of ancestral and descendant attributes, of spiritual bodies that are capable of flight, and mergence with other dimensions, is a creation of whakapapa. While there are physical aspects to 'tinana', its meaning, its sense, resist narrow definitions.

The Maori body is thus grounded in the absolute present, whilst being a product of all that has preceded it and those who are yet to come. However, the body can, and does, change immediately it moves to another location. Stories are often told of the physical heaviness of a tupapaku in one area and its lightness in another, often due to its dissent or assent at being moved to another place. In this way the body strives to entrench itself firmly in that place, at that time. It is as if the various bodies that comprise the person reconfigure themselves according to the influences of the environment. This spiritual reconfiguration can show itself when a group enters onto a marae; the intent is on forming a link to that particular location and its people, thus assisting the body in aligning it and its spiritual characteristics to that location also.

Fluidity is intrinsic to the body. Such mutability challenges orthodox Western beliefs of a fixed, deterministic structure of the body, where the body will present itself in exactly the same condition in one context as it would in another. The naming of a newborn child, for instance, would reflect this. The very circumstances surrounding the birth of a child, which might appear very obscure to the Western mind, would inform that person giving the name. Therefore the specific occurrence

would be captured, but the child might be given a host of names to allow it to link and align their being to particular locations. Throughout life, that same person might be known by one of those names within an area; the name could change as the territory changed. This could also occur upon the death of the person.

If whakapapa is the means by which all aspects of the world are interrelated, then it seeks, by its very nature, to de-individualise the body. Its natural tendency is to bind the individual into a related group. Cognisance and knowledge of whakapapa might assist this occurring; however the very existence of whakapapa beyond cognisance might suffice in binding the individual to their temporal existence. Often Maori have talked of feeling an attraction or an aversion to an area or group of people without any knowledge of whakapapa. Whakapapa may very well exist beyond the knowledge of whakapapa itself.

Actual knowledge of whakapapa becomes important<sup>29</sup> when the including gaze searches for ways to assess where the body within its scope originates from. Ascertaining who the stranger is and their whakapapa is crucial to this particular gaze. Where do they come from? What are they doing here? Such are the questions which arise when the gaze encounters the stranger. This particular gaze often attempts to reconcile the links that the stranger might have to the wielder of the gaze. While the existence of whakapapa might do this naturally, the expression of it arises from the inclusive gaze.

Importantly the whakapapa/body/gaze relationship involves itself with trying to find a fit for the Other. In this way it differs largely from the Western medical Gaze, which is inextricable from power dynamics that render the diverse uniform. This does not, however, exempt it from being used to do violence to the Other<sup>30</sup>.

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<sup>29</sup> Knowledge of whakapapa is also important in retaining the names of ancestors within the memories of the living.

<sup>30</sup> The distortion of the Maori gaze is discussed in Chapter five.

The tohunga themselves specialists, utilise more than sight in their gaze, and are therefore constantly attempting to read the harmony of the body with its whakapapa and therefore its fit with its environment. The aforementioned questions of where do they come from? what are they doing here? are particularly pertinent when the tohunga uses the gaze to try to discern an answer to a dilemma. All senses are active; the gaze as an objective, neutralising force does not play a part in an assessment.

In considering the Other's body, the tohunga might access another universe in order to perceive an imbalance. In this way the bodies, both that of the tohunga and the Other, are both immediately placed within a relationship which involves the tangible and intangible – the subjective as opposed to the objective. Fixico (2003) asserts similarly that “It is acceptance of a fact that a relationship exists between a tangible item like a mountain and a dream” (p.3). The gaze of the tohunga may not immediately perceive the cause of imbalance in the Other's body, and so will wait for the clarity of a message; often the gift of interpretation must be present for the divination of such a message to be possible.

The ability to change the form of the body completely, too, was an accomplishable feat to many tohunga and atua. The purpose of a transmigration of the soul into another body was to divine an answer through the eyes of another form. Thus the traversal of other realms, of animals and people, endows the journeyer with knowledge which would otherwise not be accessible. Maui was able to change his forms on a number of occasions (Walker, 1992), to effect change for mankind. Other indigenous people's stories are replete with instances of shape-changing. Taliesin, a Welsh druid, was chased by the witch Ceridwen and transformed himself into a hare, a fish and a bird before being eaten by the witch in the form of a grain of wheat. He later assumed the name Gwion Bach and was thrown into the sea by the witch. He retained the knowledge of his various transformations and hinted at the spiritual journey, undertaken by the body, intrinsic to both death and life (Cotterell, 1997).

Fixico (2003) refers to all physicality being replete with spiritual energies. It is this same energy which enables the body to accomplish those deeds which are today often considered unorthodox or impossible. He cites the example of Black Elk, the holy man of the Oglalas. Enabled by the interconnectedness of the tangible and intangible, Black Elk's sight was interpretive and sensitive. In a visionary trance, Black Elk recalled that:

*I was standing on the highest mountain of them all, and round about beneath me was the whole hoop of the world. And while I stood there I saw more than I can tell and I understood more than I saw; for I was seeing in a sacred manner the shapes of all things in the spirit; and the shape of all shapes as they must live together like one being. And I saw that the sacred hoop of my people was one of many hoops that made one circle, wide as daylight and as starlight, and in the center grew one mighty flowering tree to shelter all the children of one mother and one father. And I saw that it was holy. (Fixico, 2003, p.4).*

Hence sight of the Other, of the Other's body, might be said to reside in the ability to connect the Other to the world. In a Maori world this is achieved through the connection of the body to Others and to the universe through whakapapa, which tohunga often knew thoroughly.

A notion of the scientific Gaze **alighting** on the body, of there being **Enlightenment** through scientific knowledge, knows no parallel in Maori communities. Some of the greatest progress in fact occurred during the time of Te Po - no **light** existed, spatially or temporally. The Maori gaze relies less on visible sight than on an invocation of all senses. That is not to say that even during times of absolute darkness there could be no use of sight. But sight alone is not relied on.

The Maori gaze is hence less concerned with absolute knowledge than it is about allowing the body to belong somewhere. In this way it fits Levinas' proposition that the Other is something not to be known; this gaze is not troubled with attempts at definition and reductionism but instead allows the Other's body to exist within a continuum of fluidity. It is a gaze which would deplore an objective, experimental regard of the body.

## **CHAPTER FOUR –THE METANARRATIVE OF MEDICAL SCIENCE AS IT SEEKS TO ‘KNOW’ THE BODY – NEW ZEALAND EXPERIENCES**

Because the body has fallen under scientific scrutiny it has become constructed by the truth of the scientific Gaze. The truth, constructing medical science as an indubitable, is seen as a departure from the story – being ‘the truth’, it makes sense of and totalises the world. Thus medical science appears, in a modernist sense, to be leading its subjects to utopia.

The oft-quoted “incredulity toward meta-narratives” (Lyotard, 1984, p.xxiv) which defines Lyotard’s postmodernism prompts a strategy for the deconstruction of medical science and its grand themes. It is as well to wield the term ‘meta-narrative’ as a means of identifying the ways in which living subjects fall into credulity towards meta-narratives, and hence disbelief of other narratives. Postmodernist thought, at a minimum, identifies discourses of power underlying medical science, and gives the reader an articulation based on such words as ‘meta-narrative’.

The meta-narrative has its roots in the modernity period at which time emphasis was placed on the temporality yet separateness of relationships between people (Werblowsky, 1976). In intellectual history the Enlightenment was the birth of the modern period, when God was banished to the realm of distant externality; creation could be explained in terms of reason, and salvation of mankind could be realised in the truth sought by medical science. Along with the tenets of reason could be found *certainty*. The certainty of existence could be discovered through the rigours of science. This discovery necessitated the general ousting of whatever was considered superstitious.

Schisms between the Church and the State during the Enlightenment period were exacerbated by the advent of such technology as the Guttenberg Press, and by Galilean and Copernican discoveries which galvanised Western Europe into a period of learning and literacy (Rappa, 2003). Thus the populace was no longer blindly

reliant on either their King or God, and civilisation became indebted to British empiricists, among others, for such marked liberation. Rappa (2003) discusses the consequences that the birth of the meta-narrative had for European colonialism. He states that:

*The belief in the monolithic **metanarrative** of modernity therefore begins taking shape in the later stages of the Enlightenment period when the fourth wave of European colonialism began taking root across the entire globe with the extensive and exhaustive geo-political cartographies by British and French colonialists across the Americas, the Near East, the Middle East, South Asia, Southeast Asia, the Far East, and the Pacific. The largesse of the Western European enterprise and its invincibility was buttressed by new technologies of steam-powered machinery and rampant industries that not only began changing the face of Western European cities but also, the profile of the rest of the colonized world .... (p.3)*

In postmodernist philosophy, meta-narratives are “the supposedly transcendent and universal truths that underpin western civilization and that function to give that civilization objective legitimacy”(Bertens, 1995, p.124). As the story is untold, it requires reinforcement by other narratives which exist within the culture. Meta-narratives are often difficult to identify, veiled as they are - and yet strengthened - by a valence of other, more specific, discourses.

Some writers have charged that the potential to deal in claims of ‘objective truth’ derives, in science, from the exalted position of scientific knowledge bases.<sup>31</sup> These bases are inherently concerned with power; they are capable of constructing images of nature (Latour, 1999) and are therefore intercessory of power. To deny these constitutions of power and their complexities within scientific knowledge bases is often predicated upon science’s possession of ‘objective truth’, which is a notion derivative of Enlightenment rationality. Acting as an absolute arbiter of knowledge, science deals as an agent dismissive of seemingly ‘cultural’ or ‘spiritual’ systems of knowledge, which are not founded upon objective truth. The central authenticity of science is pristinely superior to surrounding stories, which never coincide with the ‘truth’.

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<sup>31</sup> See for example: Feyerabrand, P (1993) *Against Method*” London: Verso ., Merchant, C (1992) *Radical ecology: the search for a liveable world* New York: Routledge

Hence the meta-narrative is never regarded merely as a story. The meta-narrative aims to explicate everything and is overtly optimistic. It is toward the world of human capability, achievable only through the truth that it espouses. The meta-narrative defines knowledges to be reinforced and relegates other knowledges to the incredible. It is therefore emancipatory, providing a path which leads to enlightenment; it unburdens society of the yoke of lesser stories and beliefs. Of relevance here is Lyotard's reference to the "modern", in relation to the meta-narrative, as "any science that legitimates itself with reference to a meta-discourse...making an explicit appeal to some grand narrative, such as the dialectics of Spirit, the hermeneutics of meaning, the emancipation of the rational or working subject, or the creation of wealth" (Lyotard, 1984, p.xxiii).

In a sense, the meta-narrative of medical science acts as hortation; it exhorts scientists to endlessly discover, and it adjures the populace to believe its meta-narrative - that it can discover where the body originates from, how it is conceived, and how it is to be cured. The body is caught up in the jubilation of the meta-narrative; it is caught up within the knowledge/power binaries that constitute medical science.

Correspondingly, the meta-narrative of medical science has exhorted that local and specific knowledge of the body be dismissed. As Lyotard explains "scientific knowledge cannot know and make known that it is the true knowledge without resorting to the other, narrative, kind of knowledge, which from its point of view is no knowledge at all."<sup>32</sup> In attempting to capture universal, homogeneous laws which govern the genesis and existence of the body, the grand theory draws to it a reverence which polarises other knowledge systems as myth. Any belief, for instance, that Aotearoa is inhabited by folk who were not human, or that indigenous people of Australia were created through the Dreamtime, falls outside of the objective domain of science and must be something much less than 'truth'.

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<sup>32</sup> *ibid* at 29.

Knowledge exorcism can be found in many sources of literature as the meta-narrative exalts the truth of science. Propositions that nature is interconnected, for instance, are derided:

*Totemism being found so widely distributed, is a proof of the existence of that savage mental condition in which no line is drawn between men and the other things in the world. This confusion is one of the characteristics of myth in all races. (Lang, 2001, p.8).*

It is the meta-narrative's optimism that fuels science's compulsion to discover – often in quite arbitrary fashions. The main aim is to discover –to *know*. In the area of biogenetics, for instance, the side-effects of genetic recombination are little acknowledged. Shiva draws attention to risk factors by suggesting that DNA segments from oncogenes or viruses linked to autonomously replicating DNA molecules might be more easily disseminated to bacterial populations and increase the incidence of cancer and other diseases. She highlights the drive of science to always *achieve* (Shiva, 1993).

The identification of the Other's body as a trove for experimentation has its foundations in the meta-narrative that the Other is outside of the norm, as established by the truth of medical science. This has sometimes led to research that is considered to be unethical. This chapter shall examine two domestic incidents which had calamitous consequences for families and victims – the events leading to the Cartwright Inquiry and the Greenlane Hospital hearts scandal. It shall then open onto a broad description of the most relevant laws which govern protection of the body, both deceased and living, when it is interfacing with medical science. Finally Maori concerns are illustrated, along with reference to other indigenous peoples' counter discourses to the potential for genetic research, biological warfare and patenting of genetic material, all of which may be permissible under current domestic law.

#### **4.1 The Cartwright Inquiry – National Women’s Hospital**

On 25 June 1987 the then Minister of Health, Michael Bassett, appointed Silvia Cartwright to preside over a Committee of Inquiry (‘the Inquiry’) into allegations which had been published in a Metro article. The article, written by Sandra Coney and Phillida Bunkle and published in June 1987, alleged that, among other things, the National Women’s Hospital failed to adequately treat cervical carcinoma *in situ*, and also that a research programme into the natural history of cervical carcinoma *in situ* was conducted at the same hospital (The Report, 1988). It resulted in findings and recommendations which were detailed in The Report of the Cervical Cancer Inquiry 1988 (‘the Report’).

In fact the incident has its genesis in the evening of 20 June 1966, some two decades earlier. A meeting of senior medical staff at National Women’s Hospital convened to consider a proposal tabled by Associate Professor Herbert Green. In this proposal Green had sought permission to conduct an experiment on women who had shown a positive reading for carcinoma *in situ*, a widely acknowledged precursor to cervical cancer (Tolich, 2001). Permission was granted by the Board’s ethics committee, of which Green himself was a member.

The experiment used an experimental group of 131 women, and a control group of 871 women. Green excised the precancerous tissue in the control group. In the case of the experimental group comprising the 131 women, he merely monitored their condition, without having gained their consent to the experiment or, indeed, having even informed them that their test results indicated precancerous tissue (The Report, 1988).

Notably, also, Green failed to inform the women that the standard medical procedure was to excise precancerous tissue. Much evidence was adduced during the Inquiry that showed that carcinoma *in situ* was a precursor of invasive cervical cancer. Tolich (2001) cites Coney and Bunkle’s Metro article which recounts the example of a woman who had 22 malignant smears over 16 years after a hysterectomy but did

not receive any treatment from Green. She had eventually developed invasive cancer of the vaginal vault. Tolich (2001) quotes Coney and Bunkle:

*A most significant finding was that in only 5% of the group-two 'conservative' treatment patients did CIS [carcinoma in situ] disappear. That is, 95% continued to have CIS, or worse. Twenty-nine, or 22% of these women, developed invasive cancer of the cervix or vagina. In contrast, the group-one patients who had normal cytology after treatment rarely developed invasion. (p.3).*

Green, apparently, was a staunch opponent of abortion and a stoic proponent of fertility preservation, and it has been suggested that these personal beliefs motivated a blind pursuit to prove a theory – one which flew in the face of accepted medical practice. According to Coney, a patient gave the impetus for Green's theory; she had earlier been shown to have carcinoma *in situ* but had refused a hysterectomy. Two years later she had a baby and was shown to be quite well (Women's Health Action, n.d). On the basis of his own personal beliefs and the example shown by this patient, Green became a man with a mission. He strove to avoid surgery which ended in sterilisation.

Silvia Cartwright found that there was a failure adequately to treat cervical carcinoma *in situ* at the National Women's Hospital, based on a "failure to recognise the dangers for patients when procedures were adopted which did not comply with generally accepted standards of treatment at that time", "failure on the part of some colleagues and the administration to impinge on clinical freedom and act decisively in the interests of patients' safety" and "failure to take account of the patients' cultural, social and emotional needs, as well as their physical symptoms of disease, in planning a trial that would lead in some cases to many years of monitoring without definitive treatment", amongst other reasons (The Report, 1988).

#### ***(a) Code of Health and Disability Services ('the Code')***

In response to the Report of the Cervical Cancer Inquiry 1988, the Office of the Health and Disability Commissioner was established in 1994. The Code emerging as a regulation of the Health and Disability Commission was considered to be the cornerstone to the Health and Disability Services Commissioner Act 1994. Its original Bill form was considered by consumer groups to be very close to what Judge

Silvia Cartwright had suggested in her Report (Women's Health Trust, n.d). However it was subsequently altered in response to pressure from the medical profession. Note that at the time of the Inquiry there was no legislation which involved the seeking of informed consent from patients.

The Bill initially contained mention to the status of tangata whenua under the Treaty of Waitangi but this was subsequently erased (Women's Health Trust, n.d). At Right 1(3) the Code now mentions Maori along with other "... different cultural, religious, social and ethnic groups."

Under the Code tissue may be archived from a living person. In cases of tissue archival the consumer "has the right to make a decision about the return or disposal of any body parts or bodily substances removed or obtained in the course of a health care procedure."<sup>33</sup> Right 7(10), correspondingly, directs that the informed consent of the consumer be obtained before storing, preserving or utilising body parts or bodily substances. Where tissue has been removed with consent for a particular purpose but the purpose has since changed, consent for the new purpose will also have to be sought (Thomas, 2002).

In cases where consent is sought, the consumer is entitled to information that a reasonable consumer in that consumer's circumstances needs to make an informed choice or give informed consent. Consent must be given in writing if the consumer is to participate in any research or experiment.

If the healthcare provider can demonstrate that it took reasonable action in the circumstances to comply with the Code, taking into account all the relevant circumstances, including the provider's resource constraints, then clause 3 directs that the provider is not in breach of the Code. However, matters may progress to a number of fora if the provider is suspected to be in breach, such as to the Health and Disability Commissioner, the Medical or Nursing Councils, the Director of Proceedings, and thereafter to the Complaints Review Tribunal. Damages may be awarded against the provider if they are found to be breaching the Code.

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<sup>33</sup> Right 7(9)

## 4.2 Greenlane Hearts Scandal

In February 2002, it was revealed that more than 1300 babies' hearts had been retained at Greenlane Hospital. They had been obtained without parental consent (Cole, n.d). The "heart library", which held the archived tissue, was first defended as being historic, and it was further asserted that since the 1990s consent had in fact been obtained for the retention of the hearts, despite later revelations that as late as November 2000 a baby's heart was taken without the parents' consent. It was later revealed that lungs and kidneys, spleens and livers were also kept. Dr Kirsten Finucane, the Hospital's Clinical Director of Children's Heart Surgery, told the New Zealand Herald that quite a large proportion of organs were taken from aborted foetuses (Johnston and Mold, 2002).

This furore began a debacle over the status of informed consent as prescribed by the law for the deceased, particularly by the Coroners Act 1988 and the Human Tissues Act 1964.

### *(a) The Coroners Act 1988 ('the CA')*

The role of the coroner, while of modern times directed away from automatically assuming the need for post-mortems (Wallace and Johnson, 1995), is a continuation of its historic task. It aims to assist in accounting for those deaths which require further inquiry, such that all deaths in society can be sufficiently explained. The Coroner's Court, which is at the same level as the District Court, is empowered by the CA to investigate a sudden, suspicious or unusual death, or one which occurs when a person, at the time of death, was undergoing surgery, or is a mental patient or in prison or other lock-up.

Section 15 of the CA sets out that coroners' inquests are held for the purposes of:

- (1) *Establishing as far as possible:*
- *that a person has died;*
  - *the person's identity;*
  - *when and where the person died;*

- *the causes of death;*
- *the circumstances of the death.*

(2) *Making any recommendations or comments on:*

- *the avoidance of circumstances similar to those in which the death occurred;*
- *the manner in which any persons should act in such circumstances that, in the opinion of the coroner, may, if drawn to the public attention, reduce the chances of the occurrence of other deaths in such circumstances.*

Section 8 of the CA empowers the coroner to authorise a post-mortem. The coroner, in deciding whether a post-mortem should be undertaken, may attach such weight as is necessary to such criteria as ethnic origins, social attitudes or customs, whether custom requires bodies to be returned as soon as possible after death, and whether those associated with the body find post-mortems offensive. The coroner takes into account the particular circumstances of each case.

If a post-mortem is to be performed, involving persons “having the ethnic origins, social attitudes or custom, or spiritual beliefs”, then section 9 empowers the coroner to direct that the post-mortem be performed “forthwith”. The post-mortem carrying out the post-mortem may decide the extent to which it occurs. Rarely, the coroner may request that the post-mortem be limited; this, however, is entirely at the discretion of the pathologist (Wallace and Johnson, 1995).

If the body is in the possession, lawfully, of the coroner, the Code of Health and Disability Services Consumers’ Rights directs that consent be obtained from the coroner for removal of organs where an inquest or post-mortem may be required. Hence priority is accorded the coroner before any of the donation provisions of the Human Tissues Act 1964 can be invoked.

Section 14 of the CA directs that the coroner is to authorise the disposal of the body, which means burial, cremation and all other lawful modes of disposing of a body.

The coroner must, as soon as is practicable, take all reasonable steps to ensure that the immediate family is notified, including reasons for the post-mortem. There is

however no compulsion on the coroner to inform families that organs and tissue have been removed (Thomas, 2002). There is also no specific statutory requirement for coroners and pathologists to get consent to remove and retain body parts. The law does not specify who is to have possession of retained body parts.

It is at this juncture that the law in relation to post-mortems intersects with the Greenlane hearts scandal. Despite there being no provision for informed consent to be sought by the coroner to retain the hearts, an argument has been raised which centres on the role of the Code (Cole, n.d). The Code, as already described, states that the storage or use of body parts removed or obtained in the course of a health care procedure requires the consent of consumers. However it is likely that informed consent is only required from the living in relation to their own bodies – not the deceased bodies of, in this instance, their children.

Maori, too, have been often tragically affected by the process of the CA. Some instances which gained particular notoriety are: the removal of a heart from a baby which died from cot death; the removal of organs from an elderly lady without permission, when she was believed to have died merely of ‘old age’; part of the brain of a sufferer from lung cancer; and the heart from a patient who died in a mental hospital (Pahl, 1993). In another case, the body of a deceased Maori man was returned to his family without the brain. The brain of the man was finally returned under much duress and after grave distress; this particular case highlighted the ambivalence of the CA in allowing for a body, or part thereof, to be retained for forensic purposes, quite apart from ascertaining the cause of death (Pahl, 1993).

***(b) The Human Tissues Act 1964 (‘the HTA’)***

In 2004 the Ministry of Health called for submissions on the “Review of the Regulation of Human Tissue and Tissue-based Therapies: Discussion document” (‘the Review’).<sup>34</sup> The Review is meant to establish a new regulatory framework

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<sup>34</sup> See Appendix A for my submissions in response.

which would work at simplifying the bewildering array of Acts and regulations dealing with the area of human tissue. A primary aim of the Review is to develop a new HTA to regulate the therapeutic and non-therapeutic uses of tissue collected from deceased persons.

Under the common law, which is arrived at by the courts' interpretation, if the removal of a body part is not effected for the benefit of therapy, such as the removal of limbs in the case of gangrene, then such removal is considered unlawful. Furthermore, legally one could not consent to donate body parts or organs, constituting as this does the crime of maiming; consent to donate would therefore amount to the commission of a crime (Wallace and Johnson, 1995). Thus, at its inception, tissue donation in New Zealand was seen as needing strict statutory control. The Health Act 1956, for example, forbids tissue donation as an exercise in pecuniary gain. Legislators thus attempted an accord between the prospective HTA and the intention of the courts.

The HTA deals with the donation of tissues from the deceased; it does not, however, concern itself with blood donation, a procedure again covered by the Health Act 1956. The compulsory taking of blood is dealt with by the Transport Act 1962; the Guardianship Act 1968; the Status of children Amendment Act 1987; and the ubiquitous Health Act 1956. Section 11 of the HTA requires that decency be observed, requiring anyone performing an examination or removing any part of the body to carry these out in an orderly, quiet and decent manner, and not to unnecessarily mutilate the body. Section 4 authorises post-mortem examinations (along with the Coroners Act 1988) authorises post-mortem examinations, which must be carried out by, or in accordance with, the instructions of a medical practitioner. Stillborn children are not covered by the HTA.

Some countries have adopted either an approach of 'opting in' or 'opting out' when determining tissue donation. The former assumes that no consent to donate tissue is given unless positively indicated. 'Opting out' is much the reverse – it assumes that where there is no clear indication not to donate tissue, the presumption is a consent to

donation. New Zealand seems to have adopted an amalgam of both, whilst erring on the side of opting out. Consider the following sections of the HTA:

*3(1) If any person, either in writing at any time or orally in the presence of two or more witnesses during his last illness, has expressed a request that his body or any specified part of his body be used after his death for therapeutic purposes or for purposes of medical education or research, the person lawfully in possession of his body after his death may, unless he has reason to believe that the request was subsequently withdrawn, authorise the removal from the body of any part or, as the case may be, the specified part, for use in accordance with the request.*

Permission, then, is given for a part of the body to be used. The client is apparently given the positive option of donation by request.

Consider, however, section 3(2):

*Without limiting subsection (1) of this section, it is hereby declared that the person lawfully in possession of the body of a deceased person may authorise the removal of any part from the body for use for the said persons if, having made such reasonable inquiry as may be practicable, he has no reason to believe –*

- a) That the deceased person has expressed an objection to his or her body being so dealt with after death, and had not withdrawn it; or*
- b) That the surviving spouse, surviving de facto partner of the same or different sex, or any surviving relative of the deceased person objects to the body being so dealt with.*

Note that the person lawfully in possession only has to ascertain objection. He or she does not actually have to garner consent to remove body parts or tissue. The presumption exists that body parts may be taken after reasonable inquiry to ascertain some objection from spouse or relative. Even in the absence of express approval, body parts may be taken. At first glance, the proposal that relatives of the deceased be referred to may be appealing to some. Second thought needs to be given to this *prima facie* duty of care, which need not be onerous to satisfy this requirement. Thomas (2002) cites Montgomery:

*In most instances it will be sufficient to discuss the matter with any relative who has been in close contact with the deceased asking him his own views, the views of the deceased and also if he has any reason to believe that any other relative would be likely to object.*

*There is no need actually to establish a lack of objection from all relatives before authorising the removal of organs, or to make inquiries which are unreasonable or impracticable. (p.13).*

Section 2 of the HTA confers possession of the body on the person in charge of any hospital care institution, or a person in charge of a hospital within the meaning of the Mental Health (Compulsory Assessment and Treatment) Act 1992, or the Superintendent of any penal institution, depending on where the body lies. This provision does not act to limit the "... rights, powers or duties of any person entitled under any rule of law to the possession of any body." Indeed, citing Kennedy and Grubb, Wallace and Johnson (1995) state that:

*The person who has actual physical custody of the body has lawful possession (and the duty of disposal) of it until someone with a higher right (eg an executor or parent) claims the body ... In the absence of executors there is a common law duty to see that the body is buried and the person lawfully in possession is normally the occupier of the premises where the body lies or the person who has the body. (p.396).*

Wallace and Johnson continue by citing the example of entertainer Billy T James, who, after his death, was taken to his Muriwai home by his widow. She had claimed possession of his body despite kaumatua protestations that he be allowed to lie on the marae. It is probable that, in law, Mr James' widow would have had greater possessory right; the kaumatua would have been hard pressed to convince the courts that their collective right would be superior to a spouse's right.

The Greenlane hearts scandal highlighted the inability of the HTA to cater for the obtention of informed consent from the parents of the deceased children. Clearly, the Act only requires that objection be ascertained, and even then only at a very limited level. Any litigation would require the applicants to prove that the Hospital did not even meet this token threshold.

### **4.3 Maori concerns – possible uses of the legislation**

The National Women's Hospital and the Greenlane hearts scandals both illustrate a clear inability of the law to accommodate the protection of the collective. Maori are then left in a vulnerable position. The statutes described above offer only ineffectual

protection to the individual, and even then only when he or she is either in a hospital setting or a penal institution.

The Alder Hey scandal in Britain, discussed in chapter two of this thesis, was regarded with some complacency by the New Zealand Government, who vowed that such an incident would never occur here. Cole (n.d) quotes an article from the Evening Post, which includes an assertion from a Ministry of Health spokesperson that:

*... the British case was unlikely to happen in New Zealand. The Human Tissues Act ... required informed consent before organs could be taken for either transplants or research. For babies, consent could only be given by the child's guardian, usually the parents. (n.p).*

But the Greenlane hearts scandal did occur, and the thought that a Ministry of Health spokesperson could widely promulgate a misnomer about the law is an unnerving one. A glaring lack of legal protection does indicate that opportunities for misuse of Maori organs and tissue are various and many. Three similarly extreme, although entirely possible, scenarios are now highlighted to show the potential for misuse of Maori organs and tissue.

#### ***(a) The Human Genome Diversity Project***

The HTA, CA and the Code open up possibilities for the retention of tissue by researchers and it is in this context that, even with the requirement for informed consent in the case of living tissue, the collective consent may be marginalised. Maori have reason to fear that the legislation could pave the way for such projects as the Human Genome Diversity Project ('the Project'), which due to funding cuts is now not operational, but which did pose threats to the livelihoods of many indigenous peoples. In this light the Project merits discussion.

Andrews and Nelkin describe the experience of the Tristan da Cunha people (Andrews and Nelkin, 2001). The Tristan da Cunha people were victims of the meta-narrative. Having an extraordinarily high incidence of asthma, 1200 blood samples were taken from the citizens by Canadian scientists in 1993 under the guise of discovery and information. General medical tests were undertaken, along with a

construction of the population's genealogy. The Tristanians have yet to derive benefit from the studies.

Along with a number of other groups, such as the Eta of Japan, and the Yuchi of Arizona (Andrews and Nelkin, 2001), amongst others, the Tristanians have provided a 'sampling smorgasbord' for the Project, that most ambitious research endeavour, deriving from pure science, to collect blood and tissue samples from ethnic groups around the world, before their expected extinction (Posey and Dutfield, 1996), deepening science's knowledge of identified facets of migrations and disease. Despite having denied that they specifically wished to target indigenous peoples, HUGO, its organisers, nevertheless identified discrete populations that are isolated and have unique genetic makeup that is threatened. Some of these groups numbered fewer than 100 people - these are termed "isolates of historic interest" (Posey and Dutfield, 1996, p.164).

Indigenous peoples have roundly condemned the Project. The Project proceeded despite lack of indigenous participation in its formative meetings. As Chief Shenandoah (1993), of the Tadodaho people, succinctly put it: "That the Human Genome Diversity Project has progressed to the fifth meeting without discussion or consent of the indigenous nations and peoples it affects, we find unconscionable" (n.p.)

Gardiner (1997) illustrates well the concern of indigenous peoples when describing Selbourne Biological Services New Zealand Ltd's attempts to conduct experiments on the genetic material of her own hapu, Ngati He and Ngai Te Ahi of Tauranga Moana:

*After some probing the whanau realised that one of their members had indeed signed this letter. She told the meeting that she had been approached by a representative for the company soon after their initial attempts to set up a meeting with the hapu .... The representative from the company had persuaded her to write a letter in support of their application. He had talked with her about the experiments being for the greater good of 'mankind' [sic] and that the experiments were part of their scientific research intended to develop cures for diseases that were killing people around the world. (p.57).*

Indigenous peoples involved justifiably assume that they simply will not be able to afford to partake in the benefits lauded by Project workers, such as various pharmaceutical products and genetic testing (Gardiner, 1997). Further, the Project was seen as another hallmark of colonisation. Tokar (2003) quotes Liddle, Director of the Central Australian Aboriginal Congress thus:

*Over the last 200 years, non-Aboriginal people have taken our land, language, culture, health — even our children. Now they want to take the genetic material that makes us Aboriginal people as well. (n.p).*

The central theme of expropriation expressed by Liddle has been echoed since the early 1990s. As of 2003, sixteen separate gatherings of indigenous activists around the world had called for moratoria on genetic research on indigenous peoples until the various implications of such research had been assessed (Tokar, 2003).

Further research has been engaged with by multinationals which would identify disease genes based on studies of Iceland's isolated and homogeneous population. Hoffman-La Roche of Switzerland and DeCode Genetics Inc of Iceland signed a \$200 million collaborative research contract, which aimed to effect the world's most comprehensive collection of genealogical data for studying the genetic causes of common diseases (The Crucible II Group, 2003). Despite opposition by a number of Iceland's communities, the Icelandic parliament passed law on 17 December 1998 that enables DeCode Genetics to collect medical information from Iceland's 270 000 inhabitants and input it into a database. Opposition derives from perceived intrusions into privacy and the overriding of informed consent.

Even more recently, the sale of Brazilian Indians' genetic samples over the internet has been noted (Brazilian gov't probes, 2004). Alongside other such sales, these samples are being advertised over the Coriell Institute for Medical Research Ltd's website at a price of US\$85. The Institute is a US biotechnological firm which has been collecting genetic materials since the early 1960s (Coriell Institute for Medical Research, n.d). The Institute contains the world's largest collection of human cells for research. It proposes collaborations with other institutions as long as it can be established that human subjects and quality control remain protected.

Concrete measures of resistance by indigenous peoples have been taken in the form of indigenous charters and declarations. The Mataatua Declaration<sup>35</sup> calls for a moratorium on “any further commercialization of indigenous medicinal plants and human genetic materials ... until indigenous communities have developed appropriate protection mechanisms.” The protection of cultural, scientific and intellectual property has been asserted by Voices of the Earth Congress and the UN Draft Declaration on the Rights of Indigenous Peoples (Posey and Dutfield, 1996).

***(b) Biological Warfare***

With the HTA, CA and the Code allowing the retention of tissue for research, the threat of biological warfare deserves special consideration in the context of genetic collection. Since the ratification of the 1972 Biological and Toxin Weapons Convention (BTWC) in 1975 there has been a move to develop new forms of military weaponry, in the form of biological ‘defense’ (Mander, 1991).

Article 1 of the BTWC bans an entire class of arms by prohibiting the development, acquisition and stockpiling of all biological weapons (Convention on the prohibition, n.d). Its interpretation was intended to be broad; it was implemented so that all classes of biological warfare and the possession of deadly biological agents would be prohibited. The only biological agents allowed would be for research into such defensive measures as vaccines, detectors and protective gear (Miller, Engelberg and Broad, 2001). However, the difference between offence and defence is purely a matter of intent. Both, unfortunately, require research that has potentially lethal results, and may necessitate genetically specific weaponry. Of even greater concern is the lack of adherence to the convention. Biological weapons are comparatively cheap to produce. The former Soviet Union, which had ratified the 1972 Convention, continued to overtly fine-tune its offensive biological weapons programme until 1992 (Miller et al, 2001).

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<sup>35</sup> The Mataatua Declaration was passed, in 1993, after six days of consideration of significant issues affecting indigenous peoples. It had its genesis in Aotearoa.

Recent years have also seen a tendency towards narrowing interpretations of Article 1, so that a liberal use of biological agents would be allowed. The production of anthrax spores in the United States and testing of biological bombs illustrate that there is a move towards avoiding the overriding intention of the BTWC. The United States, for example, has claimed that forcible eradication of narcotic crops, which is a type of biological warfare, would not violate the BTWC (The Sunshine Project, 2000). What counts as 'lethal' biological weapons has been visited extensively by the United States, with 'non-lethal' agents apparently including human disease and anti-material agents. The United States supported the view that human disease and anti-material agents were non-lethal at United Nations in October 2001, where US Assistant Secretary of State Avis Bohlen reinterpreted biological weapons as "biological agents used with lethal intent" (Non-lethal weapons, n.d, n.p).

Widespread fears emerge that such weapons could be made to target indigenous peoples are well-founded. In an interview with Frontline, Dr Daan Goosen, who was managing director at Robdeplaat Research Laboratories, working with Dr Wouter Basson, explained that he had been involved in products designed to induce infertility in the black population only. These products, which comprised mainly of vaccines, were to be given surreptitiously to the black population, as they were perceived to be overly fertile (Plague war, 1998). Other attempts include an ethno-bomb, being worked on earlier by Saddam Hussein, to target Arabs but not Jews (Alert, 2000).

Some indigenous peoples, too, have historically been targets of biological warfare which, while not genetic in origin, was nevertheless exclusively meant to result in genocide. Between 1754 and 1767 the British provided smallpox-infested blankets to American Indians during the French and Indian war (Churchill, 1997). Smallpox resulted in the decimation of many Indians. In 1966 the United States began a study, commissioned by the US Defense Advanced Research Projects Agency (DARPA) which would identify culturally specific malodorants (The Sunshine Project, 2002). Prompted by the need to disperse Vietnamese guerillas, the study combed literature

which pertained to Asia's indigenous populations, hoping to discover ways to combat, exclusively, the guerrillas through the use of obnoxious odours.

Bartfai, Lundin and Rybeck (1993) warn that genetic weapons are entirely possible, given the genetic differences already known.<sup>36</sup> They state that:

*It is well known that clear racial differences exist between blood group proteins and histo-compatibility proteins. Dramatically different sensitivities to certain infectious agents have also been documented between the races. These genetic differences may in many cases be sufficiently large and stable so as to possibly be exploited by using naturally occurring, selective agents or by genetically engineering organisms and toxins with selectivity for an intended genetic marker. The number of known proteins (mostly from the immune system for which strong polymorphic distinctions are known) is now several dozen. These differences were recorded as the various sensitivities were found or as proteins were typified by antibodies or sequencing, but not as a result of a systematic search on the DNA level, as is now possible and being done. (p.9).*

### ***(c) Ownership of the body - Patents***

Patent laws have arisen out of the broad area of intellectual property. Their scope is uncertain for indigenous peoples, especially in the laws' verification of the authenticity of indigenous art forms and designs in general. These are all matters for concern for indigenous peoples. Perhaps the most insidious arm of intellectual property for indigenous peoples though is that which deals with genetic material. There are a number of strata to the commercialisation of genetic material, especially as the society being scrutinised is reduced to its various genetic levels. As Mead (1996) states:

*"Instead of looking at a whole country and its territorial boundaries, one reduces the country to a grid of ecosystems (terrestrial biodiversity, marine and coastal, agricultural biodiversity, deserts, marshlands) and then further reduces those ecosystems to plant/marine species and then again to genetic resources of all living things within a state's territory. Each level of reduction presents an increased commercial opportunity" (p.7).*

Patents, as a limb of intellectual property law, have been granted over material derived from living matter. In 1980 the US Supreme Court ruled that a particular

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<sup>36</sup> This article was published in 1993; the authors note that further racial distinctions in the genetic area would become even more obvious as such innovations as the HGDP proceeded.

microbial family was patentable.<sup>37</sup> In 1988 a group of laboratory mice bred to develop cancer was deemed by the US Patent and Trademark Office (PTO) to be patentable, as were other genetically altered life-forms, leading to the 'Harvard-onco mouse' patent.

Both these events were undoubtedly significant. However the one that appears to have opened the potential for human genetic material to be patented was the Moore case of 1990. This case deserves special consideration as it is pivotal in defining the rights of property in the human body.

Moore was admitted to the UCLA Medical Centre and subsequently treated for hairy cell leukaemia. Treatment included the removal of his spleen. Despite rejecting the option on his consent form to have his tissue used to develop a cell line, parts of Moore's spleen were sent to a research laboratory (Andrews and Nelkin, 2001). The doctor who undertook the operation and his technician then used the samples to develop a cell line.<sup>38</sup> They patented the cell line and assigned the patents to the regents of the University of California. 'Mo' was estimated to have a projected market value of \$3 billion.

The final ruling in this case, given by the California Supreme Court in 1990, was that Moore did not have a property right in the tissues removed from his own body. The *ratio decidendi* of the case was the Court's reference to public policy considerations. The Court did not want to be seen to be hindering research by restricting access to the necessary raw materials (Andrews and Nelkin, 2001).

The decision handed down in this case may well have opened the floodgates for lodging patents in indigenous genetic material. The first *known* application for a patent over the genetic line of an indigenous person occurred in August 1993 where a claim was lodged by US Secretary of Commerce, Ron Brown, for the Human T-Lymphotropic Virus Type 2, extracted from the DNA of a Guaymi woman.

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<sup>37</sup> *Diamond v Chakrabarty* 477 US 303 (1980)

<sup>38</sup> This was named the "Mo" cell line

Resistance from the Guaymi National Congress and the World Council of Indigenous Peoples soon mounted, to such an extent that the US Government retracted the patent claim (RAFI, 1994).

Distrust grew when the US PTO ushered in “a new and outrageous era in intellectual property by issuing a patent to the US National Institutes of Health (NIH) for an unmodified human cell drawn from an indigenous person from Papua New Guinea” (RAFI, 1994, n.p). In this case a patent was actually granted for cells from an indigenous person.

Tests were carried out amongst the Hagahai people of Papua New Guinea, where it was found that the Hagahai carried a human T-cell leukaemia virus. Although they were carriers of this virus, the type of leukaemia associated with it did not actually afflict them. The decision to patent was apparently grounded in the fact that the cell line would have important application in combating this particular strain of leukaemia. Pressure from indigenous peoples, non-governmental organisations and foreign governments finally compelled the NIH to disclaim the Hagahai patent.

The philosopher Hans Jonas warns against wagering excessively for the assumed utopia of the future. He argues that those who advocate social good as a reason for wagering all can be countered by an insistence that heritage can perish due to a euphoric enthusiasm for the future (Jonas, 1984). Indigenous peoples, Maori included, have some prescience of the demise of heritage when the potential for being researched themselves is discussed – particularly when the social good is being described meta-narratively.

Both the National Women’s Hospital and the Greenlane hearts scandals clearly indicate an existing lack of legal protection which could have disastrous consequences for Maori, who have historically been at the rough end of scientific research practices. Both scandals moreover act to undermine any optimism that Levinas might have had for an ethical encounter with the Other. He might argue that the drive to reducibly know the Other completely overtook their instigators.

Foucault may have tacitly acknowledged the process of surveillance and thus normalisation employed, subtly but inherently, in the approaches of both National Women's Hospital and Greenlane Hospital to the body. The Gaze described by Foucault, driven to extremes, was hungry to alight on and traverse the outlines and depths of the body, in the absence of an ethical framework. In doing so it was fed by its own innate discernment of truth.

## CHAPTER FIVE – PERVERSION OF THE MAORI ‘GAZE’

The introduction of this thesis included varying accounts of the eruption of Ruawahia, Tarawera and Wahanga. This event was to have a huge impact on my people of Tuhourangi who, after the eruption, moved to other whenua often well distant from their traditional area. It was thanks to other iwi who gifted whenua that my people were able to sustain themselves. For me and my relatives, however, our tribal area about Tikitapu, Rotokakahi, Okareka, Tarawera and Rotomahana remains special.

Immediately after the eruption of Ruawahia, Tarawera and Wahanga, the venerated tohunga Tuhoto Ariki was dug up alive, having been buried by the ash. Appalled by the reluctance of Maori to help with the salvage of my tipuna, the Pakeha who were present dug him up and then sent him into Rotorua township, where his hair was cut and he was given milk to drink.<sup>39</sup> He died shortly thereafter.

Tuhoto Ariki, unfortunately, had fallen victim to the normalising Gaze of Western medical science. He was treated as the West (in their superior knowledge of the body) dictated he should be treated. Any Tuhourangi explanation for leaving him alone and moreover for not exposing him to the ministrations of hospitals was thus ignored.

This thesis firstly sought clarification of the West’s treatment of the body or, more succinctly, Western medical science’s treatment of the body. To attempt an aspect of one facet of medical science’s relationship with the body, I chose the Gaze as a metaphor for the regard of the body. Inherently the Gaze normalises.

**Chapter Two** showed that regard for the body, at the behest of medical science, has shifted. Historically, in the West, the dead body has been shuffled from the

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<sup>39</sup> Tuhoto Ariki ate only riwai and drank only water

sacrosanct catafalque to the scientific Gaze. Its deserved eternal rest has often been interrupted by the political constructs of the time; its sporadic unrest depicts opaque social perceptions of the role and status of the body. Attempting to resolve spiritual/scientific tensions, the West has resorted to grand narratives to justify its use of the body, both dead and alive, in its pursuit of power. A piercing Gaze of medical science, incipient at first but fortified by a particular regard of the body, emerged.

**Chapter Three** then augmented the historical context by illustrating the complicity of Descartes' elevation of the rational faculty with the development of the Gaze that Foucault<sup>40</sup> speaks of – the Gaze that normalises. In drawing on some of Levinas' works, this thesis demonstrated that an ethical encounter, rather than seeking to know

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<sup>40</sup> Now that I am at the conclusion of this thesis, I feel compelled to recount some of the responses to my thesis topic, as they underscore wider issues. Firstly, I can remember being questioned, somewhat vigorously, as to why I was referring to Pakeha philosophers. I have heard it said that we do not need to refer to Western philosophers, mainly because we have the answers amongst our own. By referring to Western philosophers, why am I an accessory in the depletion of the world's forests by writing about the area of Western philosophy? I am suggesting that we have not yet played upon the full field of colonisation and so do not have the answers. Western philosophy has helped me, in this thesis, to identify some very real and particular ways of relating to the body. Specifically this thesis has described the binary oppositions created around the body. As Maori we are in danger of creating binary oppositions all the time, which we are not aware of. Hence the usefulness of Western philosophy.

In her doctoral thesis, Smith describes the metaphor of pou in signalling the loci of challenge which "... bring together Maori understandings of knowledge/space/people"(Smith, 2002). Thus the metaphor is used to invoke space for Maori – Smith discusses pou in the context of universities. I accept that pou may be descriptive of the need for similar space to identify binary oppositions like normal/abnormal, traditional/born-again and so on.

What emerges is a clear need for the acceptance of a number of ways of being. The diversity of our societies is then preserved and cherished. Smith, in discussing pou, is quick to indicate the multifaceted nature of pou (Smith, 2002). The Gaze would threaten our ability to conceptualise these facets of pou – in all likelihood they would be reduced to mere physical components, with other explanations for their essence being relegated to the realm of myth. An undisturbed regard for the diversity inherent in the body that crosses our path, however, sustains and fortifies these various pou.

People's responses have also highlighted the need to undertake further research. It has been a bit like a journey for me – an incomplete one. The terrain to be written about is vast; if anything this thesis has shown how much more needs to be researched for completion's sake. This thesis, whilst educational for me, is an inchoate expression of a need for further study. For instance, do Maori need to know in the same way that the Western world does? An exploration of this question would impact on this thesis, as it would either dismiss participation in the domains of Western medical science out of hand, or it would allow modified involvement. It would certainly create areas of delineation. Also the divergence around worldviews of animate and inanimate would merit investigation – these would likewise inform us of our limits to participation.

the body, would comprise an acceptance of the Other as completely different, thus resisting attempts at symmetry.

This thesis also raised the issue of Maori attempts to construct the ‘tuturu’ person – the ‘traditional authentic’ body. The examples I used to deliver my thesis at this stage were both contemporary and quite recent. **Chapter Three**, again, examined a possible traditional Maori gaze, and concluded that attempts to normalise by a Gaze are anathema to the fluidity of the body. The Gaze endeavours to render the body static by submitting it to the process of normalisation, whereas I have shown the traditional Maori gaze I have described aims to preserve the body’s fluidity.

**Chapter Four** provided a backdrop for its succeeding chapter. In this chapter I selected two examples of medical mishap – the National Women’s Hospital and the Greenlane hearts scandals – and described them for various reasons: firstly to elucidate the nature of the meta-narrative, as expounded by Lyotard, so that the grand truth ascribed to medical science could be articulated; secondly to give concrete examples of the normalising process; thirdly to describe, for those interested, the various laws supposedly protecting the body; and fourthly, and more importantly, to demonstrate the inability of the law to really protect the body. I then portrayed the lack of regard that the law has to protect particularly Maori body tissue by using the Human Genome Diversity Project, biological warfare and patents as sites of discussion around potential misuses of indigenous body tissue, with the law as a helpless onlooker.

At this point I indicated, through the discussion of the meta-narrative, the influence of a euphoric scientific mind on the expectations of societies vulnerable to the grand truth. The term euphoric is used because there is definitely a type of need for the scientist to discover, and to know. I am mindful here of some important comments made by academic Michael Novak (2003) when asked for his opinion on the ethicality of stem cell research:

*One thing this debate is showing the nation is the difference between those who can grasp, and be swayed by intellectual principles and those who need warmer, fuzzier comforts for their senses, imagination and sentiments... The role of desire is palpable. Researchers want this research. The political class wants this research .... Desire is getting miles ahead of cool judgment. The extremely plausible horrors of the future are being systematically kept out of the imagination. (pp.103-104).*

Novak alludes to the overriding excitement of the scientist in discovering, heedless of potential consequences.

## **5.1 Conclusion**

So what happens when the Gaze meets the gaze: when the perversion that is 'scientific', 'knowledgeable' and 'normal' meets the traditional gaze that has a high disdain for normalisation? That normalisation/knowledge dyad suffuses throughout the supposedly protective mechanisms constructed by the law. The traditional Maori gaze recoils from the distancing, polarising process that occurs when the body is legally perceived as an inanimate object. Concerning itself with the dynamic 'fit' of the Other within an environment of belonging, this particular gaze would also scorn any attempt by a scientist or clinician to know the depths of the body, leading to an identification and segregation of the 'normal' from the abnormal'.

To this extent any legislation which provided a pathway to coldly know the body remains unpalatable for Maori. Medical science and the law contrive an illustration of the body – an illustration which, when shed of its patina of grandiose construction, reveals a cold, aspiritual regard. Thus the Review of the Regulation of Human Tissue and Tissue-based Therapies: Discussion document suggests that a suitable translation for 'deceased' would be 'tupapaku'. Death in a Western sense, though, does not correlate with Maori stages of the spirit moving to Hawaiiiki (Rameka and Te Pania, 1990). A greater regard for the spiritual component of the body – a component which vitalises and sustains the beliefs of many cultures - is in danger of being disregarded. What occurs is a removal of body organs while the person is still alive in a Maori sense.

Western medical science attempts to raise the standards of the normal, and it is in the normalisation through medical science that one can see evidence of the pursuit of

longer life, the perfection of looks, the taking of Ritalin to lead more normal lives and so on. Thus it could be argued that an emergence of the perfection of the normal is inevitable. Standards are merely elevated along with the concomitant normal. Medical science becomes the conduit through which the perfect normal can be achieved. This is taken to its extreme in such areas of medical science as eugenics, which seeks to rid societies of undesirable traits. The implication is that societies may be rendered terribly bland and banal through the implementation of normal/abnormal binaries in medical science. More ominously, cultural diversity is quashed.

Western medical science is not the only institution to play out the norm. Mainstream educational processes have historically relied on such mechanisms as IQ testing to find a normal student (History of IQ, n.d). The justice system of Western countries is greatly lauded by its proponents as providing one law for all.<sup>41</sup> Medical science is a major participant in the normalisation process though; it presents the onlooker with a deluge of possibilities to fit within a society which Foucault saw as needed governing at the micro level. The traditional Maori gaze would therefore find itself in a position diametrically opposed to the strivance towards a eugenics society, or to a science which attempts to immobilise the body so that it can function more normally – facilitated by a process which, frankly put, removes the body from its natural context and freezes it within its Gaze.

Any attempt at a romanticisation of the traditional Maori view of the body without acknowledging its sabotage by colonisation is naïve. Most Maori would abhor non-consensual experimentation of the body, such as that which occurred at the National Women's Hospital, and in this they are no different to mainstream Pakeha. A quiet and subconscious hegemonic mimicry of the levelling and intrusive processes of medical science is possible, however. This grand ideology need not announce itself in a clarion manner, either. Acquiescence can come in many forms. Lifton (1995), a

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<sup>41</sup> Don Brash, leader of the National Party, is a prime evocateur of the imperial, mysterious metanarrative of “one law for all”. See for example: Brash underscores one law for all. ONE News – online. Jan 24, 2005. Electronic document, accessed February 1, 2005. [http://tvnz.co.nz/view/news\\_politics\\_story\\_skin/470268%3fformat=html](http://tvnz.co.nz/view/news_politics_story_skin/470268%3fformat=html)

medical academic, argues that acquiescence to an aggrandised ideology comes through socialisation to bureaucracies and organisations – step by step one is suborned to proudly bring unique talents, capacities and knowledge to the project of that particular ideology. This position is reminiscent of the meta-narrative characteristic ascribed by Lyotard.

Freire (1970) warns that the oppressed are often not aware of their oppression. The normalisation focus of the Foucauldian Gaze, and the desire to know the Other may be played out unwittingly amongst the colonised. Whilst not heralding themselves clamorously, these quintessentially Western normalisation/knowledge drives are manifested in various ways amongst Maori – often as against other Maori. Freire (1970) again argues that:

*Submerged in reality, the oppressed cannot perceive clearly the “order” which serves the interests of the oppressors whose image they have internalised. Chafing under the restrictions of this order, they often manifest a type of horizontal violence, striking out at their comrades for the pettiest reasons....the oppressed feel an irresistible attraction toward the oppressors and their way of life. Sharing this way of life becomes an overpowering aspiration. In their alienation, the oppressed want at any cost to resemble the oppressors, to imitate them, to follow them. (p.44).*

The normalisation/knowledge dyad may indeed manifest itself in an overt manner. It tends to reveal itself especially when the coloniser is obviously and physically involved. It may appear in such events as the recital of a karakia before the planting of genetically engineered crops, when permission has not been obtained at the wider hapu level; or in a unilateral agreement to a deal of far-reaching consequence which has not been the subject of consultation. It may reveal itself when Maori conflate their own expertise in teaching Pakeha about Maori spiritual ceremonies<sup>42</sup>. The desire to be part of the normal, and to know what the normal knows, does become overpowering, as Freire states.

However, more perniciously, the normalisation/knowledge drives are evinced covertly as between Maori. It is at this point that the Maori gaze encounters difficulties. In the introduction I asked about Maori adopting the normalisation

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<sup>42</sup> For an Native American account of this phenomenon in: Churchill, W. (1992) Fantasies of the master race: Literature, cinema and the colonization of American Indians. Maine, Common Courage Press.

processes which are couched within Western medical science. I believe that we do – even if an explicitly scientific setting is not manifest. This thesis has demonstrated that science has influence Maori views of the body as the Other. It is likely that the syndrome explained by Freire descends to depths well below levels of awareness, and that the philosophies fortifying colonising mechanisms meld with the mind and behaviour of the oppressed without any need for the presence of their explicit manifestations. The potential for Maori to become further colonised at multi-strata requires some trenchant observation. The potential is, indeed, threatening, as it is so furtive. Medical science, evidenced by such research as the Human Genome Diversity Project, appears to be hunting inexorably for the genuine article and it is at this point of its well honed ability to detect abnormality that the body may become more normalised than ever. The perfect norm then becomes an unblemished authentic. Maori, arguably, are unknowing players in the same game; that of creating the authentic to accord with the norm.

A further question to be posed: does the pursuit of the ‘authentic’ link with the pursuit of normalisation? Again, this is quite possible. Freire insists that the oppressed cannot identify their own oppression; the implication is that the oppressed attempt to nurture images of their own bodies that please the oppressor. At deep, subterranean levels, lurking subliminally, is the oppressed’s absolute desire to align themselves with the oppressor. This process transcends mere conscious conformity – it is based on a profound need to be inculcated with the norms of the colonising society. What results is an outward expression of that profound desire to satisfy the oppressor – not necessarily the ‘authentic’ traditional.

I posit that, by attempting to recreate the traditional body, the normal authentic body, and thus the normal perfect body, Maori are therefore recreating a series of colonising phenomena which come to bear on the mind. These re-creations are not re-embodiments of pre-colonial conditions, simply because no-one now knows pre-colonial conditions. No-one can know. A frequent occurrence is the participant in a hui who is convinced that they have the correct traditional stance. Often this is coupled with attempts to silence viewpoints inimical to theirs. The stage is therefore

set for the loss of the local knowledge and often the sentiment expressed by the assertor, if accompanied with enough rhetoric, and especially if voiced in the Maori language, is adopted uncritically. The norm is constructed and the 'authentic' deified.

The ways in which the 'expert' evidence of the normal is given voice are plethora. The recent march of Destiny Church to protest against the advancement of the Civil Union Bill contained an appearance of traditional Maori protest, leading to a belief that only nuclear, heterosexual relationships were traditional. Whakahuihui Vercoe recently opined that homosexuality never existed in traditional Maori times. Often such comments are borne of a discriminatory intent. Inherent in the drive to discriminate is a consignment of the alternative lifestyle to the abnormal, which often appears in religious discourse but is nevertheless sourced in supposed traditional knowledge.

Further examples of the subconscious adoptions of normal abound. One is the abating belief that one's Maoritanga resides in being able to speak Maori. Particularly strong around revivalist times, this cliché built a view of being Maori as what emerged from the mouth. Obviously the Maori language is invaluable, but no more so than other modes of communication which are uniquely Maori and which, like the language, rely on the preservation of local knowledge for their survival. Unwittingly proponents of an essentialist, reductionist view that being Maori lies in the language are dismissive of those who are, for instance, unable or unwilling to talk at all. Newborns may not be able to talk at all but few would dispute that, by virtue of their whakapapa, they are Maori.

Without wanting to seem too iconoclastic, I have observed similar meta-narratives, similar desires, to promote grand truths within diverse Maori groups. Some groups interested in furthering tino rangatiratanga as an aim maintain steadfastly that only direct, overt action can achieve change. It is against precisely this phenomenon of the normalisation of beliefs that Hooks (2000) warns. She quotes Susan Griffith and

articulates a description of dogma which is lengthy but nevertheless worthy of inclusion *in toto*:

*When a theory is transformed into an ideology, it begins to destroy the self and self-knowledge. Originally born of feeling, it pretends to float above and around feeling. Above sensation. It organizes experience according to itself, without touching experience. By virtue of being itself, it is supposed to know. To invoke the name of this ideology is to confer truthfulness. No one can tell it anything new. Experience ceases to surprise it, inform it, transform it. It is annoyed by any detail which does not fit into its world view. Begun as a cry against the denial of truth, now it denies any truth which does not fit into its scheme. Begun as a way to restore one's sense of reality, not it attempts to discipline real people, to make natural beings after its own image. All that it fails to explain it records as its enemy. Begun as a theory of liberation, it is threatened by new theories of liberation; it builds a prison for the mind (p.10).*

Of course it is the wielders of 'it' who form the ideology. But, interestingly, the above quote locates the theory/ideology without a subject, suggesting that the theory-become-ideology gives upon a reification in its own right.

The 'authentic' makes itself apparent in such images as the heterosexual warrior Maori male; the depiction of the Maori kuia who only wears black and who is constantly and only found to be picking watercress; the 'activist' who really is *au fait* with tino rangatiratanga, and so on. Despite an evident satirical element to these examples, they are nevertheless indicative of a promulgation of the desirable authentic. In fact, the fixed may lead to the satirical in the same way that a stereotype is often mocked!

At this point the charge of authenticity conjoins Baudrillard's assertions that the West is now embroiled in a culture of the hyperreal (Baudrillard, 1988). Hyperrealism is predicated upon a capitalist society and hints at the complicity of science, technology and the consumer. The ubiquitous symbols seen in Western societies are not based in tangible objects; that is, they are non-referential. In this particular dematerialised universe described by Baudrillard the hyperreal is ultimate. It has no basis in the authentic. It reveals itself in the simulacra – the distant imitations of that reality which is lost. It does not even concern itself with verisimilitudes. Without reference to objects or identities the simulacra disperse and reform quickly to the pattern of what Baudrillard terms 'consummativity', which is

the aimless but relentless self-sustaining capitalism of Western societies (Baudrillard, 1981).

The authentic is not at all referentially genuine but instead appeals to a phantasm of what, in a Maori sense, would be considered the colonised traditional. Quite apart from the West, indigenous peoples may be in danger of entertaining the chimerical, especially when entertained subconsciously. The tourist industry which was adopted so readily by Te Arawa, for instance, blatantly reconstructs the 'authentic' for the consumption of the new-comer, with such images as the Maori maiden staring longingly into the boiling mud pool, or the Maori warrior brandishing a taiaha. Even the acclaimed movie *Once Were Warriors* calcifies the body with far reaching consequences: suddenly fashion was towards creating oneself as the bona fide warrior.

Baudrillard uses as his prime metaphor the fantasy world of Disneyland. Here the hyperbole of the real is evident: instant gratification and a higher threshold for the fantastic require an extreme hyperreality. Whilst Baudrillard acknowledges that a larger-than-life world liberates one from the ennui of existence within the strictures of individuality and careful authenticity, it also, he argues, creates a homogeneous state, free from moral judgment, where control can be wielded more freely by the fantasy. The system controls the fantasy. Societies are seduced by images which are self-destructive. When one becomes aware of their superficiality then the need to practise surface manipulations emerges. What in fact does emerge is a clone of the system, which can only maintain its authority by changing or revealing some new facet. Hence new simulacra are necessary (Vine, 1989).

The authentic, and therefore valid, representation of the Maori body is hence one such way in which control can be maintained. It also, this thesis argues, mires the body in a morass of control through homogenisation and normalisation by other Maori. The traditional Maori gaze, in trying to find relatedness for the Other before it, would be unsettled by the current and common practice of Maori fixing identities and roles of other Maori. It would despair at the loss of difference. The desiderata

of the glistening, normal body, the post-traditional warrior, the heterosexual Maori, the flag-wielding Maori – or indeed the pen-wielding warrior - would hence represent a lamentable loss of the fluidity in Maori society, especially if they are pursued as the traditional exemplar by other Maori. Whereas the traditional Maori gaze had thus sought to include the other, fluid body within a schema of relatedness, the new, colonised Maori Gaze has subconsciously adopted the normalisation process underlying medical science, all the while naming itself traditional but rendering the body before it static. Thus the new, colonised Maori Gaze does damage to the body of the Other, as surely as if the body of the Other were being experimented on.

## **APPENDIX A**

### **REVIEW OF THE REGULATION OF HUMAN TISSUE AND TISSUE-BASED THERAPIES - SUBMISSIONS**

The “Review of the Regulation of Human Tissue and Tissue-based Therapies: Discussion document” (“the document”) has raised various issues, both overarching and specific, which need to be addressed. The response contained herein is limited particularly to Maori concerns, which, it is stressed, are not exhaustive but which must be voiced to give some balance to a document which the writer believes is thus far incomplete.

These submissions are divided into sections which attempt to deal with issues in a logical fashion. They will refer where possible to the portion of the document being commented on, but will also traverse general matters which are hinted at in the document and are not necessarily referred to directly. It will be appreciated that, with a document as extensive as the one disseminated, many of the concerns need further exploration. Perhaps this prefaces well the primary concern of the writer: that there has been insufficient opportunity for collective input into or discussion around the document.

#### **1. Consultation/Dialogue**

It is a truism to state that any document purporting to deal ultimately with the public needs extensive public input. In terms of the Maori/governmental interface this obvious need has been articulated in various governmental policies. Its necessity is affirmed in the Treaty of Waitangi; it is particularly enshrined in the principle of good faith. Thus it has been stated by the Waitangi Tribunal:

*The Tribunal in various reports extending over a longer period has likewise held that the Crown has a duty to consult its Treaty partner.*<sup>43</sup>

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<sup>43</sup> WAI 212, p107

Consultation with Maori about such far-reaching issues as human tissue management stems from the partnership that Maori and the Crown have with each other. It should not ever be viewed as an exercise in beneficence on the part of the Crown, who, it is submitted, owe a huge duty of care to Maori, in particular where Maori are greatly affected. The need to consult stems from the right of Maori to maintain their own *tino rangatiratanga* and to implement their right to agree, disagree and amend governmental policy and legislation which may greatly affect the flow of their autonomy.

Very few experiences have the potential to impact on communities as the management of the person who has recently died. This is no less so for Maori, who place the *tikanga* of the person as ascendant. This will differ between iwi. Likewise, Maori take very seriously any perceived dealings with their own body tissue.

Given the above, a full and comprehensive consultation and dialogue process should be forthcoming. However this does not appear to have been the case: there have been only two hui to discuss the fundamental issues stemming from the area of human tissues, and the document addresses Maori concerns in only roughly half a page, at A3.1. There has been nearly no effort to incorporate potential Maori concerns throughout the rest of the document, which suggests an inchoate knowledge, at best, of such concerns. Thus there is the danger that Maori concerns are merely seen as one of many concern groups, thereby displacing Maori from their rightful position as *tangata whenua* and Treaty partner. Certainly there are a number of areas in the document where a robust consultation process with Maori would have revealed concerns; however reference to Maori is relegated to an unsatisfactory separate part of the document.

As the writer has already suggested, this phenomenon might have been avoided if fuller consultation had taken place. The writer agrees with the document that, “A key part of that discussion was the need to ensure that assumptions should not be

made about the views that Maori may hold about tissue concerns.”<sup>44</sup> If this is so then the need for consultation and dialogue is even greater; it is through dissemination of the proposed legislative amendments that a wider sample of Maori views would be acquired, thus avoiding any possibility of assumptions being made. Yet this has not been carried out.

It appears that reference to Maori in the document is merely perfunctory. In the writer’s submission the Ministry of Health must undertake further consultation and dialogue with Maori before any discussion around amendment to the legislation occurs.

## **2. Terminology**

To attempt to write a document which hopes to gather Maori opinion requires the gathering of Maori views on particular topics. This must occur to avoid culturally specific assumptions being made about worldviews and to ensure that a mechanical exercise does not become the norm. The writer notes the inclusion of some words and terms in the document which are not necessarily reflective of Maori concepts; these words are often seen to equate to certain Maori terms, which then become the *lingua franca*, encapsulating solely Western concepts.

At para B7.1, for instance, there is an attempt to equate ‘tupapaku’ with ‘deceased’. However they do not necessarily coincide. This raises questions of whether ‘death’ in a Western sense correlates with Maori stages of the spirit moving to Hawaiiki. There are stages of death in a Maori sense, which occur after a body is pronounced ‘dead’ by Western medicine. Hence any collection of tissue pursuant to the Human Tissues Act 1964 may well occur while the person is still alive in a Maori sense<sup>45</sup>. This is clearly unacceptable and needs further research.

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<sup>44</sup> Para A3.1

<sup>45</sup> See para C4.5

To conceive of the collection of human tissue as only impacting on the physical 'body' is likewise naïve. Maori have long known that the body is an extension of many dimensions and is therefore symbolic of tipuna and atua. The collection of human tissue therefore has greater implications than just those which arise for the physical dimension. Whakapapa, its mergence with future generations and the integrity of those who have passed on are also affected. So 'body', which to a Westerner is merely physical, can never be separated from the spiritual in a Maori sense.

Other terms emerge which are often treated with suspicion. Such words as 'appropriately', being slightly paternalistic, suggest a decision being made by a group which may not know what is appropriate for Maori, while terms such as 'public good' and 'public interest' morph tangata whenua concerns with those of the general public, thereby riding roughshod over any rights that exist.

Perceived practice, too, seems to be assumed in the document. There is an implication, for instance, that an unclaimed body is an unimportant one<sup>46</sup>. However, all people are important and contain their own particular whakapapa. The writer rejects any suggestion that an unclaimed body should be a trove for researchers and the like. An unclaimed body should be treated the same as any other and it should not be assumed that the presence of living relatives makes a difference to the intrinsic importance of the person.

It is further assumed in the document that informed consent comes from the individual, whether it is from the donor themselves or **one** person who had a lot to do with the deceased person<sup>47</sup>. The collective nature of Maori iwi, hapu and whanau rejects such an approach generally in favour of consent or objection coming from the greater group. Likewise organ donation necessitates the inclusion of all who are involved – the donor's whanau and the donee's. It is not a situation involving the individual solely.

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<sup>46</sup> Para 5.2.2, p31

<sup>47</sup> Para D2, p91

### 3. Potential Maori concerns

There are other potential concerns which exemplify the need for consultation/dialogue. For instance, the safeguards against misuse of tissue outlined in the document are unsatisfactory. There is no mention of safeguards against the use of tissue for genetic warfare. This scenario is not unimaginable and remains a concern for indigenous peoples generally. Many Maori also see the taking of tissue in itself, regardless of any use, as an act in contravention of their own *tikanga*. The Maori-specific world of ethics needs to be given considerable weighting in any legislation such that it is on an equal par with that of generally accepted ethics.

The taking of tissue and samples should not be viewed as a *fait accompli*. There are a number of reasons, from a Maori perspective, which would prohibit the institution of legislation allowing the sampling of body tissue from Maori. For example, there are issues of cultural and intellectual property. The writer notes that images of tissue are not to be included as human tissue, and hence will not attract any protection under prospective legislation. However, technology advances rapidly, and there is every possibility that imaging techniques could provide as detailed a specimen as the original specimen itself, especially for non-therapeutic usage. Legislation thus needs to be cognisant of the emergence of high-tech imaging methods which need regulating.

Other cultural and intellectual property issues arise in relation to the process of patenting. Most indigenous peoples vigorously oppose the patenting and ownership of their genetic material. It is anathema to their spiritual values and cheapens the pivotal structures of life to a commodity. Any legislation must include provisos which address the encroachment of the commercial world into the scientific, and must dispel any pretence that these two worlds can still be read separately.

Most Maori organisations (and, indeed, many individuals) are now much more aware of the pitfalls of research and are wiser to the phenomenon of being gazed at for the purposes of yielding information to the gazer. It is difficult to pinpoint the motive

behind separating out an analysis of Maori genetic issues, for instance, when filling out the National Application Form for Ethical Approval.<sup>48</sup> If this is to allow protection of the research outcome by Maori, then the motive is laudable. If, however, it is to allow for the specific and distinct study of Maori then the undertone is much more ominous. This needs greater clarification.

Lastly, there is an overwhelming need for consultation/dialogue in the areas of use pertaining to embryos and also xenotransplantation. These areas are likely to incur immediate resistance from Maori. Certainly the writer finds both scenarios repugnant. Any prospective legislation dealing in these areas must be prefaced with large-scale hui and involvement with Maori experts.

#### **4. Conclusion**

The writer suggests the following:

1. That this review go no further until there have been far more extensive hui undertaken to ascertain the views of Maori. These hui must be accessible to all Maori and must be well funded.
2. Research needs to be undertaken into the above issues, amongst others. This is an area of huge importance to Maori. Thus there must be some funding made available to research the areas of importance to Maori, possibly before the hui suggested above commence, so that any hui recommendations are given from a well informed status.
3. Any legislation needs clear, strongly worded and unambiguous reference to the Treaty of Waitangi. A separate section is needed which would recognise the standing of Maori as a Treaty partner with the Crown.

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<sup>48</sup> Para B2.3.1

4. Those Maori who are expert in the area of human tissue must be consulted and allowed time to respond to the document and to any other reports ancillary to the document.

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