

A FAIR GO FOR MĀORI

Andrew Erueti

Expert commentary

TE TAPEKE
FAIR FUTURES
IN AOTEAROA

ROYAL
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TE TAPEKE FAIR FUTURES

Royal Society Te Apārangi has convened a multidisciplinary panel of leading experts* to examine issues of equality, equity, and fairness in Aotearoa.

The panel's name, **Te Tapeke**, comes from 'ka tapeke katoa te iwi'[†] and conveys valuing and including all people. This expert commentary expresses the view of the author.

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Ngā Ruahinerangi, Ngāti Ruanui (Taranaki),
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* royalsociety.org.nz/fair-futures

† Joshua 4:11–13. 'Including all people, without exception'.

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In September 2020, the Inquiry into Abuse in Care heard evidence from over a dozen witnesses on the subject of redress for survivors of abuse in care. The Inquiry is investigating child abuse from the 1950s in both state and faith-based institutions, including foster care, and psychiatric and disability residences. This short piece was written towards the end of the hearing, after I was asked by the Royal Society Te Apārangi's panel *Te Tapeke Fair Futures* (1) to think about fairness in a Māori context.

Having spent the last two weeks listening to evidence from survivors of abuse and their families, it is easy to see why many survivors feel that the New Zealand sense of fairness has simply passed them by. This includes the many Māori survivors who were placed in state or faith-based care.

Over the past year and more, we heard about an informal grading of Māori babies put up for adoption. Some were called 'hard to place' babies, and paired with the least-qualified adoptive parents. Those who were not adopted

were raised in orphanages, foster homes and residential homes, with many being circulated amongst these placements.

We heard about foster children being subjected to forced labour and physical and sexual abuse, being made to eat and live separately from the foster parents and their biological children.

We heard that Māori children were singled out by officials, and sent on to residential institutions and later borstal youth detention centres. Their experiences in these homes are now notorious.

Dr Oliver Sutherland, who with the Auckland Committee on Race and Discrimination investigated the homes in the 1970s, described ‘a horrendous picture of physical and mental assaults; of extreme deprivation of liberty; of inhuman and degrading treatment and punishments; of forced sexual examinations; and of unhygienic and culturally offensive practices and routines’ (2). We are only just beginning to learn more about the experience of survivors in psychiatric care and disability residences.

That Māori feature so large in this story will not be of much surprise to many. We know about the effects of colonisation, wholesale land loss, degradation, and social dysfunction – leading to a marginalised people. What I think we don’t fully appreciate yet is the role of discrimination in the institutionalisation of Māori children.

‘It’s not fair’ is not really a catchcry for radical transformation of a society. But fairness is important as a concept – as with equality and equity – because it is clearly an integral element of our collective identity as New Zealanders. It is a sense of fairness that motivated those Māori and Pākehā who created the Waitangi Tribunal in 1975. Our historical claims process is unique to New Zealand – it is not repeated anywhere overseas – and has played a critical function in recognising the mana authority of iwi and hapū.

Within Māori society, I think there is something like fairness in thinking about how to put things right. According to customary law – and I don’t claim any expertise here – there was a clear sense of legitimacy, of the need for claims to be validated and wrongs to be righted. This is the ‘law stuff’ that legal anthropologists explored in indigenous communities.

Mana, it seems, played a key role here, as with utu the principle of reciprocity. A ‘complementary pair’, is how some pūkenga experts in customary law describe mana and utu. For Māori, mana tūpuna was inherited from the gods, ancestors, and parents, and mana tangata was acquired through individual personal achievement – for example, political talent, gift giving, expertise in agriculture, fishing, or warfare. Mana was jealously guarded, and waxed and waned according to the vicissitudes of life. Any slight or defeat in battle led to its diminishment, and utu was required to restore and even augment mana. Your individual mana was linked to the mana of your whānau and the broader collective. So, if your mana was diminished, and you were quite special, everyone in your community could be compelled to restore it.

A good illustration of this is provided in 'The Great Muru', an account written in 1873 by a Pākehā armchair anthropologist (3). Often described as 'plunder', muru was a form of utu. It was a customary mechanism for resolving disputes between close kin, whereby the members of one community would come and take the personal possessions of the offending community.

In 'The Great Muru', beautiful Kahui and Lydia, young rangatira from Te Namu village in Taranaki, cause a large scandal by running off to elope – Lydia is already engaged to Aperama, a young chief from the neighbouring village of Parihaka. This brings great shame and a loss of mana for both villages. Utu is required. Chiefs from villages across the district resolve to use muru to restore their mana too, which has been diminished through their close association and kinship with Te Namu or Parihaka. Te Namu villagers lose all their possessions: their kai, chickens and other livestock, pots and pans are taken, and their homes are burned to the ground. Then, a feast – somehow prepared in advance by Te Namu villagers – is set out for the plunderers.

No one is harmed physically. Everyone is closely related here, enabling muru to operate effectively. Everyone knows their respective roles and what is required to restore mana to all.

No resistance or violence is allowed. Te Namu lose everything (but not their lives) and reinstate their mana in this way. The surrounding villages, including Parihaka, obtain redress through the property seized, and have their mana re-established. As for Kahui and Lydia? The muru has the effect of validating their union. According to custom, they are now married.

We also see the role of utu and mana in legitimising the victor's raupatu taking of land following warfare between tribes. Raupatu was considered a less-secure form of right compared to rights acquired through ahi kā long-standing occupation: the vanquished could always return to seek utu, and claim back their land. However, the victors could validate their land seizure by recognising the mana of the original occupants through pact-making and intermarriage with them. But the trump card was just ahi kā staying put by burying your dead in the ground, raising children, farming the land.

Perhaps the argument could be made that the colonisation of New Zealand has been legitimated over time, made fair by the introduction of modern medicine, education, the rule of law. As legal philosopher Jeremy Waldron puts it, an original harm may be superseded over time due to a change in circumstances,

including demographic shifts (4). But that idea is based on the assumption that the original harm has faded over time, has been superseded by something more positive. It doesn't work if things have basically become worse for a people. When I hear of the prison population, and the child welfare statistics from Oranga Tamariki, and the disproportionate number of Māori in secure facilities in mental health and disability units, and suicide rates in Māori communities, I think about the enduring nature of colonisation and its related injustices (5).

Where is the validation or the legitimacy? Mana has been undermined. A people are marginalised. They seek utu to enable them to be in a better place. To restore their individual and collective mana. To move beyond restoration to building their mana. To have tino rangatiratanga political independence recognised, and to be acknowledged as tangata whenua. Fairness goes some way in explaining what people seek. Lawyer Moana Jackson speaks of a quest for justice (6).

The Waitangi Tribunal is talking a lot about equity in the context of its review of the health system (7). The right to equality can both promote and undermine indigenous rights. However, these concepts don't quite capture the underlying cultural dimensions associated with Māori claims to justice or resolution. We could talk instead about mana and tino rangatiratanga. The Royal Society Te Apārangi panel will need to be guided by pūkenga experts on tikanga Māori. We will need to be guided by Pacific peoples and community leaders. This is all part of our journey as we seek to explicate the principles of fairness, equality, and equity – what drives and undermines them, and what types of solutions might lead to positive change for all New Zealanders.

Andrew Erueti

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