

Te Mātāpunenga: A compendium of references to the concepts and institutions of Māori customary law

By Richard Benton, Alex Frame, and Paul Meredith. Victoria University Press, Wellington, 2013.

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Reviewed by Carwyn Jones

The New Zealand legal system has always had the ability to recognise aspects of tikanga Māori. The common law system that New Zealand inherited from England developed criteria that could be applied to test whether a particular practice could be said to be ‘customary law’. *Te Mātāpunenga*, a collection of key Māori legal concepts, compiled by Richard Benton, Alex Frame, and Paul Meredith therefore has significance not only as a fine piece of scholarship but also has the potential to support the recognition of Māori law within the New Zealand legal system. This is an important and timely publication. It is important because it makes accessible a formidable range of material that would otherwise not be readily available to a student of Māori law. It is timely because of the increasing relevance of Māori law to the operation of New Zealand’s law and government. This is illustrated by cases such as *Takemore v Clarke*,¹ *Mason v R*,² and *Mika v R*,³ which, in recent years, have required our highest courts to grapple with tikanga Māori and Māori customary law.

As a compendium, *Te Mātāpunenga* is made up of entries, organised alphabetically, each addressing a key concept or practice within Māori customary law. Each entry contains a range of usage examples which demonstrate the concept in question. These are preceded by an entry guide. The guide is extremely useful for understanding the context and development of the concept as well as obtaining an overview or some sense of ‘the big picture’ with respect to each concept.

Te Mātāpunenga is the result of research done by Te Mātāhauariki, an institute at the University of Waikato that was funded by the Foundation for Research, Science and Technology. It is helpful to consider a little of the objectives and methodology of Te Mātāhauariki in order to better understand the context within which *Te Mātāpunenga* developed. Te Mātāhauariki described the overall aim of its research as being:⁴

to explore ways in which the legal system of Aotearoa/New Zealand can evolve so as to accommodate the best of the values and concepts of both major components of its society, and to generate a discourse through publications, seminars, and intercourse with key institutions, which proposes a cohesive jurisprudence and offers models for its practical application to selected areas of our legal system.

As noted in the introduction to *Te Mātāpunenga*, two key strands of work emerged from this objective (at 11). One strand of work was the compilation of authoritative references to customary concepts and institutions, which ultimately became *Te Mātāpunenga*. The second stream of work that was undertaken alongside the development of *Te Mātāpunenga* was known as *Pū Wānanga*.

The *Pū Wānanga* programme was a series of seminars that Te Mātāhauariki conducted to engage experts in tikanga and scholars in both Māori and Pākehā institutions.

This is an aspect of Te Mātāhauariki's work that feels slightly understated in *Te Mātāpunenga*, despite being potentially crucial to the credibility of the whole project.

As there is no detailed information within the book about who was involved in the *Pū Wānanga* and how information from those seminars contributed to *Te Mātāpunenga*, it is difficult to assess the value of these seminars, but I would have expected material from the *Pū Wānanga* programme to have much greater prominence within *Te Mātāpunenga*. I would have liked more information about this. From time to time, entries refer to the views of participants in the *Pū Wānanga* programme, but more information about the *Pū Wānanga* and what the seminar participants had to say in relation to the Māori law concepts that are addressed could have greatly assisted the reader in evaluating the other sources to which the entries refer.

The substantive entries are, nevertheless, extremely insightful and informative, providing individual examples to construct a textured description of the concepts that are explained. There are, however, two matters that are addressed in the introduction that jar a little. These are the brief explanations of the discourse around 'Primitive Law' and "'Genuine' v. 'Spurious' Custom" (at 16-19). I am not entirely convinced that these two sections are necessary, but if the compilers considered these necessary issues to address, this might have been done much more efficiently with a couple of brief sentences, or alternatively, much more persuasively with a more detailed analysis. These sections fell somewhere in between and consequently seemed a little out of place. In particular, the focus on these two issues from amongst the whole range of interesting scholarly discussions in this field, seemed, rather unnecessarily, to set a slightly defensive tone from the outset.

There is one final niggling matter which I had hoped would have been addressed more fully in the introduction. This relates to the title of the book itself. *Te Mātāpunenga* is described in its sub-title as '*A compendium of references to the concepts and institutions of Māori customary law*' [emphasis added]. There is some discussion in the introduction to the book which explains the way in which the compilers have deployed the term 'customary law' (at 13-16). However, this compendium encompasses much more than what might be considered to be 'customary law'. It certainly goes beyond the bounds of what might be recognised by the common law and enforced as customary law. But, I would suggest, it also goes beyond the ordinary meaning of 'customary law' in the sense that many of the concepts and institutions that are examined have sources other than custom. For example, '*Rūnanga*' (assembly or council) might be said to be an institution of deliberative law-making rather than an aspect of customary law (at 343-362). Describing all the concepts as 'customary law' might give the appearance of subordinating these concepts and institutions to common law tests and other forms of law (and perhaps even buys into the 'Primitive Law' discourse to some extent). It might have been more accurate, and perhaps have made a more striking statement, to have sub-titled the book '*A compendium of references to the concepts and institutions of Māori law*'.

Though I have made some criticisms of the overall framing of the text, this should in no way obscure the fact that this book is an excellent and very valuable resource. It makes a wonderful companion to the recently published *He Papakupu Reo Ture: A Dictionary of Māori Legal Terms*⁵ and it ought to be seen as a landmark in the recognition and understanding of Māori law.

¹ *Takamore v Clarke* [2012] NZSC 116.

² *Mason v R* [2013] NZCA 310.

³ *Mika v R* [2013] NZCA 648.

⁴ Te Mātāhauariki Research Project <<http://lianz.waikato.ac.nz/mission.htm>>

⁵ Māmari Stephens and Mary Boyce (eds) *He Papakupu Reo Ture: A Dictionary of Māori Legal Terms* (LexisNexis, Wellington, 2013).