

# THE CHILDREN OF THE TAKAMORE CASE, AND THE PRICE OF GOING HOME

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When the news started filtering through from late 2007 about the dispute over James Takamore's tūpāpaku,<sup>2</sup> I had a sinking feeling in the pit of my stomach. Being a Christchurch-raised urban Māori with a Pākehā mum, with almost no contact with my hapū or iwi until my 20s I suspected that, however the dispute ended up, the adult children of James Takamore would suffer disenfranchisement, loss, and estrangement from their whakapapa and that this suffering would last generations. Over 7 years later, and the niceties of the legal issues and disputes aside, I still have the same feeling.

I'll make a small digression to put my sinking feeling into context. I remember the one and only time I visited my father's marae and kāinga in Ahipara as a 7 year old skinny white Māori girl with patent leather shoes (no, really, and in a navy-blue sailor suit no less!) how terrifying and strange it all was.<sup>3</sup> And that was with people who cared about me and wanted me to be there. It wasn't until my nephew died some 8 years later that I returned and then again another several years after that until a third visit. And then another visit, and then another. I'd love to say that my hapū and I are tight now but it wouldn't be strictly true. I have some pretty good relationships now and we do know each other. But the real-life ties (as opposed to the metaphysical ones) are still pretty fragile if only because I am just not there often enough; maybe twice a year. My aunty Mere Williams passed away a couple of years ago and she was the most solid of all my living connections to that mysterious place called 'home'. I miss her and the certainty of bowling into her whare knowing I, and all my urban gaucheness, belonged there. And so the foundations of the house seem to crack a little more. But then again, when doors close, other doors open, beckoning us onwards. That kind of hopeful fragility is often the way for us urban-borns.

Of course I can't presume to speak for all of us but some of us will never truly make those ties that enable us to really be part of the functional group. We will remain liminal creatures, some talking up the mysterious nature of the connection we feel with the

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<sup>1</sup> Nō Te Rarawa.

<sup>2</sup> See Yvonne Tahana "Police ran out of time to stop burial" *The New Zealand Herald* (New Zealand, 25 August 2007).

<sup>3</sup> Ko Wainui te marae o ngā hapū, Ngāti Moetonga me Te Rokekā.

ancestral land of our tupuna in an attempt to feel the connection. In most cases those feelings will be absolutely heartfelt, but for some, grounded in little reality. Take us to that place, let us out of the car outside the homestead, with its peeling blue paint and that pathway leading up to the front door, and that journey of a few steps becomes very long indeed.

Some 14 years ago, I was a senior law student at Victoria University. That lovely whānaunga of mine Associate Professor Nin Tomas externally marked one of my assignments. In its pages I mentioned my own default disenfranchisement from hapū and iwi dynamics. She wrote in the margins: “So come home!” in a tidy, insistent script. And to be fair, I have been heading home, step by faltering step ever since, in my own way.

‘Faltering’ is the right word. A little while ago, I attended a wānanga at one of my marae, did the karanga on behalf of those coming on, only to learn I had completely botched one of our Northern tikanga. My aunty Mere told me gently a couple of days later in the last long conversation we were ever to have together. After the feeling of mortification had passed, and the flaming in my cheeks had subsided, I was OK with it; failure at our tikanga is just something to be expected for those of us not raised in it. All I can do is try and be better. But for many of us coming ‘home’ is not easy for we children, and grandchildren, of the urban migrations. I have never forgotten Nin’s words to me and they rang clear again in to me when the *Takamore* case came back into the public consciousness in 2014.

I can’t presume to know how the adult son and daughter of James Takamore feel or have felt over the past 9 years experiencing their own cultural estrangement in such an horrifically public and prolonged manner. From public documents it’s pretty plain that at the time Mr Takamore was taken north, the children, and their mum, were at a significant cultural disadvantage in negotiations with the Kutarere-based whānau who came to Christchurch to ask for his tūpāpaku to be able to return to them. The following excerpt comes from the Supreme Court judgment:<sup>4</sup>

Ms Clarke and Mr Takamore’s son resisted the request but Mr Takamore’s Kutarere family continued to press into the night the claim that he should return with them to the Bay of Plenty for burial. The discussion was heated and, for Ms Clarke and her son, distressing. After the son appeared to acquiesce

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<sup>4</sup> *Takamore v Clarke* [2012] NZSC 116, [2013] 2 NZLR 733 at [18]-[19].

reluctantly, Mr Takamore's paternal uncle (who also lived in Christchurch) intervened to say that the son was being pressured and that the discussion should be continued the following day. At least one member of the Kutarere family stayed with Mr Takamore's body while Ms Clarke and their son went home. The next day, after some delay and after it appeared that Ms Clarke was reluctant to return to resume the discussion, the Kutarere family, now with the support of the uncle who had intervened the night before, took Mr Takamore back to Kutarere. The Kutarere family believed their actions to be justified according to tikanga. They may have considered that the son (whose views were culturally of particular importance) had sufficiently acquiesced to give them the moral authority according to tikanga to take Mr Takamore home, at least when there was no resumption of discussion the next day and they were left with Mr Takamore's body. If so, there was significant cross-cultural misunderstanding. For their part, Ms Clarke and her children were completely at a disadvantage, since they had no understanding of the process being followed and the risk they ran in appearing to withdraw from contending for their rights.

I read that passage, and the clash of rights aside, I can at least imagine how traumatic this episode must have been, how unsure of the cultural landscape the Christchurch whānau must all have been, while fresh in their own grief for the sudden death of their Dad. There is no doubt that tikanga, when allowed to operate as designed, can be a wonderful instrument to achieve equilibrium, but this case shows that it can create disequilibrium (albeit as a result of a clash with Pākehā law as well) in the pursuit of some larger goal of the larger collective entity. I can't presume to make any judgment on the correctness or otherwise of the tikanga used in 2007 or in succeeding years up to and including 2014's attempted exhumation.<sup>5</sup> I'm wondering instead how tikanga can henceforth be used to reconcile and repair. Counsel for the Kutarere whānau at least acknowledged this long-term view of the role of tikanga, before the Supreme Court in the transcript of argument:<sup>6</sup>

I would say on the evidence [tikanga] imposes obligations that ensue beyond the decision and, with respect, the Court cannot compel those of any party in the sense of that restorative long-term process and, you know, I don't know what will be the situation, but in a generation's time when, as I say, Mr Takamore's mother has passed, if Ms Clarke has passed, is it, would it be a

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<sup>5</sup> Dana Kinita 'The battle over James Takamore' *Rotorua Daily Post* (New Zealand, 9 August 2014).

<sup>6</sup> *Takamore v Clarke* [2012] NZSC Trans 9 at 44.

different conversation that those future generations are having about all of this and where they all sit? Possibly, one can't guarantee that.

So perhaps the Tūhoe based whānau had been prepared to accept the cost in the short to medium term at least that their whānaunga in Christchurch must suffer in order that the interests of the collective are met, on the presumption that generations to come will heal the rift, that utu will be restored. I don't know, and there was a private mediation in 2015 that points to a 'successful resolution', without details being released on what that means, but that suggests 'completion' at least.<sup>7</sup> But what of the future?

Knowing how hard it is to make that cultural journey just when all that gets in the way is unfamiliarity and insecurity, how much harder will it be for the Christchurch whānau, left with the legacy of pain and perhaps even humiliation in the wake of the last several years, to take those steps? When tamariki and mokopuna arrive (if they have not already), what will being Māori mean to them? Where will 'home' be for them? Regardless of the means, tikanga, Western law, whatever, used by both sides of the dispute, how will the children and grandchildren of each side of this dispute feel about *each other* in the years to come? Maybe, and this is the heartbreaking risk, just maybe, they won't think of each other at all. Maybe that is the ultimate price the children of this case will pay.

He mihi aroha ki ōku whānaunga kua wehe atu ki tua o te ārai i te tau kua hipa ake nei, tōku māmā, Adrienne Stephens, ki a Mere Williams, Buddy Nathan, Nin Tomas hoki, koutou katoa, haere atu rā ki te kāinga tūturu...Mā te kahukura ka rere te manu...

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<sup>7</sup> Sally Murphy "Legal case over James Takamore's burial resolved", *Radio New Zealand News* (5 June 2015) available at <<http://www.radionz.co.nz/news/national/275531/legal-case-over-james-takamore-s-burial-resolved>>.