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RESEARCH ARTICLE/ARTICLE DE RECHERCHE

Who Are the People in "People-Centred Justice"? An Examination through a New Zealand Lens*

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Abstract

The phrase "people-centred justice" is a powerful rallying idea for improving access to justice. But what does it mean? While it is attractively simple, its openness means reformers can subsume a number of very different aims under its banner. Using various examples from New Zealand, where it has featured in domestic policy since 2012, this article considers three aspects of people-centred justice that mean it is open to various interpretations: conceptions of people (as legal actors, people with needs broader than law, people connected to communities); tensions between the needs of various people; and the role of representatives of people in people-centred justice. It argues that as people-centred justice comes of age, attention needs to be paid to refining its meaning. It must remain thoughtfully anchored to its original goals and its complexities need to be recognised and attended to if it is to realise its promise as a focus for access to justice reform.

Keywords: people-centred justice; first laws; indigenous legal systems; civil justice; legal persons

Résumé

L'expression « justice centrée sur les personnes » est une idée puissante et mobilisatrice pouvant améliorer l'accès à la justice. Mais quel est le sens de cette expression ? Bien qu'elle soit d'une simplicité attrayante, sa portée indéfinie signifie que les réformateurs peuvent regrouper un certain nombre d'objectifs très différents sous sa bannière. À l'aide

*The author is a pakeha settler. The analysis of the settler-versus-indigenous interpretations of "people" was prepared under the supervision of Professor Linda Te Ao. Thanks also to Mihiata Pirini and Maaike de Langen for their very helpful comments on an earlier draft. The qualitative research on which this paper draws was supported by the Royal Society of New Zealand Marsden Fund Grant number 17-UOO-207.

de divers exemples issus de la Nouvelle-Zélande, où cette forme de justice figure dans la politique nationale depuis 2012, cet article examine trois aspects de la justice centrée sur les personnes qui la rendent malléable à diverses interprétations : les multiples conceptions de la personne (acteurs juridiques, personnes ayant des besoins qui transcendent la loi, personnes liées aux communautés), les tensions entre les besoins des diverses personnes impliquées et le rôle des représentants de ces mêmes personnes au sein d'une justice centrée sur la personne. Cet article argue qu'il convient d'en affiner le sens et la portée alors que le concept continue de gagner en maturité. Cette forme de justice doit ainsi rester soigneusement ancrée dans ses objectifs initiaux. Cependant, on doit aussi faire l'effort d'identifier les problèmes et défis qui y sont associés si on souhaite que le concept réalise ses promesses de réformes dans l'accès à la justice.

Mots clés: justice centrée sur les personnes; premières lois; systèmes juridiques autochtones; justice civile; personnes morales

Introduction

Who are the people in people-centred justice? That might seem like an obtuse question. The well-understood intention of the phrase is to move the focus from lawyers, courts, and other institutions to the public and their needs. I am a supporter of this idea and its aims, and welcome a change from the focus on lawyers and courts to a more expansive and user-focused idea of access to justice. But, as I have watched the implementation of people-centred justice in my home country of New Zealand, I have also begun to question its utility as a guiding principle for justice reform. It is very attractive, for who can really object to people-centred justice? But part of its attraction is its sheer elasticity—its protean ability to fit almost any innovation in justice and bend to any underlying ideology. The aim of this paper is to illustrate, with examples drawn from New Zealand, this elasticity and to question how it can be a guiding principle when so many interpretations—that are often in tension—are possible.

While I am reluctant to be seen as attacking the phrase (who wants to be an enemy of the people?), I argue that, like "the rule of law" before it, "people-centred justice" needs closer examination of the complexities that it hides beneath its surface. As Adrian di Giovanni and Maaike de Langen argue in another piece in this issue, there is a risk that, if these complexities are not highlighted, then it can become synonymous with "'all good things' justice."[1] Drawing on examples from New Zealand, I highlight how differences in interpreting who the people are can lead to radically different results, while still formally ascribing to the idea that a system or innovation is "people-centred."

The examples that I use come from a range of sources. The first is the New Zealand Ministry of Justice's use of the term in its annual reports and other publications from its initial adoption in 2012 to 2023. I have reviewed these, not with the purpose of deconstructing the Ministry of Justice's laudable efforts to improve its delivery of services to the people of New Zealand, but to demonstrate the elasticity of the term in practice. I also refer to a study that I conducted in the

[1] Adrian di Giovanni and Maaike de Langen, "People-Centred Justice in International Assistance: Rule of Law Path Dependencies or New Paths to Justice for All?," in this collection.

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New Zealand Tenancy Tribunal in 2018–19.[2] The study involved multiple sets of data (interviews, documents, observation) and, in this paper, I draw on one aspect of that study: observations of in-person hearings ($n = 31$, average 37 minutes, range 0:06–2:06 minutes).[3] Other examples are drawn from my other published work about New Zealand justice reform.

In considering what "people" means in people-centred justice, I first provide some context about its use in the international community, its use in New Zealand, as well as some brief background on New Zealand's legal system. I then turn to analyzing how various interpretations are available of the phrase "people-centred justice," with very different results in policy and emphasis. I query its use by exploring three issues: considering people through legal roles, or as individuals connected to their communities, and with needs that go beyond the scope of the legal dispute; the tensions created by the adversarial system in balancing people's competing needs; and the role of lawyers in people-centred justice. My purpose is not to undermine people-centred justice as a positive development in the field, but to highlight the elasticity of the term and the need to make explicit the substantive commitments that underlie it when it is deployed because, if it becomes detached from these commitments, then it is sufficiently open to stand for concepts that might even undermine its original intention.

People-Centred Justice Internationally

People-centred justice is a pithy and catchy way of rallying governments and reformers around this shift from an institutional focus to a user focus.[4] As the OECD explains: "There is growing recognition of a new paradigm that can help us deal with the challenge of achieving SDG16.3—access to justice for all: people-centred justice. A way of strengthening justice systems by putting people and the outcomes they need at the centre, not institutions and existing procedures."[5]

It reframes access to justice away from access to institutions and focuses on the ability to resolve justice problems so that everyone can "participate in their economies and societies."[6] The speed with which this new paradigm has

[2] The study was granted ethical approval by the University of Otago Human Ethics Committee (reference number 18/058).

[3] For more detail about the study and its methods, see Bridgette Toy-Cronin and Sarah Bierre, "Sustaining Tenancies or Swift Evictions: Rent Arrears in the Tenancy Tribunal," *Victoria University of Wellington Law Review* 53, no. 1 (2022): 105–28.

[4] Organisation for Economic Cooperation and Development, *OECD Framework and Good Practice Principles for People-Centred* (2021), 23.

[5] HiiL, *Delivering People-Centred Justice, Rigorously* (2021), September, 2022, https://dashboard.hiil.org/publications/trend-report-2021-delivering-justice/.

[6] Joint Letter to the Secretary-General of the United Nations, "Reimagining Social Contracts: A Call to Put People at the Centre of Justice," endorsed at the Ministerial Meeting on Building Peaceful and Inclusive Societies through Justice for All, April 14, 2021, https://s42831.pcdn.co/wp-content/uploads/sites/3/2023/09/EN-Joint-Letter-to-the-UNSG-on-Common-Agenda-2021.pdf. This shift in focus on access to lawful resolution rather than access to courts and lawyers is also apparent in the access-to-justice literature, for example: "When the relevant substantive and procedural norms govern resolution, that resolution is lawful and we have access to justice, whether or not lawyers are

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achieved the status of consensus in the international sphere, as di Giovanni and de Langen observe, "has been nothing short of remarkable."[7]

The focus on putting people and the outcomes they need "at the centre" dovetails with the rise in the legal design movement.[8] Legal design provides a method for centring people's needs. The legal designer starts by understanding the need, comes up with lots of ideas, narrows them down to the most promising, builds it, tests it, and then scraps or refines or iterates.[9] The user is part of the process rather than having solutions imposed from the top down, and it encourages collaborative and multidisciplinary approaches rather than looking inwards to legal actors.[10]

People-centred justice provides a unifying theme that knits together these positive developments in access to justice: first, the shift in focus to a bottom-up user focus rather than a top-down, institution focus; and, second, the methodology of legal design to help achieve this shift. This pairing of the paradigm shift and the legal design movement is alluded to by the *Task Force on Justice*'s description of people-centred justice: "A people-centered approach to justice starts with an understanding of people's justice needs and designs solutions to respond to them. It is delivered by a justice system that is open and inclusive, and that works in collaboration with other sectors such as health, education, housing, and employment."[11]

As this quote suggests, people-centred justice also recognizes the need for collective policy action and attention to context. Justice problems and the context in which people experience them are central to formulating a people-centred approach and this understanding is informed by empirical research, including the significant, worldwide base of legal needs research.[12] Through this approach, there will be fairer outcomes for people, which build towards a broader aim of "just societies": "The more people-centred a justice system is,

involved in the resolution and whether or not the problem comes into contact with any kind of dispute-resolving forum," Rebecca Sandefur, "Access to What?" *Dædalus, the Journal of the American Academy of Arts and Sciences* 148, no. 1 (2019): 49–55.

[7] di Giovanni and de Langen, "People-Centred Justice in International Assistance."

[8] See the special issue of *Design Issues* 36, no. 3 (2020), "The Rise of Legal Design" including Margaret Hagan, "Legal Design as a Thing: A Theory of Change and a Set of Methods to Craft a Human-Centered Legal System," *Design Issues* 36, no. 3 (2020): 3–15, https://doi.org/10.1162/desi_a_00600; see also Marcelo Corrales Compagnucci et al., *Legal design* (Northampton: Edward Elgar Publishing, 2021).

[9] Margaret Hagan, "Law by Design," 2018, https://lawbydesign.co/.

[10] Margaret Hagan, "A Human-Centered Design Approach to Access to Justice: Generating New Prototypes and Hypotheses for Interventions to Make Courts User-Friendly," *Indiana Journal of Law and Social Equality* 6, no. 2 (2018): 199–239; Amanda Perry-Kessaris, "Legal Design for Practice, Activism, Policy, and Research," *Journal of Law and Society* 46, no. 2 (2019): 185–210, https://doi.org/10.1111/jols.12154; Andrea Perry Petersen, *Human-Centred Design, Multidisciplinary Collaboration and Digital Innovation to Increase Access to Justice* (Canberra: Churchill Foundation, 2021).

[11] Task Force on Justice, *Justice for All—Final Report* (2019), 17, https://www.sdg16.plus/resources/justice-for-all-report-from-the-task-force-on-justice-overview/.

[12] World Justice Project, "Atlas of Legal Needs Surveys," accessed June 19, 2024, https://worldjusticeproject.org/our-work/research-and-data/atlas-legal-needs-surveys; see also the discussion of the "grounded, empirical approach" in di Giovanni and de Langen, "People-Centred Justice in International Assistance."

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the more responsive it will be to the legal and justice needs of individuals, contributing to fair outcomes and helping build just societies."[13]

The New Zealand Context

The international community's enthusiasm for the phrase has been mirrored in local policy. New Zealand was an early adopter of the idea of people-centred justice. It became part of the Ministry of Justice's mission statement in 2012,[14] just as it "began percolating in academic and policy documents" internationally.[15] The Ministry of Justice, which is "the lead agency in the justice sector and the lead agency on Crown/Maori Relations for the government," continues its commitment to the present day: "We are working with the judiciary and our justice sector colleagues to help make sure New Zealand is a safe and just society. The Ministry of Justice does this by delivering people-centred justice services to provide access to justice for all New Zealanders."[16]

In the years since it was first adopted, the phrase appears in many ministry publications. It is sometimes deployed in a way that is unspecific and indeed circular: "We developed our mission – "to deliver modern accessible people-centred justice services"—what is important about that mission is that everything we do is people-centred—centred on the people we are here to serve."[17]

More commonly, it is applied to a wide range of innovations and projects for which the ministry is responsible, and it was this broad usage that first alerted me to the breadth of interpretations that might be available.

One example that caused particular surprise was the Ministry of Justice's application of people-centred justice to the renovation of the earthquake-prone, Victorian-era Dunedin courthouse: "Modernisation is about the changes we need to make to deliver people-centred services to provide access to justice for all. Modernising our courts and tribunals will improve people's access to justice by making it possible for them to engage with us in ways that better reflect their needs, and increase their overall confidence in our services."[18]

With a colleague, I had written about this project elsewhere, critiquing it as primarily motivated by promoting Dunedin's standing as a city, and promoting the prestige of the legal profession.[19] From its beginnings in 1902, the building was considered "imposing" and the justifications given for the considerable

[13] Organisation for Economic Cooperation and Development, *OECD Framework and Good Practice Principles for People-Centred*, 3.

[14] Ministry of Justice, *Annual Report: 1 July 2011 to 30 June 2012* (Wellington: Ministry of Justice, 2012), 3. The report states that "[i]n the first half of 2012, the Ministry developed a new business strategy based on delivering modern, accessible, people-centred justice services."

[15] di Giovanni and de Langen, "People-Centred Justice in International Assistance."

[16] Ministry of Justice, "About Us," last modified February 27, 2024, https://www.justice.govt.nz/about/about-us/.

[17] Ministry of Justice, *Annual Report: 1 July 2016 to 30 June 2017* (Wellington: Ministry of Justice, 2017), 3.

[18] Ministry of Justice, *Annual Report: 1 July 2017 to 30 June 2018* (Wellington: Ministry of Justice, 2018), 12–13.

[19] Jane M. Adams and Bridgette Toy-Cronin, "Nurturing Tradition in Dunedin: Courthouses, Lawyers and Justice," *Otago Law Review* 15, no. 2 (2018): 257–84.

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funds needed to renovate it included that its "dignified, authoritative style" emphasized respect for rule of law and "a sense of occasion."[20] A building in gothic architecture, designed to be an imposing expression of the settler government, does not take the bottom-up approach that is usually championed as people-centred. It is not clear how restoring led light windows, running data cabling, and installing audio visual equipment centres the victims, witnesses, litigants, and defendants who are the "people" most obviously at the centre. It does serve the civic pride of the people of Dunedin at large, and likely responds to the needs of the judges and lawyers who are daily users of the court. This illustrates a risk of people-centred justice: it is appealing and unspecific, and it can bend to projects with very different motivations.

Before turning to that analysis, it is important to provide some context about the New Zealand legal system. New Zealand has a primarily adversarial legal system, with rights of audience reserved to lawyers,[21] but it has a long history of reforms that decentre the role of lawyers, particularly for lower-monetary-value disputes and everyday legal problems.[22]

Since the 1980s, and like England and other cognate jurisdictions, New Zealand has seen successive governments introduce "neoliberal reforms to embed market economics and consumer choice within the discourse of access to justice and legal service provision."[23] This has drawn criticism from observers, including the now chief justice of New Zealand, for creating a "user-pays" justice system.[24] Also, in common with other cognate jurisdictions, efficiency is a key goal of the courts,[25] case management is widely used,[26] and mediation and other

[20] Ibid., at 279.

[21] Lawyers and Conveyancers Act 2006, ss 6, 21.

[22] This trend had already begun by the 1990s and has continued since: Stephen Turner, "New Zealand: Community Law Centres," *Alternative Law Journal* 17, no. 6 (1992): 295–96. The Disputes Tribunal (hearing disputes for up to $50,000) and the Tenancy Tribunal (hearing all residential tenancy disputes) bar lawyers in all but very limited circumstances: Disputes Tribunal Act 1988, s 38; Residential Tenancy Act 1986, s 93. Employment disputes allow representation by anyone, such as unions and lay advocates: Employment Relations Act 2000, s 236, schs 2 and 3, cl 2. Personal injury cannot be litigated in the courts, as injuries are covered by the Accident Compensation Corporation and arguments about the application of that scheme can be brought by a lay advocate. (The Accident Compensation Corporation is a Crown agent that provides comprehensive, no-fault personal injury cover for all New Zealand residents and visitors to New Zealand. The scheme is governed by the Accident Compensation Act 2001 and appeals about decisions made under the Act are heard by the Accident Compensation Appeals District Court Registry.)

[23] Lisa Webley, "Legal Professional De(re)regulation, Equality, and Inclusion, and the Contested Space of Professionalism within the Legal Market in England and Wales," *Fordham Law Review* 83, no. 5 (2015): 2349–67. For the New Zealand context, seeJonathan Boston et al., *Public Management: The New Zealand Model* (Auckland: Oxford University Press, 1996).

[24] Helen Winkelmann, "Access to Justice—Who Needs Lawyers?" *Otago Law Review* 13, no. 2 (2014): 229.

[25] The objective of the High Court Rules 2016, rule 1.2, echoed in the rules of other courts, is that they are "to secure the just, speedy, and inexpensive determination of any proceeding or interlocutory application."

[26] Andrew Beck, *Principles of Civil Procedure*, 3rd ed. (Wellington: Thomson Reuters, 2012), 3–5.

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forms of informal or private justice have become deeply imbedded into the New Zealand dispute-resolution landscape.[27]

As a postcolonial society, New Zealand is currently wrestling with the development of what has been termed our "third law"—a hybrid of the first and second laws.[28] The "first law" is the legal system and norms brought by Maori to Aotearoa (the indigenous name for New Zealand), which governed pre-settler society.[29] The "second law" is settler law—a law and legal system that was imported from the colonizer England, which was "intent on destruction of its predecessor."[30] The third law is the distinct hybrid of these two predecessors. Given their distinct differences and the political history, the third law has many tensions reflecting "the very human process of law-making and nation-building—or perhaps law-making *as* nation-building."[31]

In considering how people-centred justice might operate in New Zealand, it is therefore important to pay attention to the commonalities and differences between the conceptions of people in the first law and the second law, and how people-centred justice might be interpreted in a third law system. As has been observed elsewhere, one of the core challenges of creating a third law system is ensuring that the dominant second-law system does not damage the integrity of the first law when the two interact.[32] Moana Jackson, a luminary in decolonization in Aotearoa, cautioned:

> Justice for Māori does not mean the attempted grafting of Māori processes upon a system that retains the authority to determine the extent, applicability, and validity of those processes. No matter how well-intentioned and sincere such efforts, it is respectfully suggested that they will merely maintain the co-option and redefinition of Māori values and authority which underpins so much of the colonial will to control.[33]

[27] Grant Morris and Annabel Shaw, *Mediation in New Zealand* (Wellington: Thomson Reuters, 2018), chapter 3.

[28] Justice Joseph Williams, "Lex Aotearoa: An Heroic Attempt to Map the Māori Dimenision in Modern New Zealand Law," *Waikato Law Review* 21 (2013): 1–34.

[29] Maori custom law or tikanga Maori is usually referred to in the singular: "law." While the capacity of tikanga to change means there is variation between tribal groups, "those changes are always guided by the fundamental values that underpin tikanga": Law Commission, *Māori Customs and Values* (Wellington: New Zealand Law Commission, 2023).

[30] Williams, "Lex Aotearoa," 12; see also Eddie Durie, "Will the Settlers Settle? Cultural Conciliation and Law," *Otago Law Review* 8, no. 4 (1996): 449–65.

[31] Williams, "Lex Aotearoa," 12. While this is the framework of analysis that I adopt in this article, I note that it is not universally accepted and some commentators consider that there can never be a third law. See, for example, Annette Sykes, "The Myth of Tikanga in the Pākehā Law," *e-Tangata*, February 7, 2021, https://e-tangata.co.nz/comment-and-analysis/the-myth-of-tikanga-in-the-pakeha-law/.

[32] This observation is made repeatedly in *Ellis v R* [2022] NZSC 114 and also in academic literature, such as Mihiata Pirini and Anna High, "Dignity and Mana in the 'Third Law' of Aotearoa New Zealand," *New Zealand Universities Law Review* 29, no. 4 (2021): 623–47.

[33] Moana Jackson, "A Colonial Contradiction or a Rangatiratanga Reality?" in *Rethinking Criminal Justice: Justice in the Community*, ed. Judge F. W. M. McElrea (Auckland: Legal Research Foundation, 1995), 34.

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This struggle between indigenous and settler legal systems is not unique to New Zealand, and it forms an important part of any inquiry into interpretations of people-centred justice. It is against this background that I consider what "people-centred" might mean in the New Zealand policy context.

Understanding the People in People-Centred Justice

In this section, I consider three intersecting issues: first, whether people are conceived of as individual legal actors, as people connected to others, and/or as people with needs that might stretch beyond the legal problem immediately at hand; second, the possibility that different people in the same matter will have different needs and how people-centred justice can attend to these needs if they are in tension; and third, the role of lawyers in people-centred justice.

People as Individual Legal Actors or as Connected with Broad Needs

The New Zealand legal system, following its British roots, tends to treat those who come to law as individuals or entities that are created to have individual standing before the law. In this second-law tradition, cases are named by the parties to whom the legal issue relates and standing is restricted. In some ways, the second law goes beyond the individual person (natural or legally created) to an even smaller unit of analysis: the legal role. One person can be a defendant, a tenant, an employer, a property owner, and so on, depending on the nature of the legal matter at hand. This aspect of the second law has been noted and critiqued through feminist jurisprudence for its reductive tendency that hides the full human life behind "legal facts."[34] People-centred justice has the potential to respond to this critique, opening up space for the person to be seen as larger than this unit of analysis and to have their other social needs and relationships recognized.

A person-centred shift that reflects this feminist critique of the second law also dovetails with the conception of the individual in the first law. The first-law person is multifaceted, encompassing *tinana* (physical and biological aspect) and *wairua* (spiritual aspect)—bound together by *mauri* (life force)—and *hingengaro* (creative and intellectual perception), which together "combine to form a complete person."[35] The popular health model of Te Whare Tapa Wha (the four cornerstones of health) described by Dr Mason Durie recognizes the complexity of the conception of a "person" in the Maori world.[36] The four realms necessary for wellness are: *taha tinana* (physical), *taha whānua* (social), *tahahinekaro* (emotion), and *taha wairua* (spiritual). The first-law interpretation of "people" does not support the division of individuals into legal roles, but instead requires viewing them as possessing these complexities.

[34] See, for example, the discussion in Elisabeth McDonald et al., eds., *Feminist Judgments of Aotearoa New Zealand Te Rino: A Two-Stranded Rope* (Oxford and Portland, OR: Hart, 2017), 14.

[35] Khylee Quince, "Māori Disputes and Their Resolution," in *Dispute Resolution in New Zealand*, ed. Peter Spiller (South Melbourne, Victoria: Oxford University Press, 2007), 258–59.

[36] Mason Durie, *Whaiaora—Maori Health Development* (Auckland: Oxford University Press, 1994).

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Perhaps even more fundamentally, in the first law, the unit of analysis cannot be an individual because individuals belong to an indivisible and interconnected web. In first-law traditions, two key values are particularly relevant to thinking about the role of people in the justice system: *manaakitanga* and *whanaungatanga.* Manaakitanga is "the process of showing and receiving care, respect, kindness and hospitality."[37] Manaakitanga is closely intertwined with whanaungatanga, as manaakitanga fosters and nurtures whanaungatanga.[38] Whanaungatanga is used "to cover, when appropriate, kin-like reciprocal relationships among people" and refers to the "rights, responsibilities, and expected modes of behaviour that accompany the relationship."[39] Whanaungatanga may be "the single most important aspect of Māori social organisation"[40] and extends not just to relationships between people, but also to relationships "between people and the physical world; and between people and the atua (spiritual entities)."[41]

People-centred justice, as discussed in the international community, seems to encompass this broad framing of people as having wider needs than their legal role:

Access to people-centered justice services

> People have access to services that are responsive to their needs and offer alternative and less adversarial pathways to justice. One-stop shops provide a range of services under one roof, while specialist services help those with more complex problems.[42]

This broader communitarian reading of people is apparent in some readings of people-centred justice, including in the Task Force on Justice report in which "people," while not directly given a collective reading ("the people"), is community-inclusive:

> The justice journey begins by empowering people so that they can resolve their justice problems for themselves, their families, and their communities. Legal empowerment helps people understand and use the law. … A more dynamic model of legal empowerment invests in organizations that

[37] Richard Benton, Alex Frame, and Paul Meredith, Te *Mātāpunenga: A Compendium of References to the Concepts and Institutions of Māori Customary Law* (Wellington: Victoria University Press, 2013), 205: an "essential component" of manaakitanga is aroha. Aroha conveys a number of ideas, including "personal warmth towards another, compassion and empathy," at 46.

[38] Hirini Mead, *Tikanga Maori: Living By Maori Values*, Revised ed. (Wellington: Huia (NZ) Ltd, 2016), 33.

[39] Benton, Frame, and Meredith, *Te Mātāpunenga*, 524.

[40] Carwyn Jones, "Māori Dispute Resolution Traditional Conceptual Regulators and Contemporary Processes," in *Mediating Across Difference: Oceanic and Asian Approaches to Conflict Resolution*, ed. Morgan Brigg and Roland Bleiker (University of Hawai'i Press, 2011), 119; also citing Joe Williams, "He aha te tikanga Māori," paper presented at Mai I Te Ata Hāpara Hui, Te Wananga O Raukawa, Otaki, New Zealand, 2000, 9.

[41] Law Commission, *Māori Custom and Values* (Wellington: New Zealand Law Commission, 2001), para 130.

[42] Task Force on Justice, *Justice for All—Final Report*, 21.

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> are rooted in communities and that are close enough to people to understand their legal needs and the context in which they arise. It challenges justice institutions to become more open and responsive to citizens and communities as they seek justice.[43]

Taking this broad reading of "people" would respond to a need in the justice system that has been the subject of criticism for many years. In 1988, the Māori Perspective Advisory Committee in their report, *Puao te-Ata-tu*, suggested that there should be "a greater sense of family and community involvement and responsibility in the maintenance of law and order."[44] The discussion in that report was in the context of both criminal law (where most of the discussion has tended to occur) and also law that is directly relevant to the Department of Social Welfare (as it was then), particularly child placement. The writers observed: "The prevalence of Western opinion in influential areas of law, conditions the approach of administrators who service necessary institutions, and affirms the view that the Maori is to be treated as an individual and that the communal orientation of Maoridom is without value or relevance."[45]

This challenge to create more communitarian forms of justice has been, to some extent, met by various innovations in the justice system, including the specialist courts and restorative justice programmes, such as Te Whare Whakapiki Wairua, the Alcohol and Other Drugs Treatment Court.[46] This court takes what could be considered a people-centred *and* first-law-consistent approach. The procedure supports manaakitanga and whanaungatanga in the way in which it includes people, cares for them, and meets their needs. *Aroha* (love, also a core value) is expressed through the conduct of proceedings, with compassion and empathy demonstrated through respectful engagement. Proceedings open with *karakia* (a prayer or incantation) and the needs of the subjects of the court (those undergoing treatment) are met in flexible ways.[47] Graduations also begin with a *karakia* and *waiata* (song) and a graduation *haka* is performed; there are also deliberate linkages created between those undergoing treatment that continue beyond court:

> He Takitini (the many who stand together) ceremonies mark the coming together of graduates outside of the court environment. He Takitini is unique to the New Zealand setting and may be understood as representing belonging and strength in being connected to others. It is a crucial aspect of

[43] Ibid., at 70.

[44] Māori Perspective Advisory Committee, *Puao-te-ata-tu (day break)* (Wellington: Department of Social Welfare,1988), 74.

[45] Ibid., 74.

[46] Courts of New Zealand, "The Alcohol and Other Drugs Court: Te Whare Whakapiki Wairua," accessed March 20, 2024, https://www.districtcourts.govt.nz/criminal-court/criminal-jurisdiction/specialist-criminal-courts/alcohol-and-other-drug-treatment-court/; see also Olivia Klinkum, "Taking New Zealand's Specialist Criminal Courts 'to Scale' for Better Criminal Justice Outcomes," *Te Wharenga—New Zealand Criminal Law Review* (2019): 1–25.

[47] For a demonstration of these procedural innovations, see the Maori TV documentary "Drug Court" directed by Julia Parnell (2014), available on eTV.

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> providing continuing support for graduates as they continue to live in recovery outside the AODT Court in the community.[48]

Indeed, recognizing the benefits of this first-law-consistent approach, a district court initiative, *Te Ao Mārama* (the world of enlightenment), seeks to integrate these innovations into the mainstream court.[49] The chief district court judge has explained that "many facets of our justice system are inconsistent" with the first law and this lack of recognition "causes many Māori to feel that the justice system is a foreign entity and have 'little empathy' for it."[50] The idea of creating a system that is focused on the needs of people means that using a people-centred justice approach should support and reinforce the need for a stronger first-law voice in the third law. Even though "people-centred" has not been frequently discussed as encompassing this broader communal lens, it can be read that way.

While this sounds like good news for the implementation of people-centred justice, and the approach has some traction in New Zealand, Ministry of Justice documents indicate there are also crosscurrents. People-centred justice can equally be applied through a lens of neoliberal principles and a limited interpretation of people as those performing a legal role. A ministry document, praising a "modern, accessible, people-centred" approach, casts court users as "customers" who are seeking efficiency:

> Providing modern, accessible, people-centred justice services means placing the needs of our customers first. We know they want:
>
> - fast and simple processes with minimal need to visit a court facility.
> - the ability to access our services online, at times and places that suit them.[51]

This interpretation of people-centred justice privileges a very different view of people-centred justice. Reflecting the dominant ideas about efficiency and the ethos that justice delayed is justice denied, people-centred is cast as equivalent to running efficient "business processes, prioritising the progression of aged cases, making the justice system more responsive, and getting people through the

[48] Katey Thom, "Exploring Te Whare Whakapiki Wairua/The Alcohol and Other Drug Treatment Court Pilot: Theory, practice and known outcomes," *Te Wharenga—New Zealand Criminal Law Review* 3 (2017): 180–93.

[49] District Court of New Zealand, *Te Ao Mārama: Best Practice Framework* (2023), 4, https://www.districtcourts.govt.nz/assets/Uploads/Te-Ao-Marama-/Te-Ao-Marama-Best-Practice-Framework-for-website.pdf.

[50] Chief Judge Heemi Taumaunu, "Calls For Transformative Change and the District Court Response," *Waikato Law Review* 29 (2021): 121–22.

[51] Ministry of Justice, *Annual Report: 1 July 2014 to 30 June 2015* (Wellington: Ministry of Justice, 2015), 4. The use of "customers" in justice policy can be seen as an earlier attempt to create a people-centred system, by perceiving court users as customers. The ministry has since stopped using this terminology. For critiques of this approach, see Catherine Needham, "Policing with a Smile: Narratives of Consumerism in New Labour's Criminal Justice Policy," *Public Administration* 87, no. 1 (2009): 97–116; Bridgette Toy-Cronin, "Justice Customers: Consumer Language in New Zealand Justice," *Policy Quarterly* 15, no. 4 (2020): 29–34, https://doi.org/10.26686/pq.v15i4.5925.

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system more quickly."[52] Efficient case progression is an important goal but research consistently shows that many people are digitally excluded, not just through lack of access to technology, but because they cannot effectively engage with an online system.[53] The efficient online process would therefore exclude many people and leaves little room for a communal approach. The conception, therefore, is talking only about the justice needs of some people and certainly not the most vulnerable.

The focus on efficiency as being equivalent to people-centred also appears in other ministry documents, such as a document that states the ministry's mission as "Delivering modern, accessible, people-centred justice services" with four "strategic goals" sitting under this:

1. Modernize courts and tribunals to get people through quicker.
2. Reduce crime, victimization and harm.
3. Provide great service to the public every day.
4. Complete Treaty [of Waitangi] settlements with groups who are ready.

This list does not reflect the intentions of people-centred justice as explained at the outset of this article, but rather dresses existing court policy focusing on efficiency, customer service, and criminal justice in the language of people-centred justice, as well as "modernization" and "accessibility." This illustrates the possibility that "people-centred," with its lack of articulated substantive commitments, can easily be applied as window dressing to the status quo. Even policies that look at first glance to import a first-law-consistent interpretation may amount to little more than decorative nods. A prayer or incantation (*karakia*) can be added at the beginning of a hearing and acknowledgements of people and their relationships with each other undertaken, but the basic system can remain unchanged. This is possible because people-centred justice has no clearly articulated substantive commitments and bends to any "good" that is developed in the justice system.

Needs in Tension

These differing interpretations at the policy level point to another issue: balancing the needs of various people in a justice matter when those needs are in tension. The idea of people-centred justice borrows from health care, in which "patient-centred care" (and then "people-centred care") has an agreed focus: the wellness of the patient.[54] In contrast, the justice system is characterized by the

[52] Ministry of Justice, *Annual Report: 1 July 2014 to 30 June 2015*, 4.

[53] For a large and innovative study including exploration of digital capability, see Nigel Balmer et al., The Public Understanding of Law Survey (PULS) Volume 2: *Understanding and Capability* (Victoria, Australia: Victoria Law Foundation, 2023). For the New Zealand application of this issue, see Bridgette Toy-Cronin and Kayla Stewart, *Expressed Legal Need in Aotearoa: From Problems to Solutions* (Dunedin: University of Otago, 2022), 57–62, https://ourarchive.otago.ac.nz/handle/10523/14116.

[54] Organisation for Economic Cooperation and Development, *OECD Framework and Good Practice Principles for People-Centred*, 19.

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interaction of multiple people, including the litigants at the centre in a directly adversarial relationship. The other people in a matter might include jury members, witnesses (including victims), expert witnesses, and observers in the public gallery. Their needs are likely to be in tension and decisions have to be made about whose interests are preferred. Think, for example, of a tenancy matter. A landlord holding a large portfolio of properties may want an efficient dispute-resolution system and easily enforced orders. The opposing tenant, struggling with financial literacy and complex life circumstances, may need time and support to access budgeting and other support services. "People-centred" for the landlord might be an efficient online process, but for the tenant it might mean an in-person interaction and connection to support services.[55] These needs are in direct tension and, if all people cannot be equally centred, then some needs must trump others.

These tensions are also apparent when thinking through the implications of people-centred justice from a first-law perspective. If the aim is to centre the people as members of a community, then this changes who should be in the courtroom. The relational, first-law-consistent interpretation would suggest that it should be all the people who have an interest due to their web of connectivity and relationships. Again, a tenancy dispute illustrates the issue. In a case that I observed, a young woman (the named tenant) came to court accompanied by her mother. She spoke about the other people who were living in her house, highlighting the larger collective that sat behind her legal role as tenant. Her mother—also linked by whanaungatanga and whakapapa—did not live at the house but was a witness to a relevant matter. The mother was therefore asked to leave the room so that she could not hear her daughter's evidence. This left the daughter isolated in the courtroom with the landlord, the adjudicator, and me (as observer). Such isolation is characteristic of Western legal institutions (formal and informal), which, as Richard Abel observed forty years ago, "neutralize conflict [...] by individualizing grievances. [...] The individual grievant must appear alone before the informal institution, deprived of the support of such natural allies as family, friends, work mates, even neighbours."[56] A policy that favoured short hearings in a private forum could still be claimed as people-centred because some people, such as the landlord sketched above, might want an inexpensive and quick procedure, in which they are not subject to prying eyes. A relational, first-law-informed approach to people-centred justice would recognize that this tenant should be surrounded by all the people who are living in the home, her mother, and any other supporters. This might change the type of room in which the hearing can be held and effect more substantive rules, such as when to exclude witnesses. Both approaches can be justified as people-centred, but are very different—even opposite—views of a justice process.

[55] Toy-Cronin and Bierre, "Sustaining Tenancies or Swift Evictions," 125–27.

[56] Richard Abel, "The Contradictions of Informal Justice," in *Politics of Informal Justice: The American Experience*, ed. Richard Abel (New York and London: Academic Press, 1982), 288–89.

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Lawyers and People-Centred Justice

People-centred justice is silent on the issue of the important question of the role of people's representatives in people-centred justice. A *lawyer-inclusive* interpretation of people-centred justice would say that lawyers are representatives of the people, appointed by the people and, if a system does not pay heed to their needs, then it is not people-centred. After all, the person has chosen to instruct the lawyer to act on their behalf, so surely making it work for the lawyer means it works for the people.

In a document on "Innovation on the Frontline" in which the Ministry of Justice profiles "People-Centred Justice Services," the ministry appears to take this lawyer-inclusive standpoint. The introduction is headed "People-Centred Justice Services" and goes on to explain that, when people come into contact with the justice system, they are "vulnerable, stressed or angry." The report then profiles the work of staff who "have gone out of their way to help people, by providing information or by introducing new ways of doing things, to make people feel safe."[57] The profiles include registry staff and security screening staff, but the final story is about a mooting competition for junior lawyers to help them adjust to the court environment. The publication note that lawyers are a slightly different category of innovation, "but again, [it] is about making people feel comfortable in an environment that is initially foreign and often difficult to navigate."[58] The standpoint, therefore, is people-centred justice that attends to the needs of professionals.

A lawyer-inclusive view of people-centred justice is of particular salience in higher courts (where there is less self-representation) and in criminal cases, in which defendants are usually represented. It is also important for legal entities such as corporations or trusts. These entities, created and accepted by legal systems, also have justice needs and, in parts of the justice system, they account for the majority of system users. In a study of the New Zealand High Court (a senior court with jurisdiction for civil claims of over $NZD350,000), cases involving two individuals accounted for only 15.6 percent of cases in high court general proceedings.[59]

"People-centred" must, therefore, include lawyers because otherwise the needs of represented people, and the people sitting behind legal entities, will not be met.[60] The risks of this can be seen in a people-centred reform (although pre-dating that terminology) in the New Zealand District Court. A simplified form was developed to try and help self-represented litigants to structure the

[57] Ministry of Justice, *Innovation on the Frontline* (Wellington: Ministry of Justice, 2013), 1, https://thehub.swa.govt.nz/resources/innovation-on-the-frontline-people-centred-justice-services/.

[58] Ibid., 11.

[59] General proceedings are all civil cases that are not a bankruptcy or liquidation proceeding, an application for judicial review, an appeal from a lower court, or a proceeding begun by way of an originating application. Bridgette Toy-Cronin et al., *The Wheels of Justice: Understanding the Pace of Civil High Court Cases* (Dunedin: University of Otago Legal Issues Centre, 2017), 89.

[60] An exception to people sitting behind a legal entity is when the natural environment or animals have been recognized as having legal personhood: Visa A. J. Kurki, *Legal Personhood* (Cambridge: Cambridge University Press, 2023), https://doi.org/10.1017/9781009025614.

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pleading of their claims.[61] It was designed with only self-represented litigants' needs in mind (although insufficiently tested, even for this group); it was not tested with lawyers and only in a very limited way with judges. The reform was ultimately scrapped for failing to meet the needs of the lawyers and judges. This illustrates the need to pay attention to both litigants *and* their representatives' needs if the system is to be responsive.

A lawyer-inclusive reading of people-centred justice, however, is unusual. More commonly, the interpretation of people-centred justice is *lawyer-exclusive.* In the OECD framework, lawyers are not "people," but "actors": "Ensuring appropriate capability development for actors involved in providing justice services—There are many individuals and actors at all levels involved in providing justice services to individuals. These may include judges, lawyers, mediators."[62] Similarly, the Task Force Report distinguishes between "people" and "experts" when discussing people-centred data such as victims and legal needs surveys: "the data reflects what a representative sample of people report about their experiences, not opinions from experts or reports from justice institutions."[63]

These framings of lawyers as "other" are unsurprising. As discussed at the beginning of this article, the core focus of a people-centred framework is moving away from centring the needs of institutions and the professionals that support them. As Sandefur argues, a "steadily growing body of evidence shows that, if the goal is creating access to justice, other services can be more effective and efficient than lawyers" and that access-to-justice solutions need to start with what people need, not reflexively calling for more lawyers.[64] People-centred justice would therefore take an empirical approach to determining when lawyers were needed. But, as Sandefur says, lawyers do remain "part of the solution."[65] A lawyer-exclusive reading of people-centred justice introduces two risks: first, that it ignores the importance of their role for at least a portion of justice problems, as just discussed; and, second, that it is vulnerable to being co-opted to justify defunding legal services, including those offered by lawyers.

Many years of research have demonstrated that support people, including lawyers, are important in helping the most vulnerable to access justice, but various policy waves have harnessed rhetoric to defund services. Anti-litigation rhetoric has been used to push a settlement culture, reducing the poorest people's access to adjudication.[66] Policy makers have co-opted the ethics of care to justify an anti-legalism agenda. The Ethic thus provided a language to argue

[61] Bridgette Toy-Cronin, "Lessons from a Failed Court Reform: The Cautionary Tale of the 2009 New Zealand District Courts Rules," *Journal of Judicial Administration* 31 (2022): 138–53.

[62] Organisation for Economic Cooperation and Development, *OECD Framework and Good Practice Principles for People-Centred*, 31.

[63] Task Force on Justice, *Justice for All—Final Report*, 31.

[64] Sandefur, "Access to What?" 52; see also Matthew Burnett and Rebecca Sandefur, "*Designing Just Solutions at Scale: Lawyerless Legal Services and Evidence-Based Regulation*," RDP, Brasilia 102 (2022): 104–19, https://doi.org/10.11117/rdp.v19i102.6604.

[65] Sandefur, "Access to What?" 50.

[66] Elizabeth Thornberg, "Reaping What We Sow: Anti-Litigation Rhetoric, Limited Budgets and Declining Support for Civil Courts," *Civil Justice Quarterly* 30 (2011): 74.

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for a change in "the dominant ideology from individualist to one that is interconnected … from a right-based focus to a focus on both care and rights/justice, from power-over to empowering"[67] but it has been harnessed to reduce access to lawyers: "In the UK the power of the established professions including law has been attacked by successive governments in the name of client empowerment and care."[68] This has meant that vulnerable people are expected to take responsibility for their own legal matters, which they are often unable to do. McCulloch, for example, discussing a Florida self-help divorce project, argues that the project was: "[F]oisting self-representation on poor people who have more than enough demands on their time and energy without being told that their denial of legal service is really an opportunity for empowerment."[69]

Similarly, Moorhead et al. analyzed how solicitors and advice services (provided by non-lawyers) dealt with members of the public who were presenting with multiple problems and observed that the "ethos of empowerment" was often unhelpful to clients who were confused and left problems to escalate.[70]

With its silence on how lawyers fit into people-centred justice, people-centred justice is vulnerable to the same possibilities. It may be used as a justification to defund legal services (whether provided by lawyers or non-lawyer assistants) for vulnerable people, in the name of centring those people, and to continue the trend away from government funding of legal services and towards a self-service culture.[71]

Conclusion

There is a great deal of merit in guiding justice reform through a people-centred lens, refocusing attention away from institutions as a starting point and onto the experiences of those who are facing the problems and their needs. It has many strengths, including providing a rallying cry for the millions who are living in extreme conditions of injustice.[72] It is sufficiently imprecise and appealing that it has great potential to build consensus within and between countries, as evidenced by its meteoric rise.

Beyond its initial appeal, there is difficulty in the detail. There is a real possibility that policy makers and court reformers subsume a number of very

[67] Hilary Sommerlad, "The Ethics of Relational Jurisprudence," *Legal Ethics* 17, no. 2 (2015): 281–98; quoting L. Bender, "Changing the Values in Tort Law," *Tulsa Law Journal* 25 (1990): 759, 907.

[68] Sommerlad, "Ethics of Relational Jurisprudence," 282.

[69] Elizabeth McCulloch, "Let Me Show You How: Pro Se Divorce Courses and Client Power," *Florida Law Review* 48 (1996): 481–508.

[70] Richard Moorhead, Margaret Robinson, and Matrix Research and Consultancy, *A Trouble Shared: Legal Problems Clusters in Solicitors' and Advice Agencies* (London: Department for Constitutional Affairs, 2006), 56.

[71] Kathy Laster and Ryan Kornhauser, "The Rise of 'DIY' Law: Implications for Legal Aid," in *Access to Justice and Legal Aid: Comparative Perspectives on Unmet Legal Need*, ed. Asher Flynn and Jacqueline Hodgson (Oxford and Portland, OR: Hart Publishing, 2017).

[72] Task Force on Justice, *Justice for All—Final Report*, 18.

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different aims under the banner of people-centred justice. Like "rule of law" before it, people-centred justice is amenable to both thick and thin interpretations.[73] A thick interpretation of people-centred justice can support innovative policy that can help postcolonial societies to develop a third law that is attentive to context and the need for collective policy response. But the flexibility of people-centred justice opens up the possibility of a thin interpretation, allowing policy that undermines the substantive commitments that sit at its heart. It risks becoming an institutional buzz phrase—one that has power and an energizing effect, but can be mobilized for a variety of aims, including being used to undermine what it originally sought to secure against.[74]

As people-centred justice comes of age, attention needs to be paid to refining its meaning. It must remain thoughtfully anchored to its original goals, and its complexities need to be recognized and attended to. If this work is undertaken, then people-centred justice may provide mobilization for access-to-justice reform that recognizes, and is sensitive to, the needs of many.

[73] Paul P. Craig, "Formal and Substantive Conceptions of the Rule of Law: An Analytical Framework," *Public Law* (1997): 467.

[74] For a comparable example of the use of the term "diversity," see Sara Ahmed, "The Language of Diversity," *Ethnic and Racial Studies* 30, no. 2 (2007): 235–56, https://doi.org/10.1080/01419870601143927.

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