

INTRODUCTION

This book aims to introduce readers to some significant areas of ‘modernisation inspired’ legal changes or challenges that are currently being faced by Pacific island countries. These challenges are largely arising because of tensions between the legal, political and social systems introduced by various colonial powers and the legal, political and social systems of indigenous cultures. It may seem that indigenous cultures are becoming obsolete, a piece of tradition that, increasingly, belongs in the past. From such a viewpoint introduced systems must ultimately prevail in order that Pacific island nations are able to ‘progress’ and to participate in the global economy. Such a picture, though, rests on a static concept of culture which fails to realise that cultures adapt to change and that the meeting of different cultures is a catalyst for change in all of them. Throughout the Pacific these different systems are currently struggling to find ways to co-exist, to adjust to and accommodate each other. The aim of this struggle is to realise systems that are both reflective of culture and allow for participation in the modern global environment.

Law, as the multifaceted institution that ‘sets the rules’ for society, must be examined if a resolution to this struggle is to be achieved. This is no easy task. There are numerous ‘big questions’ to be answered. What is the role of law in Pacific societies, and what should it be? What needs to be done in order to make people within the Pacific respect the law? How can we make law become more relevant to people in Pacific societies? What do we mean by ‘law’ in a Pacific context? It is questions such as these that need to be addressed in order to develop a Pacific jurisprudence or philosophy of law.

There are also problems to be solved. Policy makers and legislatures are being called upon to address a number of significant issues in a wide range of areas of substantive (or practical) law. How can we manage our natural resources in a sustainable manner? How can we cease the seemingly endemic corruption amongst politicians? How can we translate human rights obligations into domestic law? The number of practical areas in which the law (either in its content or in its administration) may be deficient are simply too numerous to begin to list in any comprehensive manner.

Whilst the development of a body of Pacific jurisprudence or theory about law is undoubtedly helpful for solving practical law problems, practical law reform exercises also contribute to the development of theory. Whilst there may be methodological debate about whether it is preferable to work from concrete problems ‘upwards’ to

create a generalisation or theory, or to work from theory ‘downwards’ to create solutions to particular problems, such a debate is not very helpful in practice. The reality of contemporary Pacific societies is that a number of very difficult practical legal problems are being faced, and that these problems do, often, require one to question the very nature and role of law. Given the large number of issues of all kinds that are being faced within the contemporary Pacific and the urgency with which some of these issues must be addressed approaching them from a number of perspectives is to be encouraged.

With these things in mind this book aims to provide readers with both theoretical and practical discussion of some of the issues facing Pacific societies and legal systems. There are, as already indicated, a huge number of issues that could be included in a book that has the aim of discussing current legal issues in the Pacific islands. We have tried to focus the content of the book on some specific themes or areas of current legal controversy that allow for the writers to both discuss theoretical issues and to discuss practical problems within that theme. In the end we also had to be guided by the areas in which our contributors wished to write. This book covers issues of governance and corruption, human rights and customary law, resource issues and the (re)building of social order in Pacific societies. These are, perhaps, some of the most controversial issues currently being faced within the Pacific, although we freely acknowledge that there are many other issues that we are not including in this volume.

The first section discusses the notion of modernisation and some of the ways that we can see modernisation affecting Pacific societies. It provides readers with a broad context in which to consider specific legal issues arising in the contemporary Pacific.

The second section examines corruption. Chapters consider what corruption is, whether it is necessarily a bad thing and why it is that corruption is seemingly endemic within the Pacific. It also considers a specific practical measure to combat corruption – an ombudsman

The third section of this volume focuses specifically on some issues surrounding the place of custom and customary law in the legal systems of the South Pacific region. That is not to say that issues of custom are not relevant to the discussions elsewhere. Indeed, many of the chapters in other parts of the book will touch on issues related to those raised here. The content in this section serves to illustrate the complexities that are rife in any meaningful discussion of the relationship between custom and law. The authors do not necessarily seek to provide definitive answers. Rather, they assist the reader in forming appropriate and incisive questions.

The content of the fourth section, discussing human rights, is, in many ways, a continuation of the discussions that commenced in section 3. The apparent incompatibility between human rights and custom is perhaps the most visible clash between the different values found in the introduced and indigenous legal systems. This section highlights the numerous complexities and subtleties that underpin that basic question of ‘what is the place of human rights in the South Pacific’?

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The fifth section considers natural resource issues. Whilst Pacific land tenure has long been widely recognised as an area of considerable general interest for Pacific legal scholars, particularly because of the predominant role of customary law in this area, the management of other natural resources has been seen more of a specialist area. However, given the number of threats that the natural resources of the Pacific are facing and the centrality of these resources to Pacific lifestyles and economies natural resources issues are becoming of increasing interest and importance.

The sixth and final section of this book examines issues of disorder. Coups in Fiji Islands and Solomon Islands and high levels of criminal behaviour in Papua New Guinea are extreme expressions of the lack of respect for the rule of law that is to be found throughout the Pacific. Issues of disorder are, perhaps, the manifestation of tensions discussed elsewhere in this book. Issues of disorder are also, possibly, the greatest threat to the development of Pacific states. Reasons for the apparent lack of legitimacy of the state and possibilities for a new conception of statehood suggest ways for Pacific countries to respond to this threat and find a new way forward.

Whilst there are, of course, overlaps between the content of each theme, the book has been arranged into thematic sections in order to assist readers to appreciate the multiple approaches to a particular issue that can be taken. We have also provided introductions to each thematic section. This allows us to make some commentary on the theme and to highlight some of the important ideas within the chapters and links between them.

It is hoped that students of law, sociology and development studies will find this book helpful in introducing them to some of the current legal issues facing Pacific island countries. To assist students each chapter begins with a box defining some key terms that readers will meet in the chapter. This is done both to assist in ensuring that key terms are understood and to assist students in focusing upon the key issues contained within each chapter. Each section concludes with a series of thought provoking questions and some additional readings that would provide a good place to begin further investigation into the particular topic.

It is also hoped that this book will find a much wider readership than students. The authors contributing to this book all have strong academic backgrounds, and present their material in such a way that should be of interest to policy makers, aid donors and any others who have an interest in contemporary issues facing Pacific island legal systems and societies. The book also has relevance to readers who have more general interests in the nature of law and the state. Within the Pacific, because of the clash of introduced and traditional cultures, issues surrounding the relationship between law and the state are, maybe, more apparent than in other countries, as they manifest themselves as practical problems of disorder. Our experiences within the Pacific can make a valuable contribution to general political theory and philosophy by contributing fresh examples and perspectives to the global debate on the nature of law and the state. As such this book is not only limited to an audience with a specific interest in the Pacific region.

PASSAGE OF CHANGE

In a region and subject area in which there are so many interesting changes taking place it is inevitable that we can only touch briefly upon a few issues. Hopefully in the near future further Pacific island focused publications of a socio-legal nature will fill some of the many gaps that this volume has to leave.

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