

LEGAL SYSTEMS OF THE PACIFIC

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Introducing Sixteen Gems

Edited by
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*Distribution for the UK and
Rest of the World (incl. Eastern Europe)*
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Lefebvre Sarrut Belgium NV
Hoogstraat 139/6
1000 Brussels
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Email: mail@intersentia.be

Distribution for the USA and Canada
Independent Publishers Group
Order Department
814 North Franklin Street
Chicago, IL 60610
USA
Tel: +1 800 888 4741 (toll free) | Fax: +1 312 337 5985
Email: orders@ipgbook.com

Legal Systems of the Pacific. Introducing Sixteen Gems
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Artwork on cover: Best-Backgrounds / Shutterstock

ISBN 978-1-83970-153-5
D/2021/7849/113
NUR 820

British Library Cataloguing in Publication Data. A catalogue record for this book is available from the British Library.

*This book is dedicated with fond memories and gratitude
and as a token of an abiding legacy*

*to the memory of Donald Paterson (1934–2021),
Professor Emeritus of the University of the South Pacific and
founder of the University of the South Pacific law school
an ever-present mentor and friend.*

FOREWORD

Malo e lelei, Ni sa bula vinaka, Kia orana, Taloha ni, Faka'alofo lahi atu, Kam na mauri, Talofa, Gud de tru, Halo olgeta, Ia orana, Aloha mai e, Kia ora, Talofa lava, and warm Pacific greetings.

The island nations of the Pacific were amongst the last places on earth to be inhabited by the human species. The islands of Papua New Guinea were perhaps the first settled and Aotearoa-New Zealand the last. The early settlers of the Pacific islands established systems of governance to regulate their communities. The first 'laws' of the Pacific were oral by nature and debated and memorised through *stori* and *talanoa*. The indigenous legal systems of the Pacific islands were refined over millennia, developing into sophisticated codes designed to regulate customary ways of life, *kastom*, traditional practices, relationships between people and communities, behaviour, the environment and other aspects of community life. Traditional legal systems were unique to each island community across the Pacific.

European explorers, traders and missionaries entered the Blue Pacific universe, shattering the peace of these fragile communities. Imperial systems of governance and European legal systems were established. British, French, German and American laws were imposed on the people of the Pacific as the European powers established colonial governance.

As they struggled for political independence in the 20th century, emerging Pacific island nations developed new legal and constitutional frameworks. In some nations imported legal systems were adopted (or imposed) wholesale. Some other nations, for example Papua New Guinea and Samoa, developed unique legal systems that aimed to marry the indigenous with the imported. The result is a Pacific-wide range of legal systems that continue to evolve.

Pacific legal systems have been described in the *Encyclopedia of Comparative Law*, in various publications by the late Professor Ron Crocombe, in the *South Pacific Islands Legal Systems* volume by Michael A Ntomy, and in the books of the late Professor Guy Powles. These publications are no longer current or are out of print.

In their Introduction to this volume, Emeritus Professors Jennifer Corrin and Tony Angelo state: '... that there is a need for an up-to-date and accessible reference book for legal systems of the South Pacific'.

Legal Systems of the Pacific: Introducing Sixteen Gems aims to address that need. The legal systems of 16 Pacific island nations are described and discussed in detail including historical backgrounds, the source of the laws and indigenous elements. Cross-country comparisons are also made, including the discussion of cases of custom and customary law. Importantly, reflecting the growth of the legal profession in the Pacific, most of the chapters are written by local authors who are lawyers and authorities on their nation's legal systems.

This book provides a handy overview of Pacific legal systems and directs students, scholars and practitioners to where they can find more detail on the law of each of the 16 countries.

For much of our history, the people of the Pacific regulated our Blue Pacific universe through our customary legal systems. That all changed with the imposition of imported legal systems during the colonial period. The post-colonial period has seen the development of new legal systems for Pacific nations that are led by Pacific people familiar with Western law and knowledgeable of indigenous custom.

The new Pacific legal systems have their complexities, are still evolving and are subject to debate and challenge in the legal community and the political sphere, as recent events in Samoa demonstrate.

Since its independence, 'Samoa has sought to build a legal system that supports the modern ideal of democracy without significantly compromising its cultural heritage and uniqueness'.¹ There is an inbuilt tension between Samoan customary law, which 'developed as a means to defend and protect the group (family, village) and 'uphold the authority of *matai*', and a legal system that 'is based on principles of individual rights'. In Samoa, the judges of the Supreme and Magistrate's Courts deal with criminal offences and civil matters, and the *Fa'amasino Samoa* of the Land and Titles Court deal with matters relating to disputes over customary lands and titles. Former Chief Justice Patu Sapolu uses the term 'legal pluralism', to refer to a country with two legal systems.² Recent constitutional amendments that institutionalise legal pluralism have led to deep divisions in Samoa's legal and political communities.

In my view, public debate is a healthy sign of the development and evolution of new Pacific legal systems. It is my hope that this book will provide up-to-date and accessible information to inform these debates.

I acknowledge the many contributors to this volume and the leadership of Emeritus Professors Jennifer Corrin and Tony Angelo. *Fa'afetai tele lava*.

¹ See Patu Falefatu Sapolu et al. 'Law and Custom' in Ellie Meleisea, Leasiolagi Malama Meleisea and Penelope Schoeffel (eds) *Samoa's Journey 1962–2012, Aspects of History* (Victoria University Press, 2012) 18.

² 'Comments to Special Parliamentary Committee' *Samoa Observer* (12 May 2020).

I commend *Legal Systems of the Pacific: Introducing Sixteen Gems* to students, scholars, law practitioners and to all who are interested in the evolving legal systems of the island nations of the Pacific.

Ia manuia.

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ACKNOWLEDGEMENTS

The authors and editors extend their thanks to The University of Queensland and to the Victoria University of Wellington for the support provided for the production of this book. They would also like to thank Dame Winnie Laban for generously agreeing to write the foreword.

The vital support provided by Sir David Carruthers, Lily Fu, Billie Haddleton, Weichu Huang, Madeline Lilly-Howe and Jamie Molea (both for assistance in addition to their authorship), Ian Macintosh, Dr Yves-Louis Sage, and Kari Young is here gratefully acknowledged.

We would also like to thank Intersentia for continuing to support South Pacific scholars and its wonderful staff for assistance in getting this book from manuscript to publication.

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