

ICON-S 2023 CONFERENCE: INDIGENOUS RECEPTION BREAKFAST SPEECH —5 JULY 2023

*Luamanuvao Dame Winnie Laban**

E muamua ona ou ta le vai afei ma ou fa'atulou i le paia lasilasi ua fa'atasi mai. Tulou ou ponao'o Sāmoa i le afio o Tupu ma E'e. Tulou ou Faleupolu. Tulou auauna a le Atua. Ou te fa'atalofa atu i le Paia ma le Mamalu o le aso.

E nga iwi o te motu, te tangata whenua. Tena koutou, tena koutou, tena koutou katoa. Taloha ni. Malo e lelei. Fakalofa lahi atu. Talofa. Ia Orana. Ni sa bula vinaka. Kam na mauri. Kia Orana. Gude tru olgeta frems.

Talofa lava and warm Pacific greetings.

Thank you to the Indigenous Breakfast sponsor Meredith Connell, represented by three Wellington Partners: Sean Kinsler, Fionnghuala Cuncannon and Susannah Shaw.

Tena koe to my colleague Professor Rawinia Higgins, Deputy Vice Chancellor Maori at Te Herenga Waka - Victoria University of Wellington.

Malo e lelei Dr Mele Tupou-Vaitohi, thank you.

The theme of the ICON-S 2023 Conference is 'Islands and Ocean: Public Law in a Plural World'.

I plan to start this morning by talking about 'Islands and Oceans'; then I will talk about two recent Pasifika Law projects that Victoria University has supported that contribute to "Public Law in a Plural World", and I will conclude with some comments about the critical role the law plays in strengthening democracy in Pacific island nations.

Albert Wendt, the master Pacific story-teller, once wrote:

So vast, so fabulously varied a scatter of islands, nations, cultures, mythologies and myths, so dazzling a creature, Oceania deserves more than an attempt at mundane fact;

* Assistant Vice Chancellor (Pasifika), Victoria University of Wellington, Te Herenga Waka.

only the imagination in free flight can hope, if not to contain her, to grasp some of her shape, plumage and pain.

We often recognise the wonderful, colourful plumage of Oceania - the Pacific. We find it harder to recognise the pain.

Climate change, resulting in rising sea levels, is one painful existential crisis our Pacific island nations face. Our island homes, indigenous cultures and our ways of life are at risk. A second painful challenge is learning how to navigate constitutional structures and legal systems that are based on individualism and, at times, alien to our collective, indigenous Pacific island cultures and processes.

The vastness of the Pacific Ocean and the smallness of the islands can lead to the perception that this is a remote and difficult region: tiny islands and large land masses separated by hostile seas.

The late Epeli Hau'ofa, another great Pacific storyteller, advances a Pacific view of the region as

...a large world in which people and cultures moved and mingled, unhindered by boundaries of the kind erected much later by imperial powers. From one island to another they sailed to trade and to marry, thereby expanding social networks for greater flows of wealth. They travelled to visit relatives in a wide variety of natural and cultural surroundings, to quench their thirst for adventure, and even to fight and dominate.

I like Hau'ofa's expansive view of the Pacific as "a sea of islands" linked by an ocean that has been a busy highway for millennia.

Epeli provides a Pacific world view – an indigenous epistemology. He talks of commerce, trade, and the flow of wealth. He talks of the value of family and community relations across distance. He talks of an inter-connected world of economic and political independence. Most importantly Epeli Hau'ofa speaks to us with pride from a Pacific perspective.

Our ancestors have faced existential crises in the past and overcome them through the strength of our collective cultures and by developing responses that are based on a deep understanding of our natural environment and trusting the wisdom of our cultural knowledge.

For example, Sāmoa's indigenous governance has its roots in the *fa'asāmoa* and the *fa'amatai*. Sāmoan custom and traditional leadership refined over millennia have guided our people through many existential crises and will help Sāmoans face today's challenges. Other Pacific communities, and Maori, have access to their own indigenous wisdom.

The Pacific is our context. New Zealand is a Pacific nation. Papua New Guinea is a large Pacific nation. Tuvalu a tiny nation. Despite our differences, the Pacific is our place of belonging.

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 both with Western law and knowledgeable of indigenous custom.

Some Pacific island nations have included indigenous elements into their constitutional arrangements. The Preamble to the Papua New Guinea Constitution is one example; another can be found in Sāmoa's Constitution and its 'pluralist' legal system.

As Pacific island nations moved towards political independence in the second half of the 20th century, Victoria University played an important role: Sir Guy Powles, Professor Colin Aikman, Professor Jim Davidson and others assisted Sāmoa develop its constitutional arrangements that included indigenous elements. They also worked with other Pacific island nations. That tradition continues today. I will describe two recent projects.

Legal Systems of the Pacific – Sixteen Gems, is a recent publication edited by Professors Jennifer Corrin and Tony Angelo. Legal systems of sixteen 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 a discussion of cases of custom and customary law. Importantly, reflecting the growth of the legal profession in the Pacific, most of the chapters were written by local, indigenous authors who are lawyers and authorities on their nation's legal systems.

Legal Systems of the Pacific – Sixteen Gems 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 sixteen countries.

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. We hope that this conference will advance further understanding of indigenous Pacific legal systems.

Establishing legal systems that are based on an understanding of our Pacific context, traditions and cultures are necessary but we also need Pasifika law practitioners who can navigate these systems. Many Pasifika law students have

found it very difficult to get into law school and complete a professional qualification.

The Michael and Suzanne Borrin Foundation funded a Pasifika Legal Education Project led by Victoria University of Wellington, with the participation of law schools throughout Aotearoa-New Zealand. This project had the aims of: providing everyone working in the law space with some guidance on what adequate support for Pasifika law students may look like; increasing the number of Pasifika in the legal profession, and facilitating Pasifika legal practitioners as leaders in the profession.

The project staff used indigenous processes of *talanoa* to gather data on: Pasifika and the Law; and barriers such as: Educational Preparedness; Lack of Belonging in Law Schools; Teaching and Learning Processes; Conflict of Cultures; Equity and Racism and Bullying and Harassment. The project was Pacific led and provides a clear way forward for strengthening Pasifika participation and leadership in the law profession.

On 1 December 2022 *Fofola na ibe - Improving Pasifika Legal Education in Aotearoa* was published, reporting on Equity, Belonging, Power and Authority and setting out research findings and recommendations for Law Schools and Universities, the Legal Profession, and for Government.

I acknowledge the work of Lead Researcher Dr Mele Tupou-Vaitohi, Wiliame Gucake, Associate Professor Guy Fiti Sinclair and Tupe Solomon-Tanoa'i, and commend the project report to all those interested in advancing Pasifika Legal Education.

I have spoken this morning about two projects that have contributed to strengthening Pasifika legal knowledge and practice. I will conclude with a reflection on the critical role the law plays in strengthening democracy in Pacific island nations.

Democratic governance is fragile. Today, it is threatened in many places by populism, polarisation and misinformation.

A recent publication reflected on the indigenous governance of Sāmoa.

Since independence, Sāmoa has sought to build a legal system that supports the modern ideal of democracy without significantly compromising its cultural heritage and uniqueness. There is an in-built tension between Sāmoan 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 Sāmoa the Judges of the Supreme and Magistrate's Courts deal with criminal offences and civil matters and the *Fa'amasino Sāmoa*, Judges of the Land and Titles Court deal with matters relating to disputes over customary land and titles.

Former Chief Justice, the late Patu Sapolu, used the term 'Legal Pluralism', to refer to a country with two legal systems. In most circumstances these two systems run in parallel with few problems. However, matters in the Land and Titles Court that are taken to appeal have been dealt with by the Chief Justice and the Supreme Court, or the Court of Appeal, which leads to difficulties as judges of these two courts do not necessarily have the cultural and language skills to deal with the nuances of judgments regarding *matai* titles and customary land issues.

Chief Justice Patu stressed the importance of constitutional reforms in order for customary practices and traditions to be fully recognised in the Constitution. He once said –

I shed tears many times when giving judgment on a dispute involving individual rights versus communal rights of the chiefs and orators affected. With only individual rights protected by the Constitution, the rights of our leaders in the community must always receive an unavoidable TKO (technical knockout).

It was these matters that led to then Prime Minister Tuila'epa tabling the Constitutional Amendment Bill 2020, the Lands and Titles Bill 2020 and the Judicature Bill 2020. One effect of these Bills being passed into law was to remove the subordinate position of the Land and Titles Court. Significant debate and controversy followed. The passing of the laws did not end the public debate but led to a political crisis and eventually a change in government. The debate continues.

It is important that we have wide public debate on constitutional matters. It is helpful if Pacific island citizens are well informed and understand the different roles and responsibilities of the three pillars of governance. Clearly established and well-maintained boundaries between the Judiciary, the Executive and Parliament are important for effective democratic governance. Universities also have an important role to play promoting research projects and publications, providing educational programmes and promoting and supporting opportunities for informed debate.

This conference is a great opportunity for the people of the Pacific to gather and contribute to debates and discussion on Public Law in the Pacific. I wish you well.

Thank you. Fa'afetai tele lava. Ia manuia!

