BOOK REVIEW: *INTRODUCTION TO SOUTH PACIFIC LAW*

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Jennifer Corrin and Vergil Narokobi Introduction to South Pacific Law *(5th ed, Intersentia, Cambridge, 2022) pp i-lxxxvi, 1- 488.*

Readers familiar with previous editions of this work will be delighted with this, the fifth edition. New readers will discover this book is the key to unlocking the law and legal systems of 13 common law countries in the South Pacific. To say this book is significant is an understatement.

The authors modestly claim in the Preface that the book is an introductory text. It is much more than that. Although it is introductory in the sense that it will introduce many readers to laws and legal systems with which they will have varying degrees of familiarity, it also introduces those readers to the means of pursuing greater in-depth study of those laws and legal systems. This is no mean feat in a region where it can be difficult to locate country-specific case law, statutes and legal writing. The authors have done enormously important work to bring these disparate sources together in one accessible text.

The fifth edition updates the law stated in the fourth edition which was published in 2017 and adds Papua New Guinea to the countries covered in the earlier editions. Much has happened since 2017, including the pandemic which inevitably slowed down the development of the law (and created a rather niche field of pandemic procedural law) by courts and legislatures. Nevertheless, the book incorporates consolidations of the law in Fiji, Tonga and Tuvalu, as well as a number of significant judgments handed down in other jurisdictions notwithstanding pandemic challenges.

Rather than discretely describing the law in each country, the book is structured topically. The structure facilitates comparison of, for example, administrative law in each jurisdiction, which allows the reader to have greater contextual understanding

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of how and why administrative law in the country the reader is interested in might differ from that in neighbouring countries. The structure forces a more detailed focus on topics that might otherwise have received shorter shrift in a structure merely attempting to describe the entirety of each country's laws chapter by chapter.

Accuracy in describing laws is important, and accuracy in description permits sounder analysis. The authors have delivered both accurate, well-sourced descriptions and sound analysis. They have also thrown down a challenge of sorts. The first three chapters set out, in turn, South Pacific law and jurisprudence, state laws, and customary law. The last chapter sets out the hierarchy, constitution and jurisdiction of each country's courts. The remaining chapters discuss the topics of constitutional law, administrative law, criminal law, family law, contract law, torts law, and land law.

The challenge is found throughout the book, but particularly in the first three chapters. The challenge is to lawyers, courts and legislatures to rely less on overseas law and legal systems and to develop, as much as individual cultural and national factors permit, a local, sub-regional and regional jurisprudence. The existence of custom and customary law make this fertile ground, or should I say bountiful ocean, on which to develop this jurisprudence. But there are barriers to this development, not least of which are the inherent conservatism of the legal profession and a reluctance to depart from established ways of doing things even when there is precedent of sorts - much older customary ways of doing things that existed before the common law and western legal systems were imposed on these countries. The argument is not that the common law and western legal systems are bad – indeed, both have facilitated commerce throughout the region – the argument is that people should be open to their modification where appropriate by recognising pre-existing custom and indigenous values throughout the region.

Achieving a happy marriage of custom and common law to reflect communities that the law serves also depends on judges, lawyers and legislatures recognising the value inherent in each, and the many sources of law available to them. The authors identify five sources of law in each country: a written constitution (usually drafted with varying degrees of eloquence by Foreign and Colonial Office officials just before independence); pre- and post-independence legislation passed in the country concerned; legislation passed in the metropolitan country and applied or adopted in the country concerned; unwritten rules of common law and equity; and unwritten rules of custom and customary law.

The authors use these sources of law as a framework to discuss how each country is developing the law; and it is very much a dynamic process. Each source in each country also comes with its own procedural and burden of proof issues which

sometimes fall to be resolved by the many foreign judges sitting in the senior courts of these countries.[1] The varied sources of law, the substantive content of the law originating from each source, and the training of the lawyers and judges, are all factors that challenge the development and achievement of regional and subregional jurisprudence. These same factors however will inevitably make regional and subregional jurisprudence richer and distinctly identifiable as South Pacific jurisprudence when it is eventually achieved.

The sources of law become important when the law is discussed in the chapters on each of the countries' courts. The authors discuss many cases dealing with how customary law, common law, constitutions and statutes interact with each other. These cases have been decided by senior courts the membership of which often include judges from Australia and New Zealand. One might expect that foreign judges fall back on the common law because they know it better than the customary laws of the countries in which they serve, or that foreign judges require proof of customary law as though it were fact, but the authors point out that is not always the case. There are glimmers of hope that judges, including foreign judges, are engaged with the issue of reconciling customary law with the other sources of law.

The authors discuss several examples of foreign judges who recognise the issue exists in their judgments. For example, in 2007, Cannings J, an Australian judge sitting in Papua New Guinea, nullified a common law rule concerning employees' rights and replaced it with an underlying customary law rule (with the help of the Underlying Law Act) but was overturned on appeal.[2] The flip side of this issue is that the application of customary law may yield a result some might view as inconsistent with evolving trends in international human rights law. In *Re MM*,[3] Harrop J, a New Zealand judge sitting in Vanuatu in 2014, took account of custom authoritatively said to prohibit the adoption of a ni-Vanuatu female child by a single gay adult male, after finding the specific British part of the law of Vanuatu proscribing the adoption of an infant female by an adult male prevailed over the general and more permissive French provision. Although the decision may not have been uncontroversial[4] in some communities, it described robust advocacy delivered

1 As an aside, readers would be well served by reading Dr Anna Dziedzic's book *Foreign Judges in the Pacific* (London, Bloomsbury Publishing, 2021) as a companion piece to the present work. Each book explores, from a different perspective, how the nationality of judges serving in foreign countries affects the development of jurisprudence in those countries.

2 Sukuramu v New Britain Palm Oil Ltd [2007] PNGC 21.

3 *Re MM* [2014] VUSC 78.

4 The judgment is discussed in Sue Farran, "Child Adoption: A Dilemma in a Plural Legal System: A Critical Comment on Recent Case Law", [2014] Journal of South Pacific Law C-14.

by expatriate and ni-Vanuatu lawyers, and engagement by the foreign judge, both with this issue, and with s 95(2) of the Vanuatu Constitution which requires judges to apply French and English laws "and wherever possible taking due account of custom." There are many other examples in this book of how the interaction among the sources of law in South Pacific jurisdictions forges new jurisprudence, an interaction that many of the old colonising countries have yet to fully engage with. My mention of just two of these cases belies the breadth and depth of this book's jurisprudential analysis. And, I would venture to say, by adding Papua New Guinea to the list of countries that already included Vanuatu and 11 other countries, the mere act of publishing this book could well speed up the development of subregional and regional jurisprudence.

The authors' discussion of each country's domestic law is enriched by the framework in which the discussion takes place. I do not know enough about the law in each jurisdiction to comment on the accuracy of the analysis, but there is no reason to doubt it. The authors have made use of local lawyers and have provided an enormous number of references to ensure the accuracy of the analysis, its reliability, and more importantly, to enable deeper exploration of the substantive law in each country. It is really for this reason that I think the book has the wrong title. I have already said this book is much more than an "Introduction to South Pacific Law". It would be more accurately titled "A Comprehensive Analytical Survey of South Pacific Law" but that title may not perhaps appeal to a wider audience.

Each edition of this book improves on the previous. I consider the current edition is indispensable not only to law students, but to legislators, practitioners, and judges who make, advocate and apply the law in the common law jurisdictions of the South Pacific. I expect to see well-thumbed copies of this book in the hands of lawyers and law students throughout the South Pacific within a very short time.