

# BOOK REVIEW: *LEGAL SYSTEMS OF THE PACIFIC: INTRODUCING SIXTEEN GEMS*

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*Book Review of Jennifer Corrin and Tony Angelo (eds) Legal Systems of the Pacific: Introducing Sixteen Gems (Intersentia, Cambridge, 2021) pp i-lvi, 1-454.*

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It was with great excitement that I opened *Legal Systems of the Pacific: Introducing Sixteen Gems* (which, through its development, came to be known simply as *Gems*): a new collection providing an overview of the legal systems of 16 states, countries and territories in the Pacific Islands region. The last collection to comprehensively draw together descriptive material on jurisdictions in the region in this way was *South Pacific Island Legal Systems*, edited by Michael A Ntumu and published in 1993.<sup>1</sup> As I explain below, despite its age, that collection had remained for many a useful source from which to embark on research on many of the jurisdictions it covers, but is now well out of date. An updated collection is long overdue (indeed, in a review of Ntumu's collection by Jennifer Corrin way back in 2001, it was noted "a second edition would be very welcome").<sup>2</sup>

It is perhaps fitting then that almost 30 years later, it is Corrin and Tony Angelo (the latter of whom who served on the editorial committee for Ntumu's edited volume) who embarked on the task of compiling a refreshed volume. In this volume, the editors have sought not only to provide an up-to-date reference on the legal systems of the Pacific Islands region (with a primary focus on the South Pacific), but specifically to provide an *insider's* view of those systems. Corrin's review of the Ntumu volume, noted the diverse locations from which contributors were drawn as including "De Paul University, Chicago and City Polytechnic, Hong Kong".<sup>3</sup> In my view, one of the greatest contributions of *Gems* is that the diverse locations from

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1 Michael A Ntumu (ed) *South Pacific Islands Legal Systems* (University of Hawai'i Press, Honolulu, 1993).

2 Jennifer Corrin Care "Review: South Pacific Island Legal Systems" (2001) 5 *Journal of South Pacific Law*, available at <<http://www.paclii.org/journals/fJSPL/vol05/8.shtml>>.

3 Above, n 2.

which the majority of the contributors are drawn are the many jurisdictions under study. The editors approached the volume with the goal of having each contribution authored by a local lawyer who is an emerging authority, and achieved that goal in respect of 10 out of the 16 jurisdictions covered.<sup>4</sup> As a result, the reader has the benefit of an insight into the legal systems that is informed not only by a thorough understanding of the law, but also by a thorough understanding of context – the importance of which is well understood by comparative lawyers.

The 16 chapters of the volume cover 16 jurisdictions across the three subregions of the Pacific: Polynesia, Melanesia and Micronesia.<sup>5</sup> Perhaps somewhat uniquely, the volume covers both those jurisdictions that might be described as having a French colonial background (Polynésie Française, Nouvelle-Calédonie, and Wallis et Futuna, and Vanuatu which was for a time a French-British condominium) as well as those that might broadly be described as having a British (including Australia and New Zealand) colonial background. As the editors note, interesting points of comparison arise from reading these chapters together in terms of seeing the "influence of historical background on post-colonial laws".<sup>6</sup> The inclusion of these French-language jurisdictions also makes an important contribution in presenting a window into these systems for English-speaking lawyers and scholars. Not included in this collection in terms of Pacific island jurisdictions are those jurisdictions, the legal systems of which have been more heavily influenced by the United States. Most, though not all, of these jurisdictions are in the North Pacific, and they include the states in free association with the United States (the Federated States of Micronesia, the Republic of the Marshall Islands, and Palau), non-self-governing territories of the United States (American Samoa and Guam), and the Commonwealth of the Northern Mariana Islands.

Each chapter in this volume is organised along similar lines: beginning with a section on Context, then generally looking at Sources of Law; Constitutional Law; the Legal Profession (some chapters only); the Law of Persons; the Law of Obligations; Property Law; Commercial Law; Revenue Law; Environmental Law; Natural Resources; Criminal Law; International Law; and Civil Society Organisations. Not all chapters cover all these topics (though all cover most), and

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4 Tony Angelo and Jennifer Corrin "Introduction" in Tony Angelo and Jennifer Corrin (eds) *Legal Systems of the Pacific: Introducing Sixteen Gems* (Intersentia, Cambridge, 2021) at 1. Of those 10 chapters, most are authored by Indigenous lawyers, and those that are not are authored by at least one lawyer who has lived in the relevant system for a long time.

5 These are the sub-regions commonly used in discussing the region, though they are not unproblematic, nor are they uncontested: above, n 2, at 2.

6 Above, n 5.

some chapters have additional sections to take into account specific issues relevant to the jurisdiction under consideration: for example, the chapter on Kiribati includes a section on Banaba (an island of Kiribati which is unpopulated due to phosphate mining – the Banabans relocated to Rabi in Fiji but have the right to return to Banaba, as well as special protections in the Kiribati Constitution).<sup>7</sup> Each Chapter also ends with a very useful Bibliography.

Different chapters place different emphases on each of the topics under consideration, some of which is a result of the importance of particular areas of the law for particular jurisdictions, and some of which the result of the particular interest and expertise of the authors. On the former, for example, the book covers jurisdictions with a range of political statuses: independent states, self-governing states in free association, and non-self-governing territories. As such, the chapters on non-self-governing territories (French Polynesia, New Caledonia, Pitcairn, Tokelau, and Wallis and Futuna) necessarily focus on the division of legal competencies between the administering power and the relevant jurisdiction, as well as the substance of the law.

I come to this collection as a junior researcher interested in comparative constitutional law, and as someone with some experience researching in jurisdictions in the Pacific (and – a disclaimer – much of this work under the guidance of Professor Angelo, who has been a very important mentor, both to myself and to many many others). In that context, I want to make two comments on the contribution of this collection beyond those I have already made.

First, the chapters in this collection are largely descriptive, but the endeavour involved in producing a descriptive account of many of these legal systems cannot be underestimated.<sup>8</sup> Nor can the importance of both the bibliographic and descriptive material the collection provides. I know from firsthand experience how difficult it can be to pull together up-to-date primary legal material from many Pacific island jurisdictions. The website of the Pacific Islands Legal Information Institute (PacLII), based at the University of the South Pacific School of Law, makes a massive contribution in collating and hosting legal materials from 20 Pacific Islands countries in a way that is accessible to those not located on the ground,<sup>9</sup> but it is "a work in

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7 *Constitution of Kiribati*, chapter IX; Jennifer Corrin "Kiribati" in Tony Angelo and Jennifer Corrin (eds) *Legal Systems of the Pacific: Introducing Sixteen Gems* (Intersentia, Cambridge, 2021) 93 at 116.

8 A point the editors also make in their Introduction: Angelo and Corrin "Introduction", above n 4, at 1.

9 On this, see further Jennifer Corrin "Legal Scholarship and Pacific Islands' Jurisprudence" (2021) 26 *Comparative Law Journal of the Pacific/Journal de Droit Comparé du Pacifique* 139 at 160.

progress", and so does not have a complete collection of materials from all jurisdictions for a variety of reasons.<sup>10</sup> As the editors also note, not all jurisdictions produce law reports or compilations of legislation;<sup>11</sup> and even where they do, these may not be readily available outside the jurisdiction. As such, the work the chapters in this collection do in describing legal systems, as well as in compiling the law and in creating bibliographies, is invaluable to those doing research in the region. It is for this reason that I noted at the outset that the collection edited by Ntuny remained a valuable, though well outdated resource, for those researching in the region.<sup>12</sup>

Second, and building on that, the editors note that alongside its descriptive interest, "[t]here is also comparative interest in the collection: in the continued influence of the historical background in the post-colonial laws; in inter-country comparisons".<sup>13</sup> On the latter the editors note the differing extents to which the various legal systems integrate custom and customary law with introduced law as one point of comparative interest. I believe there is much else of further comparative interest in the collection – both as concerns comparative research within the region, as well as more broadly.

In the field of comparative law there is a growing groundswell of recognition that there is a need to look beyond large and well-studied jurisdictions (often called the "usual suspects"<sup>14</sup>) to other jurisdictions, and particularly to those jurisdictions that might be characterised as belonging to the "Global South" (which includes many of the jurisdictions in the Pacific islands region, although they are often forgotten in broader global discussions).<sup>15</sup> This is for a whole host of reasons, including that

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10 These include intermittent supplies of materials, digitisation backlogs, and challenges related to the quality of original materials. See generally "Frequently Asked Questions" PaCLII <<http://www.paclii.org/paclii/FAQ.html>>.

11 The contributions of Tony Angelo and his research staff have been important in compiling legislation in some of the relevant jurisdictions, see for example *Niue Law | Tau Fakufono-Tohi a Niue: Legislation as at December 2006* (Government of Niue, Alofi, 2006) available at <<https://www.gov.nu/wb/media/Volume%201.pdf>> (compiled by Professor AH Angelo with the assistance of Nicole Scott).

12 Jennifer Corrin and Don Paterson *Introduction to South Pacific Law* (4th ed, Intersentia, Cambridge, 2017) also published by Intersentia, is another important resource for this purpose.

13 Angelo and Corrin, "Introduction", above n 4, at 2.

14 Ran Hirschl *Comparative Matters: The Renaissance of Comparative Constitutional Law* (Oxford University Press, Oxford, 2014) at chapter 5.

15 See eg Philipp Dann, Michael Riegner and Maxim Bönnemann (eds) *The Global South and Comparative Constitutional Law* (Oxford University Press, Oxford, 2020); The concept of the Global South is a contested one: the authors of that collection note that, while the contributors to the volume taken different approaches to the concept, they as the editors see the concept as capturing "a distinctive constitutional experience" characterised by a shared context and shared themes: Philipp Dann, Michael Riegner and Maxim Bönnemann "The Southern Turn in

doing so will pluralise and enrich the discipline, and improve understandings of constitutional law globally.<sup>16</sup>

There is also growing interest in the legal systems of small states and territories in a broader comparative sense – a category to which most of the subjects of *Gems* also belong.<sup>17</sup> Small states have been an abiding interest of Angelo and Corrin, and they have recently edited two collections on this topic (published as Special Series of this Journal), but it is also a topic that has generally "attracted little attention in academic legal circles".<sup>18</sup> In the field of comparative politics, for example, it has been noted that small states (which can be defined in a number of ways, but often taken to be those with a population of less than 1 million) have often been excluded from studies and analyses, at the cost of distorting understandings of phenomena under study.<sup>19</sup> My own work with Maartje de Visser has noted that small states are similarly often left out of comparative constitutional law.<sup>20</sup>

Comparative work is a collaborative endeavour, which requires a solid foundation of description to enable the thick, and context-informed accounts necessary to inform broader analysis. Without the work of those who contribute to reference collections such as *Gems*, the broader comparative work is simply not possible.

*Gems* is an invaluable and meticulously researched book that should find a place on the bookshelves of any legal practitioners, students and researchers interested in the legal systems of Pacific island states and territories, as well as those with broader comparative interests. It is dedicated to the memory of Don Paterson, founder of the University of the South Pacific law school, a giant of Pacific legal scholarship, and

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Comparative Constitutional Law: An Introduction" in *The Global South and Comparative Constitutional Law* (Oxford University Press, Oxford, 2020) 1 at 3.

16 Dann, Riegner and Bönnemann, above n 15 at 30–37.

17 See eg Petra Butler and Caroline Morris (eds) *Small States in a Legal World* (Springer, Cham, 2017); and in the field of comparative politics, see eg Jack Corbett and Wouter Veenendaal *Democracy in Small States: Persisting Against All Odds* (Oxford University Press, Oxford, 2018).

18 AH Angelo and Jennifer Corrin "Editorial Note/Avant-Propos" in AH Angelo and Jennifer Corrin (eds) *Small States: A Collection of Essays* (New Zealand Association of Comparative Law, Wellington, 2019) 3 at 3, available at <[https://www.wgtn.ac.nz/\\_data/assets/pdf\\_file/0012/1738794/Editorial-Note.pdf](https://www.wgtn.ac.nz/_data/assets/pdf_file/0012/1738794/Editorial-Note.pdf)>; AH Angelo and Jennifer Corrin (eds) *Small Countries: A Collection of Essays* (New Zealand Association of Comparative Law, Wellington, 2019), available at <<https://www.wgtn.ac.nz/law/research/publications/about-nzacl/publications/special-issues/hors-serie-volume-xxiv,-2019>>.

19 Wouter P Veenendaal and Jack Corbett "Why Small States Offer Important Answers to Large Questions" (2015) 48(4) *Comparative Political Studies* 527.

20 Maartje de Visser and Elisabeth Perham "Variables Shaping Participatory Constitution-Making: Insights from the Small State Experience" (forthcoming, *International Journal of Constitutional Law*).

a mentor and friend to many. In the Introduction, the editors note it is for a "future team to achieve the ideal" of a reference book on Pacific Legal Systems authored entirely by local lawyers.<sup>21</sup> In finishing this review, I would like to acknowledge the work of the editors themselves in supporting and mentoring many such lawyers.

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<sup>21</sup> Angelo and Corrin, "Introduction", above n 4, at 1.