

PACIFIC LEGAL STUDIES AT VICTORIA UNIVERSITY OF WELLINGTON 1983 TO 1987

by
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The teaching of this subject in Wellington is now in its third year. When originally mooted in the Law Faculty in 1982 it was decided that the programme should be offered every second year. That plan has been maintained to date. Though the numbers enrolled in the course have not been large they have, relative to the other half subjects with which Pacific Legal Studies is grouped, been good.

The range of students to date seems to be typical of the range of students in the Law Faculty. The only unusual factor which may or may not be indicative of a trend is that of the fifteen enrolled in the programme this year thirteen are female. Most students enrol out of interest and are anxious to learn something about the life and customs of those in the Pacific regions to the north of New Zealand.

A short paper was presented to the South Pacific Legal Studies interest group at AULSA in Auckland in August 1983. That paper set out the background to the programme at Victoria and also commented on the first month of experience with it. That paper and the course programme for 1983 is appended to this comment as Appendix 1.

In February 1984 the 'experiment' of 1983 was subjected to scrutiny by the Faculty and extracts of the paper prepared for that purpose by the teachers of the course are appended as Appendix 2.

As might be expected from the responses to the course evaluation questionnaires in 1983 (Appendix 2) the programme for 1985 had a different bias from that of 1983. The course programme was not substantially changed but the background and descriptive material was presented in a less detailed and less extensive form in 1985, and two or three weeks then spent on dealing specifically with customary matters. The customary context was Tokelau and the statements on Tokelau custom by the elders of each of the three atolls were distributed in translation and formed the basis of class discussion. The constitutional/international law part of the programme was dealt with in the second half along lines similar to those used in 1983.

In 1987 the course has evolved further. Two members of staff teach the programme and, both because of their interests and the political and practical importance of the issues internationally and domestically at the moment, the focus has been placed on self-determination. The programme is in two related parts. The first deals with pre-act of self-determination matters with Tokelau as the example: the relationship of law and custom in a Pacific island jurisdiction, the minimum legal requirements of the UN in terms of reaching the appropriate level of self-government for the exercise of a right to self-determination, and the steps that that jurisdiction (Tokelau) has to take in terms of its legal system to enable it validly to exercise its right of self-determination.

The pattern of classes, in discussing what would be required for self-determination in Tokelau was to consider the existing law, the existing conditions of the islands, the UN requirements and the steps, if any, that would have to be taken in respect of legislative power, judicial power, financial control, administration, public servants and international relations in order to reach the necessary UN standards.

The changeover point in the programme is a brief consideration of the spectrum of alternatives available to a territory at the exercise of its right to self-determination.

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The second half of the programme deals specifically with the experiences of selected self-determined jurisdictions (specifically the Cook Islands, Western Samoa and the Marshall Islands, with comparative references as time permits to the situation in French Polynesia) and their choice of self-determination model. This study will in turn provide a basis for reflection about the steps towards self-government that were considered in the first half of the programme.

The programme for 1987 is in Appendix 3. It will be noted that it does not differ greatly from that for 1983. What that perhaps indicates clearly, is the feeling that the particular mix and goals that were set out in 1982 is right. It also indicates that the staff resource available and the practical issues of the moment can vary the emphasis within the programme, that it provides an appropriate balance of issues yet retains the flexibility necessary in an option with the law degree, and negatively that the overall scheme is much more than could be handled in a half year programme in the way the material is dealt with here.

Interim course evaluations continue to suggest that while the programme is good, and better than no such programme, it could well be a full year course. Equally, the question of the custom/law balance in the programme continues to attract comment. The comment is not as strongly anti-law as in 1983 but is still there. The nature of the comment in 1987 and the feelings of the teachers as a result of their experiences with the programme over the last three years suggests that the custom/law balance is now about right with custom being the specific focus of about a sixth of the programme and an integral feature of about another half of the programme.

The research topics for 1987 are as varied as in other years; they include —

The Tokelau Divorce Regulations 1987 — custom in the law

Constitutional development in Palau

Palau and the nuclear-free zone issue

Loumia v DDP (Solomon Islands Court of Appeal)

The Womens Convention and custom in Tokelau

Early twentieth century constitutional development in the Cook Islands

New Zealand's immigration policies and their effect for Pacific island peoples

Women's rights with specific reference to abortion

The tuna fishing agreement with the USA

The power of the ariki in the Cook Islands Constitution

British colonial legislation and the preservation of cultural differences — Fiji and Ceylon

Can there be fee simple land in Tokelau?

Protection of cultural material by use of copyright law.

Exam questions used to date are in Appendix 4. In addition to the handouts of previous years, materials that have been issued for the first half of the 1987 programme include —

Projection of Pacific Ocean (map-unmarked)

Tokelau Amendment Act 1986

Powles 'Law and Government in Central and South Pacific'

Solomon Islands and Tokelau poems relating to independence, colonialism, and race.

While in the last two years the main, though not exclusive, focus has been on legal problems of Cook Islands and Tokelau, the issues dealt with are those of general concern and the experiences of those two jurisdictions that have been studied are those relevant in small jurisdictions generally.

Very few issues in the Public Legal Studies area can be dealt with without a consideration of custom. However the lawyers in the field usually meet custom in the context of a law problem and the main approach at Victoria has been to deal with custom in that context.

Although there are many Pacific Island residents in New Zealand, and on campus and in New Zealand a professed Pacific interest, programmes and students are still traditionally oriented. The Pacific, like Asia, is not well reflected in courses here — there is still a European orientation with prime attention to commercial law and common law topics. This attitude is doubtless fostered by the familiar culture and language, and the substantial materials in the traditional law study areas.

The Pacific Legal Studies course at Victoria University has not only served as a useful counterbalance in law degree but has also produced other positive benefits. These include the generation of new material (e.g. the Pacific issue of *V.U.W.L.R.* — Volume 14 (1984) and a significant volume of Pacific material in 17 *V.U.W.L.R.* (1987), Pacific materials being utilised in other courses (e.g. *Law in Society* — the first year programme), graduates working in Pacific jurisdictions, a teaching link for academic research in the Faculty which was previously isolated, interdisciplinary interaction e.g. with Anthropology, and an increased awareness of the Law aspect of issues in the Pacific (with a change in practice by Government departments from simple administration to a concern to investigate the role of law).

The AULSA special interest group has been a great support to the teachers here and much as been learnt from those who have initiated and taught similar courses. This issue of this journal is especially welcome.

Appendix 1
Pacific Legal Studies at VUW
The First Year, and First Steps

Introduction

When the teaching of 'Pacific Legal Studies' was being arranged at VUW a degree of isolation and remoteness from those with similar interests and from those teaching related programmes was felt. I am therefore grateful for this opportunity to inform others with interests in the Pacific Law area of what is being done at Victoria, the difficulties we have encountered and how we are seeking to meet them.

We hope in turn that those with practice in the teaching of the subject, the gathering of relevant materials and the maintenance of contact with the jurisdictions which are the subject of our mutual interest, may take this opportunity to share their experience with us. This paper presents no thesis or research results. It is hoped nevertheless that it may provide the basis for a useful exchange of ideas on matters of increasing importance in this part of the world.

Background to the introduction of the course

In 1982 the Law Faculty at Victoria University decided to offer, on a trial basis in 1983 and 1984, four half subjects (nominated in the University Calendar as Part IIIC subjects) for the LL.B. degree. Prior experience in the Faculty had been principally with full year courses and a fairly limited range of options. Hence the desire to have the half subjects (also half year courses) on a trial basis in the first instance.

Faculty set down certain guidelines for the conduct of the courses and it was decided that each should consist of a programme of two hours lectures per week for 12 weeks and conclude with a two hour final exam. Further it was provided that 40% of the final mark in the subject should come from work done during the programme.

Faculty and students were invited to suggest suitable subjects for the programme and considerable time and effort went into the selection of the subjects that should be offered. Of the several suggestions that were put before Faculty was one, presented by students in the Law Faculty and supported by the law students' club, that proposed a Pacific Legal Studies unit. In a two page submission the students concerned gave reasons why they thought the course would be a valuable one, suggested topics for consideration in it, indicated staff with possible interest in teaching the course, and offered support in terms of informing the student body of the nature and availability of the programme.

The main points in the students' submission were:

1. That there was no teaching of Pacific Law in any of the Pacific Island States and that New Zealand universities should therefore accept a wider responsibility than simply that of teaching New Zealand law.
2. That many graduates of the university would encounter legal problems from the Pacific during their professional careers either in New Zealand or elsewhere and that some introduction to those problems would be desirable.
3. That such a course would be of particular interest and value to students from the South Pacific region who would be studying in the Faculty and then returning to their homes outside New Zealand.
4. That Victoria University, situated as it was in the capital of New Zealand, was well-placed to provide such a course.
5. That all other matters apart, Pacific legal issues were topical and of interest and relevant to New Zealanders generally.

In terms of course content the focus of the student proposal was on constitutionalism in emerging and newly independent Pacific Island States, the inter-relationship of selected aspects of customary law with the inherited Western-style law, aspects of commercial and

property law, and international law issues as they effect the states in the region with particular emphasis on the law of the sea.

In the result, Faculty approved, as one of the new Part IIIC subjects, the establishment of a Pacific Legal Studies course paired with a Maori Land Law course, each to be offered in alternate years.

A course programme for 1983

The Faculty over a long period, both in terms of individuals and in a cumulative sense, had a wide range of experience in Pacific Island legal matters. In terms of the current staff who have Pacific law experience, responsibility for developing the 1983 programme came to rest with Alex Frame, Professor Quentin-Baxter and me. Enthusiasm for the programme was tempered by the need to formulate a cohesive course from our different backgrounds of Pacific Island legal experience. The matter and method of the programme was therefore the subject of extended consultation. What was sought was a common base from the specific interests of the three to provide an acceptable academic and professional direction for an introductory course.

The result of our deliberations is seen in the course outline attached. It was submitted to Faculty members for comment and was also considered by the students before the programme began in July this year. We are now in the process of developing it in a living form and learning rapidly what can and cannot be successfully done in courses such as this and are also gaining some sense of the balance that has to be kept between a feeling for the common nature of many of the problems experienced in each of the jurisdictions and a sufficiently detailed study of some of the jurisdictions to make the true nature of the problem comprehensible.

No prerequisite was required for taking the course, though in counselling students we suggested that a pass in Constitutional Law was important (in fact most students would have passed Constitutional Law in their second year and would study Pacific Legal Studies in their fourth or final year), and that a past or concurrent enrolment in International Law or Comparative Law would be very helpful.

There are 23 in the class and in discussions with those students on the first day we found that all of them had a positive reason for enrolling in the programme and most were highly motivated in respect of some specific aspect of the course.

Texts

A significant problem we have found in the area both in terms of this programme and in our own work has been that texts are few and far between. While there is a considerable volume of material available much of it is not in public domain or accessible and much is also in a form which librarians would describe as ephemera and therefore not worth storing or accession listing.

We decided against including any general cultural historical or other non-legal data in the programme and have assumed that students will either have the necessary background or will in their personal reading endeavour to acquire the necessary background and cultural awareness. We did however draw student's attention to Metge and Kinloch, *Talking Past Each Other* (V.U.P.), Crocombe, *The Pacific Way* (U.S.P.), and the Pacific Islands Yearbook.

Because of their ready availability in Wellington and our desire that students should have some relevant materials before them in class during the programme we prescribed the principal statutes for the Cook Islands, Niue and Tokelau as the main texts. Since establishing that list the results of the 1982 Canberra Conference have come to hand and substantial reference will now also be made to *Pacific Constitutions* (ed. Sack) because the

range and content of that collection correspond very closely with what is seen as the range and content of the Pacific Legal Studies course.

On the first day, by way of background reading, students were given both 'Legal Resource Needs in Small States — the Need for New Initiatives' by Keith Patchett (7 *Commonwealth Law Bulletin* 1096) and 'Law in the Pacific Island States' by Dr C.G. Powles (8 *Commonwealth Law Bulletin* 1189). Additional materials and reading lists have been distributed to students as appropriate to the material being handled in class.

Content

The range of the programme is developed under three themes: the relationship of imported law and custom, constitutions and checks and balances in small societies, independence/free association and international relations. In the limited time available it is not expected to cover all or even most of the issues listed in respect of the jurisdictions designated as within the range of the course. The programme was drafted to be as much indicative of the direction of the course as a catalogue of what will actually be covered in it. Further the broad indications were seen as better providing scope for the individual student essays to be written during the course. However most of the matters specified in the themes will be addressed either at a general regional level or in some greater detail in respect of a sample jurisdiction.

The aim is to alert students to the sort of environment that they are likely to find in a Pacific legal jurisdiction if they are working there and also to provide them with a set of core principles or of experiences or ideas that will assist them to find their way within the system and to do their job effectively.

The topics of classes to date

The first month of the course has been devoted to the development primarily of aspects of the first theme. This will provide a general background against which more specific studies of problems confronted in the jurisdictions may be understood. The first matter considered with the group was from what sources did the Western law come? By what means and for what purposes did the Common Law become established in, for instance, Fiji, or Solomon Islands? Consideration was given to the role of the admiralty laws and the promulgation of specific statutes for the Pacific area culminating in the establishment of the Western Pacific High Commission.

From this base each student then 'adopted' a jurisdiction and investigated its current system of laws with the aim of designating in respect of that system what the current sources of the law are. The discussion of the particular sources which followed highlighted the presence in most jurisdictions of a written constitution as the supreme law and of a number of lesser sources which in most cases excluded any reference to custom as a primary source of law. The list of primary sources of Tokelau [ss 4 to 8 to Tokelau Act 1948] illustrated the ranking difficulties.

Our next concern was to establish for each jurisdiction the meaning of particular legal sources listed. The difficulties inherent in interpreting many of the phrases such as 'The law of England as existing on . . .', 'The Acts . . .', 'of general application' or 'save so far as inconsistent with this Act or inapplicable to the circumstances of . . .', and in determining the relative ranking of the various listed sources provided a lead into discussions of the need for 'back-stopping' devices, alternative ways of formulating the necessary rule in today's context, and the relationship of custom to the legal source.

In the third week the role (legal or otherwise) of customary practices within the various jurisdictions, their relevance to daily life, and their status as custom *secundum legem*, *praeter legem*, or *contra legem* was considered.

Typically land rights are reserved by the legislation for control by custom and special provision made for enjoyment of those rights only by members of the local community.

Beyond that, in the traditionally strong custom areas of property rights (not involving land), interpersonal relations, and social order, most states have legislation which follows Western secular patterns and which makes no overt allowance for local habits. These are areas of tension and potential friction in the societies where, as in Tokelau, the community has little contact with the statebacked system and continues to live by and enforce norms that are different from and often in conflict with the law e.g. by fining those who commit adultery or absent themselves from church when neither is an offence at law; or by imposing a sentence of community work when there is jurisdiction only to fine or imprison.

In other areas of law not a traditional domain of custom there may not be much legislation, but in those areas legislation is less likely to be a source of friction with the traditional rules of conduct of the community.

Having thus established in a basic technical way the nature of the rules of law applicable in the jurisdictions, we dealt with the personal and material resources available for the operation of the legal system. In this matter the data and assessments in the report of Dr G.P. Barton to the Commonwealth Secretariat on the Legal Resources in Pacific Island States was invaluable. A comparison of resources with the metropolitan states provides some startling contrasts and raises a number of questions. Are extensive legal resources, material or personnel, required to make the Common Law system operate? Does the nature or viability of the system change in the Pacific jurisdiction because of the absence there of the resources that are typically connected with the Common Law system? Again in this context the role of custom arose for consideration and (trying not to be ethnocentric) the need for Western law at all in some of the jurisdictions. If European law is needed, in what area and for what purposes? And if it is considered that there are matters for which Pacific Island States need Western style law, then in the present absence of resources to operate that law, what are the answers available to the states concerned? What is the role of the expatriate lawyer?

In order to give additional background for the discussion of these matters in the context of the themes the following papers were set as prescribed reading for the class —

Ottley & Zorn, 'Criminal Law in P.N.G.: Code, Custom and the Courts in Conflict' 31 *A.J.C.L.* 251;

Hooper, 'Land Tenure in the Tokelau Islands', S.P.C. Symposium on Land Tenure 1969.

Hooper, 'Aid and Dependency in a Small Pacific Territory', Univ. of Auckland (1982).

Future classes

In August attention will shift to primary concern with the second theme and to specific problems and cases in the constitutional law field such as the inter-relationship between fundamental human rights and customary practices as evidenced for instance in the Western Samoan case (*Attorney-General v. Olomalu*, 26 August 1982). Similarly a fairly detailed and contextual case analysis will be made of the recent Cook Islands constitutional decisions and *Attorney-General of Fiji v. D.P.P.* [1983] 2 W.L.R. 275.

September will see further discussion of constitutional law issues and the primary development of the third theme. There will be an introduction to and consideration of international law issues that are of critical practical importance to the Pacific Island states and which, in their own right, are not without academic interest.

Written work

At the completion of the general background survey, students are required to designate the topic of their individual piece of research. While the level of performance required cannot be set too high given the nature of the programme, the topics will be of a strictly limited nature and it is hoped that the programme of work will produce a body of useful

material or study aids for future researchers and students in the course. The course should in fact generate some of its own materials.

PACIFIC LEGAL STUDIES (1983) — COURSE OUTLINE

Texts:

(a) The following texts should be acquired for use in the course:

Pacific Courts and Justice (U.S.P., Suva, 1977)

Cook Islands Reprint 1977 (Gov't Printer, Wellington)

Niue Reprint 1976 (Gov't Printer, Wellington)

Tokelau Reprint 1977 (Gov't Printer, Wellington)

Constitution of Fiji [subject to availability]

(b) Additional materials will be distributed in class.

(c) General reference text:

Roberts-Wray *Commonwealth and Colonial Law* (Stevens, London, 1966).

Prospectus description:

This course will trace the development of modern legal systems in Pacific states. The relationship of custom (including land tenure) to imported and enacted law, the problems of creating checks and balances in the constitutions of small societies and the legal implications of independence or free association will provide themes for the course.

Course programme:

Materials for the course will relate to the Cook Islands, Fiji, Niue, Solomon Islands, Tokelau, Tonga and Western Samoa.

The three themes of the course will focus on the materials in the following way:

Theme I

- the relationship of imported law and custom — will involve a consideration of:
- sources of law;
- aspects of land tenure, both as a central customary concern and as an example of 'accommodation' between cultures;
- the continuance of customary decision-making and authority structures;
- legal resources and the operation of imported law.

Theme II

- constitutions, and checks and balances in small societies — will involve a consideration of:
- written Westminster-type constitutions and their interpretation;
- fundamental rights and freedoms;
- electoral practices;
- police and prosecuting functions;
- centralised/decentralised government;
- a regional Court of Appeal.

Theme III

- Independence/free association — International relations will involve a consideration of:
- the concept of independence and Pacific island state practice;
- free association and Pacific island state practice;
- aspects of treaty practice as it affects small Pacific states;
- international organisations relevant to the Pacific area.

Teaching pattern:

Each of the 3 teachers of the course will be responsible for four weeks of the programme. In order to ensure the coordination of the 3 sections and the full development of the materials most classes will be attended by at least 2 of the teachers.

The themes will be developed selectively by the teachers, each using material related to his specific interests in the subject area.

Written work:

1. An essay/opinion — suggested word limit 2000.

Students will complete an individual piece of research on an approved topic. Students should select their topics in consultation with the lecturers. An outline of the proposed treatment of the topic and the principal reference materials that will be used is to be submitted not later than 29 July. The research paper in final form must be submitted not later than 23 September.

A student who does not submit the required topic outline and bibliography by 29 July will write an essay/opinion on a topic designated by the course instructors.

(40 marks)

2. A single question 40 minute test (by way of preparation for finals) on 29 September.

Terms:

Terms as of right will be accorded to every student who —

- (a) attends class regularly,
- (b) makes a positive contribution to the class by participation in it,
- (c) completes the scheduled written work on due date, and
- (d) obtains not less than 20 marks in the essay/opinion.

Exceptionally, terms may be granted as a discretionary matter in other cases.

The intention is to grant terms to any student who has diligently attempted to come to grips with the subject, both in the written work and in preparation for the participation in class discussion.

Assessment of final mark:

The essay/opinion result will represent 40% of the final mark in the course; the final exam will account for 60% of the final result in the course.

Students whose mark from the essay/opinion and final exam is a marginal fail will have the whole terms work in the course taken into account under Examination Regulation 6 in determining the final grade in the subject. Students whose mark from the essay/opinion and final examination is 50% or above will have the whole terms work taken into account under Examination Regulation 6 before the grade of pass in the subject is finalised.

The final exam will be two hours.

Students will not be permitted to take any statutes or materials into the final examination.

**A Comparative Study of Three Pacific Constitutions —
Cook Islands, Fiji, Samoa**

1. It is proposed to consider these three Constitutions with regard to two matters:
 - (i) The *status* of the Constitution and the procedures for its *amendment*.
 - (ii) The protection of *fundamental rights and freedoms*.
2. It is hoped that the consideration of these two matters will, in turn, suggest answers to further questions:
 - (a) Why are some constitutional interests regarded as requiring *entrenchment* in the Constitutions?
 - (b) How are indigenous *customary institutions* accommodated in the Constitutions?

- (c) What approach have the Courts taken to *interpretation* of the Constitutions?
- (d) Do these Constitutions provide suitable '*checks and balances*' on the exercise of power within the jurisdictions they govern?
3. The materials to be drawn upon include:
- (a) *The cases:*
- Cook Islands:*
Clarke v. Karika (Cook Islands Court of Appeal decision of 25 February 1983). An edited version will be distributed in class.
Henry v. Attorney-General (Cook Islands Court of Appeal decision of 19 April 1983).
- Fiji:*
Attorney-General v. D.P.P. [1983] 2 W.L.R. 275 (Privy Council)
- Samoa:*
Attorney-General v. Saipa'ia Olomalu (Court of Appeal of Western Samoa decision of 26 August 1982).
- Other Jurisdictions:*
D.P.P. v. Nasralla [1967] 2 All E.R. 161
Maharaj v. A.G. or Trinidad and Tobago [1978] 2 All E.R. 670
Pillai v. Mudanayake [1955] 2 All E.R. 833
A.G. v. Antigua Times Ltd [1975] 3 All E.R. 81
Trinidad Island Wide Cane Farmers v. Seereeram 27 W.I.R. 329
Regina v. Drybones (1969) 9 D.L.R. (3d) 473
Liyanage v. The Queen [1966] 1 All E.R. 650
Hinds v. The Queen [1976] 1 All E.R. 353
- (b) *Other Materials:*
 Aikman, Helen, "Public Order and the Bill of Rights in Fiji: R v. Butadroka" (1981) V.U.W.L.R. 169.
Pacific Constitutions, ed. P Sack, 1982. See especially, P G Sack, C C Aikman, G E Fry, P J Bayne, N K F O'Neill, G Powles.

Appendix 2

Pacific Legal Studies — 1983 — An Appraisal

This course was taught by Professor Quentin-Baxter, Alex Frame and Tony Angelo. The course teaching was divided equally between the three. Mr Angelo taught the first month and dealt with basic matters related to sources of law, legal structures, and legal sources, Mr Frame, the second month, concentrating primarily on constitutional matters, and Professor Quentin-Baxter the third month, concentrating on the relationship between constitutional status and international legal status.

Twenty-six students enrolled in this course. The one extramural student did not complete the programme and two students had graduate exemption and did not participate in the written or examination work although they did attend and participate in the class fully. Technically twenty-three students completed the course with the following final results:

| | | | |
|---------------------|----------------|---|---|
| Final result 48-77% | D | — | 1 |
| | C | — | 5 |
| | B ² | — | 6 |
| | B ¹ | — | 9 |
| | A | — | 2 |

The course outline and other general data were distributed to Faculty and were the subject of discussion with students before the course began in July 1983. Subsequently, the course was also the subject of a discussion paper and some comment at the A.U.L.S.A. conference at Auckland in August 1983.

A short text *Pacific Courts and Justice* was prescribed to introduce the Pacific legal systems; beyond that the texts were the statutes and constitutions of a number of the states in the area. The total cost for texts was low as the constitutions and statutes were either those printed by the New Zealand Government Printer or were provided by the Ministry of Foreign Affairs free.

As the course is a half subject, time constraints were a problem. In discussions in 1982 among the three teachers of Pacific Legal Studies this was a matter of prime concern and early decisions were made to limit coverage to as realistic level as possible. This commitment was confirmed and emphasized by the experience of the first half of year programmes from which we learned more. In the result coverage was not a problem for us — not only because it was a problem that had been foreseen and prepared for but perhaps also importantly because the course had a very clear and strong base in constitutional law, a subject which all students had done. This basis in constitutional law was a purposeful choice and though it attracted some adverse comment in the course evaluation it served admirably as a basis for the course and as a focus for its material.

In their varying ways each of the three lecturers conducted the class in an informal lecture — cum-discussion style. The three lecturers were each present in most of the classes and in the evaluations by students the presence of the three was commented upon very favourably. Generally students seemed to think it was good to have three present and also found the interaction of the three helpful in their understanding of the subject area. Comments on the style of teaching were that the atmosphere was a particularly good one in which to put questions and to have them answered. It appears that in some sense the 'Pacific way' was achieved.

Forty percent of the final mark was allocated to an essay on a selected research topic and sixty percent to a 2 hour final examination of three questions. (One compulsory and one option to answer). A term exam had been scheduled in the course programme but, in the event, was cancelled. In its place sample examination style questions were distributed to students who were invited to discuss them and if they wished to answer them. No students

- fundamental rights and freedoms;
- electoral practices.

Theme III — Independence/free association — international relations — will involve a consideration of

- the concept of independence and Pacific island state practice;
- free association and Pacific island state practice;
- international organisations relevant to the Pacific area.

Teaching pattern

The themes will be developed selectively by the teachers, each using material related to his specific interests in the subject area.

[Written work and terms requirements as 1983]

Appendix 4
Pacific Legal Studies — 1983 Examination

Time allowed: *TWO* hours.

Instructions: Answer *BOTH* questions. All questions carry equal marks.

1. The Pacific Island state of Maroro (Fictitious) became independent in 1980 in which year the *Maroro Constitution* came into force. That Constitution which was the product of extensive local discussion over the preceding year, and which was subjected to a United Nations supervised referendum in which 75% of voters approved the proposed Constitution, provides in relevant parts:

Whereas the state of Maroro is founded upon fundamental human rights and Maroro custom . . .

Art. 1: This Constitution shall be the supreme law of Maroro ...

Art. 8: It is hereby recognized and declared that in Maroro there shall continue to exist, without discrimination by reason of race, national origin, colour, religion, opinion, belief, or sex, the following fundamental rights and freedoms: . . .

(c) The right of the individual to equality before the law;

(d) The right of the individual not to be subjected to forced or compulsory labour except in consequence of the sentence of a court;

(e) The right of the individual to own property and not to be deprived thereof except in accordance with law.

(2) It is hereby recognised and declared that every person has duties to others, and accordingly is subject in the exercise of his rights and freedoms to such limitations as are imposed, by an enactment or rule of law for the time being in force, for protecting the rights and freedoms of others or in the interests of public safety, order, or morals, the general welfare, or the security of Maroro.

Art. 9: Subject to subclause (2) of Article 8 hereof, every enactment shall be so construed and applied as not to abrogate, abridge, or infringe or to authorise the abrogation, abridgement, or infringement of any of the rights or freedoms recognised and declared by Article 8 hereof . . .

It has always been customary in Maroro that the people are required to perform, at certain times of the year, work on the personal plantations of the four Ariki (chiefs) families. Indeed the *Ariki Ordinance* 1930, enacted in Colonial times and continuing in force today, provides that:

‘Refusal to perform customary Ariki service shall be punishable by imprisonment for three days’.

The ‘Ariki service’ issue was discussed at the pre-independence meetings at the instigation of the United Nations observers and the record of that discussion discloses the following exchange:

U.N. Observer:

‘Surely this “Ariki service” is just colonialist exploitation, a feudal relic quite out of place in the new Maroro?’

Maroronui (an Ariki):

‘The Ariki service cannot be separated from Maroro custom: it preserves the unity of the Maroro people because it is an occasion for the Arikis and the people to work together. We agree with the Constitution but we do not want to change the Ariki service.’

In 1981, following some unrest among young persons in respect of Ariki service, the

Maroro Parliament enacted, and the Head of State assented to, the *Ariki Service Commutation Act 1981*. It provided in relevant parts that:

Whereas there has been dissatisfaction at the performance of Ariki service because service is required of persons at a time of year when those persons are required for work on their own plantations . . .

s.1 The performance of Ariki service shall be deemed to have been discharged by the payment to the Ariki entitled to the service of twenty-five dollars . . .

s.2 The Ariki Ordinance 1930 shall be read together with this Act.

Advise the Maroro Crown Law Office as to the likely attitude of the Pacific Court of Appeal (to which the matter would ultimately proceed) to a legal challenge to *both* the 1930 Ordinance and the 1981 Act.

2. Answer *EITHER*:

A.

“The British system of justice which, together with concepts of government and administration, was developed over centuries in another part of the world was introduced into different parts of the Pacific at different times and in different ways . . . However, all countries [in the Pacific] have a long history of the colonial administration of justice and this seems to have resulted in *general acceptance by modern Commonwealth governments of the basic principles of the British system — subject to important variations and adaptations to suit local needs . . .*

Throughout there are conflicts and inconsistencies . . .”

Pacific Courts and Justice (University of the South Pacific, Suva, 1977) 1.

Discuss this statement with reference to the relationship between imported law and local custom in Pacific island jurisdictions.

OR B.

The decolonisation of New Zealand could be regarded as the high water-mark of an older British philosophy, which stressed a gradual devolution of power, an emphasis on continuity rather than new beginnings, and no reliance at all upon constitutional entrenchment. Under the new influences generated in the United Nations, which placed the need for decolonisation ahead of readiness for self-government, there was a dramatic emphasis upon the moment of self-determination; and the Constitution (with a Capital C) became a life-preserver for the infant community it served, distributing power in ways that could help to ensure a survival of democratic values, both by establishing the rule of the majority, and by protecting individual and group freedoms and indigenous values.

Against this general background, illustrate the process of borrowing and adaptation from larger models to meet the perceived needs of comparatively small and isolated Pacific countries.

You may refer to all or any — or to only one — of the Constitutions of Pacific countries considered during the course.

Pacific Legal Studies — 1985 Examination

Time allowed: TWO hours.

Instructions: Answer *BOTH* questions. Both questions carry equal marks.

1. “All the written laws that are in force in Tokelau are those Acts which have been passed by the Parliament of New Zealand or issued as Regulations under those Acts. In addition to these written laws, however, there are unwritten laws which form part of the traditional custom of the Tokelauan people.”

Tokelau — its system of government and administration (Tokelau, 1980) 28.

In the light of your Pacific legal studies —

- (a) discuss the statement (quoted above) about the sources of law for Tokelau;
 - (b) discuss the nature and role of custom in Tokelau;
 - (c) list the principal issues that arise concerning the nature and role of law and custom in Tokelau;
 - (d) give a reasoned explanation of how the issues listed in (c) might be dealt with for the future;
 - (e) comment briefly on what the Tokelau custom/law experience tells you about small scale traditional communities with imported legal systems.
2. In 1980, the Pacific Island of Manutea became independent under a Constitution which contained the following provisions, inter alia:
- Art. 1:* This Constitution shall be the supreme law of Manutea.
- Art. 2:* The Parliament of Manutea shall have unlimited and exclusive power to make laws for Manutea subject only to this Constitution.
- Art. 20:* The Parliament of Manutea may amend this Constitution by special procedure.
- Art. 30: Fundamental freedoms*
- (1) It is hereby recognised and declared that in Manutea there shall exist, without discrimination by reason of race, national origin, colour, religion, opinion, belief, or sex, the following fundamental rights and freedoms:
 - (a) The right of the individual to equality before the law;
 - (c) The right to freedom of expression;
 - (d) The right to participate in the political process;
 - (e) The right to legal process.
 - (2) It is hereby recognised and declared that every person has duties to others, and accordingly is subject in the exercise of his rights and freedoms to such limitations as are imposed, by an enactment or rule of law for the time being in force, for protecting the rights and freedoms of others or in the interests of public safety, order, or morals, the general welfare, or the security of Manutea.
 - (3) Subject to subclause (2) of this Article, every enactment shall be so construed and applied as not to abrogate, abridge, or infringe or to authorise the abrogation, abridgement, or infringement of any of the rights or freedoms recognised and declared in this Article.
- Art. 40: Judiciary*
- There shall be a Court of record, to be called the High Court of Manutea with exclusive jurisdiction to administer the law in force in Manutea, including this Constitution.
- In 1984 the *Free Manutea Party* won an election victory. It is generally thought that the victory was partly attributable to the use of 'Radio Free Manutea' a radio station controlled by the Free Manutea Party. The party leader, John Metua, has become Prime Minister.
- The Manutea Parliament has now passed, in May 1985, an Act entitled the *Manutea Broadcasting Act 1985*:
- Manutea Broadcasting Act 1985*
- (1) No person shall operate a radio transmitter in Manutea without a licence issued by the Prime Minister.
 - (2) The Prime Minister shall not issue a licence under this Act if he is satisfied that the applicant has made statements defamatory of the Government within 5 years of the making of the application for a licence.
- The opposition party has applied for a licence to operate a radio station. The

application has been declined, the Prime Minister's letter declining the application stated that:

"Your party has made numerous statements this year which I view as defamatory of the Government and damaging to our prospects of receiving aid from abroad. I cannot therefore grant a licence under the Manutea Broadcasting Act".

You are asked to advise the opposition party whether the Manutea Broadcasting Act, and the Prime Minister's decision under it, could be successfully challenged under the Constitution. Your answer should cover both of the following possibilities.

A. That the Manutea Broadcasting Act 1985 was passed by Parliament by ordinary legislative procedure under Article 2 of the Constitution;

AND

B. That it was passed as an Act to amend the Constitution in accordance with the 'special procedure' required under Article 20 of the Constitution.