

## The Guy Powles' Minimum Standards Framework

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### Remembering Guy's Influence

When I was offered a position teaching law at the University of the South Pacific (USP) in 1996 finding out about Pacific law and legal systems was not easy. I did manage to find a copy of *Pacific Courts and Legal Systems*, edited by Guy Powles and Mere Pulea and published in 1988, in a second hand bookshop. Guy's chapter 'Law, Courts and Legal Services in Pacific Societies'<sup>1</sup> provided a thought provoking introduction to the 'richness of legal heritages'<sup>2</sup> we live with in the Pacific region. He spoke plainly about the 'confusing colonial legacy'<sup>3</sup> of introduced legal systems, and the continuing challenges of legal pluralism which mean that 'people working in the law and the courts are faced daily with conflicts, inconsistencies and seeming incompatibilities'.<sup>4</sup> He was open about the fact that 'these complexities may be cause for alarm',<sup>5</sup> but did not propose imposing a single unified legal system to alleviate this, as a 'legal system is not an end in itself... [but] should reflect what "society" wants'.<sup>6</sup> As such, he considered it appropriate 'to allow people to keep their options open – to permit more than one

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<sup>1</sup> Guy Powles, 'Law, Courts and Legal Services in Pacific Societies' in Guy Powles and Mere Pulea (eds), *Pacific Courts and Legal Systems* (1988) 6. This chapter is a considerably expanded version of Guy Powles, 'Court systems of the South Pacific' in Commonwealth Magistrates Association and Institute of Pacific Studies (pub), *Pacific Courts and Justice* (1977) 1. These two edited collections were, until the mid 1990s, the primary sources of information on legal systems within the USP region. They also covered Pacific countries and territories outside of the USP region. In 2001 it was commented that only 2 other books, Michael Ntummy (ed) *South Pacific Island Legal Systems* (1993) and Jennifer Corrin Care, Tess Newton Cain and Don Paterson *Introduction to Pacific Law* (1999) discussed Pacific law (Jennifer Corrin Care, 'Review of *South Pacific Island Legal Systems* (2001) 5 *Journal of South Pacific Law* <http://www.paclii.org/journals/fJSPL/vol05/8.shtml#> (Accessed 8 January 2017).

<sup>2</sup> Ibid, 8.

<sup>3</sup> Ibid, 9.

<sup>4</sup> Ibid, 8.

<sup>5</sup> Ibid, 9.

<sup>6</sup> Ibid, 10.

system of law to operate and alternative paths',<sup>7</sup> and instead proposed a set of minimum standards to which all legal systems should aspire to:

- The law, in its broad sense of constitutions, legislation and common, civil and customary law, should be responsive and understood.
- The courts, and all dispute-resolution bodies, should be fair and effective.
- The legal services, whether degree-qualified or para-legal, government or private, should be appropriate and available.<sup>8</sup>

The questions that Guy raised about what it means, in the context of individual Pacific island jurisdictions, for law to be responsive and understood, for dispute resolution to be fair and effective, and for legal services to be appropriate and available served to highlight the complexities of trying to conceptualise justice systems in the recently independent, resource constrained, geographically remote, small and economically undeveloped countries of the Pacific islands region. For a young lawyer coming from New Zealand, where the legal system is a well established and functional part of the socio-political landscape, this was heady reading, with Pacific legal systems being presented as a largely uncharted, and evolving, frontierland to explore.

On my arrival in Vanuatu in 1997 I discovered that the legal systems of the USP region certainly lived up to (and continues to live up to) the image of the complex, confusing and sometimes alarming frontierland that Guy's work had created in my mind. Those of us teaching in the early years of the USP LLB will remember Guy, and his wife Maureen, as frequent visitors whose passion for improving legal training in the Pacific was infectious. He was also kind, generous and reassuring on the days when trying to teach Pacific law without much access to Pacific legal materials, and in an environment where the gap between what the law says and what happens in practice is often large, seemed an insurmountable task.

One of the unique compulsory courses that the USP LLB had at the time was a final year course entitled Current Developments in Pacific Law, LW 305. Guy had been on the advisory committee establishing the USP LLB and I remember discussing the reasons for LW 305's inclusion in the compulsory programme with him. The development of the USP LLB was, of

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<sup>7</sup> Ibid, 9.

<sup>8</sup> Ibid, 10.

course, important because it allowed lawyers from USP member countries to be trained in the laws of their own legal systems for the first time. Guy was firmly of the belief (or perhaps more accurately my conversations with Guy, and others, have led me to the firm belief; the problem with losing a friend and colleague is that I cannot check back with him any more) that simply training lawyers to do “the business of law” was not enough, but instead all USP law graduates should be able to address legal policy issues that are critical for the evolution of Pacific legal systems, particularly given that much legislation was adopted from colonial authorities and was not subject to systematic review to make it appropriate for the post-Independence environment. Such legal policy work cannot be done by outside consultants who do not have an understanding of the complex legal and social heritages found within the Pacific, but instead relies on a body of Pacific lawyers who are able to engage thoughtfully in the development of their legal systems. It is only through such training that unique jurisprudence in each Pacific country that would allow for justice systems appropriate for their appropriate contexts to emerge.

I first coordinated LW 305 in 1998. The influence of Guy’s work is immediately apparent in the summary of the introduction lecture from 1999 (the year the course began to have online materials), which, in a summary of the opening of Guy’s ‘Law, Courts and Legal Services in Pacific Societies’, read:

The legal systems of the Pacific Islands face a number of difficult issues. Many of these arise from the history of colonisation. Introduced laws and systems are often inappropriate for a variety of reasons such as different geographical, economic, educational and cultural values and realities. In addition, decolonisation has resulted in movements that want to reject the relics of the colonisers. These (sometimes reactionary) movements in turn conflict with the issues of development, modernisation and the increasing pressures of globalisation.

Amidst all this conflict and confusion orderly and appropriate development of Pacific legal systems is sought. The introductory lecture and workshop aims to get you thinking about the multiple difficulties involved in achieving such development. A possible framework for analysing situations is also introduced.

The readings for this introductory lecture were Powles’ ‘Law, Courts and Legal Services in Pacific Societies’, along with other key works on developing local Pacific jurisprudence (that

maybe do not get the readership they continue to deserve 20+ years later) by Michael Ntumy, Jonathan Aleck and Asiata Vaai.<sup>9</sup>

Over the years, as the nature of the USP LLB students, class sizes and approaches to teaching changed, LW 305 evolved. One constant is the use of Guy's minimum standards, known now to my students as the "Guy Powles' minimum standards framework". It is now taught as a normative theoretical framework that can be used practically to evaluate legislation. This was not the use that Guy intended the standards for, and I recall him being quite modest about his intentions in proposing such standards when I told him how USP law students now use them, and find them to be very useful. Discussing how the Guy Powles' minimum standards have been used to help train many years of USP law students to engage in thinking about legal policy seems a fitting way to acknowledge Guy's legacy and also to share a teaching approach that others may find useful in the future.

#### Explaining the "Guy Powles' minimum standards framework"

##### **Why teach this as a theoretical framework?**

If Guy did not have any theoretical aspirations for his statement of minimum standards that a legal system should aspire to, it is reasonable to ask why it is taught as such. My answer to this comes from what I perceive to be limitations in thinking about what law ought to be that arise from the parameters of the disciplinary matrix of law.<sup>10</sup> One of the challenges of asking law students to think about *what law should be* is that, as an applied discipline, law is primarily concerned with *what legal rules are* as determined by specific rules of recognition. This "black

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<sup>9</sup> Michael Ntumy "Dream of a Melanesian Jurisprudence" in Aleck & Rannells (eds) *Custom at the Crossroads* (1995); Jonathan Aleck 'Beyond Recognition: Contemporary Jurisprudence in the Pacific Islands and the Common Law Tradition' (1991) 7 *Queensland University of Technology Law Journal* 137; Asiata Vaai 'The Idea of Law: A Pacific Perspective' (1997) 21 *Journal of Pacific Studies* 225.

<sup>10</sup> The concept of a disciplinary matrix is drawn from Thomas Kuhn. (Thomas Kuhn 'Postscript to The Structure of Scientific Revolutions' (1969) <http://www.compilerpress.ca/Competitiveness/Anno/Anno%20Kuhn%20Structures%20Posts%20cript%201969.htm> (Accessed 8 January 2016 ).) Briefly, within disciplines academic activity within a community whose members share 'an entire constellation of beliefs, values, techniques, and so on'. These beliefs both legitimise research and teaching carried on within the shared belief system of the disciplinary matrix and constrain research and teaching to the confines of the conventional disciplinary matrix.

letter law” approach<sup>11</sup> requires actors within the legal system to identify the correct legal rules and apply them to a specific situation. Only the pedigree of the legal rule is of concern. The pedigree of a legal rule is determined by other legally determined “rules of recognition”, so the system is internally validated. Questions about what the law ought to be or how the law is actually applied in practice are external to the application of the legal system, and are of no concern. The majority of undergraduate law students’ legal training is about giving them the skills to be able to practise as lawyers and solve legal problems using a black letter law approach. Various legal problem solving frameworks, including IRAC (issues, rules, application and conclusion), exist to help students develop their ability to think in this manner. Whilst the critical reasoning skills used for solving the legal problems of clients are transferable, the applied discipline of law does not provide students with either practical or theoretical frameworks for developing their ideas on normative questions about what the law should be.

There are, of course, actors within common law legal systems that do make law: primarily judges and legislatures. My position is that neither of these actors is driven by a consistent normative reasoning process in making decisions. As such law students cannot osmotically learn normative thinking by being exposed to judicial decisions or the products of legislatures as part of their black letter law focused legal training.

Considering judicial law making first, conventional legal doctrine as reflected in William Blackstone’s *Commentaries on the Laws of England*, avoids having to consider normative theory by holding that judges ‘are the depositaries of the laws; the living oracles’<sup>12</sup> who do not make law, but declare and apply it:

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<sup>11</sup> The black letter law approach is also known as legal positivism. John Austin's famous formulation of what could be called the “dogma” of legal positivism is as follows: ‘The existence of law is one thing; its merit or demerit is another. Whether it be or be not is one enquiry; whether it be or be not conformable to an assumed standard, is a different enquiry. A law, which actually exists, is a law, though we happen to dislike it, or though it vary from the text, by which we regulate our approbation and disapprobation.’ John Austin, *The Province of Jurisprudence Determined and The Uses of the Study of Jurisprudence* (Weidenfield and Nicolson Library of Ideas Edition, 1955) 184.

<sup>12</sup> William Blackstone, as quoted in Margaret Davies, *Asking the Law Question* (1994) 27.

Judges do not *decide* what the law is, nor do they exercise any *personal* judgement in determining what the proper principle to apply to a case is. The judges are regarded simply as the mouthpiece of the law...<sup>13</sup>

The challenge of legal realism has forced an acknowledgement that judges are involved, at times, in ‘reaching beyond the law for some other sort of standard to guide him in manufacturing a fresh legal rule or supplementing an old one.’<sup>14</sup> There is, however, no particular methodology guiding the normative decision making of judges. Instead, when making decisions that go beyond existing legal rules, judges may weigh up a wide range of considerations. Such a position is reflected, for example, in Vanuatu’s *Constitution*:

47. (1) The administration of justice is vested in the judiciary, who are subject only to the Constitution and the law. The function of the judiciary is to resolve proceedings according to law. *If there is no rule of law applicable to a matter before it, a court shall determine the matter according to substantial justice and whenever possible in conformity with custom.* (italics added)

The candid comments of the US judge, Senator Allen, maybe reflect the actuality of judicial decision making within common law systems, even when it is dressed up in positivist legal reasoning:

I think I am authorized, in deciding questions brought before us for adjudication, to do so in accordance with the impressions of my mind, as to the justice and equity of the matter submitted.<sup>15</sup>

If examining judicial decisions does not provide a theoretical or methodological grounding for law students in how to make choices about what law ought to be, can an examination of the Acts of Parliament do this? Whilst remaining within the confines of the discipline of law, as

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<sup>13</sup> Margaret Davies, *ibid*, 26.

<sup>14</sup> Even within conventional legal theory, judges may need to look beyond existing rules, (Ronald Dworkin, *Taking Rights Seriously* (1977) 17) A former USP colleague, Ian Fraser, commented that getting students to grasp this point was a crucial and difficult step in teaching Jurisprudence (a final-year course). He would announce to the class that they would ‘invade IRAC’, and refer to Powles’ framework as an ideal guide.

<sup>15</sup> As quoted in G Sergienko 1997 ‘A Body of Sound Practical Common Sense Law Reform Through Lay Judges, Public Choice Theory and the Transformation of American Law’ (1997) 41(2) *American Journal of Legal History* 175, 185.

opposed to engaging in interdisciplinary inquiries drawing from political studies or public policy for instance, examining the normative decision making process of the legislature difficult because, ‘jurisprudence remains fixated on the courts, on judicial reasoning’,<sup>16</sup> as opposed to the reasoning of legislatures. This may be because the legislature itself does not draft laws, but debates the merits of Bills that are presented for its consideration. Bills are prepared by other parties. A study of the actions of legislature instead reveals information about political process, but not the application of normative decision making in designing laws.

It is reasonable to assume that it might, instead, be possible to find a process for making normative decisions about what the law ought to be in the methodology of law reform commissions, which are now recognised in the common law world as being an integral part of the law making process. However, even law reform commissions, who are tasked with proposing normative changes, tend to operate without a clear methodology for making decisions.

At least part of the reason for this is historical. By the ‘golden age in law reform’<sup>17</sup> in the 19<sup>th</sup> century, law reform initiatives in common law jurisdictions focussed upon systematising, simplifying and unifying legal principles into a complete body that had clear authority.<sup>18</sup> There was a reticence to admit that such law reform activities went beyond consolidation of the law and the removal of archaic forms, because of ‘the notion... that it is undemocratic and inconsistent with the public interest that an independent authority should be established to investigate and make recommendations on subjects which Parliament will subsequently be called upon to make decisions.’<sup>19</sup> The notion that law commissions encroach upon democracy in turn led to the view that ‘the legitimate business of a law commission is with “lawyer’s law”... [and not] with topics which involve a policy or political content.’<sup>20</sup> This in turn encouraged to a law reform approach that did not explicitly address broader normative

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<sup>16</sup> Jeremy Waldron, *The Dignity of Legislation* (1999) 23.

<sup>17</sup> KO Shatwell, ‘Some Reflections on the Problems of Law Reform’ (1957) 31 *Australian Law Journal* 325, 326.

<sup>18</sup> *Ibid.*, 325 – 326.

<sup>19</sup> AF Mason, ‘Law Reform in Australia’ (1971) 4 *Federal Law Review* 197.

<sup>20</sup> Mason, above at p 215. See also Robert Buchanan 1 ‘Law Reform and Social Enquiry’ (Paper Delivered Meeting of the Commonwealth Law Reform Agencies, Vancouver 25 August 1996) <http://www.bcli.org/pages/links/clc/buchanan.htm> (Accessed 12 March 2003; the paper is no longer online but the record of the meeting is located at <http://www.bcli.org/bcli/bc-law-reform-commission/commonwealth-law-reform> (Accessed 11 January 2017)). Buchanan comments upon the distinction between ‘so-called “black-letter”, or “lawyers”, law and law which impacts on social administration or social justice.’

concerns, as “lawyer’s law” was (artificially) distinguished from social, political or economic considerations. Instead, the model of the 19<sup>th</sup> century golden age, of ‘expert committees which worked in an atmosphere of leisure,’<sup>21</sup> has been developed in the workings of modern law reform commissions into a deliberative approach. This approach requires ‘the publication of a working paper, the invitation and consideration of submissions and the delivery of a report containing recommendations...’<sup>22</sup> The statement of the Law Commission of England and Wales that appeared on their website in 2003, ‘In the light of the comments we receive, and of our own knowledge of the law, we decide on the solution which seems to us best’,<sup>23</sup> illustrates the vagueness of the process or methodology for developing recommendations from consultation.

Clear normative methodology or doctrine either within judicial law making or law reform commission processes is instead replaced by an intuitive approach. Students may well absorb this approach by exposure to judicial decisions and law reform reports. However, whilst an intuitive approach to normative questions is legitimate within the disciplinary matrix of law, it leaves students to muddle through questions relating to what law ought to be using broad critical analysis skills. It also makes it difficult for law students beginning to engage in independent research to clearly identify and articulate analytical methodologies.<sup>24</sup>

Given that at least one of the purposes of LW 305 being compulsory was to ensure that all USP law graduates would be able to address legal policy issues, it seemed to me to be appropriate to provide some training in normative theoretical approaches. As the teaching of the course developed it also became apparent that, because law students relate to law as a practical or

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<sup>21</sup> Shatwell, above n 17, 326.

<sup>22</sup> Mason, above n 19, 206.

<sup>23</sup> Law Commission of England and Wales, ‘About the Law Commission’ <http://www.lawcom.gov.uk/77.htm> (Accessed December 2003). The current website does not contain the same statement, but nor does it explain how decisions are made following public consultations (Law Commission of England and Wales, ‘How we make decisions’ <http://www.lawcom.gov.uk/about/how-we-make-decisions/> (Accessed 8 January 2017).)

<sup>24</sup> This issue is particularly noticeable with final year undergraduate students and postgraduate students who are required to present project proposals that identify analytical methodologies or theoretical perspectives. It may also help to explain my experience that many law research students want to engage in interviews or questionnaires as a research methodology despite having absolutely no training in field research methods. Possibly their reasoning is that consultation and then deliberation on the results in what law reform bodies do when considering questions of what law ought to be, and so that is how normative questions should be approached.

applied discipline, abstract theory should be de-emphasised<sup>25</sup> and instead, frameworks that can be easily applied to actual law reform questions would be more useful. It is here, as a practical theory that can be used to address real-life problems in the performance of legislation, that the Guy Powles' minimum standards framework comes into its own.

### **How is the framework applied?**

The learning outcomes for LW 305, in its current form, include that students will be able to '[a]nalyse why particular laws are not performing as well as they might; and [i]dentify strategies for improving the performance of laws.'<sup>26</sup> The assessment related to these learning outcomes requires students to choose a piece of legislation from their own country that is not performing well, analyse it to identify weaknesses and then generate strategies for improving the performance of the law. There are three parts to the assessment, two presentations that are formative assessments and a final summative written paper. Presentation 1 focuses on analysing weaknesses. Presentation 2 focuses on strategies for improving performance. The final paper then consolidates the semester's work and the feedback received into a final essay. Throughout the course the students are introduced to a wide range of theoretical approaches that can be applied practically to help both analyse laws and generate improvements to laws. Before students are "thrown into the deep" of more remotely theoretical work such as social contract theory, Habermas's theory of communicative action, Weberian notions of authority, or Pound's contemplation of the extent to which law can change society, they are introduced to Guy Powles' minimum standards; standards that are expressed in plain language and are firmly rooted in the realities of Pacific.

The topic which introduces Guy's work is entitled 'The Place of Law in Pacific Societies.' Having been asked to imagine what they would like their societies to be like, and what role law

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<sup>25</sup> A few people from the early days of the Law School will still remember the year that a number of the LW 305 students' first assignments came in with a statement to the effect that "legal theory began with the Olympic Games", and referenced this to the then Head of School Professor, Bob Hughes. He had, in fact, discussed the etymology of theory, starting with spectators (theoros) at the Ancient Greek Olympics (or possibly a more philosophical conception of theoria as they related to the Olympics), and then, no doubt, diverged into a discussion of a range of Greek philosophers.

<sup>26</sup> Anita Jowitt. 'LW 305 Current Developments in Pacific Law Introduction and Assignments Booklet' (Semester 2, 2016) 2. If readers would like access to course material on teaching the Guy Powles' minimum standards framework please contact the author as material is always available to share.

should play in this ideally imagined society,<sup>27</sup> students are then asked to consider the reasons why formal or State legal systems throughout the Pacific islands do not always operate effectively, or in accordance with imagined ideals.<sup>28</sup> It is hypothesised that part of the explanation may come from the fact that legal systems have been adopted from outside, rather than developed autochthonously, but that the introduced nature of legal systems alone cannot provide the whole answer. Issues including resource constraints and geographic considerations, which may hinder access to the legal system are also raised.

Students are then introduced to a modified version of Powles, with topic notes stating that:

Powles says:

- ▶ law should be responsive and understood;
- ▶ dispute resolution should be fair and effective; and
- ▶ legal services should be appropriate and available.

Whilst it can be helpful to tie particular minimum standards to part of the legal system, I think that it is also important that, for instance, legal services are understood and effective, that dispute resolution is understood and available and that law is appropriate and fair. Because of this I do not tie Powles' standards to particular parts of the legal system. Instead I interpret the minimum standards to be that:

*The legal system and laws within it must be responsive, understood, fair, effective, appropriate and available.*

This provides broader framework for analysis... I can use this framework to comment on particular laws.<sup>29</sup>

Whilst it would be possible to delve into a discussion of the validity of instrumentalist normative theory as an approach,<sup>30</sup> there is no discussion of the framework as an abstract

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<sup>27</sup> Readings to assist students in this are Mark Cooray, 'The role of the constitution and the law in a free society' (undated) <http://www.ourcivilisation.com/cooray/constit> (Accessed 8 January 2017) and Amitai Etzioni, 'Law in Civil Society, Good Society and the Prescriptive State' (2000) 75(2) *Chicago Kent Law Review* 355.

<sup>28</sup> In addition to Powles, readings to assist students in this are Anita Jowitt, 'The Nature and Functioning of Pacific Legal Systems' (2009) 13(1) *Journal of South Pacific Law* 1; Anita Jowitt, 'The Future of Law in the Pacific' (2008) 12(1) *Journal of South Pacific Law* 43.

<sup>29</sup> Anita Jowitt, 'LW 305 Current Developments in Pacific Law Topic 4' (Semester 2 2016).

<sup>30</sup> For those who do want to delve into such questions, and the boundaries between positive and normative legal theory, Aaron J. Rappaport, 'On the Conceptual Confusions of

theory. Instead, after brief discussion and a demonstration of the use of the framework the class works in small groups to use the framework to analyse legislation.<sup>31</sup> After initial work in groups the activity is turned into a competition to see which group can generate the most ideas, which encourages students to quickly try to come up with ideas relating to all six of the standards, rather than focusing on detailed discussion in respect of one or two of the most obvious weaknesses.

The strength of the framework is asserted to be a device to enable holistic and systematic analysis of a particular piece of law, starting from a student's own general knowledge of issues and challenges arising from implementing the law. To put it another way, it helps structured brainstorming, which should then be supported by research to both find support for factual assertions and to uncover further reasons for the law not operating which might be outside of the student's own knowledge or experience. The framework is acknowledged to be very general, with standards overlapping and lacking specific definitions. Whilst this might be troubling from a theoretical perspective it is less of an issue from a practical perspective, just so long as terms are given a personal definition by the student using the framework.<sup>32</sup>

The topic notes, after presenting a quick analysis of a law that is not being well utilised conclude:

Hopefully, however, this very basic analysis allows you to now see that using theory (in this case a theory of minimum standards) can be really helpful for analysis of issues.

You are provided with some sort of order or structure to your analysis. This particular

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Jurisprudence' (2014) 7 *Washington University Jurisprudence Review* 77 provides an interesting theoretical discussion. Later in the course, when considering the use of international best practice standards for law reform we do discuss the limits of instrumentalist normative theory, although again the discussion is practical rather than theoretical. Robert Salais, 'On the correct (and incorrect) use of indicators in public action' (2005 – 2006) 27 *Comparative Labour Law and Policy Journal* 237 is used.

<sup>31</sup> The general law discussed in class in 2016 was rape laws. Given that students in the class come from a number of Pacific jurisdictions this was selected as a general cross-jurisdictional issue as there is still a high incidence of sexual violence despite the longstanding existence of laws prohibiting such behaviour across all jurisdictions. More than that, it's the gap between legal and social norms, which makes this a rich area for discussion.

<sup>32</sup> Pedagogically my teaching ascribes to research on the importance of explicitly teaching metacognitive strategies. (See Gregory Schraw, 'Promoting general metacognitive awareness' (1998) 26 *Instructional Science* 113.) As well as modelling the framework in class, the metacognitive aspects of the use of the framework as structured brainstorming are explicitly discussed. In later classes this is tied in to a variety of strategies for organising independent essays. The limits of the applied discipline of law, discussed above, are also explicitly discussed before moving onto the more theory-heavy second half of the semester.

theory also helps to ensure you look at the issue from a number of angles. This may help you to identify a wider range of reasons for why the law is not being fully effective.

Every year the students are asked at the end of the class whether the framework is easy to use and is helpful. There is always overwhelming agreement that it is both.<sup>33</sup>

Students are then required to use the Powles' framework in analysis of their chosen piece of legislation, or sections within a piece of legislation, in presentation 1. Over the years students have used this framework to analyse a very wide range of laws, with tobacco control laws, copyright laws, environmental protection laws and domestic violence laws being perennial favourites. Some of the more unusual or obscure laws that students have introduced me to through this assignment include the *Superyacht Charter Decree 2010* (Fiji), the *Regulation of Surfing Decree 2010* (Fiji), the *Explosives Act* [Cap 6] (Vanuatu) and the *Dogs Act* [Cap 168] (Fiji). Whilst the framework does fit better with certain laws and types of issues, it has proved to be of broad application.

The second presentation is somewhat harder as it is less constrained. The subject matter – generating solutions to problems – is inherently broader than identifying weaknesses. Further, students have a broad range of theories that they can select from in helping to generate their solutions. The Powles' framework largely fades into the background by the time of writing up the final essay but remains to tie the essay to broader literature on Pacific legal systems. It has also given the students confidence to engage with theory as a practical tool for reaching and justifying normative decisions.

The consistent ease with which final year law students used the Powles' minimum standards framework to identify reasons why individual pieces of legislation did not work as well as they should meant that, when LW 305 was removed as a compulsory subject, the Powles' minimum standards could be transferred to the first year compulsory course Law and Society, LW 110. In a topic entitled 'Challenges for Pacific legal systems' students are asked to explore difficulties with the operation of the formal legal system in the Pacific. One of the points of the topic is to push students beyond the still all-too-common post-colonial rhetoric of legal systems

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<sup>33</sup> One of the other early leaders of the USP law school, Professor Bob Hughes, would no doubt appreciate that this approach to the use of theory reflects the word's etymological roots. See footnote 25 above.

failing because they are foreign, and to consider how Pacific contexts give rise to complexities in the operation of State law.

Whilst first year students are not required to do independent research using the framework, in 2015 and 2016 they used the framework in class as a structured brainstorming device to analyse reasons why there might be a conflict between bribery laws and social practice. After introducing the Guy Powles' minimum standards the activity is set up with the following instructions:

### Activity: bribery during national elections

**THE ISSUE:** In custom giving of gifts or exchange of items is expected. This is often used as a justification for paying voters during election time, which may be in breach of election laws that prohibit giving voters bribes

- A brainstorming exercise
  - After brainstorming then develop ideas with research
- Minimum standards
  - give you structure for brainstorming
  - Help you look broadly at issues
  - Make sure that you do not just focus on one particular aspect

Students are then given a blank table and asked to discuss in small groups. The table below is the result of about five minutes of discussion from the LW 110 2015 Emalus Campus students.

### Activity continued (answers from LW 110 2015)

Standard	Problems with getting people to follow bribery law	Possible solutions to address problems
Responsive	It is customary for pacific countries to give – conflict between law and custom	
Understood	Depends on society context and circumstances Most of population rural – do not understand language or concept Rural has expectation of being given donations	
Fair	Societal context might think bribery is fair Elections are not a place where gift giving should be fair Not fair – gift exchanging is about respect, in custom but some people take it improperly and spoil custom	
Effective	Not being enforced Only being enforced during elections – bribery happens other times Depends on strength of enforcing agency	
Available	No legal enforcers/ police Enforcers susceptible to being bribed	
Appropriate	Is law is appropriate in concept? Allows people who don't have the wealth to donate to participate	

There is, of course, considerable sorting to be done with this list of ideas, but the list does show a considerable range of overlapping challenges with trying to bring law and practice in society

closer. This, in itself introduces more nuance than the commonly seen legal literacy approach to “solving” the challenge of bribery during elections that addresses awareness of the laws whilst leaving other dimensions of non-conformity to laws untouched. It also serves to demonstrate that, even for first year students, the Powles’ minimum standards framework is not conceptually hard to grasp, although I think all agree that the thinking that goes into applying the standards to legislation is challenging. The exam essay question asking students to use the Powles’ minimum standards to analyse weaknesses in a law was also a popular choice, which attests to its ease of use.<sup>34</sup>

## Conclusion

Explaining my experience of how to use the Guy Powles’ minimum standards framework as a practically applicable normative theory is not the best indicator of its effectiveness. Instead, the body of good quality student work that has successfully applied the framework to thoughtfully analyse weaknesses in laws and suggested reforms is. Unfortunately none of this is published,<sup>35</sup> and this reminds me of another of Guy’s contributions. The immense value of student work in a region that is under-researched is another thing that Guy recognised. On the bookshelf at the Emalus Campus library we have a volume entitled *Legal issues in the Pacific region: the role of law in social, political and regional change: Research papers of the Pacific comparative law class of 2001*, from one of the courses Guy had taught. Whilst the Journal of South Pacific Law does accept student papers, the time it takes to polish these to publication standard can be off-putting, raising the question of whether the USP School of Law should implement other means to preserve, and find an audience for, student work.

My last communication with Guy was in early July, in respect of the newly-established Pacific Constitutions Research Network (PCN),<sup>36</sup> which aims to bring established Pacific constitutional scholars and those involved in the original constitution making in the Pacific

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<sup>34</sup> I had 83 exam scripts from the 2015 LW 110 exam on my desk whilst writing this paragraph. There were 3 essay choices; 44 of the 83 students chose to answer the Powles’ minimum standards question.

<sup>35</sup> Some may have made its way into the public domain through inclusion in student papers presented at the Law and Culture Conferences that have been operating, under a different name for the first 2 years, since 2008. Some conference papers can be found at <http://www.paclii.org/law-and-culture/> (Accessed 11 January 2017).

<sup>36</sup> See [www.paclii.org/pcn/index.html](http://www.paclii.org/pcn/index.html) for more on the PCN (Accessed 11 January 2017).

together with newly emerging scholars and policy makers. An implicit driver in the minds of those involved in establishing the PCN is that we are losing the original constitution makers and scholars to old age. Guy responded with typical enthusiasm; indeed he was the very first person to join as a member. He urged us to try to publish with USP Press, on the basis that publications from outside of the region and online journals ‘are not read by people who really ought to be forming views’.<sup>37</sup> His views on publication venues reflect the important impact of the publications that came out of USP’s Institute of Pacific Studies, and suggest a publication path that USP should reexplore.

He also gently reminded us that the point of academic work should, first and foremost, be of practical benefit to the countries in which we work:

This is naturally an academic exercise, run by academics and using academic journals, etc, to promulgate the outcomes. As an ‘on-off’ law practitioner, myself, who has, whenever possible, encouraged students and readers to consider the practical implications of the concepts and processes under discussion, I do think it is important to include, in the wide net you are casting, the lawyers of the region whose job it is to provide ongoing advice to Cabinets, and to citizens generally who are interested in improving the system of government.<sup>38</sup>

I am glad to say that, before the call for papers went out we did rectify the academic focus, but I have included Guy’s words here as an ongoing reminder to us all that, particularly in an institution such as USP, our work as law academics must not entirely ascend into an Ivory Tower, but exists to serve the region.

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<sup>37</sup> Email from Guy Powles to Anita Jowitt, 5 July 2016.

<sup>38</sup> Email from Guy Powles to Anita Jowitt, 5 July 2016.