

PACIFIC CONSTITUTIONS
PETER SACK, (ED), A.N.U. (CANBERRA, 1982)
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There are seventeen independent or self-governing Pacific states. Of these only two, Tonga (1875) and Guam (1950), came into being before the 1960's. Ten have attained statehood during the last decade.

Pacific Constitutions is therefore timely in focussing attention on the constitutional make-up of this latest group of emergent nations.

It is very much a seminal work. Before it was published little had been written on the subject. There had been some excellent studies of the constitutional structure and history of individual nation states but with the single exception of a paper given by C.J. Lynch to the 27th Commonwealth Parliamentary Conference in 1981 there had been nothing published on the subject of comparative constitutional law in the Pacific.

Pacific Constitutions contains the edited text of twenty-four papers first presented in April 1982 to the sixth Canberra Law Workshop organized by the Law Department, Research School of Social Sciences, Australian National University.

About a third of the papers are general comparative studies of aspects of constitutional arrangements in the Pacific states. Another third, including five papers which examine Papua New Guinea, are devoted to discussing individual states' constitutions. The remaining papers include some theoretical contributions which discuss the issues of constitution-making, constitutionalism and decolonization and a smattering of miscellaneous and hard to classify offerings.

This latter group contains two small delights of the collection. The first is a powerfully written contribution by Sione Latukefu which examines the earlier phenomenon of nineteenth century constitution-making in Fiji, Samoa and Tonga. That paper considers the reasons behind their promulgation, the history of their collapse in Fiji and Samoa and the reasons for their success and continued survival in Tonga. A minor but interesting point is the revelation that the 1845, 1846 and 1847 amendments to the Hawaiian Constitution were termed "Organic Acts". Is it possible that a faint echo of past Pacific constitutions may be discerned in the choice of the term "Organic Law" to describe subsidiary constitutional laws in Papua New Guinea?

The second contribution is somewhat less scholarly, but rewards instead by the interesting nature of its subject matter. It is Peter Larmour's article which examines the almost bizarre but nearly successful attempt of the Phoenix Corporation to establish a radical laissez-faire state under the auspices of Jimmy Steven's separatist movement in Vanuatu.

It is, however, the comparative papers which justify the collection. Not all are strong contributions but collectively they break much new ground and open up the field for further scholars to develop.

Of these, the most successful, and the most simply written, is that of Joe Lynch. His paper contains a thorough analysis of the similarities and differences in the role and structure of legislatures in ten of the Pacific states. Other strong comparative contributions come from Nick O'Neill (Human Rights) and Greg Fry (Succession of Government).

Equally important, but less pan-Pacific, are papers by Guy Powles and Peter Bayne. Powles' paper considers the place of traditional leadership under the constitutions of Tonga, Western Samoa, Fiji and the Marshall Islands. He concludes,

"As an institution competing freely with government and commerce ... independent chiefship contributes to a wider and more inter-active field for the exercise of power, the expression of opinion and mobility in the achievement of aspirations."

Bayne sets himself a most difficult task. His goal is to describe the judicial response to the more recent Pacific independence constitutions. Inevitably, because of the paucity of materials and the scale of the undertaking, Bayne's study is limited to an examination of cases heard in Papua New Guinea, Western Samoa and Fiji. However, he makes two interesting generalizations. First he warns against a too ready judicial willingness to exercise the power of constitutional review. In that regard he is supported by Yash Ghai and David Hegarty who in another paper argue that the unnecessary willingness of the Supreme Court of Papua New Guinea to enter the fray of constitutional ruling "damages the political process and tends to engender a climate of crisis".

Bayne's second generalization is to the effect that Pacific constitutions should be interpreted in a spirit which eschews the pervasive methodology of the common law and which instead relies upon more general tests of consistency with the principles expressed in the programmatic preambles of all the Pacific Constitutions. The little evidence that exists, however (discussed in the Papua New Guinea context in other papers by Bernard Sakora and Tony Deklin), suggests that the courts are unlikely to proceed in that direction.

All the papers that study the governance of individual Pacific states are impressive.

Particularly rewarding are Alison Quentin-Baxter's paper on Niue and the Marshall Islands and Colin Aikman's paper on the Cook Islands. The Marshall Islands commands attention, for among all the Pacific states it is the only one which rejected the form of government of the previous colonial power. Despite having been administered by the United States it adopted a modified Westminster, not a Presidential, system of government.

Niue and the Cook Islands, on the other hand, represent attempts to create post-colonial states without entirely severing the links between those states and the previous colonial power. Quentin-Baxter and Aikman each comment on the lively question of what state practice and international law will make of these novel relationships of "free association".

The weak link in the collection, the exception to which is a neat and well-argued paper by Joe Herlihy exploring the ritual rhetoric and reality of decolonisation, is the attempts at theory.

Peter Sack's own contribution includes some savagely deflating criticisms of other scholars. Consider for example his response to Peter Fitzpatrick's Law and State in Papua New Guinea

"Fitzpatrick it appears is led by frustration rather than conviction to try out Marxism as a 'substantial alternative'. He rushes through the political and legal history of Papua New Guinea, sticking Marxist labels onto every puzzle, watching with obvious delight how they give predictable meaning to everything - meaning, of course, which PNG reality derives from Marxist theory and not vice versa. Lacking a positive political identification with Marxism, he feels no need to justify the adequacy of its analytical framework in terms of the consequences it will (or must?) have for the political and legal future of PNG."

Sack also launches attacks upon Nwabueze, Friedrich and Lowenthal. Cumulatively however this glut of destruction leaves little room for the development of Sack's own arguments. His attacks though powerful lack focus and he leaves little of lasting value behind.

The worst and most self-indulgent example is that of Norman Meller. He discusses the role of the consultant in the drafting of Pacific constitutions. Despite having experience in that field he manages the difficult task of appearing simultaneously both naive and profoundly superior. Consider for example,

"The concepts I used - any concepts - for all I know, narrowed or expanded those which their different cultures could have mustered. The logic I employed - I look back now and wryly smile at placing the delegates in a situation requiring mutually exclusive, seriatim decisions of 'yes or no', Aristotelian logic they unconsciously abandoned for more culturally compatible modes as critical questions were reached, ... - was not necessarily theirs. Even the position of the diverse Micronesians acting as one, their very meeting to consider the prospect, was culturally incongruous."

Such flaws notwithstanding, the collection as a whole will be of lasting importance to future scholarship. It demonstrates that the task of pan-Pacific research is both possible and worthwhile and at the same time suggests many useful themes for future, more detailed study. For that, Peter Sack and the Australian National University are each to be congratulated on their part in the publication of this fine collection.