

## **Selected Constitutions of the South Pacific**

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In 1983 Professor Paterson published two bound volumes of selected Pacific Constitutions. [Pacific Constitutions Vol. 1 (Polynesia) and 2 (Independent States of Melanesia and Micronesia) D Paterson 1983 Pacific Law Unit and Institute of Pacific Studies, USP] The previous year Peter Sack had edited a collection of essays on a variety of topics associated with the development of constitutional law in the Pacific. [Pacific Constitutions P Sack (Ed) 1982 Law Department ANU]. Constitutional jurisprudence in the region at the time was a mere babe-in-arms and many nations had only recently attained independence. Since then no books have been published solely concerned with Pacific Constitutions. Now nearly two decades later this new collection is not only welcome but also overdue.

This volume comprises primary material from the USP member countries with the bare minimum of comment. Thankfully, if we exclude Fiji, the last twenty years have seen little of the tinkering and meddling that have bedevilled and been the hallmark of constitutional development in Africa. Whilst the Constitutions of the region may not be models of perfection by and large those in power have spared Pacific Islanders from the depressing catalogue of political chicanery witnessed elsewhere. Nevertheless this updated volume is useful as it incorporates those constitutional amendments that have been made to the original national charters. This gives it special value as some nations have not published updated versions of their own constitutions for many years.

Fiji, in the realm of constitutional stability, is the Pacific's problem child and for this reason Professor Paterson has, wisely I think, left out whatever Constitution might still be currently in effect there. The recent proceedings leading up to the judgement of the Fiji Court of Appeal in Republic of Fiji v Prasad (Fiji CA, Civil Appeal No. ABU0078/2000S, 1 March 2001) on the ongoing legality of the 1997 Constitution were at the time of publication only on the horizon. In a foreword the editor promises to republish the volume with the inclusion of Fiji when the present upheaval settles. Notably the volume omits Papua New Guinea, being limited to the constitutional documents of those countries within the region of the University. In a way this is a pity as PNG has been at the forefront of constitutional jurisprudence in the area but reasons of space no doubt dictated a line be drawn somewhere.

For many, a volume of constitutions would make for dull and dreary reading. However for the aficionado dipping into this edition throws up constant themes of interest that may not be readily apparent if one did have the Constitutions collated in a single volume. Examination of the 'preambles' alone is a fascinating

exercise as they range from the non-existent (Cook Islands, Niue, Tonga), the fairly standard matter-of-fact understated British model (Nauru, Solomon Islands and Tuvalu) through to the freedom struggle formula (Vanuatu). All invoke a strong belief in a Christian 'God' none in more ringing evangelical terms than the Constitution of Samoa with its opening declamation:

'IN THE HOLY NAME OF GOD, THE ALMIGHTY, THE EVER LOVING

WHEREAS sovereignty over the universe belongs to the Omnipresent God alone, and the authority to be exercised by the people of Samoa within the limits prescribed by His Commandments is a sacred heritage.'

Not surprisingly most preambles also firmly acknowledge and affirm the importance of local custom and tradition.

New to me was how they reflect the 'mother' nation. Only a new infant state with American parentage could contain a preamble with the memorable:

We have reason to be proud of our forefathers who boldly ventured across the unknown waters of the vast Pacific Ocean many centuries ago, ably responding to the constant challenges of maintaining a bare existence upon these tiny islands, in their noble quest to build their own distinctive society.

(Constitution of Marshall Islands).

Unmistakable echoes of the Pilgrim Fathers, the Taming of the 'Wild' West and Star Trek!

The primary value of a collection such as this is that comparison is simple and revealing. For example a quick examination of the fundamental rights charters shows an intriguing divergence. That of Vanuatu for example is short, uncomplicated and unconditional; that of neighbouring Solomon Islands prolix, convoluted and hedged with qualification.

Comparison reveals that Samoa led the way in outlawing gender discrimination by section 15 of its 1962 Constitution. Vanuatu has been equally unequivocal; [Article 5.] However Tuvalu, [section 11(2)] and Solomon Islands [section 15 (5)] have hedged the prohibition of sexual discrimination with qualifications relating to custom. The terms of the ban on discrimination contained in section 15 of the Kiribati Constitution do not include any reference to sexual discrimination and the Constitution of Nauru also has no specific non-discrimination provision.

For idiosyncratic colour section 32 of the Constitution of Tonga is unrivalled. The rare and splendid prose of this provision is a marvellous, almost biblical, declaration to the monarchic succession in the Kingdom and a refreshing antidote to the anodyne language employed in modern drafting.

The perennial bugbear of modern publishing is inadequate proofreading and this volume is no exception. Most glaringly at 329 chapter 2 of the Constitution of Tonga is headed 'Constitution of Kiribati' and both Articles 55 and 56 of the Vanuatu Constitution are headed 'Public Solicitor.' Article 55 in fact relates to the Public Prosecutor. Article 9 of the Vanuatu document purports to deal with 'Automotic Citizens.' Even the author's surname is not immune. On the front and back covers it is Paterson but is then given as Patterson four times a page or two in before reverting to the correct Paterson in the 'Foreword.' All these glitches are apparent from a cursory review.

Each document is prefaced by a brief and useful historical introduction. A slight quibble with that of the Solomon Islands at 257 is that the relevant 1960's Order in Council, The Western Pacific (Courts) Order 1961 [SI 1506 of 1961 (UK)] was made in 1961 not 1960.

This collection will be an invaluable and essential shelf companion for all those engaged in research or teaching in any arena of constitutional development in the Pacific region. Hopefully Professor Paterson can be persuaded to edit a collection of essays and commentaries on the many aspects of constitutional interest that have surfaced in the last quarter of a century.

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