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Crisis: collapse of the National Bank of Fiji

Roman Grynberg, Doug Munro and Michael White, 2002, Crawford House, Adelaide, 183pp, ISBN 1 863 33225 1

This book will undoubtedly upset some people in Fiji as it calls into question the reputation of individuals, and the propriety or integrity of national institutions responsible for standards of performance in the banking industry. Some will consider it to be an intrusion by 'outsiders' into matters that are solely the concern of the people of Fiji. In fact the authors have served Fiji well by providing a readable account of an institution which, under the direction of an overly ambitious chief executive with strong political support, far outstripped its intrinsic ability to perform. They have drawn on material in the public domain, the press, Hansard and annual reports of institutions in their efforts to unravel a tangled web which appears to have resulted from at best incompetence, at worst malpractice.

Why did the National Bank of Fiji 'collapse'? The National Bank of Fiji, originally the Savings Bank of Fiji, could have played a modest but valuable role serving a client base of farmers, small business and individuals. As a government operation its capital was necessarily modest, relying on clients' deposits for lending operations and loans guaranteed by government. It was not designed to undertake substantial commercial business: loans to any one customer were limited to 25 per cent of equity. But circumstances engender change, and in 1974 the then Minister for Finance granted a waiver to this condition: this was later taken to be a general exemption. Following the military coups of 1987 Prime Minister Sitiveni Rabuka, acting in what he considered the national interest, dispensed with senior expatriate management, appointing Vinsanti Makrava as chief executive. The scene was set for rapid expansion in lending activity,

lending which failed in many instances to recognise the normal tenets of prudent commercial banking.

In fairness to Makrava it should be said that inefficient banking and monitoring practices existed prior to his incumbency. The change of management in 1987 merely accelerated lending without appropriate safeguards. In 1995 Minister of Finance, Berenado Vunibobo, had the unpleasant task of revealing that bad and doubtful debts were thought to total F\$90 million. However, by the time the full picture unfolded this figure had blown out to F\$220 million or 8 per cent of GDP, a situation for which the government would ultimately be responsible. Following this disclosure sections of the media had a field day; everyone who could possibly be held responsible ducked for cover—the National Bank of Fiji board and management, the auditor-general, the Reserve Bank of Fiji, politicians and officials of the Ministry of Finance. The government steadfastly refused an open enquiry into the reasons for the collapse. Statutory authorities responsible for monitoring banking practices claimed to have done what they could to avert the fiasco. Quite rightly the authors of this book have not sought to assign responsibility for, as they aver, 'no one person or single thing can be held solely accountable for the demise of the National Bank of Fiji' (p.149). Again, '[n]either the present authors nor the public of Fiji will ever know for certain whether corruption and cronyism were at the heart of the National Bank of Fiji's problems' (p.127). While no one body or person can be nominated as the real culprit all those with roles involving the proper conduct of the National Bank of Fiji's affairs must, to varying degrees, be culpable. In particular, government's refusal to hold an open enquiry means the truths has been hidden: national credibility becomes the loser.

Restructuring of the National Bank of Fiji as an alternative to winding up, steps taken to meet government's responsibilities to

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depositors, the expansion of public debt and the sale of the government's 49 per cent share of Amalgamated Telecom Holdings to the Fiji National Provident Fund, are expounded dispassionately. The role of sections of the media in keeping the public informed on developments, despite threats by government to introduce legislative control, makes interesting reading.

This book is a sad commentary on the government and its agencies' handling of a financial crisis of substantial proportions. It reveals a situation where it is impossible to assign credit to any party, except perhaps to sections of the media. While the book may find few friends in high places, this would seem to matter little in the long run if more responsible financial monitoring of government and its operations results.

Rodney Cole
Former Secretary for Finance, Fiji

Custom and the Law

Paul de Deckker and Jean-Yves Faberon (eds), 2001, Asia Pacific Press at The Australian National University, Canberra, 186pp, ISBN 0 731 53661 4, A\$32

Custom and the Law is an English translation of the original French publication *Coutume Autochtone et Évolution du Droit dans le Pacifique Sud* published by Éditions L'Harmattan in 1995. This is the first of a planned series of translations of the work of leading French scholars in the Asia Pacific region.

Custom and the Law emanates from an international legal conference bringing together leading legal representatives and academics from the French-speaking Pacific (from New Caledonia and French Polynesia), as well as metropolitan France.

This volume constitutes an important contribution to one of the most pressing questions in the Pacific region today, namely the tension which exists between customary

practices with respect to the management and good functioning of Pacific societies and the European-based Western legal systems imposed by former and current colonial powers. Good governance and security have become key issues in the Island Pacific today, where political instability and serious problems of law and order have become almost the norm. One has only to think of states such as Fiji, the Solomon Islands and Papua New Guinea, wracked by instability during the past decade.

Part One details customary rules, not laws, in the three territories of New Caledonia, French Polynesia and Wallis and Futuna, and discusses the manner in which these rules have been modified to be accommodated within the French legal system. Under French law it is almost impossible to allow custom any legal status, as exemplified by Norbert Rouland in his incisive preface to the volume

[a]lthough the 1958 Constitution explicitly refers to *territoires d'outremer* and their populations, by recognising the right to self-determination, it nevertheless states that...the principle of the indivisibility of the republic, as well as the principle of equality, insists on the unity of the French people and thus forbids any differentiation between citizens constituting a same people (p. 2).

However, in spite of these strictures, there are differences within the French-speaking Pacific, for example, Saura notes that

[i]n contrast to New Caledonia, civil law in French Polynesia has no distinct status, and French law seems to have absorbed, marginalised, or annihilated many traditional customs that Westerners would classify as legal...thus a Ma'ohi civil state or an indigenous court does not exist, nor have they existed for some time in French Polynesia (pp. 81-2).

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Part Two of *Custom and the Law* deals with indigenous custom and the jurisprudence of the French Overseas Territories. Bernard de Gouttes describes the dilemma facing judges in the French legal system, namely that either they apply French law by marginalising particular local law, or they apply French law by maximising its capability to take Kanak customs into account. The fundamental issue is the compatibility between the task of the judge, as defined by Article 66 of the Constitution of the Fifth Republic, to guarantee individual liberty, and the fact that Kanak culture blends the notion of individual responsibility with that of the collective responsibility of the tribe. Calinaud and Domingo-Neti discuss the intricacies of land tenure and custom in jurisprudence in a Polynesian context, while Aimot examines the complexities of intersection of the Western and Polynesian systems in Wallis and Futuna.

Custom and the Law should be compulsory reading for those interested in the interplay between customary rules and regulatory traditions and the Western rule of law that has been imposed upon the Pacific islands. It goes right to the heart of problems debated every day in Oceania, not just in francophone Pacific states, but in states and territories throughout this region. Where Western-introduced legal systems come up against customary rules, there is almost always a tension, not the least of which is the apparent impossibility of translating the vernacular concepts involved into either English or French, ignoring the differences between the British and French legal systems.

It is a book which will engage not just legal practitioners, but all who are involved in Pacific development and institution strengthening. It comes as no surprise, therefore, that *Custom and the Law* has already become a standard reference in a number of Pacific island tertiary courses. It is an attractively produced book, extremely lucidly

translated by Tim Curtis. Asia Pacific Press are to be congratulated on their foresight in publishing this valuable translation from the francophone Pacific and so making it available to a much wider readership.

Darrell Tryon
The Australian National University

Food Security for Papua New Guinea: proceedings of the Papua New Guinea Food and Nutrition 2000 Conference

R.M. Bourke, M.G. Allen and J.G. Salisbury (eds), 2000, ACIAR Proceedings No. 99, Australian Centre for International Agricultural Research, Canberra, 892pp, ISBN 1 863 20308 7, A\$52

It is no easy task to review a book that is 900 pages long and contains more than 100 chapters. But let me say at the outset that this is a landmark rather than a doorstop. It might even be a fitting epitaph for the chief editor, Michael Bourke, if he were not still alive and kicking. This volume represents the latest instalment in a series of publications relating to food and nutrition in Papua New Guinea which date back to the early years of the country's independence, when Bourke was an agronomist on the public payroll in Papua New Guinea who championed the cause of research into local food crops against the majority of his colleagues, who were more concerned with promoting the staples of the export sector.

It also represents a significant addition to a second body of literature on the indigenous agricultural systems of Papua New Guinea which has emanated from the Land Management Group in the Research School of Pacific and Asian Studies at The Australian National University. Even before the publication of this volume, it could be said that the systematic survey of these agricultural (or horticultural) systems by Bourke and his colleagues (most notably Bryant Allen and Robin Hide) during the

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course of the 1990s had produced a uniquely detailed contribution to scientific knowledge. This latest volume is one of the milestones in a new phase of research by the Land Management Group, which is primarily concerned with the capacity of these indigenous agricultural systems to supply the nutritional requirements of a rapidly growing population in the context of a steep decline in most of Papua New Guinea's traditional export industries.

The conference whose papers are collected here attracted speakers and participants from around the world, including Australia, France, Switzerland, Holland, Japan, Solomon Islands and New Zealand, as well as from all provinces of Papua New Guinea. The breadth of international participation is perhaps less significant than the engagement of many local scientists whose conditions of work were tending to detach them from the international scientific community, and who therefore needed the stimulus of a 'big event' to reignite their enthusiasm for public debate.

The papers in this volume are divided into two main parts, the first dealing with food security and nutrition and the second with food production in Papua New Guinea (the title of the second part is somewhat misleading, because some of the papers in both parts deal with the neighbouring countries of island Melanesia). The largest of the six sections in the first part contains 17 papers on the topic of food shortages and the 1997 drought and frosts which represent a significant addition to the literature on this particular subject. The most significant section in the second part is probably that which contains nine papers on sweet potato production, significant because the literature on this topic has failed to reflect the fact that sweet potato is a crop introduced from America within the last 500 years. It has not only become the staple food of more than half the population of Papua New Guinea, but

now has more varieties in Papua New Guinea than it has in its continent of origin.

Needless to say, in a volume which contains the entire proceedings of a very large conference, the papers vary considerably in quality (as well as in length), but it is safe to say that several of them are of major significance as contributions to the international literature, especially those which introduce each of the 11 sections. In addition to the 115 conference papers, the volume also contains a summary of the proceedings, with policy recommendations and two appendices containing a list of useful web sites and other relevant conferences and workshops held in Papua New Guinea over the past 30 years. Anyone who may be wondering why it does not also contain a bibliography should be advised that this is not just because it would make for an even larger number of pages, but also because the Land Management Group at The Australian National University has already produced a comprehensive bibliography as part of the Mapping Agricultural Systems Project.

This book has not only outweighed (quite literally at 1.6 kilograms) the previous 98 contributions to the series of conference proceedings published by the Australian Council for International Agricultural Research; it has also outsold them, not just because A\$52 seems to be a very reasonable price for 900 pages, but also because the content has been widely recognised as a definitive statement on the subject of the conference.

Colin Filer
The Australian National University

Asia-Pacific Constitutional Systems

Graham Hassall and Cheryl Saunders,
Cambridge University Press, Cambridge,
2002, 314pp, ISBN 0 521 59192 5, £40

The constitutional structures of Asia and the Pacific make for a daunting subject. Diversity

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of constitutional forms—parliamentarism versus presidentialism, federal versus unitary states, majoritarian versus proportional elections, and so on—is more pronounced in the Asia Pacific region than in almost any other part of the world. In addition, across the region there are numerous different trajectories of political development from the newly industrialised north Asian countries to the developing island states of the Pacific. There is also enormous social variation, from relatively homogenous nation-states to fractionalised and fragmented post-colonial polities. Diversity is the hallmark of the region.

The authors of *Asia-Pacific Constitutional Systems* sensibly take this diversity as a given. Surprisingly, however, they only sporadically attempt to identify underlying trends and patterns in constitutional designs and structures across the region. Instead, much of the book consists of episodic and largely unstructured accounts of particular processes (writing the constitution) or institutions (the legislature), taking tidbits of information from different cases and contexts. The result is mixed, working reasonably well in some chapters and failing spectacularly in others.

Structurally, the book is divided into three sections. The first section addresses issues of traditional pre-colonial political structures in Asia Pacific states, the introduction of colonial (or modern) constitutions and the process of writing autochthonous local constitutions. The second section deals with the legislature, representation, heads of state and constitutional revision. The third section looks at the role of the courts and judiciaries, interruptions and suspensions of constitutional powers, and devolution, while the conclusion is a digression on postmodernity and constitutionalism.

The chapters present a great deal of information (valuable and trivial) as well as some misinformation. At times the authors try

to mention every example of a given subject they can, while at other times they are so brief as to only scratch the surface. A more serious problem is the lack of any discernable theoretical underpinning to the book's discussion. While there are several well-established theories of constitutionalism, I was unable to identify a consistent theoretical or analytical line in this book. There is no reference anywhere to the new institutionalist approaches to constitutional analysis or the strategic uses of constitutions, for example.

The chapter on the subject I know best (that is, representation), not only lacks theoretical grounding, but factual analysis as well. Mistakes and confusion abound. Sections on particular electoral systems, simple plurality, for example, quickly drift off into discussions of electoral administration, a subject which is then given a section of its own several pages later. The account of proportional systems (pp. 94–5) describes the simplest such system as the single transferable vote, which is actually the most complex of all major electoral systems and one that is not used in any of the countries covered. A potted list of countries that use proportional systems is then presented, leaving out some important examples (such as South Korea) and including some that shouldn't be there at all (for example, Vanuatu). Similar confusion besets the remainder of the chapter.

Other subjects are better dealt with. The chapters that work best (constitutional revision and suspension of executive power) take a more traditional approach, moving from country to country and case by case on the basis of a common descriptive framework. By contrast, the introduction and conclusion head away from formal description into largely uncharted territory—a postmodern critique of constitution-making.

The end result is an uneven and sometimes incoherent combination of facts and theory. In addition the writing, while

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varied, is too often flat and passive, making the text something of a chore at times. A stronger editorial hand would have substantially improved the result. That this did not occur is disappointing, particularly given the importance of the subject matter and the fact that this is a book by two well qualified academics published by a major scholarly press.

Benjamin Reilly
The Australian National University

***Report of the Elections Observer Group:
a Joint Electoral Commission/
Transparency International Vanuatu
Project***

Shirley Randell (ed.), 2002, Blackstone
Publishing, Port Vila, 146pp,
ISBN 9 823 29023 7

This is a joint report by the Vanuatu Electoral Commission and Transparency International Vanuatu on the conduct of the Vanuatu National Elections which were held on 2 May 2002.

The Elections Observer Group (EOG) was chaired by Pastor Willie David Saul, a former Commissioner of Police and consisted of Myriam Abel, Vanuatu Director of Public Health; Hannington Alatoa, Vanuatu Ombudsman; Nadia Kanegai, Manager Northern Operations, TVL; Bishop Charles Ling, churches representative; Viran Molisa, youth representative, State Law Office; John Niroa, Director of Secondary Education; Chief Tom Numake, former President of the National Council of Chiefs; Yvette Sam, President Transparency International Vanuatu and three international observers: David Oughton, former New Zealand Secretary of Justice; Sir Anthony Siaguru, President Transparency International PNG and Greg Urwin, former Australian High Commissioner to Vanuatu.

The EOG was constituted on 29 April 2002, just prior to the election. Their report covers six days, from 29 April until 4 May 2002. The goal of the EOG was

...to observe the electoral process in Vanuatu during the 2002 national elections with a view to making an informed judgment about citizen awareness of their electoral rights and capacity to participate in a free and fair election (p. xi).

The twelve observers were distributed as follows: Tanna—Chief Tom Numake and Myriam Abel; Santo—David Oughton in Luganville and Nadia Kanegai in Rural Santo; Malakula—John Niroa; Efate—Pastor Willie David Saul, Bishop Charles Ling, Yvette Sam and Greg Urwin in Port Vila and Sir Anthony Siaguru, Hannington Alatoa and Viran Molisa in Efate Rural electorate.

The EOG found a number of serious flaws in terms of the electoral infrastructure, although they congratulated the people of Vanuatu for the orderly and disciplined manner in which they conducted themselves on election day in exercising their right to choose the representative of their choice.

They made a list of some sixty-five recommendations to improve future elections. Among other problems, the EOG found that the Vanuatu electoral roll was fundamentally flawed. There were 20,000 more accredited voters on the electoral roll (127,092) than the number of ni-Vanuatu over 18 years of age recorded in the 1999 Census (107,068). According to the EOG, the flawed electoral roll could be the primary contributor to possible electoral fraud. In fact, the Vanuatu electoral roll has yet to be computerised and coordinated with a database registering births, deaths and marriages. An unreliable electoral roll creates opportunities for electoral fraud and renders measurement of the incidence of corruption and malpractice difficult. The EOG also

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noted major related problems with the security and safety of electoral cards. At the same time, there were concerns expressed about the security and the collection of ballot boxes, with uncertainty expressed by the police as to whether all of the ballot boxes had been collected.

Among other major recommendations, the EOG found that legislation in relation to elections requires immediate review and strengthening; in the past alleged instances of electoral fraud have not resulted in convictions due to the inability of the Public Prosecutor's Office to pursue these matters.

The EOG report has great merit in that it formally records electoral problems that have bedevilled every general election in Vanuatu since 1979. It was high time that such an exercise be undertaken, but it is a pity that the joint Electoral Commission/ Transparency International Vanuatu project should have been formalised right on the eve of the election rather than well in advance. This would have allowed much better planning and a much more thorough observation of the whole electoral process.

As has been the case in Vanuatu for some time now, the francophone community was under-represented in the EOG, represented by only 2 out of the 12 members. This weakness is evident in the Transparency International Vanuatu publicity material reproduced at the end of the report, where only English and Bislama, but no French, language material appears. More galling is the Bislama spelling of the word 'vote' as *wot*, in that material, rather than *vot*, universally used for thirty years.

But the greatest weakness, and this is presumably the result of great haste in organising the EOG's travel arrangements, is undoubtedly that 7 out of the 12 observers remained in and around Port Vila, not visiting the populous offshore islands, and that only 5 managed to visit islands outside

Efate. On polling day, the EOG visited only 6 out of the 17 Vanuatu constituencies. It is to be hoped that future EOGs will be organised well in advance of the elections, and that their coverage will extend to all constituencies.

That being said, however, it is clear that it was important to conduct such an observer exercise, as previous Vanuatu elections are known to have been marred by electoral irregularities of many kinds. The fact that the EOG was able to make such a detailed set of pertinent recommendations for improving the conduct of future elections within a month of the election is a testimony to their engagement with ensuring electoral fairness and transparency. Their report has done a great service to the Republic of Vanuatu.

Darrell Tryon
The Australian National University