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Swimming Against the Tide? An assessment of the private sector in the Pacific

Paul Holden, Malcolm Bale and Sarah Holden, 2004, Asian Development Bank, Manila, 178 pp, ISBN 9 715 61534 1

This report is an output of the Pacific Department in the Asian Development Bank aimed at developing understanding of the reasons for the poor private sector development in the Pacific island countries. The authors take as a basic assumption that development of the private sector is critical to the Pacific island countries' long-term economic growth and reduction of poverty. Further, it is assumed that the private sector will only flourish when there is a welcoming environment for investment. Otherwise, capital provided by donors and international finance agencies only finances the flight of private capital from the Pacific island countries.

It is recognised that the Pacific island countries do have economic disadvantages in the form of geographical remoteness, small markets and frequent natural disasters. However, these natural handicaps are compounded by weak macroeconomic performance, poor governance, political instability, extensive government involvement in what would otherwise be activities carried out by the private sector, underdeveloped financial sectors, and a poor legal and investment policy environment for business.

After examining private sector assessments of the Marshall Islands, Papua New Guinea, Samoa and Vanuatu, and surveying opinions around the region, the authors conclude that the prime cause of the poor private sector performance is 'extensive state involvement in areas better left to the private sector, coupled with the state's inability to provide the public goods and institutions...that a flourishing private

sector needs' (p. 2). None of this is new but what the authors have added in this very well written report is the depth of analysis, especially of issues such as the constraints to the development of financial markets and the arrangements necessary in order for private markets to function effectively.

The analysis is largely based on the concepts of the New Institutional Economics with its focus on transactions costs. The ways in which existing institutional arrangements lead to high transactions costs facing potential investors are highlighted and the ways in which new institutional arrangements could lower transactions costs are explored.

The critical question the authors pose is whether these societies have to modernise and give up their cherished traditions in order to promote private sector development and its resulting benefits. Their answer is that the societies will have to adopt modern business practices if they are to prevent even larger proportions of their populations falling into poverty and to increase the welfare of all the people. However, the authors believe that such modernisation can take place without forgoing tradition. They believe that incentive structures that determine individual behaviour can be introduced that respect local cultural practices, just as they have in other countries that have modernised.

However, the authors caution that in order for such institutional change to take place there must be broadly based discussion of the issues in order to have society-wide ownership of the changes needed for private sector development.

The authors set out a roadmap for the implementation of such reform. As a first step there must be a public commitment to private sector development. However, it must be made very clear to the private sector that while there will be extensive changes to build an investor-friendly environment,

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there will not be any special deals for individual firms or industries. The second step is to carry out detailed studies to identify the constraints to private sector development, as these will vary from country to country. Next, there should be consultation with the private sector to prioritise the actions to be taken and to design the institutions and the policy changes to be implemented.

Throughout, the authors emphasise, bold political leadership will be necessary. This key ingredient is what has so often been missing in past attempts at reform and has been the main factor in the success of economic reforms in Samoa.

To take but one area of needed reform covered, the authors set out a sensible, non-threatening approach to the changes needed to land tenure in order for private sector development to flourish. As they argue, the fact that most land in the Pacific island countries is held under customary ownership, without a secure form of leasehold available to individual investors, is the major factor inhibiting the development of commercial credit for most people in the rural sectors. As a result, private sector investment is sub-optimal and productivity of the land is much lower than it could be.

As well as needing 'ownership' of the idea of creating such individual forms of land tenure, the authors note that 'institutional software' in the form of land registries, local courts, survey capacity, property valuation and mortgage preparation will be necessary in order for a land market to be fully operational. The report also details why it is very difficult, if not impossible, to securitise 'movable assets' and what arrangements would be necessary to have effective registration and enforcement of such assets so that people could use them as collateral for credit.

The political difficulties of this whole process are recognised. In particular, there

will be strong resistance from the traditional élite because of their loss of power. Their existing power essentially stems from the communal ownership of land and the rhetoric about how this form of land ownership provides a social safety net.

The report sets out the principles that need to be observed to gain the acceptance of the customary landowners. As well, the authors suggest the steps that could be followed to overcome the problems arising in establishing the rightful owners to the land, the boundaries of the land and the allocation of rights to the land.

As the authors remark, the steps are simple, the process is not.

This report demonstrates the authors' understanding of the reasons for the poor performance of the Pacific island countries, and the suggestions they make for overcoming the constraints to private sector development are sensitive to the practical and political obstacles standing in the way of change. The report is an excellent contribution to the discussion of the process of economic reform in the Pacific region. Reading it should be of value to university students, development assistance professionals and policymakers.

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South Pacific Least Developing Countries: towards positive independence

Binayak Ray, 2003, Progressive Publishers, Kolkata, 190 pp, ISBN 8 180 64056 6

In *South Pacific Least Developing Countries*, the author paints a realistic, though somewhat gloomy, picture of what he describes as the least developing countries in the Pacific—Kiribati, Samoa, Solomon Islands, Tuvalu and Vanuatu—following the United Nations Development Programme's characterisation

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of these countries. Although his noble vision of positive economic and political independence (that is, 'not depending on others' and not to be 'under obligation to others') for these countries is somewhat utopian in this age of internationalisation and globalisation, it is nonetheless important in that it challenges these Pacific island nations to a more assertive will to become economically and politically independent.

This study is a provocative analysis of economic, governance and development issues in the Pacific island nations the author investigates. More than just a descriptive account of corruption, instability and other such negative emphases which now dominate many studies of the Pacific, this study offers a prescriptive analysis of the reasons behind these nations' socio-political and economic problems. The author's interests include, among other things, the proposal for a collective approach among the Pacific island nations to a more effective utilisation of their natural resources, especially what the author describes as their 'large exclusive economic zone'. This is an important proposal worthy of further analysis by the Pacific island nations themselves.

While the author adopts a basically development economics mode of analysis, he goes beyond mere economic prescription to a broader approach that accommodates constitutional law, political, cultural theoretical and other disciplinary perspectives in his examination of the causes and effects of the poor socioeconomic *status quo* in these countries. This, in my view, is one of the major strengths of the book: it attempts a more integrated approach to the issues, thus challenging piecemeal assumptions and approaches to good governance and development in the Pacific.

The author also looks at the issues from the perspectives of the Pacific countries being investigated, feeling 'the pulse of the

community in developing economic and social policies'. This is important for a number of reasons. For instance, the disadvantages (geographical, demographic, economic and so on) of these countries ought to be taken into serious consideration in an honest assessment of their respective situations. Some of these disadvantages are clearly not the inventions or creations of the Pacific people themselves. Trade barriers and market access are factors beyond these countries' control. Geographical isolation is a function of distance, not the result of some conscious design. Global warming and the resultant rising sea levels, which threaten to submerge Tuvalu and other Pacific countries are not the result of over-industrialised Pacific societies. And most, if not all, Pacific countries are still struggling to make sense of the socio-political systems inherited from the colonial powers. In fact, many of the current problems with these countries' political systems are debts bequeathed by colonialism. These issues are often overlooked or simply ignored in many analyses of the Pacific situation.

In looking at the issues from the perspectives of the Pacific countries he analyses, the author thus makes a genuine attempt to ground his analysis in socio-historical contexts, taking into account the possibilities and limitations inherent in those contexts. Herein lies another major strength of this study: it is grounded. This challenges remote-controlled analysis and the promulgation of pre-conceived notions about Pacific island peoples.

That said, it must also be noted that the author's attempted comprehensive approach runs the risk of glossing over some important issues. One such issue is the author's appraisal of Pacific constitutional systems. The author's claim that Samoa is a constitutional monarchy, strictly speaking, is not consistent with constitutional facts. The assertion that the Constitution of Samoa

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1960 'has virtually a constitutional monarchy, although it has neither been incorporated nor made clear or fully explained in the constitution' is ambiguous. True, the Head of Samoa has prerogative power and other constitutional functions granted under the Constitution, such as giving the royal assent to parliamentary bills as a necessary stage in Samoa's lawmaking procedure. But, in the final analysis, Samoa's Head of State is a ceremonial figure, a unifying symbol for the nation as the constitutional framers understood it.

Regarding the election of the Head of State which the author seems to consider a potential problem, it must be noted that Article 18(1) provides for the election of a future Head of State by Parliament under the provisions of the First Schedule of the Constitution and pursuant to specific qualifications set out in Clause (2), including the eligibility of the nominee to be elected as a member of Parliament and that the nominee does not possess such other qualifications as Parliament may determine from time to time by resolution. In other words, the election of a future Head of State will be governed by and conducted in accordance with established legal and democratic procedures.

In an interesting discussion of land tenure systems in the Pacific, the author mounts a case for legal title in fee simple. Whereas the need for the liberalisation of property rights must be conceded, any reorganisation of land tenure systems must be done sensitively and with caution as the author himself correctly noted. What is contentious is the author's claim that the difficulty of effectuating land reform lies in what he describes as 'the community's emotional attachment with land'.

It needs to be said that the difficulty of privatising land ownership is the result of the interplay of complex factors; it is most certainly not a mere matter of sentiment-

alism or emotional attachment. In fact, the constitutional prohibition against the alienation or disposition of customary land or any interest therein by way of sale, mortgage, gift or otherwise is predicated on the understanding that family land belongs to all the members of the family, both present and future. In a very important sense, this is a legal mechanism designed to ensure that the family's future generations will have land to live on, that is to say, they do not have to buy land on which to live. The problem that Pacific peoples are now being asked to face as part of socio-economic reform is acquiring the right to use customary land in execution of loans and so forth without (arguably) ultimately alienating family property. Whether or not that will prove to be a viable long-term economic solution to the Pacific's economic problems remains to be seen. One thing seems certain though: at the end of the day, people need land to live on and landless generations will create much more than just economic problems.

While issues such as the ones noted above do not ultimately undermine the credibility of the author's study, they do warn against the tendency to gloss over differences and disparities arising out of divergent cultural specificities and political histories of Pacific countries. Be that as it may, the author should be applauded for making an honest effort to look at the issues from the different perspectives of the actors in the development movement in the Pacific, including that of the Pacific people themselves. After all, they are the ones who stand to be affected by the development programs being prescribed.

In conclusion, I note with approval R.J. May's evaluation of this study in the preface, that this study 'goes beyond the bounds of conventional economic prescriptions for the region and challenges some of the conventional wisdoms of both policy

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makers and Pacific islanders themselves'. And such is the important contribution the author makes to reform and development analysis for the Pacific.

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Passage of Change: law, society and governance in the Pacific

Anita Jowitt and Tess Newton-Cain (eds),
2003, Pandanus Books, Research School of
Pacific and Asian Studies, The Australian
National University, Canberra, 357pp,
ISBN 1 740 76025 5

Passage of Change: law, society and governance in the Pacific is, perhaps ironically, as much about change as lack of change. Since contact with Europeans and subsequent Christianisation, colonisation and (in most cases) decolonisation, Pacific island societies have undergone considerable transformations economically, socially and politically (Chapter 1 by Vijay Naidu). At the same time, many characteristics of 'ancient' Oceania remain, along with the heritage of the more recent colonial past. This is reflected in contemporary world views and ways of being of communities and individuals which, throughout the region, are firmly rooted in local culture and practices. These 'ways of being', often labeled 'tradition' or 'custom', continue to be held as legitimate precisely because they have withstood the passage of time and provide meaning, connection and purpose on a daily basis. Lack of change also characterises the modernist/positivist assumptions with respect to the nation-state, constitutional regimes and the rule of law, which continue to dominate the 'formal' (state/bureaucracy) sector (Chapter 16 by Robert Hughes). The modernist outlook,

'which reinforces the supremacy of introduced law' (p. 336), is not only a remnant of colonialism but a central feature of the international community's relations with the region today (particularly through the latter's good governance and liberalisation agendas). This modernist outlook has contributed to Pacific societies' difficulty in seeing past the dichotomies with which they have been burdened: state versus community; nation versus kin; customary law versus common law; human rights versus custom; traditional versus modern use of resources; and so on.

Passage of Change is an important book because it examines how these dichotomies have come about, why they persist and the problems they cause in contemporary Pacific island states. It does so by examining the application of law in the region. Although the book is written entirely by jurists associated with the University of the South Pacific's School of Law (with the exception of Chapter 1), it does not deal with technical aspects of law but rather with the role of law in society and governance. As such, it provides a welcome perspective on governance issues, differing from the usual points of view advanced by political scientists and economists, and reminds us that making sense of governance in the Pacific requires an interdisciplinary approach. The book also demonstrates the many ramifications that a single field of human activity and thought (in this case, introduced law) can have in society. This is particularly the case in Pacific societies where law, in indigenous or native conceptualisation, has never been a stand-alone practice or category of thought, and where justice has been understood more in terms of restoring balance in the community than in terms of defending individual interests (see Chapter 14 by Sinclair Dinnen). Yet, as *Passage of Change* illustrates, 'law' in the Pacific has generally become

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synonymous with common law and constitutional order while customary law, often referred to as 'custom', is considered secondary. As Owen Jessep writes

When 'the law' notices custom, it does so as something other than true law—either as fact, like 'compensation' treated as part-payment of damages or as a factor in sentencing, or as foreign law, like customary marriages. Custom is objectified and so kept out of the development of local common law (p. 208).

This has led to 'lack of progress in establishing and developing an appropriate 'indigenous jurisprudence', that is a body of legal doctrine which reflects Melanesian ideas and principles' (p. 216).

Zorn, in her excellent contributions on family law (Chapter 5), also shows how customary law is consistently made to fit into the framework of common law, and she concludes that: '[t]o the extent that the courts privilege common law principles and processes over customary law, the law diverges from the felt experience of the people' (p. 112). Grace Molisa and I also came to a similar conclusion with respect to the state of politics in Vanuatu, where, in our discussions about governance, many ni-Vanuatu expressed a sense of alienation due to a lack of 'understanding [of] a system [Vanuatu] has been burdened with' (Huffer and Molisa 1999). It seems that as long as what is categorised as custom does not become part and parcel of contemporary governance (law, politics, economics), state and local institutions will continue to lack legitimacy and relevance to many communities throughout the region (see Chapter 3 by Graham Hassall).

Zorn, in another chapter on women and the law, raises the thorny issue of the interpretation of custom in village and national courts, particularly with respect to

women. Her contribution inevitably leads to a wider reflection on the links between custom and human rights (dealt with in Section 4 of the book) that are generally assumed to conflict and to belong to different realms of thinking and practices. But as Zorn demonstrates, it is often because many features of custom remain vastly underpublicised that certain decisions of village courts, dominated by male power-brokers, discriminate against women. Indeed much of women's custom—knowledge, rights, responsibilities and status—has, with the impact of colonialism and subsequent political developments, been ignored or sidelined in contemporary governance. It remains an under-researched area. Practices such as 'bride price', for instance, are today interpreted in ways that are very different from their original purpose and conceptualisation. At the same time, Zorn shows that the state legal system 'fails to redress the problems caused by custom...' thereby leading to situations where 'women are the subjects of double discrimination' (p. 137). A much more thorough understanding of Pacific philosophies and practices, with respect to women as well as other categories of the population, is necessary so that they may be critically evaluated—as should be introduced principles, systems and institutions—in today's context.

In conclusion, *Passage of Change* should be seen as an invitation to law students to begin building a 'Pacific jurisprudence or philosophy of law' (p. 1). It should also serve as a warning to regional policymakers, academics and donors that if the rule of law is to be widely accepted in the region, then it must be made relevant and legitimate by adapting itself to Pacific world views. The latter cannot be discarded as secondary and the process of integration must be a two-way street.

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On a final, editorial note, the book would have benefited from more careful organising and proofreading. The volume is somewhat artificially divided into six parts, the order of chapters is not always logical and the section on natural resources is limited in scope. References in some chapters are inaccurate and there are too many typographical errors for a scholarly publication. In addition, certain chapters are clearly based on lecture notes and should have been reworked for a wider readership. Finally, it is a shame that there was no collaboration with Pacific islander students and scholars as authors or co-authors. That said, the volume is a valuable contribution to regional scholarship on governance and should hopefully lead to substantive research and publishing on Pacific legal philosophy.

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References

Huffer, E. and Molisa, G., 1999. *Governance in Vanuatu: in search of the Nakamal Way*, Discussion Paper 99/4, State, Society and Governance in Melanesia, Research School of Pacific and Asian Studies, The Australian National University, Canberra.

Modern Papua New Guinea

Laura Zimmer-Tamakoshi, 1998, Mt Thomas Jefferson University, Kirksville, 424pp. Index, figures, ISBN 0 943 54957 4

This very useful edited volume provides a series of essays on various elements of social, cultural, economic and political life in Papua New Guinea. It was put together in response to the lack of a broad-ranging text on contemporary Papua New Guinea. Zimmer-Tamakoshi has done exceedingly

well in soliciting papers from a wide range of social scientists, all established commentators on the country.

Like Papua New Guinea itself, one of the strengths of the volume is the diversity of perspectives and languages that the volume contains. Contributors to *Modern Papua New Guinea* come from a range of disciplinary backgrounds: economists, anthropologists, social workers, geographers and political scientists are all included. The length of the contributions vary (anthropologists seem to have the most to say, or at least need more words to say it), as does the engagement between theory and more empirical material.

The book is structured around four main themes: state and national identity, economic development, the 'New Society', and people's welfare. Within this framework the topics are wide-ranging, covering the state-society relationship, plantations and smallholder agriculture, fisheries, mining, inequality and gender in the urban setting, AIDS and sex work, the education system, law and order, and conservation. Rather than try and provide a sample from each, it is perhaps more useful to concentrate on two of the chapters and use them to highlight a theme that occurs throughout the book.

A common thread in the bulk of the papers is the dilemma faced equally by the individual and the state in balancing notions of 'tradition' and 'modernity'. One explicit example of this is Christine Bradley's contribution on the examination by the Papua New Guinea Law Reform Commission on domestic violence. In the context of the widespread condoning of wife beating, the Commission had to negotiate between the written law and the Papua New Guinea Constitution—both firmly against domestic violence—and the Commission's own mandate to 'make the country's system of law more compatible with Papua New Guinea's customary attitudes and practices' (p. 353). The review went ahead, and the

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Interim Report highlighted both the extent of the problem and sought ways of reducing domestic violence. The 1987 Interim Report was generally welcomed, except in the National Parliament where one member 'was outraged that the nation's leaders were being asked to waste their valuable time discussing family quarrels, and another said he would like to tear up and burn the Interim Report' (p. 356). The extensive public education campaign that followed has been highly successful at changing such attitudes, and indeed continues in some parts of the country today.

Likewise Colin Filer's chapter on mining (entitled, with the typical Filer flair for irony, 'The Melanesian Way of menacing the mining industry') offers typically insightful commentary on the clashes between traditional communities and multinational mining houses. Slinging a few barbs in the direction of 'coffee shop' environmentalists along the way, he points out that

...although we might detect a superficial resemblance between the way that Melanesian villagers and Western environmentalists perceive the 'pollution' of the mining industry, we need to bear in mind that the Melanesian perception (and the actions that stem from it) owes much less to the desire for a 'clean natural environment' than it owes to the search for a new social and economic order (p. 174).

He concludes by arguing persuasively that local and national political discourse directed at the mining companies

...is not a conscious or deliberate battle against the demons of mineral imperialism, but an internal struggle which threatens the fabric of their state and has the accidental or unintended effect of creating an increasingly problematic investment climate for the

mining companies...The Melanesian Way of menacing the mining industry is not just a failure to cooperate with the industry itself, which many people might applaud as a heroic act of resistance, but a lack of mutual cooperation in the pursuit, and even the definition, of that 'development' which everyone agrees they want (p. 175).

These are simply two of the many very good contributions making up this volume. This is an illuminating collection that offers something for most specialised interests, and should form an essential addition to the collections of those with an interest in Australia's nearest neighbour.

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