

## Beyond Recognition: Promoting Indigenous Peoples and their Laws in the South Pacific

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### Introduction

In Australia, the discussion on constitutional change has concentrated on formal recognition of Indigenous peoples and their languages, and anti-discrimination. A comparison with the position in small island countries of the South Pacific, where Indigenous customary laws are generally still very strong, could be a useful tool in a more extensive inquiry in Australia. Of course, as failed transplants have vividly demonstrated,<sup>1</sup> there is always a need for caution in looking for solutions from overseas. Laws are not developed in a vacuum, but are often inextricably linked with the social institutions within which they operate. Most importantly, a major difference exists in the fact that Indigenous peoples form the majority in most of the small island countries of the South Pacific,<sup>2</sup> whereas in Australia they do not. Notwithstanding, the attempts by Australia's near neighbours to give Indigenous custom and culture a more prominent place in their legal systems may broaden the important Australian debate.

In small Island countries of the South Pacific, Indigenous customary laws are generally still very strong. Due to the spirit of nationalism prevailing in the lead up to independence, many South Pacific countries gave constitutional recognition to Indigenous culture and customary laws, and to some institutions of Indigenous governance. Unfortunately, this was not preceded by a thorough discussion of the difficult issues involved and the exercise has not been an entire success. Where Indigenous customary norms and institutions are incorporated in, or acknowledged by state law, complex problems arise. In part, this emerges from the fact that, across the years, even those well-disposed to Indigenous customary laws have consistently fallen into the trap of treating

1 Otto Kahn-Freund, 'On Uses and Misuses of Comparative Law' (1974) 37 *Modern Law Review* 1.

2 In Solomon Islands, about 97 per cent of the population are Indigenous: Ministry of Finance, Statistics Office, Report of 1999 Population & Housing Census, Basic tables and census description, 2000, Statistic Office, Honiara. In Vanuatu, about 98 per cent of the population are Indigenous: CIA, World Factbook, <<https://www.cia.gov/library/publications/the-world-factbook/fields/2075.html>>.

This is a preview. Not all pages are shown.