Grand Narratives Interwoven: Pacific Constitutions and Constitutionalism of the Global South

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A. Introduction

The Pacific islands are undoubtedly of the global south. They share with others in the global south the experience of colonisation, foreign domination for the purposes of resource extraction, and the marginalisation and subordination of indigenous knowledges and institutions of governance.[1] The southern turn in comparative constitutional studies has tended to focus on constitutions in Africa, Latin America and Asia, with specific countries, such as South Africa, Colombia and India, receiving much of the attention.[2] Their constitutional experiences have provided the recurring themes from which the defining features of southern constitutionalism have been drawn.[3] In this contribution to the Symposium 'Grand Narratives of Constitutional Journeys and the Crisis of Democracy', I take up the invitation to reflect on where Pacific island constitutions fit in the wider scholarship on southern constitutionalism.

The primary point of departure is Theunis Roux's article 'Grand Narratives of Transition and the Quest for Democratic Constitutionalism in India and South Africa'.[4] The purpose, however, is not to critique that Article,[5] but to take the conversation beyond India and South Africa and trace the features of debates about constitutionalism in the Pacific region in order to identify how the constitutional experiences of the Pacific might contribute to wider scholarship on global south constitutions. In this, this brief reflection

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1 These recurring features of the colonial experience are set out in *Philipp Dann / Michael Riegner / Maxim Bönnemann*, The Southern Turn in Comparative Constitutional Law: An Introduction, in: Philipp Dann / Michael Riegner / Maxim Bönnemann (eds.), The Global South and Comparative Constitutional Law, Oxford 2020, pp. 1-38.

2 Ibid., p. 11.

3 E.g., *Daniel Bonilla Maldonado* (ed.), Constitutionalism of the Global South: The Activist Tribunals of India, South Africa, and Colombia, Cambridge 2013.

4 *Theunis Roux*, Grand Narratives of Transition and the Quest for Democratic Constitutionalism in India and South Africa, World Comparative Law 57 (2024), p. 57.

5 For such critique see contributions to the World View Symposium: Grand Narratives of Transition and the Quest for Democratic Constitutionalism in India and South Africa by Theunis Roux, World Comparative Law 57 (2024), pp. 1-126; see also IACL-AIDC Blog, Workshop my Paper Series–Grand Narratives of Transition and the Quest for Democratic Constitutionalism, 2025, https://blog-iacl-aidc.org/2025-posts/2025/6/3/workshop-my-paper-series-grand-narratives-of-transition-and-the-quest-for-democratic-constitutionalism-response-to-commentators (last accessed on 28 August 2025).

cannot be comprehensive. The constitutional experiences of the countries[6] of the Pacific region are all different; and there is often diversity between different groups within each country. The examples I draw on are intended to illustrate some of the features of debates about constitutions in the region, not to exclusively or exhaustively define a 'Pacific constitutionalism'. That is a much bigger task, and one that is being led by Pacific scholars and actors, drawing on the diversity of constitutional knowledge, experience and expressions in the region.

B. Narratives of External Influence and Constitutional Transition

In his article, Roux sets out two competing 'grand narratives' about the constitutional transitions in India and South Africa. Each narrative seeks to make sense of the adoption of western liberal constitutional forms by polities in the global south. One narrative cast constitution-makers as creative adapters of western constitutional forms, making deliberative choices about what parts to adopt and what parts to change to meet the needs of post-colonial India and post-apartheid South Africa. The other narrative casts constitution makers as restricted and constrained by western constitutional forms, which entrench inequality and subordinate Indigenous laws and norms.

There are similar narratives in the scholarship and practice of constitutional transitions in the Pacific. Pacific constitutions draw on the legal forms and institutions created during colonial administration and the constitutions of colonising states. Foreign influence is apparent in the constitutional texts, which share structures, language and provisions adopted from foreign sources.[7] In addition, the mode of constitution making in many states facilitated foreign influence. The constitutions of former British colonies were all formally made by Order in Council, following conferences of representatives from the Pacific country and British officials.[8] In those countries where constitutions were made and adopted by national representatives, foreign advisers had a role in constitutional design and drafting, albeit with varying degrees of influence.[9] In some counties constitution making was carried out in conjunction with negotiations on resource ownership and extraction, such

6 The term 'countries' is used to encompass independent states as well as polities in the region that are not states but nevertheless have their own constitutional systems.

7 *Graham Hassall*, Governance, Legitimacy and the Rule of Law in the South Pacific in: Anita Jowitt / Tess Newton Cain (eds.), Passage of Change: Law, Society and Governance in the Pacific, Perth 2003; *Peter Larmour,* Foreign Flowers: Institutional Transfer and Good Governance in the Pacific Islands, Honolulu 2005; *Brij V Lal* / *Kate Fortune* (eds.), The Pacific Islands: An Encyclopedia, Honolulu 2000, p. 314.

8 *W. David McIntyre*, Winding up the British Empire in the Pacific Islands, Oxford 2014.

9 *Elisabeth Perham*, Modes of External Constitutional Advising in Constitution-Making Processes, Thesis, UNSW Sydney 2024, pp. 12–20.

that foreign interests directly influenced constitutional choices.[10] Transitional provisions extended colonial laws and institutions into independence,[11] while provision was made for foreign judges, in practice often drawn from the former colonising country, to serve on Pacific courts.[12]

However, Pacific constitutions also feature innovations and departures from the conventional constitutional model, which provide evidence of the agency of Indigenous actors engaged in constitution making during colonial times, at independence and in later reform processes. Many constitutions in the region explicitly protect customary land ownership, departing from western liberal models of the individual ownership, sale and acquisition of property.[13] Indigenous custom is recognised as a source of law, giving constitutional space to legal pluralism.[14] Some constitutions have created institutions through which customary leaders can provide advice to government on lawmaking and policy.[15] Constitutions feature express exceptions and limitations on individual rights that seek to recognise and elevate customary communal conceptions of rights over individualistic ones.[16] Authority has been decentralised to local communities, some of which are working to create their own constitutions.[17] Constitutions have grappled with the effects of migration and the displacement of peoples as a result of colonial exploitation of resources, in some cases providing constitutional space for diaspora and migrant communities.[18]

10 E.g., Kiribati: *Katerina Martina Teaiwa*, Consuming Ocean Island: Stories of People and Phosphate from Banaba, Bloomington 2014. Nauru: *Cait Storr,* International Status in the Shadow of Empire: Nauru and the Histories of International Law, Cambridge 2020.

11 *Jennifer Corrin Care*, Discarding Relics of the Past: Patriation of Laws in the South Pacific, Victoria University of Wellington Law Review 39 (2009), p. 635.

12 *Anna Dziedzic*, Foreign Judges in the Pacific, London 2021.

13 *Joseph D. Foukona*, Customary Land in Pacific Island Countries: Laws and Threats, in: Margaretha Wewerinke-Singh / Evan Hamman (eds.), Environmental Law and Governance in the Pacific, Abingdon 2020.

14 *Jennifer Corrin Care / Don Paterson*, Introduction to South Pacific Law, Cambridge 2022, pp. 5-6.

15 E.g., The Malvatumauri in Vanuatu, the Council of Iroij in the Marshall Islands, and the House of Ariki in the Cook Islands. On this and other sites of mixing see *Miranda Forsyth*, Custom Inside and Outside of Constitution in the Pacific Island Countries Today, Journal of South Pacific Law (2017), p. 146.

16 For a general limitation provision see e.g., the Constitution of Tuvalu 2023, s 29. Specific examples include limitations on the right to vote in Samoa: see *Anna Dziedzic*, Constituencies in a Hybrid State: An Examination of the Shift from "Territorial" to "Electoral" Constituencies in Sāmoa, Journal of Pacific History 57 (2022), p. 498 and proposed limitations on freedom of movement in Solomon Islands: see *Rebecca Monson / George Hoa'au*, (Em)Placing Law: Migration, Belonging and Place in Solomon Islands, in: Fiona Jenkins / Mark Nolan / Kim Rubenstein (eds.), Allegiance and Identity in a Globalised World, Cambridge 2014.

17 *Miranda Forsyth*, The Writing of Community By-Laws and Constitutions in Melanesia: Who? Why? Where? How?, IB2014/53, https://openresearch-repository.anu.edu.au/server/api/core/bitstreams/adef7152-096d-4bfb-a786-e48efee6678d/content (last accessed on 28 August 2025).

18 See e.g., provisions relating to the people of Banaba in Constitution of Kiribati 1979 Ch. IX.

These examples support narratives of constitutional transition as Indigenous-led adaptations of western constitutional forms as well as narratives of colonial impositions. Such narratives have played a role in recent debates on constitutional reform in the region, especially those which seek to elevate Indigenous norms, practices and institutions. For example, in 2020, amendments were made to Samoa's Constitution to give the Land and Titles Court equal status to the Supreme Court and to give it jurisdiction over constitutional rights as well as Samoan custom. In justifying the amendments, Samoa's Prime Minister asserted that original constitution was made 'by *papalagi* [foreigners] who have no customs and culture like Samoa' and that changes were needed for the 'court to equally view individual rights, which [are] based on *palagi* beliefs, and communal rights, which are at the fore of our cultural governance'.[19] This characterisation of the constitution and the constitution making process was contested[20] and the amendments were reversed by the subsequent parliament.[21]

In 2023, Tuvalu adopted a new constitution, which also sought to better balance individual human rights and Tuvaluan customs and values, through a new Charter of Duties and Responsibilities and constitutional recognition of island governments. Tuvalu's Constitution of 1986 had already gone some way to elevate customary values and institutions, but controversial court cases prompted further debate the distinction between 'ideas of human rights as championed by bodies like the United Nations' and Tuvalu's consensus-oriented communal traditions.[22] For the 2023 amendments, constitution makers adopted what they described as a 'decolonial' approach that sought to 'interweave culture and local Tuvaluan knowledge into Westminster parliamentary and government systems'.[23]

C. A Counter Narrative: Interwoven Constitutions

In Samoa and Tuvalu, constitution makers drew on narratives of the colonial imposition of constitutional forms as well as narratives of their adaptation to context. Rather than being pitched against each other, however, they are used to produce what is described in the Tuvaluan context as an 'interweaving' of the external and indigenous in the constitutional system. Weaving is also used by Tongan scholar Mele Tupou Vaitohi as an analytical frame to understand how Pacific constitutions are created by combining international, colo-

19 *Mata'afa Keni Lesa*, LTC Bills: Masked PM Slams "Unfounded Palagi Thinking", Samoa Observer, 28 April 2020, https://www.samoaobserver.ws/category/samoa/62059 (last accessed on 28 August 2025).

20 *Malama Meleisea / Penelope Schoeffel*, Sāmoan Custom, Individual Rights, and the Three 2020 Acts: Reorganizing the Land and Titles Court, The Journal of Pacific History 57 (2022), p. 439.

21 Constitution Amendment Act 2025.

22 *Simon Kofe / Jess Marinaccio*, Tuvalu Constitution Updated: Culture, Climate Change and Decolonisation, Devpolicy Blog, 20 September 2023, https://devpolicy.org/tuvalu-constitution-updated-culture-climate-change-and-decolonisation-20230921/ (last accessed on 28 August 2025).

23 Ibid.

nial, Indigenous and liberal constitutional norms and practices to produce a single woven constitutional floor.[24] Weaving is a creative, communal process, which involves deliberate choices about which strands to use, and how to arrange and interlink them in ways that are functional and which convey meaning. As such, constitutional weaving provides a counter narrative to the idea that constitutions must be entirely autochthonous to be authentic as well as to the assertion that written constitutions derived from western models are necessarily foreign and imposed. It suggests the possibility that the grand narratives that Roux outlines can not only find common ground in shared goals, but that they can coexist in other ways that are mutually supportive.

The idea of a syncretic constitution that amalgamates western and indigenous ideas is discussed briefly in Roux's article in the dialogue between the liberal and culturalist grand narratives. There, the critique is made that while constitution makers sought to innovate and extend written constitutions to capture and incorporate indigenous forms and values of governance, their constitutional 'imagination' was limited by the constitutional forms provided by the west.[25] This is a common starting point for post-colonial constitutions. As Sandipto Dasgupta explains, postcolonial constitution making was conducted under an understanding that 'constitutions now were an ideal set of norms and institutional attributes that granted membership to the liberal family of nations. Instead of polities creating their constitutional forms, adherence to a constitutional form made polities legitimate.'[26] In this way, the western liberal constitutional form was the necessary framework through which colonised polities could communicate their sovereignty and self-government.[27] While this is one way to read Pacific constitutions, it is a reading that risks marginalising and mischaracterising the plural nature of Pacific constitutional systems.

One understanding of legal pluralism presents it as different systems of law coexisting in the same place. In this, it is a feature of many societies in the global north and south. In many Pacific contexts, however, the different legal systems and values of introduced state law, Indigenous customary law, and Christianity are not neatly contained and ordered in a hierarchical fashion. Rebecca Monson, in her book 'Gender, Property and Politics in the Pacific' shows how the state legal system has become embedded in Solomon Islands through the way in which Solomon Islanders navigate the three different systems of law. She shows that in doing so, they do not merely *access* and *use* law, but actively *produce*

24 *Mele Tupou Vaitohi*, Constitutional Weaving in Tonga, a Small State with Traditional Authority: A Theoretical Framework for Tonga's Constitutionalism, in: Elisabeth Perham / Maartje De Visser / Rosalind Dixon (eds.), Small State Constitutionalism, London 2025.

25 *Roux*, note 4, pp. 48–49.

26 *Sandipto Dasgupta*, Legalizing the Revolution: India and the Constitution of the Postcolony, Cambridge 2024, p. 8.

27 For a study of this process in the Pacific see *Anna Dziedzic*, Patterns of External Influence in Making and Interpreting Three Pacific Constitutions, Comparative Constitutional Studies 2 (2024), p. 172.

it.[28] Through this process, the multiple legal orders are vernacularised, in ways that challenge the centrality of state law while simultaneously recognising its authority, albeit it as just one legitimate source of law amongst several. Once again, the weaving metaphor seems apt, because it captures the sense that pluralism is not a mixing or a hybrid, but a process in which the different strands of law are still discernible such that, in Demian and Rousseau's terms, 'one can be used as a background or source of authority for the other'.[29]

It is possible, and theoretically productive, to try to understand the pluralism of Pacific constitutions in a similar way. Doing so would present some fundamental challenges to western liberal understandings of constitutionalism. It might, for example, require some rethinking of key concepts such as constitutional supremacy[30] and human rights.[31] It would take seriously the call to reject colonial framings of Indigenous custom as 'not law'.[32] It would harness decolonial methodologies that take different sources and norms seriously, not in order to romanticise or treat one as more superior than the other, but to recognise and value each of the component epistemologies.[33] This might mean decentring the constitutional text and looking to other places and processes through which constitutional norms are generated and made legible and authoritative across different legal orders[34] or to the history of encounter and experimentation with constitutional forms in the pursuit of self-determination.[35] Intra-regional constitutional comparison and conversation would help to shift the constitutional template against which constitutions and their workings

28 *Rebecca Monson*, Gender, Property and Politics in the Pacific: Who Speaks for Land?, Cambridge 2023.

29 *Melissa Demian* / *Benedicta Rousseau*, Owning the Law in Melanesia, in: Eric Hirsch / Will Rollason (eds.), The Melanesian World, Oxfordshire 2019, p. 317.

30 See e.g., *Stephen Levine*, Constitutional Change in Tuvalu, Australian Journal of Political Science 27 (1992), p. 492.

31 See e.g., *Eselealofa Apinelu*, Standing under Fenua: Customary Rights and Human Rights in Postcolonial Tuvalu, Thesis, Swinburne University of Technology Melbourne 2022.

32 *Eugénie Mérieau*, Area Studies and the Decolonisation of Comparative Law: Insights from Alternative Southeast Asian Constitutional Modernities, International Quarterly for Asian Studies 51 (2020), p. 153.

33 On methodology see *Aparna Chandra*, Detangling Knots in the Narratives: A Response to Theunis Roux, World Comparative Law 57 (2024), pp. 114, 122; *Zoran Oklopcic*, The South of Western Constitutionalism: A Map Ahead of a Journey, Third World Quarterly 37 (2016), p. 2080. On pluralism and the global south see *Tobias Berger*, The "Global South" as a Relational Category: Global Hierarchies in the Production of Law and Legal Pluralism, Third World Quarterly 42 (2021).

34 To again draw inspiration from Monson, see her discussion of how women speak for land in Solomon Islands: *Monson*, note 28. On the transdisciplinarity of self-determination in the region, see *Katerina Teaiwa*, Our Rising Sea of Islands: Pan-Pacific Regionalism in the Age of Climate Change, Pacific Studies Journal 41 (2018), p. 26.

35 See e.g., *Tracey Banivanua-Mar*, Decolonisation and the Pacific: Indigenous Globalisation and the Ends of Empire, Cambridge 2016; *Demian / Rousseau*, note 29, on the legal framing of self-determination movements.

are tested[36] away from a liberal western constitutional model to a Pacific one. In short, constitutional amendment and reform is not the only way to decolonise a constitution.

D. Moving Beyond Transformative Constitutionalism

In the cases of South Africa and India, Roux identifies that the two competing narratives share an ideal, which he calls southern democratic constitutionalism, which is that constitutions in the global south should be designed to empower a democratic state to undo the colonial legacy of social, economic and cultural inequality. Southern democratic constitutionalism moves beyond classic liberal constitutionalism as 'limits on government', to transformative constitutionalism, in which the state and its institutions have a positive obligation to address economic injustice and inequality.[37] This idea of transformative constitutionalism does not resonate in much of the Pacific. With the notable exception of Papua New Guinea,[38] Pacific constitutions do not seek to empower the state to lead the task of social change. Instead, Pacific constitutions seek to maintain a meaningful role for local customary forms of government (with which Christianity is in many cases now intertwined) alongside imported institutions and principles of governance. As such, if pressed to identify a shared ideal that resonates with theories of southern and decolonial constitutionalism that drives constitutional design and change in the Pacific, I would suggest that it is this interwoven pluralistic character of constitutions. As with transformative constitutionalism, the realisation of the ideal interwoven constitution is a difficult and sometimes perilous task, but there is much done and being done by scholars, activists and leaders of the Pacific to understand, theorise and realise this aspect of 'Pacific constitutionalism', in ways that resonate with and contribute to the wider field of comparative constitutional law.

36 To take up a provocation from *Chandra*, note 33, pp. 118–119.

37 *Roux*, note 4, p. 51.

38 On Papua New Guinea's transformative constitution see *Bal Kama*, Rethinking Judicial Power in Papua New Guinea: A Mandate for Activism in a Transformative Constitution, Singapore 2024. Even here pluralism features, as the National Goals and Directive Principles and Basic Social Obligations direct the government and the people to build on Indigenous social orders and values in the pursuit of development, see *Vergil Los Narokobi*, Narokobi's Melanesian Philosophy in the Papua New Guinean Legal System, The Journal of Pacific History 55 (2020), p. 274.