

WEAVING PASIFIKA VIEWS INTO THE FORMS AND PRACTICE OF LEGAL EDUCATION IN AOTEAROA NEW ZEALAND

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With the backdrop of the work of the 'Improving Pasifika Legal Education in Aotearoa New Zealand' project, this paper considers the two ways in which Pasifika views have been woven into the forms of legal education. Universities and law schools can weave Pasifika people and views into legal education in New Zealand by 1) administrative measures of admissions and support programmes, and 2) curriculum reform.

Le programme de recherche pluridisciplinaire "Improving Pasifika Legal Education", présidé par l'Honorable Luamanuvao Dame Winnie Laban, Vice-Chancelor adjoint (Pasifika) à Victoria university of Wellington, a été mis en place en 2020 avec pour objectif premier de promouvoir les conditions d'accès et de réussite en Nouvelle Zélande aux études juridiques des étudiant(e)s du Pacifique Sud.

Ces travaux présentent l'originalité d'avoir été menés en privilégiant sur le plan méthodologique le concept dit du 'Talanoa'.

Clé pour maintenir des relations respectueuses, le 'Talanoa' fait référence à la façon dont les populations du Pacifique Sud organisent leur communication sous la forme d'une conversation qui leur permet de partager des idées, leur vécus respectifs et leurs aspirations.

Le programme de recherche pluridisciplinaire "Improving Pasifika Legal Education", a ainsi permis de successivement aborder les thèmes d'un cursus universitaire en droit ou d'une pratique judiciaire qui en Nouvelle-Zélande,

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favoriseraient un traitement égalitaire entre les différentes communautés du Pacifique Sud.

Les conclusions des premiers travaux des différents groupes de travail ont été présentées le 1er décembre 2022.

Elles ont dégagés deux lignes directrices pour permettre aux étudiants du Pacifique Sud de réussir leurs études juridiques en Nouvelle Zélande, à savoir tout d'abord la mise en place de mesures administratives d'admission adaptées qui devront être accompagnées de programmes de soutien et ensuite l'instauration d'un curriculum spécifique.

I INTRODUCTION AND CONTEXT

There is a general consensus among stakeholders in New Zealand that increasing the number of the Pasifika law students is a priority. This consensus is reflected in the national project entitled, 'Improving Pasifika Legal Education in Aotearoa New Zealand.'¹ This is an important project whose aim is to increase the number of Pasifika students enrolling and graduating with law degrees in New Zealand.

The term "Pasifika" describes people living in New Zealand who have migrated from the Pacific, or who identify with Pasifika based on their ancestry or heritage. It is a collective term that refers to men, women, and children who identify with the islands and/or cultures of Samoa, Vanuatu, the Cook Islands, Papua New Guinea, Tonga, Niue, Hawaii, Tokelau, Fiji, Solomon Islands, Kiribati, Tuvalu, or are of other Pasifika or mixed heritages. The term includes a variety of combinations of ethnicities, recent migrants or first, second, third, fourth, and subsequent generations of New Zealand-born Pasifika peoples.

In the 2018 Census, New Zealand's population of Pacific peoples was reported as 381,642, or 8.1 per cent of New Zealand's total population.² It is a multi-ethnic, heterogeneous demographic comprising different languages and cultures.³ The same Census reported that Pasifika people are also the fastest growing young population in New Zealand, with low rates of mortality and high rates of fertility.⁴ By 2026, it is projected that Pacific people will make up 10 per cent of New Zealand's

1 Funded by Michael and Suzanne Borrin Foundation.

2 Statistics New Zealand "Pacific Peoples" (2018) <<https://www.stats.govt.nz/tools/2018-census-ethnic-group-summaries/pacific-peoples>>.

3 However, there are significant cultural similarities and there are shared experiences around colonisation, migration and resettlement.

4 Statistics New Zealand "Pacific Peoples" (2018) <<https://www.stats.govt.nz/tools/2018-census-ethnic-group-summaries/pacific-peoples>>.

population.⁵ Thus, Pasifika in New Zealand "will produce an increasing portion of the nation's births, its student body, workforce, taxpayer base, voter and consumers of both public and private goods and services".⁶

However, Pasifika are consistently underrepresented in the law programmes in tertiary education institutions in New Zealand at the undergraduate, Honours and postgraduate levels. For instance, in 2011 only 3.5 per cent of New Zealand law graduates were Pasifika, while 66.1 per cent were Pākehā.⁷ The growth of Pasifika law graduates has been minimal to non-existent, with Pasifika at only 6.5 per cent of LLB graduates in 2017 and Pākehā at 71 per cent.⁸

The first part of this article examines the different affirmative actions or interventions taken to support and increase the number of Pasifika students in law schools in New Zealand. The second part suggests a programme of transforming the norm of lawyering taught in law school through a substantial and structural review of the modes of legal education to achieve a meaningful improvement to Pasifika legal education in New Zealand.

II MEASURES TAKEN BY LAW SCHOOLS IN NEW ZEALAND TO ADMIT AND SUPPORT PASIFIKA STUDENTS

The measures taken to make law school more accessible to Pasifika people can be divided into two main administrative categories: affirmative actions and support services.

A Affirmative Action – Targeted Admissions

Targeted admissions can be classified as an affirmative action designed to admit members of identifiable historically disadvantaged groups, with the goal of increasing the ranks of minority lawyers in the profession.⁹ The goal is to provide access to law school for individuals who might never have successfully applied.

5 Ministry of Social Development "The Social Report" (Ministry of Social Development, Wellington, 2010) at 15.

6 Ministry of Pacific Island Affairs "About Pacific peoples in New Zealand: Ministry of Pacific Island Affairs" <www.mpia.govt.nz>

7 Rachael Breckon "Diversity Changing Stereotypes – the future lawyer" *LawTalk* (New Zealand, 14 Sept 2012) at 7.

8 Geoff Adlam "Snapshot of the Profession 2019" *Law Talk* Volume 926 (March 2019), at 31.

9 Dolores Blonde et al "The Impact of Law School Admission Criteria: Evaluating the Broad-Based Admission Policy at the University of Windsor Faculty of Law" (1998) 61 *Sask L Rev* 530 at 533.

The availability of targeted admission pathways varies between universities and not all law schools in New Zealand offer such targeted admission pathways for Pasifika law students.

The law schools at AUT and Waikato University have direct entry. For example, at AUT, a Pasifika student who has completed Part I papers with at least a B grade average in the compulsory law papers will be offered a place in Part II. However, students are considered on a case-by-case basis. At Waikato University, there is no limitation of entry from first year to second year.

Certain law schools have targeted admission programmes in place to assist Pasifika law students. This includes the University of Auckland and the Victoria University of Wellington. The University of Auckland offers Undergraduate Targeted Admission Schemes (UTAS) as one of the university's initiatives to meet its responsibilities under the Treaty of Waitangi and to achieve equity outcomes in line with its Equity Policy, procedures and strategic objectives. The Pasifika student cohort is one of the minority groups eligible under this programme. To be eligible for consideration under the UTAS (Moana Oceania), a student must comply with all the administrative requirements, and the faculty must approve the application. As at 2022, the university offers 37 places for entry into Part 2 under the UTAS (Pasifika). The Law Faculty provides the following support for Pasifika students:

- a Pasifika academic and support advisor who provides academic and cultural support from enrolment and assignments to advice on choices after an LLB
- Pasifika Academic Support Strategies, which help schemes to foster and advance Pasifika achievement, such as *Talanoa* sessions
- Pasifika career models to inspire students.

At the Victoria University of Wellington, the Law Faculty oversees an admissions programme intended to ensure increased representation of Māori and Pasifika students in the law programme. Since 2020, the targeted Admissions Process for Pasifika – more recently renamed the Targeted Admissions for Pasifika Achievement (TAPA) – aims to increase the number of Pasifika students who transition from first to second-year law. Five per cent of available places at 200-level law are reserved for Pasifika students applying under the TAPA. Students who wish to be considered under this process will indicate that in their enrolment application or notify the faculty. Applicants must have passed all prerequisite courses and be interviewed by a panel typically comprising members of the Pasifika community, the Law Faculty and Pasifika legal practitioners. TAPA admissions can overlap with the distinct Māori Admissions Process for Māori taura,¹⁰ given that approximately

10 In the Maori language, the word 'taura' refers to student or pupil.

22% of the taura identify as both Māori and Pasifika. The support given to the students who are in these programmes includes:

- regularly scheduled meetings with the Pasifika Engagement Advisor
- additional workshops designed to assist Pasifika students with their study skills, time management and learning mindset
- support from academics who attend these additional workshops.

The other law schools either do not offer targeted admission to Pasifika law students or they are considering it. For example, at the University of Otago, the Law Admissions Committee determines admission to second-year law. There are two categories for admission – standard entry and alternative entry. In regard to the alternative entry category, candidates can only be considered by virtue of their Māori descent. Pasifika students are only considered for the standard admission category. At the University of Canterbury, a discretionary second-year entry is being investigated and evaluated in 2022.

B Support Services for Pasifika Law Students

Each law school administers its own programmes to support Pasifika law students. There are different types of support provided specifically for Pasifika law students.

1 Pasifika leadership

There are generally low rates of visible Pasifika representation among law schools' leaders. This suggests that law school institutions need to promote the advancement of Pasifika in leadership roles. Diversity in leadership is imperative and is promoted in the universities through initiatives designed to enhance communications and interactions with Pasifika students in law schools. For instance, the University of Auckland Law School has appointed an Associate Dean (Pasifika) who is on the leadership team at the Law School and who also leads the support programmes for the Pasifika student body while contributing to high-quality teaching and research. Similarly, the Auckland University of Technology has in place an Associate Head of School (Māori and Pacific Advancement) who is responsible for overseeing the academic support, planning and tracking of student achievement.

2 Support for equity success

Pasifika law students receive a variety of support at law schools. These include mentorship, extra tutorials, and coaching. The University of Auckland offers content- and skills-based workshops and pre-exam retreats.

Some of the equity supports are short term. For instance, one law school coordinated a Pasifika first year law coaching project from 2014 - 2015, where alumni were recruited to coach Pasifika first year law students in order to improve retention and success.

Some law schools provide funding for events such as conferences, special awards for Pasifika students or initiatives designed to maximise opportunities for Pasifika law students. The Auckland University of Technology and University of Waikato have initiatives targeting Pasifika school leavers.¹¹

3 Engagement support

New Zealand law schools have different initiatives in place to encourage and facilitate engagement with Pasifika law students. These initiatives include the appointment of engagement advisers or liaison academic staff or a convenor of Pacific Engagement for Pasifika student support and pastoral care. For example, one law school provides targeted support and pastoral care for first year Pasifika students by appointing a dedicated Student Advisor Pacific and an Academic Skills Tutor whose responsibilities include academic and pastoral care for these students. Other engagement initiatives include encouraging Pasifika law students who are high achievers into honours programmes.

Through these practices and policies, law schools across New Zealand have supported increasing the participation of Pasifika people. There are good reasons for this. First, there is an increasing expectation of courts and clients for lawyers to demonstrate Pasifika cultural competence. Further, it is the responsibility of lawyers to sustain a democratic, rule-of-law-based legal order that represents the society it serves. To some extent, they are the guardians and gatekeepers of the legal system, instrumental in the vindication of Pasifika's legal rights and entitlements. So, members of the legal profession should ensure broad and representative access to the profession as a gateway to positions of influence in politics and in society in general.

The focus is on the law school as the first point of admission to the legal community. The Pasifika students' subjective experiences with legal education identified in the 'Improving Pasifika Legal Education in Aotearoa New Zealand' project elucidates the realities that speak more deeply to the underlying systemic inequality than the formal anti-discrimination laws and policies.

11 Secondary school students considering applying to law schools.

III CURRICULUM ENHANCEMENT – WEAVING PASIFIKA VIEWS INTO LEGAL EDUCATION

Weaving Pasifika worldviews into legal education will require a re-conceptualisation of the normative model of lawyering produced in law school. This weaving process will move beyond the measures outlined in Part II of this paper towards revising the curriculum to reflect an institutional and professional culture based on equity, belonging and power/authority assumptions. This can be achieved through meaningful engagement with the study of law, as well as the provision of the law school environment where learning takes place naturally through critical tools and structured reflections.

The forms and practices of the law schools in New Zealand are premised on the traditional legal pedagogy that relies on the 'case method' of instruction. It is the main mode of instruction in the first-year curriculum at law schools across New Zealand. The case method is based on an understanding of legal analysis as a science where laws are organised into a system of predictable and neutral rules and principles that can be applied generally in any fact situation.¹²

However, legal realists have argued that legal education can do more than teach cases in order to adequately prepare future lawyers for the contextual contingencies of real-world lawyering.¹³ They believe that the case method excludes factors that are relevant in any case affecting members of minority groups. It also inadequately considers social variables leaving no room for self-critique within the discourses of legal analysis and reasoning. If students are taught that doctrine is all that matters, they will resist attempts at diversifying the content of core courses. Student responses reflect the values and priorities set by the law school. Commitments to diversity and transformation will not be effective if the classroom and curriculum reproduce traditional priorities and privilege established perspectives. Here are some ways where Pasifika worldviews can be woven into legal education.

A Broadening Skills through Learning by Doing

Teaching students how to read a case and understand its logic and principles is an important competency, but it is just one of many skills a new lawyer needs –and it may not be the most important skill. As law schools do more than teach doctrine, especially as technology provides access to legal information and knowledge much easier, law schools can provide added value with a focus on identity and skills-based knowledge, rather than only on cognitive knowledge on the part of legal educators.

12 Oliver Wendell Holmes "The Path of the Law" (1897) 10 Harv L Rev 457 at 458.

13 Jerome Frank "A Plea for Lawyer-Schools" (1947) 56 Yale LJ 1303 at 1315.

B Mainstreaming Experiential Education

The current law school model, relying on the case method and Socratic teaching, prioritised the 'mastery of principles and doctrines' as opposed to skills and habits.¹⁴ However, the experiential education approach such as that used in legal clinics is motivated by a desire to increase access to justice for those who are disadvantaged, poor and the vulnerable. The role of the lawyer is seen as not only to apply and explicate formal rules; students learn how to challenge and re-interpret rules, problem-solve and set norms in a fact-based, client specific, socially contingent context. Moreover, Pasifika worldviews can be integrated into legal education through experiential or clinical learning.

Therefore, legal clinics provide a venue for student creativity and energy, while also highlighting the importance of skills training and learning by doing. Hence, in addition to teaching skills and providing access to justice for the poor, clinics help students understand the law through the eyes of the people who are affected by it. This enables the development of a vision of pedagogy and practice that will be responsive to the lived impact of law and the structural reality of power differentiation. Clinical education can be seen as an instrument of social transformation wherein a commitment to justice can be promoted through the dual methods of client-centred lawyering and student-centred learning.

While some law schools provide clinical programmes, they remain conceptually distinct from mainstream legal education. They are often viewed as an alternative or complement to the all-important doctrinal instruction that occurs in the lecture theatres. However, clinical and experiential learning can widen that which is relevant to learning and practising law without limiting abstract doctrine. It also offers real-life settings to apply diverse forms of legal knowledge and abilities to actual case studies, rewarding different student competencies and skill sets. Further, it employs critical reflection to nurture professional and personal growth, socially responsible and ethical behaviour through the appreciation of the lived impact of law and legal practice. Therefore, the mainstreaming of clinical legal education offers possibilities beyond promoting access to justice for Pasifika people through on-campus and community clinics. It can foster students' political consciousness and appeal to a student's desire for hands-on experience skills acquisition. The lessons learned from clinical education offer unique opportunities to further mainstream experiential

14 David A Garvin "Making the Case – Professional education for the world of practice" (September-October 2003) Harvard Magazine, <https://www.harvardmagazine.com/2003/09/making-the-case-html>.

learning by incorporating it into the core of legal education as a vehicle for incorporating Pasifika pedagogy.

A Pasifika pedagogy can seek understandings of legal problems through the eyes of the different affected individuals or groups. Such an approach can remedy the depersonalising, abstracting tendency in traditional legal analysis. It helps reorient the focus of study from the rule to the process. It also teaches legal principles as contextualised by facts. This is in contrast to the case method approach of extracting the ratio, and then rationalising the facts according to a pre-set analytical frame. Such a shift allows for counterbalancing and changing epistemological assumptions and widens the scope for diverse contributions to the production of legally relevant knowledge.¹⁵

With clinical learning, it can be argued that the client experience provides students with an opportunity to deal with situations that are not structured, learn how to think through actual professional issues and study law in complex social contexts. Applying law in the complexities of the context and as part of the actual legal process would make clinical learning more effective than extracting abstract principles from dicta based on court decisions. In this way, clinical learning provides general benefits based on learning by doing and reflection. However, it can be expanded to include mooted and role-play where the form of instruction is problem-based where theory and principles are applied to a practical situation, as students engage in the act of doing and reflect on their performance and process.

The benefit of adapting this reflective process is that evaluation in an experiential learning setting tends to gauge a student's progress over time and through the use of an assortment of evaluative tools. This will allow students to demonstrate their talent in various ways and it will also allow them to develop at their own pace. It provides an educational setting where students of different backgrounds will perform well.

Further, the curriculum contents and pedagogy can motivate students to engage and be successful in higher education. This is based on active and collaborative learning, with enthusiastic lecturers, and it offers a range of learning experiences. Engaging students through the curricular contents and delivery methods will be an effective way of motivating all students, but especially Pasifika students. Collaborative learning and teaching refers to the ways in which pedagogy, curricula and assessment are designed and delivered to engage students in learning that is meaningful, relevant and accessible to all. It embraces a view of the individual and individual difference as the source of diversity that can enrich the lives and learning

15 Kimberle W Crenshaw "Toward a Race-Conscious Pedagogy in Legal Education" (1988) 11(1) National Black Law Journal <https://escholarship.org/uc/item/0qp9p46>.

of others.¹⁶ For example, some students may be less intrinsically interested in the subject, but engaging learning and teaching strategies can ignite their interest and improve their engagement.

Pasifika values and views are based on a collaboration approach horizontally and vertically. The lecture or teaching style is detached, didactic and impersonal. To the extent that it is dialectical, it thrives on confrontation, and it is burdened by a tradition of classroom authoritarianism that has unproven pedagogical value. On the other hand, a Pasifika pedagogy follows a model of student-centred education, whereby the instructor is a mentor or guide, facilitating the student's self-learning. The students discover and produce the knowledge themselves making connections through the act of doing. Because this process encourages cooperation with fellow students to make the interests of clients' paramount, students will be more likely to work as collaborators in problem solving and knowledge production rather than competitors.

IV CONCLUSION

In conclusion, the consensus is that law school and the legal profession in Aotearoa New Zealand should be representative and that there is a representative deficit of Pasifika lawyers. From this perspective, the law schools and the profession are tasked with a responsibility to remedy this issue. As a result, law schools have put in place various administrative initiatives such as targeted admission and Pasifika student support programmes to promote legal education and remedy the issue of representation of Pasifika peoples. However, based on the findings of the Improving Pasifika Legal Education project, once Pasifika students are admitted to law schools, their experiences are shaped by the patterns of social exclusion and academic underperformance, so the problem of retention and completion continues.¹⁷

Pasifika success in legal education is a priority. Although there have been several advances made to improve representation of Pasifika peoples in law school and systems have been put in place, the promise of successful Pasifika law students and law graduates remains unfulfilled. As a result of analysing the data and thinking of interventions, we understand that a Pasifika collaborative approach and clinical learning practices offer a useful method to achieve a more engaged pedagogical commitment to increase and improve Pasifika success in legal education. Hence, the law schools have a real opportunity to change the form and practice of lawyering in

16 Deborah Son Holoien "Do Differences make a Difference? The Effects of Diversity on Learning, Intergroup Outcomes, and Civic Engagement" (2013) <https://inclusive.princeton.edu/sites/g/files/toruqf1831/files/pu-report-diversity-outcomes.pdf>.

17 Key Findings, Fofola na ibe – Improving Pasifika Legal Education Report on Findings and Recommendations, (Borrin Foundation, Wellington, 1 December 2022).

New Zealand as they are a place of production not only of lawyers, but of law itself. They transmit and assimilate the behaviours, ethics and norms that shape the professional identity. Pasifika worldviews provide an account of legal education that weaves diversity into the forms and practices of law.