

# TEACHING LEGAL ETHICS AND PROFESSIONALISM IN A SOUTH PACIFIC CONTEXT

---

CAROLYN PENFOLD

## I INTRODUCTION

Most law schools teach courses with names such as ‘Lawyers, Justice and Ethics’, ‘Law, Lawyers and Society’, ‘Ethics and Professional Conduct’, or ‘The Legal Profession.’ Whatever name they go by, these courses increasingly cover many aspects of both legal professionalism and legal ethics. The push to do so in Australia can be seen in a 2008 Discipline Based Initiative on Learning and Teaching which set as a goal: ‘develop effective means to inculcate in Australian law students the values of professionalism, ethics, and service.’<sup>2</sup> It can be seen further in the inclusion of ‘Ethics and Professional Responsibility’ in the Threshold Learning Outcomes for Law,<sup>3</sup> and the more recent development of an ALTC Good Practice Guide on this topic.<sup>4</sup>

In Australia, National Uniform Admission Rules also call for the study of ‘Ethics and Professional Responsibility,’ although the fuller description of the requirement is still almost entirely rules based,<sup>5</sup> and many state admission bodies still require only the study of ‘professional conduct,’<sup>6</sup> without any mention of ethics training.

\* Faculty of Law, University of New South Wales.

Gary Davis, ‘A Catalogue of the Teaching of Legal Ethics, Professional Responsibility, Etc in Australian Law Courses’ (Document collated for Council of Australian Law Deans (CALD), November 2008) <<http://www.cald.asn.au/docs/4.1Ethics.pdf>>.

<sup>2</sup> Susanne Owen and Gary Davis, ‘Learning and Teaching in the Discipline of Law: Achieving and Sustaining Excellence in a Changed and Changing Environment’ (Project Report, Australian Learning and Teaching Council, 2009) <[http://www.olt.gov.au/system/files/resources/altc\\_LawReport.pdf](http://www.olt.gov.au/system/files/resources/altc_LawReport.pdf)>.

<sup>3</sup> Sally Kift, Mark Israel and Rachael Field, ‘Learning and Teaching Academic Standards Project: Bachelor of Laws Learning and Teaching Academic Standards Statement’ (Australian Learning and Teaching Council, 2010).

<sup>4</sup> Maxine Evers, Leanne Houston and Paul Redmond, ‘Good Practice Guide (Bachelor of Laws): Ethics and Professional Responsibility (Threshold Earning Outcome 2)’ (Australian Learning and Teaching Council, 2011).

<sup>5</sup> Law Admissions Consultative Committee, ‘Uniform Admission Rules 2008’ (2008) <<http://www.lawcouncil.asn.a>>.

<sup>6</sup> Davis, above n 1.

Nonetheless, there are moves toward requiring the study of ethics in addition to professional practice, and the competency standards of the National Uniform Admission Rules do now require that ‘an entry level lawyer should act ethically *and* demonstrate professional responsibility ...’.<sup>7</sup> Between academic institutions and admitting bodies, the need to teach ethics along with professional responsibility is increasingly being recognised and acted upon.<sup>8</sup>

In most South Pacific countries there are no equivalent admission requirements for lawyers. However, the Law School of the University of the South Pacific (USP) introduced Legal Ethics as a compulsory course in the Bachelor of Laws degree in 2005.<sup>9</sup> The course is described as follows:

Legal Ethics — Any person studying for a professional degree should have some knowledge of the ethical principles upon which the practice of all professions is based. Students of law in particular require an understanding not only of the organisation, nature, structure, practice and operation of the legal profession, but also an appreciation of the ethics which impact upon their work as lawyers and their relationship with the community. The duties imposed on the lawyer can be seen as being grounded in ethics. These duties, to the court and to the client, will be considered in this course.<sup>10</sup>

It was hoped that the introduction of Legal Ethics as a course within the undergraduate LLB degree would ‘increase public confidence in the profession, make for better lawyers and contribute to the legal education of those studying the law.’<sup>11</sup>

The USP’s Professional Diploma in Legal Practice also includes an Ethics module, described as follows:

Ethics & Professionalism & Work Skills — In this module trainees will learn about:

- the rules of professional responsibility;
- their duties as individual lawyers to evaluate the appropriateness of their conduct in all professional situations;

<sup>7</sup> Law Admissions Consultative Committee, above n 5, 22 (italics added).

<sup>8</sup> Ethics and professionalism often overlap but may also be distinguished. For example not returning calls, skipping appointments, or keeping files in disarray, may all be unprofessional while not unethical. Courtesy, organisation, attention to timing, and thorough record keeping may not generally appear to be as important as ‘ethics’, but where the aim is to increase trust in, respect for, and use of a particular system, and such practice is often not modelled even by senior practitioners or judicial officers, it may need to be more explicitly taught.

<sup>9</sup> Email from Peter MacFarlane to the author, 12 April 2012. Professor Peter MacFarlane is a former Head of the USP School of Law who introduced Legal Ethics at USP and has taught the course numerous times.

<sup>10</sup> University of the South Pacific, *School of Law: Bachelor of Laws (LLB) Program Content* (11 March 2013) <<http://www.usp.ac.fj/index.php?id=8384>>.

<sup>11</sup> Peter MacFarlane, ‘Book Review of Duncan Webb, Ethics, Professional Responsibility and the Lawyer’ (2003) 7 *Journal of South Pacific Law* <<http://www.paclii.org/journals/JSPL/vol07no1/6.shtml>>.

- how they can apply rules of professional conduct in various professional contexts;
- their professional responsibilities in specific professional [settings].<sup>12</sup>

By making the study of legal ethics and professionalism compulsory in all undergraduate and postgraduate legal qualifications, USP signals its belief that these are necessary topics in the training of South Pacific lawyers. However, teaching such topics in the South Pacific creates major challenges, and the effectiveness of such teaching will depend to a great extent on a recognition and understanding of the context of the South Pacific legal environment.

The course descriptions (above), so similar to those used in Australia, assume the teaching of legal ethics and professionalism for a state based, common law legal system. This paper does not suggest that this system is to be preferred over other systems, and does not suggest that the legal ethics and professionalism which enhance state based common law legal systems are superior to those supporting traditional systems. It does not discuss the broader issues surrounding legal pluralism, cultural relativism, or neo-colonialism. Rather, accepting that USP teaches legal ethics and professional responsibility in a curriculum which focuses predominantly on state based common law, this paper examines some of the difficulties of doing so in the South Pacific, and makes suggestions for overcoming those difficulties.

The Law School of the University of the South Pacific is located in Port Vila, Vanuatu, over 1000 kilometres from the main administrative hub of USP, and from the remainder of the Faculty of Arts and Law in Suva, Fiji. The Law School draws its students from a dozen different South Pacific countries,<sup>13</sup> each of which has its own internal diversity of cultures, and thus students have a multitude of disparate background languages, different levels of facility with English, and marked differences in educational levels and life experiences. In addition, law students may study online for the whole of their law degree, and never physically attend a class or come face to face with their teachers<sup>14</sup>

This would raise challenges for teaching any topic, but it is complicated for law teaching by the fact that each South Pacific country also has its own legal system(s). Each country has some element of English or American common law, initially introduced by colonisers but adopted locally upon independence.<sup>15</sup> In addition,

<sup>12</sup> The University of the South Pacific, *The Professional Diploma in Legal Practice* (11 March 2013) <<http://www.usp.ac.fj/index.php?id=8388>>.

<sup>13</sup> University of the South Pacific, *USP Home Page* (5 October 2012) <<http://www.usp.ac.fj>>.

<sup>14</sup> There have been suggestions that campus based attendance be required at least for part of the degree but this is not presently the case.

<sup>15</sup> Tonga has adopted such a system despite not having been formally colonised. Jennifer Corrin and Don Paterson, *Introduction to South Pacific Law* (Palgrave Macmillan, 3<sup>rd</sup> ed, 2011).

other rules or practices, or other laws or legal systems, will apply as their Constitutions protect and preserve different aspects of non-‘state’ law. In many South Pacific countries custom is still applied in traditional settings, in ways which may ignore, support, or conflict with the ‘common law system’. In Melanesia, ‘law’ is not traditionally differentiated from the rest of custom, so the traditional styles of living, working, interacting and resolving disputes all form part of the ‘way of knowing’.<sup>16</sup>

Across the South Pacific, lawyers may be expected to work within and between a number of these systems, owing responsibilities to the state law and legal system while needing also to live within and interact with traditional or custom systems. These challenges face anyone teaching law in the South Pacific, and the difficulties are compounded for the teaching of legal ethics and professionalism, where the context makes these topics both particularly important and particularly difficult.

This paper is based on the author’s experience teaching a range of courses including Legal Ethics at the Law School of USP in 2010 and 2011, and ongoing research conducted in the Solomon Islands and Vanuatu since 2010.<sup>17</sup> The research project aims to identify legal educational needs in the South Pacific. As part of the project, interviews have been conducted with more than 60 lawyers and others working closely with lawyers to ascertain the knowledge, skills and attributes required for legal work in Vanuatu and the Solomon Islands; to identify the opportunities available to acquire those; and to identify unmet needs requiring further or alternative education or training. The initial phase of this project, with a more detailed contextual background and discussion of methodology, was reported in a previous volume of this journal.<sup>18</sup>

While the overall research project includes all aspects of legal education, this paper focuses mainly on the importance and challenges of teaching legal ethics and professionalism for the Melanesian countries of Vanuatu and the Solomon Islands. It highlights factors which need to be taken into account in teaching such a course in the South Pacific, and makes suggestions for overcoming some of the

<sup>16</sup> “If law was ever a special discipline in Melanesia ... it would in our view fall to be described generally as knowledge or wisdom. Law, in our view does not exist as a phenomenon which controls society, but as part of cognitive knowledge of a community.” Bernard Narokobi, *Lo Bilong Yumi Yet: Law and Custom in Melanesia* (Melanesian Institute for Pastoral and Socio-Economic Service and the University of the South Pacific, 1989) 25.

<sup>17</sup> Ethics approval for this research was initially sought from the USP Faculty of Arts and Law in 2011 in accordance with USP protocols. More recently ethics approval has been granted by ANU’s Humanities & Social Sciences Delegated Ethics Review committee — Protocol: 2012/263.

<sup>18</sup> For more information on this research see Carolyn Penfold, ‘Contextualising Program Outcomes for Pacific Island Law Graduates’ (2012) 22 *Legal Education Review* 51

difficulties encountered. Much of this will be relevant to other South Pacific countries also, and to other developing countries.

## II THE IMPORTANCE OF TEACHING LEGAL ETHICS AND PROFESSIONALISM IN THE SOUTH PACIFIC

Teaching legal ethics and professional practice in the South Pacific is particularly important as the region works to bed down relatively recently introduced, and still developing, state legal systems. Recent events such as the breakdown of law and order during the ‘tensions’ in the Solomon Islands, and the latest coup in Fiji, which led to the abrogation of the Constitution, demonstrate the still precarious position in much of the region of state laws and legal systems, their lack of authority, and the fine line between a functioning state legal order on the one hand, and instability and (state) lawlessness on the other.

In Vanuatu and the Solomon Islands the state systems of law operate under poorly understood, and often poorly functioning, Westminster-style governments. Concepts such as ‘rule of law’ cannot be assumed to be understood,<sup>19</sup> or effective. National sovereignty, a concept imported by the colonisers,<sup>20</sup> continues to create tensions in both countries. Central national parliaments govern multiple communities spread over vast distances which, until recently, were autonomous. ‘Nation-building’ is still underway.

In 2002 the Pacific Islands Forum Secretariat, in a survey of governance issues, found the region was characterised by

weak legislatures with a prevailing weak culture of accountability and transparency and lack of clarity in the independence of parliament, weak regulatory frameworks... with few sanctions against non-compliance, weak judiciaries that are generally understaffed ... and the courts often have a considerable backlog of cases.<sup>21</sup>

In 2009 the picture was not greatly different. At this stage the Pacific Islands Forum Secretariat claimed that

the Pacific regional security environment has become increasingly complex and diverse ... The region has had to contend with ... internal conflicts and crises ... governance challenges [and] limited legal and law enforcement resources and capacity ... Instances of violent conflict, civil unrest, and political crises have had serious consequences for internal

<sup>19</sup> Brian Tamanaha, ‘The History and Elements of the Rule of Law’ (Legal Studies Research Paper 12-02-07, Washington University, February 2012).

<sup>20</sup> Narokobi, above n 16, 76.

<sup>21</sup> Attributed to Pacific Islands Forum Secretariat, ‘EU Pacific Regional Support Strategy 2001–2005 for the Pacific ACP Group’ in Regional Resource Centre for Asia and the Pacific, ‘Sustainable Development Practices for the South Pacific’ (United Nations Environment Programme, 2004) <<http://www.rrcap.ait.asia/pub/sdp/sp.pdf>>.

stability and sustainable development in a number of Pacific Island countries.<sup>22</sup>

There is a need and an opportunity for assistance at the regional level to support national institutions in the law and justice sector and the security sector, and in broader governance and accountability mechanisms.<sup>23</sup> Overseas countries and organisations pour huge amounts of money into the South Pacific.<sup>24</sup> On the basis that good governance and a strong legal system are prerequisites to positive and lasting change and development, the law and justice sector is a particular focus for aid. The Regional Assistance Mission to the Solomon Islands (RAMSI), and the Vanuatu Legal Sector Strengthening Project (VLSSP) are just two examples of overseas funding being put into attempts to strengthen governance and legal systems. The VLSSP ran from 2000 to 2011, with the purpose of supporting ‘a stable and responsive government in Vanuatu by building sustainable administrative and legal capacity ...’<sup>25</sup> and has now been replaced by the Vanuatu Law and Justice Partnership, 2012<sup>26</sup> RAMSI in the Solomon Islands has been running since 2003, and currently has 19 long-term advisers supporting Solomon Islands to build up its judicial, legal, and correctional systems and capacity, through the transfer of legal knowledge skills as well as

<sup>22</sup> Pacific Islands Forum Secretariat, ‘Political Governance and Security Programme Strategic Plan 2009–2011 (Revised 2010)’ (Strategic Plan, 2010) <[http://www.forumsec.org/resources/uploads/attachments/documents/2009–2011\\_PSP\\_PGS.pdf](http://www.forumsec.org/resources/uploads/attachments/documents/2009–2011_PSP_PGS.pdf)>.

<sup>23</sup> Ibid.

<sup>24</sup> ‘Over the next four years, Australia anticipates increasing assistance to the Pacific region by around 37 per cent, from \$1.17 billion in 2012–13 to an indicative level of \$1.6 billion by 2015–16.’ AusAID, *An Effective Aid Program for Australia* (31 July 2012) <<http://www.ausaid.gov.au/makediff/pages/aid-policy.aspx>>. ‘Australia provides half of all global Official Development Assistance (ODA) to Papua New Guinea (PNG) and Pacific island countries. This amounts to \$1.12 billion in 2012–13, and represents almost 22 per cent of total Australian ODA.’ AusAID, *Pacific* (20 March 2013) <<http://www.ausaid.gov.au/countries/pacific/Pages/home.aspx>>. For NZ aid to specific programs see New Zealand Ministry of Foreign Affairs and Trade 2012, ‘Partnerships for Progress – Development in the Pacific 2012’ (2012) <[http://www.aid.govt.nz/webfm\\_send/299](http://www.aid.govt.nz/webfm_send/299)>.

<sup>25</sup> NSW Department of Attorney General and Justice, *Vanuatu Legal Sector Strengthening Program* (31 August 2012) <[http://www.lsc.lawlink.nsw.gov.au/lsc/projects/lsc\\_closed\\_projects/legal\\_manage\\_vanuatu.html](http://www.lsc.lawlink.nsw.gov.au/lsc/projects/lsc_closed_projects/legal_manage_vanuatu.html)>.

<sup>26</sup> ‘Strong and stable law and justice institutions contribute to a fair and peaceful society...For 10 years, Australia has worked with Vanuatu to build more effective legal institutions and improved police services. The Governments of Vanuatu and Australia established the Vanuatu Law and Justice Partnership in 2012 to strengthen the sector as a whole and build the capacity of agencies in the formal justice sector.’ AusAID, *Effective Governance* (5 April 2012) <<http://www.ausaid.gov.au/countries/pacific/vanuatu/Pages/effective-governance.aspx>>.

core public service skills.<sup>27</sup> Nonetheless, the needs in these areas remain considerable.

The introduction and maintenance of programs such as RAMSI and VLSSP (among many others) reflect the view of more developed neighbours and of the international aid community that the factors necessary to allow development include good governance, security, and strong legal systems. However, these concerns are not external only, as demonstrated by regional bodies and individual countries themselves frequently seeking outside assistance to strengthen their capacity in such areas. An obvious need in legal capacity building is local legal practitioners, trained not only in law but in the legal ethics and professionalism required to support and enhance the state based common law system.

This need is reflected in responses to a study undertaken in Vanuatu and Solomon Islands with more than 60 lawyers and those working closely with lawyers.<sup>28</sup> Participants were asked about their work, the knowledge and skills needed for that work, gaps between the knowledge and skills they had and those required for their work, and opportunities they had to fill those gaps. Data collected covered the whole gamut of legal knowledge and skills, but in terms of ethics and professionalism, responses showed a keen interest in improving the legal system and the behaviour of those working within it. In fact, when asked to rank a number of desired learning outcomes for law graduates in the South Pacific, ‘ethics and professional responsibility’ was identified as the learning outcome of greatest importance.

In addition, when asked the open-ended question, ‘What is the most important thing for a South Pacific lawyer to know, to understand, or to be able to do?’ many respondents, both lawyers and non-lawyers, mentioned ethics and professionalism. A number of respondents replied simply that most important was ‘legal ethics’, ‘ethics and integrity’, ‘ethics and attitudes;’ or ‘to be ethical’.<sup>29</sup> Others fleshed out the idea, referring to acting ethically for one’s clients: ‘lack of concern about what happens to clients influences their whole approach to work’; lawyers should ‘exercise duties with fairness, be trustworthy, be trusted to represent someone’; and ‘ethics need emphasis, this is one of the biggest issues ... They take instructions and take the money even when (the matter) is not going anywhere. They overstretch their ability to adequately represent — they take too many clients.’

<sup>27</sup> Regional Assistance Mission to Solomon Islands, *Our Work: Justice* <<http://www.ramsi.org/our-work/law-and-justice/justice.html>>. Note that RAMSI is currently transitioning to ‘more normal, long-term development assistance’ from the previous post-conflict assistance provided. <<http://www.ramsi.org/ramsis-future/transition.html>>

<sup>28</sup> Penfold, above n 18.

<sup>29</sup> Unless otherwise referenced, all comments in the text are drawn from interview transcripts.

More commonly, however, respondents mentioned the need for professional and ethical practice for the good of the broader community: ‘there are lots of gaps in South Pacific law, lots of grey, and lawyers use and abuse those gaps — lawyers should strive to improve the laws of the country, not just use the gaps for themselves and their clients’; ‘understanding what professional responsibility involves — everything else flows from that; how you can use your knowledge and skill for change for the better — try through work to help create good governance, and good governance brings social security’; and ‘we are all working for justice, only if we all work for justice is it fair to citizens; [we need] better understanding of ethical considerations’.

Those working in or with the legal profession clearly recognise the importance of legal ethics and professionalism, and the context increases its importance. Where legal systems are firmly entrenched, poor practice on the part of individual legal practitioners may be unfortunate; but where a legal system is not well entrenched, has limited reach, and is still seen by many as foreign (as discussed below), poor professional and ethical behaviour among lawyers may have greater consequences. In addition, while many of the comments above appear to accuse individual lawyers, the broader system within which they learn and work does little to support their ethical and professional development. It is thus all the more important that legal practitioners are well educated in this area.

### III THE DIFFICULTY OF TEACHING PROFESSIONALISM AND LEGAL ETHICS IN THE SOUTH PACIFIC

Law school courses in legal ethics and professionalism tend to include, at a minimum, rules regulating individual lawyers and the profession generally. These rules may be drawn from legislation, delegated legislation, case law, rulings of disciplinary bodies and so forth.

In addition, courses may include some or all of:

- concepts of professional responsibility beyond the rules (for example the history of professions and corresponding responsibilities which pertain to professions rather than trades, ideals of duty, and service to others and to the community);
- awareness of ethical issues and the need to behave in the ‘right’ way as a lawyer; and
- applied ethics, including recognition and examination of the role of individual’s values, morals, and standards in ethical decision making, ability to choose between possibilities, to anticipate and evaluate outcomes, and to reflect upon the choices made.<sup>30</sup>

<sup>30</sup> Davis, above n 1.

The above are likely to be relevant to all lawyers, and a wealth of material is available in regard to those aspects of legal ethics likely to be common across jurisdictions.<sup>31</sup> However, it is more difficult to find resources which assist teachers to contextualise the ethical and professional needs of lawyers in the South Pacific environment. Governance literature focused on Melanesia often includes discussion of ethics, particularly in the context of corruption,<sup>32</sup> but material relating to *legal* ethics in the South Pacific is scarce. As a result, the USP legal ethics course uses Australian text or case books, which assume that lawyers work in a formal, stable, orderly environment with clear rules, functioning law societies, and empowered judiciaries. Understandably, such materials make no attempt to contextualise ethics to the Melanesian or South Pacific contexts, and this article is thus intended to help to fill that gap.

In Solomon Islands and Vanuatu at least, and possibly more broadly in the South Pacific and other developing countries, particular contextual factors, specific to these jurisdictions, must be looked at to determine both what needs to be taught, and how it might be taught. These factors include:

- the primacy of kin or *wantok* ('one-talk') relationships as the base ordering of the society;
- the 'foreignness' of the state legal system, and of concepts of professional and ethical practice as understood in countries such as Australia;
- the lack of effective disciplinary procedures for challenging unethical and unprofessional behaviour; and
- the lack of appropriate workplace supervision and mentoring in legal ethics and professionalism.

Although all overlap to some extent, they will initially be addressed individually.

### *A Wantok and Kin Relationships*

Pacific Island societies have traditionally been strongly based upon clan and kinship systems, and in Melanesian countries these remain an important basis of the social structure.<sup>33</sup> In the Solomon Islands and Vanuatu the *wantok* system is particularly strong. *Wantok* (the Bislama and Pidgin term from the English 'one talk') is not simply a grouping of same language speakers. In fact at the term's

<sup>31</sup> See for example Maxine Evers, Leanne Houston and Paul Redmond, above n 4, and the bibliography of resources collected therein.

<sup>32</sup> See for example Elise Huffer, 'Governance, Corruption, and Ethics in the Pacific,' 2005 17(1) *The Contemporary Pacific* 118; and Peter Larmour, *Culture and Corruption in the Pacific Islands: Some Conceptual Issues and Findings from Studies of National Integrity Systems*, (ANU, Asia Pacific School of Economics and Government 2006).

<sup>33</sup> Narokobi, above n 16, ch 2.

broadest, wantoks may not even speak the same language, but may be more loosely aligned, as for example from the same island, the same country, or even simply ‘Melanesian’.<sup>34</sup>

Wantokism refers to the mutual duties and responsibilities which exist between wantoks, and which can be extremely demanding. Wantoks must help one another by providing food, shelter and cash, and must share the advantages and benefits they acquire. To deny one’s wantok is a grave matter which generates social repercussions and may threaten a wantok’s place within the community.<sup>35</sup>

In developed countries, looking after one’s family or community is seen in a positive light, but is encouraged only so far as it may be done within the strictures of the law. When one looks after one’s family with public goods or with an employer’s money, it becomes illegal and frowned upon. In Melanesia, however, what the ‘Western’ world calls nepotism may be recognised only as family responsibility or wantokism: ‘a request from a family member cannot be denied.’<sup>36</sup>

A young lawyer writing for the Pacific Young Lawyers Forum commented

the wantok system is very common in the Solomon Islands ... the position as a public servant is used to serve the benefit of relatives, family members and friends. It is a form of corruption that has been imprinted in the minds of the general public. As long as one is a public servant you have to serve your wantoks despite the facts that you have certain codes of conduct to abide by. So it’s a conflict between performing up to the expected standard and using the office for the best interest of wantoks.<sup>37</sup>

In addition, wantok obligations may well be felt more strongly than any obligations to state law. State law may impose responsibilities upon lawyers which conflict with and are antithetical to wantok obligations, and may also be seen by Melanesian lawyers as less significant. For those in Melanesia it may be more important to have wantok on side and supportive, than to have the support of state law and the legal profession. A young lawyer interviewed for this research project stated:

I went to the jail to see a client. My two cousins were there charged with murder, and they wanted me to represent them. When I said I couldn’t do it they were very, very upset. I tried to explain but they are still very unhappy.

<sup>34</sup> For example a bill introduced into the Vanuatu Parliament in June 2010 in support of independence for West Papua was entitled ‘*Wantok Blong Yumi Bill*’ (Our Wantok’s Bill).

<sup>35</sup> David Lea, *Melanesian Land Tenure in a Contemporary and Philosophical Context* (University Press of America, 1997) 3.

<sup>36</sup> Sophie Fisher, ‘Solomon Islands Social Welfare Needs Analysis’ (Research Paper, International Social Service Australia, 2012) <<http://www.iss.org.au/wp-content/uploads/2012/06/Solomon-Islands-FINAL-Full-Doc.pdf>>.

<sup>37</sup> Elizabeth Tito Kuautonga, ‘Pacific Young Lawyers Forum, Commonwealth Law Ministers Meeting 2011’ reported in *newSPLAsh 2 (2011) 7*, <<http://www.southpacificlawyers.org/files/uploads/newSPLAsh%20Issue%202.pdf>>.

When you have close relatives you will have conflict. Custom obligations say ‘you are wantok, if you don’t do this you are neglecting me / us. What I do for you, you must do for me.’ Wantok do not understand the legal profession.

Clearly this will have major implications for lawyers in the South Pacific, pulled between obligations to the law on the one hand and obligations to kin and community on the other.

### B *The ‘Foreignness’ of the State Legal System*

Most Pacific Island countries have gained independence only recently. Although the colonisers’ systems of law have been in most of these countries for over a hundred years in some shape or form, for much of that time they have continued to be, or to be seen as, the laws of foreigners. It is only since independence that the current state legal systems could be said to belong to the local community — which in the case of Solomon Islands is only since 1978, and in Vanuatu since 1980. At independence these new states chose to adopt their current legal systems, although to many in the Pacific Islands these systems remain foreign. An expatriate magistrate working in Honiara after independence described occasional ‘downright anger and hostility towards what they (Solomon Islanders) saw as the dominance of the “foreign” or “white man’s” law’.<sup>38</sup>

While the state law may be better understood in the main towns, for much of the population the state-based common law legal system remains foreign, and to some degree even irrelevant. As in any pluralist legal system, there must be an understanding that ‘the law’ will mean something different from “‘the’ law” in a state with only one legal system, but even after the adoption by the state of the common law legal system in Melanesia, it is still commonly referred to as ‘modern law’, ‘introduced law’, ‘adopted law’, ‘foreign law’, ‘white man’s law’, or ‘formal law’, which differentiates this law and legal system from other laws and legal systems existing in these countries. This foreignness of the state legal system, along with its limited reach in practice, contribute both to a lack of understanding of the system and to a lack of commitment to it within these communities

In addition to its character as an imported system, this law is not the only system in use, and in fact to many it may be a secondary system of little importance in the ordering of their day to day lives.<sup>39</sup> The majority of Ni-Vanuatu and Solomon Islanders live traditional lifestyles in rural and remote areas to which formal law rarely extends.

<sup>38</sup> Kenneth Brown, *Reconciling Customary Law and Received Law in Melanesia: The Post-Independence Experience in Solomon Islands and Vanuatu* (Charles Darwin University Press, 2005) 13.

<sup>39</sup> Guy Powles, ‘Law, Courts and Legal Services in Pacific Societies’ in Guy Powles and Mere Pulea (eds), *Pacific Courts & Legal System* (Institute of Pacific Studies, University of the South Pacific 1988) 6, 18–19.

Rather, custom ‘is indisputably the way in which the majority of conflicts in every rural and urban community in [Vanuatu] are managed’.<sup>40</sup> The same is true of Solomon Islands where, for ‘most citizens, the first resort in the case of disputes are local [custom systems]’,<sup>41</sup> and the ‘dominant form of justice and dispute resolution comes from traditional community and village level mechanisms’.<sup>42</sup> The reach of formal law is also perceived to be decreasing rather than increasing over time.<sup>43</sup> The continuing traditional lifestyle of many, along with the pluralist nature of law in the Pacific Islands, may make interaction with or commitment to the state legal system superfluous for much of the population.<sup>44</sup>

In addition, even for those for whom the introduced legal system is an important part of life — including indeed trained lawyers — their knowledge of the law does not come with an understanding or ownership of the traditions of that law. For example basic assumptions of common law such as treating people as individuals (rather than as part of a larger community),<sup>45</sup> relying on reason and logic (and refusing to accept magic or spirits),<sup>46</sup> and relying on and applying rules and precedent (rather than looking for the best resolution of the issue at hand), may contradict everything a Melanesian person believes about the world.<sup>47</sup> Hence while the state common law system relies on certain understandings and expectations, the system’s transplantation from one place to another may fail to carry with it those understandings and expectations. The very concepts may be so foreign as to need considerable teaching and reinforcement, keeping in mind that the concepts may be not only unfamiliar but may also be misunderstood or even actively disdained.

<sup>40</sup> Miranda Forsyth, *A Bird that Flies with Two Wings: Custom and State Justice Systems in Vanuatu* (ANU E-Press, 2009) 97.

<sup>41</sup> Sinclair Dinnen and Nicole Haley, Justice for the Poor, *Evaluation of the Community Officer Project in Solomon Islands*, (World Bank, May 2012) 10 <[http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/05/11/000386194\\_20120511024415/Rendered/PDF/687150WP0f0970jectEvaluation0Final.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2012/05/11/000386194_20120511024415/Rendered/PDF/687150WP0f0970jectEvaluation0Final.pdf)>

<sup>42</sup> Centre for Security Governance, Security Sector Reform Resource Centre, *SSR Country Snapshot: Solomon Islands* <<http://www.ssrresourcecentre.org/countries/ssr-country-snapshot-solomon-islands/>>.

<sup>43</sup> Matthew Allen et al, Justice for the Poor, *Justice Delivered Locally: Systems, Challenges and Innovations in Solomon Islands* (World Bank, July 2013) 12 <[http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/JDL\\_July\\_2013\\_Final\\_Online\\_Report.pdf](http://siteresources.worldbank.org/INTJUSFORPOOR/Resources/JDL_July_2013_Final_Online_Report.pdf)>.

<sup>44</sup> Guy Powles, above n 39.

<sup>45</sup> *Ibid* 24.

<sup>46</sup> Narokobi, above n 16, 74: For Melanesians at least, ‘the active participation of the “spirit” in human affairs will continue to dominate their perceptions of the law’; and Narokobi, above n 16, 9 ‘The place of spirits in Melanesian social order cannot be overemphasised ... any development of Melanesian jurisprudence will have to give full cognisance to the interaction between living persons and the spirits of the dead.’

<sup>47</sup> *Ibid*, esp Part 1.

Foreignness is not confined to the legal system, which operates alongside a ‘foreign’ system of government. Like the common law system, the Westminster system also requires certain understandings and commitments if it is to function effectively — understandings and commitments which have developed over many years elsewhere, and which may not be easily transplanted. The political party system, poorly understood at the time of independence,<sup>48</sup> continues to be unstable in both Vanuatu and Solomon Islands.<sup>49</sup> It is rare that a single party has a majority, and at times it is not even clear which members of parliament do and do not support the government. Votes of no confidence are common, allegiances are swiftly changed, and court actions are commonly used to change governments. Instability is the norm, and the desire to attain or maintain power often outweighs any commitment to values or a party platform.<sup>50</sup> Corruption and mismanagement are constant concerns,<sup>51</sup> and leadership codes are frequently alleged to be breached, but breaches are rarely disciplined. The poor functioning of the introduced system of government may add to suspicion of state law and lack of commitment to the common law legal system.

### C *Lack of Disciplinary Procedures*

Many South Pacific countries experience considerable difficulty with unethical and unprofessional behaviour within the legal system, and beyond. Efforts have been made to address these issues through the introduction of rules, codes, enforcement mechanisms and disciplinary bodies.<sup>52</sup>

For lawyers the written rules are found in legislation and delegated legislation. In Solomon Islands the *Legal Practitioners Act* (1987) requires that the Chief Justice be satisfied that an applicant for admission is a ‘fit and proper person’ before admitting him or her as a legal practitioner. The legislation goes on to delegate to the Chief

<sup>48</sup> Sam Alasia, ‘Party Politics and Government in Solomon Islands’ (Discussion Paper 7/97, ANU, 1997) <[http://www.vanuatu.usp.ac.fj/sol\\_adobe\\_documents/usp%20only/pacific%20general/Alasia.htm](http://www.vanuatu.usp.ac.fj/sol_adobe_documents/usp%20only/pacific%20general/Alasia.htm)>.

<sup>49</sup> See annual reports in ‘The Contemporary Pacific’ including Gordon Leua Nanau, ‘Political Reviews, Melanesia, The Solomon Islands’ (2012) 24 *The Contemporary Pacific* 407; Howard van Trease, ‘Political Reviews, Melanesia, Vanuatu’ (2012) 24 *The Contemporary Pacific* 414.

<sup>50</sup> *Ibid.*

<sup>51</sup> Regional Assistance Mission to Solomon Islands, *Anti-Corruption* <<http://www.ramsi.org/our-work/anti-corruption.html>>; The Heritage Foundation, *Vanuatu* (2013) <<http://www.heritage.org/index/country/vanuatu>>; The Heritage Foundation, *Solomon Islands* (2013) <<http://www.heritage.org/index/country/solomonislands>>.

<sup>52</sup> As noted above however, the legislatures creating (or delegating power to create) rules of conduct and corresponding disciplinary regimes for lawyers, may themselves be chaotic and undisciplined, and the rules may thus be given less respect than may otherwise be the case.

Justice in consultation with the Rules Committee, power to make rules relating to (among other things) professional practice, conduct, complaints, and discipline of practitioners. Breach of such rules may carry fines and may constitute ‘professional misconduct.’<sup>53</sup>

The Solomon Islands *Legal Practitioners (Professional Conduct) Rules* (1995) are lengthy and detailed. Among other things, they place duties on legal practitioners to observe the ethics of the legal profession, and not to engage in conduct (whether in pursuit of his profession or otherwise) which:

- is illegal;
- is dishonest;
- is unprofessional;
- is prejudicial to the administration of justice; and
- may otherwise bring the legal profession into disrepute.<sup>54</sup>

As in Solomon Islands, in Vanuatu a person must be fit and proper to be admitted to practice. New lawyers are initially registered conditionally for two years, after which they may be admitted unconditionally.<sup>55</sup> The *Legal Practitioners Act 1980* establishes a Law Council, and delegates to it responsibility for the etiquette and conduct of legal practitioners.<sup>56</sup> The *Rules of Etiquette and Conduct of Legal Practitioners Order 2011* oblige lawyers to:

- uphold the rule of law;
- facilitate the administration of justice;
- not attempt to obstruct, prevent, pervert or defeat the course of justice; and
- use legal process only for proper purposes<sup>57</sup> (among other things).

In both Solomon Islands and Vanuatu procedures have been established for disciplining lawyers who breach the Rules. However, although the need has been recognised for a number of years,<sup>58</sup> in

<sup>53</sup> *Legal Practitioners Act 1987* (Solomon Islands), s 21(2).

<sup>54</sup> *Legal Practitioners (Professional Conduct) Rules 1995* (Solomon Islands), rule 4

<sup>55</sup> Although this may need to change, given the ruling of Justice Spear in *Hamel-Landry v Law Council* [2012] VUSC 119; Judicial Review Case 01 of 2011 (27 June 2012): ‘The two tiered admission process undertaken in Vanuatu with a registered legal practitioner being admitted either conditionally or unconditionally has no proper basis in law.’

<sup>56</sup> *Legal Practitioners Act 1980* (Vanuatu), 2, 5(d). Note this is the *Legal Practitioners Act 1980*, as amended. The *Legal Profession Act* of 2005 has never commenced.

<sup>57</sup> *Rules of Etiquette and Conduct of Legal Practitioners Order 2011* (Vanuatu), rule 5(1), (2) & (3), rule 6.

<sup>58</sup> *Legal Practitioners (Amendment) Act 2003* (Solomon Islands) No 2 of 2003 provides that ‘[t]here shall be a Panel consisting of legal practitioners appointed by the Chief Justice for the purposes of constituting a disciplinary committee to investigate any complaint on the conduct of any legal practitioner,’ yet the first panel was not convened until 2012. See also MacFarlane, above n 11. ‘Small jurisdictions raise special problems in terms of conflicts of interest and confidentiality. In these circumstances it is even more important to have effective Rules of Professional Conduct and a client-focused mechanism for dealing with complaints.’

neither country are the rules well enforced. In the Solomon Islands to 2011 ‘no practitioner ha[d] yet been sanctioned’ for reasons including ‘lack of commitment by disciplinary committee members, lack of procedural rules as to how a hearing should proceed, and conflicts on the part of practitioners sitting on the disciplinary panel.’<sup>59</sup> However, at the time of writing a panel had been convened to hear one matter<sup>60</sup>

Likewise in Vanuatu it is difficult to find any record of lawyers being disciplined,<sup>61</sup> although in 2011 it was reported that ‘there are some serious complaints now with the [Law] Council.’<sup>62</sup>

#### D *Lack of Supervision and Support in Practice*

New and inexperienced lawyers working in the South Pacific face particular difficulties in developing an understanding and practice of ethics and professionalism. To begin with, they will often be supervised by others who themselves have had little ethical or professional training, or who have had a non-contextualised training. Secondly, they may not be much supervised at all. In interviews conducted with lawyers in Solomon Islands and Vanuatu, local lawyers were far less likely than expatriate lawyers to mention mentoring, supervision or instruction as methods of improving their skills.

Some local lawyers did mention supervised practice and mentoring: ‘I was lucky to have a mentor’ or ‘it was informal before but now the firm has put in structures to teach the young ones. Each Fri at 3.30 we close up shop and conference the cases we’ve had that week and what is coming up for the following week. Senior lawyers talk about their experiences, difficulties, and young lawyers can talk

<sup>59</sup> South Pacific Lawyers’ Association, ‘Needs Evaluation Survey for South Pacific Lawyer Associations’ (Final Report, 18 October 2011). <<http://www.southpacificlawyers.org/files/uploads/2011%2010%2018%20-%20Needs%20Evaluation%20Survey%20Final%20Report.pdf>>.

<sup>60</sup> ‘Panel Appointed to Look Into Ashley’s Case’ *Solomon Star News* (Honiara), 11 May 2012 <<http://www.solomonstarnews.com/news/national/14594-panel-appointed-to-look-into-ashleys-case>>. Note a 2003 amendment provides for the establishment of the disciplinary panel, above n 58, yet the first panel was not convened until 2012. It is unclear whether or not the Disciplinary Panel has made a decision on this matter, but it has ‘discussed’ it according to the Solomon Islands Broadcasting Corporation <<http://www.sibconline.com.sb/story.asp?IDnews=33149&IDThread=44>>. The *Solomons Star* has reported that Ashley ‘has been unable to practise since he came out of jail after the High Court registrar refused to renew his practising certificate.’ Daniel Namosuia, ‘Ashley Joins Forum’ *Solomon Star News* (Honiara), 8 October 2012 <<http://www.solomonstarnews.com/news/national/16128-ashley-joins-forum>>.

<sup>61</sup> The annual reports required of the Law Council are not accessible. However, a former member of the Disciplinary Committee reports that cases have been heard in the past. A judge of the Vanuatu Supreme Court also reported that he had ‘heard of some cases having been heard previously.’

<sup>62</sup> South Pacific Lawyers’ Association, above n 59, 28.

also. Otherwise experience goes to waste because there is no avenue to pass on that knowledge.'

However, most local lawyers did not mention mentoring or supervision as ways of furthering learning, with one stating that there is 'no time, especially in private firms ... because time is money, they need to get paid, so [there is] no time to teach a young solicitor. Learning is time consuming and thus costly.'

Most local lawyers talked rather about learning on the job by observing and doing. While this is an excellent way to learn good practice, it is equally an excellent way to learn poor practice if those in the more senior and supervisory roles are untrained or act poorly. And there is no doubt that many of them are acting poorly: 'You see some really appalling behaviour, rarely disciplined. So young lawyers see this and think it's an appropriate way to behave.' 'Some senior lawyers are not setting a good example.' 'Some of the most senior lawyers are the worst offenders re professionalism and ethics.' 'Judges make comments about the lawyers in the cases ... there is a disciplinary mechanism but it's rarely used. Some lawyers don't tell clients the case is hopeless, in order to continue to get fees. They adjourn and adjourn. Some time limits are enforced, but when they're kicked out of court the client loses out, not the lawyer. Clients don't know they can act against their lawyer'.

The problems here are not all due to a lack of integrity on the part of more senior lawyers. Lawyers work within an often unstable and disorganised governmental and legal environment, with little if any support from institutions such as strong law societies or other such bodies. Even senior lawyers in Vanuatu and Solomon Islands often lack training, lack experience, and lack time and resources. They are often working in high-pressure jobs with poor pay and conditions, with frequent opportunities and high incentives for corruption, carrying the expectations of their communities and the obligations of their wantoks, poorly equipped to handle these things, and with inadequate supervision and support structures around them. As one lawyer said 'they may be professional, but then not handle it on the ground.' Another lawyer noted the lack of supervision in practice, and commented of the transition from law student to lawyer: 'I had to fend for myself much of the time.'

Clearly law students and lawyers in the South Pacific need training in ethics and professionalism, and need ongoing supervision and support if that learning is to be applied. Currently legal ethics is taught in the undergraduate law degree, and taught again in the Practical Legal Training Program, yet it appears that there is still room for considerable improvement. Training in ethics and professionalism should not be seen as something done once, or even twice, but rather as something which develops along a continuum, requiring theory and practice and supervision and support. Suggestions are made below for how this might be improved for South Pacific lawyers.

#### IV SUGGESTIONS FOR TEACHING LEGAL ETHICS AND PROFESSIONALISM IN THE SOUTH PACIFIC

Improvements in teaching legal ethics and professionalism could be made in three different but related areas

- better contextualising the teaching of legal ethics and professionalism;
- improving supervision and support in practice; and
- creating a stronger ethical environment.

It is important that the latter two, focusing on the post-university development of ethical and professional skills, are taken into account. Firstly, teachers of ethics and professionalism at university level need to be aware of what lies ahead for their students. Secondly, teaching ethics and professionalism at university level is an opportunity to influence what happens in the future in terms of post university training, as future lawyers are those most likely to be in a position to change the profession. Thirdly, in the absence of admission boards, law societies, or CLE providers looking into legal education, articles such as this, and the activities of those teaching ethics and professionalism, offer the best scope for input into developments in the local legal profession.

##### *A Contextualising Teaching*

At the University of the South Pacific Law School, text books and teaching materials from overseas are often relied upon as the only material available on a topic. While a ‘South Pacific Law’ series was published by Cavendish in the late 1990s and early 2000s, and some titles have since been updated by other publishers,<sup>63</sup> no textbook or collection of materials on ethics and professionalism in the South Pacific has been published. As a result teaching of this topic has relied on overseas textbooks, and local case law and legislation as far as it has been available.

Contextualising the teaching of legal ethics and professionalism could really help students to develop the required knowledge and skills, as it would build on their background knowledge and experience and prepare them not in the abstract, but rather for the actual environment in which they will practice. For example teaching that ethical and professional behaviour is required to ensure that the state legal system is respected, trusted, and not brought into disrepute, particularly where the state legal system is not yet fully entrenched, may be more meaningful than teaching that this

<sup>63</sup> See for example Jennifer Corrin Care, Tess Newton and Don Paterson, *Introduction to South Pacific Law* (Cavendish Publishing, 1st ed, 1999), Jennifer Corrin and Don Paterson, *Introduction to South Pacific Law* (Routledge-Cavendish, 2nd ed, 2007) and Corrin and Paterson, above n 15 (Palgrave Macmillan, 3rd ed, 2011).

behaviour is required because lawyers belong to a 'profession'. To teach more contextually, emphasis could perhaps be placed on an examination of the development (or lack of development) of the local legal profession, and look at reasons for that development or otherwise. Students could themselves be encouraged to generate ideas for improvement, and for increasing commitments to ethics and professionalism. They could examine concrete ways to further the development of the local legal systems and the application of law, taking into account the history, constraints, and opportunities in their local environment.

Concepts of professionalism may be difficult to take on board for students new to the system. For example in a formal common law system, record keeping is simply part of professional practice, as well as being essential for evidentiary purposes; but for those less schooled in written cultures such activities cannot be presumed. One lawyer emphasised the importance of 'filing, storing things properly, knowing to come back to it.' Another thanked a departing VLSSP officer: 'she taught us how to file. Before she came we just lost the documents, and when we went back to court we had to make them all over again. Now we can file our documents and use them next time.'<sup>64</sup> Filing and record keeping, making written responses to correspondence, dating letters, and keeping copies, are just examples of practices which may be important in the state legal system in a way they are not in Melanesian life generally. They may thus require explicit reference in classes.

While those from outside the South Pacific may see such topics as unbefitting tertiary academic study, the assumptions which Australian and New Zealand universities may make about the skills and knowledge of their law students and graduates simply do not hold true here. The 'high level professional skills'<sup>65</sup> expected of lawyers cannot be developed without ensuring basic professional skills are also in place. To that end the first mandatory CLE in Vanuatu was held in June 2011,<sup>66</sup> with Chief Justice Lunabek encouraging participants 'to be on time, as timing is an important aspect of the

<sup>64</sup> Thanks from State Law Office to departing VLSSP team. Farewell function at the Prime Minister's Offices, Port Vila, Vanuatu 2012.

<sup>65</sup> 'I particularly welcome the emphasis on the responsibilities of professional bodies and law schools to develop high-level professional skills': Daryl Williams (then Attorney General of Australia) quoted in Peter MacFarlane, 'The Teaching of Legal Ethics at the Undergraduate Level (Working Paper)' (2002) 6 *Journal of South Pacific Law* <<http://www.paclii.org/journals/JSPL/vol06/7.shtml>>.

<sup>66</sup> *The Rules of Etiquette and Conduct of Legal Practitioners Order 2011* (Vanuatu), s 19 states that 'a lawyer must undertake the continuing legal education and professional development as provided for by the Vanuatu Law Society Act'. However, in 2010 'the VLS struggled to meet the requirements outlined in the new Vanuatu *Law Society Act* of 2010, which provides for CLE for lawyers. The VLS needs to have a more structured approach to CLE to the extent that it is spelled out in law as being mandatory for each practitioner for the purpose of renewing a practising certificate.' South Pacific Lawyers' Association, above n 59, 22–23.

legal profession.’ Basic Court Etiquette was the topic of the CLE, with sessions including dress in court; seating in court; bowing and maintaining silence in court; introducing oneself in court; standing in court; addressing the bench; addressing other counsel; indirect speech; giving the court undivided attention; acknowledging a ruling from the bench; addressing or referring to witnesses; staying in your place; referring to evidence; dealing with questions from bench; assisting the record of evidence; and being reliable.’<sup>67</sup> Clearly, what requires emphasis in the development of professional skills is very different in different jurisdictions.

The topic could also be further contextualised by the use of local case studies, which more truly reflect the type of ethical and professional dilemmas South Pacific lawyers are likely to face in their careers. In small jurisdictions with few lawyers, cases in which conflicts of interest may arise are rife.<sup>68</sup> The need to act against wantoks, chiefs, a bigman, or others above the lawyer in the social hierarchy will frequently create difficulties for lawyers, while the inability to act *for* wantoks will create other problems.<sup>69</sup> Learning to deal with these is likely to be both more useful, and more understandable, than learning from overseas cases. Although common law and principles espoused in foreign cases will apply, the use of local fact situations is likely to aid learning, and to make it more useful in practice.

In addition, local lawyers could be brought into the classroom, whether as ongoing teachers or guest lecturers, to explain and to help guide students in how ‘real life’ challenges may be met. Without this students may feel that they are learning about the ideal without meeting the reality on the ground. Bringing in practising lawyers to discuss ethics would give students an understanding that the learning is not merely theoretical but is practical also, and is valued by lawyers in their own jurisdictions. Even more importantly, it would provide role models in practice for students soon to join the profession. Note however that to be useful, any guest practitioners would need knowledge of and a commitment to ethical and professional practice, as well as a willingness and ability to reflect on this practice for the benefit of others. Such lawyers may be difficult to find.

Strong local law societies could assist greatly with this. A law society which involves itself in the training of lawyers, as well as supporting lawyers in practice, would be in an excellent position to influence the development of the profession. Law societies will have the best knowledge of the difficulties facing local lawyers, as

<sup>67</sup> ‘Workshop Reminds Legal Practitioners About Basics’ *Vanuatu Daily Post* (Port Vila), 28 June 2011 <<http://www.dailypost.vu/content/workshop-reminds-legal-practitioners-about-basics>>.

<sup>68</sup> See, eg, South Pacific Lawyers’ Association, above n 59, 28, 35.

<sup>69</sup> See example above under wantok/kin relationships.

well as an interest in ensuring that their training is suited to the local context. However, the law societies are only in a position to do this if independent from interference, which is not always the case in the South Pacific.<sup>70</sup>

Clinical practice can also be an excellent way to help develop ethics and professionalism in students. Clinics allow the modelling of best legal practice, give high-quality supervision of actual legal work, offer feedback in response to real-life situations, create opportunities to reflect on experience, to integrate theory with practice, and to develop an awareness of law in the context of a student's own community.<sup>71</sup> Like the previous point, however, clinical education will be useful only if the students really do see ethical and professional best practice applied within their clinic. While this was emphasised in the USP initial placement and later clinical program,<sup>72</sup> it is apparent that it is very dependent on the placement and the clinical staff available at any given time, and that modelling best practice cannot merely be assumed to occur.<sup>73</sup>

In addition to the above suggestions, a pervasive approach, which involves incorporating or integrating legal ethics and professionalism into all aspects of the law curriculum,<sup>74</sup> would really assist students to develop a deeper understanding of the topic, and of how and where it may be relevant in practice.

For example ethics concerning advocacy and the role of prosecutors might be incorporated within criminal law, the ethics concerning negotiation might be dealt with in torts; examination, cross-examination and dealing with witnesses could be picked up in civil or criminal procedure or evidence, conflicts of interest might be incorporated into contract or property law.<sup>75</sup>

However, such an approach requires a considerable degree of institutional support,<sup>76</sup> and significant effort across the curriculum. Nonetheless, this may be a particularly useful approach in the South Pacific environment. Given that legal ethics and professionalism are central to the process and practise of state law, yet may be both unfamiliar to students and in fact in conflict with their experience and world view, confronting it at every level of the curriculum would

<sup>70</sup> See, eg, *Legal Practitioners Decree 2009* (Fiji) which took over the regulation of lawyers and removed the Law Society's complaints handling and disciplinary powers, following the abrogation of Fiji's Constitution.

<sup>71</sup> Adrian Evans et al, *Best Practices in Australian Clinical Legal Education* (Australian Government Office for Learning and Teaching 2012) 4–5.

<sup>72</sup> Edward Hill, 'Clinical Legal Education in a Developing Island Jurisdiction – A Unique Environment' (2000) 11 *Legal Education Review* 253

<sup>73</sup> Michael Blaxell, *Reflections on the Operation and Direction of the USP Community Legal Centre, Port Vila* 2013 (unpublished, copy with author).

<sup>74</sup> MacFarlane, 'Teaching of Legal Ethics', above n 65; Evers, Houston and Redmond, above n 4, 7.

<sup>75</sup> MacFarlane, 'Teaching of Legal Ethics', above n 65.

<sup>76</sup> *Ibid.*

give increased opportunity for students to develop both the skills and commitment required in this area.

### B *Ensuring Post-admission Support*

The provision of post-admission support, supervision, education and training may strain the resources of firms, government offices, and local law societies.<sup>77</sup> Also, as discussed above, in Melanesia the supervision and support received by new lawyers in practice is often somewhat hurried, disorganised, or even non-existent. This would place pressure on new lawyers in any legal environment, but more so in a legal environment which is itself somewhat chaotic. A number of government departments, such as offices of the Public Solicitor or Public Prosecutor, as well as some private firms, are trying to provide ongoing in-house support for their lawyers. There are reports of individual supervision, weekly meetings, and in-house CLEs, as well as occasional opportunities for ongoing support and training via courses such as those offered by Pacific Islands Legal Officers Network (PILON) or the Victorian Bar. However, there seems still to be an unmet need for supervision and support in practice.

The offices reporting the most organised supervision and support, both government and private, are those which have or have had expatriate lawyers. This may be due to those lawyers having themselves been supervised and supported, as well as having perhaps a greater confidence in their ability to model appropriate behaviour for other lawyers.

Capacity-building programs such as RAMSI in Solomon Islands and the Legal Sector Strengthening Program in Vanuatu have built into their programs this type of support,<sup>78</sup> which is recognised by local lawyers as extremely beneficial. However, while lawyers are being supervised and supported under these programs, they are not necessarily developing the skills themselves to supervise and support others, so that when the programs finish, the supervision and support of others is not often continued within the office. Further, many of those who are trained under these programs leave the offices to take up other employment,<sup>79</sup> which can badly disrupt the continuity of such schemes. It appears that such capacity-building exercises do support lawyers in developing the skills they need in their legal work, but could perhaps be aimed more directly at building capacity

<sup>77</sup> In 2010 'the VLS struggled to meet the requirements outlined in the new Vanuatu Law Society Act of 2010, which provides for CLE for lawyers.' South Pacific Lawyers' Association, 'Needs Evaluation Survey', above n 59, 22.

<sup>78</sup> Henry Vira, 'Vanuatu Legal Sector Strengthening Program' (Asian Development Bank, 2008) 5. <<http://www2.adb.org/Documents/Studies/Capacity-Development-in-the-Pacific/Legal-Sector-Strengthening-Program.pdf>>.

<sup>79</sup> Ibid 7, 8.

in mentoring and supervision, and focus also on creating supervision and support structures aimed to outlive the particular program in question.

In addition, as discussed above, legal ethics and professionalism is not something which can just be 'taught' as filing documents or drafting statements may be. It is likely to require trust in another person and the ability to speak in confidence about issues arising. This can be particularly difficult in small jurisdictions still based to a large extent on kinship, where it may be difficult to find truly impartial, disinterested advice and support. Suggestions to assist with that include the creation of mentoring relationships beyond the organisation or even beyond the country, such as with overseas counterparts, with local or visiting judiciary, and with other senior lawyers. In addition to such hierarchical relationships there have been suggestions of peer support via the networking of junior lawyers across South Pacific countries.<sup>80</sup>

As well as individual relationships, larger bodies can often lend support to those caught in ethical dilemmas. For example the International Association of Prosecutors has offered advice and spoken out publicly against unethical pressure brought to bear on South Pacific prosecutors by governments, and the United Nations Office on Drugs and Crime offers support for lawyers trying to prosecute corruption. In addition, 'twinning arrangements', for example between the parliaments of Queensland and of Solomon Islands, encourage inter-country advice and support.<sup>81</sup>

Local law societies and bodies such as the regional South Pacific Lawyers Association may provide supportive interactions, along with CLE and workshops to teach and encourage ethical and professional behaviour. These may be more successful with less experienced lawyers still keen to learn, and who are less likely already to have been caught up in unethical and unprofessional practice.

<sup>80</sup> Joan Puloka, South Pacific Lawyers' Association, 'Pacific Young Lawyers Forum, Commonwealth Law Ministers Meeting 2011' reported in *newSPLAsh* 2 (2011) 7, <<http://www.southpacificlawyers.org/files/uploads/newSPLAsh%20Issue%202.pdf>>. Note also the possibilities of mentoring programs such as that set up in the USA as 'American Inns of Court' <<http://home.innsocourt.org>>

<sup>81</sup> Twinning arrangements exist between Australian and Pacific parliaments that are members of the Commonwealth Parliamentary Association. At present six Pacific parliaments are twinned with Australian Capital Territory, Queensland, South Australia, Tasmania, Victoria and Western Australia. In addition the New South Wales Parliament operates a separate program for the Bougainville House of Representatives and Solomon Islands Parliament. Commonwealth of Australia, *Parliamentary Strengthening* <[http://www.aph.gov.au/About\\_Parliament/International\\_Program/Parliamentary\\_Strengthening](http://www.aph.gov.au/About_Parliament/International_Program/Parliamentary_Strengthening)>.

### *C Strengthening the Legal Environment in Support of Ethical and Professional Practice*

Where unprofessional and unethical practice is common, it can be difficult to hold an ethical line without structures in place to support that line. Although ethics and professionalism are not easily ‘taught’ or learned out of context, the support of strong rules, codes of conduct, or legislation can help lawyers in this sphere. Firstly, it can make clear at least the minimum requirements of ethics and professionalism for individuals uncertain about what behaviour is and is not acceptable. Secondly, having rules to back them up can assist lawyers to stand up to pressures to act unethically. Thirdly, it can assist the society to understand the behaviour required of lawyers, and thus can lead to higher expectations from clients and the community generally.

If the laws, rules or codes are to function effectively they also need a method of enforcement, along with actual enforcement in practice. Rules which exist but are ignored without sanction are unlikely to create higher ethical standards, but enforcement itself raises further problems.

If the government is to take a role in enforcement, there is the issue of needing to prioritise the use of scarce resources: is it better, for example, to prosecute unethical practice or to prosecute assault or murder? If a non-government body such as a Law Council, Legal Ombudsman, or Legal Services Commission is created for enforcement, still resources must be found. A strong law society may be able to perform the task, but where there are few lawyers, and lawyers are not well off, the law society is also unlikely to have the resources required. Even apart from a shortage of financial resources, there is likely to be limited time and expertise available for running an enforcement process.

In addition, social factors will make enforcement difficult. Discussion above regarding small communities, hierarchical structures, and wantok relationships are relevant here, and the issues they raise are as real in enforcement as in practice. Lawyers do not like to act against or criticise one another, especially where unprofessional and unethical behaviour is widespread, and a criticism of one lawyer may actually be a criticism of the practice of many.

Clients and the community are also reticent to complain about the behaviour of lawyers, often trusting lawyers *because* they are lawyers: they are educated, they have the knowledge. Clear rules could create higher community expectations of lawyers, which may in turn lead to more complaints being made, and more action demanded in response. However, this would require clear rules, a clear avenue of complaint, and a process for action to be taken.

In societies with a long-standing, stable, and well-resourced state legal system, it is easy to expect that all lawyers will behave well, and that those who do not will be taken to task. However, in a still-developing legal system with a shortage of resources, a lack of ethical role modelling and a lack of experienced practitioners, it may be worth focusing equally on encouraging, recognising and rewarding good ethical and professional practice. Complaints, enforcement and punishment are all necessary to protect the legal system from incompetent and unethical practitioners, yet focusing on the best practitioners may do more to improve the practice of the legal profession overall. Rewards could include accreditation as an ethical practitioner, resources to assist the person to mentor others, or preferred selection for overseas workshops and training opportunities.

## V CONCLUSION

It is clear from the above that while some aspects of 'ethics' may be universal, the context within which the law is taught and practised must be taken into account in determining the appropriate content and method for teaching legal ethics and professionalism. The history, the stage of economic development, and the social structure of a country will be important, as will be the history and stage of development of the legal system or systems, the current state of legal practice, the opportunities for legal education to continue beyond the classroom, and the availability of mechanisms to check unethical behaviour. All of the above must be taken into account if legal professionalism and ethical practice is to be improved in the South Pacific.