

Finding Our Way to the Island: Critical Reflections from Two Emerging Pacific Legal Academics in Aotearoa

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Abstract

This article offers critical reflections regarding legal scholarship on Pacific peoples in Aotearoa from two Pacific early career academics in the legal academy. It explores why very little legal scholarship focusing on the issues facing Pacific peoples in Aotearoa exists by examining and illustrating the systemic barriers that prevent Pacific legal academics from producing such scholarship. It then examines the detrimental impacts this lack of legal scholarship on Pacific peoples in Aotearoa has on both Pacific law students and Pacific communities in Aotearoa. Lastly, it imagines a Pacific jurisprudence for Pacific peoples in Aotearoa located within Pacific communities, committed to fulfilling the obligations that Pacific peoples have to Māori as Tangata Whenua of Aotearoa.

Introduction

The legal academy in Aotearoa faces a big problem. There have only ever been eight pieces of legal scholarship published in domestic law publications that focus on legal issues facing Pacific peoples in Aotearoa that are, in fact, written by Pacific peoples.¹

The various reasons for the dearth of legal scholarship are not difficult to theorise. First, Pacific peoples are severely underrepresented in legal academia in Aotearoa. Second, the capacity of Pacific legal academics to publish and develop legal scholarship of any kind is inhibited by the systemic barriers that many Pacific scholars in the academy face, such as invisible labour demands and a lack of access to research grants and opportunities.²

Regardless of these systemic barriers, there is still a great need for more legal scholarship on legal issues facing Pacific peoples in Aotearoa that is, most importantly, *by* Pacific peoples. This is because it is our Pacific law students and Pacific communities in Aotearoa who suffer the consequences of this lack of legal scholarship. Therefore, rather than accept current circumstances, as two Pacific early career academics (PECA) in the legal academy, we remind ourselves of the enduring words of Epeli Hau'ofa: "It is time to create things for ourselves, to create established standards of excellence that match those of our ancestors."³

We also take inspiration from the voyaging teachings of Micronesian voyager Mau Piailug. In 1979 Mau went to Hawai'i to teach Nainoa Thompson the traditional ways of wayfinding. Mau had arrived to help Nainoa and other Hawaiian voyagers make the trip from Oahu to the island of Tahitinui for the first time in about a "million years."⁴ In the final days before their trip, Mau took Nainoa to the bottom of Oahu and told him to recite the star chart from Oahu to Tahitinui. After this, Mau asked him "can you see the island?" to which a confused Nainoa responded: "I don't understand what you mean." Mau would ask Nainoa this many times over the next three days, and a still confused Nainoa would respond the same way. Nainoa began to worry that Mau doubted his abilities which led to a crisis in confidence. Finally, on the fourth day, Mau again told Nainoa to recite the star chart and asked him once more, "can you see the island? Now can you see the island?" This time, Nainoa closed his eyes to try to visualise the island of Tahitinui in his mind. At last, Nainoa responded, "Yes, Mau, I can see the island. I can see it

now. Yes, I get it, I get it. I've got it." Nainoa not only made the voyage from Oahu to Tahitinui, he also was able to voyage back from Oahu to Hawai'i, a feat that had not been achieved in 600 years.⁵

Accordingly, in this article we take the first steps to imagine and see our own island as two emerging Pacific legal academics in Aotearoa. For us, this is an island where we are able to reach our great and fullest potential as scholarly activists serving our communities. This article proceeds as follows. First, we examine the barriers that explain why there is so little legal scholarship published regarding the issues facing Pacific peoples in Aotearoa. To illustrate these barriers, we then tell the stories of our own struggles in publishing legal scholarship and examine the impacts that this lack of scholarship has on our Pacific law students and our Pacific communities in Aotearoa as a whole. Last, we begin to consider how we can start to see our island and the possible ways that we can one day voyage to it.

It is important to note that a significant limitation of this article is that it does not reflect on legal scholarship that focuses on issues facing Pacific peoples outside Aotearoa, the wider Pacific Islands, and around the world. This is due to the fact that we have not yet engaged with these issues in depth as PECA living in Aotearoa. However, we note with alofa and loloma the work of Pacific legal scholars who have produced groundbreaking scholarship on these issues, and hope that this article can contribute to discourse and scholarship on their experiences as well.⁶

Why is There So Little Legal Scholarship Published on Pacific Peoples in Aotearoa?

Before exploring the question above, it is necessary to first address a more preliminary question: who, or what, do we mean by "Pacific"? This question is arguably more complex than it seems. "Pacific" obviously refers to those descending from one or more of the various islands within Te-Moananui-a-Kiwa. The term "Pacific," though, is besieged with limitations. Foremost is that it is a colonially imposed reference thrust upon the many—and diverse—ethnic groups existing within Te-Moananui-a-Kiwa. In Aotearoa, "Pacific" (and its various iterations such as "Pasifika" and "Pacifika") is a nomenclature deployed largely for political convenience. It collapses (and, at worst, homogenises) the diversity of our ethnic-specific identities into a racialised monolith. There is no singular way to be or embody one's "Pacific-ness," nor should there be. While there have been movements, even within our own Pacific law support team at Auckland Law School, to replace "Pacific" with "Moana" or "Moana Oceania," for the purposes of this paper we have chosen to adopt the term "Pacific."⁷ This is because we are still grappling with which term is the most appropriate for us to use in our scholarship, given that the law, and the vast majority of relevant scholarship, still utilises the term "Pacific."

The Underrepresentation of Pacific Peoples in Legal Academia

While there has not been any recent empirical research recording the exact number of legal academics in Aotearoa yet, at the date of writing, we estimate that there are currently eight individual law academics of Pacific descent in academic positions across law schools in Aotearoa. These Pacific legal academics are Dr. Rex Adhar (professor, University of Otago), Dr. Guy Fiti Sinclair (associate professor, University of Auckland), Dr. Keakaokawai Varner Hemi (assistant vice chancellor Pacific, University of Waikato), Bridget Fa'amatuainu (lecturer, Auckland University of Technology), Dr. Mele Tupou (research fellow, Victoria University of Wellington), Alex Latu (lecturer, University of Otago), and ourselves: Dylan Asafo (lecturer, University of Auckland) and Litia Tuiburelevu (research fellow, University of Auckland).

To put the number eight in perspective, we estimate that there are currently 237 law academics in Aotearoa, excluding adjunct professors, emeritus professors and honorary professors, and including teaching fellows and research fellows.⁸ This means that Pacific peoples make up roughly 3.4 percent of the legal academy, despite Pacific peoples making up 8.1 percent of the total population of Aotearoa as of 2018.⁹

The exact proportion of Pacific legal academics who currently have permanent appointments (as opposed to fixed term) is unknown. However, it is clear that most (5 of 8) Pacific legal academics occupy junior academic positions at the lecturer or research fellow level, with only one Pacific professor of law and one Pacific associate professor of law in the country. It must also be acknowledged that not all of the Pacific law academics listed above specialise or produce scholarship that focuses on issues facing Pacific peoples in Aotearoa. To be clear, we do not acknowledge this to criticise Pacific legal academics who do not focus on these issues, as it is crucial that Pacific legal academics engage in a diverse range of legal scholarship just as non-Pacific legal scholars do. However, we acknowledge this to help explain how the vast underrepresentation of Pacific legal academics impact the production of legal scholarship on issues relating to Pacific peoples in Aotearoa.

So why are Pacific peoples underrepresented in legal academia in Aotearoa? In lieu of empirical scholarship examining this particular issue, we observe that this underrepresentation partly reflects the more proximate problem that Pacific peoples are underrepresented among undergraduate law degree graduates in New Zealand's law schools. In 2017, it was reported that Pacific peoples only made up 6.1 percent of those who graduated with Bachelor of Laws/Bachelor of Laws with Honours degrees,¹⁰ again, despite the fact that Pacific peoples make up 8.1 percent of the total population.¹¹ The exact number of postgraduate law students in Aotearoa also cannot be confirmed, but given the undergraduate figures above and our own anecdotal observations in the legal academy, we assume that Pacific peoples are also underrepresented at this level as well. This particular underrepresentation is concerning because postgraduate law degrees are generally required for academic positions.

Beyond these numbers and proportions, we draw on our lived experiences in the legal academy to argue that Pacific peoples are underrepresented in legal academia in Aotearoa because there is an absence of equitable pathways for Pacific peoples to become law academics in law schools.¹² We also draw on our lived experiences to support the findings of Mara Hosoda who examined the experiences of Pacific peoples in New Zealand law schools, finding that “anecdotally there have been more Pacific staff however they do not tend to stay long within the faculty because they return to their respective island countries.”¹³

The Lack of Capacity Among Pacific Legal Academics to Produce Legal Scholarship

We argue that the very few Pacific legal academics who are employed to produce legal scholarship lack the capacity to do so because of various systemic barriers in the legal academy. One of these systemic barriers is the excessive and under-recognised “invisible” labour that Pacific law academics take on as a part of their service roles. As noted by Sereana Naepi, “diverse [non-White] bodies engage in invisible labour that is not valued by the institution,” and “Pasifika understand service and knowledge dissemination differently from universities.”¹⁴ According to our own lived experiences and anecdotal observations, Pacific legal academics, like many other Pacific academics, are tasked with service roles that involve providing academic and pastoral care to their Pacific students. It goes without saying that this is an important role that many Pacific legal academics, including ourselves, are excited, eager,

humbled, and honoured to take on. This is due to the collectivist and relational nature of Pacific peoples: the sacred cultural relationships that Pacific teachers have with their Pacific students and the unique responsibilities that Pacific academics have to their communities.¹⁵ This, of course, is in addition to their service to non-Pacific students.

However, we argue that a major problem arises when one considers the immensity of care that Pacific law students deserve and need, and the institutional expectation that (the very few) Pacific legal academics should be responsible for providing this care, alongside any designated professional staff. This problem deepens when service roles account for a relatively small percentage of our paid work, compared to the significant research and teaching obligations that we must fulfil to be promoted. As Naepi explains, “current promotional practices in universities focus on research (40% of the time), teaching (40% of the time) and service (20% of the time) and do not consider ontological differences that see all three as deeply intertwined given the importance of relationships.”¹⁶

This leads to the second systemic barrier preventing Pacific legal academics from publishing legal scholarship on legal issues impacting Pacific communities: the lack of funding and opportunities for research projects. This barrier is elucidated by the work of Joanna Kidman and Cherie Chu, who argue that the “academic prestige economy” excludes Pacific people’s research, community, and social spaces across the academy, where “Pacific faculty are frequently excluded from formal institutional mechanisms that confer recognition and value, such as promotions, and were rarely the recipients of academic awards, prestigious fellowships, or invitations to sit on editorial boards.”¹⁷

In the specific context of legal academia, this exclusion manifests in the lack of grants that have been created, commissioned and granted to Pacific legal academics to research legal issues facing Pacific peoples in Aotearoa. To date, there have only been two major research grants for legal research into Pacific communities, which were both provided in 2020 by the Michael and Suzanne Borrin Foundation, a philanthropic organisation committed to legal research, education and scholarship. One is titled “Pacific Peoples and the Criminal Justice System in Aotearoa, New Zealand: Past, Present and Future,” led by Litia Tuiburulevu. It aims to “centre the lived experiences of Pacific peoples who have been through, are going through, or are working in the criminal justice system” and recognises the importance of “building research capacity for Pacific legal scholarship.”¹⁸ The second is “Equality, Belonging and Authority/Power—How Can Law, Policy and Practice Support Best Outcomes for Pasifika in Aotearoa New Zealand—Improving Pasifika Legal Education,” led by Assistant Vice-Chancellor (Pasifika) Luamanuvao Dame Winnie Laban, of Te Herenga Waka—Victoria University of Wellington. It aims to “increase the number of Pasifika in the legal profession and facilitate Pasifika legal practitioners as leaders in the profession by improving legal education.”¹⁹

In our view, the lack of research grants and other research opportunities is not simply due to the underrepresentation of Pacific legal academics, but also discrimination and racism that underpins how Pacific research by Pacific academics is perceived and valued by universities and other institutions. As Kidman and Chu note, “in universities, white academic habitus is regularly reinforced through dismissive attitudes towards Pacific faculty and students. Pacific peoples in Aotearoa frequently encounter racism in their everyday and working lives . . . and these attitudes are also present in academia.”²⁰ In our view, it is pivotal that these research grants are accessible to Pacific legal academics (including those in junior lecturer or research

fellow positions) in order for our research to be able to be non-institutionalised and embedded within our community. Legal research, particularly within the academy, has traditionally centred on written, doctrinal analysis of the law (statute, case law and so forth), as opposed to multidisciplinary, multimedia and qualitative methodologies (lived experience, storytelling, talanoa) that are oftentimes more appropriate to examine issues facing our Pacific communities.

Our Struggles in Producing Legal Scholarship on Issues Facing Pacific Peoples in Aotearoa

Below, we tell our stories of how we have struggled to produce legal scholarship on issues facing Pacific Peoples in Aotearoa frankly and unapologetically. Our storytelling here is inspired not only by the groundbreaking work of other Pacific academics across the academy, but also the bravery of Māori law academics like Ani Mikaere, who have produced legal scholarship to speak out against the realities of working in an institutionally racist Western legal academy.²¹

Dylan

I was appointed as one of Auckland Law School's first *susuga faiako*—professional teaching fellows, along with Lotu Fuli, in March 2017. The purpose of these two part-time positions was to provide academic and pastoral support to our Pacific law students, and to manage and teach into the Pacific law tutorial programme and Pacific-themed law electives; they ultimately provided a viable pathway to academia for two aspiring Pacific legal academics. I started on a part-time basis and was encouraged to pursue a master of laws (LLM) degree part time as well. At this time, my role required a 40 percent teaching, 40 percent research, 20 percent service split, and I was advised to work towards turning my first LLM research paper into my first research publication to fulfil the research component. To give a sense of how badly I struggled to complete the paper, I was assigned the paper in March 2017 and it was due in May, but I did not *start* writing it until August.

The reason I struggled to write my paper was because the 20 percent service component of my role actually ended up taking 70 percent of my time. To be more specific, every weekday I would spend the full working day assisting Pacific law students as well as running and teaching Pacific law tutorials. I would then attempt to work on my paper in the evenings and weekends but many of these attempts failed. I applied for multiple extensions over the next 5 months, but every time the deadlines for this paper loomed I felt like I had to either choose between assisting Pacific law students in personal or academic crises, or ignore them to complete my research paper. For us Pacific academics, this is not a real choice. The needs of our students are always paramount. To be clear, being able to assist and serve Pacific law students was and will always be an honour and one of the most rewarding blessings in my life. The real problem was systemic because I was expected to fulfil my duties to my Pacific law students, as well as fulfil simply unrealistic teaching and research demands. To be frank, I felt like the system had set me up to fail as an aspiring Pacific legal academic.

In addition to these practical hurdles, I struggled with my first LLM paper intellectually. My research paper sought to imagine what a Pacific critical legal theory (PacCrit) could look like, after learning about critical race theory (CRT) and Latinx critical legal theory (LatCrit) in my undergraduate studies.²² One of the key reasons I struggled intellectually with the paper was the absence of critical legal scholarship on issues facing Pacific peoples in Aotearoa written by Pacific legal academics. In addition, things were also made difficult by not having a senior

Pacific legal academic who specialised in legal issues facing Pacific peoples as a supervisor, due to the underrepresentation of Pacific legal academics mentioned above.

Thankfully, I had an incredibly generous, kind and patient supervisor, Dr. Treasa Dunworth, an Irish legal scholar who has served extensively with and in the Pacific law programme. Empowered by her faith and confidence in me, and her wise encouragement to not worry about achieving perfection, I wrote a paper that proposed a “draft blueprint” of a theory that explicitly outlined its long non-exhaustive list of limitations and warmly encouraged critique from other Pacific peoples.²³ I was eventually able to submit it for marking in October 2017 and the paper was published in the *Canterbury Law Review* in 2020.²⁴ While the article has many important shortcomings and flaws, I am proud that it was written with hope, courage, and an unapologetic love for Pacific peoples.

Litia

After completing my undergraduate BA/LLB (Hons) at the beginning of 2018, I was employed by the crown solicitor’s office in Tāmaki Makaurau as a law clerk. About three months into my employment, I was approached by the editors of the *New Zealand Women’s Law Journal* (NZWLJ) to write a paper focussing on Pacific women and the law. The piece, entitled “Legally Brown: The Experiences of Pasifika Women in the Criminal Justice System,” is research that, three years on, is important to reflect on.²⁵ When approached by the NZWLJ’s editors about penning a piece broadly around Pacific women and the law, I was simultaneously thrilled and anxious. Until then, my understanding of legal writing was rather myopic: writing had to be doctrinal, revolving solely around case law or statute, wholly “objective,” absent of any evil “I” sentiments, and structured according to the “issue, relevant law, application, conclusion” framework drummed into every undergraduate law student. How, then, was I to explore the myriad intersectional issues (legal and non-legal) affecting Pacific women in the justice system absent of a clear case, statute, or theory to ground my research in? During the six years of my undergraduate studies, I was afforded only one opportunity to explore the law vis-à-vis Pacific peoples in Aotearoa. That was for Helena Kaho’s *Pacific Peoples in Aotearoa: Legal Peripheries* elective course where I wrote about racism in housing law and policy, focussing on inner-city gentrification in Tāmaki Makaurau. Helena’s teaching opened my mind to the critical and creative possibilities of legal research that skewed from the conventional paradigm of what legal writing is/was “supposed” to be. While the absence of critical (Pacific) legal scholarship made it difficult to place the article into its gendered, racialised, sociological, political, and economic contexts, Helena’s teaching and encouragement imbued me with enough crumbs of confidence to believe such analysis was possible.

I began by perusing the various library and legal databases to scope the existing literature. I naively hoped that the databases would work like a crucible, filtering the specific from the general, presenting me with a concise (Pacific) legal issue to write on. Despite my efforts, none of my searches presented me with a neatly packaged topic for analysis. Rather, I came across numerous threads that, when woven together, could form a mosaic of interrelated issues to discuss. Although the process of weaving these many and varied threads was more intellectually laborious than anticipated, it nonetheless allowed for more nuanced critique that would have been otherwise absent had the work confined itself to a single axis. Nevertheless, the piece does have a major shortcoming. My choice to title the paper “The Experiences of Pasifika Women in New Zealand’s Criminal Justice System...” was erroneous given I did not undertake any qualitative research to determine what those “experiences” were. The piece is analytical, not experiential.²⁶ Nevertheless, I hope that the article might contribute to the burgeoning corpus

of critical Pacific legal scholarship in Aotearoa. Foregrounding the lived experiences of Pacific peoples, communities historically excluded by the law/legal research/legal academia, invariably enriches one's work.

My current research into Pacific peoples and the criminal justice system in Aotearoa foregrounds the narratives of Pasifika directly impacted by the justice system. It is the stories buried in the hearts and minds of our community that we hope will be revealed in the interview process. As a Pacific researcher, the aim is to position the research as a continuation of the transformative justice *kōrero* that has been happening for generations.²⁷ The goal is not to be the “first” or the most “groundbreaking,” but to situate our research (and any future research endeavours) in good relation to our communities and their collective futures.²⁸

With some of the struggles facing Pacific legal academics illustrated by our stories, in the next section we consider how the lack of legal scholarship focusing on Pacific peoples in Aotearoa impacts Pacific peoples.

What Are the Impacts of a Lack of Legal Scholarship on Pacific Peoples in Aotearoa?

We argue that there are detrimental impacts specifically for Pacific law students. However, in considering the impacts, we must also heed the warning from Konai Helu Thaman that “we must be careful not to advocate something simply because our own education has largely been structured by it or our jobs depend entirely on it.”²⁹ Therefore, we consider the impacts on our Pacific communities at large below as well.

Impacts on Pacific Law Students

The scarcity of legal scholarship on Pacific peoples in Aotearoa by Pacific peoples is obviously concerning from a research perspective, but this lacuna also impacts upon our Pacific law students, too. To date, there is no literature directly exploring the experiences of Pacific law students at universities in Aotearoa.³⁰ However, the experiences of Māori and Pacific students in higher education more generally has been the subject of academic inquiry. In 2014, a research team at the University of Auckland led a multimedia project titled “I, Too, Am Auckland” looking at the factors impacting Māori and Pacific student success in higher education.³¹ Several law students participated in the focus-group video interviews. Although the focus groups traversed many topics ranging from targeted admission schemes, racism, microaggressions, colonisation, and potential solutions, the following points were raised by Pacific law students specifically³²:

- 1) Ongoing experiences of racial microaggressions or “subtle racism” toward them whilst at the University. This was most acutely felt in physical spaces such as the lecture theatres and libraries.
- 2) Pacific law students were often tokenised by Pākehā students (and, sometimes, staff) for their physical abilities on the sports field, but rarely invited to participate in intellectual debates, moots or discussion.
- 3) They saw their lecturers as occupying positions of great authority and privilege, with the ability to influence students' perceptions of marginalised groups. If racist sentiments were expressed by their lecturers, this would undoubtedly impact peer perceptions of Pacific and Māori law students.
- 4) Many Pacific law students were the first in their family to attend university and carried their family's pride and sacrifice on their shoulders. This was a heavy load

to bear, made more difficult when experiencing racial hostility in their place of learning.

Whilst we cannot (and should not) speak on behalf of our students, we can speak to our experiences as academics working with our Pacific law students over the past three years. During our time as students, we benefited from the generosity of the Pacific law tutorial programme (formerly known as PASS) and the Pacific Island Law Students' Association. However, it was not until 2015 that the faculty appointed Helena Kaho, New Zealand's first Pacific woman legal academic, albeit on a one-year fixed-term contract. Helena's impact was, and is, immeasurable and cannot be wholly captured in words. Her aforementioned elective course explored sociolegal issues about Pacific peoples in Aotearoa and had students exploring, discussing, and researching issues including CRT, LatCrit, intersectionality, the dawn raids, housing deprivation, the Recognised Seasonal Employment Scheme (RSE), immigration law, and more. For many Pacific and non-Pacific law students alike, this was often the first time they were introduced to—let alone critically engaged with—these issues in a multidisciplinary way, anchoring the law in its sociological, historical, political and economic contexts. After taking the course ourselves as students, we had the privilege of teaching into the course as *susuga faiako* before becoming course directors in 2019 (Dylan) and 2020 (Litia).

Despite this course being a fresh and powerful learning experience for our students, inevitably, the lack of legal research on the different sociolegal issues we covered was the most significant limiting factor. Thankfully, our students were still keen to push through the paucity of scholarship to explore for themselves the relationships between the issues facing Pacific peoples in Aotearoa and the law. We often reflected regretfully on how much more enriching the learning experience would be for students if we could assign a coursebook full of scholarship by Pacific legal academics. For us, it was also particularly difficult to witness our Pacific law students being unable to see themselves, their stories, and their values in the course curriculum like they deserved to.

Impacts on Pacific Communities in Aotearoa Generally

Like all academic research, legal scholarship plays a crucial role in shaping society, including society's laws and policies. Legal scholarship in particular can speak specifically to the efficacy of different international law treaties, statutes, case law and government regulations, and then propose substantive recommendations for law reform and amendment that lawmakers are able to consider.

One recent example that illustrates the power of legal scholarship to influence progressive changes in the law for minorities is in the 2020 High Court sentencing case of *R v. Ruddelle*.³³ In this case, Justice Matthew Palmer was sentencing Karen Anne Ruddelle, a Māori woman who had been convicted of manslaughter after stabbing her partner who was going to give her a “hiding” and potentially harm her younger son who came to her defence. Prior to the *Ruddelle* case, judges had largely adopted the outdated and misogynistic “battered woman trope” that focuses on blaming women who have experienced intimate partner violence, wrongly concluding that leaving violent relationships is always possible and the cure for the abuse, while failing to acknowledge that victims of intimate partner violence do proactively resist the abuse and seek help.³⁴

In determining Karen's sentence, Justice Palmer considered the approach that other judges have taken in similar “excessive self-defence” cases in which they view the violent actions of the

woman in question more harshly, and thus arguably bought into the battered woman trope. However, rather than adopting this approach, Justice Palmer cites in a footnote, a New Zealand Law Review article by Pākeha academic, Julia Tolmie, which incisively discredits the battered woman syndrome trope in the law to make the following analysis in their judgement:

I do have regard to the other cases of excessive self-defence causing manslaughter in family violence contexts because these are features of the offending which go to its seriousness and to culpability. I note the Crown agrees with this approach. But in making these comparisons I note it is important not to replicate any previous misconceptions about family violence and to focus on the offending in the context of the relationship, rather than based only on the latest specific incident.³⁵

Another important example illustrating the power of legal research is Moana Jackson's landmark research report *He Whaipaanga Hou: The Maori and the Criminal Justice System: A New Perspective*, which has recently inspired an equitable and compassionate approach to sentencing Māori offenders.³⁶ This was first seen in the 2020 High Court sentencing case, *Benson v New Zealand Police*, in which Justice Cooke made the following statement while citing Jackson in a footnote:

In relation to Māori offenders the Courts are becoming increasingly familiar with the impacts of colonisation in New Zealand, and how that has ultimately affected subsequent generations appearing before the courts. This has now become apparent as a matter of institutional knowledge.³⁷

Justice Cooke's positive treatment of *He Whaipaanga Hou* has since been referenced and replicated in three other sentencing cases for Māori.³⁸ We cannot help but hope that "Pacific Peoples and the Criminal Justice System in Aotearoa" will have a similarly positive impact for Pacific peoples in sentencing and other processes in the criminal justice system.

In our view, there are also a number of other hypothetical examples that can illustrate how legal research could have had (and still could have) important outcomes for our Pacific communities in Aotearoa. For example, legal scholarship by a Pacific legal academic is needed in light of the 1980 Court of Appeal case *Tifaga v. Department of Labour*, which is the leading case on the criminal defence of impossibility, that is, the defence that argues that a person should not be convicted of a crime as it was beyond their control or practically impossible for them not to commit it.³⁹ This case concerned Mr. Tifaga, a Samoan migrant worker, who was seeking to defend his inability to leave Aotearoa when his temporary visa expired on the grounds that he did not have enough money to pay for a plane ticket. The court rejected this defence as follows:

The defendant had voluntarily arrived in New Zealand on a temporary permit. Throughout his stay it was his continuing responsibility to provide the practical means to enable him to leave the country. He had chosen not to have sufficient funds available to meet the outward fare, and there was no evidence suggesting that it had been impossible for him to maintain a reserve for that purpose. The defendant's failure to leave the country was conduct which had been correctly attributed to him in terms of criminal responsibility.⁴⁰

We argue that a law review article by a Pacific legal academic is needed to critique and historicise this 1980 case in terms of the racist anti-Pacific sentiments that were fostered by the dawn raids of the 1970s and provide much-needed cultural context as to why Tifaga, as a Samoan migrant worker earning low wages and paying remittances to his family back home, could not simply save money for his outward fare. We believe that such scholarship would have

been helpful in the 1980s after the case was decided and is still needed now, given that *Tifaga* remains the authority on the defence of impossibility in 2021.

Similarly, we argue that legal scholarship by a Pacific legal academic is needed to critique the Western Samoa Citizenship (Western Samoa) Act 1982, in which the Muldoon Government was able to use the racist anti-Pacific sentiments it fostered in the dawn raids era to deny Samoans New Zealand citizenship.⁴¹ The act, to this day, is still referred to as “New Zealand’s most racist law,” yet remains on the books despite sustained protest.⁴² These examples help to demonstrate how a lack of legal research harms our Pacific communities by denying us space within academia (and the law) to collectively critique, engage with, and reimagine equitably transformative futures.

In seeking to avoid these harms, in the next section we begin to consider the big questions: how can we imagine and “see” the island?

Seeing the Island: Towards a Pacific Jurisprudence for Pacific Peoples in Aotearoa

Despite our prior sentiments expressing varying degrees of cynicism, we are inspired by the likes of Naepi, Kidman, Chu, Pialug, Thompson, Hau’ofa, Thaman, Tolmie, Jackson, Mikaere, and Dunworth to always remember that while our obstacles may be great, our collective imagining must be greater.

Therefore, we know that to “see” and then voyage to our island, we must develop our own jurisprudence along the lines of PacCrit, and to do so by centring collective wondering and possibilities that exist outside of the institutional dogma. In our view, this aligns with the decolonial praxis that embraces new avenues of knowledge production and sharing not wedded to institutional boundaries.

This means that our Pacific jurisprudence for Pacific peoples in Aotearoa must not be confined to the academy but located and based in our diverse communities throughout the country. This has three important and interrelated implications for our approach to building this jurisprudence through legal scholarship and praxis. First, we must be mindful that Pacific communities have been talked about, talked over, and spoken for; it follows that there will understandably be some scepticism, animus, reticence, and wariness towards higher education and those who work in it (including ourselves). Second, all of our efforts in scholarship and praxis must be informed by the belief that more meaningful change can be affected outside of research publications by advocates who are not academics by profession. Third, in adopting Indigenous Pacific research methodologies and CRT storytelling tools, all of our efforts in scholarship and praxis must seek to capture and amplify the diverse lived experiences of Pacific peoples.⁴³ This must be done despite the fact that this kind of collaborative, interdisciplinary, mixed-methods research is unorthodox, if not unwelcome, within a legal academy that remains largely objective, positivist, and doctrinal.

When our research is focused on legal issues facing Pacific peoples in Aotearoa, we must always forefront our positionings as non-Indigenous people of colour who hold a sacred, precolonial relationship with Māori as Indigenous peoples of Te-Moananui-a-Kiwa. Whilst our struggles are similar, they are not the same. It follows that our scholarship and praxis must always reject the temptations of reproducing colonial dynamics and deny the legitimacy of the settler-colonising state in advocating for constitutional transformation centred on realising Te

Tiriti o Waitangi-centred constitutional transformation as advanced by Matike Mai—The Independent Working Group on Constitutional Transformation.⁴⁴

For our Pacific jurisprudence to succeed, we must also be prepared to tackle the systemic and institutional barriers that inhibit our imaginations and harm our communities head on. This will involve us supporting the transformative scholarship and praxis of Pacific academics such as Naepi and Chu, and Māori academics like Kidman, Tara McAllister, Olivia Rowley and Reremoana Theodore as they continually fight for Aotearoa to reject the colonial and neoliberal university model, and instead adopt “indigenised” and “decolonial” “Plural-versity” models that are “[s]paces and places that deem all knowledges worthy” and are “[i]magined outside of our current economic system.”⁴⁵

In the specific contexts of law schools, we must also advocate in solidarity for the transformative vision of the “Inspiring National Indigenous Legal Education for Aotearoa New Zealand’s Bachelor of Laws Degree” project led by Māori law academics around the country, which help us all reimagine a bicultural, bilingual, bijural legal education system that will see both Māori and non-Māori in Aotearoa thrive.⁴⁶ As a part of this advocacy, we must challenge law schools to nurture Māori and Pacific research excellence that exists outside Western orthodox notions of legal scholarship through fundamental redistributions of resources and power.

Conclusion

As Nainoa Thompson learned in 1980, you must “see” the island before you make the voyage to it. It is not enough to have the skills and knowledge of a voyager; you will not be able to make it to the island if you do not take a moment to visualise it first. It is that image that will inspire you and your collective to push through all the storms and rough waters that come your way and allow you to set sail again if you ever lose your way.

This article represents one of our first attempts to visualise our island. This is an island where Pacific law academics in Aotearoa are able to reach our great and fullest potential as scholar activists for our communities.

Finding our way to the island means that we must dare to create our own Pacific jurisprudence that overcomes systemic barriers and institutional norms to serve our communities. It also follows from our location in Aotearoa that, as *Tauīwi of colour* and *Tangata Tiriti*, our Pacific jurisprudence must fulfil our obligations to our Māori *whānaunga* by actively advocating for Te Tiriti-based constitutional transformation and *Tino Rangatiratanga*.

With these obligations in mind, in concluding this article, we are drawn to the words of Māori academic, Alice Te Punga Somerville, whose poem “An Indigenous Women Scholar’s Prayer” captures the essence of our hopeful, intergenerational aspirations for legal research on issues facing Pacific peoples in Aotearoa.

*An Indigenous Woman Scholar's Prayer*⁴⁷

May I grow old enough to be forgotten.

*May my questions become passé,
may my bibliographies become outdated,
may my theories be superceded,
may I be obsolete.*

*May I teach students who teach students who teach students:
may I meet these younger thinkers at conferences,
may I read and cite their work,
may I watch them stand more stably than I could ever have dreamed.*

*May I sit in committee meetings where young colleagues raise new challenges
because the old ones have finally been put to rest.*

*May I watch the old guard quietly move on, but more than this:
may I live long enough to be part of an old guard
who younger scholars wish would retire.
(May I get to retire.)*

*May I see scores of Indigenous scholars
write hundreds of Indigenous books
that ask thousands of Indigenous questions.*

*May I meet Indigenous vice-chancellors, presidents, professors, and deans;
may they not all be men.*

*May I lie on a future death-bed and look back with regrets related to work
rather than regrets related to family.*

May my passing be unshocking, not early, not unexpected.

May I run out of ideas before I run out of time.

¹ To our knowledge, these pieces of legal scholarship are: Alex Latu and Albany Lucas, "Discretion in the New Zealand Criminal Justice System: The Position of Maori and Pacific Islanders," *Journal of South Pacific Law* 12 (2008): 84–93; Ema Hao'uli, "Triple Wins or Trojan Horse?: Examining the Recognised Seasonal Employer Scheme Under a TWAIL Lens," *New Zealand Yearbook of International Law* 11 (2013): 183–220; James Bruce Lutui, "Apology : A Moral, Cultural and Restorative perspective," in *Therapeutic Jurisprudence: New Zealand Perspectives*, ed. W. J. Brookbanks (Wellington: Thomson Reuters, 2015); Patricia Caroline Finau, "Therapeutic Jurisprudence and Problem Gambling in New Zealand," in *Therapeutic Jurisprudence*, ed. Brookbanks; Helena Kaho, "The Family Group Conference: A Tongan Perspective," *New Zealand Law Review* (2016): 687–721; Helena Kaho, "Oku Hange 'a e Tangata, Ha Fala Oku Lālanga: Pacific People and Non-violence Programmes under the Domestic Violence (Amendment) Act 2013," *New*

Zealand Women's Law Journal 1 (2017): 182–191; Litia Tuiburelevu, “Legally Brown: The Experiences of Pasifika Women in the Criminal Justice System,” *New Zealand Women's Law Journal* 2 (2018): 78–106; Fuimaono Dylan Asafo, “We Are Voyagers!” Building a Pacific Critical Legal Theory for a New Voyage to Freedom,” *Canterbury Law Review* 27 (2020): 99–122. We also note with alofa and loloma the contributions by non-Pacific legal scholars to legal issues facing Pacific peoples in Aotearoa New Zealand, such as: Lola Gorrell, “Not Sold on the Housing Accords and Special Housing Areas Act 2013: How Housing Legislation in New Zealand Ignores Our Pacific People on the Peripheries,” *Public Interest Law Journal of New Zealand* 5 (2018): 84–96; Ana Kathrin Maquiso, “Aotearoa, the Land of the ‘Long Tail’: Exploring How Pasifika Students Are Underserved by the Education System through School Disciplinary Removals,” *Public Interest Law Journal of New Zealand* 6 (2019): 5–14.

² See: Sereana Naepi, “Why Isn’t My Professor Pasifika? A Snapshot of the Academic Workforce in New Zealand Universities,” *MAI Journal* 8 (2019): 229–230; Joanna Kidman and Cherie Chu, “‘We’re Not the Hottest Ethnicity’: Pacific Scholars and the Cultural Politics of New Zealand Universities,” *Globalisation, Societies and Education* 17 (2019): 492.

³ Epli Hau’ofa, “Our Sea of Islands,” in *A New Oceania: Rediscovering Our Sea of Islands*, ed. E. Hau’ofa, E. Waddell, and V. Naidu (Suva: University of the South Pacific in association with Beake House, 1993), 16.

⁴ Here, we summarise Mau’s teachings to Nainoa as retold by Justice Joseph Williams at the Hui-a-Tau Conference 2015. See Joseph Williams, “Can You See the Island?—Justice Joseph Williams,” *Māori Law Review* (2015), <https://maorilawreview.co.nz/2015/10/can-you-see-the-island-justice-joseph-williams/>.

⁵ Polynesian Voyaging Society, “The Story of Hōkūle‘a,” <http://www.hokulea.com/voyages/our-story/>.

⁶ Some examples include, but are not limited to: Ian Falefuafua Tapu, “Finding Fonua: Disappearing Pacific Island Nations, Sea Level Rise, and Cultural Rights,” *Arizona Law Review* 62 (2020): 785–804; Ian Falefuafua Tapu, “How to Say Sorry: Fulfilling the United States’ Trust Obligation to Native Hawaiians by Using the Canons of Construction to Interpret the Apology Resolution,” *New York University Review of Law and Social Change* 44 (2019): 445–88; Beatrice M. Tabangcora, “Ua Se Vaa Tu Matagi: The Revival of Criminal Libel in Samoa,” *Comparative Law Journal of the Pacific* 24 (2018): 39–52; Bridget Crichton, “Gender Equity in Samoan Laws: Progress vs Contradictions,” *Journal of South Pacific Law* (2018): 125–42; Keakaokawai V. Hemi, “Closing Geographical Distances: The Value of a New Zealand Perspective on the Admission Policy of a Native Hawaiian School,” *Waikato Law Review: Taumauri* 24 (2016): 14–42.

⁷ See Lagi Maama Academy and Consultancy, “Why ‘Moana Oceania?’,” <https://www.lagi-maama.com/whymoanaoceania>. Here, “Moana Oceania” is encouraged to be used in place of more commonly used terms “Pacific” or “Pasifika” because “Moana Oceania” “empowers and privileges Indigenous perspectives” and “embodies a worldview that is strongly connected to Aotearoa but has its roots in the wider region.”

⁸ See: Auckland Law School, “Auckland Law School: Handbook 2020,” <https://cdn.auckland.ac.nz/assets/law/Documents/2020/lawpublications2020/Law%20School%20Handbook%20WEB%202020.pdf>; Auckland University of Technology (AUT) Law School, “Academic Staff,” <https://www.aut.ac.nz/study/study-options/law/academic-staff/>; Te Piringa Faculty of Law, “Law Staff Directory,” <https://www.waikato.ac.nz/law/about-us/staff/>; Victoria University of Wellington Faculty of Law, “Our People,” <https://www.wgtn.ac.nz/law/about/staff#academic>; University of Canterbury Law, “Faculty of Law Staff,” <https://www.canterbury.ac.nz/law/people/>; University of Otago Faculty of Law, “Our People in the Faculty of Law,” <https://www.otago.ac.nz/law/staff/>.

⁹ Statistics New Zealand, “Pacific Peoples Ethnic Group,” <https://www.stats.govt.nz/tools/2018-census-ethnic-group-summaries/pacific-peoples>.

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- ¹⁰ New Zealand Law Society. “Lawyer Ethnicity Differs from New Zealand Population,” <https://www.lawsociety.org.nz/news/lawtalk/issue-920/lawyer-ethnicity-differs-from-new-zealand-population/>.
- ¹¹ Statistics New Zealand, “Pacific Peoples Ethnic Group.”
- ¹² We note that there have only been a few efforts by law schools to specifically recruit Pacific legal academics, including Auckland Law School’s recent recruitment round (see University of Auckland, “Aspiring or Established Legal Academic—Lecturer to Professor,” <http://www.maoripacificjobs.co.nz/jobs/aspiring-or-established-legal-academic-lecturer-to-professor>) and Auckland University of Technology’s Eke Tangaroa, the Māori and Pacific Early Career Academic Programme of AUT, which recruits law academics (see AUT, “Eke Tangaroa—AUT’s Māori and Pacific Early Career Academic Programme,” <https://www.aut.ac.nz/about/careers-at-aut/working-at-aut/maori-and-pacific-early-career-academic-programme>).
- ¹³ Mara Kawehiwehi Hosoda, “Optimising the New Zealand Law School Experience for Pacific Lawyers,” (PhD thesis, University of Otago, 2015), 223.
- ¹⁴ Naepi, “Why Isn’t My Professor Pasifika?,” 229.
- ¹⁵ Tim Baice et al., “Responding to the Call: Talanoa, Va-vā, Early Career Network and Enabling Academic Pathways at a University in New Zealand,” *Higher Education Research and Development* (2021): 75–89; Marcia Leenen-Young et al., “‘Pillars of the Colonial Institution Are Like a Knowledge Prison’: The Significance of Decolonizing Knowledge and Pedagogical Practice for Pacific Early Career Academics in Higher Education,” *Teaching in Higher Education* (2021): 1–16.
- ¹⁶ Naepi, “Why Isn’t My Professor Pasifika?,” 229.
- ¹⁷ Kidman and Chu, “We’re Not the Hottest Ethnicity.”
- ¹⁸ Michael and Suzanne Borrin Foundation, “Pacific Peoples and the Criminal Justice System in Aotearoa, New Zealand: Past, Present and Future,” <https://www.borrinfoundation.nz/pacific-peoples-and-the-criminal-justice/>.
- ¹⁹ Michael and Suzanne Borrin Foundation, “Equality, Belonging and Authority/Power—How Can Law, Policy and Practice Support Best Outcomes for Pasifika in Aotearoa New Zealand—Improving Pasifika Legal Education,” <https://www.borrinfoundation.nz/equality-belonging-and-authority/>. It is worth noting that Luamanuvao is not one of the eight Pacific legal academics listed above, but is leading the project in her capacity as Assistant Vice-Chancellor (Pasifika).
- ²⁰ Kidman and Chu, “We’re Not the Hottest Ethnicity.”
- ²¹ Ani Mikaere, “Stories of Survival: Working Inside the Imposter Legal System,” in *Colonising Myths—Māori Realities: He Rukuruku Whakaaro* (Wellington: Huia Publishers, 2011), 15–50.
- ²² See Richard Delgado and Jean Stefancic, *Critical Race Theory: An Introduction*, (New York: New York University Press, 2017), 3, and Elizabeth M. Iglesias, “Identity, Democracy, Communicative Power, Inter/National Labor Rights and the Evolution of LatCrit Theory and Community,” *University of Miami Law Review* 53 (1999): 622.
- ²³ Asafo, “We Are Voyagers!”
- ²⁴ Asafo, “We Are Voyagers!”
- ²⁵ Tuiburelevu, “Legally Brown.”
- ²⁶ Time, resource, and ethics constraints meant a qualitative approach was not possible for that article.
- ²⁷ I want to acknowledge and thank Moana Jackson for his ground-breaking work in *Maori and the Criminal Justice System: A New Perspective, He Whaipanga Hou* (1987), that has provided the blueprint for this research project. His writing has opened my mind to how we can write, research, and discuss the law in an empathetic and relational way.
- ²⁸ Inspired by the writing of Hana Burgess, Donna Cormack and Papaarangi Reid, “‘Calling Forth Our Pasts, Citing Our Futures’: An Envisioning of a Kaupapa Māori Citational Practice,” *MAI Journal* 10 (2021): 57–67.
- ²⁹ Konai Helu Thaman, “Decolonizing Pacific Studies: Indigenous Perspectives, Knowledge, and Wisdom in Higher Education,” *The Contemporary Pacific* 15 (2003): 1–17.

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- ³⁰ As noted above, the experiences of Pacific law students at New Zealand law schools are currently the topic of the project “Equality, Belonging and Authority/Power—How Can Law, Policy and Practice Support Best Outcomes for Pasifika in Aotearoa New Zealand—Improving Pasifika Legal Education,” funded by the Michael and Suzanne Borrin Foundation.
- ³¹ Ngā Pae o Te Māramatanga, “I, Too, Am Auckland,” <http://mediacentre.maramatanga.ac.nz/content/i-too-am-auckland>.
- ³² Ngā Pae o Te Māramatanga, “I, Too, Am Auckland.”
- ³³ R v. Ruddelle, NZHC 1983 (2020).
- ³⁴ Julia Tolmie, “Leaving the ‘Battered Woman’ Trope Behind,” *Newsroom* (14 August 2020), <https://www.newsroom.co.nz/ideasroom/leaving-the-battered-woman-trope-behind>.
- ³⁵ Julia Tolmie, “Defending Battered Defendants on Homicide Charges in New Zealand: The Impact of Abolishing the Partial Defences to Murder,” *New Zealand Law Review* (2015): 675–677.
- ³⁶ Moana Jackson, *He Whaipāanga Hou: The Māori and the Criminal Justice System: A New Perspective* (Department of Justice, February 1987).
- ³⁷ Benson v. New Zealand Police, NZHC 1946 (2020), 23.
- ³⁸ R v. Ngatai, NZHC 2106 (2020), 87. See also: R v. MacDonald NZHC 224 (2021), 58; R v. Hakaraia, NZHC 1733 (2021), 62, in which the High Court judges also cite Moana Jackson, “Where to Next? Decolonisation and the Stories in the Land,” in *Imagining Decolonisation* (Bridget Williams Books, Wellington, 2020): 55.
- ³⁹ Tifaga v. Department of Labour, 2 NZLR 235, Court of Appeal (1980).
- ⁴⁰ Tifaga v. Department of Labour, 235.
- ⁴¹ Graeme Edgeler, “The Citizenship (Western Samoa) Act is New Zealand’s Most Racist Immigration Law. Why Is it Still on the Books?,” *Spinoff* (7 February 2017), <https://thespinoff.co.nz/society/07-02-2017/the-citizenship-western-samoa-act-is-new-zealands-most-racist-immigration-law-why-is-it-still-on-the-books/>.
- ⁴² Edgeler, “The Citizenship (Western Samoa) Act is New Zealand’s Most Racist Immigration Law.”
- ⁴³ Sereana Naepi, “Pacific Research Methodologies,” in *Oxford Research Encyclopaedia of Education*, ed. George Noblit (New York: Oxford University Press, 2019), <https://oxfordre.com/education>; Delgado and Stefancic, *Critical Race Theory*.
- ⁴⁴ Matike Mai Aotearoa, *He Whakaaro Here Whakaumu Mō Aotearoa: The Report of Matike Mai Aotearoa—The Independent Working Group on Constitutional Transformation* (Matike Mai Aotearoa, 2016), 99–112.
- ⁴⁵ Tara McAllister et al., “Why Isn’t My Professor Māori? A Snapshot of the Academic Workforce in New Zealand Universities,” *MAI Journal* 8 (2019): 235; Naepi, “Why Isn’t My Professor Pasifika?”
- ⁴⁶ Jacinta Ruru et al., *Inspiring National Indigenous Legal Education for Aotearoa New Zealand’s Bachelor of Laws Degree* (Michael and Suzanne Borrin Foundation, 2020).
- ⁴⁷ Alice Te Punga Somerville, “An Indigenous Woman Scholar’s Prayer,” <https://oncewewerepacific.blogspot.com/2018/04/an-indigenous-woman-scholars-prayer.html>.