

**MIXED BLESSINGS: LAWS, RELIGIONS, AND WOMEN'S RIGHTS IN  
THE ASIA-PACIFIC REGION**

Edited by Amanda Whiting and Carolyn Evans

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The last 25 years or so have seen a rise – or maybe a reawakening – of English-speaking scholarship on law and religion. American scholars, naturally, have been at work on the interrelations of the religious life and the legal system for much longer than other Anglophones. But evangelical and Catholic revivals, the emergence and subsequent qualification of multicultural policy and lawmaking, and the rise of Islamism and the Age of Terror have combined to prove elsewhere that secularisation is not 'inevitable', and to reveal that, in complex and barely articulated ways, religion serves alongside, outside and inside law as an important social phenomenon that helps to organise our life together.

In general, law and religion scholarship adopts a sympathetic position on the religious life and, as a corollary, either a liberal suspicion of official state encroachments on private religious spheres or a Christian ambivalence towards government's undoubted capacity to do good and evil. Not so the aptly-named *Mixed Blessings*. Ambivalence about the social role of religion permeates this excellent collection of essays. As its sub-title suggests, *Mixed Blessings* is a series of eight studies that sit inside the intersection of law, religion and women's issues. The contributors - Australian, American and Singaporean – come from English-speaking scholarly communities, but their scholarship is brought to bear on law in south-east Asia and the south-western Pacific. The essays are grouped by reference to the dominant religious tradition of the Asia-Pacific countries concerned: Theravada Buddhism (Thailand), Christianity (Papua New Guinea, Solomon Islands, Aotearoa/New Zealand, East Timor), Islam (Indonesia, Brunei) and Confucianism (Singapore), although Li-ann Thio's study on Singapore concentrates on the place of Islam in the city-state. The essayists, mostly legal academics, are all women – not a token male in sight. This may well be *Mixed Blessings'* strength, and the source of the essayists' characteristic uncertainty about the contribution that religious systems make to the quality of women's lives in the Asia-Pacific. Throughout the collection, there is a strong empathy for the women of the countries studied and, in most, a proved understanding of their position under the 'two powerful regimes' of law and religion. The outcome is, usually, a high standard of scholarship.

Indeed, it is only where reservations about the impact that belief systems have on women are not expressed that the essays in *Mixed Blessings* do not persuade.

All of the essays in the Christian and Muslim groups deal with the place of indigenous custom in the legal system, but two in the Christian group demonstrate a political commitment to a strong role for custom in the legal system that, I believe, clouds their assessment of its potential to undermine the status of women. Leah Whiu, who writes the Māori side of the essay for Aotearoa/New Zealand, recounts an incident in 2003 when, by agreement with the local *iwi* (tribe or descent group), a Health Board in Wellington banned women from entering a building site. The *iwi*'s representative stated, 'It's not my rules, it's rules that have been brought down through the generations'. The ban attracted the ire of feminist groups, and the attention of the Human Rights Commission.<sup>1</sup> Whiu, however, draws on other Māori scholars who argue that women had a more authoritative role in traditional Māori communities than western Christianity later allowed them<sup>2</sup> – which may or may not be true – and suggests that a more constructive approach to the Wellington building site row would have been to listen to Māori women, who themselves might not have understood the ban in hierarchical terms.<sup>3</sup> That also may or may not have been true, but when set against a customary ban that, on its face, was explicitly sexist, some actual evidence of a Māori women's tradition that helped to show a more enlightened custom might make the position taken in the essay more compelling.

Similar reservations may be expressed about Jean Zorn's attempt in the chapter on Papua New Guinea ('PNG') to reconcile a customary indulgence of witch-killing with western feminism. Zorn admires the PNG law reformer, judge and parliamentarian Bernard Narokobi – whose ideas have certainly been amongst the most original, stimulating and challenging of political thought in the post-colonial Pacific. But they are perhaps idealised and, if Narokobi's decision in the *Gesie*<sup>4</sup> case is any guide,<sup>5</sup> genuinely dangerous for women. As an Acting Judge, Narokobi sentenced two Highland men to less than a year's imprisonment for the premeditated murder, by strangling, of a woman whom they believed had caused a child's death by evil sorcery. The men had meted out the customary punishment for witches. The *Gesie* decision was deeply influenced by Narokobi's own claimed belief in evil sorcery, and his project of incorporating custom into the national criminal law. It was followed by similar witch-killing cases in which he sentenced the murderers to only a few months in

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1 Margaret Bedggood and Leah Whiu, 'Women, Religion, and the Law in Aotearoa/New Zealand: The Complexity of Accommodating Different Value Systems in Law' in Amanda Whiting and Carolyn Evans (eds), *Mixed Blessings: Laws, Religions, and Women's Rights in the Asia-Pacific Region* (2006) 152-4.

2 Ibid 152.

3 Ibid 157.

4 (Unreported, National Court of Papua New Guinea, Narokobi AJ, 12 July 1980).

5 Jean Zorn, 'Women and Witchcraft: Positivist, Prelapsarian, and Post-Modern Judicial Interpretations in PNG' in Whiting and Evans, above n 1, 84-90.

gaol and the payment of traditional compensation.<sup>6</sup> Zorn questions whether witch-killing in PNG should be considered criminal,<sup>7</sup> and recounts Narokobi's view that it is 'reasonable' and, while technically unlawful, should be treated leniently.<sup>8</sup> She pitches this approach against the appeal judges in *Gesie*, who are critically cast as positivist,<sup>9</sup> and who, having criticised Narokobi for believing, without evidence, that the victim had indeed killed others by evil sorcery, raised the sentences to the standard six years imprisonment for witch-killing.<sup>10</sup> Zorn nevertheless recognises the 'sexual abusiveness' of custom in PNG and, as a feminist, criticises Melanesian custom for its chauvinism.<sup>11</sup> Equally, though, she concludes that custom and gender equality 'need not be antithetical' if PNG women's perspectives are listened to as well.<sup>12</sup> Perhaps. But, this still fails to explain Zorn's evident preference for Narokobi's approach to witch-killing cases over the less accommodating appeal court judges. At some point, either the author's anti-colonialism<sup>13</sup> or her belief in western equalities has to give way. In Zorn's chapter, neither does, and this casts doubt on her claim to be able to synthesise these commitments.

The other essays in the Christian group demonstrate the stronger and more common quality of *Mixed Blessings* – a particularism that is not skewed by overarching political commitments. For instance, Jennifer Corrin Care's chapter on Solomon Islands acknowledges both the patriarchal character of custom and (when women are in their traditionally defined place) a customary value given to their skills, alongside the uneven but more overt equalising tendencies that introduced law and Christianity have had on gender relations.<sup>14</sup> Similar interrelations are evident in Susan Harris Rimmer's chapter on East Timor.<sup>15</sup> Certainly when compared with Narokobi and Zorn, Corrin Care has a more dynamic view that Melanesian custom can absorb and incorporate moral and social influences that post-date European contact. Corrin Care also values the incorporation of custom in the state-run legal system, but believes that custom

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6 Ibid 90.

7 Ibid 86.

8 Ibid 89.

9 A distracting feature of the chapter is that Zorn consistently (and mistakenly) equates positivism with a conservative western judicial method that is less reliant on custom as a source for legal development in adjudication, and (following Narokobi) relies only on sources that predate Hart's *Concept of Law*: ibid 80.

10 Ibid 90-5.

11 Ibid 82.

12 Ibid 99.

13 Ibid 74.

14 Jennifer Corrin Care, 'Between a Rock and a Hard Place: Women, Religion and Law in Solomon Islands' in Whiting and Evans, above n 1, 101-2.

15 Susan Harris Rimmer, 'The Roman Catholic Church and the Rights of East Timorese Women' in Whiting and Evans, above n 1, 179-81.

now incorporates indigenised Christian conceptions and hopes that, within local custom, 'women may develop a human rights agenda with local resonance'.<sup>16</sup>

The particularism of *Mixed Blessings* also explains the essayists' reluctance to look beyond the specific local laws of the country each deals with. In a useful introductory framing of the essays, the editors express surprise at how little reference to international law and, notably, the *Convention on the Elimination of All Forms of Discrimination Against Women*<sup>17</sup> ('CEDAW') there was in the contributions.<sup>18</sup> This was obviously corrected in revisions, as there is extensive comment on the place of CEDAW throughout the book - and in every chapter. However, the more illuminating quality of *Mixed Blessings* still lies in contrasts made possible by comparison of the domestic legal and religious issues that concern women in each of the countries, and especially where those countries also have significant social commonalities. As has been mentioned, Islamism is one of the principal causes of the rise of law and religion scholarship. The region circles the world's most populous Muslim nation, and has too many flashpoints where Islam, other world religions and western secularism encounter each other. As elsewhere, Islamism is *the* religious and political question of the Asia-Pacific - just think of East Timor, Bali, Papua, Aceh, central Sulawesi, the southern Philippines and southern Thailand. Exceptional analyses of Islamism are dealt with in essays from Kathryn Robinson (on Indonesia) and Ann Black (on Brunei), and offer fascinating contrasts of the interrelationship between *syari'ah*, secular national law and, in these countries, the possible moderating effect that custom can have on women's status. While there is a general awareness of the differences wrought by emerging democracy and an autocratic Sultanate, different populations and concentrations of wealth, the two essays reveal significantly different detailed legal responses to Islamism. In some respects echoing Corrin Care, Robinson recounts how the rights of women were strengthened through Indonesia's *Compilation of Islamic Law*, in which the strategy of legal development was the mutual inculturation of *adat* (custom) and *syari'ah*.<sup>19</sup> The challenge of Islamism, especially through rising support in Indonesian politics for polygyny, threatens the home-grown compromises of legal and religious life in Indonesia, but still does not come close to (and seems unlikely to approach) the more rational and advanced Islamisation of Brunei, where Black expects that *syari'ah* criminal law will eventually be introduced.<sup>20</sup>

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16 Corrin Care, above n 14, 128.

17 *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 18 December 1979, Res 34/80 (entered into force 3 September 1981).

18 Carolyn Evans and Amanda Whiting, 'Situating the Issues, Framing the Analysis' in Whiting and Evans, above n 1, 18.

19 Kathryn Robinson, 'Muslim Women's Political Struggle for Marriage Law Reform in Contemporary Indonesia' in Whiting and Evans, above n 1, 201.

20 Ann Black, 'Islamization, Modernity, and the Re-positioning of Women in Brunei' in Whiting and Evans, above n 1, 232.

These kinds of comparisons show how the potentially small intersections of *Mixed Blessings* – law, religion, women and Asia-Pacific countries – enlarge our understanding of how experiences of law are affected by differences in the organisation of government, religious lives, colonial experiences and geographies, as well as by the different sexes of the people they apply to. As noted in relation to Robinson's and Black's essays, the comparisons are more meaningful when there are fewer social differences between the countries, but broader comparisons would have been enriched if there had also been a chapter on Australia – simply because it is the most distinctively secular and western country in the region. Nevertheless, with some regularity, the essayists themselves draw comparisons with Australia and the editors have tried to compensate by dealing with the implementation of *CEDAW* in Australia.<sup>21</sup> Students of comparative law, gender studies and the region should be looking at *Mixed Blessings* closely. But, in the rising field of law and religion, the collection is a significant, well-crafted and absorbing contribution. For the Asia-Pacific, this book deepens the work in the field - precisely because of its nuanced and scholarly ambivalence towards both the life of the law and the life of the spirit.

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<sup>21</sup> Evans and Whiting, above n 17, 15.