

“WE ARE VOYAGERS!” BUILDING A PACIFIC CRITICAL LEGAL THEORY FOR A NEW VOYAGE TO FREEDOM

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Abstract

The many complex inequities that Pacific peoples around the world face today call for a new voyage to new places of freedom from subordination by the law. In response to this call, I propose for Pacific peoples to start building a critical theory of our own – a Pacific Critical Legal Theory (PacCrit for short) – to then help us design and build the vaka (canoes) that we will need for this new voyage. This article takes the first step to drafting a blueprint for PacCrit that draws on existing Pacific methodologies, scholarship and praxis and critical race theories from other peoples of colour. My first draft blueprint proposes for PacCrit to be an intellectual and political voyaging movement for Pacific peoples, by Pacific peoples, that aims to eliminate the ways in which the law subordinates us through producing critical scholarship and praxis which privilege the diverse voices and aspirations of Pacific peoples.

I. Introduction

Tatou o tagata folau!

E vala'auina, e le atua

o le sami tele e o mai

Ia ava'e le lu'itau e lelei

Tāpenapena'

We are voyagers!

Summoned by, the mighty gods

of this mighty ocean to come

We take up the good challenge

Get ready

My mum had a dream of becoming a lawyer. Even after raising three kids and working as a nurse for 20 years, she was determined to go to law school in her forties to make her dream a reality. She still yearned to know the law, to use it to help our family, our community and other people in need. But, due to reasons beyond her control, her dream was not meant to be. She is like many Pacific migrants who

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1 Opetaiā Tavita Foa'i and Lin-Manuel Miranda “We Know the Way” in *Moana: Original Motion Picture Soundtrack* (Walt Disney Records, Burbank, 2016).

not only dream of their children becoming doctors, engineers and lawyers, but also dare to dream of becoming doctors, engineers and lawyers *themselves*. These dreams have been realised by few, but for many Pacific migrants, the dream lies dormant in their children and children's children.

What I have learned from the sacrifices of my mother and other Pacific migrants is that the barriers to legal education for Pacific peoples have not only made the law a tool that many Pacific peoples are unable to use, but a tool that is too often used against us.

After being schooled in the ways of the law within the privileged walls of law school to realise my mum's dream, I am now determined to realise my own dream that I thankfully share with many other Pacific peoples – which is to ensure that the law can no longer be used as a tool to oppress and subordinate Pacific peoples. However, a great obstacle to realising this dream is the reality that the opportunity to formally study and understand the law is only available to a privileged few Pacific people. Therefore, the question is: how can Pacific peoples end our oppression and subordination by the law – a feat that often seems impossible and too far beyond our reach?

While generations of oppression by the law present clear challenges to our advancement of Pacific peoples, the truth is we are voyagers! Our ancestors were voyagers who used their ingenuity and skill to build the *vaka* (canoes),² in order to navigate the vast Pacific ocean for thousands of years, using indigenous navigational techniques developed over several millennia.³ As the enduring message of Pacific post-colonial scholar Epeli Hau'ofa reminds us, our ancestors did not conceive the scope of their lives as being limited to small island masses but their universe included the vast ocean that surrounded them – “smallness is a state of mind”.⁴

The reality that Pacific peoples living both inside and outside of the Pacific Islands face significant marginalisation and subordination by the law calls us to embark on a “new voyage” of our own to new places of freedom from subordination by the law. Around the world, other marginalised ethnic groups have built their own critical legal theories to investigate and eliminate the ways in which the law subordinates their respective groups through critical scholarship and praxis. However, there is currently no formal critical legal theory or critical race theory

2 Damon Salesa “Epilogue: Tangata, Moana and Whenua” in Sean Mallon, Kolokesa Mahina-Tu'ai and Damon Salesa (eds) *Tāngata o Le Moana: New Zealand and the People of the Pacific* (Te Papa Press, Wellington, 2012) at 338. As Salesa notes: “The ancient *vaka* that allowed people to traverse the moana were always culture-carrying vessels, as are their modern day descendants.”

3 Peter Addis “Explorers and pioneers: The first Pacific people in New Zealand” in Sean Mallon, Kolokesa Mahina-Tu'ai and Damon Salesa (eds) *Tāngata o Le Moana: New Zealand and the People of the Pacific* (Te Papa Press, Wellington, 2012), at 17.

4 Epeli Hau'ofa “Our sea of islands” in Eric Waddell, Vijay Naidu and Epeli Hau'ofa (eds) *A New Oceania: Rediscovering Our Sea of Islands* (University of the South Pacific, Suva, 1993) at 7.

made by Pacific peoples, for Pacific peoples, to help navigate the many ways in which the law subordinates us in our everyday lives. Therefore, in this article, I aim to provide a first draft of a Pacific Critical Legal Theory (PacCrit for short) to help us draw the blueprints for the *vaka* we need for our new voyage.

This article proceeds as follows. Part II takes the first step towards this new voyage by drawing on existing Pacific methodologies, critical scholarship and praxis and critical legal theories from other marginalised groups to begin drafting a blueprint for PacCrit. This blueprint proposes for PacCrit to be underpinned by three core objectives. Objective one, as part III of this paper outlines, is to develop interdisciplinary and multi-dimensional understandings of how the law perpetuates the subordination of Pacific peoples. Part IV will then outline objective two, which is to build communities and institutions focused on using scholarship, policy and politics in PacCrit scholarship and praxis. The fifth part of this article then outlines objective three of PacCrit, which is to propose new laws, reforms and alternatives to law that aim to eliminate the subordination of Pacific peoples by achieving Pacific conceptualisations of health and wellbeing. Finally, part VI proposes future directions for PacCrit voyagers to take in seeking to develop this blueprint further.

For this first draft of the blueprint, I adopt the broad definition of "Pacific peoples" provided by Statistics New Zealand for its censuses. This definition encompasses people who identify as Samoan, Cook Islands Māori, Rarotongan, Tongan, Niuean, Tokelauan, Fijian, Australian Aboriginal, Hawaiian, Kiribati, Nauruan, Papua New Guinean, Pitcairn Islander, Rotuman, Tahitian, Solomon Islander, Tuvaluan and Ni Vanuatu.⁵ I adopt this definition as I feel it is broad and encompassing of a range of Pacific ethnicities from Polynesia, Melanesia and Micronesia.

However, this definition of "Pacific peoples" (along with every term, idea, assumption, proposition, position and argument in this article) is encouraged to be the subject of further discussion, debate and critique by other individuals and collectives committed to being a part of the new PacCrit voyage, whom I will refer to as "PacCrit voyagers".

5 "2013 Census ethnic group profiles" StatsNZ <www.archive.stats.govt.nz>.

II. PacCrit: Drafting the Blueprint

A. Rationale: Why We Need A Theory of Our Own

Currently, there is no formal existing critical legal theory or critical race theory specifically designed to help Pacific peoples navigate the ways in which the law subordinates us in our everyday lives. Therefore, I propose that we as Pacific peoples need to build a critical theory of our own, to then help us design and build the canoes that we will need for this new voyage to places of freedom from subordination by the law.

This type of endeavour is not new or unheard of in legal academia. Rather, there is a rich history of scholars from marginalised groups forming their own theories in response to the inadequacies of existing jurisprudence in addressing the issues that their particular marginalised group or groups face.⁶

When Critical Legal Studies (CLS) emerged in the late 1970s, it focused on critiquing the law as oppression used by the wealthy class to legitimise their socioeconomic exploitation to the detriment of the lower classes.⁷ In recognising that CLS movements did not allow for a specific focus on the oppression of women and people of colour, white women and African American scholars developed feminist legal theory⁸ and Critical Race Theory (CRT) respectively.⁹ In response to both the white woman-led feminist movements and male-led CRT movements excluding interests of women of colour, women of colour (mostly African American woman scholars) developed critical race feminism,¹⁰ and intersectionality theory,¹¹ respectively, towards the late 1980s and early 1990s. Naturally, other marginalised groups also formed their critical jurisprudence during this time, including but not limited to: Asian American legal studies,¹² gay and lesbian legal scholarship,¹³ Latina/o

6 See Francisco Valdes “Legal Reform and Social Justice – An Introduction to LatCrit Theory, Praxis and Community” (2005) 14 GLR 148 at 151.

7 See Alan Hunt “The Theory of Critical Legal Studies” (1986) 6 OJLS 1 at 1.

8 See Ann Scales “Toward a feminist jurisprudence” (1978) 56 Ind LJ 375 at 375.

9 See Richard Delgado and Jean Stefancic “Critical race theory: An annotated bibliography” (1993) 79 Va L Rev 461 at 461.

10 See Amii Larkin Barnard “The Application of Critical Race Feminism to the Anti-Lynching Movement: Black Women’s Fight Against Race and Gender Ideology, 1892–1920” (1993) 3 UCLA Women’s LJ 1 at 2.

11 See Adrien Katherine Wing *Critical Race Feminism: A Reader* (New York University Press, New York, 1997) at 2.

12 See Robert S Chang “Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space” (1994) 11 Asian LJ 5.

13 See Francisco Valdes “Theorizing ‘OutCrit’ Theories: Coalitional Method and Comparative Jurisprudential Experience—RaceCrits, QueerCrits and LatCrits” (1999) 53 U Miami L Rev 1265 at 1295–1296.

Critical Legal Studies (LatCrit)¹⁴ and Third World Approaches to International Law (TWAIL).¹⁵

It could be argued that TWAIL is an appropriate theory for Pacific peoples to critique the law. This is due to the fact that several Pacific Islands, including Kiribati, Samoa, Solomon Islands and Vanuatu, have been considered to be Third World nations,¹⁶ and all Pacific Island nations are widely considered to be small island developing states (SIDS).¹⁷ Furthermore, the impacts of international law on Pacific peoples are of great concern, which is evident by how a TWAIL lens has already been applied by Pacific scholar Ema Hao'uli to critique New Zealand's Recognised Seasonal Employer (RSE) Scheme for Pacific migrants.¹⁸

However, I argue that TWAIL is inadequate as an effective critical movement for Pacific legal issues for two main reasons. Firstly, PacCrit should not be limited to being concerned with international law only, where countries with significant Pacific populations like New Zealand have significant inequalities between Pacific peoples and non-Pacific peoples.¹⁹ Secondly, I argue that Pacific scholars cannot simply adopt critical legal theories and movements that were not made by Pacific people in order to understand the unique legal, political and social issues that Pacific peoples face. This is in order to honour the common mantra amongst many Pacific peoples – "for Pacific, by Pacific", which urges that any initiative or movement that involves or impacts Pacific peoples, must be led by Pacific peoples.²⁰

This is not to say that TWAIL scholarship cannot be of value to PacCrit endeavours. Rather, I posit that TWAIL scholarship is likely to be essential in developing PacCrit understandings of the historical contexts of international law and how international law institutions, customs and instruments subordinate Pacific peoples worldwide as aptly demonstrated in Hao'uli's aforementioned critique.

14 See Valdes, above n 6, at 151.

15 James Thuo Gathii "TWAIL: A Brief History of its Origins, its Decentralized Network, and a Tentative Bibliography" (2011) 3 Trade L & Dev 27 at 27.

16 "Countries of the Third World" One World Nations Online <www.nationsonline.org>.

17 UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLS) "The Impact of Climate Change on the Development Prospects of the Least Developed Countries and Small Island Developing States" (UN-OHRLS, 2009) at 10.

18 See Ema Hao'uli "Triple Wins or Trojan Horse?: Examining the Recognised Seasonal Employer Scheme Under a TWAIL Lens" (2013) 11 New Zealand Yearbook of International Law 183.

19 See Lisa Marriott and Dalice Sim *Indicators of Inequality for Māori and Pacific People* (Victoria Business School, Working Paper 09/2014, August 2014) at 7–27, which reports that Pacific peoples face significant inequalities in terms of outcomes in health, knowledge and skills, paid work, economic standard of living, cultural identity and social connectedness.

20 See *Guidelines on Pacific Health Research* (The Health Research Council of New Zealand, May 2005) at 10–11.

B. The Limitations and Inevitable Flaws of this Draft Blueprint

Undeniably, it is far from ideal for PacCrit to be established by one legal scholar in one article. Ideally, PacCrit would be established following collaborative efforts by a vast range of Pacific scholars, students, activists and community leaders coming together to determine what PacCrit should entail.

This collaborative approach to establishing jurisprudence has been adopted by other marginalised groups, as seen with LatCrit which was established at a 1995 colloquium held in Puerto Rico to discuss the relationship between Latinas/os and CRT.²¹ Therefore, a collaborative approach to establishing PacCrit is necessary for its success in eliminating the subordination of all Pacific peoples by the law. As Valdes explains:²²

LatCrit theorists have made “community building” a primary concern from the beginning. This priority is rooted in critical recognition that atomistic “success” — at least as a scholar in a hostile or indifferent environment — can never lead to structural reform, systemic improvement or social transformation. This recognition has been corroborated over the years, time and again, by the many experiences of marginality that scholars of color have documented within the legal academy of the United States, as well as throughout modern-day society as a whole.

However, I argue that there are two practical barriers that make this ideal method of establishment impossible for PacCrit. Firstly, is the underrepresentation of Pacific scholars in legal academia. While PacCrit scholarship and praxis will not be limited to Pacific legal scholars, it is inevitable that legal scholars will need to take leadership roles in scholarship and praxis. It is difficult to provide an accurate estimate of the number of Pacific legal academics worldwide without any empirical research. However, from the academic staff lists of various law faculties at the time of writing, there are ten at the University of the South Pacific,²³ two at the University of Auckland,²⁴ one at Auckland University of Technology,²⁵ one at Victoria University²⁶,

21 Steven W Bender “Now More than Ever: Reflections on LatCrit at Twenty” (2016) 37 Whittier L Rev 335 at 335.

22 Valdes, above n 6, at 161.

23 See University of the South Pacific “Staff Profiles” <www.usp.ac.fj>.

24 See University of Auckland “Academic staff” <www.law.auckland.ac.nz>.

25 See Auckland University of Technology “Bridget Fa’amatua’ainu” <www.aut.ac.nz>.

26 See Victoria University of Wellington “Guy Fiti Sinclair” <www.victoria.ac.nz>.

one at the University of Waikato and two at the University of Otago.²⁷ With LatCrit having a pool of around 100 Latina/o legal professors in the United States to join the 1995 colloquium,²⁸ it appears to be highly unlikely that we will be able to achieve the numbers necessary to hold a colloquium of a similar scale.

This underrepresentation of Pacific peoples in legal academia goes beyond the underrepresentation of Pacific peoples amongst law graduates. From my own experience and conversations with both Pacific and non-Pacific law graduates, it can be explained by the common perception that legal scholarship has no place in initiating social justice for Pacific peoples and other marginalised groups.

However, in my view, the new voyage to positive social, political and legal change for Pacific peoples through legal scholarship is a long one worth taking, even if the fruits of such a voyage cannot be immediately enjoyed in one's lifetime. This view is eloquently stated by LatCrit scholar Steven Bender as follows:²⁹

Legal scholarship is never about changing the world tomorrow but about changing the world over time. So, whether it's LatCrit or anything else, the project in legal scholarship cannot be about the social results you personally can see in your own lifetime but about helping to chart a path towards them.

Secondly, it is my perception that there is currently an unfortunate lack of capital, support and momentum for conferences focused specifically on collaborating to establish a critical Pacific jurisprudence. Pacific legal scholars are blessed to have a "Pacific Law and Culture Conference" every two years amongst law students and legal academics from Universities in New Zealand and the University of the South Pacific (USP) to present research on legal issues facing Pacific peoples.³⁰ However, while this conference is an invaluable opportunity for aspiring and established Pacific legal scholars, it should be noted that this conference is not focused on formally establishing a PacCrit movement or similarly focused collaborative efforts in scholarship and praxis.

27 See University of Canterbury School of Law "Academic Staff" <www.laws.canterbury.ac.nz>; University of Otago School of Law "Professor Rex Ahdar" <www.otago.ac.nz>; University of Otago School of Law "Alex Latu" <www.otago.ac.nz>; and The University of Waikato "Tootooleaava Dr. Fanaafi Aiono-Le Tagaloa" <www.waikato.ac.nz>.

28 Valdes, above n 6, at 153.

29 Bender, above n 21, at 354.

30 See University of Canterbury "Pacific Law and Culture Conference" (July 2018) <www.canterbury.ac.nz>.

The grim reality is that these practical barriers of insufficient capital and support are unlikely to disappear, despite the fact that the need for PacCrit scholarship and praxis continues to grow.

Therefore, in my current privileged position as one of the very few Pacific persons in legal academia, I cannot passively wait for these practical barriers to disappear in order to start a new voyage with PacCrit. Instead, with these great limitations and inevitable flaws keenly in mind, I will use this article to produce the first draft of a blueprint for PacCrit that future Pacific activists can critique and refine further in order to form a more robust and well-informed blueprint.

I must also note that this first draft of the PacCrit blueprint is written from the perspective of an Australian-born, but New Zealand-raised Pacific person educated and currently living in New Zealand. Therefore, the ideas, assumptions and examples are largely drawn from New Zealand experiences and circumstances. I hope to learn more about ideas, assumptions and examples from Pacific peoples in the Pacific Islands, Australia and the United States of America whose experiences and circumstances need to be incorporated in future drafts of the PacCrit blueprint. More importantly, I hope for Pacific peoples in these areas outside New Zealand to take the lead in developing these parts of the blueprint or blueprints, as well as resulting scholarship and praxis.

C. The Methodology Used to Create this Draft Blueprint

I will create my blueprint of PacCrit by adapting the principles of other race jurisprudence, namely TWAIL, CRT and LatCrit to form a blueprint jurisprudence appropriate for Pacific contexts that is based on the works of Pacific scholars. This methodology is inspired by the approaches used to establish LatCrit and other critical race jurisprudence:³¹

LatCrit ... includes a collection of principles and practices that have been assembled largely, though not exclusively, from two main sources: the prior jurisprudential experiments of “critical legal studies” and associated movements; and eight years of experience with the “LatCrit” experiment, which began in 1995.

While there are no formal PacCrit experiments to refer to, there is a wealth of remarkable scholarship by Pacific scholars on Pacific research methodologies and

³¹ Valdes, above n 6, at 148–149.

Pacific jurisprudence regarding indigenous customs and practices.³² While it is beyond the scope of this paper to explore this substantial and rich body of literature in detail, it is imperative for these works to be discussed in further revisions of this draft blueprint and adopted in PacCrit scholarship and praxis in the future.

D. PacCrit's Aim and Objectives

I propose for PacCrit to be an intellectual and political voyaging movement that broadly aims to eliminate the subordination of all Pacific peoples by the law. To achieve this aim, PacCrit is underpinned and driven by three core objectives:

- (1) Objective one: Develop interdisciplinary and multi-dimensional understandings of how the law perpetuates the subordination of Pacific peoples.
- (2) Objective two: Build communities and institutions focused on using scholarship, policy and politics in PacCrit scholarship and praxis.
- (3) Objective three: Propose new laws, law reforms and alternatives to law that aim to eliminate the subordination of all Pacific peoples by achieving Pacific conceptualisations of health and wellbeing.

PacCrit's central premise, aim and objectives, as stated above, are adapted from the central premise, aim and set of objectives of TWAIL as articulated by leading TWAIL scholar, Makau Mutua in his seminal 2000 article titled "What is TWAIL?"³³

I have chosen to adapt these articulations from Mutua because I believe they provide clear and strong directions from which PacCrit can develop. Not only are these objectives bold, ambitious and courageous aspirations for Pacific peoples, they are also sufficiently broad enough for there to be a number of sub-objectives and diverse range of directives underneath each of them.

Of course, PacCrit collectives may dismiss using the above premise, aim and set of objectives and may opt for a wholly original and organic approach to laying down a blueprint for PacCrit. Furthermore, as is the case with TWAIL and TWAIL

32 See Tamasailau Suaalii-Sauni "It's in your bones!": Samoan custom and discourses of certainty" (2012) 13 YBNZ Juris 70; Etuale Lealofi "Samoan Jurisprudence: A Commentary" in Tamasailau Suaalii-Sauni and others (eds) *Su'e Su'e Manogi - In Search of Fragrance: Tui Atua Tupua Tamasese Ta'isi and the Samoan Indigenous Reference [Su'e Su'e Manogi]* (National University of Samoa, Apia, 2009); Tui Atua Tupua Tamasese Ta'isi Efi Tupuola Tufuga "Samoan Jurisprudence and the Samoan Land and Titles Court: The Perspective of a Litigant" in Tamasailau Suaalii-Sauni and others (eds) *Su'e Su'e Manogi* (National University of Samoa, Apia, 2009); Bernard Narokobi "Law and Custom in Melanesia" (1989) 14 Pacific Perspectives 17; Unasa I F Va'a "Samoan Custom and Human Rights: An Indigenous View" (2009) 40 VUWLR 237; and Asiatia Vaai "The Idea of Law: A Pacific Perspective" (1997) 21 Journal of Pacific Studies 225.

33 See Makau Mutua "What is TWAIL?" (2000) 94 ASIL Proc. at 31 and 36.

scholars, this premise, aim and objectives do not need to be endorsed or strictly adhered to by all in the PacCrit voyage who want to use scholarship and praxis to benefit Pacific peoples.

Nonetheless, I will proceed by outlining the three objectives and the adaptations I have made from the TWAIL equivalents from Mutua to make them appropriate and useful for us as Pacific peoples seeking to be free from subordination from the law.

III. Objective One: Towards Interdisciplinary and Multi-dimensional Understandings of Subordination by the Law

A. The Presumption of Subordination

Objective one's presumption that the law subordinates Pacific peoples derives from the central premise of CRT, as stated by the University of California Los Angeles School of Public Affairs (UCLA):³⁴

CRT recognizes that racism is engrained in the fabric and system of the American society. The individual racist need not exist to note that institutional racism is pervasive in the dominant culture. This is the analytical lens that CRT uses in examining existing power structures. CRT identifies that these power structures are based on white privilege and white supremacy, which perpetuates the marginalization of people of color.

This presumption allows for PacCrit to adopt the twin principles of anti-subordination and anti-essentialism principles that underlie CRT and LatCrit. Valdes provides an apt explanation of how the relationship between the principles and their relationship to LatCrit's work in scholarship and praxis:³⁵

... anti-essentialism enables critical (and self-critical) mappings of the dimensions, layers and inter-connections of "different" kinds of subordination, thereby helping to show how "different" structures of subordination operate across categories, places and eras as interconnected systems of

34 UCLA School of Public Affairs "What Is Critical Race Theory?" (11 March 2012) <www.spacrs.wordpress.com>.

35 Valdes, above n 6, at 157.

subordination that affect many "different" social groups or legal classifications. Similarly, in the LatCrit scheme of things, anti-subordination helps to ensure that critical analysis and exchange will always be geared to social justice uses – to resist and reform any and all systems of social or legal oppression. In sum, then, anti-subordination purpose anchors and steers anti-essentialist analysis in LatCrit theory and praxis.

Due to my own shortcomings in knowledge and experience, it is beyond the scope of this paper to explore more complex questions of subordination by custom and customary law in Pacific states, as well as the particular nuances involved when law is used by Pacific peoples to oppress other Pacific peoples. However, discussing and debating these questions and nuances is a high priority for PacCrit voyagers seeking to refine this objective.

B. The Need for Interdisciplinary and Multi-dimensional Approaches

My proposal for PacCrit voyagers to adopt interdisciplinary and multi-disciplinary approaches to scholarship and praxis derives from LatCrit:³⁶

LatCrit theory self-consciously does not limit itself to law or scholars: students, activists and other interested parties from various disciplines, backgrounds and regions, help to constitute LatCrit theory as a collective enterprise in every respect.

I argue that there are two reasons why a firm commitment to interdisciplinarity is essential for PacCrit scholarship and praxis. Firstly, Pacific cultures are uncompromisingly collectivist,³⁷ where PacCrit's validity relies heavily on its application and development being executed in a collaborative manner in culturally appropriate spaces. Secondly, the legal and social issues that Pacific peoples face have important cultural, historical, anthropological, sociological and psychological dimensions that must be appreciated by scholars and non-scholars in those fields.

³⁶ At 148.

³⁷ Taimalie Kiwi Tamasese, Tafaomalou Loudeen Parsons and Charles Waldegrave *Pacific Perspectives on Ageing in New Zealand* (Family Centre, March 2014) at 31.

An interdisciplinary approach therefore rejects the notion that the law exists in a vacuum. This means that it is not possible for one PacCrit voyager who is an expert in law to produce PacCrit scholarship or praxis on their own. Even if they were versed in other academic disciplines, they would also need to have a vast range of work and life experiences so that they were able to serve the diverse interests and aspirations of Pacific peoples. This is simply impossible.

Therefore, like LatCrit, PacCrit demands genuine interdisciplinarity in the form of collaboration between scholars and non-scholars as collectives. As I have discussed above and will elaborate on further in the next section on *talanoa*, working collectively is a cultural predisposition of any PacCrit endeavour.

The fundamental importance of including and privileging the contributions of non-academic community activists derives from the need to appreciate that the insights of academic scholars are largely limited by the Western legal frameworks in which we have been educated. According to Valdes, acknowledging the confines of legal academia was an important lesson for LatCrit scholars:³⁸

We have learned, in other words, that atomistic traditions of producing legal scholarship are not the only, nor even the best, ways of producing anti-essentialist theory, much less performing anti-subordination praxis

...

We have sought to link in common cause with community activists “on the streets”, as well as with critical scholars in other disciplines and agents of social transformation around the world, because we remain keenly aware that we are the representatives of traditionally subordinated communities within the privileged corridors of (legal) academia.

The need for Pacific peoples to challenge these Western frameworks in scholarship was superbly described by Tongan scholar and poet Konai Helu Thaman:³⁹

It is essential to challenge the dominance of western philosophy, content, and pedagogy in the lives and the education of Pacific peoples, and to reclaim indigenous Oceanic perspectives, knowledge, and wisdom that have been devalued or suppressed. Modern scholars and writers must examine the western disciplinary frameworks within which

³⁸ Valdes, above n 6, at 162–163.

³⁹ Konai Helu Thaman “Decolonizing Pacific Studies: Indigenous Perspectives, Knowledge, and Wisdom in Higher Education” (2003) 15 *The Contemporary Pacific* 1 at 17.

they have been schooled, as well as the ideas and images of the Pacific they have inherited, in order to move beyond them.

Furthermore, interdisciplinary approaches in PatCrit must also be multi-dimensional. Valdes defines multi-dimensional analysis as going "beyond intersectionality to recognise the coexistence of multiple identities and their constant social interaction in the lives of human beings" by examining inter-group privilege within demographic groups and also focus on lesser-studied intersections of geography, ability, seniority and other relevant identities.⁴⁰

However, this does not mean that PacCrit voyagers cannot adopt the more widely known approach of intersectionality⁴¹ and turn to developed and developing bodies of intersectional scholarship and praxis⁴² in seeking to understand instances of multi-dimensional discrimination and subordination facing Pacific peoples.

C. The Value of *Talanoa* and Other Pacific Methodologies

The question now is – how can an interdisciplinary and multi-dimensional approach in PacCrit be achieved? I suggest that a potential answer or starting point for consideration lies in established decolonised Pacific indigenous research methodologies such as *talanoa*. It is beyond the scope of this paper to explore these methodologies in detail; however, it is worth exploring the *talanoa* methodology briefly.

Talanoa is a process of face to face engagement that can range from a casual conversation to a formal meeting over more serious matters that have different variations across Pacific cultures.⁴³ *Talanoa* was established as a research methodology by Tongan scholar Timote Vaoileti and Fijian scholar Sitiveni Halapua, the latter explaining *talanoa* to be a process that is fundamentally concerned with

40 Valdes, above n 6, at 159.

41 See Kory Stamper "A Brief, Convoluted History of the Word 'Intersectionality'" *The Cut* (online ed, United States of America, 9 March 2018). In regards to the popularity of intersectionality beyond academia and in multi-media and art, Stamper notes: "While the fight for 'intersectionality' and its meaning intensifies among the intelligentsia, however, the word continues its slow march forward, quietly breaking new ground."

42 Key examples include: Olena Hankivsky and Julia S Jordan-Zachery *The Palgrave Handbook of Intersectionality in Public Policy* (Palgrave Macmillan, Cham, 2019); and Edna Erez and Shannon Harper "Intersectionality, Immigration, and Domestic Violence" in Ramiro Martínez, Jr, Meghan E Hollis and Jacob I Stowell (eds) *The Handbook of Race, Ethnicity, Crime, and Justice* (Wiley-Blackwell, New York, 2018).

43 See Saunoamaali'i Karanina Sumeo "Land rights and empowerment of urban women, fa'afafine and fakaleiti in Samoa and Tonga" (PhD thesis, Auckland University of Technology, 2016) at 68; Tamasailau Suaalii-Sauni and Saunimaa Ma Fulu-Aiolupotea "Decolonising Pacific research, building Pacific research communities and developing Pacific research tools: The case of the talanoa and the faafaletui in Samoa" (2014) 55 Asia Pacific Viewpoint 331, at 333.

the fostering and strengthening of relationships that are built on mutual respect, educational reciprocity and reducing tensions.⁴⁴ *Talanoa* is also an ideal starting point as it is a term and process adopted across Pacific cultures with oral traditions of knowledge.⁴⁵

In addition to *talanoa*, there are a range of methodologies and models deriving from particular Pacific cultures that PacCrit scholars should explore, including, but not limited to: *fa'afaletui* (Samoa),⁴⁶ *teu le va* (Samoa),⁴⁷ *kakala* (Tongan),⁴⁸ the *vaka* model (Tongan)⁴⁹ and *tivaevae* (Cook Islands).⁵⁰

Adopting such culturally dictated methods will also go a long way in ensuring that as many Pacific peoples as possible are able to actively engage and take the lead in PacCrit scholarship and praxis, including Pacific peoples without legal education, academic qualifications or literacy. PacCrit's use of *talanoa* can therefore be seen as a manifestation of one of the hallmarks of CRT analyses – storytelling and counter-storytelling of “one's own reality” to narrate and illustrate experiences of racial oppression of people of colour.⁵¹

In any case, the voices of Pacific peoples who are not scholars in law or in other academic disciplines must not be marginalised or silenced in PacCrit *talanoa*. Rather, I posit that it is critical for all PacCrit activists to appreciate that the knowledge that non-scholars possess may arguably be *more* important in PacCrit scholarship and praxis and should be privileged accordingly. In my own experience, Pacific peoples who have been deprived of access to education in law or other fields are likely to have been enriched with resilience due to life experience in socioeconomic adversity. Furthermore, Pacific peoples who have been deprived of access to education in law or other fields are likely to have also been educated in Pacific customs, traditions and other forms of indigenous knowledge that are essential to PacCrit scholarship and praxis.

To be clear, I am not suggesting an overturned hierarchy or specific prioritisation of Pacific voices in *talanoa*. Rather, in my own experiences in *talanoa* and in Pacific contexts, there is a strong power imbalance which favours and privileges the voices

44 See Sitiveni Halapua *Talanoa process: The case of Fiji* (East West Centre, Hawaii, 2000) at 1–2.

45 Sumeo, above n 43, at 68.

46 Tamasailau Suaalii-Sauni and Saunimaa Ma Fulu-Aiolupotea “Decolonising Pacific research building Pacific research communities and developing Pacific research tools: The case of the talanoa and the faafaletui in Samoa” (2014) 55(3) *Asia Pacific Viewpoint* 331.

47 Melani Anae “Research for better Pacific schooling in New Zealand: Teu le va – a Samoan perspective” (2010) 1 *MAI Review* 1.

48 Konai Helu Thaman “Ako and faiako: Educational concepts, cultural values and teacher role perceptions in Tonga” (PhD thesis, University of the South Pacific, 1988).

49 Lino Nelisi “Ko e vaka fakaako he faiaoga Pasifika he moana Okalana” (MEd dissertation, University of Auckland, 2004).

50 Teremoana Maua-Hodges “Ako Pai Ki Aitutaki: Transporting or Weaving Cultures” (Wellington College of Education, Wellington, 1999).

51 Delgado and Stefancic, above n 9, at 161.

and interests of established scholars and community/family leaders or chiefs. This power imbalance means that the voices of Pacific peoples who are not scholars in law or in other academic disciplines are often marginalised or silenced in PacCrit *talanoa* due to being deemed unworthy, unimportant and irrelevant. I, therefore, propose for participants in any PacCrit *talanoa* to be actively conscious of such power imbalances, whether it be in regards to one or a combination of the following: academic status, cultural standing, gender, sexual orientation, gender identity, Pacific ethnicity, cultural affinity and any other axis of inequality that may manifest in Pacific and non-Pacific spaces.

IV. Objective Two: Building PacCrit's Communities and Institutions

As emphasised above, PacCrit's success depends on the ability to build communities that are open to *all* Pacific peoples, including scholars from other academic disciplines, representatives from different private and public sectors and all community activists and members that are committed to anti-subordination for all Pacific peoples.⁵²

Of course, community building and mobilising communities for change are hardly new practices for Pacific peoples when it comes resisting injustice at the hands of the law. From the Mau movement for Samoan independence,⁵³ to the ongoing Polynesian Panthers movement established in response to racialised policing and the 'dawn raids' during the 1970s,⁵⁴ it is clear that Pacific peoples have never been (and will never be) passive and accepting of injustice perpetrated against us, no matter how powerful the oppressors may appear to be.

Today, where racial discrimination and injustice against Pacific peoples appears to be more covert and institutional,⁵⁵ Pacific peoples have continued to build communities and groups both in the law and beyond that are focused on addressing inequities facing their wider communities and families. In the law, the Pacific Lawyers Association (PLA) in New Zealand focuses on:⁵⁶

52 Valdes, above n 6, at 161.

53 See J W Davidson *Samoa mo Samoa: The Emergence of the Independent State of Western Samoa* (Oxford University Press, Melbourne, 1967).

54 See Melani Anaé "All Power to the People: Overstayers, dawn raids and the Polynesian Panthers" in Sean Mallon, Kolokesa Mahina-Tuai and Damon Salesa (eds), above n 2, at 227–228.

55 See Elizabeth Revell, Evangelia Papoutsaki and Elena Kolesova "Race, Racism and Everyday Communication in Aotearoa New Zealand" in Giles Dodson and Elizabeth Papoutsaki (eds) *Communication Issues in Aotearoa New Zealand: A Collection of Research Essays* (Epress Unitec, Auckland, 2014) at 38–39.

56 See Pacific Lawyers Association "About" Facebook <www.facebook.com>.

... promoting fellowship and mutual support among Pacific People, identifying and responding to the legal needs of Pacific communities, and promoting and conducting research on any issues of relevance to Pacific lawyers and Pacific people.

Furthermore, Pacific law student groups in various law schools in New Zealand have been established to promote and empower Pacific law students and their wider communities at the University of Auckland,⁵⁷ Auckland University of Technology,⁵⁸ the University of Waikato,⁵⁹ Victoria University of Wellington,⁶⁰ the University of Otago⁶¹ and the University of Canterbury.⁶² At the University of Auckland, Pacific law students have established The MALOSI Project (which stands for the Movement for Action and Law to Overcome Social Injustice), which empowers Pacific youth to pursue legal education through workshops and educate the masses on Pacific legal issues through its blog.⁶³

It may be collectively decided later that PacCrit first localise itself within these law groups or be established as a collaboration between these law groups, seeing they have established links with one another and have already taken great strides in achieving PacCrit's objectives. It may even be argued that there is no need for an explicit movement like PacCrit (and therefore PacCrit communities of voyagers) because these law groups are more than capable of the new voyage to freedom from subordination on their own.

However, the reason why I have decided to propose PacCrit as a separate and new initiative and entity is because I feel that this new voyage to places of freedom from subordination by the law that the PacCrit movement is designed for cannot be achieved by law groups alone, either separately or together.

I have two main reasons for this proposition. Firstly, from my own experience and as an Executive member of the University of Auckland Pacific Island Law Students Association (PILSA) and The MALOSI Project, and knowledge of the PLA, these groups have limited capacity and resources for such an immense project when they are already tasked with the main objective of looking after their respective members. Secondly, as mentioned above, PacCrit is committed to interdisciplinarity

57 See Pacific Island Law Students' Association "About" Facebook <www.facebook.com>.

58 See AUT Pacific Law Students Association "About" Facebook <www.facebook.com>.

59 See PLSA – Waikato Pacific Law Students "About" Facebook <www.facebook.com>.

60 See Pasifika Law Students' Society of Victoria University of Wellington "About" Facebook <www.facebook.com>.

61 See Otago Pacific Islands Law Students Association "About" Facebook <www.facebook.com>.

62 See UC Pasifika Law Students' Society "About" Facebook <www.facebook.com>.

63 See The MALOSI Project "The MALOSI Project" The MALOSI Project <www.themalosiproject.com> (last accessed 24 June 2018); and The MALOSI Project "About" Facebook <www.facebook.com>.

in scholarship and praxis and these law groups cannot bear the burden of extending and then managing such a large scope. Therefore, community-building for PacCrit means that PacCrit communities must also be comprised of scholars and students at world-class interdisciplinary Pacific studies research centres in New Zealand, including Va'aomanū Pasifika at Victoria University of Wellington⁶⁴ and the Macmillan Brown Centre for Pacific Studies at the University of Canterbury.⁶⁵

Nevertheless, the great limitations in drafting this first draft of the PacCrit blueprint as mentioned above mean that community-building for PacCrit will be incredibly challenging. Regardless, PacCrit activists must aspire to not only build communities, but build institutions, as LatCrit has done in becoming an incorporated formal institution in the state of Florida.⁶⁶ This incorporation has meant that LatCrit is a not-for-profit corporation with its own by-laws that allow it to adopt a "collective self-governance" model of governance which allows it to not only organise conferences and workshops, but also conduct or collaborate in any appropriate law reform project or engage in litigation.⁶⁷ This move to make LatCrit an institution has enabled LatCrit theorists to branch out with a variety of successful community projects, initiatives and educational programmes.⁶⁸

The power of LatCrit communities and institutions to impact social justice was demonstrated with LatCrit's amicus brief in the 2015 case of *Arce v Douglas*.⁶⁹ This case concerned the appeal by Maya Arce, the daughter of the director of the Mexican American Studies (MAS) programme, Sean Arce, challenging the constitutionality of Arizona Revised Statute § 15-112.⁷⁰ This provision had been used by the Arizona Superintendent, John Huppenthal, to remove the MAS programme from the Tuscon Unified School District (TUSD) curriculum.⁷¹ In response, LatCrit scholars and a group of teachers prepared the amicus briefs for the case, and, in conjunction with the plaintiffs, successfully argued that the legislation was vague and overbroad.⁷²

Therefore, I propose for PacCrit voyagers to consider aspiring to achieve similar levels of community power as LatCrit has. However, LatCrit's model demonstrates only one way of building communities and institutions. It is for PacCrit communities

64 See "Va'aomanū Pasifika—Pacific Studies and Samoan Studies" Victoria University of Wellington <www.victoria.ac.nz>.

65 See "Macmillan Brown Centre for Pacific Studies" University of Canterbury <www.canterbury.ac.nz>.

66 Valdes, above n 6, at 163.

67 LatCrit "Collective Self-Governance: Performing the Theory" LatCrit <www.latcrit.org>.

68 Valdes, above n 6, at 163–170. Valdes provides a comprehensive review of LatCrit projects in scholarship in praxis, including annual conferences and symposiums, an academic journal, a study abroad programme and student education projects.

69 *Arce v Douglas* 793 F.3d 968 (9th Cir. 2015).

70 AZ Rev Stat § 15-112.

71 Guadelupe T Luna "LatCrit Praxis: *Arce v Huppenthal*" (2016) 10 Charleston L Rev 277 at 277.

72 At 279.

to decide collectively for ourselves whether we wish to pursue this LatCrit model or collaborate to create a whole new style of communities and institutions.

V. Objective Three: Proposing Laws, Reforms and Alternatives to Law that Achieve Pacific Conceptualisations of Health and Wellbeing

What distinguishes objective three of PacCrit from TWAIL's equivalent objective is my proposed addition of the aspiration to achieve Pacific conceptualisations of health and wellbeing for all Pacific peoples. This proposed addition aims to shift the focus from assessing the validity of the law according to Western concepts of "reasonableness" and "justice", to determining the law's validity according to whether or not it results in the infliction of actual physical, emotional, spiritual and psychological harm on the peoples whose rights the law purports to protect.

An established and developing legal paradigm which opens the door to achieving this objective, is Therapeutic Jurisprudence (TJ). TJ was established by American legal scholars David B Wexler and Bruce Winick and is essentially "the study of the role of law as a therapeutic agent".⁷³

I am interested in what it would look like if PacCrit's proposals for law reform and alternatives conceptualised law as a therapeutic agent. A potential basis for this conceptualisation may lie in the holistic Pacific models of health, including the *fa'afaletui*, *teu le va*, *kakala*, *vaka*, *tivaevae* and *fonofale* models among others.⁷⁴

However, with PacCrit's commitment to multi-dimensionality, particular care must be taken when utilising Pacific conceptualisations of health, where there are is a significant and growing number of Pacific peoples who lack affinity with traditional Pacific cultural concepts and customs to various degrees.⁷⁵

PacCrit activists must also appreciate the reality that, for many Pacific peoples, Christianity and Pacific cultures have woven together.⁷⁶ With Oceania being "the most solidly Christian part of the world"⁷⁷ and 72.8 per cent of Pacific peoples in New

73 David B Wexler "TJ and the Criminal Courts" (1981) 35 *Wm & Mary L Rev* at 280; and Warren Brookbanks "Therapeutic jurisprudence: a new legal paradigm" (November 2011) *Rethinking Crime and Punishment* <www.rethinking.org.nz>.

74 Fuimaono Karl Pulotu-Endemann "Fonofale Model of Health" (paper presented at the Pacific Models for Health Promotion, Auckland, September 2009).

75 Melani Anae, Cluny Macpherson and Paul Spoonley *Tāngata O Tē Moana Nui: The Evolving Identities of Pacific Peoples in Aotearoa/New Zealand* (Dunmore Press, Wellington, 2001) at Part Four.

76 Philip Fountain and Geoff Troughton "Woven Together? Christianity and Development Between New Zealand and the Pacific" (9 June 2016) <www.victoria.ac.nz>.

77 Charles W Forman *The Island Churches of the South Pacific: Emergence in the Twentieth Century* (Orbis Books, Michigan, 1982) at 227.

Zealand being Christian,⁷⁸ it is important for PacCrit scholarship and praxis to focus on and acknowledge the relationship between Christian faiths, Pacific peoples and the law.

However, with its commitment to multi-dimensionality, PacCrit scholarship and praxis must not ignore the minority of Pacific peoples belonging to other religious groups or who have no religious affiliations at all. PacCrit voyagers must be keenly aware that Pacific peoples are immeasurably diverse and varied in our beliefs, where the absence or lack of traditional dominant beliefs does not necessarily indicate an absence or lack of subordination also. This emphasises the importance of PacCrit endeavours being multi-dimensional. Like in LatCrit, those of us undertaking PacCrit endeavours must always be "self-critical" in ensuring that we are performing the all-inclusive and open theory that we proudly proclaim.⁷⁹

Useful insight as to how cultural and religious affinity impacts different Pacific people and their subordination by the law can be achieved through using the Pacific Identity and Wellbeing Scale (PIWBS) developed by Cook Island psychology scholar, Sam Manuela, and Chris G Sibley.⁸⁰ PIWBS is a culturally appropriate, 31-item self-report measure that assesses six factors of Pacific identity and wellbeing, with six factors that are important for the holistic conceptualisation of the Pacific self-concept.⁸¹

PacCrit's focus on also presenting alternatives to law acknowledges the reality that the law, even as "a healing agent", will not always be the answer to achieving Pacific conceptualisations of health and wellbeing. The importance of being cautious when using the law as a Western construct to heal marginalised groups was noted by Māori legal scholar, Khylee Quince, in considering the applicability of therapeutic jurisprudence approaches in addressing the problems facing Māori as the indigenous peoples of Aotearoa:⁸²

The epiphany by therapeutic jurisprudence theorists that law and its processes have destructive anti-therapeutic effects is a lesson that colonised peoples have learned in the five centuries since the Western Europeans set forth to conquer the new world ... The very notion of considering law as a "healing agent" would be ridiculed by any colonised

78 "The profile of Pacific peoples in New Zealand: September 2016" Pasefika Proud <www.pasefikaproud.co.nz>, citing data from "2013 Census" StatsNZ <www.archive.stats.govt.nz>.

79 Valdes, above n 6, at 159.

80 Sam Manuela and Chris G Sibley "The Pacific Identity and Wellbeing Scale-Revised (PIWBS-R)" (2015) 21 Cultural Diversity and Ethnic Minority Psychology 146.

81 At 146.

82 Khylee Quince "Therapeutic Jurisprudence and Maori" in Warren Brookbanks (ed) *Therapeutic Jurisprudence: New Zealand Perspectives* (Thomson Reuters, Wellington, 2015) at 348.

subject anywhere ... Asking us to put faith in the very tools of our own oppression is a very big leap of faith indeed.

Quince's hesitance to adopt TJ-based approaches echoes the broader warning by African American feminist and womanist writer and civil rights activist, Audre Lorde, that "the master's tools will never dismantle the master's house".⁸³

Therefore, in striving to achieve objective three, PacCrit communities must commit to thinking outside the box of the law by proposing non-law-based alternatives to law-related issues facing Pacific peoples. This can include community projects and initiatives to educate and empower Pacific communities to pursue a legal education and become informed on legal issues impacting the Pacific to then become political activists advocating for the advancement of all Pacific peoples. LatCrit again has set an excellent standard.⁸⁴

Another non-law-based alternative includes utilising the power of politics rather than law, by creating scholarship and praxis (including political protests and policy submissions) which aim to raise public awareness and generate the political pressure required to eliminate the law's subordination of Pacific peoples.

Two of the aforementioned law communities and groups, The MALOSI Project and the PLA, have already made great strides with educational initiatives,⁸⁵ community public awareness initiatives⁸⁶ and policy submissions.⁸⁷ Therefore, it is proposed that non-law-based PacCrit endeavours must aim to work with these law groups and assist with and/or build on the work done by these groups and other similar and relevant work from existing groups outside the law.

83 See Audre Lorde "The Master's Tools Will Never Dismantle the Master's House" in Cherríe Moraga and Gloria Anzaldúa (eds) *This Bridge Called My Back: Writings by Radical Women of Color* (Kitchen Table, Women of Color Press, New York, 1983).

84 See LatCrit "LatCrit Teaching and Pedagogical Resources" LatCrit <www.latcrit.org>.

85 See The MALOSI Project, above n 63. As stated on the post of 2 October 2018: "It is always a privilege to be asked to speak within schools and it is always particularly joyous when we visit the students at Tangaroa College."

86 See Tangata Pasifika "TP+ Community Support Expo hosted by Pacific Lawyers Association" Facebook <www.facebook.com>.

87 See Pacific Lawyers Association, above n 56. As stated on the post of 2 October 2018: "An independent panel established to review the 2014 family justice reforms has released its consultation paper (below). The panel seeks feedback on how the 2014 changes have affected people who have been involved in Family Court proceedings. The closing date for submissions on the consultation paper is Friday 9 November 2018. The PLA will prepare submissions on issues raised and we welcome your views on any aspects of the paper that you may wish to comment on. All comments will then be collated and included in the PLA submissions to the panel."

VI. Future Directions for PacCrit: Where to from Here?

With the first draft of the blueprint now outlined, the question for PacCrit voyagers now is: where to from here?

The practical barriers to establishing PacCrit that I mentioned in Part II of this article (the underrepresentation of Pacific legal scholars and the lack of capital, support and momentum for a critical Pacific movement in law) need to be areas of focus for PacCrit voyagers to discuss and work on in order for PacCrit to reach its fullest potential. Other priority areas for future consideration and debate, including the role of Pacific indigenous knowledge, jurisprudence, methodologies and custom in the PacCrit blueprint, are also important future directions for PacCrit voyagers.

However, in staying true to the bold, audacious and impatient spirit of this paper, this Part will now outline a non-exhaustive and unranked list of issues of inequity and subordination that Pacific peoples are currently facing that I believe require intervention with PacCrit scholarship and praxis.

It may be that it is far too premature and even nonsensical of me to suggest a list of issues for PacCrit voyagers to consider now, when the ink on the first draft of the blueprint is yet to dry. However, I provide this list here because it *may* be that PacCrit voyagers feel that it is time to now "test the waters" with this first draft of the PacCrit blueprint in order to make further revisions for subsequent drafts. In other words, PacCrit voyagers may be of the view that we cannot ascertain how useful and appropriate this first draft blueprint is until the above objectives and ideas are tentatively (or even roughly) applied to one (or several) of the issues and inequities facing Pacific peoples.

Therefore, in no particular order or ranking, I present a few of these issues as questions for PacCrit voyagers interested in testing the waters in this way:

- Can PacCrit informed responses to climate change achieve the aspirations of our Pacific peoples in the Pacific Islands⁸⁸ at the forefront of climate change's impacts?⁸⁹

88 These aspirations have been expressed as formal declaration by a Pacific led activist movement in response to climate change – see Pacific Climate Warriors "The Pacific Climate Warriors Declaration on Climate Change" Act 350 <www.act.350.org>.

89 For a critical examination of New Zealand's current approach to climate change in the Pacific, see Philip Cass "A plan nobody hopes they will need: New Zealand and Climate Change Migration" (2018) 24 *Pacific Journalism Review* 138.

- Can PacCrit voyagers inspire and facilitate action to end the “slow genocide”⁹⁰ of the indigenous Melanesian peoples of West Papua?⁹¹
- Are PacCrit approaches able to help eliminate socioeconomic inequality and poverty burdening our Pacific families in New Zealand?⁹²
- Can PacCrit approaches to understanding law and policy facilitate the elimination of the racialised health inequities between Pacific and Pākehā peoples in New Zealand and Australia?⁹³
- Building on Helena Kaho’s pioneering work on Family Group Conferences (FGCs) from a Tongan perspective,⁹⁴ how can PacCrit assist in making FGCs and other dispute resolution mechanisms culturally appropriate and effective for Pacific families?
- Building on Helena Kaho’s groundbreaking article on the efficacy of New Zealand’s non-violence programmes,⁹⁵ are there ways in which PacCrit scholarship and praxis can help protect Pacific families from the harms of family violence
- What can PacCrit voyagers do to address the great inequities in disciplinary removal rates between Pacific and non Pacific in the New Zealand education system?⁹⁶
- Following on from the trailblazing exploration of the experiences of Pacific women in New Zealand’s criminal justice system by Litia Tuiburelevu,⁹⁷ how can PacCrit scholarship and praxis help address intersectional discrimination against Pacific women not only as victims and perpetrators

90 Maire Leadbeater “The Monday Extract: New Zealand’s disgraceful role in the ‘slow genocide’ of West Papua” *The Spinoff* (online ed, New Zealand, 9 July 2018).

91 For a concise summary of the injustices against indigenous peoples in West Papua, see Johnny Blades “International attention drawn to West Papuan struggle” *Radio New Zealand* (online ed, New Zealand, 1 February 2019).

92 For a useful dissection of the impacts of socioeconomic inequality and poverty on Pacific peoples, see Karlo Mila “Only One Deck” in Max Rashbrooke (ed) *Inequality: A New Zealand Crisis* (Bridget Williams Books, Wellington, 2014).

93 For an article examining current policies addressing racialised health inequities in obesity rates, see Lena Rodriguez, James R George and Brent McDonald “An inconvenient truth: why evidence-based policies on obesity are failing Māori, Pasifika and the Anglo working class” (2017) 12 *Kōtuitui: New Zealand Journal of Social Sciences Online* 192.

94 Helena Kaho “The Family Group Conference: A Tongan Perspective” (2016) *NZ L Rev* 687.

95 Helena Kaho “Oku hange ‘a e tangata, ha fala oku lalanga: Pacific people and non-violence programmes under the Domestic Violence (Amendment) Act 2013” [2017] 1 *NZWLJ* 182.

96 For a statistical overview of these inequities facing Pacific secondary school students, see Education Counts “Stand-downs, suspensions, exclusions and expulsions from school” Education Counts <www.educationcounts.govt.nz>.

97 Litia Tuiburelevu “Legally Brown: The Experiences of Pasifika Women in the Criminal Justice System” (2018) 2 *NZWLJ* 78.

of crime, but also as lawyers, judges, legal scholars and policy makers in the criminal justice system?

- Continuing on with the scholarship of Keakaokawai Varner Hemi on litigation against affirmative action programmes for Hawaiian students in the United States of America,⁹⁸ how can PacCrit scholarship and praxis be used to advance the rights to education for indigenous Hawaiians?
- Drawing on the critical historical context provided by Antony Anghie's TWAIL critique of Australia's exploitation of Nauru,⁹⁹ how can PacCrit scholarship and praxis be used to advocate for the rights of asylum seekers in Nauru and on Manus Island?¹⁰⁰
- Can PacCrit voyagers work towards the realisation of the rights of Pacific members of the Lesbian Gay Bisexual Transgender Queer and Intersex (LGBTQI+) community by decriminalising homosexuality in Pacific Island states?¹⁰¹

These questions, and many others besides, aim to provide PacCrit voyagers with a rich agenda of directions for refining the first draft PacCrit blueprint in this paper. It is my hope that these possible directions are able to help guide PacCrit voyagers seeking to build PacCrit and voyage to places of freedom from subordination from the law.

VII. Conclusion

My mum is a PacCrit voyager. This is not only because she is unfailingly supportive of all my ideas, goals and dreams – but more importantly because she has been and always will be committed to using all her skills and experiences to help all her fellow Pacific peoples, regardless of the fact that she is not a lawyer.

98 See Keakaokawai Varner Hemi "Everyone, no-one, someone and the Native Hawaiian learner" (PhD Thesis, University of Waikato, 2016); See Keakaokawai Varner Hemi "Closing geographical distance: The value of a New Zealand perspective on the admission policy of a Native Hawaiian School" (2016) 24 Waikato Law Review: Taumauri 14.

99 Antony Anghie "The heart of my home: colonialism, environmental damage, and the Nauru case" (1993) 34 Harv Intl LJ 445.

100 For a comprehensive critique of the Australian government's treatment of asylum seekers in Nauru, see Susanna Dechent, Sharmin Tania, and Jackie Mapulanga-Hulston "Asylum Seeker Children in Nauru: Australia's International Human Rights Obligations and Operational Realities" (2019) 20 IJRL 1.

101 For an outline of how homosexuality is criminalised in the Pacific region, see Harriet Smith "Australia's marriage-equality debate reverberates through the Pacific" *The Interpreter* (online ed, Australia, 2016); Pacific Media Centre "Gay rights in the Pacific – what still needs to be done?" Asia Pacific Report <www.asiapacificreport.nz>.

In this paper, I have proposed a PacCrit to help voyagers like my mum and myself design and build the canoes that we will need for the new voyage to places of freedom from subordination by the law for all Pacific peoples.

There are significant limitations with this first draft written by me as a single Pacific legal scholar. As a result, there are a number of inevitable weaknesses, shortcomings, inaccuracies and oversights that I urge readers interested in being a part of this new voyage to consider and critically respond to.

The great barriers to the bold aspirations of PacCrit mean that this new voyage will be difficult and may appear impossible many times as we attempt to finalise the blueprint, test the waters, construct the canoes and set sail to navigate the seas and oceans that lead to our freedom. In these dark and trialling times, may we always remember that “we are voyagers”,¹⁰² and find strength in the following words of Hau’ofa that remind us of our truth:¹⁰³

We are the sea, we are the ocean, we must wake up to this ancient truth and together use it to overturn all hegemonic views that aim ultimately to confine us again, physically and psychologically, in the tiny spaces which we have resisted accepting as our sole appointed place, and from which we have recently liberated ourselves.

...

We must not allow anyone to belittle us again, and take away our freedom.

¹⁰² Foa’i and Miranda, above n 1.

¹⁰³ Hau’ofa, above n 4, at 16.