Global Constitutionalism (2021), 10: 2, 351–366
doi:10.1017/S2045381720000210

CAMBRIDGE
UNIVERSITY PRESS

RESEARCH ARTICLE

Foreign judges of the Pacific as agents of global constitutionalism

Anna Dziedzic

Faculty of Law, University of Hong Kong
Email: dziedzic@hku.hk

Abstract

Studies of global constitutionalism have focused on the transnational movement of constitutional law through the citation of foreign judgments. However, little attention has been paid to the movement of constitutional judges themselves. This article considers how the foreign judges who sit on courts of constitutional jurisdiction in Pacific island states can be understood as part of the phenomenon of global constitutionalism. It identifies three ways in which foreign judges can be agents of global constitutionalism: as mechanisms for the diffusion of constitutional ideas, as expressions of global constitutional values and as objects of transnational legal transfer. An empirical analysis comparing the citation practices of local and foreign judges in constitutional cases in nine Pacific states suggests that the use of foreign judges on constitutional courts does contribute to the international movement of constitutional ideas. However, a critical analysis of foreign judges as expressions and objects of global constitutionalism sheds light on a range of tensions in the role of constitutional judges and understandings of global constitutionalism.

Keywords: constitutional judges; Pacific island courts; citation of foreign law; legal transfer

I. Introduction

Studies of global constitutionalism examine the transnational movement of constitutional texts, institutions and ideas, and the extent to which this has led to a degree of convergence across national constitutions.[1] In the context of constitutional adjudication, much of the scholarship has concentrated on the transnational movement of constitutional *law* through the citation of foreign judgments by courts of constitutional jurisdiction.[2] The movement of constitutional *personnel* – such as judges – across national borders has received less attention. Here, the literature has focused on informal international

[1]This article engages with the strand of global constitutionalism that examines the internationalization of constitutional law, and not the ways in which laws and institutions at international and regional levels have come to have constitutional features: Antje Wiener and others, 'Global Constitutionalism: Human Rights, Democracy and the Rule of Law' (2012) 1 *Global Constitutionalism* 1; Christine EJ Schwobel, 'Situating the Debate on Global Constitutionalism' (2010) 8 *International Journal of Constitutional Law* 611.

[2]Sujit Choudhry, 'Globalization in Search of Justification: Toward a Theory of Comparative Constitutional Interpretation' (1999) 74 *Indiana Law Journal* 819; Vicki C Jackson, *Constitutional Engagement in a Transnational Era* (Oxford University Press, Oxford, 2010).

© The Author(s), 2021. Published by Cambridge University Press.

https://doi.org/10.1017/S2045381720000210 Published online by Cambridge University Press

networks rather than the importation and exportation of constitutional officials themselves.[3] This article examines the ways in which foreign judges who sit on domestic courts of constitutional jurisdiction are agents of global constitutionalism, taking part in the transnational movement of constitutional ideas.

It is widely assumed that judges will be citizens of the state in which they serve. While this is indeed the case in most states, foreign judges serve on courts of constitutional jurisdiction in at least 27 states across the world.[4] This article uses experiences from Pacific island states to explore the relationship between the practice of foreign judging and global constitutionalism. The use of foreign judges is a long-standing and familiar 'custom'[5] in the Pacific, which is likely to continue for some time. For this reason, while the Pacific region is often overlooked in comparative constitutional studies, its experiences provide important insights into this aspect of global constitutionalism.

This article identifies three senses in which foreign judges might be agents of global constitutionalism. First, foreign judges might be *mechanisms* for the diffusion of constitutional ideas, because as judges or lawyers practising across several states they are in a position to facilitate comparative engagement in judicial decision-making. Second, foreign judging might be understood as an *expression* of global constitutionalism, in that judges – and foreign judges in particular – represent global constitutional values of judicial independence and impartiality. A state (in particular, a developing state or one engaged in transition to democracy) that imports a judge (in particular, a judge from a recognized constitutional democracy) can be understood as signalling that it ascribes to and practises global constitutional norms. Third, foreign judges might themselves be *objects* of global constitutionalism, as personnel who, just as much as constitutional ideas and institutions, can move across jurisdictions.

Following a brief outline of the practice of foreign judging in the Pacific (Part II), this article examines the three senses in which foreign judges might be agents of global constitutionalism. In relation to each, I explain how the literature on global constitutionalism might be applied to the use of foreign judges and test this application by reference to experiences in the Pacific. To illustrate the extent to which foreign judges in the Pacific are mechanisms for comparative engagement in constitutional adjudication, Part III presents an empirical analysis of the citation of foreign law by Pacific courts. Comparing the approaches of local and foreign judges suggests that foreign judges in the Pacific are indeed a mechanism for the diffusion of constitutional law. Part IV outlines the ways in which foreign judges of the Pacific may be understood as *expressions* of global constitutional values, and particularly judicial values, but suggests that the way this is done gives precedence to constitutional values forged in colonialism and the global north. Part V examines the ways in which foreign judges become objects of global constitutionalism and suggests that, in order to be transferrable across national borders, judges must submit to a degree of standardization and decontexualization. While the empirical study

[3]Anne-Marie Slaughter, 'A Global Community of Courts' (2003) 44 *Harvard International Law Journal* 191.

[4]In the years between 2010 and 2015, foreign judges sat on courts of constitutional jurisdiction in Andorra, the Bahamas, Belize, Bosnia Herzegovina, Botswana, East Timor, the Federated States of Micronesia, Fiji, the Gambia, Kiribati, Kosovo, Lesotho, Liechtenstein, the Marshall Islands, Monaco, Namibia, Nauru, Palau, Papua New Guinea, San Marino, Samoa, Seychelles, Solomon Islands, Swaziland, Tonga, Tuvalu and Vanuatu. Foreign judges also sit on courts of Hong Kong and Macau (autonomous regions of China).

[5]Venkat Iyer, 'The Judiciary in Fiji: A Broken Reed?' in HP Lee and Marilyn Pittard (eds), *Asia-Pacific Judiciaries: Independence, Impartiality and Integrity* (Cambridge University Press, Cambridge, 2017) 130.

https://doi.org/10.1017/S2045381720000210 Published online by Cambridge University Press

in Part III suggests that the use of foreign judges on constitutional courts does contribute to the transnational movement of constitutional ideas, the discussions in Parts IV and V highlight how the practice exposes tensions in both the position of constitutional judges and understandings of global constitutionalism.

II. Foreign judges in the Pacific

The Pacific region comprises states, self-governing territories and dependencies. It includes a great diversity of peoples, histories, cultures and languages. This article focuses on nine states: Fiji, Kiribati, Nauru, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu. While diverse, these states share some relevant characteristics that facilitate constitutional comparison. All are independent states and members of the Commonwealth of Nations. Most have small populations, in several cases dispersed across islands in large ocean areas.[6] All are small island developing states and face challenges in relation to the economic activity, governance and resilience of their peoples.[7]

The disruptions of European exploration, exploitation and colonization affected many aspects of Pacific societies, including their legal systems. Prior to colonization, the peoples of the Pacific were governed according to custom, manifest in distinctive laws and languages across and within what are now state borders. Colonization superimposed a new layer of legal order and control, as British, Australian and New Zealand colonial administrators introduced common law legal systems and courts modelled on those in their own jurisdictions and staffed, in the main, by judges imported from the metropolitan centre.

Upon their transition from protectorate or colony to independent statehood, the nine Pacific states maintained the judicial structures imported by colonial administrators, adapting them to the requirements of independent statehood – for example, by replacing regional courts of appeal and the Judicial Committee of the Privy Council with their own national courts. Superior courts, at both trial and appellate levels, have jurisdiction to determine constitutional questions and exercise powers of strong judicial review.[8] In all states, Indigenous custom continues to operate as a recognized part of the law, as an influence on the content of statutory and common law and/or as an alternative to the formal legal system for the resolution of disputes.[9]

[6]As at 2015, Tuvalu and Nauru had populations of approximately 10,000, Tonga 106,000, Kiribati 112,000, Samoa 193,000, Vanuatu 265,000, Solomon Islands 584,000 and Fiji 892,000. Papua New Guinea is the exception, with 7,619,000 people. See United Nations, Department of Economic and Social Affairs Population Division, *World Population Prospects* (United Nations, Geneva, 2015), available at <http://esa.um.org/unpd/wpp>.

[7]*About the Small Island Developing States* (United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, 2015), available at <http://unohrlls.org/about-sids>; Francis X Hezel, *Pacific Island Nations: How Viable are Their Economies?* (East-West Center, Hawai'i, 2012) 3.

[8]In total, seventeen courts across the nine states exercise constitutional jurisdiction: Fiji – High Court, Court of Appeal, Supreme Court; Kiribati, Solomon Islands and Tuvalu – High Court and Court of Appeal; Papua New Guinea – National Court and Supreme Court; Samoa, Tonga and Vanuatu – Supreme Court and Court of Appeal. In Nauru, the Supreme Court was the only court of constitutional jurisdiction until 2018, when the Nauruan Court of Appeal was established.

[9]*Converging Currents: Custom and Human Rights in the Pacific* (New Zealand Law Commission, Wellington, 2006); Jennifer Corrin, 'Getting Down to Business: Developing the Underlying Law in Papua

https://doi.org/10.1017/S2045381720000210 Published online by Cambridge University Press

The nine states also share in the practice of foreign judging, for which there are several rationales. One is that there is insufficient demand for, and supply of, local full-time judges. All courts of appeal in the region sit part time, and in the smallest states of Nauru and Tuvalu the superior trial courts also sit part time, limiting the demand for full-time judges. Small populations and relatively young national legal professions have, in the past, meant that there were insufficient numbers of qualified local candidates available and willing to fill the required judicial positions, although this is changing as more Pacific islanders obtain legal education and experience. Another justification sometimes offered is that foreign judges bring, or are seen to bring, a greater degree of impartiality than local judges. This is regarded as important in small states, where it is claimed that personal and political connections between judges and potential litigants are inevitable,[10] and especially so in the Pacific, where the ties of extended family and community are particularly strong and give rise to a range of social obligations.[11]

For the purposes of this article, a foreign judge is defined as a judge who is not a citizen of the state in which they serve as a judge. Generally, a foreign judge is also an 'outsider' in the sense that they are a member of the legal community of a foreign jurisdiction, although there are some judges who, while not citizens, have lived and worked as lawyers in the one Pacific state for a substantial time.

All foreign judges serving in the nine Pacific states come from common law jurisdictions, predominantly Australia, Britain, New Zealand and Sri Lanka.[12] Some foreign judges reside in the Pacific state and serve for a period of years or months; others visit for a particular case or sittings and then leave. In contrast, local judges tend to be resident, serve full time and enjoy tenure for many years or until an age of retirement. In most states, the courts of appeal that finally determine constitutional matters are usually composed entirely of foreign judges. Only in Papua New Guinea, and more recently in Samoa and Vanuatu, is it usual for foreign judges to sit alongside local judges to hear final constitutional appeals.[13]

III. Foreign judges as mechanisms of global constitutionalism

'Global constitutionalism' describes the sense in which national constitutions around the world have come to share a vocabulary and structure, entrench a similar range of democratic

New Guinea' (2014) 46 *The Journal of Legal Pluralism and Unofficial Law* 155; Asiata Va'ai, 'The Idea of Law: A Pacific Perspective' (1997) 21 *Journal of Pacific Studies* 225; Miranda Forsyth, *A Bird That Flies with Two Wings: The Kastom and State Justice Systems in Vanuatu* (ANU ePress, Canberra, 2009).

[10]Derek Schofield, 'Maintaining Judicial Independence in a Small Jurisdiction' in John Hatchard and Peter Slinn (eds), *Parliamentary Supremacy and Judicial Independence: A Commonwealth Approach* (Cavendish, New York, 1999) 73–74; Wouter Veenendaal, *Politics and Democracy in Microstates* (Routledge, London, 2015) 187.

[11]Susan Boyd, 'Australian Judges at Work Internationally: Treason, Assassinations, Coups, Legitimacy of Government, Human Rights, Poverty and Development' (2003) 77 *Australian Law Journal* 303, 306; Thuy Mellor and Jak Jabes, *Governance in the Pacific: Focus for Action, 2005–2009* (Asian Development Bank, Manila, 2004) 37; Rose Lesley Kautoke, 'The Jury System in Tonga' (2009) 13 *Journal of South Pacific Law* 8, 18; John A Keniapisia, 'Judges from Other Commonwealth Jurisdictions Serving in the High Court and Court of Appeal of Solomon Islands' (Paper presented at the 20th Commonwealth Law Conference, Melbourne, 2017) 6.

[12]Anna Dziedzic, 'The Use of Foreign Judges on Courts of Constitutional Jurisdiction in Pacific Island States' (PhD thesis, Melbourne Law School, Melbourne, 2019) Ch 2.

[13]Ibid Ch 3.

https://doi.org/10.1017/S2045381720000210 Published online by Cambridge University Press

institutions and individual rights, and reflect common values of constitutionalism, rule of law and democracy. Comparative constitutional scholars have identified a range of mechanisms that facilitate this convergence.[14] The adoption of similar constitutional provisions has been facilitated by the incorporation of international law in state constitutions, most notably in relation to the protection of rights, as constitutions increasingly reflect, or even expressly refer to or adopt, international human rights conventions.[15] Similarities in constitutional provisions may arise as a result of a range of external influences in constitution-making with which local constitution-makers interact.[16] Convergence is also facilitated by the sense in which national constitutions are understood to not only speak to constituencies within the state, but also seek to gain the approval of international communities beyond the state.[17]

In various ways, the constitutions of the nine Pacific states studied here exhibit these features of convergence. With the exception of Tonga, the states became independent in the period of decolonization from 1960 to 1980, each with a written constitution to mark the event.[18] Some constitutions were enacted as schedules to an imperial order and were based on templates provided by the British Colonial Office, and as a result share a common structure, language and provisions.[19] Others were autochthonous in the sense that they were enacted by locally constituted bodies.[20] Constitution-making in some states was subject to oversight by the United Nations Trusteeship System.[21] All constitutions were the subject of negotiation between local Indigenous leaders and the departing colonial administration. In terms of substance, the independence constitutions mostly adopted the common law[22] and Westminster parliamentary systems.

[14]Cheryl Saunders, 'The Impact of Internationalisation on National Constitutions' in Albert HY Chen (ed), *Constitutionalism in Asia in the Early Twenty-First Century* (Cambridge University Press, Cambridge, 2014); Mark Tushnet, 'The Inevitable Globalization of Constitutional Law' [2008] *Virginia Journal of International Law* 985.

[15]Christine Bell, 'What We Talk About When We Talk about International Constitutional Law' [2014] *Transnational Legal Theory* 241, 255; Juliane Kokott, 'From Reception and Transplantation to Convergence of Constitutional Models in the Age of Globalization' in C Starck (ed), *Constitutionalism, Universalism and Democracy: A Comparative Analysis* (Nomos, Baden-Baden, 1999) Pt VI.

[16]Maartje De Visser and Ngoc Son Bui, 'Glocalised Constitution-Making in the Twenty-First Century: Evidence from Asia' (2019) 8 *Global Constitutionalism* 297.

[17]Bell (n 15) 266–79.

[18]Tonga was never formally colonised, but as a protectorate from 1900 to 1970, the British government assumed responsibility for defence, foreign affairs and some judicial proceedings. Its Constitution was made in 1875.

[19]*Constitution of Fiji 1970* (schedule to the *Fiji Independence Order 1970* (Imp))*; Constitution of Kiribati 1979* (schedule to the *Kiribati Independence Order 1979* (Imp)); *Constitution of Solomon Islands 1978* (schedule to the *Solomon Islands Independence Order 1978* (Imp)); *Constitution of Tuvalu 1978* (schedule to the *Tuvalu Independence Order 1978* (Imp)).

[20]*Constitution of Nauru 1968*; *Constitution of Papua New Guinea 1975*; *Constitution of Samoa 1960; Constitution of Vanuatu 1980.* The *Constitution of Tonga*, made in 1875, was influenced by the constitutions of Hawai'i, the United Kingdom and the United States.

[21]Nauru, Western Samoa and the territory of New Guinea were included in the UN Trusteeship System: Andriy Y Melnyk, 'United Nations Trusteeship System' [2013] Max Planck Encyclopedia of Public International Law, available at <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e563?rskey=gs5iMV&result=1&prd=OPIL>.

[22]Jennifer Corrin Care, 'Cultures in Conflict: The Role of the Common Law in the South Pacific' (2002) 6 *Journal of South Pacific Law*, available at <http://www.paclii.org/journals/fJSPL/vol06/2.shtml>.

https://doi.org/10.1017/S2045381720000210 Published online by Cambridge University Press

All included a bill of rights, usually based on the Universal Declaration of Human Rights.[23] Alongside these colonial influences, however, extensive transnational activism and exchanges among Indigenous peoples of the Pacific enabled decolonization and left their mark on Pacific constitutions.[24]

Scholars of global constitutionalism argue that convergence in the text and structure of national constitutions gives rise to a 'common constitutional language' through which constitutional actors may interact.[25] They have traced how, when interpreting constitutional provisions, courts look to legal doctrines and principles developed in other national jurisdictions. Transnational judicial 'borrowing', 'dialogue' or 'engagement' can arise when judges seek guidance from international law or foreign constitutional law to interpret provisions in their own state constitutions.[26]

Dixon and Jackson suggest that foreign judges are in a strong position to contribute to the capacity of a court to engage with comparative and international legal sources.[27] Foreign judges carry with them knowledge of the law and context of their home jurisdictions, which they can use to inform the interpretation of the constitutional provisions of other states. Ideally, foreign judges also develop knowledge of the law and context of the jurisdiction(s) in which they sit. Dixon and Jackson conclude that a successful foreign judge is one who can 'bridge' the constitutional perspectives of those inside and outside a national constitutional system.[28] They argue that such foreign judges are well placed to engage in critical forms of comparison that take account of the context in which laws operate and relevant differences between jurisdictions that might affect the reception and implementation of imported constitutional doctrine.[29]

Is this the case for the foreign judges of the Pacific? One way scholars have sought to measure transnational ties between jurisdictions is to study the citation of foreign judgments in constitutional decisions.[30] This methodology has some limitations. It does not, in itself, show whether the cited foreign judgment has been adopted, discussed or rejected. Nor does it account for the influence of foreign law that is considered by a judge but not cited in the judgment.[31] Further methodological issues arise when testing whether judges adopt a particular approach *because they are foreign.* Different courts – and different judges on those courts – employ a variety of approaches to constitutional reasoning. Some might be more open to looking to

[23]Susan Farran, *Human Rights in the South Pacific: Challenges and Changes* (Routledge, London, 2009) 70. The Constitution of Tonga 1875 included a bill of rights, drawing on models from the United States and Hawai'i.

[24]Tracey Banivanua-Mar, *Decolonisation and the Pacific: Indigenous Globalisation and the Ends of Empire* (Cambridge University Press, Cambridge, 2016).

[25]Jiunn-rong Yeh and Wen-Chen Chang, 'The Emergence of Transnational Constitutionalism: Its Features, Challenges and Solutions' (2008) 27 *Penn State International Law Review* 89, 98.

[26]Choudhry (n 2); Jackson (n 2).

[27]Rosalind Dixon and Vicki Jackson, 'Hybrid Constitutional Courts: Foreign Judges on National Constitutional Courts' [2019] *Columbia Journal of Transnational Law* 283, 311–13.

[28]ibid 354.

[29]ibid 312.

[30]For example, Tania Groppi and Marie-Claire Ponthoreau (eds), *The Use of Foreign Precedents by Constitutional Judges* (Hart, Oxford, 2013).

[31]David Law and Wen-Chen Chang, 'The Limits of Global Judicial Dialogue' (2011) 86 *Washington Law Review* 523, 558–62.

https://doi.org/10.1017/S2045381720000210 Published online by Cambridge University Press

foreign case law due to directives in the constitutional text, the judge's own understanding of the judicial role in constitutional interpretation, the social and political context in which constitutional questions arise or the judge's background and experience.[32] The arguments put to the court by legal counsel (some of whom, in the Pacific, are foreign) also influence judicial reasoning. Nevertheless, an empirical study of foreign citations can indicate an openness to considering foreign law and the most commonly used sources of foreign law. A study comparing the citation practices of local and foreign judges might indicate whether foreignness is a relevant point of difference in judges' approach to comparative law.

The methodology for this study is based on that used in similar empirical studies of judicial citation practices[33] with some adjustment in order to compare the approaches of local and foreign judges. Constitutional cases from the nine Pacific states were identified and all case law citations recorded.[34] Cases were classified as 'constitutional' if they dealt, in the main, with the interpretation or application of a constitutional provision. The study covered constitutional cases decided between 2000 and 2015, a period in which the courts of the Pacific states were well established[35] and from which there is reliable data to identify the nationality of the judges.[36]

In total, 174 constitutional cases were identified. For every case, each separate judgment was coded as authored by a local judge (or a panel composed entirely of local judges), a foreign judge (or panel of foreign judges) or a mixed bench of local and foreign judges. Where judges issued separate reasons for decision in the one case, each substantive written judgment was coded separately (making a total of 207 separate judgments). Concurring opinions, where a judge simply noted their agreement with the findings of another judge, were not included on the basis that citations made by the judge who gave substantive reasons cannot properly be attributed to the concurring judge. For each judgment, the number of citations to foreign law and local law were counted and, where a judgment included citations to both local and foreign law, the proportion of foreign to local citations was calculated. Table 1 sets out the results organized by jurisdiction, with an additional column to show the proportion of judgments in the sample that were authored by foreign judges. Table 2 presents the same data, organized by whether the judgment was made by a foreign judge, local judge or mixed bench.

Table 1 shows that 122 of 207 (almost 60 per cent) of the judgments in constitutional cases contain foreign citations, indicating a general willingness by Pacific courts to cite foreign case law in constitutional decisions. This is partly a reflection of the influence of the common law approach to adjudication, in which judges develop the law through inductive reasoning and analogy to decided cases and tend to produce discursive written

[32] Jeffrey Goldsworthy, 'Constitutional Interpretation' in Michel Rosenfeld and András Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press, Oxford, 2012) 706–17.

[33] In particular Groppi and Ponthoreau (n 30).

[34] Cases were identified by a search of Pacific Legal Information Institute ('Paclii'), an open-access online database of legal materials from Pacific jurisdictions, available at <http://www.paclii.org>. While not every decision of every court is provided to Paclii for publication, the database is reasonably representative.

[35] By 1990, most states had established their own courts of appeal and discontinued appeals to the Privy Council. Kiribati and Tuvalu retain appeals to the Judicial Committee of the Privy Council, but no appeals have ever been taken.

[36] Dziedzic (n 12) Appendix.

https://doi.org/10.1017/S2045381720000210 Published online by Cambridge University Press

Table 1. Number and proportion of judgments containing foreign citations, by jurisdiction

Jurisdiction	Total # judgments[37]	# judgments with local citations only	# judgments with local & foreign citations	Av % foreign citations within each judgment	% judgments authored by foreign judges
Fiji	42	3	38	72	70
Kiribati	7	1	5	90	100
Nauru	9	2	7	74	100
Papua New Guinea	70	50	19	25	8
Samoa	15	2	13	73	40
Solomon Islands	14	2	12	77	50
Tonga	6	-	5	63	100
Tuvalu	7	-	6	84	100
Vanuatu	37	16	17	51	10
TOTAL	**207**	**76**	**122**		

Table 2. Number and proportion of judgments containing foreign citations, by type of judge

Type of judge	Total # judgments[38]	# judgments with local citations only	# judgments with local & foreign citations	Av % foreign citations within each judgment
Foreign judge	81	12	66	72
Local judge	103	48	50	54
Mixed bench	23	16	6	45
TOTAL	**207**	**76**	**122**	

judgments explaining their decisions.[39] It is also a pragmatic response to contextual features of Pacific island states. The small size and limited resources of Pacific populations, and the continuance of customary procedures for the resolution of disputes, mean that relatively few constitutional challenges have proceeded to judicial determination over the years. Lacking local precedents, common law judges are likely to look to overseas cases for guidance.

The organization of results by jurisdiction in Table 1 indicates a degree of correlation between those jurisdictions in which constitutional cases are decided predominantly by

[37]Including nine judgments in which no cases were cited.

[38]Including nine judgments in which no cases were cited.

[39]Cheryl Saunders, 'Judicial Engagement with Comparative Law' in Tom Ginsburg and Rosalind Dixon (eds), *Comparative Constitutional Law* (Edward Elgar 2011) 355–7.

https://doi.org/10.1017/S2045381720000210 Published online by Cambridge University Press

Table 3. Source of foreign citations

Source jurisdiction	Total # citations	By foreign judges		By local judges		# by mixed bench
		#	% of total	#	% of total	
United Kingdom	262	161	26	90	25	11
Australia	228	153	25	66	18	9
Privy Council	151	101	16	37	10	13
New Zealand	63	39	6	21	6	3
Pacific jurisdictions[40]	63	39	6	24	7	-
Canada	60	32	5	26	7	2
African jurisdictions[41]	55	25	4	29	8	1
United States	38	28	5	9	3	1
European Court of Human Rights	33	6	<1	27	8	-
Caribbean jurisdictions[42]	23	12	2	10	3	1
Pakistan	14	6	<1	6	1	2
India	12	3	<1	8	2	1
Ireland	7	6	<1	1	<1	-
Other[43]	8	2	<1	3	<1	3
TOTAL	**1017**	**613**	-	**357**	-	**47**

local judges and lower rates of citation to foreign law. Table 1 shows that in Papua New Guinea and Vanuatu, there seems to be a general tendency for judges to cite judgments from their own jurisdictions in preference to foreign law. This can be inferred from the lower proportion of judgments that cite foreign law and the greater proportion of citations to local rather than foreign law in judgments that draw on both. There are several possible explanations for these results in Papua New Guinea and Vanuatu. As the largest state in this study, Papua New Guinea has generated more constitutional precedents of its own, reducing the need for judges to look to foreign law. Similarly, over half of the constitutional cases in Vanuatu during the sample period concerned parliamentary procedures, a subject on which Vanuatu's courts have developed significant local jurisprudence. In addition, however, in both Papua New Guinea and Vanuatu, a significantly lower proportion of

[40] Fiji, Kiribati, Papua New Guinea, Samoa, Solomon Islands, Tonga, Vanuatu.

[41] Botswana, Gambia, Ghana, Lesotho, Malawi, Mauritius, Namibia, Nigeria, South Africa, Seychelles, Tanzania, Uganda, Zambia, Zimbabwe.

[42] Bahamas, Barbados, Belize, Dominica, Eastern Caribbean Supreme Court, Grenada, Guyana, Jamaica, St Lucia, Trinidad and Tobago.

[43] Cyprus, Hong Kong, Malaysia, Philippines, Sri Lanka.

https://doi.org/10.1017/S2045381720000210 Published online by Cambridge University Press

constitutional cases were heard by foreign judges compared with other Pacific jurisdictions. This introduces the possibility that local judges and foreign judges might indeed take different approaches to comparative constitutional law.

The data presented in Table 2 show that, across the region, foreign judges are more likely than local judges to cite foreign case law. Foreign citations appeared in 81 per cent of the judgments authored by foreign judges, but in only 49 per cent of the judgments authored by local judges and 23 per cent of the judgments handed down by mixed benches. In addition, foreign judges tend to cite a greater *proportion* of foreign case law in their judgments. In judgments where citations to both foreign and local law appeared, citations to foreign law made up, on average, 72 per cent of all cases cited by foreign judges, but only 54 per cent of all cases cited by local judges. This latter finding demonstrates a greater tendency by foreign judges to cite foreign law.

Table 3 sets out the sources of the foreign case law cited by Pacific courts. It shows that foreign judges and local judges look to a shared pool of common law jurisdictions, which they cite to a largely similar degree.

The idea of a transnational common law facilitates foreign citations by both foreign and local judges. It provides a point of connection between constitutional systems that are otherwise quite different: in contrast to the Pacific states, the United Kingdom and New Zealand do not have a single written constitution, while Australia's constitution does not include a bill of rights. The common law provides foreign judges with familiar concepts and points of reference to assist them in adjudicating constitutional cases in the Pacific and provides *all* judges with a shared tradition that facilitates comparison with other common law jurisdictions. It seems that the shared common law elides distinctions in the approach of foreign and local judges. Sir Anthony Mason, an Australian judge who served in Fiji and Solomon Islands, commented that 'so ingrained is the common law judicial tradition that the only differences one notices are differences in personality and attitude to the judicial role … in other words, the differences are of a kind that you encounter when sitting with Australian judges'.[44]

One notable finding set out in Table 3 relates to the citation of cases from the European Court of Human Rights. Although all constitutions in the region protect human rights and some expressly permit courts to refer to international human rights law when interpreting constitutional rights,[45] courts in the Pacific make very few references to international case law, at least in constitutional cases.[46] Decisions of the European Court of Human Rights are cited in only ten judgments. Seven of these judgments were written by three different local judges, and the remainder by three different foreign judges.[47] The small

[44]Anthony Mason, 'Sharing Expertise with the Developing World' (2001) 26 *Alternative Law Journal* 7, 8.

[45]*Constitution of Fiji 1997* s 43(2); *Constitution of Fiji 2013* s 7(1)(b); *Constitution of Papua New Guinea 1975* s 39(3)(b)-(e); *Constitution of Tuvalu 1986* s 15(5)(c).

[46]It is important to note that this finding refers only to *case law* produced by international courts. A recent study suggests that some Pacific courts more frequently refer to international treaties, and in particular human rights treaties: Petra Butler, 'A Survey of Human Rights Decisions in Fiji, Samoa, Tonga and Vanuatu' in AH Angelo and Jennifer Corrin (eds), *Small States: A Collection of Essays* (Victoria University of Wellington, Wellington, 2019).

[47]*Matatumua v Medical Council* [2000] WSSC 1, *Samoa Party v Attorney General* [2009] WSSC 23, *Toailoa Law Office v Duffy* [2005] WSSC 53 (Sapolu CJ); *Jackson v Attorney General* [2009] WSSC 73, *Jackson v Attorney General* [2009] WSSC 122 (Nelson J); *Naba v State* [2001] FJHC 127, *Ali v State* [2001] FJHC 169 (Prakash J). The three decisions authored by foreign judges were *Naduaniwai v Commander, Republic of Fiji Military Forces* [2004] FJHC 8, *McCoskar v State* [2005] FJHC 500 (Winter J); *Republic of Fiji Military Forces v Qicatabua* [2008] FJCA 119 (Scutt J).

https://doi.org/10.1017/S2045381720000210 Published online by Cambridge University Press

size of this sample militates against reading too much into this finding: it might reflect more on the arguments put in a particular case, or the knowledge and interests of the particular judge, than differences between foreign and local judges. The relatively low number of citations to the European Court of Human Rights does however indicate a general preference on the part of both local and foreign judges to draw on the decisions of common law courts rather than international courts.[48]

This empirical survey of citations to foreign case law by courts of constitutional jurisdiction suggests that, in the Pacific, foreign judges are indeed mechanisms for the transnational movement of constitutional laws and doctrines. The foreign judges in the Pacific are, by and large, more likely than local judges to cite foreign law in their judgments in constitutional matters. Citations to foreign decisions make up a greater proportion of the total number of citations in the judgments of foreign judges than in the judgments of local judges. It is important to note, however, that these data show only a tendency: there are examples of local judges making extensive use of foreign law[49] and foreign judges who cite only local law.[50]

Whether the tendencies identified here indicate that foreign judges engage in a 'critical' form of comparison, informed by deep knowledge of their home jurisdiction and the jurisdiction in which they sit, is harder to tell. The high incidence of foreign citations in the decisions of foreign judges might indicate that foreign judges are indeed more willing than local judges to engage with comparative law. However, it might be that foreign judges turn to familiar jurisdictions in preference to unfamiliar local case law, especially when they are pressed for time and have limited resources for legal research.[51] In addition, foreign judges carry, perhaps unconsciously, the presumptions, orthodoxies and approaches to constitutional adjudication of their home jurisdiction, and cite cases from home accordingly.

The practices traced in this part introduce an important qualification to the 'global' in global constitutionalism. In the Pacific, transnational judicial engagements are informed more by the genealogical connections between jurisdictions based on a shared common law and former colonial relationships, and less so by universalist claims about the principles of constitutionalism, enshrined for example in international human rights law.[52] The foreign judges of the Pacific may therefore be more accurately characterized as mechanisms for the spread of a transnational common law than a global constitutional law.

IV. Foreign judges as expressions of global constitutionalism

Scholars of global constitutionalism have suggested that not only are constitutional texts and judicial interpretations converging, but core constitutional principles are doing so as

[48]For example, *Fiji v Prasad* [2001] FJCA 2, *Taione v Tonga* [2004] TOSC 47, *Teonea v Pule o Kaupule of Nanumaga* [2009] TVCA 2, *State v Pickering* [2001] FJHC 51. On the continuing influence of common law rights in Pacific jurisdictions see Farran (n 23) 77–83.

[49]See, for example, the discussion of the citation of international law by local judges.

[50]For example, Justice Cannings, a non-citizen judge of the PNG National and Supreme Courts cites many more cases from Papua New Guinea than foreign law.

[51]Stephen Eliot Smith, 'The Way We Do Things Back Home: Do Expatriate Judges Preferentially Cite the Jurisprudence of Their Home Countries?' (2013) 13 *Oxford University Commonwealth Law Journal* 331, 340–41. Visiting foreign judges of appeal generally hand down judgment in the same sittings as the case was heard – that is, within a week or fortnight.

[52]On the distinction between universalist and genealogical approaches, see Choudhry (n 2).

https://doi.org/10.1017/S2045381720000210 Published online by Cambridge University Press

well.[53] Alongside principles such as democracy and the rule of law, an independent judiciary is regarded as an essential and universal requirement of constitutionalism. Constitutionalism requires states to have a court empowered to adjudicate and enforce constitutional norms, review legislation and executive actions for compliance with the constitution, and hear complaints from individuals affected by actions and laws that are contrary to the constitution.[54]

Foreign judges may be characterized as agents of global constitutionalism when they are seen as supporting domestic constitutional courts to meet globally prescribed standards of independence, impartiality and expertise.[55] How might foreign judges perform this function? Most obviously, where there are insufficient numbers of local judges, judges can be imported from outside to provide essential judicial services. However, foreign judges continue to be used in Pacific courts in circumstances where localization would appear achievable. One reason for the continued reliance on foreign judges in these circumstances is that foreign judges are understood to express certain values, carry global connections and communicate with an international audience.

One manifestation of this expressive capacity of foreign judges is the claim that, due to their distance from the national community, they have a greater degree of impartiality than local judges.[56] While the coherence and underlying assumptions of this claim have been criticized,[57] it is a prevalent perception. Impartiality is often cited as a justification for the use of foreign judges in the Pacific.[58]

A second intangible value is perhaps best described as 'prestige'. In addition to distance, foreign judges carry with them the prestige of their home jurisdiction and the office they hold in it. In this, Pacific courts that use foreign judges are not only 'borrowing' constitutional personnel, but also the reputation and status of the foreign judge and their home court and jurisdiction.[59] Claims of this kind deal in appearance, perception and reputation, and thus risk reinforcing stereotypes. As discussed below, foreign judges tend to travel from 'developed' to 'developing' states, which can affect perceptions of prestige – although not necessarily for good reasons.

Third, while perceptions within the national polity are crucial to the sociological legitimacy of the court and foreign judges, the use of foreign judges – like global constitutionalism itself – extends a court's audience beyond the national community. The use of foreign judges is sometimes regarded as a way of building the confidence of external audiences, such as foreign investors, donor agencies and other states. The idea is that external actors who 'see themselves' or at least a judge associated with their own or a familiar jurisdiction reflected on the bench will have greater confidence in the judiciary and the legal system. Iyer suggests that foreign judges in Fiji bring 'talent, expertise, prestige, trustworthiness, old world courtesy, sound judgment, robust common sense and

[53] Anne Peters, 'The Globalization of State Constitutions' in Janne E Nijman and André Nollkaemper (eds), *New Perspectives on the Divide Between National and International Law* (Oxford University Press, Oxford, 2007).

[54] Mark Tushnet, 'The Globalisation of Constitutional Law as a Weakly Neo-Liberal Project' (2019) 8 *Global Constitutionalism* 29, 32.

[55] Dixon and Jackson (n 27) 306–09.

[56] See nn 10–11.

[57] Dziedzic (n 12) Ch 6; Peter MacFarlane, 'Some Challenges Facing Legal Strengthening Projects in Small Pacific Island States' (2006) 4 *Journal of Commonwealth Law and Legal Education* 103.

[58] See n 11.

[59] For example, Boyd (n 11) 307; Iyer (n 5) 128–29.

https://doi.org/10.1017/S2045381720000210 Published online by Cambridge University Press

a broad outlook which inspires confidence in the general public and the world of international business alike'.[60] In the Pacific, the presence of foreign judges has been said to maintain judicial independence, keep corruption in check, bolster the credibility of constitutional decisions and enable judgments to serve as precedents in other jurisdictions.[61]

Underlying these claims is the sense that the presence of foreign judges is beneficial because they connect the court with communities beyond the state, be they foreign investors, other courts or international institutions that measure and assess the quality of constitutionalism and the rule of law. It is a manifestation of global constitutionalism in the sense that national constitutional systems are understood to speak not only to domestic constituents, but also to an international community.

While claims of this kind are widespread, they resonate problematically with the international transfer of laws and the movements of people and knowledge that characterized colonialism.[62] Colonial narratives characterized Indigenous peoples of the Pacific as uncivilized and incapable of self-government.[63] The long history of constitution-making in the region is, in part, a story of Pacific peoples' struggle to signal self-government by adopting governance structures familiar to a Western audience. This led, however, to what Merry describes as the 'sovereignty paradox', whereby Pacific nations adopted Western forms of governance in order to gain international recognition, but required foreign experts to administer the constitutional institutions that marked their sovereignty.[64] A similar dilemma arises when highlighting the impartiality of foreign judges as a class, which problematically casts local judges as *inevitably* lacking impartiality.[65] An uncritical presumption that foreign judges are both more expert and more impartial than local judges can work to entrench a preference for foreign judges.

The practice of foreign judging as it arises in the Pacific largely traces the unidirectional movement of constitutional ideas from 'developed' to 'developing' states, and from the Global North to the Global South. In the main, foreign judges travel from large developed states (Australia, New Zealand and the United Kingdom) to work in smaller, developing states. There is a similar movement in the citation of foreign case law – in theory, the use of foreign judges has the potential to facilitate the exportation of constitutional developments from Pacific jurisdictions into foreign judges' home jurisdictions. However, while untested empirically, citations to the judgments of Pacific courts appear rarely in the decisions of Australian, British and New Zealand courts.[66] This disparity in the

[60]Iyer (n 5) 128–29.

[61]Boyd (n 11); Katie King, 'Order from the Court: Judiciaries as a Bulwark Against Legislative Corruption in Vanuatu' *The Global Anticorruption Blog* (2015), available at <http://globalanticorruptionblog.com/2015/12/18/order-from-the-court-judiciaries-as-a-bulwark-against-legislative-corruption-in-vanuatu>.

[62]Sally Engle Merry, 'From Law and Colonialism to Law and Globalization' (2003) 28 *Law & Social Inquiry* 569.

[63]Banivanua-Mar (n 24) Ch 5.

[64]Sally Engle Merry, *Colonizing Hawai'i: The Cultural Power of Law* (Princeton University Press, Princeton, NJ, 2000) 47, 89.

[65]See Dziedzic (n 12) Ch 6, where I critique the claim that the impartiality of local judges is necessarily compromised by their membership of a small community. I argue that claims of impartiality support the use of foreign judges only where foreign judges stand in for local judges who must recuse themselves from hearing a case or cases of a particular kind in circumstances where an alternative local judge is unavailable.

[66]Justice French, former Chief Justice of Australia and Judge of the Supreme Court of Fiji, describes one case, concerning discretions of the Director of Public Prosecution, which subsequently has been cited by courts in Commonwealth countries, including the House of Lords: Robert French, 'Cooperation and Convergence: Judiciaries and the Profession' (Sydney, 21 April 2012).

https://doi.org/10.1017/S2045381720000210 Published online by Cambridge University Press

international status of states – and their judiciaries and judges – make metaphors of a global 'dialogue' or 'exchange' inapt and demonstrate how global constitutionalism tends towards the diffusion of the constitutional values of the Global North.

There are, however, changes afoot in the Pacific practice of foreign judging that might disrupt the North–South movement in global constitutionalism. In recent times, Pacific states have appointed increasing numbers of foreign judges from Sri Lanka, Africa and other Pacific jurisdictions, a practice that changes the colonial optics of reliance on foreign judges from former colonial administrations, and potentially also changes how judges approach constitutional interpretation.[67] In turn, Pacific islanders have sat as judges on international courts and as foreign judges on courts in Africa and the Caribbean.[68] Paying attention to these pathways of constitutional influence and exchange will be important to the future development of the phenomenon of foreign judging as well as understandings of global constitutionalism.

V. Foreign judges as objects of global constitutionalism

Studies of global constitutionalism tend to focus on the diffusion of *law* – that is, the movement of constitutional provisions and legal doctrine. However, as Twining notes in his critique of the 'ideal' model of legal transfer and reception, *personnel* can also be objects of transfer.[69] In this part, I examine foreign judges as objects of transfer and explain how it is that constitutional judges can move across national borders.

The use of foreign judges is a part of the phenomenon of 'judicial globalization', traced by Slaughter and developed by others,[70] in which judges interact across national boundaries through references to foreign judgments, engagements with foreign courts in determining transnational legal disputes, and face-to-face meetings at judicial conferences. Foreign judging is another example of judicial globalization, connecting judiciaries across national borders.

Slaughter claims that judicial globalization changes how judges think about their role. She claims it fosters a sense of judging as a global profession in which 'judges see each other not only as servants and representatives of a particular polity, but also as *fellow professionals* in an endeavour that transcends national borders'.[71] In the Pacific, there is a similar emphasis on the idea of foreign judges as members of a judicial *profession*, whose role is defined and valued by professional standards of impartiality and specialist expertise, most notably in the common law.

This professional conception can be contrasted with understandings of the role of the judge that embed judges deep in their own national system. For example, writing about the United States, Kahn argues that only judges who are citizens, and therefore part of the people, can speak on behalf of the people when determining the meaning of the

[67] Daniel Bonilla Maldonado, *Constitutionalism of the Global South: The Activist Tribunals of India, South Africa, and Colombia* (Cambridge University Press, Cambridge, 2013) 23–24.

[68] Sir John Muria, former Chief Justice of Solomon Islands, sat as a judge in Sierra Leone and Belize; Richard Lussick, a judge from Samoa, also served in Sierra Leone and the United Nations Appeals Tribunal.

[69] William Twining, 'Diffusion of Law: A Global Perspective' (2004) 49 *Journal of Legal Pluralism and Unofficial Law* 1.

[70] Slaughter (n 3); Sam Muller, Sidney Richards and Laura Henderson (eds), *Highest Courts and Globalisation* (Hague Academic Press, The Hague, 2010).

[71] Slaughter (n 3) 193.

https://doi.org/10.1017/S2045381720000210 Published online by Cambridge University Press

constitution.[72] In some legal traditions, constitutions are understood to express or create a distinctively national identity or national values.[73] In others, judges are expected to interpret vague, ambiguous or out-dated constitutional provisions by reference to social needs.[74] In both cases, judges are presumed to have knowledge and experience of national values and social needs because they are members of the national community.[75]

In contrast, the conception of judges as professionals minimizes the significance of such links between judges and the polity, thereby enabling judges to move between jurisdictions. This idea resonates with theories of globalization and the transfer of constitutional law. Immerwahr explains how standardization – in everything from measurement to manufacturing – facilitated globalization by allowing things and people to move easily across jurisdictions.[76] The global movement of constitutional provisions and ideas requires a similar standardization. In his 'IKEA' theory of constitutional transfer, Frankenberg describes the process by which constitutional ideas generated in one constitutional system become a 'product' in the 'supermarket' of constitutional transfers, ready to be imported into new contexts. An important part of this process is decontextualization. The ideas or institutions are 'reified as marketable commodities, then formalized – that is, stripped of their contextual meanings – and, finally, idealized as meaning what they are meant to mean and functioning in the way they are meant to function'.[77] It is through this process that constitutional concepts become globally transferable.

The movement of judges across national borders also requires standardization and decontextualization. It relies on a vision of a global judicial profession in which judges are impartial, technical legal experts with transferable skills in constitutional adjudication. This is one conception of an 'ideal' judge but, as noted above, there are other, competing views about the role that constitutional judges can and should perform in their national constitutional systems. In this, the transnational movement of constitutional personnel, as with constitutional ideas, carries the risk of standardization without due regard for local context. In the Pacific, troubling manifestations of this risk include the marginalization of Indigenous custom as a relevant source of law and values when interpreting Pacific constitutions[78]

[72]Paul Kahn, 'Independence and Responsibility in the Judicial Role' in Irwin P Stotzky (ed), *Transition to Democracy in Latin America: The Role of the Judiciary* (Westview Press, Boulder, CO, 1993) 77.

[73]Mark Tushnet, 'The Possibilities of Comparative Constitutional Law' (1999) 108 *Yale Law Journal* 1225; Dieter Grimm, *Constitutionalism* (Oxford University Press, Oxford, 2016) 209.

[74]Mauro Cappelletti, *The Judicial Process in Comparative Perspective* (Clarendon Press, Oxford, 1989) 5; Goldsworthy (n 32) 689; Grimm (n 74) 205.

[75]Aharon Barak, 'The Role of the Supreme Court in a Democracy' in Mads Tønnesson Andenæs, Lord Slynn of Hadley and Duncan Fairgrieve (eds), *Judicial Review in International Perspective* (Kluwer Law International, Amsterdam, 2000) 122–23, 128.

[76]Daniel Immerwahr, *How to Hide an Empire: A Short History of the Greater United States* (Bodley Head, London, 2019) Ch 18.

[77]Gunter Frankenberg, 'Constitutional Transfer: The IKEA Theory Revisited' (2010) 8 *International Journal of Constitutional Law* 563, 571.

[78]While not the only factor, the use of foreign judges is one reason why Pacific courts have been slow to develop a jurisprudence that draws on Indigenous custom: Teleiai Lalotoa Mulitalo Ropinisone Silipa Seumanutafa, *Law Reform in Plural Societies* (Springer, New York, 2018) 78; Bernard Narokobi, *Lo Bilong Yumi Yet: Law and Custom in Melanesia* (Melanesian Institute for Pastoral and Socio-Economic Service University of the South Pacific, Goroka, 1989) 158–59; Falefatu M Sapolu, 'Adjudicators in Western Samoa' in Guy Powles and Mere Pulea (eds), *Pacific Courts and Legal Systems* (University of the South Pacific and Faculty of Law, Monash University, Melbourne, 1988) 61–62.

https://doi.org/10.1017/S2045381720000210 Published online by Cambridge University Press

and a mismatch between law and society, in which the values and norms of the law are different from those of the people.[79]

VI. Conclusion

This symposium on global constitutionalism in Asia and the Pacific provides a forum for the exploration of states, experiences and constitutional phenomena not previously explored in the scholarship on global constitutionalism. The experiences of Pacific states in the use of foreign judges provides one such new lens through which to examine both the role of a constitutional judge and the operation and assumptions of global constitutionalism.

This article has shown that foreign judges are a mechanism through which foreign law is cited and applied in the constitutional decisions of Pacific courts. As such, foreign judges *are* agents for the globalization of constitutional law – or at least a common law subset of it. The article has, however, also shed light on the tensions that arise when judges are understood as expressions of global constitutionalism or become objects of global constitutionalism. The perception of foreign judges as guarantors of judicial independence both rests on and perpetuates colonial assumptions about Pacific peoples' capacity for self-governance and the flow of norms of global constitutionalism from the Global North to the Global South. Further, thinking about judges as themselves objects of constitutional transfer highlights the glosses required to conceptualize a 'transferable' global judge and to understand what is potentially lost when judges are seen as professionals easily removed from constitutional and national contexts of both their home jurisdiction and the states in which they serve.

I conclude with a caveat, which is that this analysis of foreign judges as agents of global constitutionalism is situated in the particular context of the Pacific. The use of foreign judges in other contexts might have quite different outcomes and implications, some of which have been explored by other scholars.[80] Further study of the phenomenon of foreign judging is warranted to better understand the means by which foreign judges are agents of global constitutionalism, and the challenges presented by this practice both to understandings of the role of constitutional judges and to global constitutionalism.

Acknowledgement. My thanks to the participants at the Symposium on Global Constitutionalism: Asia-Pacific Perspectives, held at the Chinese University Hong Kong, 28–29 March 2019 and to Cheryl Saunders, Alex Schwartz, Bui Ngoc Son and Julius Yam for their comments on earlier drafts.

[79]Brian Z Tamanaha, 'Battle Between Law and Society in Micronesia' in Dennis Galligan and Mila Versteeg (eds), *Social and Political Foundations of Constitutions* (Cambridge University Press, Cambridge, 2013) 585.

[80]For example, Albert HY Chen, 'International Human Rights Law and Domestic Constitutional Law: Internationalisation of Constitutional Law in Hong Kong' 4 *National Taiwan University Law Review* 237; Constance Grewe and Michael Riegner, 'Internationalized Constitutionalism in Ethnically Divided Societies: Bosnia-Herzegovina and Kosovo Compared' (2011) 15 *Max Planck Yearbook of United Nations Law* 1.

Cite this article: Dziedzic A. 2021. Foreign judges of the Pacific as agents of global constitutionalism. *Global Constitutionalism* 10: 351–366, doi:10.1017/S2045381720000210

https://doi.org/10.1017/S2045381720000210 Published online by Cambridge University Press