CONSTITUTING VANUATU: SOCIETAL, LEGAL AND LOCAL PERSPECTIVES

Jackson N Maogoto, University of Manchester
Benedict s, RMIT University

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Benedict Sheehy* and Jackson Nyamuya Maogoto**

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ABSTRACT

Governance in Vanuatu has been a source of concern for Australia as it forms part of Australia’s ‘Arc of Instability.’ Vanuatu has adopted a modified Westminster system as the Westminster system and its constitution are often advocated as the model for constitutions and governance around the world. In various former colonies local populations were expected to simply absorb its liberal democratic principles apparently on some assumption that such principles were an innate part of human nature. Most readings of history would come to a different conclusion. Vanuatu illustrates this error and the complexities of a society that create not only a broad challenge for governance, but undermines the

* Benedict Sheehy, B.Th., M.A., LL.B., M.A., LL.M., Senior Lecturer, Law, RMIT University, Melbourne (Australia).
** Dr. Jackson Nyamuya Maogoto, LL.B (Hons) (Moi), LL.M (Cantab), LLM (UTS), PhD (Melb), GCertPPT (UoN), Senior Lecturer, School of Law, University of Manchester (UK).
credibility of simplistic, universalist approaches of liberal solutions including, institutional transplants, to these challenges. This paper asks questions about the nature and status of law in and governance of society in Vanuatu and then examines various answers, from broad social perspectives, and academic sources to interviews conducted among members of the Vanuatu community. It concludes that the system fails as insufficiently attuned to the realities of the society that makes up Vanuatu. That is to say the system fails to effectively address the needs and interests of the population, and fails to sufficiently incorporate the indigenous systems in situ.

1. INTRODUCTION

Clifford Geertz, the world renowned Harvard anthropologist visiting the island of Java in the 1950’s observed a curious phenomenon. Geertz writes:

The highest ranking traditional king on Bali, who was also, under the arrangements in effect at the time, the regional head of the new Republican government, came to the village… When [he] came to the village… He squatted on the floor of the council pavilion to symbolize that in this context he was but a visitor, however distinguished, and not a king… the council members listened to him with enormous deference, a grand outpouring of traditional politesse, but what he had to say was far from traditional. This was, he told them, a new era. The country was independent. He understood how they felt, but they really ought not to [practice traditional law]… it was not modern, up-to-date, democratic… they should, in a spirit of the new Indonesia [practice new law]. When he finished (it was a long oration), they
told him, slowly, obliquely, and even more deferentially, to go fly a kite. Village affairs, as he well knew, were their concern not his, and his powers, though unimaginably great and superbly exercised lay elsewhere. Their action… Was supported by the hamlet constitution, and if they were to ignore it, poxes would fall upon them, rats would devour their crops, the ground would tremble, the mountains explode. Everything he had said about the new era was right, true, noble, beautiful, and modern, and they were as committed to it as he was… But well, no [the traditional law would still be followed]. His traditional status acknowledged, his modern duty done, or anyway attempted, the diving king-cum-civil servant said, may the village prosper, thanks for the tea, and left amid kowtows to his foot, and the issue never resurfaced.¹

Geertz was observing two parallel, unintegrated, discrete yet simultaneous governments operating in a nation state. When one stops to think about it, one must confess that it is a most curious state of affairs and interesting problem for those proposing to impose a centralized state type solution to the governance problems of coordination and control. The problem faced by those responsible for the governance in such places is that the pre-European form of governance is strong, vibrant, effective—indeed what twentieth century jurist Hans Kelsen would recognize as necessary condition for the existence of valid legal system.² This extant traditional form of governance exists because it is part of the fabric of that society, a tribal society.

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Research conducted for this study more than fifty years after Geertz finds exactly the same situation: a thriving tribal system, independent of and functioning effectively apart from the Western institutions of the nation state in the South Pacific.\(^3\) This situation can be explained by reference back to Weber’s ideas on social organization. Weber argued that there were three main types of governance in society. These he identified as ‘charismatic domination’ (that of familial and religious), ‘traditional domination’ (that of patriarchs, and feudalism), and ‘legal domination’ (that of modern law and state, bureaucracy).\(^4\) Each of these forms of organisation relies on a different source of power for social control.

In those societies in which the tribe has been destroyed by the changes of modernity—the end of feudalism, the rise of capitalism, and the rise of the nation state—forms of governance other than ‘charismatic’ and ‘traditional’ are not only imaginable, but desirable. Indeed, to avoid despotism, corruption and oppression particular institutions restraining government power are necessary. However, to suggest that ‘legal domination’ is a form suitable and sufficient for all societies, including those societies with a tribal system in place is to ignore the reality on the ground. Yet despite this apparently obvious fact, the Social Darwinists of today, that is to say the neo-classical economists and their neo-liberal political counterparts, continue to insist that legal domination is the evolutionary and hence inevitable end of human development, and further that it is the only way to create a society which meets acceptable standards for human life in the twenty-first century. Finally, of

\(^3\) Some findings similar to those of this article were drawn from interviews reported in Elise Huffer and Grace Molisa, ‘Governance in Vanuatu: in search of the Nakamal way State’, ‘Society and Governance in Melanesia, Research School of Pacific and Asian Studies’, Discussion Paper 99/4 19 May 2004 available at http://dspace.anu.edu.au/handle/1885/40138 p 3.

course, one cannot ignore that such governance and in particular the nation state is the only form readily integrated into the international system of nation states.

As mentioned, there are two streams to this discourse: market based solutions to distributions of economic goods and services; and liberal democracy in terms of distributions of governance power. This social Darwinian view is espoused by powerful institutions in the West such as the World Bank in its ‘good governance’ discourse. The idea is that the Western institutions of governance i.e. free markets and liberal democracy, are sui generis, that is a self creating or spontaneous order. Nature, they argue, will bring these forms of order about and it is only consistent with nature that Western powers are acting, creating and supporting efforts to bring such governance regimes about. Although it has not been politically popular prior to the G.W. Bush administration, social Darwinist neo-classicists and neo-liberals have insisted that the imposition of ‘civilised’ systems of governance is not only appropriate, but necessary, as the only viable form of governance.

Our interviews in 2007 Vanuatu suggest that efforts to create a Western liberal democratic nation state, with its institutions of free markets and finely crafted constitutional documents, have failed to displace the traditional system on the one hand and failed to take root due to failing to creating a viable, vibrant governance system on the other. The promise has failed, at least in part, because those institutions and constitutions themselves

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6 Hayek discusses the price mechanism as a ‘marvel’, a spontaneous response solving certain economic problems. For the price mechanism to work, of course, one must have well functioning markets. F A Hayek, ‘The Use of Knowledge in Society’ (1945) 35 (4) American Economic Review pp 519-30.
7 Argued most eloquently in Francis Fukuyama, The End of History and the Last Man (Free Press, 1992) following Alexandre Kojève among others.
are not rooted sufficiently or adequately integrated into the governance practices indigenous to those locales.⁸

Forms of governance in existence will not be destroyed by fiat, and particularly not by an externally driven and crafted fiat. Governance ideologies and institutions exist because they are accepted as part of the culture and function well enough to self-perpetuate. In the South Pacific they are an expression of a cosmology that does not touch on the myths of Western liberalism. They follow a cosmic ordering of gods, lands, seas, environment, chiefs and people, not the cosmology of nation-states, democracy, elections, individualism and liberalism. Indeed, those in another cosmology do not hanker after a form of governance that has nothing to do with them. In other cosmologies, leaders are people whose job it is to lead, just as fishermen are people whose job it is to fish. It is not the job of the people to make one person a fisherman and another a leader.⁹ If one does not believe it is her position to tell the fishermen where to fish, then why is it her job to tell the leader how to lead? This theme has been expressed in various contexts, from a multi-national forum attended by political leaders of South Pacific islands,¹⁰ to recent interviews in Vanuatu.¹¹

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⁹ Noted as a common attitude among labour by Efraim Kalsakau, interview 12 July 2007.


Yet the liberal view is quite the opposite. The highest right is the right of the individual to liberty, including self-determination. This right finds its expression on a grand scale in the right to participatory governance through some form of democracy. Each person is presumed to have some innate desire to govern himself or herself and not only that, but to have valid and important urge to govern or contribute to the governance of society as a whole. Yet seldom does one stop to ask: ‘Is this indeed a dream shared by all?’

Reflection on this question suggests that some other form of democracy or indeed governance that works in conjunction with other forms of governance is an imperative if one wishes to govern effectively and respect the wishes or aspirations of the people in question.12

These problems can be seen in the treatment of the constitutions of various South Pacific countries. A broad study of imposition of Western institutions and the transplant of Western legal systems to the South Pacific by Peter Larmour suggests that it has not been an unqualified success.13 Anthony Regan, in a more detailed examination of four Melanesian constitutions—Fiji, PNG, Vanuatu, and the Solomon Islands—shows with

12 The lack of such is evident in P Sack’s comment: ‘The bells of autochthony have a hollow ring to it in the Pacific. The cycle which started two hundred years ago in North America and France seems to be reaching its mechanical completion instead of giving way to much needed new departures.’ P Sack, ‘Constitutionalism and “Homegrown” Constitutions’ in Pacific Constitutions: Proceedings of the Canberra Law Workshop VI, ANU (ANU E Press, 1982) p 1.

marked clarity that the underlying issues related to the clash between the culture and the imported constitutional based legal system undermine any such grand project. Regan points out that although not evident at the outset, time has proven the error of importing Western liberal democratic constitutions. He notes that Westminster based constitutions had distinctive socio-historical roots which provided fertile ground for their conception, development and growth. In particular he notes the emergent middle class that gave rise to the notion of separation between public and private interests. This development of space between public and private interests took place over a number of centuries in the West and forms the necessary foundation for a constitution dealing with the limitation on government action, succession and accountability. Without such basis, further constitutional discussion is mere casuistry. Furthermore, it should be noted that such efficacious constitutions are a fantasy when run up against real power—that power emanating from military might. In the west, where liberal democratic governments flourish, states have been founded by civil war and military conquests, and are themselves not constrained in military action by constitutions and courts. Yet the expectation is that governments elsewhere will accept limits on their actions based on some purported belief in separation of powers doctrine or a sui generis understanding of liberal democratic ideals.

15 See note 14 above.
Dr. J. Corrin Care demonstrates the serious failures of the Western legal system in the Solomon Islands, and the challenges of imposing and integrating Western legal system with social orders and customs in the South Pacific. This is not to say that there have not been real efforts to adjust Western institutions to indigenous conditions—which rulers and their advisers for various reasons have believed to be effective and/or significant in those societies in which they chose to interfere. One notes, for example, the Native Courts established by the Presbyterian mission in the late nineteenth century on Tanna Island in Vanuatu, only to have it undone in 1912 by the next Resident Commissioners of the Condominium. While this may be an historical example, it sounds with an enlightening study of contemporary Vanuatu. As anthropologist William Miles observes: ‘Criminal proceedings in Vanuatu are invariably ‘black’; but civil cases are ‘white.’… [it is in the courts where is] the money that counts, the interests of the outside world, are decided, in English, by and among whites.

Reading such statements leads one to ask: is law, as the social ordering of Western liberal democracy, indeed sufficient to create a functioning liberal democratic society along with its institutions championed by the West as the panacea for all that ails humankind in all

parts of the world? At the core of the liberal democratic nation state is the constitution. Accordingly, one must consider and examine the constitution to see whether in fact it achieve these ends and does serve this function. Does the adoption of a constitution upon the declaration of independence create a liberal democracy? In theory it should. Yet one questions whether from the heights of the throne of law’s empire things look the same as they do from the perspective of law’s subjects eking out a living from the dirt. Perhaps they do so; however, on the ground in Vanuatu things looks rather different. In Vanuatu, as in most of Melanesia, the emperors on law’s throne have been European powers markedly different in terms of culture from the majority living on the islands. The European powers under domestic and international pressure and at times in response to violent rebellion have drafted and prepared constitutions which then ‘surprisingly’ fail to live up to their promises of the creation of civil society though Western liberal democratic institutions—although it is important to note that the notions of ‘indigenous’ and ‘European’ and even half-caste are flexible, depending on the perceived power associated with the respective ethnicity prevailing at the time. We turn now to examine the specific case of Vanuatu.

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22 See for example, Martin Krygier’s discussion in ‘The Uses of Civility’ in Martin Krygier, Civil Passions: Selected Writings (Black Ink Press, 2005) p 163.
24 See the interesting discussion in Crocombe, (note 13 above), pp 127-131.
2. SOCIETAL PERSPECTIVE: VANUATU

Vanuatu was not recognized as a country or nation by the international community until 1980. Yet to state the obvious, it was in existence well before that time. It is a collection of 83 islands in the Melanesian archipelago and has been inhabited since about 1,500 BCE. European explorers came to the islands some 3,000 years later, in the early 17th century C.E. They began settling there in the late-18th century. Plantations of cotton, maize, and sugar were established from 1863. The islands and their inhabitants were placed under a joint administration by the European powers, Britain and France. But what is Vanuatu? To answer this question one must move away from the politico-legal notion of a ‘republic founded on a constitution’ to examine the social order on the ground.

From a social perspective the inhabitants of the islands come from some one hundred different ethnic groups, each with their own distinctive culture including political ordering, languages (more than one hundred languages are still in use in the nation), customs and arts. From the traditional Naghol or ‘land divers’ of Pentecost Island in the north, who inspired today’s popular bungee jumping, to the active volcano Yasur of Tanna Island of the south, with its related dances and rituals, each island retains its distinctive culture. The differences are not simply matters of material culture. Indeed, the differences go deep into

27 For an interesting, if occasionally sensationalist account, see Miles, *Bridging Mental Boundaries*, note 21 above.
the social order. For example: in the north, chiefs tend to be chosen on the basis of wealth and power, whereas in the south, chiefdom is a hereditary office.\(^{29}\) This abundance of diversity is difficult to imagine in an island grouping with a land mass of some 14,760 km\(^2\) in an area of the ocean about 900 kilometres by 1200 kilometres.\(^{30}\) The archipelago’s inhabitants rely largely on subsistence agriculture and fishing, and remain connected to their traditional, clan based, island based ethnic identities. In other words, Vanuatu is an ethnically diverse country—a multi-cultural collection of societies with all the benefits and challenges that entails. This diversity is neither a new phenomenon nor an unprecedented problem. Indeed, the premier historical figure of the nation is Roy Mata, a 13\(^{th}\) century chief, warrior and diplomat who brought peace to the warring nations on the island of Efate through diplomacy. The singular significance of this accomplishment is attested to not only in surprisingly accurate folklore which survived more than half a millennium, but also in his grave site which included twenty-five members of his court and forms the greatest archaeological site in the nation.\(^{31}\) Despite these differences, the peoples share culture as well through such things as pigs, trading grass skirts, drinking of kava, and the drawing of sand pictograms indicating such themes as kinship and numbers.\(^{32}\)


\(^{30}\) The ten largest islands are in descending order: Espiritu Santo (3,956 km\(^2\)), Malakula (2,041 km\(^2\)), Efate (900 km\(^2\)), Erromango (888 km\(^2\)), Ambrym (678 km\(^2\)), Tanna (555 km\(^2\)), Pentecost (491 km\(^2\)), Epi (445 km\(^2\)), Ambae or Aoba (402 km\(^2\)), Vanua Lava (334 km\(^2\)).


\(^{32}\) For an in-depth discussion about the archaeology and contentions concerning the similarities and dissimilarities of the cultures see S Bedford, *Pieces of the Vanuatu Puzzle: Archaeology of the North, South*
Culture is not some form of rigid, fossilised tradition which allows no divergence from the norm. Indeed, one of the contributions of the archaeological digs has been a clearer understanding of the nature and breadth of such changes. Although the traditional form of governance across the societies of Vanuatu would be described in Weberian terms as ‘traditional domination’, the European invasion, altered radically the dominant focus of culture, social activity and social ordering. Today’s Vanuatuan society bears evidence of the ongoing stresses resulting from that invasion. The European liberal democratic social organisation with its individualistic, capitalist focal points has created significant challenges for those living with the traditional worldview of traditional domination. The creation of the nation state of Vanuatu thirty-odd years ago did not suddenly sweep away millennia of diversity. Indeed, as noted by noted Australian scholar Stephen Firth: ‘[Melanesian countries] consist of hundreds of different identity groups thrown together by the experience of colonial rule but with little else to foster a sense of common national destiny.’

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35 Firth, *Globalisation and Governance*, (note 10 above), p 3 (Italics added).
3. LEGAL PERSPECTIVE: VANUATU

a. Early European System and Developments

Vanuatu, known prior to its independence as the New Hebrides or Nouvelle Hebrides, was considered a colony of both the British and French Empires. Neither found the island group to be of much significance as demonstrated by a fledgling population of just 299 French citizens and 146 British citizens in 1901.36 The colony was ruled by two resident representatives who cooperated to administer the colony jointly. Thus there was a British Residency; a French Residency; and a Joint Condominium Government. It was ruled under this strange cooperation ‘The Condominium’ from 1906 until independence in 1980. While the Condominium served the interests of the ruling powers it may well have initiated a view of law as a series of commensurate arrangements or systems that may be applied as seen fit. Indeed, it was a common practice under the Condominium to shop for favourable decisions from the cooperating administrations.37

The Condominium is described by Keith Woodward, an administrator with the British Residency for twenty-five years, as: ‘far from constituting a unified system of government.’ As he describes it:

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British and French nationals were to be subject to the authority of their own
governments and to come under their own national law and courts. [Further]
Neither power could exercise separate authority over the indigenous
inhabitants, and the New Hebrideans could not, while residing in the [Island]
Group, acquire British or French status.38

Eventually a Joint Court was set up, but that too missed legal actions as between
Melanesians leaving jurisdiction over them to the naval commanders who also conducted
retaliation raids against the same Melanesians.

b. Laws, the Constitution and Independence

Relations between the Europeans and the indigenous were marked by violence from the
outset, but particularly escalated once it was clear that the Europeans were not prepared to
respect prior indigenous occupation of the land.39 The movement and successful
independence led to further sharpening of differences and breakdown in Vanuatu society.40
Violence was threatened41 and did on occasion occur,42 although the two powers, France
and Britain, which governed the then colony, had agreed to some form of withdrawal.43
Independence in Vanuatu was not gained without struggle. The people had to organise

40 See the first hand account of Vanuatu’s first president, Ati George Sokomanu, and former Prime Minister,
Donald Kalpokas in Bresnihan and Woodward, Tufala Gavman, note 20 above, see particularly, Sokomanu
at pp 479-482 and Kalpokas at pp 343-5.
41 See for example, the first hand accounts of marine Colonel Carter and British Police office Cook, in
42 J Beasant, The Santo rebellion, an imperial reckoning (University of Hawaii Press, 1984). For a first hand
account of an indigenous person employed by the British commission, see Joe Delesa in Bresnihan and
43 Donald Kalpokas in Bresnihan and Woodward, Tufala Gavman, (note 20 above), p 345.
under the ever watchful eye of the governors—English and French who shared the ‘Anglo-French Condominium.’

Upon gaining independence, (for the second time it should be noted as the colony at Port Vila was given the right to self-governance in 1889 as ‘Franceville’) Vanuatu took on a legal system drawn predominantly from the law in force at the time independence was achieved. That was the law UK in the Western Pacific which provided that, ‘the civil and criminal jurisdiction of the High Court [of the Western Pacific] shall, so far as circumstances admit, be exercised upon the principles of and in conformity with: ... the substance of the English common law and doctrines of equity.’

Upon achieving independence the newly formed nation state of Vanuatu, like the other newly independent states in the South Pacific, adopted a constitution. A constitution is purportedly a special kind of document. As noted, it is to be the foundational document of a nation state, creating or ‘constituting’ that nation state, setting up authority structures in a society and granting powers and placing limitations on the people participating in the governing of society. It creates a government of the state institution, as Weber has it, ‘legal domination.’ The installation of a constitution is an anointing of certain members of the polis, an acknowledgement of their power in the existing social structure and a reifying thereof as well as reformation and institutionalisation of that power. In other words, it is the

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44 Cited in Care, ‘Cultures in Conflict’, note 18 above.
installation by codification in law of the power structure in that society. In Vanuatu the constitution had been drafted more or less by the reigning powers, although with input from locals. It would appear that the acceptance of the constitution by those clamouring for independence was a condition of sorts given in exchange for the grant of independence.

The constitution itself was based on UK and French principles. The drafters of the Constitution explicitly recognised its pluralistic origins. Section 95 states:

…all Joint Regulations and subsidiary legislation made under the joint regulations which were in force immediately before independence... [and] British and French laws in force or applied in Vanuatu immediately before independence... which continue to apply to the extent that they are not expressly revoked or incompatible with the independent status of Vanuatu and wherever possible taking due account of custom.

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46 Larmour observes that the Colonial executive often exercised their powers in a less than even-handed manner, favouring the settlers over the indigenous people, Larmour, *Foreign Flowers*, (note 23 above), p 45, and the former Inspecteur-General Jean-Jacques Robert noted France’s interests leading its whole approach to the sovereignty issue, in part requiring the local replacement government to accept certain priorities prior to agreeing to a hand-over of power. Inspecteur-General Jean-Jacques Robert in Bresnihan and Woodward, *Tufala Gavman*, (note 20 above), p 427.


Indeed, in certain areas of law, the legal system recognised in addition, church law.\textsuperscript{49}

The constitution, as part of the new legal system formed upon independence, has been described as one of the ‘foreign flowers’ of the South Pacific.\textsuperscript{50} Interestingly, despite its foreign origins the constitution of Vanuatu was not drafted without special consideration to the powers that existed. Indeed, Chapter 5 of the Constitution\textsuperscript{51} creates a special parliamentary body not found in Western countries. That body, which is common to a number of South Pacific nations, is the Council of Chiefs.\textsuperscript{52} To have a sense of that body, one cannot do better than to quote the sections pertaining to same in their entirety.

\textbf{Chapter 5}

\textbf{NATIONAL COUNCIL OF CHIEFS}

29. (1) The National Council of Chiefs shall be composed of custom chiefs elected by their peers sitting in District Councils of Chiefs.
(2) The Council shall make its own roles of procedure.
(3) The Council shall hold at least one meeting a year. Further meetings may be held at the request of the Council, Parliament, or the Government.
(4) During the first sitting following its election the Council shall elect its Chairman.

\textsuperscript{49} See for example, the discussion of marriage law in Sue Farran, ‘Pigs, mats and feathers: customary marriage in Vanuatu’ 2004 27(2) \textit{The Journal of Pacific Studies} pp 245-276.

\textsuperscript{50} Originally used to describe the constitution in Fiji, applied more broadly to the South Pacific by Larmour, \textit{Foreign Flowers}, (note 23 above), p 80.


FUNCTIONS OF COUNCIL

30. (1) The National Council of Chiefs has a general competence to discuss all matters relating to custom and tradition and may make recommendations for the preservation and promotion of ni-Vanuatu culture and languages.

(2) The Council may be consulted on any question, particularly any question relating to tradition and custom, in connection with any bill before Parliament.

ORGANISATION OF COUNCIL AND ROLE OF CHIEFS

31. Parliament shall by law provide for the organisation of the National Council of Chiefs and in particular for the role of chiefs at the village, island and district level.

PRIVILEGES OF MEMBERS OF COUNCIL

32. (1) No member of the National Council of Chiefs may be arrested, detained, prosecuted or proceeded against in respect of opinions given or votes cast by him in the Council in the exercise of his office.

(2) No member may, during a session of the Council or of one of its committees, be arrested or prosecuted for any offence, except with the authorisation of the Council in exceptional circumstances.

The constitution grants this body a carefully circumscribed competence. It provides the right to ‘discuss all matters relating to custom and tradition.’ This right is certainly unremarkable in that free speech and free association are considered basic rights in constitutional democracies. The constitution also grants the right to ‘make recommendations for the preservation and promotion of ni-Vanuatu culture and languages.’
Again, this power is not particularly remarkable. Further, the Constitution assigns it a consultative role ‘on any question, particularly any question relating to tradition and custom, in connection with any bill before Parliament.’ The wording of this clause is awkward, not making it clear why ‘any question’ should be differentiated from ‘particularly any question relating to tradition and custom.’ One would think that either the Council makes recommendations on bills before Parliament generally, or it makes recommendations concerning ‘tradition and custom’ on bills before Parliament.

The Council has no legislative, judicial or executive roles. Further, it has no monitoring, reporting, investigative, adjudicative, or enforcement, powers. In legal terms, it is an empty, powerless body—providing advice when the politicians desire it. In fact, despite the Constitutional role granted to the Council of Chiefs it appears that the Council is not even consulted on legislation.53

The Constitution’s silence, however, can be read in another way. While not empowering the chiefs as actors within the national sphere, so doing does not preclude them from acting within their traditional spheres of power, namely, at local regional and village levels.54 Certainly, this function has yet to be displaced by the nation state and is an area in which traditional institution of chiefdom maintains its dominance. This local power is not insignificant on a national level. One example of its significance is in the control of politicians who for the most part, it must be remembered, are still members of local

indigenous groups. The chiefs have been successful particularly when called in to resolve internecine quarrelling between politicians—a regular and difficult problem as politicians are elected along ethnic lines rather than policy (which is largely the same from party to party).\textsuperscript{55} They continue to operate effectively, unconstrained by the constitution, at sub-national levels.

Another conclusion which could be drawn from this important mediating role of the chiefs is that the state governmental mechanism is but another layer or system parallel to that which is operating along customary lines. Chiefs retain an important place in the Vanuatu cultural and governance landscape, and indeed, in interviews, they have been identified as potentially having a role for controlling politicians.\textsuperscript{56} Indeed, Powels was prescient writing in 1982 of the competition between chiefs and national government in the South Pacific as sources of services and power.\textsuperscript{57} These competing powers are in many respects antithetical to each other, (as one would expect between Weberian traditional and legal alternatives)—explaining in part why the constitution may be viewed as neither overtly hostile to nor inclusive of the institution of chiefdom.\textsuperscript{58} That is that the chiefs’ conflict resolution powers are an important part of political resolution in the system of legal domination, and further that chiefly powers are too deeply embedded in the socio-cultural fabric to be extracted there from. Thus, legal domination set up by the constitution does not seek to expel or


\textsuperscript{56} Interview with Kalsakau, 12 July 2007 and with Seru Kirokanu, of Vanuatu Association of NGO’s and Lai Sakita of TAFEA Council interviews July 13, 2007

\textsuperscript{57} Powels, ‘Traditional Institutions’, (above note 52), pp 346-7.

\textsuperscript{58} Powels, ‘Traditional Institutions’, (above note 52), p 347.
displace chiefly powers or traditional domination; despite the challenge such power poses to legal domination.

This constitution has served both good an ill in the country. Perhaps the best illustration of its effectiveness has been the crisis in 2001 which nearly tipped the country into civil war. We turn next to examine that crisis.

4. LOCAL PERSPECTIVES—LAW IN ACTION IN VANUATU

a. Constitutional Crisis In Vanuatu

Politics in Vanuatu, as in most South Pacific countries, seems to follow a path somewhere between traditional indigenous power structures and those structures one would expect to find in liberal representative democratic states, the legal domination.\(^{59}\) Politics in Vanuatu, as one can imagine, has never been easy. It is marked by continually shifting loyalties among party lines as each parliamentarian seeks personal and clan gain. Indeed, the horse trading among politicians in that country is historic\(^ {60}\) such that the government has been at best only marginally effective in governing the country,\(^ {61}\) and indeed political loyalty of MPs has been described as ‘a tradable commodity.’\(^ {62}\)

\(^{59}\) See discussions in Larmour, Crocombe and Godleier and Strathern. See notes 13 and 23 above.


The combined lack of economic opportunities and limited efficacy of law to control politicians, make election to parliament a most enticing opportunity for self-enrichment and enrichment of one’s clan. As previously noted ‘different [parties’] policies are not clearly distinguishable, which is not particularly surprising, given the shared roots of most of the major parties. Voting appears to be based more upon linguistic or kinship ties than policies. Personalities are also important, and certain politicians have reputations for being more corrupt or less corrupt than others. In other words, the traditional dominance which undermines legal dominance is too firmly rooted to be displaced by the legal framework which forms Weber’s legal dominance.

Among the influential power brokers of Vanuatu is Barak Tame Sope Mau’utamate. Sope, who began his career as a representative of the former New Hebrides Condominium Administration, was involved in the independence movement. He was a supporter of the moderate group supporting the English, but as would be expected, inflammatory in his approach to the slower, paternalistic French. Sope was a leading National Party activist who nearly came to power as a result of some questionable conduct by his uncle, the first president of Vanuatu, Ati George Sokmanu. Sope came to power as the Prime Minister of

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Vanuatu in 1999, after having held various posts in different prior governments. As we will demonstrate in the narrative that follows, in the hands of a wily, capable politician like Barak Sope, the Constitution became yet one more tool to manipulate a system and a populace poorly served by Western institutions, including law.

Sope, having been dismissed from his position as Minister of Tourism, Immigration and Transport, started the Melanesian Progressive Party in October 1999. He was Prime Minister from December 1991 to November 2001. Sope held power by way of a coalition government. His spurning of the main coalition partner, Union of Moderate Parties, led to a vote of no confidence. The Speaker of the House, Paul Tari, an open partisan ally of Sope, refused to let the motion be debated leading the opposition to take the matter to court. Tari, upon being ordered to allow the motion to be debated then attempted further delay, and when Sope’s government finally lost the motion, Tari suspended the new Prime Minister and deputy Prime Minister for alleged breaches of the constitution and standing orders. Again the court overturned Sope’s ally, Tari on both matters. Tari certainly on the instructions of Sope, set himself up as the interpreter of the constitution—denying all comers on the basis of ‘the constitution.’

As the case wound its way through the courts, Tari effectively providing cover, Sope was in full flight, attempting to buy the loyalty of various marginalised opposition politicians and engaging in corrupt deals that eventually landed him in jail. Sope fraudulently attempted to

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68 This narrative is based on Morgan, ‘Converging on the Arc of Instability?’ note 62 above.
issue some $USD 300 million in bearer bonds to corrupt Indian-Thai businessman Amerendra Nath Ghosh.

In this instance, the courts stepped in and, as Michael Morgan observes, contributed to the solution:

> He [Sope] consistently misrepresented or ignored the laws and regulations of parliament and turned a blind eye to the separation of powers principle under which Vanuatu’s Westminster-style system operates. In his April 2001 judgement, Chief Justice Lunapek noted that the ‘interpretation of the constitution … is self-evidently … entrusted to the Court by the people of this country through the Constitution.’

The court’s condemnation of Sope and his crony, Tari, were a positive contribution to the undermining of their efforts to manipulate the institutions of government for their own personal gain.

Sope did not, however, limit his attempts to manipulate the government system to coordination of cronies in parliament. He coordinated his legal manoeuvres with exploitation of loyalties he had cultivated among the police force and the Vanuatu Mobile Force. In addition Sope built his power base in his constituency on the island of Ifira which he developed until his power encompassed the whole of rural Efate. He was

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eventually forced from office by his defeat on the no confidence motion. The new Prime Minister, Natapei, initiated an investigation which ultimately led to Sope’s arrest, trial, conviction and imprisonment for forging bank guarantees. Although at one time it appeared that a violent uprising might be occasioned by his arrest, nothing materialized. He was sentenced to three years of incarceration, but received a presidential pardon in 2003. Upon his release he was re-elected.

b. Western and Indigenous Law and Governance

The whole Sope affair, from his rise, scandal, arrest and later pardon, was based on his successful self-promotion as a grass-roots leader, and his appeal to ni-Vanuatu as one of them, following a tradition going back to independence leader, Jimmy Stephens. His rhetorical attacks have been directed against ‘foreigners’—including World Bank officials, foreign investors, and members of the Australian Federal Police. He is the traditional type leader sceptical of and attacking legal dominance as contrary to the people—at least, such is his rhetoric.

Sope’s underlying scepticism of Western institutions finds resonance elsewhere. Hilda Lini, a chief of the Turaga nation of Pentecost Island, parliamentarian from 1987-1998, and former Minister for Justice and former Minister for Health has called for Melanesian women to reject Western approaches to conflict resolution and governance which she sees

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as leading Melanesia in the direction of ‘uncontrolled crime, violence and poverty.’ While Lini does not advocate a complete renunciation of Western ideas, she takes a cautious approach toward them. She writes:

While all Pacific countries are governed by Western systems of governance, there is a growing sense within the Pacific community to identify models that will best suit the Pacific. A new network, with the membership of six indigenous nations, is seriously looking into the use of indigenous models of governance as the foundation for state governments. This would mean borrowing only certain aspects of foreign systems of governance that will contribute to upholding the collective ownership of peaceful co-existence.

Although Europeans have installed and dominated the economic, political and legal power structures for more than a century, the indigenous structures have proved remarkably resilient, surviving to the present. A very revealing discussion broadcast on the ABC’s Time to Talk illustrates the vitality of the indigenous system even in the face of the fully developed Western institution of law. Each of the participants, Chief Justice Lunabeck, Public Prosecutor Lini-Leo, and Chief Numake focuses on law differently. Yet, apparently, each seems to respect the other’s domain. The interview is worth reading for the radical differences of systems and the apparent complementarities of those same systems.

VINCENT LUNABECK: We have the Constitution and the Constitution is the basic law, the fundamental law of course. The Constitution provides for justice system to be administered by the tradition. The Constitution provides also that custom shall be part of the laws of the republic. So we have that duopoly legal system as to whether the written law conflicts with the traditional system. First of all before the conflict believe that there are room, big room for the two systems to coexist. The general observation of Vanuatu is simply that on a number of islands there are no police, so the question is who or which institution maintains peace and order in lieu and place of the police? The chiefs - the answer is the chiefs.

HEATHER LINI-LEO: In some islands they are very effective and they can hold customary courts to resolve problems, disputes, even classified as both civil and criminal. In other islands where the chiefs are not effective then they use the Western justice system more often.

VETUNA: Vanuatu's Public Prosecutor, Heather Lini-Leo.

HEATHER LINI-LEO: For example, Torba in the north has scattered islands. Ships don't usually go there and the last criminal court session was three years ago. But then we don't receive any major cases or minor cases, any complaints coming in because the chiefs play a role in trying to keep their people within the customary code of practice let's say, and even the Church plays a bigger role too in trying to keep their church members within the Christian conduct.

CHIEF TOM NUMAKE: Chiefs always had their own custom laws before Christianity arrived in Vanuatu. Actually our custom law, which has been there a long, long time before the Condominium government formed in Vanuatu, and also before we had our independence we had these laws.
VETUNA: Chief Tom Numake from Tanna Island is the President of Vanuatu's National Council of Chiefs, the Malvatumauri.

In Vanuatu, each island has its own custom laws to resolve differences.

CHIEF TOM NUMAKE: For an example if you steal a pig then we say you have to kill a pig and you have to swap the live pig to swap that one you kill. And also for other things like if you murdered a person, if you killed someone, kill him dead according to our custom, we have different customs in each island of Vanuatu and for Tanna, if you kill someone, then you have to give pigs and kava, vegetables, mats and grass skirts, and on top of that you have to swap the person you killed, even by accident or you meant to do it, you have to give a girl and the girl for Tanna is the last peace making equipment we use, but that's the last tool we use for peace making in our islands. So if you give only a pig or kava, that is not enough, you have to give a girl and it has to be over 21 years old so that once it goes with the family of the dead person then she's married at the same time and raise up the family of the dead person. And that's our punishment and people in Tanna they always respect and it's still going on until today.

VETUNA: However what constitutes a settlement under customary law is not always acceptable under introduced state laws. In some cases, police investigation and criminal proceedings are perceived as double and unfair punishment.\(^7\)

Further, Numake continues:

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CHIEF TOM NUMAKE: Custom laws is absolutely different because we don't have jails and the difference is that for us once we shake hands, we drink kava together, that's the end of it. But the other laws, if you put someone in jail for an example who is married, has got children, wife and children back at home, once you put that person into jail we say in custom that it looks like you've put more burden on the whole family now because he should be at home to look after the kids, the woman cannot look after the children by herself. So we say in custom, putting people in jail you put more burdens on the whole family.  

It appears that a Western legal system is useful where traditional systems are not functioning (for whatever unspecified reason), and where traditional systems are functioning, there seems to be no need or demand for Western systems. From an administrative point of view, and from a theoretical point of view which views the legal system as a unitary whole, the systems is in a state of chaos, yet from the perspective of these participants, and interviewees with their own understanding of the culture and experience on the ground, it seems to be a workable system.

Thus, although participants in the legal systems in Vanuatu may find themselves able to navigate their respective spheres, inevitably there must be clashes, not all of them readily resolved. The case law and cases themselves indicate numerous tensions existing particularly in the centres and where considerable wealth is at stake. In those instances, and where foreign property interests are involved, the courts have leaned heavily on Western

78 ‘Justice, Law and Order’, note 77 above.
79 Mentioned by various people informally as well as in in-depth discussion with the Vanuatu Association of Non-Governmental Organizations, representatives were Seru Virokanu, and Lai Sakita, commenting specifically on the role of the chiefs in community problem solving and indigenous ‘democracy’ July 2007.
legal resolution in some instances making it all but impossible for indigenous systems to be heard. Still, in other instances fundamental conflicts of objectives have yet to be resolved. For example, William Miles observes: ‘assessing culpability, the aim of Western jurisprudence, skews the process of reaching compromise, the goal of Melanesian dispute resolution.’

80 See Care, ‘Cultures In Conflict’, note 18 above.
81 Miles, Bridging Mental Boundaries (note 21 above), p 167.
83 Mr M Naparau, Principal Economist of Vanuatu; Mr. Suhas Joshi, Public Financial Management Advisor (PFMA), of the IMF executive agency, Pacific Financial Technical Assistance Centre, Suva, Fiji; Martin Brownbridge an IMF consultant attached to the PMFA, Rave Nikah, Secretary to Head of State, and informal interview with William Edgell.
84 Various people encountered in shops, markets, restaurants, and government offices were pleased to speak on an informal basis about the situation.
85 Efriam Kalsakau, the General Secretary of the Vanuatu Council of Trade Unions, interviewed 12 July 2007.

c. Ongoing Societal Issues—Voices On The Ground

The governance dialogue has been described as a thinly veiled euphemism for ‘politics’—that is the politics of Western powers seeking to ensure accountability for aid dollars and secure opportunities for their firms looking to invest. The objective of the World Bank and other international bodies concerning governance is clearly to advance a liberal, representative democratic form of governance, and, of course, to create economic opportunities through free markets.

To gain a better understanding of how the systems and institutions were working, interviews with representatives of government, civil society, labour and NGOs were

80 See Care, ‘Cultures In Conflict’, note 18 above.
81 Miles, Bridging Mental Boundaries (note 21 above), p 167.
83 Mr M Naparau, Principal Economist of Vanuatu; Mr. Suhas Joshi, Public Financial Management Advisor (PFMA), of the IMF executive agency, Pacific Financial Technical Assistance Centre, Suva, Fiji; Martin Brownbridge an IMF consultant attached to the PMFA, Rave Nikah, Secretary to Head of State, and informal interview with William Edgell.
84 Various people encountered in shops, markets, restaurants, and government offices were pleased to speak on an informal basis about the situation.
85 Efriam Kalsakau, the General Secretary of the Vanuatu Council of Trade Unions, interviewed 12 July 2007.
conducted in July 2007. They revealed a difficult relationship between those in power supported by the Western institutions representing fulfilment of Western promises, and the populace struggling to cope with the difficulties of living in a developing country, with a burden of a corrupt, ineffectual, self-interested national government. In broad terms, the issues identified were employment, education, gender equity and corruption of the national government.\footnote{Our study confirms similar findings by Huffer and Grace in interviews conducted in 1999. Huffer and Amolisa, ‘Governance in Vanuatu’, (note 3 above), p 3.}

For example, the problems of national government corruption can be seen in the report of the Vanuatu’s Ombudsman’s legal counsel\footnote{K J Crossland, ‘The Ombudsman Role: Vanuatu’s Experiment’, Discussion Paper 00/5 Research School of Pacific and Asian Studies available at http://rspas.anu.edu.au/papers/melanesia/discussion_papers/crossland.pdf.}—a perspective supported by Transparency International.\footnote{Larmour and Barcham, Transparency International Country Study Report, (note 53 above), p 8.} As seen in the constitutional crisis discussed above, the Western legal system facilitates as much as it circumscribes politicians proclivity for corruption. Interestingly, in an informal interview with William Edgell, one of the people implicated in Sope’s scandal\footnote{Crossland, ‘The Ombudsman Role’, note 88 above.} mentioned corruption as a problem.\footnote{Informal interview, July 2007.}

One particular institution, embedded in the Constitution, designed to limit corruption among other things, is the office of the Ombudsman. Although Vanuatu adopted its Constitution in 1980, there was no subsidiary legislation creating the office until 1994 and no Ombudsman appointed until 1995.\footnote{Hill, ‘The Vanuatu Ombudsman’ in Jowitt and Cain, Passage of Change, (note 14 above), p 72.} At the end of the term of the first ombudsman, who...
proved to be active, popularly supported, for outspoken exposure of corruption (although of questionable efficacy if one seeks for a change in practices), a new Ombudsman came in who has closed ranks with the politicians in power. The current ombudsman, Peter Taurakoto, not only refused an interview once he understood that the interview was not merely a press opportunity but a research interview, but indeed would not even speak to the researcher. In any event corruption is a particularly difficult concept in Vanuatu, which has a culture of gift giving. Yet corruption is not the only or even most important issue facing ni-Vanuatu.

Several interviewees indicated the severe problem posed by a lack of education for the ni-Vanuatu. Without sufficient education, they did not understand the role of politicians. Indeed, even the politicians fail to grasp the nature of the system and hence their responsibilities as noted by Efraim Kalsakau, the General Secretary of the Vanuatu Council of Trade Unions. Kalsakau observed:

Our leaders are not prepared to enter politics, people are elected to Parliament with very little knowledge of what is happening out there. People really don’t understand what globalisation is all about. They have not studied economics so, [as a result of poor education] people are voting for bags of rice and that is not good. So, I think that the Government has to educate the people.

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91 Hill, ‘The Vanuatu Ombudsman’ in Jowitt and Cain, Passage of Change, (note 14 above), p 72
93 Jenny Ligo, CEO of the Vanuatu National Council of Women; Rave Nikah, the Secretary to the Head of State and Efraim Kalsakau, the General Secretary of the Vanuatu Council of Trade Unions.
94 Interview 12 July 2007.
Ni-Vans did not understand their form of government, and although keen to do so and to participate, they had not the information and hence lacked the capacity.\(^97\)

Some interviewees saw education as the key to reduced corruption. Their view was that a better educated populace would understand, identify and oppose corruption more readily.\(^98\)

Kalsakau explained that one of the main thrusts of the labour movement was the education of villagers about democratic government. He speaks to people on various islands about how democracy works and finds the populace interested in and agreeable to the system. Yet, he finds that the government does not support civic education.\(^100\)

Much was made of the lack of economic opportunities in terms of employment, and particularly so for young people. From casual observation it is evident that there are groups of unemployed and underemployed young men on the streets of the capital Port Vila. Community leaders identified lack of jobs as a major source of concern and unrest.\(^101\)

Interviewees believed that the lack of jobs correlated to an increase in crime, increased potential for civil unrest, which combined with a general sense of injustice did not bode


\(^{98}\) Efraim Kalsakau, the General Secretary of the Vanuatu Council of Trade Unions.


\(^{100}\) Interview 12 July 2007.

\(^{101}\) Kalsakau, and interviews with Seru Kirokanu, of Vanuatu Association of NGO’s and Lai Sakita of TAFEA Council interviews 13 July 2007.
well. With extra time on their hands, young men spent time watching violent action movies and plotted and planned ways of engaging in criminal activity in the country.\textsuperscript{102}

The lack of economic opportunity was tied to lack of educational opportunities by all interviewees. Concerning the education and employment connection Jenny Ligo, CEO of the National Council of Women had this to say:

\begin{quote}
Everybody have to pay [for school] and nobody pays because they can’t pay. Even 1000 vatu is not easy. They need to educate the people to use their own resource like, help them to grow crops or, help them how to use their resources. Because, some of them say, oh we plant, we plant, the farmer said we plant taro, we plant, but there is no market. So, they come here… to Vila, they don’t have a proper place…. There will be more, not unqualified, many people will be putting out from school. But, there is not enough employment.\textsuperscript{103}
\end{quote}

There is also the particular matter of injustice on the issue going back to Australia’s policy of ‘black birding’ in the last century. While at that time, indigenous people were essentially kidnapped from Vanuatu (and other Pacific islands) and forced to work in the cane fields of Australia. Now, when it is no longer deemed to be in Australia’s interests and accordingly, migration from Vanuatu to Australia is now very difficult.\textsuperscript{104} The irony of the situation is not lost on the inhabitants of the Vanuatu.

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\begin{itemize}
\item \textsuperscript{102} Noted by Kalsakau in his discussion with and observations of young men at the trade hall.
\item \textsuperscript{103} Interview on 13 July 2007.
\item \textsuperscript{104} Views of Kalsakau, and Ligo.
\end{itemize}
In interviews, they recalled their history, recognised their current need for immigration, the opportunities immigration represents and the obstacles placed before them by Australia. It is a real issue. There is a real sense of being the poorer cousin on the one hand baited by the images of television, movies and wealthy foreigners, while denied access to opportunities on the other the issue is not only labour but extends across Australian foreign policy to include trade generally. As Prof. Ron Crocombe, the academic father figure of Pacific studies describes it:

> Australia and New Zealand have always – Australia particularly – always tried to kill any question of labour mobility. Australia says, 'You must open up everything where Australia will benefit from – your markets, your investment, your everything else. But anything that you will benefit from ...' – and about the only thing they will benefit from is some labour market access – 'No, you can't have that.'

Despite the manifest injustice of this stance, it remains the Australian policy through to the present.

Interviewees saw hope in the institution of the chiefs. The chiefs seem more connected to the people, more interested in balancing community needs and resources, and to hold more authority. While the state politicians may have been out of control, self-interested,

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manipulators of the state system, the chiefs seemed to be the true leaders of the people. In other words, traditional dominance is seen as a preferred option for governance, at least in some respects. Even a broader democratic governance was seen as a potential contribution of the chiefs. Today’s chiefly process was explained to the interviewer in the following terms:

It is not like they just come from their house and say what they want to the people and then go. They listen to every individual member of the community, even the woman and there is a meeting place for men. After every meeting, the men will go back to the home and say what comes out of the meeting, in their own home and the woman will have the final say. [if she does not like it, she will advise the man who will then return to a reconvened meeting]…. Chiefs, they are just like spokesman. There are certain times when things get out of hand and they come in with general orders, but not all the time. Most of the time, in the afternoon they drink Kava and they share ideas and then they come up with some consensus and the Chief will say, this is what we are going to do.106

Interviewees were not of the view that chiefs were the solution for everything. Some suggested that the chiefs’ contribution would be strongest in subsistence economies still operating on many islands.107 One of the problems noted by Ligo was that the Council of Chiefs was composed exclusively of males and that this perpetuated longstanding problems of power imbalance between the genders. Yet, in terms of over all control of violence and

106 Interviews with Seru Kirokanu, of Vanuatu Association of NGO’s and Lai Sakita of TAFEA Council (13 July 2007).
107 Interviews with Seru Kirokanu, of Vanuatu Association of NGO’s and Lai Sakita of TAFEA Council (13 July 2007).
control of politicians, there was a consensus that further solutions were necessary and that the chiefs may well be an important part of the solution.

Still, any solution coming from the institution of chiefdom needs to recognise the inherent contradictions between it and the Western liberal state as legal domination. As Powels observed: ‘Chiefship and traditional decision-making cannot survive incorporation into imported authority systems which, in order to achieve their purpose, are required to retain their Western function and style.’\(^1\) While Powels may be overstating the case making it an either-or situation, he has identified an important contradiction between the systems. He goes on to identify the issue more specifically as follows:

…to those who regard chiefship … as inconsistent with the egalitarian principles upon which participatory democracy should be based, the sooner chiefship receives the ‘kiss of death’ the better. For others, it seems that small-scale non-Western societies lacking expensive infrastructure cannot afford to lose too quickly any institutions which contribute to the quality of daily life in a manner acceptable to the people concerned.\(^2\)

Although Powels identified these issues in 1982, they remain outstanding issues which need to be addressed in moving toward more effective use of the constitution to provide effective governance.\(^3\) Perhaps the underlying tension is best clarified by reference again

\(^1\) Powels, ‘Traditional Institutions’, (note 52 above), p 347.
\(^3\) Powels also notes the innate conflict of interest in owing chiefly status to one’s tribal on traditional lines and so required to support the tribe on the one hand, but having one’s recognition and empowerment by the state dependent on being required to be loyal to the state as a state agent on the other. Powels, ‘Traditional Institutions’, (note 52 above), p 353; however, it is not clear that this is a uniquely South Pacific problem——
to the Weberian conception of ‘traditional dominance’ versus ‘legal dominance.’ It is noteworthy that Weber did not see them as mutually exclusive or ‘pure’ types. Weber suggests that the reality is a mix of types. Until there is some real need or benefit shown causing a shift to legal dominance, the efforts and hopes of extinguishing and replacing traditional dominance are an unhelpful if not actually harmful approach to addressing the problems of governance.

5. CONCLUSION

The society described by Geertz fifty years ago has much in common with the society thriving in the islands today denominated as ‘Vanuatu.’ The concerns remain much the same, the social structures much the same, but increased contact with the rest of the world as a result of telecommunications, membership in the state based international system, and an increasing shift to a market based economy suggest that the awkward straddling between social systems will continue and the movement will continue to toward legal domination. As Weber observed, the forms of domination are not mutually exclusive, and the greater the extent that impersonal administration is needed, the greater will be the value of bureaucracy and legal domination. That awkward straddling which results from insiders’ changing needs in response to participation in the international system and globalisation and from outsiders who as members of the international system and as donors call for certain forms

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one considers, for example the conflicting loyalties of any democratically elected politician to the voters and to the government.


of governance and accountability, lead us to believe that a shift toward legal dominance will continue. For it to continue effectively, however, some new thinking needs to take place.

Professor Robert Hughes argues that particularly in the context of the South Pacific the state needs to be reconceptualised. He states:

what the state presupposes is not some all-embracing unity as such. What it should be taken to presuppose is, rather, an identity; but an identity understood in a particular way that is consistent with the idea of the state as a substantive association rather than as an abstract of formal corporate institution. …. We often lose sight of the fact that the state is basically composed of human individual who are associated in various ways. The tendency has thus long been to conceive of the state in wholly abstract formal terms, such as appears in the corporate theories of the state. In the South Pacific states, given their size and the relative familiarity involved in social relations between their citizens, the abstract conception seems immediately inappropriate.\textsuperscript{113}

Yet, despite his insight, the conceptualization not only continues, but governs the remedies prescribed by outside parties seeking ‘good governance’—i.e. powerful civil institutions of a Western, constitutional democratic society. All in all, Western liberal democratic institutions of the nation state and its legal system, the ‘foreign flowers’, fail to offer comprehensive solutions to the entrenched socio-political problems while certainly pre-

exiting the European invasion, exacerbated by their institutions. The situation has been described as ‘jurisprudential schizophrenia’.

The traditional dominance holds and will not be displaced simply because foreign influence has demanded legal dominance through the creation of a nation state with liberal democratic principles enshrined in a constitution.

Nevertheless, it would appear that legal dominance through the creation of the nation state and its Western legal system does hold certain attraction and offer certain strengths to Vanuatu—not to mention the alternative—an undesirable and in all likelihood impossible return to a pre-Western history several hundred years ago. Given Vanuatu’s multiculturalism and pluralistic legal traditions, some form of system that allows accommodation of those various traditions is imperative.

Yet the nation state governmental system as its stands has been described as ‘irrelevant to the day to day lives of many people’ and one assumes this can be extended to the legal system. No system can survive long if it is not relevant to those purportedly dependent on and governed by it. The lack of buy in and corollary rejection of traditional systems, the manipulation of the nation state system by wily politicians, the failure of that system to address the needs of the people or serve their interests, while being little more than window dressing for aid donors suggests that the system is a hollowed out, still-born transplant, failing to truly address the needs and interests of the local populace or those of outside interested parties regardless of the legitimacy ascribed to those interests.

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To the extent that Vanuatu is going to be ‘constituted’ as a nation among the nation states of the world, to be organised along the lines of legal domination, it is going to have to do so on its own terms, recognizing itself as a pluralistic society, a society with knowledge of its members not impersonal, cognizant of its highly diverse traditions, and deeply imbedded cultural heritages from the South Pacific and Europe.\textsuperscript{116} Constituting Vanuatu is not going to occur as the result of the imposition of some black letter law by interested outside powers. It will not occur as a result of foreigners imposing their agendas with the collusion of interested insiders via a Constitution under the rubric of good governance, but a decision from those under traditional dominance that a move to legal dominance and the adoption of its corollary distributions is preferable and indeed necessary to survive in the twenty-first century.