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TRADITIONAL LEADERS AND LOCAL GOVERNMENT IN PACIFIC ISLAND COUNTRIES

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Introduction: ‘traditional’ leadership and contemporary governance

The ‘call for recognition’ of the role of traditional leaders in contemporary governance has been made by a range of actors and agencies in the Pacific region. A 2003 Commonwealth Pacific Regional Consultation on Maximising Civil Society’s Contribution to Development and Democracy recognized that Pacific indigenous and traditional forms of governance provide authority within their local areas, help maintain Pacific values in the wider society, and provide holistic world views beneficial to the natural environment. A 2004 Regional Symposium on Local Democracy and Good Governance similarly urged commitment by states to develop collaboration with traditional leaders at local level, and highlighted the importance of traditional governance structures in improving governance and reforming local government (Commonwealth Secretariat 2005). While noting the difficulties involved in integrating traditional and modern systems of governance, the Symposium noted the desirability of planners and administrators collaborating with both traditional and modern structures and their associated values: ‘Both traditional and modern approaches to conflict resolution, for instance, should be brought together as an assistance to countries in the region.’ The ‘Auckland Accord’ adopted at the 2007 Commonwealth Local Government conference stated:

Sites of competing authority at the local level are damaging to community wellbeing. The Aberdeen Agenda underscores the importance of inclusive governance with local government acting as first among equals. Effective cooperative governance frameworks that suit the local conditions enable traditional and democratic systems to operate side-by-side or be complementary in the attainment of local development . . . It is essential to have a clearly defined legal framework as . . . the basis for effective cooperation in the local governance context. A sustainable and structured framework for dialogue is needed to ensure genuine communication and provide a peaceful dispute resolution mechanism.

(University of Technology Sydney 2007: 4)
A knowledge and understanding of the fundamental cultural groupings prevalent in the Pacific Islands and the differences they display in matters of leadership selection and roles is thus important to understanding local governance in traditional settings. The population of Oceania is approximately 10 million persons, living in tens of thousands of villages, hamlets, settlements, and towns, on thousands of islands, spread across some 20 countries and an ocean area of 550,000 square kilometres. These are some of the ‘small island states’ of the contemporary era: ten remain dependent on one or other metropolitan power, and the populations of the independent states range from 10,000 (Nauru) to almost 8 million (Papua New Guinea).

Cultural diversity across the Pacific influences styles of leadership and the institutions of government. Sahlins’s (1963) anthropological work differentiated Melanesian ‘big-man’ societies, in which leadership is achieved, and Polynesian ‘chiefly’ titles, which are generally ascribed by birthright, but noted that both constituted viable systems of government:

Almost all of the native peoples of the South Pacific were brought up against intense European cultural pressure in the late eighteenth and the nineteenth centuries. Yet only the Hawaiians, Tahitians, Tongans, and to a lesser extent the Fijians, successfully defended themselves by evolving countervailing, native-controlled states. Complete with public governments and public law, monarchs and taxes, ministers and minions, these nineteenth century states are testimony to the native Polynesian political genius, to the level and the potential of indigenous political accomplishments. (Sahlins 1963: 288)

All traditions are modified over time. What passes as ‘traditional’ in contemporary times is necessarily a modification of pre-colonial and colonial era practices and could more accurately be termed ‘neo-traditional’. In the 1880s, for instance, Fijians were not allowed to revisit or attempt to resurrect the tradition and culture of pre-colonial era, a period called in Fijian ‘Daku ni Kuila’ (the period before the Union Jack was raised), accompanied by introduction of the Wesleyan Christian Catechism and education system that created the imaginary Trinitarian vanua (tradition), lotu (church) and Matanitu (State). But whereas traditional leadership was based on ascription, and on prowess in war and state-craft, it was ‘fossilized’ by the British such that traditional leaders became protected government functionaries as part of the colonial administration’s ‘indirect rule’. After independence was gained in 1970, the role of traditional leaders in contemporary governance became less certain: ‘Fijians gradually sensed a drift and purposelessness’ (Madraiwiwi 2005), and now the Great Council of Chiefs has been disbanded.

In the case of other Polynesian societies such as Tuvalu, the terms ‘tradition’ and ‘traditional governance’ refer to values, beliefs, legends, artefacts, and institutions as filtered and modified by both Samoan pastors of the London Missionary Society and by British colonial government officials.

In some places the very term ‘chief’ was introduced by colonial authorities or missionaries, keen it identify leadership patterns they could understand and work with. Bolton says of Vanuatu:

In order to establish points of entry into communities, the Condominium created two categories of person, and appointed community members to them – the categories of chief and assessor. Assessors were established in the Anglo-French protocol of 1911 to act as consultants in cases presented to Native Courts, which were hearings over which District Agents presided. As time passed the role of assessors was modified, and they were given increasing responsibility, being left to settle minor disputes themselves.
The second category of person introduced by the Condominium was that of chiefs. The Presbyterian chiefly model was taken up and modified by the Condominium Government in order to establish individuals throughout the archipelago who could represent and act for their community in dealings with outsiders.

(Bolton 1998: 183)

Studies by Lawson (1990) and White (1992) describe the invention of chiefly categories and traditions in Fiji and Solomon Islands respectively. Maasina Ruru, an anti-colonial political movement among Malaita Workers in the Solomon Islands Labour Corps during the 1930s and 1940s, advocated the creation of an indigenous hierarchy of ‘chiefs’ to counter the colonial hierarchy of headman and district officers, and to demand political rights and the application of customary law. The chief was the focus of power and meaning in village life, and his formal roles as feast giver, alliance-maker, and warrior, embodied the vitality and integrity of their region. In the case of contemporary Bougainville:

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\textit{kastom} \text{ is not the same as the custom of the ‘old days’, and it is changing, fluid, too. . . . } \textit{kastom} \text{ refers to the effort to bring institutions and ways that are rooted in indigenous local traditional practices into a modern political realm where both indigenous and exogenous social and cultural forces are at work.}
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(Boege 2006: 2)

Although the passing of long-established leaders Tupou IV of Tonga (in 2006) and Malietoa Tanumafili II of Samoa (in 2007) tested the public’s loyalty to notions of paramount rule in those countries, the hold of custom remains strong. Even though these small Pacific countries adopt Western conventions and codes of law, their value systems continue to rely on ancient codes which are acknowledged in society but not in the constitution. In the case of Samoa, for instance:

Although much has been written about the \textit{fa’asamo} and \textit{fa’amata}, most of it has had an institutional, systemic, or procedural focus. Relatively little has been written about the principles that underpin the system. Important concepts such as \textit{pule} (authority, power); \textit{soalaupule} (joint decision making); \textit{autasi} (consensus); \textit{alofa} (love, compassion, care); \textit{fa’aaloalo} (respect); \textit{mamalu} (dignity); \textit{fa’autaga}, \textit{töfä}, and \textit{moe} (all refer to wisdom), and many others, have not been defined extensively, and yet they constitute the basis of indigenous Samoan institutions.

(Huffer and Asofou So’o 2005: 312)

In Kiribati, social organization maintains some traditional organizational patterns. \textit{Kainga} (hamlets) comprising between twenty and one-hundred family members, remain the foundation of social and residential units. Kainga are usually led by the oldest male, who allocated such tasks as procuring food and other necessities of life in accordance with a clear division of labour based on sex and to a lesser extent, age; assisted with arranging marriages and adoptions; procured the services of specialist canoe builders, house builders and healers; and represented his \textit{kainga} at the district maneaba, a traditional yet continuing institution described by Maude (1977) as ‘the focus of the whole social life of the community’:

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\text{in it were held all discussions concerning peace or war or any of the other innumerable concerns affecting the common weal; it was the Law Court, where offenders against customary norms were tried, and disputes heard and arbitrated by the Old Men; and}
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Pacific Island countries

the centre for the many ceremonies and feasts of a formal character, as well as the more dignified community recreations and dances . . . The maneaba was all that to the [I-Kiribati], and much more; the traditional club-house of the aged; a pied à terre for the stranger; and a sanctuary for those in flight. All behavior under its roof had to be seemly, decorous, and in strict conformity with custom, least the maneaba be matauninga (offended) and the culprit maraia (accursed).

(Maude 1977: 34)

Although these roles have been redefined in contemporary Kiribati society, the powers and legitimacy of the maneaba still carry weight. The Laws of Kiribati Act 1989 recognizes the continued authority of village elders, through the maneaba, to lead major community projects and activities.

There are, thus, societal values throughout Pacific Island societies that underpin daily life which draw heavily on social systems of the past but which are in some instances of relatively recent origin. If anything, the notion of ‘chief’ is not merely undergoing a revitalization, but is being ‘re-badge’ in service of the modern state. Papua New Guinea, for instance, has incorporated chiefly status into its system of public honours. In Samoa, matai can be national leaders as well as local, since the Electoral Amendment Act of 1990 only entitles matai to stand for election to the 45-member Parliament. In Samoan perspective this is ‘faa-Samoa’ (in the Samoan tradition), since the Member of Parliament remains answerable to the matai of the nu’u (village meeting, or ‘fono). Although in theory MPs are those who win at general elections, their tenure is in practice at the pleasure of the nu’u, which determines the ‘pre-selection’ of candidates.

In Solomon Islands, a proposed review of government in the lead-up to independence recommened that chiefly authority be embedded in local government bodies, and that chiefs hold an annual conference of Elders (British Solomon Islands 1972). In a church-supported initiative for the Island of Santa Ysabel, Anglican Bishop Dudley Tuti was in 1975 installed as paramount chief for the entire island – an arrangement that continues to the present - although nowhere else in the country, since Santa Isabel is Solomons’ only island with island-wide traditions.

There is, at the same time a counter-movement, in which chiefly roles are being questioned, especially by youth and women, who regard the inscription of power in senior men as limiting or devaluing. Such tensions between introduced systems of governance and the pre-existing systems are widely reported (Larmour 2005).

But what needs to change: tradition, or modernity? Few now argue that ‘traditional’ forms of authority should be abolished or allowed to wither away, while some question how appropriate ‘modern’ forms of democracy are for Pacific societies.

Scope of jurisdiction

Reforms have increasingly sought to restore the role of tradition in local government and to bring together elected officials and traditional elders or even replace the former with the latter. However, while tradition may play an important role in the maintenance of identity, traditional authorities are not necessarily good at delivering services. Moreover, they are not generally able to deliver such services as hospitals, or road maintenance, which require expertise and are subject to economies of scale, or to deliver services that have significant externalities, like immunization. A World Bank report has assessed Pacific Islands’ governance as:

. . . national government planning and control that does not involve local authorities in a co-ordinated manner; poor communication among municipal government, rural
local authorities, and urban villages in the same metropolitan area; a tax burden to support urban development that falls unevenly on beneficiaries in the urban region; and a lack of capacity to address the needs of the population, which vary greatly across jurisdictions. Equally, traditional forms of governance are also unlikely to respond adequately to these pressures.

(Commonwealth Secretariat 2005: 80)

Leaders whose jurisdictions were geographically bound by the traditional location of their cultural and political community now seek to continue their roles and responsibilities among communities that straddle not only rural and urban environments, but also trans-national ones. For many, the chief personifies aspects of central value and identity that are increasingly seen as being threatened by ‘western’ values of individualism and materialism.

**Constitutional recognition**

The extent to which Pacific Island constitutions recognize traditional institutions and norms of leadership and governance was debated during preparations for independence. Constitutional solutions were easiest to discern where such traditions were already acknowledged nation-wide. Where traditional institutions differed by locality, however, entrenchment at national level was more difficult and was usually handled through later legislation, which allowed for localized implementation. For some countries, such as Solomon Islands, this resulted in a situation in which traditional leadership and governance although ignored in the national constitution remains the foundation of decision-making at community level. Pacific Islands’ Constitutions thus vary greatly in the extent of their formal recognition of tradition, and the presence of absence of such provisions is not an indicator of the strength of informal traditional authority.

The Constitutions of Marshall Islands and Vanuatu establish Councils of Chiefs and in 2006 Vanuatu passed a *Chiefs Act*. Section 2(a) of the Marshall Islands Constitution (Functions of the Council of Iroij) provides for a council that may consider ‘any matter of concern to the Republic of the Marshall Islands, and it may express its opinion thereon to the Cabinet’. The Constitutions of Palau and the Federated States of Micronesia similarly recognize the authority of traditional leaders. Kiribati’s Constitutional preamble acknowledges that society’s continued adherence to its traditions and heritage. Although the Constitution does not articulate the role that Parliament should play in giving due recognition to customary law and traditional authorities, the *Laws of Kiribati Act* deals recognizes customary law and traditional authorities, and Constitutional Chapter 9 allows the Banaban community to be represented in the Maneaba (Parliament) by a representative (i.e. traditional leader) rather than by an elected member. In Papua New Guinea the Constitution of the Autonomous Province of Bougainville reserves seats in the Provincial Council for traditional leaders.

The Constitution of Solomon Islands gives specific recognition to customary law by virtue of Section 76 and Schedule 3, which recognizes custom as a source of law, but places it below the status of the constitution and statutory law. Parliament can make laws for the application of customary law in the country, and the Constitution directs Parliament to provide a role for traditional chiefs in local governance (Section 114(2)). Attempts had been made under this provision to appoint chiefs in provincial area council assemblies, but the attempt failed, partly because only males can be chiefs, and this norm conflicts with overriding requirements to deliver gender equality. A current draft constitution provides ‘church leaders, youth leaders and women’s representatives, as well as traditional chiefs’ (Nanau 2002: 19) with a role in national
legislative processes through membership of a ‘Congress of Governors’ so as to ‘assuage
the conflict of traditional and modern laws, and to encourage communities to take ownership of
the system’ (ibid.).

In the case of Samoa, Constitutional article 111(1) holds that law is ‘inclusive of any custom
or usage which has acquired the force of law in Samoa or any part thereof under the provisions
any Act or under a judgment of a court of competent jurisdiction’. More than two decades
passed before Parliament responded to this provision with the Village Fono Act 1990, which is
discussed in more detail below. There are also Constitutional provisions that deal with land.
Clause 103 recognizes customary land as one of the three categories of land ownership in
Samoa. By defining ‘Customary land’ as land held in accordance with Samoan custom and usage
the provision recognizes traditional land governance practices. The Constitution also establishes
a Land and Titles Court (Clause 103) to deal with land matters and matai titles. Constitutional
Article 44 provides that the qualification for a person to stand for election will be determined by
statute, and the statute, in turn, declares the determining qualification as being position of matai
title, which can only be held through adherence to Samoan custom and usage.

The Constitution of Tonga is silent on the role of customary law. However, at the same
time it continues the recognition of the Tongan leadership system first codified in the 1875,
Constitution, which recognized the monarchy, and granted land rights and titles to twenty
nobles and their families. There are now thirty three nobles. All village affairs and local govern-
ment is thus subject to a strict hierarchical social order of King, nobles, and commoners.

Vanuatu’s independence Constitution of 1980 (Article 95(3)) recognizes customary law,
custom practice and traditional authorities. Parliament is authorized to provide for the manner
of ascertaining of custom. Article 29 establishes a Council of Chiefs (Malvatumauri), comprising
31 custom chiefs representing Island councils, village councils, and urban councils, entitled to
discuss matters relating to custom and tradition, to make recommendations for the preservation
and promotion of ni-Vanuatu culture and languages (article 30), and to be consulted on any
question, particularly any question relating to tradition and custom, in connection with any
bill before Parliament (article 30(2)). Article 49 allows courts to accept people knowledgeable
in custom to sit with judges in proceedings with a component on customary law. Courts are
authorized to base decisions on custom in instances when no statute is applicable. Although
Constitutional Article 95 recognizes customary law as part of the laws of the Republic of
Vanuatu, it has not proven easy to practically combine both customary laws the formal legal
system. The Great Council of Chiefs has expressed the view that legislation has the effect of
eroding customary law.

There are, at the same time, some counter-veiling trends. Although the Constitution of
the Federated States of Micronesia (1970) provides for traditional rights, a Constitutional
Convention in 2002 specifically excluded traditional leadership from membership. Hagglelam
explains that traditional leaders are not fully recognized in the constitution, but remain
important:

the future of traditional governance at the states level in the Federated States of
Micronesia is not too rosy. At the national level, it is downright impossible because of
opposition from Chuuk and Kosrae. For the Federated States of Micronesia, creating a
role for the traditional chiefs to preserve custom and traditional would amount to chas-
ing a phantom because, no matter how one argues it, there is no such thing as national
custom and tradition. What the traditional chiefs need to protect and preserve are the
various customs and traditions of the four states; so the task would be better handled at
the state-level. However, a useful new role of the traditional chiefs might be created
to promote national unity. The traditional leaders might be able to bridge the cultural divides that exist among the states in the Federated States of Micronesia. This new role would be more politically useful and nationally relevant than the role of protecting and preserving customs and traditions that do not exist at the national level.

(Hagdelgam undated)

Statutory recognition of traditional rights

Apart from recognition of traditional authority in national constitutions, it can also be provided in subsidiary legislation. In Solomon Islands, Makira-Ulawa Province’s Chiefs Empowerment Act adds chiefs to the Provincial leadership machinery and to the Provincial Payroll. In 2007 then Prime Minister Manasseh Sogavare attended celebrations and was invested as paramount chief of Makira and Ulawa and Ukinimasi’. The Customs Recognition Act (2001) lists criminal and civil matters that courts can deal with in accordance with custom. The Local Government Act (1985), however, which provides for the regulation and operation of local area councils, including town councils, is silent on the role of custom and traditional authorities, apart from empowering Councils to determine which forms of custom are good and should be encouraged within council boundaries. The Provincial Government Act (1997), which regulates the operation of provincial governments in Solomon Islands, does not refer to customary law or the use of any form of traditional authority within its governance system. A similar law with no mention of custom and traditional authority is the Honiara Town Council Act (1999). Other Acts like the Islanders Marriage Act (1945), Islanders Divorce Act (1960) and the Wills, Probate and Administration Act (1991) provide for the administration of marriage, divorce and administration of estates of Solomon Islanders respectively. Each of these Acts give recognition to custom and the function traditional authorities perform in the ceremonies or roles.

In Vanuatu the Vanuatu Cultural Centre has projects on Traditional Resource Management and the Traditional Ecological Knowledge (TEK) and Traditional Resource Management (TRM) Database Project. Furthermore, the Pentecost-based Melanesian Institute of Philosophy, Science and Technology hosted the Vanuatu Indigenous Peoples’ Forum at Lavatmagemu village in north-east Pentecost in April 2007. The Forum brought together 500 participants from all over Vanuatu. The resolutions of the Vanuatu Indigenous Peoples’ Forum were finalized as the Lavatmagemu Dekleresen 2007, parts of which were then presented (in the month of May) to the 6th session of the United Nations Permanent Forum on Indigenous Issues in New York. In 2007 Shefa Province was engaged in a ‘Year of Traditional Economy’ awareness campaign designed to encourage the revitalization of traditional cultural practices and heritage, including resource management and governance practices as the basis for the continuing strength of the traditional economy; and encouraging people who are involved in production within the traditional economy to value their role and to continue expanding the production of traditional foods and wealth items within that economy.

Kiribati is one of the few Pacific Islands countries that has provided clear guidelines about customary law as a source of law. The Laws of Kiribati Act 1989 declares customary law to be enforceable in all courts, and sets out clearly the different purposes in which custom maybe considered in both criminal and civil matters. In criminal matters custom can be used to determine the existence of a person’s state of mind, reasonableness of an act or excuse or to determine a penalty. In civil matters it is used to determine ownership by custom, rights to possession, administration of native land, and the rights of married people and children. Section 6(3)(b) of the Act establishes the hierarchy of laws, stating that where there is conflict between customary law and common law, customary law shall always prevail. This applies to
such matters as administration of customary land, custody and guardianship of children, and communal leadership in village projects – thus providing considerable scope for traditional leaders to exert their roles and functions at local level. The Marriage (Amendment) Act 2006 recognizes the need to ensure marriage follows the customs and traditions of the Kiribati people. It allows, for instance, marriage to the sixth degree of cousinship as ordered by custom and tradition as compared to second cousins in the previous provision.

The Island Courts Act (1983) authorizes island courts to take into account customary law and practices when dealing with criminal cases. This practice was promoted in the courts higher in the court hierarchy by the Criminal Procedure Code Act (1981) which promotes reconciliation and dispute settlement in accordance with custom (Section 118). It is a requirement under section 119 for courts to take account of any compensation or reparation made under custom by parties or traditional authorities.

The Local Government Act 1984 provides for a local government authority on all the islands in Kiribati in the form of an island council, empowered to amend customary law as it sees fit when making by-laws. The Act has facilitated a gradual devolution of authority to allow citizens to take charge of their own development at local level (although central government retains a supervisory role over the operation of local government). Island Councils are often assisted by the Botaki ni Unimwane, an assembly of older islanders who act as guardians of Kiribati culture and custom, though the role and function is not expressly recognized by any particular legislation.

Finally, the Electoral Act of Kiribati, the Elections Ordinance 1979 and subsequent amendments still maintain recognition of the mweaka, a customary practice whereby gifts exchanged between traditional leaders during election times are regarded as a traditional practice, rather than a corrupt practice – a recognition that ensures that such traditional practice are protected in the face of modern democratic practice.

In Samoa, custom has remained strong at all levels of society through both the colonial and independent periods. Whereas the General Laws (No. 2) Ordinance 1932 declared that certain aspects common law principles pertaining to wills, legitimacy, custody and guidance, could be deemed inapplicable because of the circumstances and lifestyles of the Samoans, such later important legislation as the Administration Act (No. 23) of 1975 remained silent on the role of custom. The Village Fono Act of 1990, in contrast, has done much to integrate traditional leadership and law into contemporary practice. The Act empowers traditional leaders or village Fonos to deal with matters and residents of the village in accordance with the customs and usages of that respective village. It also allows them to make rules for the maintenance of hygiene, administer the use of village land, direct the allocation of work, and impose punishments on wrong doers.

The Act empowers the village Fono to oversee land ownership and titles to land – although their actions can be challenged by parties in the Land and Titles Court, or further reviewed by the Supreme Court of Samoa. On matrimonial matters, the Matrimonial Act closely follows customary matrimonial law. Marriages in Samoa are monogamous and are solemnized in church and are above the marriageable age because the law and now the culture of the people requires, which is now believed by the people to be proper and a reflection of current customs and beliefs about custom.

Tonga provides an example of a Pacific country in which custom prevails at local level, without necessarily being recognized in law. Although, for instance, the Marriage and Registration Act (CAP 61), does not provide for marriages in Tongan custom, Tongan Courts have on numerous occasions accepted custom in proceedings. This is evident in the case of Tu’iha’a’ateiho v. Tu’iha’a’ateiho, where the court held that the fact that Tonga custom requires
a man to give respect and assistance to the widow of the elder brother was a factor which influenced the court. In the case *Leota v. Faumuina* the court considered traditional practices such as customary apologies for wrong doing in imposing a reduced punishment. Despite the failure of the *Marriage and Registration Act* to give recognition to marriage in custom, Tongan courts have held that couples who had lived together prior to the enactment of any law pertaining to marriage were presumed married according to Tongan custom and practices prevailing in Tonga.

Laws in Tuvalu also give preference to customary law over common law in such matters as land and waters, rights of succession, dissolution of marriage, and guardianship, custody, and support. The *Laws of Tuvalu Act* 1987 expressly states that customary law shall have effect as part of the laws of Tuvalu: ‘4(2) In addition to the Constitution, the laws of Tuvalu comprise: (a) every Act; (b) customary law; (c) the common law of Tuvalu; (d) every applied law.’ In addition, Schedule 1, paragraph 2 states that ‘customary law shall be recognized and enforced by, and may be pleaded in, all courts except so far as in a particular case or in a particular context its recognition or enforcement would result, in the opinion of the court, in injustice or would not be in the public interest’.

Tuvalu’s *Local Government (Amendment) Ordinance* 1985 defined the ‘maneapa’ or ‘falekaupule’ as ‘the traditional assembly of elders which in each island shall have the meaning and composition given to it by local custom and tradition’ (sec. 3 of the Ordinance, 1985). Although only a small country, with a population of just 10,000, Tuvalu has been preoccupied politically with the tensions between central government and the eight populated islands. In 1993 the government adopted a policy of decentralization to address such issues as the rapid urbanization of the capital island Funafuti, and a People’s Congress in Funafuti in 1995 attended by over 70 delegates from all islands issued a communiqué stating a definitive preference for decentralization and democratization. The subsequent Niutao Forum of 1996 issued 55 resolutions and recommendations that helped shape the revolutionary *Falekaupule Act* of 1997, which re-set the relationship between traditional and ‘modern’ forms and practices of governance.

The principal functions conferred on the ‘Falekaupule’ by the Act are the election of the *Pule o Kaupule* (President of Island Council), approval of the Kaupule budget, approval of appointments to Kaupule offices, approval of bye laws, and a few others. The Falekaupule is also responsible for the nation’s Falekaupule Trust Fund (FTF) which was established in 1999. The Act enhanced the ability of the Kaupule (Island Executive) and Falekaupule (Island Assembly), to act more independently and more self-reliantly. Traditional leaders and institutions were formally made responsible and accountable for the general well-being of their people (each island community has traditionally had its specialists to assist communities with house building, canoe building, fishing, coconut husbandry, traditional medicine, taro cultivation, fighting, navigation, midwifery, sorcery, divination and curing, tattooing). The Falekaupule and Kaupule also became involved in the provision and delivery of goods and services, capacity building, infrastructural development, education and training, and land management, environment and conservation. They revived traditional methods for resource management, and disaster management. Traditional knowledge concerning tools, zoning, quotas on fish catches, and development of regulations and rules and enforcement mechanisms (punishment and shaming) is increasingly now translated into community programs aimed at preserving and protecting the harvesting of the island’s resources.

Yet despite the legal recognition and role given to the Falekaupule in terms of its relationship with the island councils as well as with central government, there still remain a number of irreconcilable differences and continuing power struggle between them. Interestingly, the differences revolved around the conception of the two institutions – the very problem that
the Falekaupule Act purports to resolve. Whereas islanders view the Falekaupule as an integral part of their traditions and customs despite its recent origin and a colonial construction, they continue to perceive local government as an alien institution and as an extension of central government.

These tendencies toward the recognition of traditional leaders, decentralization, and recognition of custom law, have also prevailed in Vanuatu. The highest traditional authority in Vanuatu, the National Council of Chiefs was established by the Constitution, and its specific functions, appointments and operation provided for in the National Council of Chiefs Act (2006). The Decentralization of Local Government Regions Act (1994), which provides for the establishment and operation of local government councils, states that local government council shall consist of elected members and appointed members who may include chiefs, women representatives, youth representatives and church representatives (Section 7).

In the case of Fiji, statutory recognition of custom and traditional authority has shifted markedly over time as a consequence of political conditions in that country. In the modern period governance of the indigenous population was set out in the 1876 Deed of Cession by which Fijian chiefs agreed to the terms of British Annexation. Chiefly authority was entrenched through the establishment of a ‘Great Council of Chiefs’ and recognition of their authority over their people and land. However the importation to Fiji if indentured labourers from India affected these arrangements, and Fiji came to independence in 1965 with what amounted to dual systems of government – a ‘modern’ government for all Fiji’s citizens, in which a ‘Fijian Affairs Board’ and other agencies were embedded to administer indigenous Fijian affairs separately. All land remained in under Fijian customary ownership, although the benefits of economic activity were managed by a Native Lands Trust Board on these owners’ behalf. A military regime which dismantled Fiji’s democratic institutions from late 2006 also dismantled the Great Council of Chiefs while leaving the system of land tenure and the chiefly system in place.

The continuing significance of tradition in contemporary Pacific life

Three areas in which traditional authorities in Pacific Island societies continue to exert considerable influence at local level are in the distribution of land, consent to natural resource development, and dispute resolution. Each of these areas will thus be considered below in brief.

Land distribution

Since most land in Pacific Island countries remains in customary ownership, and has not been formally surveyed, much less alienated or acquired by the state, methods for allocation of ownership and use also remain in customary hands. In Solomon Islands, for instance, the Land and Titles Act (1969) states that ownership over customary land is to be in accordance with current customary usage applicable to a respective area. Before any land complaint is brought to the courts all other traditional means of resolving it must be exhausted. This gives authority for traditional authority to deal with land disputes, and if parties disagreed with the outcome, they can take the matter to the local courts. A customary land appeal court (CLAC) includes local chiefs and elders as judges, who deal with cases in accordance with local customary law and practices.

In Tonga, similarly, the Lands Act establishes a Land Court but does not expressly spell out whether such a court will consider customary law when making their decisions (recalling the note above that the Tongan Constitution of 1875 provides that all land belongs to the King). In Tuvalu traditional land rights are vested in a ‘system of chiefly stewardship’ (Brady 1974). The Native Lands Ordinance 1957 established a Lands Court which curiously is empowered to deal
with child paternity and custody in addition to land boundaries, transfer of title, and usage. The Samoan *Taking of Lands Act* of 1964 recognizes *matai* as head of the *pule* (family), and as such, as the legitimate authority to forward claims on behalf of a *pule* for compensation and likewise receiving it as well. In Vanuatu, the *Customary Land Tribunal Act* (2001) moved land disputes from the jurisdiction of the judiciary to that of local chiefs, and on the basis of customary law and practice.

**Resource consent and community mobilization**

Chiefs also play a key role in giving blessing and assent to a range of government projects, which result in the public also giving its broad support. In 2008, for instance Efate Chiefs played a key role in assenting to development of Efate Island’s Ring Road, funded by the US’ Millennium Challenge Fund. Cooperation with the Ring Road project included facilitating access to quarries. In the Cook Islands, leaders known collectively as the *Koutu Nu* – the custodians of the land and natural resources on the island of Rarotonga – brought their communities together with the private sector and other stakeholders to successfully re-establish the *Raui* system of traditional marine protection, which had not been practiced for over 50 years. They have also, in partnership with NGOs and community stakeholders, pressured the Government to declare the island of Suwarrow, which was being considered for lease to an Australian company for pearl farming, as a Sanctuary for birdlife.

In Samoa, *matai* (chiefs) are nominated by each *‘aiga* (family) and sanctioned by the village *Fono* (assembly, or meeting). The *matai* is trustee of the family’s land and property, and empowered to allocate physical, capital, labour and organizational resources for use by family members. The sharing and distribution of food is channelled in accordance with the social hierarchical system of Samoan society. Traditionally, goods flowed to the chiefs, who then redistributed them to the people. The *Fono* directs all activities related to that village which may include, fishing, housekeeping, preparing feasts, hunting, clearing forests, and in ancient times also included preparation for war. In modern times, *matai* still consider themselves as the rightful and legitimate administrator and coordinator of these family and village activities. Meleisea maintains that the Samoans have consistently pushed that their ‘traditions and customs should be the only basis of legitimacy in government’ (Meleisea 1987).

In Fiji, there is a hierarchy of *ratus* (chiefs), with the paramount chief of the *Matanitu* (Confederacy) at the apex; with *ratus* at lesser levels graded according to the size of the villages, districts or province under their command. As traditional head of the village, the *ratu* controls and directs all aspects of village life, from development projects, to church activities, and ceremonies. He (although in rare instances she) is responsible for seeing that villagers respect the village; through him village resources are pooled when social occasion demands; he arbitrates in the most serious quarrels between the social units in the village and holds the ultimate authority for correcting misconduct and in general anything requiring the co-operation of the whole village.

In Vanuatu, the cooperative participation of state and community leaders is important in ensuring community development. The state is involving community chiefs and leaders in ensuring and to instigate development at community level. One example is the use of community initiated project areas. On Efate the chiefs are currently the drivers of change and development in the community. They initiate the management of their land and forest resources to ensure its sustainability for the future generation. Councils of Chiefs are becoming increasingly formalized at island level, some now having formal constitutions that define their chiefly status, power and processes. In 2014, fifty-three chiefs on Nguna Island launched a Constitution of
nineteen provisions covering such matters as customary land, chiefly title, custom governance, identification of customary land boundaries, customary clan verification, and other customary related issues (Anon 2014).

Dispute resolution and law and order

Traditional leaders play important roles resolving disputes, which often pertain to ownership and use of land, but which also erupt on other issues. In Solomon Islands, the people are of the view that chiefs should decide land matters and the magistrates and high courts should not have power to decide land disputes. Traditional leaders proved a source of stability and continuity during years of crisis. With the decline of government services in many areas between 2000 and 2003, many communities turned to traditional leaders and indigenous modes of organization to carry on with a wide range of such activities as had been the province of government as local courts, to support for teachers and health workers.

In Fiji, the most notable challenges chiefs encountered in the contemporary period were mediating during the coups of 1987, 2000 and 2006 (Appana 2005). Ironically, although the modern chiefly system was constructed to suit British colonial rule, it continues to be drawn on in times of crisis or when political agendas need the stamp of approval. The Great Council of Chiefs (GCC) was always been called upon to find solutions when Fiji faced political uprising. In 1987 it deliberated long and hard before supporting coup leader Rabuka, and in 2000, it worked with the Fijian Military to gain the release of hostages held for several months at parliament. Traditional leadership now plays a significant but diminishing role.

Chiefs and traditional leaders in Vanuatu actively participate in community affairs and have mechanisms in place to try to resolve conflicts at community level. On the island of Tanna, for instance, inter-group conflicts are mediated in the Nakamal by a third group which is invited as neutral observer. Once the dispute is resolved the parties are expected to drink kava together to symbolize that agreement has been sealed and compensation agreed. In Vanuatu’s rural areas ‘village police’ have assisted assist chiefs maintain peace and order since 1994. For example, In the case of Fresh Water, next to Port Vila, chiefs organized themselves at two levels, so that problems were addressed at ‘area level’ before being referred to a Council of chiefs at a broader level. Chiefs also oversee reconciliation ceremonies (Larmour and Barcham 2005).

In Samoa, the fono is the governing body which administers the affairs of the village in accordance with Samoan customs and traditions. Village fono have on occasions banished villagers for serious transgressions of custom, although there appears to be some uncertainty as to whether they have this right in law (superior courts have ruled that this power rests with the Land and Titles Court, although this has not stopped villages from using this power).

The matai who comprise the village fono traditionally enjoy the right to govern village life and punish offenders. Since independence, a number of individual Samoans had challenged the power of the village fonos to regulate village social and economic organization. The legal challenges were mainly to do with the rights of the matais to banish offenders from the village and the right to control commerce. The challenges were on the basis that decisions to banish offenders and control commercial activities violated individual rights guaranteed under the constitution. The successful prosecution in certain of these cases against the collective decisions of the village fonos was a major concern to the matais, who saw that as the encroachment of the courts into their domain and jurisdiction (Powles 1986, quoted in Macpherson 1997). Macpherson explains that that was the basis of the debate which led to the enactment of the Village Fono Act of 1990.
For Tuvalu, a major point of contention and conflict concerns demarcation of the functions of the Kaupule (Island Council) and the Falekaupule, especially concerning the relationship between the Falekaupule and such other local government agencies as the island court and lands court. The judicial function traditionally vested together with the other two functions of executive and legislative in traditional leaders and institutions, but which was subsequently subsumed by the colonial government as part of the native island (or local) government system, is a particularly contentious issue. Other conflicts that have cropped up from time to time came about mainly from the discharge of the Falekaupule responsibilities relating to its legislative and executive functions. These can be categorized as management and inter-personal issues which can be tackled through proper training and education.

The Falekaupule had often made decisions on cases that should have rightly and legally come under the purview of the court system. The problem has been long standing and there appears to be no easy solution. Despite the fact there is no legal basis for it, the Falekaupule have continued to hold the idea that they also have legitimate punitive authority to impose decisions on those who wilfully disobey the resolutions of that assembly. Several cases in the past demonstrate the regularity of such incidences. In an incident in the 1990s, the chiefs and the Falekaupule of Vaitupu passed judgment on one individual who repeatedly failed to participate in community projects (community projects normally require the contribution of voluntary labour and there is expectation that everyone without fail must contribute unless a person is sick, or over the retirement age – this varies between the islands – or is an expectant or nursing mother). When the chiefs’ decided to banish this man from the island he sought the advice of the police officer on the island. Although then officer pleaded his case on the basis that the chiefs’ decision was unconstitutional and illegal this questioning of the chief’s authority as being unconstitutional aggravated the situation, and a potential physical confrontation was only avoided when the culprit voluntarily boarded a ship bound for another island.

Such forms of punishment were not uncommon in the past, and continue to be considered legitimate and proper forms of punishment, which are viewed as providing community protection, unity and well-being. Based on that philosophical approach to life any abhorrent and destructive behaviour cannot be tolerated. Additional traditional forms of punishment besides banishment and ostracism include tolo in which the offending party would be brought into the Falekaupule and a group of strong men – depending on the severity of the offence – would be either hand-picked or simply volunteer to levy punishment by assault. Other forms of punishment included public flogging, which is still a recognized form of traditional punishment in the Falekaupule on the island of Nui.

Another important area of conflict relates to the overall customary rights of the Falekaupule vis-à-vis the rights and freedoms of the individual. As noted, customary law under the *Laws of Tuvalu Act 1987* is recognized, enforced by, and pleaded in, all courts – unless its enforcement would result in injustice or is contrary to public interest.

In *Alama v. Tevasa* the precarious nature of the relationship between customary law and the individual rights and freedoms in an election petition was considered by the High Court of Tuvalu. When the petitioner unsuccessfully stood as a candidate in a bye-election on Nukulaelae Island in March 1986 he petitioned the High Court to declare the election results null and void on the ground that the Respondent and his agents, including chiefs and elders, were guilty of corrupt practices in contravention of para. 4(1)(a) of the *Election Provisions (Parliament) Act*. He claimed that the Respondent was present at a large feast organized by the Falekaupule and endorsed by the chiefs and elders. The court found that the actions of the traditional leaders were consistent with the customs and traditions of Tuvalu. In making the decisions as they did,
The authority of [traditional leaders] is founded in the values and culture of Tuvalu. It is the linchpin of the life and laws of Tuvalu protected by the Constitution. The authority of [traditional leaders] requires them to make decisions to guide the people and foster their welfare. This means that . . . in Tuvalu the [traditional leaders] necessarily and legitimately exert great influence and their decisions carry great weight. Their concern with politics . . . is consistent with their role as [traditional leaders] and I am satisfied that what they did was in accordance with the customs and traditions of Tuvalu.

Although the judgment was made in the context of an election petition, it can easily be extended to include a proposition that if traditional leaders and institutions discharge their governmental functions in conformity with the customs and traditions of Tuvalu, the courts may be prepared to acknowledge the validity if not the legality of such decisions (Seluka 2002).

The control of law and order in these communities appears to work best when community-driven, and chiefs are the best drivers of changes at local level. Chiefs in Vanuatu play an important role as dispensers of justice at all the village level. Informal village courts are becoming the most frequently used dispute resolution tribunal in Vanuatu. Although they have no legal powers, village courts also hand down punishments for acts of wrong doing. Chiefs also help maintain stability in times of conflict—notable examples being a 1998 riot fuelled by concerns over the management of the Vanuatu National Provident Fund, and reconciliation ceremonies in 2003 following disagreements over the appointment of the Police Commissioner.

Additionally, local chiefs in Vanuatu are responsible for identifying areas for tourism, industrial development, native reserve, and residential development, and some are also involved in sustainable development initiatives, such as the Efate Land management Area Initiative, a project initiative by the Island’s chiefs to conserve land and resources.

In Kiribati, traditionally, the northern islands of Makin-Abemama, Marekei, Abaiang, Tarawa and Maiana including Abemama and its two satellite islands (Kuria and Aranuka) had their respective chieftaincy that were responsible for all matters that affected or might affect the community. The southern islands were traditionally governed by the village elders—representatives of each kainga—through the maneaba government, a system of gerontocracy rule where the unimane or village elders who were representatives of each kainga, governed and managed the affairs of the community. The maneaba government system had long been greatly changed and weakened with the incursion of the missionaries and the colonial government in the 19th century. Indeed, Macdonald asserts that by 1892, the traditional forms of social and political organization in Kiribati had been significantly modified as a direct result of a number of external forces, notably the missionaries, traders and commercial activities and finally the establishment of the colonial government.

The present local government system which was first introduced in 1894 was the first attempt to rationalize and harmonize traditional systems of governance—the maneaba system of government and the chieftaincy with western models of governance. The formalization of local government systems in the respective islands was effected through the enactment of the Native Laws of the Gilbert and Ellice Islands Colony published in 1894. On the islands from Butaritari-Makin to Abemama the King or High Chief was made responsible for the good order of the
island. For the central and southern islands of Nonouti, Tabiteuea, Nikunau, Beru, Tamana and Arorae, the maneaba governments were given recognition with councils being placed in charge. Native magistrates were also appointed and were given the sole responsibility of adjudicating on criminal and civil cases.

**Conclusion**

As might be expected, two different systems of governance – the formal and legislation-based, and the traditional – did not and do not sit well together, and tensions and disputes can result from their different philosophical underpinnings. This can vary both between, and within, the different island societies of Oceania. Whereas the western concept of governance emphasizes individualism, the rule of law, and parliamentary democracy, traditional governance systems emphasize principles of egalitarianism and a form of socialism (the collective good). The relationship between traditional authority and local government is still beset by tensions. Island communities have not taken full ownership of local government systems and continue to rely in part on their customs and traditions – some elements of which are accepted by respective governments. While this delivers a strong sense of culture and identity, it has not produced equal opportunities and benefits for all, particularly in the case of women, young people, and, in ranked societies, the majority, who of are of common rather than chiefly descent.

**Notes**

1 *Principles on Good Practice for Local Democracy and Good Governance* adopted at the Commonwealth Local Government Conference held in Aberdeen, Scotland, in March 2005
2 The English rendition of the word ‘falekaupule’ is ‘house or council of leaders or elders’.

**References**


