CHAPITRE 2
HISTORICAL PERSPECTIVES
ON INDEPENDENCE

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Summary: *Decolonization and development carry assumptions about sovereignty and progress that emerged in Europe over many centuries of turbulent change. The "modern" model of the nation-state is supported by the United Nations in international law, but sociocultural realities in ex-colonies often challenge its adoption without some adaptations, because colonialism has not encouraged self-determination except at the last minute. Oceania has become a laboratory for negotiated political experiments, but ongoing pressures from agents of globalization should not serve as pretexts to negate the quest for dignity by indigenous peoples. Independence should not be monopolized by the rich and powerful.*

Perspectives historiques de l'indépendance

Résumé : *La décolonisation et le développement reposent sur des présomptions de souveraineté et de progrès qui ont émergé en Europe pendant plusieurs siècles de changement turbulent. Le modèle « moderne » de l'État-nation est soutenu par l'ONU dans le droit international, mais les réalités socioculturelles dans les anciennes colonies s'opposent souvent à son adoption tel quel, car le colonialisme n'a pas encouragé l'auto-détermination, sauf en dernier ressort. L'Océanie est devenue un laboratoire d'expérimentations politiques négociées, mais les pressions incessantes exercées par les agents de la mondialisation ne devraient pas servir de prétextes pour nier la quête de dignité des peuples indigènes. L'indépendance ne devrait pas être monopolisée par les riches et les puissants.*

> *"If people had shells, they would not have invented states" (Jackson 1990: 39).*

Decolonization is a rather passive-sounding word like depopulation (i.e. mass death or emigration). Political scientist Peter Larmour (1983: 1) writes that to decolonize can be

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"a process by which authority is formally transferred from a metropolitan government to its successor." That sounds simple: one country lets go of power, to some degree, over another country. However, because power can take many forms, "Formal decolonization does not preclude the continuing influence of the metropolitan government, or others, by means including budget subsidies, project aid, technical assistance or military garrisons… And while the formal government of a territory may be decolonised, economic, social, cultural and religious institutions do not necessarily follow" (*Ibid*.). Beyond "official" decolonization, therefore, ongoing entanglements may require active local liberation, as indigenous authors such as Linda Tuhiwai Smith (1999) have argued. But when, exactly, is a colony no longer a colony? Historically, visions of post-coloniality have varied.

In the late nineteenth century, Paul Leroy-Beaulieu (1891: xvi-xvii) said a "civilized" country would give birth "to a new society out of its entrails" that was more developed than it could have been without imperial tutelage. Before the "modern colonization" of his era, he admitted that subject peoples had often been exploited and kept in "perpetual infancy," but he did not accept Baron Turgot's view that "mature" colonies would drop like ripe fruit from the parent tree -- unless they were "analogous" clones, like the settler colonies in the Americas, Canada or Australia (*Ibid*. 844). He even called the creation of a French settler-elected council in New Caledonia in 1885 "premature," recommending that its powers or franchise should be restricted (*Ibid*. 577). In fact, if the majority of the inhabitants were not immigrant colonists, he predicted that a colony would slide back into "anarchy." So much for the so-called "civilizing mission," which was under-funded anyway! A century later, Robert Aldrich and John Connell have described "colonies" as overseas dependencies that were created by conquest or by settlement. But they suggest that the "last colonies" in the world today (about forty) are generally small, "enjoy a large degree of self-government and reap considerable economic benefits from their attachment to metropolitan states" (1998: 2-3). A truly "colonial" relationship with a "mother country" is thus structured by inequality between the metropolitan ruler and the distant ruled, making self-government ultimately a quest for human dignity (Fanon 1968: 81).

The era of decolonization formally began after 1945, when the United Nations Charter favored self-determination in "non-self-governing territories." After liberation struggles succeeded in India, Indonesia and Indochina, Britain, the largest colonial power, began to pull back from "east of Suez." The UN became increasingly militant, as anti-colonial rhetoric (and arms for rebels) from the Soviet Union and an emerging non-aligned movement of ex-colonies fanned the "winds of change." Yet some observers have criticized the impulse to decolonize as rushed, even "telescoped," because economic globalization compromised the sovereignty of every country (Ferro 1994). Structurally, there was a built-in problem: colonized peoples wanted *self*-rule, but first they were expected to adopt the European-derived modern state model, which even in Europe was

already adapting to regional unification. Some critics have argued that creating new states was really just another means of international control and assimilation (Hardt and Negri 2000). But was the sovereignty that had been spread by Western imperialism readily transferable to ex-colonies, sometimes through belated political reforms shortly before independence? From the Belgian Congo to Papua New Guinea, experience in running national-level governments was often minimal before the new anthem heralded the new flag, because colonialism was not designed to build independence. As a French official in New Caledonia put it, "colonization is only a business" (Delignon 1898: 173).

Indeed, the financial and corporate agents of the Western-dominated world economy wanted free reign to seek profits and resources during the Cold War, in competition with rival Soviet-style socialism, so how strong could the new state be allowed to be? Even after the fall of the Berlin Wall in 1989, the Third World still exists, now renamed the South, because global power relations between core and periphery remain unequal, as the policies of industrial superpowers, the World Trade Organization, the World Bank and the International Monetary Fund reveal (Rivero 2001). The "civilizing mission" rarely produced more than a simulacrum of sameness: a handful of dependent clients nibbled at some crumbs of the extracted economic surplus, while the modern arms that industrial powers sold to local leaders (and rebels) often generated more coercion than services, opening the way for corruption and civil wars over unfulfilled expectations. This essay will argue that a historicized perspective can inspire greater reflection about "universal" concepts such as statehood, nationhood, decolonization and sovereignty. Consensual negotiations among all the stakeholders, including the UN, should mediate the "empire of conformity" (Tully 1995) that the *transnational* West has imposed on its "post-colonies."

I ORIGINS OF THE MODERN STATE SYSTEM

From the *longue durée* perspective of world history, polities and nations have existed since antiquity (Braudel 2002). Anthony Smith (1986) has traced the emergence of what he calls politically and culturally cohesive *ethnies*, organized either as small-scale city-states or as ruling classes over empires. He prefers like many other scholars to reserve "nation" for modern times, but in effect his *ethnie* is quite similar to it. Smith's *ethnie* had an urban elite who mobilized solidarity against "others" (or chaos) through identity symbols and legitimizing ideologies, economic development (and social class hierarchy), a state bureaucracy, and a military that could control territory. Scholars have debated what caused early states to arise, whether it was a peaceful evolution from agricultural villages to chiefdoms to large-scale kingdoms, for internal conflict-resolution, irrigation management and self-defense, or whether it was a more coercive process of domination, exploitation and external conquest (Claessen and Skalnik 1978). Robert Clark (1997) has portrayed resource-maximizing states since ancient times as environmental black holes that required ever-expanding access to raw materials, land and labor in what became a

"global imperative." Most scholars tend to see centralization, territorialization, social stratification and complex development as typical state traits. A steady economic surplus from taxation or trade, or both, enabled an elite to unite once-autonomous polities and achieve ranked occupational specialization embellished by ideology and symbols.

Archeological evidence from Sumerian Uruk shows that the so-called "city-state" expanded far from its base in lower Mesopotamia, through military garrisons in trade centers in the northern mountains to acquire raw materials, and also through farming settlements in southwestern Persia (Algaze 1993). The neo-Marxist "world system" concept of dominant cores and exploited peripheries has now been projected into the past (Frank and Gills 1993), so it could be argued that earlier hegemonic "modernities" existed before the Western industrial form -- for example in the Chinese tribute system (Frank 1998) or in the trans-regional *Dar al-Islam*, which was "demarcated sharply from all culture *before and beyond* its limits" (Hodgson 1993: 14, emphasis added). John Gledhill has suggested that so-called "stateless" societies chose to resist hierarchical statehood by organizing kinship-based systems of customary rules without rulers. He warns that assuming modern centralization to be the proper outcome risks demoting non-Western polities to "defective" status, as colonial administrators and anthropologists once did: "State and stateless societies develop in ways that are fundamentally interdependent" (1994: 46). Dipesh Chakrabarty's call to "provincialize" Europe (2000) highlights the shallow historical depth of Eurocentric analyses of global political economy.

The conventional starting point of the modern "sovereign state" in Europe is usually the Treaty of Westphalia in 1648, which ended the destruction of the long wars between Catholics and Protestants and created "a decentralized system of sovereign and equal nation-states" (Miller 1990: 21). Centralizing dynasties had been creating entrepreneurial monarchies and capitalistic city-states (Tilly 1992) and also distinguishing the ruler from his office, the crown. But the fictive unity of medieval Europe as Christendom (under one church) had drowned in blood, and the cold political realism of Machiavelli found growing support in the mathematical and scientific rationality of Descartes and Newton. Still, most scholars do not link the term "nation" to the state concept in 1648, because popular (democratic) sovereignty remained rare and contested. Jean Bodin of France and Thomas Hobbes of England supported absolute state power, even divine right monarchy, as the guarantor of public order and private property. Michel Foucault (1965) traces the "great confinement" to the 1600s, as the Bourbon monarchy created new state institutions of population control that complemented new capitalist labor structures. Even after the English civil war and 1688 revolution, nobles and merchants remained in control of Parliament under the constitutional monarchy. But John Locke redefined state authority as a social contract, based on the "natural rights" and consent of the (wealthy) governed and on "laws of nature" (e.g. human reason) that developed the economy (Held 1989).

What emerged was "international" law, which initially was more concerned with the rights of states than of the people, until the American and French revolutions of the late eighteenth century. Emmerich de Vattel used "state" and "nation" interchangeably in his *Law of Nations* (1758), but his emphasis was on political community, based on a state bureaucracy and the military ability to defend a territory, whereas the nation was more a cultural entity represented by the elite. The state was legally sovereign and autonomous, with exclusive domestic jurisdiction based on the natural rights of its individual subjects to order and prosperity (Anaya 1996: 13-15). Yet in reality, Germany remained divided into hundreds of states of variable sizes and capabilities, so the larger states dominated the smaller ones until unification by Prussian warfare in 1871. Robert Jackson (1990) suggests a dual aspect of state sovereignty: negative (external) and positive (internal). Empirical states, as he puts it, were patrimonial war machines that successfully asserted sovereignty, so they could negate challenges to their borders. Hugo Grotius, in the same century as Westphalia, implied a modernist notion of positive sovereignty that pursued economic development within a zone of civilized states ruled by natural law, beyond whose borders lay competing states or else peoples living in a "state of nature" without effective governments. Hence the *terra nullius* designation that European expansionists often applied to the domains of non-European peoples overseas who did not "properly" develop their lands (*Ibid*. 54-55). James Anaya points out that some jurists had defended the human rights and sovereignty of Native American peoples like the agricultural Aztecs and Incas, dismissing right of discovery as a sufficient justification for colonial rule, yet they had no choice but to accept the Spanish conquests and to hope that tutelage would convert those peoples to Christianity and progressive development (1996: 10-13).

The economic dimension of modern statehood has been an important consideration, from early European state formation through justifications for colonial expansion to the Cold War. Both Christianity and the secular Enlightenment espoused an idealized vision of the autonomous individual with rights, but individuation was also a form of social atomization. Businessmen sought to dismantle competing solidarities, from peasant customs to feudal privileges to labor unions. State-backed mercantilism helped economic growth, but the "free" individual became a social and political pawn, as entrepreneurial states proletarianized small farmers and overseas subjects. In the competition between Western capitalism and Soviet-style socialism, both were modernizers, but with rival means and ends (Wallerstein 1996). Meanwhile, state bureaucracies took on a life of their own, as coercive administration became more autonomous from its "parochial" public (Skocpol 1979). Max Weber warned about the risk to individuals of being trapped in an "iron cage" until "the last ton of fossilized coal is burnt" (1958: 181).

Within European history, the modern "nation-state" was thus not born overnight but rather evolved over centuries of often-traumatic upheavals, from the death of a third of the

population of Germany in the Thirty Years War through British land enclosures that pushed rural labor into urban manufacturing and slums to national-scale revolutions and technologically sophisticated "total" wars. Despite Western pretensions to superiority during the peak of imperialism, World War I caused considerable suffering, destruction and disillusionment, and it resulted in yet another world war. Overseas, three centuries of absolutist mercantilism led Latin American ex-colonies into two centuries of political instability and economic dependency under Anglo-American neo-colonialism. René Dumont once warned independent Africans about the threat of "South Americanization" (1966: 23), and now Ben Reilly warns Pacific Islanders about creeping "Africanization" (2000). Are we to believe that those regions have created AIDS-like contagious threats? Or have Clark's resource-consuming black holes, which displaced entropy outward, created new kinds of "black holes" in the overseas periphery? (Doumenge 2002).

II PACIFIC POLITIES AND EUROPEAN CONTACT

To what extent were there nations or states in Oceania before colonialism? It is a logical question to ask, since European expansionists sometimes encountered powerful states in other regions. But modernist scholars would likely say no, even though the issue is more complex than a simple answer can describe. Certainly chiefdoms and kingdoms existed before European contact, but in many parts of the Pacific island world multiple language groups, autonomous lineages, and limited resources and land often constrained the emergence of large-scale polities. Regarding Sāmoa, indigenous historian Malama Meleisea notes that oral traditions speak of a Tui Manu`a of divine genealogy who once ruled the archipelago and nearby islands. The ancient monarchy organized the islands into administrative districts run by high-ranking chiefly families, and the title itself survived into the early twentieth century. There was a shift in power in the sixteenth century to the western Sāmoan islands, after Tongan invaders had occupied them but then been driven out. A new paramount status arose called the *tafa`ifa*, whose holder had to acquire the four highest chiefly titles with approval from the two leading orator groups. But the office was not hereditary and was held infrequently because of intense chiefly competition, as disappointed English missionaries later found out after first converting the Pomares in the Society Islands and then their obedient subjects or conquered enemies.

The Sāmoan system of chiefly titleholders is as complex as that of feudal Europe, though every family was represented in council meetings, if unequally. Orators recited the *fa`alupega*, or ceremonial greetings, at meetings to remind the chiefs of their intricate relationships to each other: "It serves as a constitution and encapsulates, in a few phrases, the origin and rank of each constituent title… for the *nu`u* [village] or local polity, for districts and *for the nation*" (1987: 2, emphasis in original). Over time there emerged "a unitary system of dispersed authority," i.e. culturally united but politically decentralized despite the precedents for monarchy (*Ibid*. 1). He argues that the Weberian rational-legal

bureaucratic state does not adequately encompass the complexity of the *fa`a Sāmoa* (Sāmoan way of life). Weber would likely regard the latter as traditional, because on the surface it appears not to distinguish the individual from the office. But Meleisea says that Sāmoan titles are earned, not directly hereditary, and the system is "clear in essentials, flexible in detail… new practices, ideas and good could be accepted and incorporated into it so that either the system remained unchanged in its essentials, or else was not perceived to have changed fundamentally" (*Ibid*. 16-17). Missionaries would have to convert every village, unlike in Tahiti, but local Christian pastors became almost another kind of chief (Howe 1984).

Pacific archeologist Patrick Kirch (2000) detects processual patterns in the *longue durée* of the human settlement and development of Oceania. Seafaring technology appeared in Melanesia as early as 40,000 years ago, but its development accelerated when Austronesian-speakers sailed into the region from Asia after about 1500BC. In Micronesia and Melanesia, and then eastward into Polynesia, voyagers enacted a vision of the sea as a network of navigation routes between islands and of societies with ranked lineages, unlike the self-made "big man" leadership in Papuan-speaking societies. As people voyaged to new archipelagoes, they transformed landscapes, intensified food production as populations grew, specialized in skills and formed chiefdoms: "The Tongan *langi* tombs, the Easter Island statue temples, the Hawaiian *heiau*, and the tomb islets of Nan Madol are all reminders of the powerful role of ideology in the legitimation of a sociopolitical structure" (Kirch 2000: 323). Indeed, the impressive stone structures in Micronesia, from the *latte* house pillars of Guam to the temple-capital of Nan Madol on 92 islets off Pohnpei (which are similar to monuments on Kosrae), demonstrate that chiefdoms were not confined to Polynesia, as do the forts on Maré in New Caledonia and the terraced irrigation systems on nearby Grande Terre (Kirch 2000, Sand 1995).

Hawai`i has been called an early state, because of its highly stratified chiefly polities that sometimes achieved multi-island hegemony, land divisions run by tiers of appointed chiefs, and well-developed irrigation systems, fish ponds, specialization and monumental temples (Kirch 2000: 300). Like Sāmoa, Tonga also had a tradition of divine monarchy, but its unity survived longer by defusing pressure from rival branches of the royal lineage by delegating political titles and functions to them, somewhat like the shogunate in Japan. Tonga's extensive congeries of allied, conquered or migrant-settled islands across the south Pacific has been mislabeled an empire, but tribute flowed toward the Stonehenge-like coral arch at the entrance to the royal compound on Tongatapu. Even resource-poor atolls had their wars of dominance among status- and surplus-seeking chiefs. Large-scale labor-mobilizing polities might rise or fall, but enduring inter-island and inland-coastal exchange systems, vibrant art forms, and intricate land and marine tenure customs testify to the ongoing dynamism of Oceanian societies (Hviding 1996). Makere Stewart-

Harawira of Aotearoa/New Zealand has said that the holistic world view of Oceanians can teach the modern world, because it encompasses spiritual/ecological relationships between humans and nature, and a view that time intertwines cyclical cultural renewal and linear genealogy: "the spiral is moving forward, it is returning" (2005: 42).

Early European contact with Oceania has been a subject of competing interpretations, from "fatal impact" victimization approaches (Moorehead 1966) through an "islander-oriented" focus on indigenous agency (Davidson 1966) to ethnographic analyses of cultural interaction (Sahlins 1985). There was often tragic miscommunication between early explorers and islanders, from Magellan's initial contact with Guam in 1521 through Wallis's with Tahiti in 1767, and violence did not necessarily stop after first encounters. Depopulation from epidemic diseases and varying degrees of cultural loss and economic dependency grew over time, as traders brought ready-made iron tools and weapons (including firearms), and missionaries, beachcombers and other foreigners introduced new customs and beliefs. But some indigenous leaders would be able to convert their interaction with foreign vessels into new assets for claiming status, as they appropriated and adapted outsider innovations. In the late eighteenth and early nineteenth centuries, for example, Tahiti, Hawai`i and Tonga built new kingdoms, in part, with foreign help (Howe 1984). Later, the balance of power tended to shift in favor of the outside agents of industrial states, leading to destabilization in the islands and to increasingly "unequal contracts" between them and Europeans (Hempenstall 1994). Debts to traders or affronts to missionaries might invite foreign naval interventions, and local disunity could hinder resistance. Spain conquered the Marianas in the late seventeenth century with Chamorro allies who were rivals of their opponents, and in Sāmoa and Fiji, foreign debts and land disputes soon led to annexation (Hempenstall and Rutherford 1984). The kidnapping of laborers (Maude 1981), misunderstood treaties (Walker 1990) and unilateral takeovers (Dornoy 1984) marred indigenous relations with outsiders, and in cases where there was a significant settler population, as in Australia, New Zealand, and New Caledonia, land dispossession left a legacy of hardship and deep resentment (Reynolds 1987).

III COLONIZATION AND SOVEREIGNTY

Unfortunately for indigenous peoples during Western scramble for "unclaimed" real estate (and hence prestige and profits) in the late nineteenth century, international law was invoked mainly among colonizing powers, who invented it and used it to justify their expansion (Anaya 1996). Western legal conferences, notably the one held in Berlin in 1884-85, created rules to avoid war among rival outsiders, e.g. treaties signed with native leaders would signify "effective occupation." Ironically, non-Westerners had no voice in such forums, and those who did sign annexation treaties, which thereafter enshrined *foreign* sovereignty, actually lacked equal legal sovereignty because they were seen as too "backward." That contradiction was camouflaged by a paternalistic "sacred trust of

civilization" that was owed to supposedly child-like native wards who, as Lord Lugard, the father of indirect rule, said, "must as yet be schooled in the discipline of the nursery" (Jackson 1990: 71). By 1913, over half the land surface and population of the world was ruled by Westerners, who created "multiple scale-models of themselves through colonial settlement and collaboration with indigenous peoples," thus enabling European travelers to find some degree of familiarity and status around the world (Ferguson 2006: 16). Put another way, "the number of sovereign states was at its lowest and the extent of their territorial control was at its greatest" in "a kind of international enclosure movement" (Jackson 1990: 55, 67). An exclusive Western club used "constitutive recognition" to practically monopolize self-rule: "The result was the first universal international society based on a selective membership principle which discriminated between a superior class of sovereign states and an inferior class of various dependencies" (*Ibid*. 61).

Sometimes Western takeovers, if they had not been so humiliating and tragic, were almost comically arbitrary and arrogant. For example, Germany and Spain nearly went to war over Micronesia in 1885, until they agreed to let the Pope mediate, much as an earlier pontiff had divided the overseas world between Spain and Portugal in 1494. Pope Leo XIII decided in favor of Spain this time, but Germany kept the Marshall Islands and its extensive copra trading operations. When the Spanish tried to establish a colony on Pohnpei, however, the indigenous people killed the governor and drove the survivors onto a warship in the harbor. Resistance to the Spanish continued until the U.S. seized Guam in 1898, after which Spain sold its other Micronesian colonies to Germany anyway (Hanlon 1988). Micronesia would endure a succession of foreign rulers, from Spain to Germany to Japan to the U.S., as each generation had to learn a new colonial language. In Sāmoa, a treaty among Germany, the U.S. and Britain in 1889 established joint rule, but a hurricane that year sank six out of seven of their warships in Apia harbor, because the German and U.S. vessels refused to evacuate to sea for fear of losing their influence; only the British ship was wise enough to leave port. In 1899, Germany and the U.S. partitioned the Sāmoan islands (Hempenstall and Rutherford 1984). Today, the indigenous peoples of the Marianas and Sāmoa each remain divided into two states.

Peter Hempenstall has argued that although indigenous resistance to colonial rule was not always unified or designed to drive foreigners away completely, Pacific islanders found various ways to contest unequal power relations with the intruders. Anti-colonial protests included armed rebellions, economic cooperatives, labor unions, political action (e.g. the Sāmoan Mau movements), and millenarian churches that blended indigenous beliefs and Christianity into syncretic cultural organizations with economic and political aspects (Hempenstall and Rutherford 1984). Superficial accommodation with foreign rulers might conceal ways for colonial subjects to subvert or disobey orders, in what James Scott calls "everyday resistance" (Lal, Munro and Beechert 1993). Tonga won a

case in the court of the British Western Pacific High Commission in 1909, by using the constitution of the monarchy and its protectorate treaty to defeat attempts by the British resident to shut down a local economic cooperative that competed with European traders. An English judge saw islander business initiatives as positive and declared that his own government's role should be "to ensure that organizations like the Kautaha which could be of great use and benefit to the community, were properly run, and not, by high-handed and ill-advised action, to wreck them" (Hempenstall and Rutherford 1984: 59). The U.S. never regarded itself as a colonizer, yet the U.S. Supreme Court refused to extend the rights of citizenship under the U.S. constitution to Guam or Sāmoa, unless Congress made explicit provision for doing so. The 1900 "deed of cession" signed by Sāmoan chiefs was ratified only in 1929, after a local protest movement against U.S. Navy rule (Chappell 2000). In Hawai`i, the influence of American missionaries and threats from foreign warships over debts and land issues pushed the Kamehameha kingdom to adopt "a fundamentally Anglo-American legal system" (Merry 2000: 35) to remain sovereign. But that change disconnected the Westernized state from the indigenous nation, and the former became an instrument of American businessmen, who overthrew the monarchy in 1893 with support from the U.S. navy and requested annexation (Osorio 2002).

The impact of colonialism varied considerably across Oceania, from occasional armed patrols in the highlands of New Guinea to severe land losses, repression or depopulation in other islands (Firth 1997). Nicholas Thomas (1994) has argued that colonialism in the Pacific was never as monolithic or omnipotent as it is often represented, and that various "colonial projects" in the islands sometimes conflicted (e.g. missionaries siding with indigenous people against administrative policies or business interests) or else failed to achieve their goals. Lauren Benton's comparative study of interactions between Western laws and indigenous cultures suggests that the colonial state took shape slowly over time. Due to myriad negotiations with local customs, "new hybrid orders" compromised the uniformity sought by foreign rulers and settlers. Just as the royal administrations of centralizing states in Europe went through transitional phases of legal pluralism, so "Colonial states did not in an important sense exist *as* states in the early [stages] of colonialism. They did not claim or produce a monopoly on legal authority or on the assignment of political and legal identity" (Benton 2002: 259). Custom kept a viable space for itself, albeit partly reshaped by colonialism, amid the routinization of cultural difference into institutional forms: "Legal norms encoded both culture and property, and neither could change without the other" (*Ibid*. 262).

Anthropologist Richard Scaglion once worked for the PNG government to try to reconcile Western-style government law with indigenous custom, which in PNG they call "underlying law." He suggests that legal pluralism has been a reality in Oceania ever since colonialism began to construct centralized states, "which superimposed a layer of

transplanted Western law over local legal systems" (2004: 86). Attempts to assimilate custom into legal procedures have varied, depending in part on whether the colonizer was dealing with hierarchical chiefly structures or situation-specific egalitarian procedures. Indigenous custom did not gain official legal status in PNG until 1963, but it became part of government law via local court decisions, notably in land disputes. In anglophone south Pacific countries, even British common law court precedent has been invoked to help mediate between state law and indigenous custom. Despite frequent requests by indigenous communities that anthropologists help them to codify their own customs into state law, Scaglion warns, "When custom is written, it becomes frozen at a quickly outdated moment in time and loses the flexibility that made it what it was" (*Ibid*. 93). Western-trained lawyers and judges hesitated to consider custom in court, and "modern" legal discourses, from treaties to contracts, caused custom and foreign laws to overlap but still differ. Scaglion sees in some attempts to address world problems a "return to the types of conflict-management strategies that originally characterized many Pacific Island societies' customary legal systems" (*Ibid*. 99). "Legal pluralism," he says, "can provide the means for reconciling traditional and global life, but much work remains" (*Ibid*.).

Stuart Banner's study (2007) of colonial land policies in the Pacific concludes that Anglo-American colonizers often alienated lands from indigenous peoples using treaties that granted rights to the latter if they possessed agriculture and boundaries and their polity was recognizable by Western law. Today, claims for redress are relatively easier for native peoples who have such treaties, though an early settler presence and other factors could undermine such advantages. Despite the Waitangi Treaty of 1840, armed resistance, a king movement, millenarian churches, and formal diplomacy, the Maori were still marginalized in New Zealand (Walker 1990). Colonial regimes and their native subjects both contributed to processes of nation-building and state formation, but the results were unstable because the primary agents of policy were usually foreign, and assimilation was incomplete. Persuasive hegemony and collaboration were both backed, ultimately, by a coercive, alien-directed state apparatus (Guha 1997). Benoît de l'Estoile has shown that colonial administrators asked for help from anthropologists to decipher the "codes" of native cultures in order to better categorize and rule their subjects. In the twentieth century, after the League of Nations was created, public opinion encouraged a reform movement that used science to legitimize colonization by developing indigenous societies as well as their resources. Administrator-anthropologist Maurice Delafosse told his students at the French Colonial School in 1921, "We actually feel the necessity of excusing, or at the very least justifying, actions that, to speak plainly, have consisted on our part of dispossessing peoples of their independence for the profit of our own country" (quoted in De L'Estoile 2005: 43).

IV DECOLONIZATION STRUGGLES IN THE PACIFIC

Decolonization is sometimes viewed as a *restoration* of sovereignty: colonized peoples can re-enter history (Fanon 1968: 69). Yet they generally do so inside foreign structures, from state institutions to "national" borders to international commerce, often with very little preparation and having to retain the colonial language (or pidgin) as the official lingua franca because of indigenous cultural diversity, especially in Melanesia. Despite criticisms that the Western state system was spread around the world as an instrument of domestication, the nation-state model has appealed to many indigenous nationalists who see it as a vehicle that can be appropriated and adapted by decolonizing peoples to gain leverage against continued domination (Stewart-Harawira 2005). The "spirit of Bandung" – the Asian-African Conference that met in Indonesia in 1955 – supported decolonization through political freedom, racial equality and economic growth, but it has been dismissed by some observers today as misguided or even obsolete. Nevertheless, Philippines delegate Carlos Romulo called Bandung "a historical pageant, symbolizing the coming of age of Asia and Africa" (1956: 35-36). "We have to try to avoid repeating all of Europe's historic errors" (*Ibid*. 24), he said, after his country had recently become independent from the U.S. in 1946. "Our way of life – which we have had for 2000 years – may not offer the prosperity of the 200-year old United States, but there is something in maturity that cannot be bought with dollars…" (*Ibid*. 44).

The UN supported decolonization more than the League of Nations had done. But defining a non-self-governing territory became a topic of debate, because like the League before it, the UN was at first dominated by colonizing powers, some of which had non-self-governing indigenous minorities within their borders as well as overseas. The UN promoted not only socio-economic well-being but also self-government, yet it limited that commitment according to the country's "stage of advancement," a loophole that enabled some colonizers not to cooperate with the UN Special Committee (Roff 1991). In 1960, UN General Assembly Resolution 1514 specified that all colonized peoples should attain "complete independence and freedom" while preserving "national unity and the territorial integrity of the country" (i.e. no secessions). That same year, Resolution 1541 proposed three methods for an NSGT to decolonize: sovereign independence, free association, or integration into another country (usually the former colonizer). All three options were designed to end "segregation and discrimination" and ensure "complete equality" and "self-government" to colonized countries. Independence and integration were thus presented as opposite but equivalent poles of a legal spectrum of democratic choices, with free association in between and perhaps transitional. The UN resolutions referred to "the passionate yearning for freedom in all dependent peoples" and to a "process of liberation" that was deemed "irresistible" and required accommodation "to avoid serious crises" (*Ibid*. 16-19). With UN help, Western Sāmoa led the way in Oceania by gaining

independence in 1962; eight more countries would follow suit by 1980, while five chose free association, and others were "integrated" in various ways.

In the Pacific, it has often been claimed that the colonizers (mainly Britain and its regional settler surrogates, Australia and New Zealand) were more eager to decolonize than the indigenous peoples were, because nationalism was relatively underdeveloped due to cultural diversity and economic dependency in small, isolated island countries. Robert Aldrich (2000: 188) wrote, "In Oceania, decolonisation has marked a victory for the old colonial powers." He admits that both western Sāmoa and Nauru agitated for independence and as Trust Territories received support from the UN, while PNG and Vanuatu had self-government movements once democratic elections were allowed shortly before independence. But "the most ardent and violent struggles have taken place in countries where they have seemingly been in vain" (2000: 174), especially where immigration made the indigenous people demographic minorities. Barrie MacDonald notes that colonialism grouped small-scale societies into larger territorial frameworks. Urban centers attracted migrants and had to provide expanded services for the whole country, usually subsidized by outside aid. Educated elites benefited from "localization" of state personnel, but a general lack of political parties hampered political mobilization, beyond voting for individual representatives who were expected to mediate between tradition and modernity and to bring home rewards to their districts. Despite attempts to promote Melanesian Socialism or a Pacific Way, he concludes, "Decolonisation has, in many ways, become a ritual applied irrespective of relevance to all dependencies… While independence may seem a break with the colonial past, the continuities are rather more important because they establish the framework…" (MacDonald 1986: 124-25).

Decolonization in Oceania has occurred primarily through peaceful negotiation, though like the original colonial annexations, the dialogues have tended to be unequal, despite pressure from the indigenous peoples and the international community (Larmour 1983: 2-3). In 1983, for example, Pohnpei voted for independence, but the U.S. wanted to retain strategic control of its Micronesian Trust Territory, so it changed the ballot to eliminate that choice and required Pohnpeians to vote again, resulting in free association instead (Hanlon 1988). Stewart Firth (1989) criticizes any status short of independence as denying legal sovereignty to former colonies, but Aldrich suggests that "arrangements different to separation and sovereignty – statehood, 'free association,' territorial status – represent historical and constitutional alternatives to independence rather than failures of decolonization" (2000: 174). Jackson regards many ex-colonies as juridical "quasi-states" propped up by "new normative regulations: weak, marginal or insubstantial states are now exempted from the power contest at least in part and treated as international protectorates" (1990: 23). He concludes, "a greater variety of international statuses including more intrusive forms of international trusteeship might have rendered the post-colonial situation

less unsatisfactory" (*Ibid*. 202). By this reasoning, weak or failed states should never have become sovereign (or at least not yet, an old imperial caution), and their unhappy examples should serve as warnings to peoples under foreign rule of what may befall them if the colonizer leaves. Free association, integration or some form of subsidized autonomy would supposedly be preferable to independence, and indigenous peoples need not follow UN procedures but instead can decolonize through referendums organized by the colonizer with fewer choices than international law would require. Yet would the native inhabitants of Nazi-occupied France have liked this approach in 1944?

Jurist Yash Ghai, who was constitutional advisor for Papua New Guinea, the Solomon Islands and Vanuatu in the 1970s, has observed, "The constitutions are so structured as to transfer authority to an educated, westernized elite [and] far from marking the end of colonialism, can be viewed as its culmination" (1983: 62). Economically, the new state becomes captive to the ideology of development, and hence neo-colonialism that limits its ability to change social inequalities despite the expansion of the state apparatus. Yet despite this masking of foreign influence, "Constitution making has been important in the Pacific, for in many countries it has represented the first real exercise in national politics" (1983: 26). This belated territorial-scale negotiation perpetuated legal pluralism because in the colonial period, the state, although powerful in varying degrees, was not 'national,' was not based on consensus and tolerated a wide measure of autonomy at various levels… It was content to use traditional authorities (or create them where they did not exist) in order to ensure that its writ ran in the rural areas… Custom was used by the colonized as a base to pose the occasional challenge to some aspect of colonial rule or policy (*Ibid*. 63).

In the Australian-ruled UN Trusteeship of Papua New Guinea, for example, a British policy in African colonies of creating local village councils was transferred to PNG after World War II. But in most cases, these were new institutions in the indigenous societies, and only those involved in the cash economy could finance their activities through taxes. Moreover, the village councils only had advisory powers in relation to district patrol officers, who remained the sole link to the colonial administration. As late as the 1960s, Australian Territories Minister Charles Barnes viewed the councils "as an *alternative* to participation in the central government" (Downs 1980: 105, emphasis in original). The pro-self-government Pangu Pati thus achieved significant success in elections but never a legislative majority. In the Solomon Islands, Britain transferred not only colonial policies but also administrative personnel from Africa, but educated islanders criticized the paternalistic attitudes of this "Africa Corps" and called for independence. In Vanuatu, British and French regimes jointly tried to administer one hundred indigenous language groups in a condominium arrangement, which local nationalists called "pandemonium,"

and in Fiji and New Caledonia colonial immigration polarized ethnic tensions over who was to control the territories if and when they decolonized (Chappell 2005).

Once considered by anthropologists a kind of laboratory of social isolates in which to study human evolution, Oceania is today a diverse arena of contested experimentation in forms of self-government. For example, New Zealand and the UN have recently been pushing Tokelau to choose free association as a status that will "decolonize" its three resource-poor atolls. But two referendums so far have failed to overcome the sentiment among many Tokelauans that they have already voiced an act of self-determination in preferring to remain a territory, whose people have some autonomy and New Zealand citizenship and financial aid (Huntsman and Kalolo 2007). PNG, which became an independent state in 1975, has been called "Lucifer" by the Wind Nation in Manus province, who refused to accept colonial borders (Wanek 1996), and Bougainville attempted armed secession in 1988-2003, as did two islands in Vanuatu and the Kanak of New Caledonia (and the West Papuans in Indonesia). After the first anti-Indian military coup in Fiji in 1987, indigenous nationalist Asesela Ravuvu (1991) called democracy a "façade" that helped outside immigrants to dominate his country. In Tonga, on the other hand, a pro-democracy movement has since the 1980s challenged the lack of political representation of the commoner majority under the chiefly-dominated monarchy, leading to a destructive riot in the capital in 2006. Sāmoa reformed its constitution in 1990 to satisfy demands by women and untitled men to be allowed to vote, in addition to titled chiefs, but as a compromise between tradition and the modern state, only chiefs would be allowed to run for office (Chappell 1999). The prospect of a "failed state" was used to justify a peace-keeping mission in the Solomon Islands civil war in 2003. But Australia had refused the country's call for help until its tourists were bombed in Bali (Kabutaulaka 2005), so the intervention resembled the "old world order" of the nineteenth century.

V POST-COLONIALITY ?

"But how does one get from the colony to 'what comes after'?" asks Achille Mbembe in his *On the Postcolony*. "What death does one die 'after the colony'?" (2001: 196-97). Besides promoting aspects of indigenous custom regarding land rights or chiefly roles in building national or regional identities, Oceanian leaders have expressed unity through the Pacific Forum by creating a nuclear free zone and by negotiating fishing and offshore mineral rights under the 1982 UN Law of the Sea (Firth 1989). Yet if they fail to run their new states by the standards of outsiders, the fault is often attributed to their own "traditional" customs, not to any disruptive effects of "modernizing" colonialism or "free trade" development policies (Chappell 2005). Truly strong states are not encouraged, because foreign trade partners, aid donors and investors, who usually have the industrial advantage, want to keep their leverage in relations with developing countries. Sāmoan exporters complain, for example, that Australia and New Zealand restrict or ban their

products, despite the theoretical market access granted in the SPARTECA regional trade agreement (PIR 6/29/09). The World Bank and International Monetary Fund have made billions of dollars in net profits from interest on loans to developing countries. The World Trade Organization can demand that such states open up their raw material-based economies, while industrial countries often protect their own agriculture, because the developing countries have fewer than half the votes in such organizations. Since World War II, international law has gradually shifted toward the side of decolonization (Anaya 1996), but in 2007 the UN Declaration of the Rights of Indigenous Peoples prohibited political "separatism" from administering states by native minorities. It was mainly multi-ethnic African states that wanted that restriction, but who can enforce it?

As the Cold War ended, the World Bank emphasized "good governance" in the 1990s in developing countries. But the definition of that goal was tied to "free market" policies that were supposed to facilitate outside investment in local development. Binayak Ray (1998) noted that public sector corruption in Pacific Island states was caused partly by the reality that administrative systems had not changed structurally at independence; instead, they perpetuated elite rule over subject masses. Elections, by themselves, did not necessarily confer positive internal sovereignty on new states, because alien constructs risked becoming arenas for graft to serve personal, family or local community needs more than the national civil society: "Given the diversity of nations, there cannot, nor should there be, a single model for good governance practices and public administration structure… traditional values and customs continue to exert considerable influence and power… and should not be discarded outright, but be given due consideration in reform measures to ensure that they are acceptable to the community and are practical" (*Ibid*. 3). Modernization usually seeks to eliminate "custom-bound" thinking, so traditional leadership often declines, and new ways to make decisions and resolve conflicts take time to gain legitimacy: "reform measures must specifically relate to the country's geography, history, society and economy, and should not blindly follow other countries" (*Ibid*. 1). David Gegeo (1998) of the Solomon Islands has recommended grassroots dialogue with indigenous people to find out what kinds of development would be more culturally meaningful to them than top-down planning. Epeli Hau`ofa of Tonga (1994) sees in the choices made by families about which migrants to send overseas and where to send them a continuity with ancient voyaging in quest of resources, and a form of independence.

Liberation is a multi-faceted, ongoing process, but the quest for dignity is fundamental to the human spirit, so independence cannot simply be erased as obsolete. The French people demonstrated that when they rejected the European Union constitution in 2005. "Institutional and bureaucratic uniformalization appeared with the development of the State," Mark Ferro observes, and as that model enlarged its scale to the level of the European Union, "The citizen, who had lost his bearings, has also lost his recourse"

(1994: 506). As for colonized peoples overseas, "The liberation struggles, the conquest of independence, did nothing to stop the different unification processes put in place since the sixteenth century" (*Ibid*. 508). He sees today's technological, financial and economic globalization as "a colonialism without colonists" (*Ibid*. 516). Canadian jurist James Tully, however, proposes that post-imperial sovereignty should mean "the authority of a culturally diverse people or association of peoples to govern themselves by their own laws and ways free from external subordination" (1995: 195). Based on First Nation treaty-making in Canada, he argues that older constitutions once provided belonging through custom without individualism, but the modern versions enshrine the latter while excluding the former. He prefers a hybrid "constitutionalism informed by the spirit of mutual recognition and accommodation of cultural diversity. Both the philosophy and practice consist in the negotiation and mediation of claims to recognition in a dialogue governed by the conventions of mutual recognition, continuity and consent" (*Ibid*. 209). That approach could legitimize sovereignty internally or externally, but the real challenge is to reconcile individual and collective (e.g. indigenous) rights in the modern world. One creates a universal person, the other a special group identity, perhaps a nation.

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