ANALYSEN UND BERICHTE

›Decolonisation‹, ›Independence Constitutions‹ and the ›Modern State‹ in the Pacific Islands

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I

At first glance the Pacific Islands may look like a laboratory designed to develop a ›pure‹ decolonisation theory: by the time ›decolonisation‹ reached the area, it had been amply rehearsed elsewhere; routines had been established and most of the leading actors had a reasonably clear idea of what to expect and of what was expected from them; the upheavals of World War II had settled; there were no organised, aggressive and frustrated ›nationalist‹ movements; and the economic and strategic stakes (as well as the numbers of white settlers) were comparatively small. Thus the process has, so far, been almost disturbingly peaceful[1] and the forces and notions involved in ›decolonisation‹ as such (insofar as they exist) should have been able to exert themselves with a minimal distortion by ›external‹ factors.

Yet, the smallness of scale which sheltered the Pacific Islands from the winds of history in the past is also a stumbling block on the path of every historical theory. The stage is so intimate that statistical probabilities – the base of any historical laws, regularities or trends – constantly cancel each other out. History in the Pacific Islands is still a very personal and personalised affair. At least, the impersonal forces which have been identified – and thereby reinforced – as shaping Western ›evolution‹, and which appear to justify the writing of a certain brand of history rather than the mere collecting of, perhaps, wildly contradictory stories, are still only enlarging their beach-heads. Nevertheless, ›decolonisation‹ in the Pacific displays common features, although they are too general to be of much use in writing a ›realistic‹ history of the relevant period in

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1 The New Hebrides/Vanuatu case no longer fits neatly into this pattern. The independence of Vanuatu is too recent for a substantial body of scholarly literature to have developed, although, no doubt, several books are in the pipe-line. J. MacClancy's short history »*To Kill a Bird with Two Stones*«, Vanuatu Cultural Centre Publications No. 1 (1980), provides a useful introduction with further references.

any particular island. Such a history would have to concern itself in every case almost exclusively with individuals and the relations between them.[2]

The smallness of scale – combined with the vast expanses of ocean separating these often tiny islands – has still another (and far more important) consequence: it tends to show that the allegedly necessary is in practice impossible and that it may therefore be an erroneous ideological axiom rather than an unavoidable ›fact of life‹. To put it less mysteriously: while there seems to be general agreement on one crucial aspect of ›decolonisation‹ – namely that it requires the continued presence of the ›modern state‹ in the former colony – the ›decolonisation‹ experience in the Pacific Islands demonstrates that some distinct ›polities‹ cannot and, perhaps, never will be able to afford this presence.

So far this problem has been largely seen in terms of the ›economic viability‹ of a few ›marginal‹ states and the solution has been the propping-up of the ›modern state‹ by external subsidies in various forms and under different constitutional arrangements (ranging from ›independence‹ through ›association‹ to integration into another state). This approach, which appears to prevent full ›decolonisation‹ – and ›economic viability‹ of the resulting units was indeed, until recently, regarded as an essential precondition for ›decolonisation‹ – is justified by the assumption that these subsidies are temporary measures and that the ›marginal‹ states will eventually become self-supporting – perhaps, like 21th Century Naurus, as the result of deep-sea mining.[3]

The claim was and still is that ›economic progress‹ will make the ›modern state‹ universally affordable. But even if this is so, it does not follow that the ›modern state‹ is also necessary. Nevertheless, the ›economic progress‹ aspect is a crucial ingredient in the circular argument on which the whole approach rests: only the ›modern state‹ can bring about the economic development which makes it affordable. It forms part of a strategy which tries to solve the world's problems by increasing *supplies* in the form of goods and services etc. Since the geographic reality in the Pacific demonstrates the limitations of this strategy particularly clearly and since the traditional Pacific cultures express an alternative strategy – focussing on the control of *demands* (including the population size) – the traditional social and political institutions, processes and values of this area are not merely museum pieces or objects of rhetorical national pride but have considerable theoretical as well as practical significance – and not just for the Pacific Islands. In other words: the Pacific Islands may indeed turn out to be the arena in which the decisive

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2   It is the familiar, ›middle level‹, historical writing with its modest, conventional summaries or generalisations – supposedly based on hard evidence – which presents unusual problems.

3   Nauru was the second Pacific Island State (after Western Samoa in 1962) to become independent. Its Constitution dates from 1968. (The Cook Islands – Constitution 1964 – are self-governing and associated with New Zealand.) Although the total population of Nauru is even now only about 6,000 (as compared with approximately 150,000 for Samoa and 20,000 for the Cook Islands) ›economic viability‹ was no problem on account of its rich phosphate deposits which earned the Nauruans already in 1966 one of the highest *per capita* incomes in the world (*see* K. McDowell, The Factors Behind the Constitutional Arrangements in Nauru, in P. Sack (ed.), *Pacific Constitutions*, Canberra, 1982: 73–85.

battle for ›decolonisation‹ is fought, but the issues involved may have little in common with those listed on the conventional agenda of ›decolonisation‹ theorists.

II

If the term ›decolonisation‹ were just an analytical tool designed to achieve a better understanding of history, it would best be abandoned forthwith in favour of a series of narrower and less ambiguous concepts. However, ›decolonisation‹ belongs to a group of terms also serving as ideological weapons, which play a significant role in shaping history and which are in this respect, historical facts rather than explanatory devices.[4] It is therefore futile to try to escape ›decolonisation‹ and worse to attempt to neutralise it by drowning it in a vat of pseudo-synonyms – such as ›independence‹ or ›transfer of powers‹ – to be retrieved at random or when a particular label promises to support a specific argument particularly well.

It would be equally pointless to search for a dogmatic and logically consistent definition of ›decolonisation‹. The approximate meaning must emerge from the historical process (or processes) it is meant to characterise – which does not mean that the term ›decolonisation‹ could not be improperly used in academic discussions or that a historical process to which it is properly applied must conform to the ideas the term is meant to convey.

Although these difficulties are serious and give rise to much confusion, the situation is not hopeless. It is certainly not exceptional: ›nationalism‹ for example, or ›self-determination‹ are similar nuts that are much harder to crack. For one thing, ›decolonisation‹ is and is used as a dependent concept: it can only make sense when seen together with ›colonisation‹ or ›colonialism‹. For another, ›decolonisation‹ is not only a reverse process (the reversal of ›colonialism‹) but also a distinct type: it does not apply indiscriminately to all processes by which a colony can cease to be a colony. The disintegration of the Roman Empire, for instance, would, even by those who see it as a ›colonial‹ empire, be hardly described as ›decolonisation‹.[5]

Pursuing this line, it becomes evident that ›decolonisation‹ is exclusively linked to a particular historical form of ›colonisation‹: it is neither concerned with the ›colonisation‹

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4 It goes without saying that, upon close inspection, many other types of historical facts, also turn out to be (generalising or evaluating) conceptualisations instead of objective descriptions.

5 On the other hand, it may be politically regrettable (at least from the Asian point of view) that the ›decolonisation‹ of the British Empire was no longer prepared by Gurkhas taking over Buckingham Palace and dispersing Parliament with kicks and rude jokes. (It is instructive, in this context, to consider Bryce's ›classic‹ comparison of ›The Roman Empire and the British Empire in India‹ (*Studies in History and Jurisprudence*, vol. l, Oxford, 190 l: 1–84, especially the conclusion). Bryce proclaims the ideology of modern European colonialism with such self-assurance that one no longer wonders why so many writers on ›decolonisation‹, two generations later, still find it difficult to free themselves from these blinkers (just as their anticolonial counterparts who share the same limited field of vision, seen in a negative light).

efforts of the ancient Romans (or Greeks or Chinese) nor with the colonisation of the Saxons by the Franks, or the Slavs by the Saxons, or the Anglo-Saxons by the Normans etc. – instead it focusses on modern European ›colonialism‹ since the 16th Century, especially on 19th Century European ›imperialism‹ in Africa, Asia and the Pacific. The type of ›colonisation‹ which ›decolonisation‹ has in mind thus involves the ›colonisation‹ of peoples belonging to different races and cultures and living in distant parts of the globe.[6]

As it is concerned with the ›colonisation‹ of peoples rather than their countries, a ›colony‹ of European ›colonists‹ on a previously uninhabited island can (›strictly speaking‹) not be ›decolonised‹. The same applies to ›colonies‹ where European ›colonists‹ exterminated the indigenous population and, perhaps, even where they turned it into a powerless, marginal minority. The handing-over of a ›colony‹ by the ›colonial‹ power to the resident ›colonists‹ (especially where they merely form a dominant minority) is not ›decolonisation‹. Neither the declaration of independence of the United States of America nor the founding of the Commonwealth of Australia can be ›properly‹ called acts of ›decolonisation‹. This point is well illustrated by the case of Rhodesia: the attempts by the European ›colonists‹ to cut their bonds with the United Kingdom als the ›colonial‹ power were rightly understood by everybody else as being aimed at preventing rather than achieving ›decolonisation‹.

III

The term ›decolonisation‹ sees the process for which it stands primarily from the position of the colonial powers: it is they who ›decolonise‹ their colonies, not the colonised. ›Decolonisation‹ terminates colonialism by destroying the colonies as colonies. It is, in this sense, a demolition of empire, which could be achieved by unilateral withdrawal, by a solemn and solitary declaration on the part of the colonial power – as a counterpart of the unilateral assumption of sovereignty through which the colonies came into existence – proclaiming their legal death.

But the negative aspect of ›decolonisation‹ goes further: it implies the failure of colonialism, not merely its end. It perceives colonialism as a mistake, as an unfortunate event which must be somehow undone. In that sense ›decolonisation‹ is akin to paying compensation: the aim is to reverse history and to take it back to the point before the ›damage‹ occurred.

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6   The lack of this lack of geographical contiguity is one of the reasons why the Russian ›colonisation‹ of Siberia may fit into a different category (and why ›decolonisation‹ must also take a different form). Perhaps it is characteristic for ›colonialism‹ that it was, from the start (from the Pope's division of the non-Christian world between Portugal and Spain), aimed at incorporating the rest of the globe (in a subservient role) into the (superior) universalistic, Western cultural and economic system – whereas the Russian version of ›colonialism‹ (in contrast to Soviet ›hegemonism‹?) was still simple, uncivilised and pluralistic conquest?

At another level this is not only impossible but also undesirable, so that ›decolonisation‹ is partly transformed into a positive process, geared towards the future rather than a hypothetical past. In this context ›decolonisation‹ as ›the end of empire‹ tends to change into ›independence‹ – but into ›independence‹ as a goal of ›decolonisation‹ and not in its own right. ›Decolonisation‹ aims at the creation of an independent state in the place of the colony which had hitherto existed: death becomes metamorphosis. That is to say – unless additional factors come into play – the shape of ›independence‹ is determined by a ›decolonisation‹ on the part of the ruler and not ›liberation‹ on the part of the ruled: it is, in its pure form, not the achievement of true independence but marks, at best, the point from where this goal can be freely pursued.

›Decolonisation independence‹ tends to be strongly influenced by the ›compensation‹ aspect of ›decolonisation‹ which – paradoxically – thereby too acquires a second, positive face. ›Decolonisation‹ changes into the completion of colonialism. The sins of the past are undone by lifting the colonised to the level of the colonisers. The guiding to ›independence‹ turns into the ultimate justification of colonialism. The civilising mission of colonialism is finally accomplished. ›Decolonisation independence‹ does not stand for freedom of choice but for assimilation. It means – not becoming independent – but becoming as independent as ›we‹ are; it means becoming independent through becoming like ›us‹ – the ›like-us-ness‹ defining the basic contents of independence.

›Decolonisation‹ is thus far the ›continuation of colonialism by other means‹: one of its central aims is the permanent integration of the colonised – albeit in a different role – into the world of which, during its formative period, the colonisers were the leading members. A return to pre-colonials state-less societies, for example, ist not part of the bargain. Instead, the colonised are expected to commit themselves in their ›independence constitutions‹ to the ›modern state‹. That is why the process of decolonisation can be designed as a ›transfer of power‹. ›Decolonisation‹ is – for the colonisers – essentially the transfer of the legal state powers to a new state whose structure is defined in its ›independence constitution‹.

For the colonised the situation looks, of course, not quite the same – especially before ›independence‹.

A major reason for the different perception of ›decolonisation‹ is that the colonised, as yet, do not speak and act on behalf of a state with which they identify. On the contrary, they still perceive the ›state‹ as part of the colonial scene and thus as being on the list of those institutions etc. which should be abolished or at least drastically modified as part of ›decolonisation‹. For ›decolonisation‹ as seen by the colonised is also first of all a negative process – but one with a much wider scope. To them ›decolonisation‹ means not only the abolition of colonial sovereignty but the destruction of everything representing the colonial regime. It is therefore a broad, cultural rather than a narrow, political, let alone legal, task.

But, for the colonised ›decolonisation‹ has also a positive side. It naturally leads to a revival of traditional values, institutions and processes which were suppressed or distor-

ted during the colonial period. They must reassert themselves after the termination of foreign rule to prove that colonialism was a wrong which can and should be undone. Without some form of traditional revival only a lament for the human or cultural victims of colonialism would be possible. ›Decolonisation‹ would be ultimately pointless because too late. For the colonised ›decolonisation‹ can only be achieved if the post-colonial future can be built on the pre-colonial past.

It is also clear, however, that ›decolonisation‹ cannot merely be a restoration of the pre-colonial past. For the colonised even more than for the colonisers ›decolonisation‹ is vitally concerned with the future. For the former this aspect tends to merge with a demand for ›modernisation‹, embracing the pre-colonial past as well as the post-colonial present. The goal is a hybrid, typically a modern nation state built on traditional foundations.

In addition, the colonised must respond to the ›decolonisation‹ approach of the colonisers. Here the ›transfer of power‹ aspect of ›decolonisation‹ assumes critical importance. Since ›powerlessness‹ is the crux of colonialism as seen by the colonised, the acquisition of power becomes the key to ›decolonisation‹. It seems to matter little what powers are transferred and in what forms, as long as the transfer occurs – the quicker the better. One does not look a gift-horse in the mouth, expecially if one believes to be able to alter its shape once one has got it.

Hence, the more smoothly ›decolonisation‹ proceeds, the more strongly it tends to be dominated by those features which the colonisers chose to achieve their goals. To put the paradox differenty: the more peaceful ›decolonisation‹ is, the more equal the game, the more it turns into a triumph of colonialism. In its ›pure‹ form ›decolonisation‹ has about as much to do with ›true‹ decolonisation as ›demobilisation‹ with a situation in which an army is ›demobilised‹ by turning all conscripts into professional soldiers.

This does not mean that the concept ›decolonisation‹ is wrong (its face value may well express what ought to happen) – rather, it implies that history sails (as it frequently does and rarely by accident) under a false flag.

IV

It is easy to appreciate why ›independence constitutions‹ play a central role in the ›decolonisation‹ process as seen by the colonisers. It is less clear why this fact is so readily accepted by the colonised. They, one would have thought, should insist on a separation of the ›transfer of power‹ from the constitution-making process and on beginning the latter (at least formally) only after ›independence‹ is achieved.

The general acceptance of an ›independence constitution‹ as a condition for independence in the Pacific Islands has many and varied reasons. For present purposes the following is particularly significant. At the eve of independence, the political ›elite‹ among the colonised is simultaneously filled with tremendous hunger for and distrust in

state powers. It wants to destroy the colonial state and yet maintain its modern state machinery for the task ahead. The modern state is seen as a very necessary but also very dangerous evil, too valuable and too powerful to be let loose even for a second. In practical terms, the main task is to bring the colonial bureaucracy under local political control, but the local politicians do not trust each other either (not with such a lethal weapon): they too have to be controlled in various ways – and how else can that be done than by way of a strong ›independence constitution‹, defining individual rights and national goals, providing reins as well as spurs for governmental action?

›Independence constitutions‹ are thus primarily conceived by the colonised as charters for post-colonial state government and not as revolutionary blue-prints for newly independent societies. They are attempts to tame the colonial state, not attempts to reconcile the modern state with traditional forms of socio-political organisation. Although it is accepted that the future of the country after ›independence‹ will continue to be shaped – as during the colonial period – by governmental action, there remains a curious feeling that the state (which is to be regulated by the ›independence constitutions‹) is somehow distinct from society (for which the ›independence constitutions‹ have little direct relevance). While it is seen as desirable that ›traditional society‹ and the ›modern state‹ should eventually meet, the ›independence constitutions‹ are not to provide this meeting place.[7]

Similarly, while it is important for the ›independence constitutions‹ to be programmatic, they do not have to commit themselves, for example, to a concrete programme of economic development. Crucial issues (such as traditional land tenure) are often consciously avoided[8] and fundamental tensions (such as those between the requirements of

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[7]   This is not the place to enter into a discussion of the nature and the characteristics of the ›constitutions‹ of ›traditional societies‹ – not even limited to the Pacific Islands. While there are a number of important, general and – at first glance – clear distinctions, between these ›constitutions‹; and those of ›modern states‹, the contrasting of two simple ideal types would be highly misleading, at least in the former case. It is true that the separation of political and social functions (which in the ›West‹ took the form of a ›reification‹ of the ›State‹) is not as marked in the traditional socio/political groups and groupings in the Pacific. It is also true that their organisation tends to be based on kinship (or, at least, an ideology of kinship) rather than on residence within an (artificial) territorial unit and that the exercise and the control of political power is in many ways less ›legalised‹ or bureaucratised, but this is only a small part of the story, and it is fatal for a realistic appreciation of the strengths and weaknesses of ›traditional systems‹ if they are, even with the best will in the world, seen from a ›modern state‹ perspective – which is not merely the only perspective that most of us ›instinctively‹ know but also the only one that has been worked out in a manner that ›fits‹ into theoretical but at the same time ultimately policy-oriented, ›implementable‹ debates. The purpose of this paper is to highlight the need for widening the scope of this debate not to expound my understanding of certain aspects of certain Pacific societies.

[8]   The case of Vanuatu is again exceptional. An attempts was made to cut at least this one Gordian knot (perhaps the wrong one?) with the constitutional sword. Section 71 declares bluntly that all land belongs to the »indigenous custom owners and their descendants« [as if there is a clear and unproblematic concept of customary land *ownership!*]. But even if this is interpreted as a self-executing wholesale expropriation of all alienated land, it achieves by itself no more than a clearing of the way for a radical new beginning. Section 71 does not say what is going to happen to land in Vanuatu and Section 72 only goes as far as cautiously suggesting that »the rules of custom [is custom composed of – legal, enforceable – rules?] shall form the basis [!] of ownership [?] and use of land in the Republic«.

economic development, traditional values and Christian faith)[9] are left unresolved – not merely because it is too difficult, or impossible, to reach agreement, but because these are not the kind of issues which the ›independence constitutions‹ are meant to settle. As far as their normative and organisational sides are concerned, their field is the modern state and nothing else.

This is shown by the treatment of traditional leaders in the ›independence constitutions‹. They take no interest in traditional forms of political organisation or leadership as such. Only insofar as traditional leaders or political institutions are given a role in the running of the modern state is their existence recognised, and their functions are then exclusively defined by the constitution or subsidiary legislation. Even Article 100 of the Western Samoan Constitution, which seems to be a general constitutional recognition of the traditional *matai* position is not a real exception, as it says nothing about chiefly rights or duties etc., but only prescribes that:

> A matai title shall be held in accordance with Samoan custom and usage and with the law relating to Samoan custom and usage.[10]

The spheres remain, in principle, distinct and there is, if anything, a veiled threat that the state, through the law relating to Samoan custom and usage, can, some time in the future, assert its dominance over traditional forms of political authority.

Although the Samoan state is presented in the Preamble as a creation of the traditional leaders,[11] the constitution (which, by contrast, is described as »the work of the people«) clearly sets it apart from traditional society: it comprises, according to Art. 3 »the Head of State, Cabinet, Parliament and all local and other authorities established under any law« – but not under custom!

9   Religion, and Christianity in particular, is still a serious matter in the Pacific Islands. Even the ›state‹ is not seen as a purely secular institution. This has been reflected, often in a curious mixture, in Pacific constitutions since the Tongan Constitution of 1875 which must be, by now, one of the oldest, operative, written constitutions in the world. While proclaiming the freedom of worship – restricted to God – in Article 5 (although the commission of »evil and licentious acts« in the exercise of this freedom is made unlawful) it declares in Article 6 not only the Sabbath Day sacred but also working or gambling on that day to be illegal and all contracts or agreements concluded or witnessed during its course to be void.
     Since the first modern constitution – that of Western Samoa in 1962 (see the following footnote) – it has become common to assert loyalty to Christianity as well as to tradition, for example in the Constitution of Tuvalu. In its Preamble the people of Tuvalu acknowledge God »as the Almighty and Everlasting Lord«, affirm their allegiance to »Her Most Excellent Majesty Queen Elizabeth II, Her Heirs and Successors« and express their desire »to constitute themselves as an Independent State based on Christian principles, the Rule of Law and Tuvaluan custom and tradition«.

10   It is impossible to give a brief but adequate account of the *matai* system. For a recent discussion which is particularly useful from a legal point of view, see G. C. Powles, The Persistence of Chiefly Power and Its Implications for Law and Political Organisation in Western Polynesia, PhD thesis, Australian National University, 1979. One particular point, however, should be made: by 1979, *matai* accounted for 7.2 % of the total population and for 38 % of males 20 years and over (*ibid.*: 189). That is to say, taken as a whole, the system, while perhaps undemocratic in the modern Western sense, is not nearly as oligarchic as it may sound (although its internal structure has a strong hierarchical emphasis).

11   »Whereas the Leaders of Western Samoa have declared that Western Samoa should be an Independent State based on Christian principles and Samoan custom and tradition.«

The human rights provisions in the Western Samoan Constitution also maintain an artificial separation of traditional society and the modern state. Clause 2 of Article 15 outlaws discrimination *inter alia* on the basis of »social origin« or »family status« unless »expressly authorized under the provisions of this Constitution« – as if Samoan custom could not possibly demand this kind of ›discrimination‹ – although Clause 4 admits that some of the pre-independence laws or administrative practices of the state could be at variance with Clause 2. Clause 4 allows them to remain in operation for the time being, with a proviso which again appears to assert the dominance of the modern state over traditional society:

> Provided that the State shall direct its policy towards the progressive removal of any disability or restriction which has been imposed on any of the grounds referred to in Clause (2) and of any privilege or advantage which has been conferred on any of these grounds.

Whatever the relations between the human rights provision in the Constitution and Samoan custom and tradition – and they are far from clear – they are unlikely to correspond with the views expressed by the then Prime Minster, Fiame Mata'afa, some years after the Constitution came into force:

> We must take care that we adopt only those rights which will not interfere with our own respected customs and traditions.[12]

Article 44 of the Western Samoan Constitution probably provides the best illustration for the length to which the ›separate spheres‹ approach can be pushed, for the complex reasons behind this approach and for the problems it can create.
It was clear at the time the ›independence constitution‹ was finalised that the leaders of Western Samoa wanted, in principle, a limitation of suffrage to *matai*.[13] It was also clear that the United Nations – Western Samoa being a Trust Territory – were not pleased with this limitation but were prepared to accept it after it had been ratified by the people of Samoa in a referendum. Despite all this, the Constitution avoids the issue and pretends that the intrusion of traditional society in the modern state has not taken place. It presents a conventional, modern, democratic façade by stating in Article 44,3 that the qualifications of electors are to be prescribed by law.
Even the relevant law, the Electoral Act 1963, tries to prolong the pretence by insisting in Section 16 that »every person« shall be qualified – provided that he is the holder of a *matai* title. Moreover, it is again the modern state law and not custom which defines who

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12 *See:* G. C. Powles, The Status of Customary Law in Western Samoa, LLM thesis, Victoria University of Wellington, 1973: 37, where this statement is quoted.
13 The »individual voter's role«, primarily designed for naturalised Europeans outside the traditional social system, will be disregarded.

among the *matai* is actually qualified. It is not the holding of the title in accordance with custom which counts, but the fact that the name of the title-holder appears

> for the time being on the Register of Matais established and kept pursuant to the Land and Titles Protection Ordinance 1934.[14]

Since *matai* suffrage is not, at least not formally, part of the Western Samoan Constitution, it could obviously be challenged as being contrary to the human rights provisions in that document. It is surprising that it took until 1982 before the challenge actually occured. It was predictably successful before the Supreme Court[15] and it is a mixed blessing that the Court of Appeal just overturned this decision, thus restoring the veil hiding the still unresolved tensions between traditional society and the modern state.[16] The significance of the ›separate spheres‹ approach reaches much further. It has, for instance, also considerable impact on the way in which ›decentralisation‹ is handled. Although it is one of the acknowledged aims of ›decentralisation‹ to change the colonial pattern of government by involving the people more directly – as they were in the pre-colonial past – this is not done by utilising traditional forms of government. Instead, ›decentralisation‹ becomes an extension of modern government to the local level so as to make it more responsive to local needs and to give the people better access to its services. ›Decentralised‹ government is still modern, bureaucratic state government, supposedly controlled by elected political representatives of the people, not government by the people along traditional lines. ›Decentralisation‹ is the devolution of the transferred colonial state powers, it leads to state government in miniature, it helps the modern state to penetrate to the grassroots level, it multiplies the impact of the bureaucracy instead of reducing it.

It is typical that the 1979 Constitution of Belau – with a total population of about 15,000 – renamed the colonial ›municipalities‹ ›states‹ (Article XV, s. 6) and that the main aim of the caps ›Western Breakaway Movement‹ in the Solomon Islands was the duplication of the detailed provisions relating to the national government in the proposed sonstitution at the provincial level.[17] It is also typical that it was a central concern of the ›Movement‹ to assure that the economic potential of the ›province‹ was firmly controlled by the ›provincial government‹.

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14 In addition title-holders are excluded if they are disqualified under Section 5 of the Act or under the age of 21 years.

15 *See:* Saipa'ia Olomalu etc., unreported decision of 5 April 1982.

16 The judgement which runs to 41 type-written pages is well worth studying if and when it becomes available in published form. (Printed legal materials for the Pacific Islands, including legislation, are, in general, difficult to obtain. While this is often frustrating, especially for interested outsiders, it is by no means clear that the costs involved in maintaining an efficient reporting, printing and distribution service would be justified – although it could be easily financed by avoiding one of the many of the expensive ›white elephants‹ in the field of economic development once every twenty years or so.)

17 *See* P. Larmour, Federal Constitutions that never were: ›Nagriamel in the New Hebrides and the ›Western Breakaway movement‹ in the Solomon Islands, in P. Sack (ed.) *Pacific Constitutions* Canberra, 1982: 141–152.

The provinces, it should perhaps be noted, are themselves seen as creations of the modern state: they are established by Parliament »after considering the advice of the Constituency Boundaries Commission«; they are subsequent subdivisions of the Solomon Islands state established by the Constitution (Section 114, Subsection 1).[18]

The ›separate spheres‹ approach is even visible at the ideological level in the programmatic parts of the ›independence constitutions‹. Just as the technology of government they adopt is that of the modern Western state, the goals of government and the individual rights and social obligations of the citizens they proclaim are basically Western imports, although some of them are ›novel‹ and others are chosen as being the equivalents of traditional Pacific values and aspirations.

It is certainly unusual that the Bill of Rights in the Constitution of the Marshall Islands includes basic obligations on the part of the government as a reflection of collective rights of the people, but neither the right of the people »to health care, education and legal services« (Section 15) nor »to responsible and ethical government« (Section 16) – and the corresponding obligation on the part of the government »to take every step reasonable and necessary« to reach these goals – appears to have much to do with traditional Marshallese notions: it rather looks like a further step in the direction of the perfect welfare state.

The lengthy preamble to the Papua New Guinea Constitution[19] seems to contain an exception, as the fifth and last of the national goals calls for the implementation of »Papua New Guinea ways«. However, the picture changes considerably if this goal is seen in context and inspected more closely.

First of all, it is – in relation to the preceding four goals – subsidiary and ›procedural‹. Secondly, it has no major impact on the formulation of the subsequent basic rights and social obligations or on the organisational framework provided in the body of the Constitution. And thirdly, it is weakened rather than strengthened by the ›directives‹ which are meant to concretise it.

The first four goals form an admirable, modern, development-oriented package: integral human development, equal opportunity to participate in the development of the country, its political and economic independence, conservation of natural resources and the environment. The fifth goal aims at implementing this package »primarily through the use of Papua New Guinea forms of social, political and economic organisation‹. Papua New Guinea ways are not a goal in themselves but are proclaimed to be the most appropriate means of realising other goals which are by implication seen as being in accordance with Papua New Guinea values. Yet, by descending from the lofty level of traditional values to that of traditional organisation the goal could open the way to very

18 It does not come as a surprise that the traditional chiefs also find a place in Subsection 2 »Parliament shall make provision for the Government of the provinces established under this Section, and consider the role of traditional chiefs therein«.

19 The Constitution of Papua New Guinea is one Pacific constitution that has already received monographic treatment *see:* J. Goldring, *The Constitution of Papua New Guinea: a Study in Legal Nationalism,* Sydney, 1979.

practical reforms. It is in this respect that the following ›directives‹ are so disappointing. The first calls for a »fundamental re-orientation [not re-organisation!] ... of the institutions of government, commerce, education and religion« as well as – in a moment of despair – »our attitudes«, as if the people had already firmly turned their backs towards Papua New Guinea ways. Moreover, it talks no longer of forms of organisation but of forms of »participation, consultation and consensus« etc. The (imported) institutions of government are here to stay but they are to be made more responsive to the needs of the (re-oriented?) people, through more participation, more consultation and a more consensual approach.

Directive (2) requires that »particular emphasis in our economic development be placed on small-scale artisan, service and business activity«. Directive (3), after proclaiming the »cultural, commercial [!] and ethnic diversity of our people« as »a positive strength«, stresses that the »traditional ways of life and culture« should be »dynamically and creatively [applied] for the tasks of development.« Directive (4) finally refers to the traditional forms of social, political and economic organisation in the shape of »traditional villages and communities«, but merely in order to insist that they should remain »viable units of Papua New Guinean society [not the state!]« – adding immediately, that »active steps ... [should] be taken to improve their cultural, social, economic and ethical quality«.

This is far from being a strong, optimistic and motivating program for blending traditional society with the modern state. And the paternalistic nostalgia with its implied (not so subtle) distinction between ›we‹ (the constitution-makers), ›we, the People‹ (as the sovereigns of the new state) and ›our people‹ (the real people, living in traditional communities that urgently require the assistance of the state to improve not only their economic but also their social, cultural and ethical quality so that they may survive as viable units of society) – is, objectively, quite offensive.

There are, of course, good reasons for this ›separate spheres‹ approach and all the ambiguities and problems it involves. To find a synthesis between the modern state and traditional forms of socio-political organisation, between the demands for modern goods and services and traditional cultural values (if this is intended) is indeed a formidable task. It certainly is a task for which neither the colonisers nor the colonised are well equipped during the ›decolonisation‹ period[20] – and it can probably never be mastered in a constitutional document.

It is, without doubt, ›realistic‹ to avoid these issues, or at least to avoid resolving them, in the ›independence constitutions‹ and to concentrate on trying to tame the colonial state. The political (and intellectual) climate is probably such that the poetic but impotent wing-flapping of the Constitutional Planning Committee in Papua New Guinea is the

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20 The ›pressure of time‹ argument ist, in my view, merely a convenient excuse. What is required is vision, courage and commitment, not another year or two to compare and select from an even larger range of irrelevant precedents.

best that can be accomplished.²¹ On the other hand, it is equally clear that the ›independence constitutions‹ do little more than to legitimate the perpetuation of conventional forms of modern state government.²²

The ›elites‹ were, I believe, aware of this, they knew that the real tasks lay still ahead, but all of them – the experiences of their predecessors notwithstanding – believed in the ›miracle of independence‹. Once independence was achieved, everything would be different. Once they wielded power, the state could and would change from an instrument of oppression into a tool for human development. The ritual of independence (which became largely the ritual of constitution-making – to be distinguished from the actual ›transfer of power‹ horse-trading behind closed doors) would change acid into honey; it also gave the impression that national politics would continue to be conducted in a grand manner, so that there would be ample opportunity of moulding the future of the nation. The fate of ›decolonisation‹ in the Pacific – if it is seen as involving more than the transfer of state powers from the colonisers to the colonised – thus remained in balance beyond ›independence‹, and it is necessary to consider briefly the role of the ›independence constitutions‹ during the post-independence period.

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It hardly needs saying that the ›miracle of independence‹ never occurred. This is not a century which favours miracles, and somehow the chances decrease rather than improve with ›independence‹. If a miracle is wanted, it must be engineered during the immediate ›pre-indendence‹ period when everything appears possible and nothing certain. As it was, things returned, with amazing speed but also without dramatic hitches, to ›normal‹, and the ›independence constitutions‹ assumed the kind of invisibility constitutions have everywhere, except in times of crisis.

It is ironical though, that the non-occurrence of the ›miracle of independence‹ is a key factor in preventing major constitutional crises so far. No one, including radical purists (comparatively speaking) like Fahter John Momis²³ in Papua New Guinea, has taken the explicit or implicit programmatic aspect of the ›independence constitutions‹ sufficiently seriously to stake his or her political life on their implementation. Power is sweet and plausible excuses for not letting it go are easily found. More importantly, there is still enough power to be shared at various levels to give everybody interested at least a sporting chance – and political power games are still the favourite Pacific sport.

Besides, Pacific Islanders are pragmatic in playing this game, and, so far, they have

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21 *See* Papua New Guinea, Constitutional Planning Committee, Final Report, Port Moresby, 1974: 2/12–15.

22 That does not mean that there were no ›innovations‹ – but they were all more or less exciting variations of the same basic model; they did not basically alter the accustomed and familiar structures of modern government.

23 For some information on the role of John Momis *see* J. A. Ballard (ed.), *Policy-Making in a New State, Papua* New Guinea 1972–77, St. Lucia, 1981.

preferred to manipulate it in traditional ways instead of trying to alter the constitutional rules and conventions in their favour. Thus, the constitutional processes and rituals have been readily incorporated into the pluralistic political cosmos and have been largely followed (although – or because – much of the decisive action as yet takes place outside this framework). In particular, governments have succeeded each other peacefully and in accordance with the rules of the constitutions.[24]

However while this is in itself a highly desirable and significant result, it proves little. It does not demonstrate that ›constitutionalism‹ is working in the Pacific, but rather that there has been as yet neither a compelling need nor a realistic chance to try to do anything else – and that Pacific Islanders, including their leaders, are reasonable people who dislike ideological confrontation and dogmatic commitment.

Why should a military commander in the Pacific Islands – if a military force exists at all – attempt a military coup? Instead, he can resign, stand for parliament and come at the first attempt close to becoming prime minister as Ted Diro in Papua New Guinea has recently demonstrated.[25] What can a Pacific Island prime minister do to stay in power after a lost election or a successful vote of no confidence? How could Albert Henry in the Cook Islands have refused to accept the decision of the Chief Justice which effectively removed him from power?[26] What option did Iambakey Okuk have apart from trying to calm down his disappointed supporters after his defeat in the last elections in Papua New Guinea? Should he have led a march on Port Moresby to take over the national government or tried to turn his home province into the independent state of Simbu?[27]

As long as there are no serious external pressures, as long as the economic conditions do not deteriorate too much further – and the people are still patient, frugal and predominantly self-sufficient – as long as aid and remissions keep on coming in,[28] and as long as no one takes the constitutions too seriously, the will survive – not because they have proven themselves under fire, but because the Pacific has so far been – by world standards – a lucky region.

However, the happy state of muddling along – performing the rain-dances of development on the silent assumption that time will solve the real problems by providing more and more money – is unlikely to be allowed to continue much longer. When the crunch

24 *See* G. Fry, Successions of Government in the Post-Colonial States of the South Pacific: New Support for Constitutionalism? in P. Sack (ed.), *Pacific Constitutions,* Canberra, 1983: 189–205.
25 The 1964, 1968 and 1972 Elections in Papua New Guinea have all been treated in book form (the last volume is D. Stone (ed.), *Prelude to Self-Government,* Canberra, 1976). A volume dealing with the 1976 Elections is about to appear and the 1982 Elections will eventually also be written up in a similar way.
26 *See:* R. G. Crocombe (ed.), *Cook Island Politics, the Inside Story,* Auckland, 1979 and K. Hancock, *Sir Albert Henry, His Life and Times,* Auckland, 1979.
27 Okuk was – and still is – one of the most volatile forces in Papua New Guinean politics. He had high hopes of becoming the country's new prime minister after the 1982 Elections, only to lose his own seat (*see* also: Ballard *ibid.*).
28 Some of Polynesian Island communities, in particular, depend heavily on monies returned by members working abroad, and deals concerning payments for a continued military presence of the United States in the Micronesian Islands sometimes, unfortunately, dominate debates about political developments in that region.

comes, the Pacific Islands would be in a much stronger position if they began to take the ›decolonisation‹ process again more seriously. The issues which ›decolonisation‹ has raised have not yet been resolved, certainly not by the ›independence constitutions‹. To play games with increasing stakes over who is going to hold what slices of the imported modern state powers is humanly understandable, but will make the solution of these problems only more difficult. It is a mistake to believe that ›decolonisation‹ is about *who* is to govern the colonies; it is, like colonialism, about *how* they are to be governed.

While the Pacific Islands will perhaps always be too small and too scattered and too poor to afford the modern state, they have considerable advantages in devising and implementing viable alternatives: as long as traditional society is alive (and can thus be used as the target of ›modernisation‹) the Pacific Islands can – at least internally – afford to be without the modern state (or adopt a drastically reduced and modified form of the modern state).[29] As fas as external pressures and danger are concerned (which are real and likely to increase), the modern state in its Pacific miniature form will, in any case, only give minimal protection.[30] The Pacific Islands cannot beat the West (or the East) at its own game. Their only realistic chance is to work on their own alternatives and that requires an intellectual and spiritual ›decolonisation‹ which, so far, has hardly begun.[31]

29 The lack of size makes complex ›governmental‹ structures unnecessary and alternatives feasible which may be impractical when dealing with large populations. Moreover, the stronger cohesion of social groupings, which still function in many respects as political units, not only hampers the working of modern Western legal and bureaucratic devices designed to control the exercise of political power or to make it more effective, but also facilitates the continued use of traditional alternatives (based on notions of reciprocity etc.). Finally, most people (including most leaders) are still economically and psychologically able to lead an essentially self-sufficient life at the subsistence level and to rely on traditional relationships for their social security. There are, naturally, serious problems and rapid and significant changes, but there remains an important potential which is, at present, squandered rather than utilised.

30 The total population of the Pacific Islands (not including Hawaii, New Zealand and West-Irian) is less than 6 million, of which more than half live in Papua New Guinea. More than half of the Pacific Island ›states‹ have a population of less than 100,000 each. Luxembourg would hold – comfortably – the number three position in the Pacific context and even Monaco would rank in the middle-field.

31 This does not mean to say that nothing is happening. Indeed, it would be impossible to avoid modification, adaptation and even innovation, even if this were the aim. However, most of these changes are haphazard and brought about by the force of circumstances rather than by design. What is needed is a much more ›holistic‹ and determined effort, aimed not so much at one masterplan as at the identification of ranges of alternatives which can be tested. The main problem seems to be the, sometimes eager and sometimes grudging, acceptance by Pacific Island leaders that the Islands have, ultimately, no choice but to follow the path of the West. They are persuaded that they must, even in theory, pursue the course of least resistance, although it might lead into a bog. Their consolation prize is an immediate and dramatic improvement of their individual material well-being, if only at the expense of those whom they claim to represent.

ABSTRACTS

›Decolonisation‹, ›Independence Constitutions‹ and the ›Modern State‹ in the Pacific Islands

By *Peter G. Sack*

This paper looks at the ideological and conceptual, rather than political or economic aspects of ›decolonisation‹. It focusses on the rôle of ›independence constitutions‹ rather than on the ›transfer of power‹ process. It argues that the ›independence constitutions‹ are aimed at taming the ›colonial state‹ and not at reconciling the ›modern state‹ with the values and institutions of ›traditional society‹ and that they are therefore characterised by a ›separate spheres‹ approach. It concludes that the success of ›constitutionalism‹ in the Pacific is more apparent than real, that the internal tensions are still unresolved (and external pressures likely to increase), that the real challenge of ›decolonisation‹ – the development of alternative, ›modern‹ forms of political organisation – remains to be faced and that a successful completion of this task is of considerable interest to the rest of the world.

International Disputes in Africa

By *Maria Magdalena Kenig*

The author first presents the outline of a typology of ›international disputes‹ in the light of international jurisprudence and academic opinion on the subject; specific positions of Polish international lawyers are instanced in the course of the investigation. The article then proceeds to a classification of ›international disputes‹ in Africa, considering the factors giving rise to their appearance and contributing to their exacerbation or subsequent resolution. Charakteristic features of ›international disputes‹ in Africa are pointed out in conclusion of the survey.