informal justice in law and justice reform in the pacific region

Alumita Durutalo
post-graduate student at the ANU, voices her concern that nowadays neither the colonially derived judicial system supporting the rule of law, nor traditionally effective methods of conflict resolution, can deal alone with an increasing number of new crimes in Fiji. A selective integration of traditional and state-based structures and their methods of dealing with crime may better suit the well-being of communities.

FIJI, A CASE STUDY

Introduction

The Fiji islands, known as ‘Viti’ amongst indigenous Fijians, have been regarded as the place where both Polynesian and Melanesian people have settled during their east–west and west–east Pacific migrations. These islands demonstrate Polynesian and Melanesian characteristics in their people’s physical features and material culture. In approximately 300 islands about five hundred dialects are spoken by indigenous communities.

When Europeans began arriving in large numbers in the 1800s, the ancient, basic social unit in Fijian communities was the I Tokatoka, or extended family unit. Both patrilineal and matrilineal structures featured in some parts of Fiji. A number of extended families made up the Mataqali, or sub-clan, while a number of sub-clans formed a clan, or Yavusa. Members of a Yavusa are believed to have descended from a common ancestral God. Two more constructs, political by nature, were the Vanua and the Matanitu. Unified by a powerful Vanua chief through warfare, the Vanua was well defined by its geographical boundary. The Vanua was already well defined by the 1800s
while the Matanitu was still in the process of formation and was influenced by the arrival of the different waves of Europeans: shipwrecked sailors, beachcombers, traders, planters, missionaries and, most significantly, the British colonial administrators from 10 October 1874. The Matanitu was used as a basis to form a state through the unification of a number of Vanua. This political process became only partially successful in parts of Fiji, more so in the eastern region, where the Polynesian influence of chieftainship and social hierarchy was most marked.

![Fijian Socio-Political Structure Diagram]

**Fijian Socio-Political Structure**

Before Britain colonised the Fiji islands, indigenous social structures from the I tokatoka to the Vanua defined the boundaries in which social relations were organised, articulated and interpreted within Fijian communities. People lived according to customs and expected norms of behaviour which were not written down in a constitution or books of law. Their oral customs and traditions, which were practised within the confines of socio-political structures, had been able to sustain Fijians from one generation to another for thousands of years.

Customs and traditions still regulate the lives of individuals in many parts of Fiji from the moment of birth until death. An individual is born into a gradation of social units which range from the I Tokatoka to the Vanua. Traditional social rank, status and roles are inherited at birth and one cannot
change these dispositions later in life. For instance, if one is born into the warrior clan, this will be a life-time preoccupation. Roles define social relationships and socialisation introduces individuals to the norms of one’s social group. But the nature of the social relationships which emerge out of these roles have been changing as a result of foreign influence and internal dynamics.

After cession in 1874 the British, in attempting to establish the colonial state by indirect rule in Fiji, incorporated aspects of traditional Fijian structures into modern forms of governance with British features. The administrative structure was enabled through the introduction of a Native (later Fijian) Administration.¹ It involved the demarcation of provincial boundaries and the formation of provinces; the establishment of a Native Council (later Council of Chiefs); and the setting up of other councils at provincial, district and village levels. Within the overall structure of the Native Administration were provincial courts in which Fijian magistrates were employed. Fijian magistrates were trained to work for the colonial state and thus facilitated the introduction of the modern rule of law into Fijian society. Their role was abolished prior to political independence in 1970.

![Diagram of Native Administration structure]

Aspects of Native Administration in colonial governance, 1874 to 1970
Another important official employed in the colonial system was the *Ovisa ni Yasana* or provincial policeman whose duty it mostly was to collect taxes from all registered adult male members of a province. The posts of the provincial magistrate (*Turaga ni Lewa*), provincial policeman (*Ovisa ni Yasana*) and that of the district *Buli* were abolished prior to political independence in 1970. This also brought to an end the existence of provincial courts. However, the structure of the Fijian Administration still very much resembles what was established by the colonial state.

During the colonial period, when Fijian provincial magistrates were employed to solve conflicts at the provincial level, traditional chiefs continued to resolve conflicts at the village level or within their *Vanua* boundaries. While Fijian magistrates operated within the modern rule of law and handed out rulings which became ‘legal’ through the colonial state, the rulings of the traditional chiefs derived validation from customary practices and from the traditional authority that had been bestowed on them by the predecessors of the people within a *Vanua*.

**Traditional Leadership Within the Fijian Social System**

Many of the indigenous Fijians, who own 83 per cent of the land in Fiji still live in villages or in the rural areas and outlying islands where traditional social relations are still observed. Fiji’s population stands at approximately 775,000, with approximately 415,582 people in rural areas. Its indigenous Fijian rural component stands at approximately 232,240 while its urban population is over 161,300.
Table 1  Rural/Urban Distribution of Indigenous Fijians in the 14 Provinces

<table>
<thead>
<tr>
<th>Province</th>
<th>Rural Population</th>
<th>Urban Population</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ba</td>
<td>32,789</td>
<td>37,113</td>
<td>69,902</td>
</tr>
<tr>
<td>Bua</td>
<td>10,473</td>
<td>519</td>
<td>10,992</td>
</tr>
<tr>
<td>Cakaudrove</td>
<td>29,353</td>
<td>2,232</td>
<td>31,585</td>
</tr>
<tr>
<td>Kadavu</td>
<td>9,413</td>
<td>—</td>
<td>9,413</td>
</tr>
<tr>
<td>Lau</td>
<td>12,002</td>
<td>—</td>
<td>12,002</td>
</tr>
<tr>
<td>Lomaiviti</td>
<td>12,046</td>
<td>2,673</td>
<td>14,719</td>
</tr>
<tr>
<td>Macuata</td>
<td>17,168</td>
<td>5,195</td>
<td>22,363</td>
</tr>
<tr>
<td>Nadroga/Navosa</td>
<td>24,763</td>
<td>3,417</td>
<td>28,180</td>
</tr>
<tr>
<td>Naitasiri</td>
<td>18,257</td>
<td>52,580</td>
<td>70,837</td>
</tr>
<tr>
<td>Namosi</td>
<td>5,221</td>
<td>—</td>
<td>5,221</td>
</tr>
<tr>
<td>Ra</td>
<td>16,858</td>
<td>1,515</td>
<td>18,373</td>
</tr>
<tr>
<td>Rewa</td>
<td>8,809</td>
<td>50,084</td>
<td>58,893</td>
</tr>
<tr>
<td>Serua</td>
<td>6,606</td>
<td>1,859</td>
<td>8,465</td>
</tr>
<tr>
<td>Tailevu</td>
<td>28,314</td>
<td>4,148</td>
<td>32,462</td>
</tr>
</tbody>
</table>

Source: Bureau of Statistics, Suva. 1996 Fiji Census of Population and Housing

The table shows that maritime provinces such as Lau and Kadavu have no urban centres while others, such as Rewa and Naitasiri on the island of Viti Levu, have mostly urban dwellers. This is due to internal migration from the outlying islands and also from other provinces on Viti Levu into these two provinces. Fiji’s capital, Suva, and neighbouring town, Nausori, are located in the provinces of Rewa and Naitasiri. The majority of rural Fijians still live in villages.

Within the boundaries of a village, social organisation still revolves around the I tokatoka (extended families), Mataqali (sub-clan) and Yavusa (clan). Each social unit has a leader who is chosen from senior members of the most senior household. The holder of a title, i.e. leader of a Mataqali or Yavusa, can also be female. Chiefly titles are open to all eligible members of a chiefly clan; in pre-colonial Fiji, the most able candidate was often installed. This was regardless of whether there were more senior members available who were not so eligible.
Traditional thinking behind this strategy was linked to demands associated with chiefly leadership and authority. A chief is often regarded as the human representative of ancestral Gods and is bestowed with mana (divinely derived power) as soon as he drinks the bowl of kava (drink of the Fijian Gods) during his or her instalment. In traditional Fijian philosophy, a chief is the foremost ‘protector’ and ‘peacemaker’ of all those who reside within his or her traditional area of jurisdiction. This implies that during conflicts a chief’s role as a peacemaker and neutral arbitrator becomes very crucial to the stability of life in a community after the resolution of conflicts.

The customary way of solving conflicts within Fijian society involves the ceremony of ‘bulubulu’ which means ‘to bury the past and make peace for the future’. In the village context, this would require the presence of the chief and senior members of the sub-clans and clans. Often kava is used in the ceremony. However, more serious conflicts would also involve the presentation of tabua (symbolic compensation with whale’s tooth) to the wronged. With the completion of the ceremony, which includes traditional apologies to those being wronged, all parties involved are considered to have buried the past and of having started a new journey. The customary way of solving conflicts is not intended to punish and simultaneously alienate the wrongdoer from the rest of the community. While the perpetrators of wrong actions recognise that they are at fault, they are also being helped by the community to reform and live according to the norms of society.

In the attempt to solve a conflict, the chief’s role as a neutral arbitrator becomes very important. A chief would try to approach the problem of reconciling offenders with their victims by a number of approaches. First is the need to listen to both parties impartially. Second is the ability to recognise which party is to be blamed for the problem. Third, and also most important, is the ability to reconcile the differences between the two groups. In the attempt to reconcile differences the chief also gives words of advice, more to the ‘trouble makers’ or the ‘accused’ than to the aggrieved party. As part of conflict
resolution, the chief may advise the trouble makers to present their *bulubulu* to those who are wronged. The final part of customary conflict resolution is the ability to bring about forgiveness between the two parties.

Within traditional societies where the kinship system is still observed, forgiveness is an important virtue because people live close together, know each other well, take part in the same ceremonies and perhaps farm on the same piece of land at the end of a conflict. From a modern functionalist perspective, social solidarity depends on harmonious living amongst individuals and groups. Parallel to this modern thought is the indigenous knowledge that the maintenance of the kinship system and blood ties is very important to the survival of the group. The peaceful resolution of conflicts holds the key. The kinship system is the structure that holds indigenous Pacific societies together and gives meaning to Pacific cultures. Within indigenous Fijian knowledge, ‘one does not punish to alienate but one punishes to reform’.

The absence of the philosophy of ‘punishment for reform’ in modern Fiji and in other parts of the Third World is possibly a contributing factor to the high rate of recidivism amongst offenders. Especially from the late 1980s to the 1990s, there was a high crime rate as well as high recidivism rate among indigenous Fijians in prison. This was probably directly influenced by punitive methods in solving conflicts which concentrated on punishing the wrongdoers but did not rehabilitate them to reform their ways.4

### Table 2  Ethnic Origins of Prisoners in Fiji from 1988 to 1991

<table>
<thead>
<tr>
<th>Year</th>
<th>Fijian (%)</th>
<th>Indian (%)</th>
<th>Others (%)</th>
<th>Total Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1988</td>
<td>77.0</td>
<td>20.0</td>
<td>3.0</td>
<td>848</td>
</tr>
<tr>
<td>1989</td>
<td>74.0</td>
<td>22.0</td>
<td>4.0</td>
<td>1,458</td>
</tr>
<tr>
<td>1990</td>
<td>76.52</td>
<td>20.28</td>
<td>3.20</td>
<td>1,041</td>
</tr>
<tr>
<td>1991</td>
<td>78.0</td>
<td>20.0</td>
<td>2.0</td>
<td>1,073</td>
</tr>
</tbody>
</table>

The Fiji Prison Services’s Annual Report for 1993 also highlighted this continual high rate of imprisonment amongst indigenous Fijians, a trend which has continued into the new millennium. For indigenous Fijians, the high rate of imprisonment amongst its people and, in particular, its youths should give cause for alarm. There is great need to review the current system of punishment and to ask whether it is serving any useful purpose for our society on the whole. Although people may be reassured that the criminals have gone to prison, some drastic measures are needed to rectify the problem if the same offenders continue to march in and out of gaol at taxpayers’ expense.

The Fijian Challenge

Given the cycle of imprisonment and recidivism, it is time to consider seriously how traditional ways of solving conflicts can be utilised to strengthen the modern system. This will involve the ability to link customary ways of resolving conflicts with the modern legal rational framework’s support. There may be need to define what each sector can contribute towards an integrated holistic solution to rendering justice effective within the boundaries of the modern state. The grey area between customary and modern justice has been a ‘death trap’ mostly for youths in Fijian society. Fijian youths who face trial in the modern legal justice system are often left to fend for themselves when seeking legal advice even for petty offences. Once convicted, the cycle continues and it is quite difficult for them to return to the norms of Fijian communities largely because there are currently no avenues available to assist them.

Another challenge to Fijian society is how to extend methods of customary justice to urban settings. In large urban settings such as Suva, Nadi, Lautoka or Labasa, many ‘under-classes’ of indigenous Fijians have migrated from the outer islands to live as squatters on the fringes of the urban areas. The challenge is to ensure that such groups of transients be included in programs that become available in their original communities. The problem facing these urban Fijian squatters is
also political in the sense that since the establishment of the Native Administration, the governing authorities have tended to ignore the plight of Fijian squatters. These marginalised groups in the urban areas have increasingly become a ‘reserve army of de-stabilisers’, manipulated for political goals. During the Fijian military coups of 1987, and George Speight’s civilian coup of May 2000, destabilisation in Suva was possible through the recruitment of this large reserve of under-educated and unemployed youths in the squatter settlements around Suva. Bearing in mind this particular case, it becomes apparent that the Fijian establishment has to tackle first the root cause(s) of urban displacement and alienation before even contemplating issues of justice.

The problems faced by agents of justice and Fiji generally have been exacerbated by the emergence of new types of conflicts caused by modern changes which different communities have had to face. Drug related cases in villages have caused an increasing dilemma since the 1980s. How does one attempt to solve ‘new’ problems by using the customary method of resolving conflicts? In such situations, it is evident that the customary way is insufficient for the nature of the problem encountered. It is in such cases that the informal customary and legal rational ways of resolving conflicts need to be inter-linked.

Drugs have become more easily available due to the farming of marijuana. Youths are rendered vulnerable in some parts of Fiji. While much of the product is sold outside the communities where farms are located, a reasonable proportion is also used locally by youths. Social problems are increased when crimes are committed by youths under the influence of drugs. Often such perpetrators end up in Fiji’s psychiatric hospital. This problem highlights the modern political dilemma of how the rule of law can be recognised and upheld in post-colonial states. It is evident from drug related crimes that the customary justice system is by itself ineffective to address newly emerging problems such as these. While the Fiji Law prohibits the use of illegal drugs, and people found in possession of them
usually go to prison, justice is not served when the offenders resume their habits after serving their sentences. Modern state laws are also directly challenged by recidivism.

In such cases a number of traditional and modern sectors need to be involved in programs that target the eradication of social problems. Agents of the modern legal system may have to provide legal education and emphasise why it is important for people to observe the rule of law. In this respect the Ministry of Education could provide youths with sessions of non-formal education, the Ministry of Health launch a campaign on the dangers to health posed by substance abuse, the Ministry of Agriculture demonstrate the importance of farming ‘socially acceptable crops’ and the Ministry of Fijian Affairs could also participate by presenting indigenous Fijian villagers with new visions. The resolution of conflicts associated with newly emerging problems such as drug abuse and an increasing violence against women needs a multi-dimensional approach.

**Informal Justice and the Role of the Ministry of Fijian Affairs**

The Ministry of Fijian Affairs — a long established institution of governance — can facilitate the link between informal justice and the modern legal justice system. Traditional leaders such as chiefs could be given training and legal authority to solve petty conflicts at village level. While this ministry has already been conducting training sessions for its traditional leaders and provincial officials, perhaps it also needs to legitimate them to exercise informal justice methods within the modern legal justice system.

Prisoners who commit petty crimes could be sent back to their villages for community work under the supervision of traditional leaders. In Fiji this could solve the problem of overcrowding within prisons. It would help prisoners to become rehabilitated and accepted back into their own communities. Social stigma follows a term in prison and alienates individuals from their original communities. Former inmates then tend to remain in the towns and are susceptible to re-offend in such an environment. A just society will attempt to reform individuals rather than have them merely punished.
Fiji needs to adopt programs that will keep people within the confines of the rule of law. If, after solving some problems, society or the state does not offer opportunities to enable individuals to survive, then justice becomes a farce.

**Conclusion**

Melanesia, the largest and most resourceful of the three groups of islands in the Pacific has always been the ‘hot bed’ of the Pacific. Political instabilities have included military and civilian coups and a threat of secession in Fiji (1987 and 2000); an attempted coup in Vanuatu (1980s); civil war in Bougainville (from late 1988) and a complete breakdown of the modern state in the Solomon Islands (2000).

It is time that Melanesian leaders and those concerned with the welfare of Melanesian states seriously consider the root causes of prevailing problems. Without addressing these problems first, attempts to restore justice, whether in the accepted customary or in the legal-rational sense, only serve as window dressings and become mere ‘band-aid’ solutions to deep-seated dilemmas and contradictions. Justice in the context of Melanesia is not an absolute but a relative term. It must be seen as corresponding to the changes in the material and economic conditions of life, for we cannot revive the practice of customary justice alone within communities or societies which have undergone tremendous socio-political and economic changes. Justice cannot be tackled in a vacuum without considering other, sometimes parallel factors of life.

In Melanesia, as in other parts of the Third World, justice should begin by giving people opportunities through socio-economic and political development. Without these, in this modern age of economic reform and globalisation, justice within the context of the post-colonial state in Melanesia, whether in the customary or legal rational form, will remain an illusion.
Endnotes

1 The system of ‘indirect rule’ through a Native (later Fijian) Administration engaged chiefs as ‘middle men’ or ‘middle managers’ of their own people under the rule of the colonial state. Chiefs were employed mostly in the Native Administration as *Roko Tui* (provincial or Yasana administrators), *Buli* (district or *Tikina* administrators), *Turaga ni Lewa i Taukei* (or Fijian magistrates) and *Ovisa ni Yasana* (or provincial officers).


3 Household in this context refers to the extended family which can be either patrilineal or matrilineal.


5 Interview with Mere Verebalavu, Auckland Hospital, New Zealand, November 2001, former psychiatric health sister at St Giles Psychiatric Hospital, Suva, Fiji