Introduction

In his 1999 lecture to the London School of Economics, the Canadian economist J K Galbraith made an interesting observation.

'As we look back on the achievements of the last century we must all pay tribute to the end of colonialism. Too often, however, the end of colonialism has also meant the end of effective government. Particularly in Africa, colonialism frequently gave way to corrupt government or no government at all. Nothing so ensures hardship and suffering as the absence of a responsible, effective, honest polity…. Economic aid is important but without honest, competent government, it is of little consequence. We have here one of the major unfinished tasks of the century' 1.

As one nation state after another in Africa, and indeed other former colonies, suffer political chaos and slide inexorably into a state of abject poverty, the statement is clearly true. But in approving the end of colonialism while lamenting what took its place, it is instructive to look for the underlying causes of this disappointing outcome. This paper argues that one of the critical causes, particularly as it relates to the Pacific Island Countries [PICs], has been the loss over time of the traditional structures for governance, law and custom of the indigenous people and makes some recommendations.

1. The colonial legacy

1 Quoted in The Globe and Mail, July 6, 1999
1.1 The trauma that has followed independence celebrations in so many former colonies has disappointed many who saw the end of colonialism as a new dawn. In looking for reasons for this outcome, the first reaction is to argue that the fundamental cause is unprincipled, corrupt and despotic leadership. Regrettably there is ample empirical evidence of that. But that inadequate leadership poses yet another question. How is it that, in a democratic society with a constitution based on the rule of law, these 'leaders' were able for so long to plunder their own countries and utilise the armed services to suppress opposition without being held to account? Put another way, did democracy work? And if not, why not? It is doubtful the beleaguered citizens would gain solace from being told democracy is the best form of government even though that is true. For them the benefits may be hard to discern.

1.2 Others might argue that the outcome is the result of poor economic performance due to inadequate natural resources or insufficient aid. Yet, as is well known, many of these countries are in fact rich in resources. And, in so far as aid is concerned, a landmark study conducted by the World Bank in 1998 noted that over recent decades there had been a depressingly negative correlation between aid and growth. Some countries received substantial aid and yet their income fell, while others received little aid and their incomes rose. The World Bank concluded that compatible policies were essential if aid was to work and that poor countries have been held back, not by a financing gap, but by 'institutions' and 'policy gap.

1.3 It is that conclusion that leads to the thrust of this paper. It is submitted that one reason for the political and social catastrophe that has occurred in former colonies is that the imposed governance structures and the rejection of cultural mores ultimately failed to meet the needs of the people.

1.4 The instability that followed the end of colonialism was the result of a resurgent indigenous nationalism [accompanied by an urge to return to traditional customs] clashing with an imposed, but now voluntary, colonial governance regime. Which would prevail in this duality, depended on the ethnic makeup of the particular community and whether there was appropriate leadership. It should be noted that the colonial legacy was not standard amongst all former British colonies. Some retained the Queen as Head of State. Others became republics and, of those, some elected a titular President while others preferred an executive President. It is pertinent to note that almost one half of the Commonwealth, mostly in Africa, have now an executive President [often for extended periods] and in general terms those countries appear to have fared least well. It has not been uncommon for the democratic constitutional framework to be suspended or subjected to change without a genuine plebiscite. Sometimes the Parliamentary Opposition acts quite inappropriately and seeks not only to defeat the Government but, if necessary, unlawfully overthrow it. There is also often interference with the independence of the Judiciary with occasionally an outright rejection of its judgments. And free and fair elections are sometimes the exception rather than the rule.

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1.6 It need hardly be said that modern statehood requires some sort of governance structure. And equally many structures and institutions introduced by the colonising power were and remain sound and a vast improvement. For example, to be able to adopt a body of law was a great advantage. In the modern world a Parliament of representatives to make law, an Executive to govern day to day, and a Judiciary are essential at the centre. But a deliberate by product of the introduction of these institutions was the denigration of customary authorities, values and practices seen to be inferior when, in fact, in a given community they often were not. Democracy does not require the extinguishment of local rules unless they are repugnant to justice or simply do not work in the contemporary environment. The question now is whether at the local level there is room to re establish those customary values and practices. It implies a move away from centralisation and a return of decision making to the people and their traditional authority figures.

1.7 And so the issue is whether the substitution of indigenous values by imported values has been sufficiently successful. The evidence would suggest it has not. People seek the security of being able to control their own destiny using behavioural patterns with which they are comfortable. Competent and progressive governments exist therefore when the populace is involved in decision making, have confidence in government institutions when they are required, and are able to hold leaders to account. While corruption is found in every governance structure, the greater the dedication to serve the community honestly, the greater will be the support of that community. With that support much can be achieved. Without it, very little.

2. Instability in the PICs

2.1 Over the decades numerous papers have been prepared, research undertaken and seminars held to identify ways to help the PICs reach their full potential. Yet despite laudable regional leadership initiatives, especially in education [USP], environment [SPREP], fishing [FFA] and shipping [Forum Line], many PICs remain poor by international standards, and some struggle to provide adequate health and other services.

2.2 Of even greater concern, however, is the incidence of internal violence due that has been caused at least in part, by disputes over land, longstanding tribal feuds and a lack of trust between tribal groupings and the respective government institutions. There has been an unhealthy tendency for people to take the law into their own hands - even to the extent of overthrowing elected governments.

2.3 However the international condemnation that inevitably follows domestic conflict, and with it the withdrawal of much needed financial help, while not unusual, is often in fact counterproductive. At such times the PIC government needs friends to help it through the crisis and find solutions. It does not need lectures from over the horizon.
2.4 In recent years, too, an aggravating factor has been the global disquiet that has arisen from the massive increase in large powerful trading blocks, the globalisation of commerce, the surge in IT innovations, free trade agreements [for some but trade barriers for others], and an ever increasing emphasis on material wellbeing. Everything now seems to have a dollar value. Gifts with an intrinsic value such as fine mats or pounamu [greenstone] are under threat from the greenback or the Euro. The recognition of personal values in a collective society such as mana through powerful oratory and knowledge of protocol withers with IT communications or in the context of the modern power breakfast.

2.5 These developments tend to favour the powerful and to make the rich even richer, at least initially. Conversely the poor become relatively poorer - and more marginalised as well.

2.6 Many people throughout the world now feel a real sense of helplessness. They fear that others are getting ahead while they are being left behind. They are convinced that their own destiny is no longer in their own hands. This real sense of unease is present in all countries. It is one of the underlying reasons why politicians, to whom the public have looked in vain for reassurance, are held in such low regard - indeed almost contempt.

2.7 In such a climate it is hardly surprising the small island states of the Pacific believe they are not only fighting to get ahead but even to survive. Thus are small independent states buffeted by today's winds. Their challenges are formidable. And if the politicians are unable to command the respect of the people the future is bleak.

3. The inherent advantages of small indigenous communities

3.1 Yet the PICs, like other indigenous groups throughout the world, have inherent advantages.
3.2 Usually at the insistence of the colonial power many indigenous communities abandoned their traditional but quite functional governance structures and adopted 'western' concepts that were unsuited to small pacific nations with centuries of customary lore and tradition. Even in countries with constitutions that made a serious attempt at preserving the traditional governance structure, such as the Samoan constitution in which the founding principle is "Samoa mo Samoa" or Samoa for the Samoans based on matai suffrage, the situation today is far removed from that envisaged by the constitutional draftsmen. Saliemoa Vaai says:

'Since independence however, the State, primarily through the legislature, has increasingly implemented measures with marginalising implications on custom. Significantly, by a simple majority of Parliament, Matai suffrage has been removed and replaced by universal suffrage as the mode of electing parliamentary members........Homegrownness of the Samoan constitution has also been given insufficient weight by the Courts in landmark cases that have tended to give primacy to western practices and law.'

3.3 Not all traditions, of course, justified retention. There is no place today for revenge killings or sanctions that include mutilation. And dreaming of a time long past when the innocent native lived in some sort of Arcadian bliss is a sign of delusion.

3.4 But the richness of a culture based on different values that has stood the test of time will normally produce better outcomes. Taking the best of the past therefore [customary traditions], and blending it with the best of the present [neo-colonial infrastructure], may well result in the best for the future.

4. Governance generally

4.1 Much academic literature has been written on good governance structures and practices. However of themselves they will never be the panacea for all ills they are sometimes represented to be. There is no one system that suits every country. Thankfully, absolutism does not exist. A starting point is the United Nations: Characteristics of Good Governance, which recommends:

♦ Participation - all men and women should have a voice in decision making, either directly or through legitimate intermediate institutions that represent their intention. Such broad participation is built on freedom of association and speech, as well as capacities to participate constructively.

♦ Rule of Law - Legal frameworks should be fair and enforced impartially particularly laws on human rights

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3 Samoa Faamatali: Saliemoa Vaal, National University of Samoa, 1999.
4 Source "Governance and Sustainable Human Development" United Nations Development Programme 1997
Transparency - transparency is built on the free flow of information. Processes, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them.

Responsiveness - institutions and processes try to serve all stakeholders.

Consensus orientation - good governance mediated differing interests to reach a broad consensus of what is in the best interest of the group and, where possible, on policies and procedures.

Equity - all men and women have opportunities to improve or maintain their well being.

Effectiveness and efficiency - processes and institutions produce results that meet needs while making the best use of resources.

Accountability - decision-makers in government, the private sector and civil society organisations are accountable to the public, as well as to institutional stakeholders. This accountability differs depending on the organisations and whether the decision is internal or external.

Strategic vision - leaders and the public have a broad and long term perspective on good governance and human development, along with a sense of what is needed for such development. There is also an understanding of the historical cultural and social complexities in which that perspective is grounded.

This last bullet point is extremely important and acknowledges the need for leaders to understand the cultural context when determining the strategic vision. So there are no absolutes. Principles guide. But the quintessential principle is ‘what is just’.

4.2 And even if appropriate institutions are in place, there will be little stability if those in control abuse their power, or if the institutions cannot respond to the needs of the populace.

5. Competing cultures

5.1 Research on a comparison of the merits of competing value systems and forms of governance is not extensive. Perhaps this is because advocates rarely see merit in opposing alternatives and inevitable regard their version as superior. A value system where individual rights are predominant and economic efficiency all important is a far cry from one in which individual rights are subservient to the community as a whole and where living in harmony on a small land mass is the first consideration. And the enforcement of the law with concomitant penalties bears little resemblance to a society that seeks to heal wrongs done and to restore relationships. Restorative justice concepts were in vogue in indigenous societies centuries before it occurred to others. The Family Group Conferences which today try to work out what should be done with young offenders, has been hailed as innovative. Yet they are really no more than an expanded sentencing circle found historically throughout First Nation communities in Canada.
5.2 And it follows that universal suffrage, a parliamentary democracy with an executive and a loyal opposition, an impersonal "state" enforcing the criminal law, detailed individual human rights, and a judicial system which applies the law from on high, may well be appropriate to wealthy developed European nations. But they do not always lie easily with the value systems developed over centuries by small indigenous populations. Rather than attempting to mimic the Mother of Parliaments, therefore, it may be that a greater acceptance of the wisdom of traditional ways of doing things will produce better outcomes.

5.3 Indigenous traditions seek to resolve conflict by expressions of regret, by forgiveness and healing with the concentration, not on individual rights, but on restoring relationships. This requires a vesting of authority [which can if necessary be withdrawn], a consensual approach to decision making rather than a majority view, and a rejection of the winner-take-all result found in European jurisdictions. The desire is to 'put right' the issue in contention. Compare this with the colonial perception that when Westerners 'could not find any brick built courts, any armed, salaried and uniformed constables, nor any paper and ink codes, they concluded that there was neither law nor justice'.

6. The indigenous way

6.1 The colonial powers also rarely understood the different attitude to the natural order and man's place in nature enjoyed by indigenous peoples described by Joy Harjo, of the Creek Indian as follows:

"All landscapes have a history, much the same as people exist within cultures, even tribes. There are distinct voices, languages that belong to various areas. There are voices inside rocks, shallow washes, shifting skies; these are not silent. And there is movement, not always the violent motion of earthquakes associated with the earth's motion or the steady unseen swirl through the heavens, but other motion, subtle, unseen, like breathing. A motion, a sound, that if you allow your inner workings to stop long enough, moves into the places inside you that mirror a similar landscape; you too can see it, feel it, hear it, know it."

6.2 'People of the land' as they are sometimes described, do share a value system, and from that a form of governance that was largely ignored by the colonial powers as they enthusiastically imposed their 'superior' values and regimes.

6.3 The Royal Commission on Aboriginal Peoples in Canada listed the 'Attributes of Aboriginal Traditions of Governance' as follows:

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5 Vaai ibid, p11 quoting Narokobi, 1982
♦ **The centrality of the land** - For many aboriginal peoples, the land, which encompassed not only the earth but water, the sky, all living and non living entities, is the source and sustainer of life.

♦ **Individual autonomy and responsibility** - individuals have a strong sense of personal autonomy coupled with an equally strong sense of responsibility to the community.

♦ **The rule of law** - For many aboriginal peoples, the law is grounded on instructions from the Creator or in a body of basic principles. Any failure to live by the law is an abdication of responsibility and a denial of a way of life.

♦ **The role of women** - In many aboriginal societies, women's roles were significantly different from those of the men in governance.

♦ **The role of elders** - Elders are the trusted repositories of learning on history, medicine, and spiritual matters, providing advice and vision and resolving disputes.

♦ **The role of the family and clan** - Traditionally the family or clan constituted the basic unit of governance for many Aboriginal peoples.

♦ **Leadership and Accountability** - For many Aboriginal societies, especially those that placed little value in hierarchy, leaders were chosen and supported by the entire community and held little authority beyond that earned through respect. Accountability was an ingrained feature of this pattern of leadership.

♦ **Consensus in decision making** - Many Aboriginal people speak of the principle of consensus as a fundamental part of their decision making process.

6.4 These basic principles are a far cry from those that apply in today's secular world where politicians and bureaucrats make decisions far removed from the ordinary citizen. Countries governed by indigenous people may find that a renaissance of such guiding principles pays handsome dividends. Whilst it is true that no one system of principles fits all, principles that have been developed by and have guided a community for centuries, are likely to be the most suitable for that community.
6.5 An attempt to infuse such principles into a vision for a new country governed by the indigenous people is found in the proposed vision for Nunavut in Northern Canada. After extensive consultation with its citizens, a document was concluded which contains the following expectations of the people for the new government:

**PlACES PEOPLE FIRST**
- Represents and is accountable and fair to all its residents
- Is a servant of the people of Nunavut
- Seeks direction from the people
- Is shaped by and belongs to the people of Nunavut
- Offers programs and services in an integrated and holistic manner
- Promotes harmony amongst people
- Places ownership of well-being into the hands of individuals, families and communities
- Conducts itself with integrity and openness
- Encourages excellence and welcomes creativity, and
- Incorporates the best of Inuit and contemporary government systems

6.6 It is pertinent perhaps to note that only the best and not all Inuit and contemporary government systems were to be adopted.

6.7 Political leadership, then, requires an understanding of good governance and good government principles and how they can blend with the culture and traditions of the country. And where there are multicultural communities, as is the case almost universally today, a successful leader will seek to bring harmony amongst all citizens and provide a mechanism to resolve disputes without violence where harmony has broken down. The evidence would suggest that not all PIC have been able to strike the right balance. Of course no one would suggest the balance is easy to find.

**7. The New Zealand experience**

7.1 After a century of assimilationist policies it is only in the last 25 years that there has been a recognition that assimilation was unwise, unnecessary, grossly unfair to Maori, and deprived all New Zealanders of the benefits of a rich indigenous culture. Today there is a manifest renaissance of the Maori culture. An example is the support provided by government to protect the Maori language.

7.2 The establishment of the Waitangi Tribunal in 1975, to hear claims by Maori against the Crown over alleged Treaty of Waitangi breaches, provided a valuable safety valve for pent up anger and political tension. Tribunal reports have exposed past injustices for all to see. No longer could they be ignored.

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7 "Nunavut - Changing the Map of Canada," Insights - Public Sector Management in Canada Vol. 3, Number 4, Public Policy Concern
7.3 To avoid further breaches of Treaty obligations in the future there is now wide consultation with iwi on matters of importance to Maori and involvement in policy development.

8. Lessons from Treaty of Waitangi claims negotiations and the present role of Maori

8.1 These settlements were made easier because the Crown negotiators tried to view the dispute through the eyes of the claimants. There was a willingness to negotiate using Maori tikanga. Negotiations took place "chief to chief" i.e. the senior kaumatua elected by the iwi dealt with the Minister directly. Negotiation sessions began and ended with a karakia. Respect therefore was accorded to the values of each side.

8.2 The settlement terms reflect Maori values too. There is an apology from the Crown, a return of culturally important land or chattels and then a commercial redress package. The intention is to restore the honour of the Crown, to recognise the mana of Maori, and to restore the relationship between the two.

8.3 Matters that may be of interest arising from the settlements are:
A number of iwi now have an economic base as a result of the transfer of over $600m in land and cash. For the first time in over century iwi have a confident future and are able to control its own destiny. They are now in a position to manage their own affairs largely in accordance with their own traditions or tikanga. Iwi are addressing the need to preserve and protect the tribal history and cultural traditions that were at risk of being lost. Whakapapa is now properly recorded and updated. Iwi provide educational scholarships to young Maori and some have instituted health services based on traditional ways of healing holistically, rather than an emphasis solely on the physical body. Customary fishing rights to take for the marae have been incorporated into regulations that authorise elders to grant licenses to tribal members. Greater recognition of a rahui or a temporary ban on fishing, is accorded by Maori and non-Maori alike. And those customary fishing rights can have precedence over all others when stocks are run down - an arrangement which may not accord with human rights declarations of equality, yet are accepted as fair.

8.4 Over the last 25 years there has been a genuine attempt in New Zealand to pay greater attention to the culture and traditions of Maori. Young New Zealanders at school undertake visits to marae and the hesitation and discomfort many of the older generation experience when dealing with Maori issues will soon be a thing of the past. And there is now a deeper understanding of Maori tikanga and protocols, not all of which comply with internationally proclaimed human rights. For example, speaking rights are still denied to women on most marae.

8.5 There has also been some thought given to the Maori dimension in the application of the criminal law and sentencing policies. While all New Zealanders are subject to the same criminal law, common sense dictates that sanctions may vary provided there is
equality of treatment overall. It seems unobjectionable to take into account the fact that a kaumatua or elder has lost speaking rights on the marae as a matter of tribal discipline when a court is sentencing for the same offence. And with the recent introduction of lay community magistrates it is intended that Maori will be appointed and will sit on the marae to dispense justice in minor crime.

8.6 Inter tribal disagreements often relating to ma nawhenua [land interests] and iwi takiwa [tribal boundaries] are resolved on the marae. The role of the wider family is still very much respected in Maori communities. Inter family adoptions for examples are quite common.

8.7 And despite a century and a half of European influence, the tradition of iwi making gifts to visiting iwi [and thereby creating a right to receive at least the equivalent in return at a later date] found throughout indigenous cultures, remains alive and well in Maori society. This generates respect and honour.

8.8 As Maori make up only about 15% of the population, it is not easy to detect the Maori dimension in the structures, institutions and conventions of the Legislature, the Executive and the Judiciary [other than the guaranteed representation in the House of Representatives]. But there has, nevertheless, been a distinct and visible mindshift first, in the more positive attitude of non Maori to Maori culture, and secondly in the way the government provides services to New Zealanders of different ethnic backgrounds by contracting with those ethnic groups to deliver it themselves.

9. The advantage of small communities

9.1 Indigenous people elsewhere may be able to take this much further than has occurred in New Zealand where customs and traditions have become blurred over time through inter marriage. Where ethnically connected families or groups reside together more or less exclusively in confined high context communities such as islands, they may be better positioned to ensure their traditional customs are protected and preserved, and more especially followed, where that is seen as desirable. In Hawaii, for example, there appears to be a revival of interest among the Hawaiian community in the tradition of 'ho'oponopono' - a form of mediation in family disputes likened to the 'peeling the onion', during which all facets of the problem are revealed and then 'disentangled' or 'put right' through recognition by the parties and a formal process of apology and forgiveness.  

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8 See, for example: Ho'oponopono: Some lessons from Hawaii Mediation; Wall and Callister, Negotiation Journal, 1995,
9.2 Many of the Canadian provinces, with the support it would seem of the Federal government, have studied ways to transfer responsibility for the administration of justice on the reservations to the native communities. The retention of sentencing circles where the community determines the punishment is one such mechanism. Here the goal is to heal the wrong done rather than simply punish the wrongdoer. Civil disputes too are better handled at the local level with the involvement of respected elders. In Quebec working models suggest the wide involvement of mediators who help the parties to find the solution to the dispute. There is much to be said for these initiatives. It means the local people with local knowledge decide what should be done. It also relieves the government of the cost of establishing more courts.

9.3 But more importantly, involving as it does a voluntary input from so many from the community, these initiatives are a shift away from the focus on material gain that accompanies being paid for every action. This is seen by some as quite critical in any successful community.

9.4 Robert Putnam, an American academic who studied political institutions in Italy to explain the worldwide phenomenon of disenchantment with politicians, concluded that sound government is due in large measure to a healthy voluntary sector\(^9\).

9.5 This call for a renewed spirit of voluntarism gained support at a conference held in Winnipeg, Canada in 1998 on Aboriginal governance in urban settings. Many speakers expressed the belief that a return to greater voluntary activity would strengthen aboriginal communities.

9.6 Putnam believed:
- Citizens acting in a voluntary capacity encourage social trust and co-operation
- Trust and co-operation tend to be self-reinforcing and cumulative
- Conversely, the absence of these is also self-reinforcing e.g. defection, distrust, exploitation
- Higher levels of trust lead to better government
- Market economies improve when there are high levels of trust
- Over the past decades voluntarism has declined and this has been accompanied by the lowering of trust in governments
- Leisure time originally made available for voluntary work has declined due to TV etc

9.7 While some might argue this is all rather simplistic it does contain an element of truth. The emphasis on material gain and material possessions has reduced the willingness of people to do voluntary acts of service although much is still achieved through unsolicited and voluntary inputs. And there is evidence that many governments are seeking to enter into partnerships with NGOs and the private non-profit sector. There is ample evidence of the benefits flowing from this co-operative effort.

10. Conclusion

10.1 For today's leaders of the PIC the challenges are formidable. Seeking more and more aid from donor countries, while helpful, will not be enough. One might ask why so many PICs are experiencing internal conflict and achieving poorer outcomes than expected. No doubt they also suffer from the worldwide phenomena of public disenchantment with politicians and politics per se. It may be some leaders may be the authors of their own misfortune. But clearly everything that might improve the situation should be examined.

10.2 It is recommended therefore that consideration be given to the following questions:

What are the inherent strengths of the indigenous culture?

Are customary values and governance systems that have been set aside more suited to the community?

Are those values and systems capable of reintroduction?

Are institutions of government respected by the populace? And if not, why not?

Is there a satisfactory forum to resolve local civil disputes?

Is there a satisfactory forum to deal with land disputes?

Would mediation and other dispute resolution techniques offer more than the court system? If so, how could that be introduced?

What role should the traditional leaders such as the Great Council of Chiefs, the Customary Chiefs Council, the Tamaaiga, the Eiki Nopele or the House of Ariki play?

Should greater devolution of power occur and can the exercise of discretion be given in more circumstances to the community?
10.3 And for those who carry the burden of finding the answers to these questions, it may be as well to recall the definition of true leadership.¹⁰

A leader is best
When people barely knows he exists
Of a good leader, who talks little.
When his work is done, his aim fulfilled,
They will say, "We did this ourselves"

¹⁰ Extract from Taoism writings
The World's Great Religions by Huston Smith