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**OPERATION HELPEM FREN: SOLOMON ISLANDS, TRANSITIONAL
JUSTICE AND THE SILENCE OF CONTEMPORARY LEGAL
PATHOLOGIES ON QUESTIONS OF DISTRIBUTIVE JUSTICE**

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OPERATION HELPEM FREN: SOLOMON ISLANDS, TRANSITIONAL
JUSTICE AND THE SILENCE OF CONTEMPORARY LEGAL
PATHOLOGIES ON QUESTIONS OF DISTRIBUTIVE JUSTICE

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Abstract

In July 2003, Australia led a multinational intervention – Operation Helpem Fren - to the Solomon Islands (SI), in an effort to prevent that country becoming a failed state. This Working Paper examines the provenance of the Regional Assistance Mission to Solomon Islands, using Western, local and combatant analyses of the conflict as the basis for a case-study of the discourse of Transitional Justice (TJ). TJ can be understood as one part of a larger contemporary legal pathology, which suggests that illegality and conflict can be dealt with by the creation of liberal democratic institutional structures and the fight against impunity. It suggests that the excessive focus of TJ and these other contemporary legal pathologies on individual criminal accountability undermines the creation of sustainable peace and stability in failed states. Transitional justice must instead move to embrace distributive justice concerns, becoming a transformative justice, or it will fail to deal with the underlying socio-economic causes of conflict.

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FIGURE 1. MAP OF SOLOMON ISLANDS



FIGURE 2. BOARD AT THE MARITIME RESEARCH CENTRE

Source: ALAIN RETIERE AND HEINZ SCHURMANN-ZEGGEL, CONFLICT PREVENTION AND PEACE CONSOLIDATION IN THE SOUTH PACIFIC: PAPUA NEW GUINEA, SOLOMON ISLANDS, FIJI ISLANDS (European Commission Conflict Prevention and Crisis Management Unit, prepared by the United Nations Office for Project Services, June 2002), at 2. The caption to this photograph reads: “The photograph on the cover page was taken at the entrance of the maritime research centre, located on west coast of Guadalcanal that used to employ almost 50 persons, both Malaitans and Guadalcanalese, and that was looted and completely destroyed on 19 June 2000 as part of the operation ‘Eagle Storm.’”

The board itself reads:

Food for Thought

Isatabu, it is becos [sic] of you that your neighbouring atom like islands have been named after the “wisest and richest king” Solomon.

Isatabu, it is on you where WWII ended and the world has established its economic, social and political ties.

Isatabu, it is on you where the capital of Solomon Islands is located.

Isatabu, it is on you that most of the government revenues are collected.

Isatabu, it is on you where people of different ethnicity are born.

Isatabu, it is becos [sic] of you that the “Freedom Movement” emerges.

Whatever reform transitional justice-seeking implies, it is limited and determinate, and couches the economic question in terms of human restitution for known past losses.¹

I will fight to protect a *habuna momoruqu* (the blood of my island). Nation-states should be built on fairness, not injustice.²

INTRODUCTION

Look deep in the Old Testament and you will find a number of passages that speak of the source of King Solomon's immense wealth:

And Hiram sent him ships commanded by his own officers, men who knew the sea. These, with Solomon's men, sailed to Ophir and brought back four hundred and fifty talents of gold, which they delivered to King Solomon.³

On November 19, 1567, a band of 150 Spanish *conquistadores* led by Alvaro de Mendaña de Neyra, Franciscan friars, slaves and miners set out from Callao in Peru aboard two ships in search of Ophir's gold. Although they did not find it, the islands where they fetched up still bear the mark of that other-worldly presence in their name: Solomon Islands. Mendaña de Neyra's expedition was, officially, a *conquista spiritual*, a quest to bring civilization to the people of the Pacific through the Gospel. Unofficially, this spiritual evangelism aimed at securing profits for the Spanish Crown, in the form of precious metals, merchandise and labor.⁴

Today, a different kind of foreign intervention force is at work in Solomon Islands. Operation Helpem Fren (*pidgin* for "Help a Friend") (OHF), the Australian name for the Regional Assistance Mission to the Solomon Islands (RAMSI), is a regional force which at its peak comprised approximately 1,800 military personnel and over 300 police. The force—invited into Solomon Islands (SI) in July 2003—aims to bring to an end a period of armed conflict and criminal activity in Solomon Islands reaching back to 1998. It aims to prevent SI becoming a "failed state," to restore law and order, and to hold militants and criminals accountable for their past atrocities and crimes. In time, the aim is also to allow the rejuvenation of the state's mechanisms of political and legal governance, including the Royal Solomon Islands Police (RSIP), as well as institutions of economic and financial governance. This mission is, in its own modern way, a *conquista spiritual* promising justice transcending or transforming SI's earthly woes. It aims to "rebuild" SI state institutions, restoring a system of law and order based on

¹ Ruti G. Teitel, *Transitional Justice in a New Era*, 26 FORDHAM INT'L L.J. 893, 901 (2003).

² GEORGE GRAY, *HABUNA MOMORUQU (THE BLOOD OF MY ISLAND): VIOLENCE AND THE GUADALCANAL UPRISING IN SOLOMON ISLANDS* 31 (State, Society and Governance in Melanesia, Research School of Pacific and Asian Studies, Australian National University, Discussion Paper 02/4 (2002)). Gray was a member of the Isatabu Freedom Movement (IFM), a Guadalcanalese militant group, during the armed conflict in Solomon Islands.

³ 2 *Chronicles* 8:18. The gold of Ophir is celebrated throughout the Old Testament: *Job* 22:24, 28:16; *Psalms* 45:9; *Isaiah* 13:12; 1 *Kings* 9:28, 10:11, 22:48; 1 *Chronicles* 23:4; 2 *Chronicles* 9:10.

⁴ See generally Jacqui Murray, *Fools gold: Australia's South Pacific Quest*, August 26, 2003, available at http://www.brisinst.org.au/resources/murray_jacqui_solomons.html, last visited on December 6, 2003.

individual accountability for violations of others' individual rights, and to restructure the SI economy, preparing it for sustainable participation in the modern global economy.

While it has not been framed by any of the actors involved as an exercise in transitional justice (TJ) pure and simple, OHF is, at one important level, exactly that. Many of the TJ aspects of OHF manifest themselves in the forms and institutions typical to traditional TJ discourse: attempts to ensure individual criminal accountability for past atrocities;⁵ the imposition of an amnesty;⁶ and discussion of a truth and reconciliation commission.⁷ But many of the institutional aspects of OHF go beyond traditional conceptions of TJ, particularly the involvement of an invited coalition of foreign powers,⁸ and the explicit recognition by many actors of the need to deal with underlying socio-economic grievances. Studying OHF within a TJ framework therefore offers the opportunity for insights into both the purpose and limitations of OHF, and the purpose and limitations of TJ.

This Working Paper consequently attempts two tasks, one descriptive and one normative. First, it attempts to provide a description, a record, of the provenance of OHF, focusing on its TJ aspects. Second, it attempts a normative task: using OHF to unsettle existing TJ discourse, particularly by exploring the liberal agenda upon which much of that discourse is predicated. In particular, I want to explore the limits of the liberal agenda of the TJ *conquista spiritual*. To do this, I situate TJ discourse within a larger genre of contemporary international governance theorizing, which I describe as *legal pathology*. Current variants of this genre all draw from the dominant liberal paradigm in international law and international relations, which structures justice as a process of individual accountability through rule of law, largely writing issues of distributive injustice out of the narrative.

Part I, *Pathologies*, provides a quick sketch of contemporary TJ discourse, and describes how it constitutes one of a number of contemporary legal pathologies, all predicated on a liberal individualism which sifts procedural justice from distributive justice. In Part II, *Symptoms*, I provide a brief history of the conflict in Solomon Islands. Part III, *Diagnosis and Prescription*, comprises an account of the legal pathological approaches taken by Western commentators in dealing with the conflict in Solomon Islands, setting out how they described the "problem" and the remedy they advocated. Part IV, *Treatment*, describes the provenance of OHF and its approach to transitional justice issues. Part V, *Panaceas, Placebos and Side Effects*, provides a critique of this approach, revealing the liberal individualist agenda it promotes, and identifying

⁵ George Gray openly admits that "[d]uring the crisis all sides committed many violent atrocities." See GRAY, *supra* note 2 at 29. There is an extensive public record of these atrocities, though that record remains patchy: see, e.g., COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION, CONCLUDING OBSERVATIONS OF THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION: SOLOMON ISLANDS, MARCH 20, 2002, UN Doc. CERD/C/60/CO/12; Amnesty International, *Solomon Islands: Civilians at risk from fallout of coup attempt*, 6 June 2000, AI Index ASA 43/002/2000, News Service Nr. 108; Amnesty International, *Solomon Islands—Human rights abuses erode peace talks*, 7 September 2000, AI Index ASA 43/007/2000, News Service Nr. 169.

⁶ *Infra* at pp. 30 *et seq.*

⁷ *Infra* at pp. 30 *et seq.*

⁸ While some UN Peacekeeping Operations (e.g. UNAMSIL in Sierra Leone; MONUC in DRC) and Transitional Administrations (e.g. UNMIK in Kosovo, UNTAET in East Timor) have included components focusing on rebuilding decayed justice systems, holding trials for past human rights violations or even both, in no situation prior to SI has an independent state, to my knowledge, invited a foreign military coalition into its territory and state institutions to rebuild the justice system from the inside out.

the limitations of that agenda. In Part VI, *Alternative Medicine*, I present my conclusions and argue for a movement from transitional justice based on liberal individualism to a discourse of transformative justice based on a broader distributive justice agenda.

PART I. PATHOLOGIES: OF TRANSITIONAL JUSTICE AND OTHER CONTEMPORARY LEGAL PATHOLOGIES

What is “transitional justice”? And what does it mean to describe it as one of a number of “contemporary legal pathologies”? In this Part, I attempt to provide a brief sketch of contemporary TJ discourse, and describe how it constitutes one of a number of contemporary legal pathologies, all predicated on a liberal individualism which separates procedural justice from distributive justice.

Professor Ruti Teitel is one of the leading theorists of transitional justice.⁹ She defines transitional justice as “the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes.”¹⁰

Teitel has offered a genealogy of TJ in three phases: a post-war phase, focused on accountability for crimes committed during World War II; a post-Cold War phase, in which TJ was linked to nation-building, and was localized and privatized; and a contemporary, steady-state phase, in which TJ is normalized and brought into the center of international law and international relations discourse.¹¹

This normalization of TJ is a part of the larger process that has been described as the “legalization of international relations.”¹² The dominant contemporary academic and policy discourse on questions of international justice focuses on the creation of “rule of law” conditions, both within and between states. This process involves an unsettling of the traditional legal boundary between the state, built on law, and international society, built on power. Contemporary academic and policy discourse is unified by a common discursive strategy, which I shall call *legal pathology*. This strategy diagnoses conflict-riven societies (including international society) as suffering from a lack of rule of law, and prescribes legalization (the creation of the rule of law through the reproduction of the legal institutions of liberal democratic society) as the treatment. Peacekeeping becomes a process not merely of keeping warring groups

⁹ See RUTI G. TEITEL, *TRANSITIONAL JUSTICE* (2000); Ruti G. Teitel, *Transitional Justice Genealogy*, in 16 HARV. HUM. RTS J. 69 (2003); Teitel, *supra* note 1. For other leading texts in this discourse see *TRANSITIONAL JUSTICE AND THE RULE OF LAW IN NEW DEMOCRACIES* (A. James McAdams, ed., 1997); STEVEN R. RATNER AND JASON S. ABRAMS, *ACCOUNTABILITY FOR HUMAN RIGHTS AND ATROCITIES IN INTERNATIONAL LAW: BEYOND THE NUREMBERG LEGACY* (1997); *TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES* (Neil J. Kritz, ed., 3 vols, 1995).

¹⁰ Teitel, *Genealogy*, *supra* note 9 at 69.

¹¹ *Id.*

¹² See *Legalization and World Politics: A Special Issue of International Organization*, 54 INT’L ORG. (2000); *Debate on the Theme: Internationalization of Legal Relations*, 96 ASIL PROC. 144 (2002); see also ANTHONY CLARK AREND, *LEGAL RULES AND INTERNATIONAL SOCIETY* (1999); cf. Philip Allott, *The Emerging Universal Legal System*, 3 INT’L L. FORUM DU DROIT INT’L 12 (2001); Shirley V. Scott, *International Law as Ideology: Theorising the Relationship between International Law and International Politics*, 5 EUR. J. INT’L L. 313 (1994).

apart, but of reconstructing societies from within, with a rule of law focus.¹³ States' ability and willingness to ensure individual criminal accountability of individuals suspected of war crimes, crimes against humanity and genocide becomes subject to scrutiny by an international legal institution, the International Criminal Court, against international standards.¹⁴ This international discourse may even move towards adopting *quasi*-legal standards for measuring states' ability and willingness to protect their own nationals.¹⁵ TJ forms one part of this larger project, offering a discourse of state and social transition towards rule of law conditions, through the institution of individual (usually criminal) accountability for past wrongs.¹⁶ Impunity—the failure to enforce existing criminal norms—is characterized as the problem, enforcement of the rule of law the solution.

One of the things that recognizing this discursive strategy as “legal pathology” allows us to do is to recognize the political agendas and power dynamics at work within the discourse.¹⁷ The variants of legal pathology I have identified are all inherently liberal, in the sense that they seek to promote an agenda of individual rights and liberties enshrined in the notion of “rule of law.” The disease of conflict-riven societies, the disease of state and international failure, is the failure to provide adequate opportunities for individuals to vindicate their rights, the failure to establish the rule of law. Healthy societies and healthy states, the discourse suggests, govern violence through legal institutions, offering individuals the opportunity to vindicate their rights through courts and litigation processes, taming violence. Justice is, in this model, about rights, courts and individual accountability. It is a model focused on procedural justice, not distributive justice.

It is important to acknowledge that there are exceptions to this orthodoxy within the discourse. For example, David Crocker lays out eight goals at which TJ processes should aim: truth; providing a public platform for victims; accountability and punishment; rule of law; compensation for victims; reconciliation; public deliberation; *and institutional reform and long-term development*.¹⁸ He argues that

¹³ See, e.g., Comprehensive review of the whole question of peacekeeping operations in all their aspects, Report of the Panel on United Nations Peace Operations, U.N. Doc. A/55/305 – S/2000/809 (2000) (“Brahimi Report”).

¹⁴ See Rome Statute of the International Criminal Court, adopted and opened for signature July 17, 1998, by the U.N. Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, U.N. Doc. A/Conf.183/9 (1998), *entered into force* July 1, 2002, *reprinted in* 37 I.L.M. 999 (1998).

¹⁵ See INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT: REPORT OF THE INTERNATIONAL COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY (2001). For an overview of contemporary discourse on humanitarian intervention see HUMANITARIAN INTERVENTION: ETHICAL, LEGAL, AND POLITICAL DILEMMAS (J.L. Holzgrefe and Robert O. Keohane, eds, 2003).

¹⁶ For an overview of this preference for prosecution see Miriam J. Aukerman, *Extraordinary Evil, Ordinary Crime: A Framework for Understanding Transitional Justice* 15 HARV. HUM. RTS J. 39, 39-40 (2002). Aukerman argues that the “crime analogy” often breaks down in the face of radical evil and that whether we prioritize prosecution or other justice mechanisms must depend on the goals we seek to achieve. This paper attempts to build on that argument by demonstrating that some goals associated with transitional justice, such as socio-economic transformation, may require us to go beyond the limitations we encounter if we focus on criminal prosecution and the introduction of the “rule of law.”

¹⁷ For further insight into the similarities of the discursive strategies of law and medicine see MICHEL FOUCAULT, THE BIRTH OF THE CLINIC: AN ARCHAEOLOGY OF MEDICAL PERCEPTION (1975); MICHEL FOUCAULT, DISCIPLINE AND PUNISH: THE BIRTH OF THE PRISON (1979). My discussion of legal pathology also takes its cue from the frequent use of “healing” metaphors in TJ literature.

¹⁸ See David Crocker, *Reckoning with Past Wrongs: A Normative Framework*, 13 ETHICS & INT’L AFFAIRS 43 (1999).

[a]n emerging democracy fails to make a sustainable transition unless it identifies the causes of past abuses and takes steps to reform the law and basic institutions—government, economic life, and civil society—in order to reduce the possibility that such violations will be repeated ... Basic institutions include the judiciary, police, military, land tenures system, tax system, and the structure of economic opportunities.¹⁹

This passage is remarkable, though, for its exceptionalism. It is exceptional in two senses: first, in that it characterizes institutional reform and long-term development as an exceptional solution, only one goal amongst eight; and, second, in that it discusses such issues at all. Much of the literature gives some thought to restructuring public politico-legal structures, but pays little attention to “private” interactions, including national economic life, and their impact on post-conflict rehabilitation.

Miriam Aukerman’s work provides a good example of the limits of the discourse, and the exceptional nature of an approach which highlights the importance of institutional, cultural or social transformations as much as the transitions of public politico-legal structures. Aukerman provides a powerful critique of TJ’s narrow focus on criminal prosecution;²⁰ but even when she speaks of the capacity of TJ mechanisms to achieve “social rehabilitation,” she measures this not by the extent to which that rehabilitation establishes new social, economic or cultural dynamics, but by two liberal indicia: establishment of the truth and establishment of the rule of law.²¹ Aukerman recognizes, it is true, that

[p]erhaps funds spent on prosecutions would have a stronger rehabilitative effect if spent on reforming a society’s political and legal framework. Prosecutions may well be less successful in rehabilitating a society than a concerted effort to reduce inequalities in wealth, provide basic public education, create functioning courts, establish civilian control over the military, ensure the independence of the press, or hold free and fair elections.²²

For Aukerman a rehabilitative approach to TJ is “an attempt to develop democratic institutions that will reduce the risk of future violence, or change a society’s moral values.”²³ Her focus is democratic reform, reform of politico-legal structures, and not the underlying pattern of socio-economic exchange on which those state institutions are built. Moreover, although she discusses a wide range of mechanisms which can assist in providing transitional justice—truth commissions, reports by international delegations, lustration, civil liability, reparations and historical inquiry, in addition to criminal prosecution—all of these mechanisms are *retrospective*. They all adopt the liberal approach of identifying past wrongs, past violations of individual rights, and remedying them through a primarily restitutive response. The importance of TJ’s restitution focus will become important later, when we seek to identify an alternative approach.

¹⁹ *Id.* at 59.

²⁰ Aukerman, *supra* note 16.

²¹ *Id.* at 72-75.

²² *Id.* at 76.

²³ *Id.* at 95.

The agenda of this Working Paper is to highlight, through the close study of a single case history, the inherent limits of this liberal legal pathology. I focus on TJ as one instantiation of this pathology, but I believe the lessons we learn may also have ramifications for other variants in the genre. The limits of legal pathology lie in the distinction it draws between procedural, typically criminal, justice, and distributive justice. If the challenge of TJ is, as David Crocker has put it, to determine “how an incomplete and fledgling democracy ... should respond (or should have responded) to past evils without undermining its new democratic regime or jeopardizing its prospects for equitable or long-term development”²⁴ then the danger in the liberal legal pathology underlying contemporary TJ discourse is that its excessively narrow focus on liberal individualism and procedural justice *may* in fact jeopardize exactly that long-term development for which it seeks to act as the basis. The key danger lies in focusing on the retrospective vindication of individual victim rights, at the expense of larger-scale, prospective socio-economic restructuring to address the underlying conditions that produced the original transgressions.²⁵ This may—or may not—primarily be a question of prioritization and sequencing,²⁶ part of the agenda of this Working Paper is to investigate whether the conflict between the individual rights focus of TJ and broader distributive goals in fact runs deeper, or whether, perhaps, we can reimagine “transitional justice”—and other contemporary legal pathologies—to *include* issues of distributive justice.

My thesis, then, is that the TJ discourse that is, in Ruti Teitel’s terms, being “normalized” is predicated on a narrow liberal individualism which may in fact hinder deeper social, economic and constitutional transformations which could more adequately address the underlying divisions which give rise to the inhumanities TJ seeks to address. The aim of the Solomon Islands case history presented in much of the rest of this Working Paper is to test that thesis.

PART II. SYMPTOMS: A BRIEF OVERVIEW OF THE CONFLICT IN SOLOMON ISLANDS

In this Part, I provide a very brief history of the conflict in Solomon Islands (SI). This is a case-chart, a record of the symptoms which international decision-makers have reviewed in determining how to deal with SI’s problems.²⁷

²⁴ Crocker, *supra* note 18 at 43.

²⁵ Bruce Ackerman has characterized corrective justice as a threat to “constitution”-making: BRUCE ACKERMAN, *THE FUTURE OF LIBERAL REVOLUTION* 69-98 (1992). The danger I seek to highlight is the danger corrective justice poses to a process which resembles, in Ackerman’s typology, “revolution”-making.

²⁶ As Crocker puts it: “When reckoning with past injustice does not coincide with or contribute to ameliorating present ones, how much should be spent on the former at the expense of the latter?” Crocker *supra* note 18 at 60. For discussion of some of the surrounding issues see Neil J. Kritz, *Progress and Humanity: The Ongoing Search for Post-Conflict Justice*, in *POST CONFLICT JUSTICE* 55, 85-86 (M. Cherif Bassiouni, ed., 2002); Paul van Zyl, *Justice Without Punishment: Guaranteeing Human Rights in Transitional Societies*, in *LOOKING BACK/REACHING FORWARD: REFLECTIONS ON THE TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA* 42 (Charles Villa-Vicencio and Wilhelm Verwoerd, eds, 2000).

²⁷ A more comprehensive record of the SI conflict is provided by: AUSTRALIAN STRATEGIC POLICY INSTITUTE, *OUR FAILING NEIGHBOUR: AUSTRALIA AND THE FUTURE OF THE SOLOMON ISLANDS* 19 (2003) (hereafter “OFN”); ALAIN RETIERE AND HEINZ SCHURMANN-ZEGGEL, *CONFLICT PREVENTION AND PEACE CONSOLIDATION IN THE SOUTH PACIFIC: PAPUA NEW GUINEA, SOLOMON ISLANDS, FIJI ISLANDS* 22 (European Commission Conflict Prevention and Crisis Management Unit, prepared by the United Nations Office for Project Services, June 2002) (hereafter “EC Mission Report”) (Report of a European Commission conflict prevention assessment mission deployed to the South

SI is a state of more than a thousand islands in the South Pacific, east of Papua New Guinea, occupied by over 500,000 primarily Melanesian people, speaking over sixty languages. Per capita GDP is roughly \$530,²⁸ drawn largely from cash cropping and subsistence fishing and agriculture. Former exports of timber, fish, palm oil and gold have been reduced by armed conflict to timber alone. Population growth sits at 3.3 percent per year, among the fastest in the world.²⁹

In the late nineteenth century, transnational organized crime groups known as “blackbirders” operated out of what is now SI, abducting members of the indigenous population and transporting them around the South Pacific for use as labor. To stem this trade, and to preempt strategic intervention by other Great Powers, the United Kingdom established an imperial Protectorate in Solomon Islands.³⁰ Throughout its administration, the U.K. made little effort to develop the country economically or socially.

In 1942, Japanese forces built an airstrip on the SI island of Guadalcanal. In August 1942, after a fierce battle, the U.S., supported by Australia and New Zealand, captured the island, and established a military base adjacent to the airstrip. The military presence attracted labor from all over the SI, leading to the growth of the SI’s largest town, now the capital, Honiara.³¹ This town was populated not only by indigenous Guadalcanalese, but also groups from other islands, particularly Malaita.

At the end of World War II, Britain formally regained control of the territory, eventually granting independence on July 7, 1978. Although the formal institutions of government were established upon independence, both those institutions and national consciousness had little opportunity to develop,³² leading one SI Prime Minister to describe the country as a state that was “conceived but never born.”³³

SI was left largely to its own devices for the ensuing 20 years. Corruption slowly took hold, with rival groups vying for control of public apparatus for their personal benefit and the benefit of their formal (electoral) and informal (kinship) constituencies.³⁴ The inflow of foreign investment

Pacific from February 21, 2002 to March 15, 2002); TARCISIUS TARA KABUTAULAKA, BEYOND ETHNICITY: THE POLITICAL ECONOMY OF THE GUADALCANAL CRISIS IN SOLOMON ISLANDS (State, Society and Governance in Melanesia, Research School of Pacific and Asian Studies, Australian National University, Working Paper 01/1 (2001)), available at <http://rspas.anu.edu.au/melanesia/tarcisiusworkingpaper.htm>, last visited December 12, 2003; Sinclair Dinnen, *Winners and losers: politics and disorder in the Solomon Islands 2000-2002. (Political Chronicles)* 37(3) J. PACIFIC HISTORY 285 (2002).

²⁸ Similar to East Timor or the Democratic Republic of Congo.

²⁹ OFN, *supra* note 27.

³⁰ *Id.*

³¹ *Id.* at 20.

³² *Id.*

³³ Solomon Mamaloni, *The Road to Independence*, in INDEPENDENCE, DEPENDENCE, INTERDEPENDENCE: THE FIRST 10 YEARS OF SOLOMON ISLANDS INDEPENDENCE 7, 14 (R. Crocombe and E. Tuza, eds, Suva and Honiara: Institute of Pacific Studies, USP Honiara Centre and the Solomon Islands College of Higher Education, 1992).

³⁴ For example, the current Prime Minister, Sir Allan Kemakeza, is alleged to have distributed thousands of dollars of state funds to family members in 1999 and 2000, when he was Deputy Prime Minister. The funds allegedly came primarily from a bank loan of \$25 million from Taiwan: *see* JUDITH BENNETT, ROOTS OF CONFLICT IN SOLOMON

to support resource extraction activities entrenched corruption. Slowly the economic machinery of the state began to spiral out of control, with development and growth stagnating, the population growing, service delivery declining, debt climbing and foreign investment beginning to retreat. The state became even more remote from the rural population, and increasingly failed to meet the expectations of small urbanized, educated groups.

In the 1990s, a civil war on the neighboring island of Bougainville spilled over into SI, with SI becoming a “haven and base” for Bougainvillean secessionists, their ideas and arms.³⁵ From 1996 young Guadalcanalese men, “disgruntled with successive governments’ failure to address developmental issues and the demands of the [Guadalcanal] Province, plus the presence of settlers from other islands (especially Malaitans) on their island began collecting arms.”³⁶

In 1998 and 1999, civil conflict between Guadalcanalese and Malaitans, fuelled by these ideas and arms, grew into armed conflict. The underlying disputes involved tension over land and other economic opportunities and divergent cultural traditions (including contrasting matrilineal and patrilineal inheritance rules). These tensions had grown in the half-century since the influx of Malaitan labor to work around the U.S. military base established in 1942. By the mid-1990s, Malaitans dominated both Guadalcanal’s private agricultural economy and a large proportion of the jobs in Honiara itself, including in the public service.³⁷

In 1998, during a land handover ceremony, the Premier of Guadalcanal Province, Ezekiel Alebua, demanded compensation from the national government for 25 Guadalcanal people allegedly killed at the hands of Malaitan settlers. (Compensation is an important component of Melanesian justice systems.) He also sought the return of lands purchased, rented or occupied by Malaitans and compensation to Guadalcanalese for the Government’s use of their land for the national capital.³⁸ Met by government opposition to their demands, some Guadalcanalese men organized themselves into a militia, the Guadalcanal Revolutionary Army (named after the Bougainville Revolutionary Army), which developed into the Isatabu Freedom Movement (IFM). The IFM was initially armed with homemade guns, bush knives, bows and arrows. As the conflict developed, both sides gained access to high-powered weapons, including military assault rifles and police pistols.

The IFM began a campaign of intimidation which led to large-scale internal population movements. In 1999, some 20,000 Malaitans were forced into Honiara, from where many were

ISLANDS. THOUGH MUCH IS TAKEN, MUCH ABIDES: LEGACIES OF TRADITION AND COLONIALISM 11 (State, Society and Governance in Melanesia, Research School of Pacific and Asian Studies, Australian National University, Discussion Paper 2002/5 (2002)). Kemakeza was forced to resign over the incident, but rose again to power following Ulufa’alu’s deposition. For further details *see* Dinnen, *supra* note 27.

³⁵ OFN, *supra* note 27 at 21.

³⁶ KABUTAULAKA, *supra* note 27. *See also* Tarcisius Tara Kabutaulaka, *Beyond Ethnicity: Understanding the Crisis in the Solomon Islands*, available at http://journalism.uts.edu.au/archive/fiji_coup/beyondethnicity.html, last visited December 12, 2003.

³⁷ OFN, *supra* note 27 at 21. *See also* EC Mission Report, *supra* note 27.

³⁸ BENNETT, *supra* note 34 at 11; KABUTAULAKA, *supra* note 27.

repatriated to Malaita.³⁹ At first the SI government downplayed the situation. The Minister of State, Alfred Sasako, was reported as saying that,

...so far as I gather, there are actually two and at the most three very small groups of perhaps a total of 50 people. Some of those arrested on arms charges were disgruntled former police officers. Most other trouble makers appear to be young people who do not take it seriously, but who want a bit of fun and adventure.⁴⁰

On May 23, 1999, a *kastom* (customary) feast ceremony was held in Honiara, bringing together the “Big Men” from Guadalcanal and Malaita to reconcile those province’s differences.⁴¹ The feast did not, however, include those actually involved in perpetrating violence, nor attempt to deal with the underlying causes of the tensions.⁴² It was deliberately limited to a symbolic act of reconciliation.

Unsurprisingly, confrontation between the Malaitan-dominated Royal Solomon Islands Police (RSIP) and the IFM slowly grew. A second attempt at negotiating peace was made in June 1999. On June 28, 1999, the Honiara Peace Accord brokered by the Commonwealth Secretariat’s special envoy, Fiji’s former Prime Minister, Major General Sitiveni Rabuka (himself a successful coup-leader) was signed. The Honiara Peace Accord took the important step of acknowledging that successive governments since independence had ignored many issues raised by Guadalcanal people, and committed to addressing key issues, including land.⁴³ Six weeks later, the Panatina Agreement, signed on August 12, 1999, affirmed the Honiara Peace Accord “as the framework for a lasting solution to the problems of ethnic unrest in Guadalcanal,”⁴⁴ and emphasized community policing, the need for militants to lay down arms and the need to disband “illegal organisations.”⁴⁵ Guadalcanal militants were signatory to neither of these Accords, which consequently had little effect, despite the deployment of a small contingent of 9 Vanuatu and Fiji police on November 1, 1999, as called for in the accords.

Malaitans marched on national Parliament in November 1999, demanding compensation from the national government for harms done by Guadalcanalese. Prime Minister Ulufa’alu, a Malaitan, refused. Malaitans responded in late 1999 and the first half of 2000 by organizing their own militia, the Malaitan Eagle Force (MEF) based in Honiara. The MEF included members from the Royal Solomon Islands Police (RSIP), its well-armed Field Force, and government prison services.⁴⁶ It quickly exerted control over the capital, Honiara, leading to government paralysis and the collapse of law and order.⁴⁷ Foreign capital pulled out, government revenue plummeted, and most public services were suspended. Following the 1997/98 drop of 15–20

³⁹ KABUTAULAKA, *supra* note 27. Other sources put the total number of IDPs higher: *see, e.g.*, NORWEGIAN REFUGEE COUNCIL/GLOBAL IDP PROJECT, PROFILE OF INTERNAL DISPLACEMENT: SOLOMON ISLANDS, (May 2002) (putting the number at 35,000).

⁴⁰ PACIFIC ISLANDS MONTHLY 25 (June 1999), quoted in KABUTAULAKA, *supra* note 27.

⁴¹ KABUTAULAKA, *supra* note 27.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Quoted in id.*

⁴⁵ *Quoted in id.*

⁴⁶ BENNETT, *supra* note 34 at 11; EC Mission Report, *supra* note 27 at 22.

⁴⁷ BENNETT, *supra* note 34 at 11.

percent in GDP,⁴⁸ it took a further plunge of roughly 25 percent in 2000–2001,⁴⁹ with per capita GDP halving in the 6 years to 2003⁵⁰ to be half what it was at independence in 1978.⁵¹

By April 2000 the RSIP had killed 13 IFM members.⁵² In April 2000 a second Malaitan paramilitary group emerged, the Malaita Seagull Force (MSF).⁵³ The parliamentary opposition alleged that this group was linked to Prime Minister Ulufa'alu, and was established for the purposes of destroying the MEF.⁵⁴ In public, Ulufa'alu rejected this claim, agreeing on May 14, 2000 to the establishment of a Parliamentary committee to investigate the existence of the MSF.⁵⁵ In private, Ulufa'alu sought outside intervention as early as April 2000. Fearing a coup, Ulufa'alu requested the deployment of 50 Australian police officers to protect the government and restore law and order.⁵⁶ Australia rejected the request.

Further peace talks were held in Buala on May 4 and 5, 2000, and in Auki on May 9 and 10, 2000. These led to agreement by the Government to decriminalize specific militant groups, in exchange for the surrender of weapons. On May 12, 2000, the Australian Government agreed to fund the expansion of the foreign contingent to 50 police officers.⁵⁷ Given the government's inability to punish militant groups if they failed to surrender their weapons, there was little incentive for compliance with these negotiated agreements. On June 5, 2000 officers of the RSIP aligned with the MEF seized control of the national armory and threatened the national government. Ulufa'alu stepped down under duress on June 15, 2000.⁵⁸ Facing MEF intimidation, Parliament formed a new government under Manasseh Damukara Sogavare, previously Finance Minister in the Ulufa'alu government. The IFM condemned the coup as the "rape" of democracy and called for immediate intervention by Australia, New Zealand or the UN.⁵⁹ The MEF launched a major operation against the IFM.

⁴⁸ OFFICE OF PACIFIC OPERATIONS, ASIAN DEVELOPMENT BANK, *IMPACT OF THE ASIAN FINANCIAL CRISIS ON PMDC ECONOMIES*, (Manila, 1998).

⁴⁹ AUSTRALIAN SENATE FOREIGN AFFAIRS, DEFENCE AND TRADE COMMITTEE, *A PACIFIC ENGAGED: AUSTRALIA'S RELATIONS WITH PAPUA NEW GUINEA AND THE ISLAND STATES OF THE SOUTH-WEST PACIFIC*, REPORT OF AN INQUIRY INTO AUSTRALIA'S RELATIONS WITH PAPUA NEW GUINEA AND THE ISLAND STATES OF THE SOUTH-WEST PACIFIC, at 274, tabled in Australia's Commonwealth Parliament on August 12, 2003, ISBN 0 642 71286 7, available at http://www.aph.gov.au/Senate/committee/FADT_CTTE/png/report/index.htm, last visited December 12, 2003 (hereafter "A PACIFIC ENGAGED").

⁵⁰ Commonwealth of Australia Parliamentary Debates, House of Representatives, Official Hansard, Fortieth Parliament, First Session—Sixth Period, No. 11, 2003, August 12, 2003, (hereafter "Hansard") at 18198. Growth rates in the Solomon Islands during the period 1985–1995 were, in contrast, around 6 percent: *see* A PACIFIC ENGAGED, *supra* note 49 at 22-23.

⁵¹ A PACIFIC ENGAGED *supra* note 49 at 274.

⁵² KABUTAUAKA, *supra* note 27.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *See* Hansard, *supra* note 50 at 18211.

⁵⁷ Australian Minister for Foreign Affairs, Alexander Downer, Media Release. Solomon Islands, May 12, 2000, available at http://www.dfat.gov.au/media/releases/foreign/2000/fa039_2000.html, last visited December 9, 2003.

⁵⁸ OFN, *supra* note 27 at 22.

⁵⁹ Isatabu Freedom Movement, Press Statement, June 5, 2000, available at <http://rspas.anu.edu.au/melanesia/solomonspressreleases.htm#1>, last visited on November 24, 2003.

Australia and New Zealand facilitated peace talks aboard the *HMAS Tobruk*, an Australian naval vessel sent to the area. A ceasefire was agreed on August 3, 2000, and a peace conference organized by the Australian government in Townsville, Australia. The Townsville Peace Agreement (TPA)⁶⁰ was signed on October 15, 2000. A separate Marau Peace Accord (covering a remote area of Guadalcanal excluded from the TPA) followed in February 2001. Both sets of negotiations excluded representatives of civil society and provinces other than Guadalcanal and Malaita.⁶¹

The TPA proved only a partial success. A planned early ceasefire was achieved, but did not become permanent in the manner envisaged. An Australian-led and -funded International Peace Monitoring Team oversaw the surrender of weapons in a disarmament program, but fewer weapons were received than were thought to be in the field. An indigenous Peace Monitoring Council was established, but could not see through the individual compensation program envisaged under the TPA, nor the program it envisaged for the development of areas affected by violence and internal displacement.⁶² Elections held in December 2001 returned a new government under the leadership of Sir Allan Kemakeza.

When the TPA expired in October 2002, little had been done to deal with SI's structural problems. The formal disbanding of militant groups encouraged these men, affected by their militancy and still in possession of significant weapons caches, to turn to criminal intimidation, extortion and corruption. One key faction of the IFM calling itself the Guadalcanal Liberation Front, led by Harold Keke, refused to become party to the TPA, and slowly assumed control over the southern coast of Guadalcanal, the Weather Coast. Keke's group became increasingly violent. Although formally disbanded, some members of the MEF used Keke's activities as an excuse to retain weapons. Violence remained endemic, each local group seeking protection wherever it could find it. In Western Province, the local population, with transnational kinship links to Bougainville, sought and gained the protection of the Bougainville Revolutionary Army (BRA), leading to the killing of a number of Malaitans by the BRA in early 2002.⁶³

More than 30 people were murdered in SI in the first six months of 2003.⁶⁴ On February 10, 2003 the former Solomon Islander Police Commissioner (1982–1996) and National Peace Councillor Sir Fred Soaki was assassinated. On May 12, 2003 senior officials of the Australia New Zealand (ANZ) bank, one of the largest banks in the region, abandoned SI after receiving murder threats from the organizers of a pyramid scheme. The nation's entire financial system shut down for 2 days. Australia urged the SI to "get its house in order," and began to seriously consider intervening.⁶⁵ In late May 2003, a 60-year-old Australian missionary at a remote settlement in SI was beheaded. In April and June 2003, Keke allegedly attacked villages on the

⁶⁰ Available at <http://www.catholicnet.com/townvillepeace.htm>, last visited December 11, 2003.

⁶¹ BENNETT, *supra* note 34 at 11.

⁶² OFN, *supra* note 27 at 23.

⁶³ EC Mission Report, *supra* note 27 at 25-26.

⁶⁴ See BBC NEWS, *Q&A: Crisis in the Solomons*, June 26, 2003, available at <http://news.bbc.co.uk/go/pr/fr/-/1/hi/world/asia-pacific/3023106.stm>, last visited December 12, 2003.

⁶⁵ See Graham Fletcher, Head, Solomon Islands Taskforce, Department of Foreign Affairs and Trade, "Australia's Policy; Strategy; Mandate," Paper presented to *Solomon Islands Update: Crisis and Intervention*, Australian National University, August 25, 2003, at 1, available at http://rspas.anu.edu.au/papers/melanesia/SI_update_03_fletcher.pdf, last visited on November 24, 2003.

Weather Coast, leading to the displacement of roughly 1,000 people,⁶⁶ and numerous transit-related deaths. His group also took hostage nine Anglican missionaries, eventually releasing three and apparently killing six on the basis that they were spying for the national government.

The SI Prime Minister, Sir Allan Kemakeza, allegedly met in late May 2003 with the Papua New Guinea Prime Minister Sir Michael Somare during the Pacific Island Leaders Summit in Okinawa, Japan, and asked PNG for assistance. One commentator has suggested that PNG responded by sending a team to Solomon Islands to collect intelligence information for a PNG Defence Force expeditionary force to disarm Keke.⁶⁷ Some commentators have made similar allegations about the possibility of an Indonesian intervention.⁶⁸

Australia's National Security Committee (NSC) called for the preparation of a proposal for a peace operation in the Solomon Islands. Australia's Department of Foreign Affairs and Trade (DFAT) established a Solomon Islands Task Force, headed by Graham Fletcher, which coordinated planning with the Australian Defence Force (ADF), Australian Federal Police (AFP), Australian Agency for International Development (AusAID) and other relevant government departments and agencies.

PART III. DIAGNOSIS AND PRESCRIPTION: CHARACTERIZING THE SOLOMON ISLANDS' AILMENT

These, then, were the symptoms of civil conflict in Solomon Islands. How was this conflict perceived, outside the Solomon Islands? In this Part, I present a summary of the Western, liberal perception of this collapse, as it is represented in two key documents.⁶⁹ The first document is a report prepared by the United Nations Office for Project Services (UNOPS) in June 2002 for the European Commission Conflict Prevention and Crisis Management Unit, authored by a member of UNOPS and the head of Amnesty International's Pacific Region program.⁷⁰ The second is a report prepared by the Australian Strategic Policy Institute, an Australian-government-funded strategy think tank, headed by a former Australian Department of Defence bureaucrat, Hugh White.

Although neither document represented official government policy at the time it was written, the two documents, taken together, provide a characteristic representation of dominant governmental

⁶⁶ Hansard, *supra* note 50 at 18198; Kabutaulaka puts the number at 991: *see* KABUTAULAKA, *supra* note 27.

⁶⁷ Hriehwazi Yehiura, *PNGDF about to launch crack unit after warlord when Australia intervened*, in PNG NATION, June 30, 2003.

⁶⁸ *See* Mark Davis, *Solomons Riddle*, broadcast on SBS DATELINE, August 27, 2003, transcript available at <http://www.sbs.com.au/datetime/trans.php3?dte=2003-08-27&title=Solomons+Riddle>, last visited December 10, 2003; *see also* Sinclair Dinnen, "Ways Forward—Rebuilding," Paper presented to *Solomon Islands Update: Crisis and Intervention*, Australian National University, August 25, 2003, at 1, available at http://rspas.anu.edu.au/papers/melanesia/SI_update_03_dinnen.pdf, last visited on November 24, 2003.

⁶⁹ A third diagnosis is provided by the Australian Senate in A PACIFIC ENGAGED, *supra* note 49. That Report does not provide such a useful insight into perceptions of the SI crisis, because it was the result of a Parliamentary Inquiry with a broad focus on the South West Pacific region as a whole, and Australia's relations with that region. Where appropriate reference is, however, made in this paper to that Report.

⁷⁰ *See* EC Mission Report, *supra* note 27 at 7.

and civil society discourse.⁷¹ They offer us evidence both of the nature and process of the legal pathologies that are today dominant in Western capitals, and of the genealogy of decision-making in a particular case.

1. **Diagnosis: the absence of the rule of law**

The European Commission sent a small conflict prevention assessment mission to the South Pacific from February 21, 2002 to March 15, 2002. That mission travelled to Fiji and Papua New Guinea in addition to Solomon Islands, spending March 3–8, 2002 in SI. The mission, “composed of experts with competence in anthropological/historical, security, governance, development or regional issues” was “commissioned to report comprehensively on potential conflict issues, and to propose medium term conflict prevention strategies to be integrated into planned co-operation activities.”⁷²

The Report prepared by the Mission (“EC Mission Report”) characterizes the SI conflict as having undergone a transformation in the wake of the TPA:

Since the signing of the Townsville Peace Agreement, the dynamics of the conflict has changed from organized inter-ethnic fighting to an increasingly lawless “free-for-all” situation, in which the rule of the gun can determine political and economic power, access to services and consumer goods, as well as income opportunities.⁷³

In this diagnosis, the SI’s ailment is characterized by rule of the gun where there should be the rule of law. The EC Mission Report presents the impartial state institutions as criminally corrupted by *wantoks* (kinship networks).⁷⁴ The EC Mission Report describes an

entire criminal justice system ... in crisis and partially unable to function. The police, as far as it does attempt to operate professionally, are often frustrated by the refusal of witnesses to cooperate due to justified fears of reprisals... Only one of the nine provinces still has a magistrate, and no one has been brought to justice for murders and other killings since 1998.⁷⁵

The EC Mission Report explains this collapse of law and order as concomitant with a decline in public trust in authority.⁷⁶ The collapse of law and order creates opportunities for violence, exacerbated by the loss of control over weaponry.⁷⁷ It is further exacerbated by the blurring of lines between state violence (the police) and private violence (combatants), through the Police Special Constables program established by the TPA to incorporate ex-combatants into community policing programs.⁷⁸

⁷¹ OFN specifically seeks to situate itself within the larger discourse of state building and international intervention. See OFN, *supra* note 27 at 28-29.

⁷² EC Mission Report, *supra* note 27 at 6.

⁷³ *Id.* at 23.

⁷⁴ *Id.*

⁷⁵ *Id.* at 24.

⁷⁶ *Id.* at 25.

⁷⁷ *Id.* at 24-25.

⁷⁸ *Id.* at 27.

These are the symptoms the EC Mission Report perceives. What does it point to as their cause? The EC Mission Report describes tensions in SI as “ethnic,” and occasionally simply “political.” It contrasts modern, impartial state institutions such as the “rule of law,” embodied in police officials, with primitive, traditional or customary social institutions, such as *wantok*, *kastom* and ethnic heritage. This narrative often elides or confuses the absence of behavior consistent with the rule of law with behavior motivated by atavistic ethnic hatred. The collapse of the criminal justice system is blamed largely on police deliberately blocking or frustrating investigations involving their own relatives or *wantoks*.⁷⁹ No serious attempt is made to explain how or why these police officers might perceive such behavior as rational. It is simply assumed to be irrational.

Particularly conspicuous for its absence in the EC Mission Report is extended discussion of possible economic causes for violence. Economic factors are only considered “[i]n addition”;⁸⁰ they are not considered independent causal factors, but instead exacerbate the root cause (lack of rule of law) by “depriving the government of even the most basic resources to maintain essential social services, let alone to address the driving forces of the conflict.”⁸¹ Attempts by different militant groups to gain control over the state’s economic resources are not considered as rational attempts by actors in a conflict to achieve their key socio-political goals; instead they are characterized as irrational, illicit attempts by “mafia” to loot the neutral state’s resources.⁸²

A similar legal pathology is evident in the landmark report of the Australian Strategic Policy Institute, *Our Failing Neighbour*.⁸³ As I explain later, that Report marked a turning-point in Australian thinking on the legitimacy of outside intervention in small island states in the South Pacific. As we shall see, that shift in treatment strategy came about largely as a result of a changed assessment of SI’s capacity to infect the South Pacific region. It was not a result of a change of the basic diagnosis of the SI’s ailment.

Like the EC Mission Report, *Our Failing Neighbour* (OFN) characterizes (as the name might suggest) the SI’s ailment as a failure of state institutions,⁸⁴ represented through the state’s loss of the monopoly over legitimate violence. This is manifested in the collapse of the state’s ability to enforce the legal order, to provide justice. Lawlessness not only permits private recourse to violence, private justice, but also positively encourages it as a “survival strategy.”⁸⁵ OFN even picks up the imagery of the EC Mission Report, characterizing the situation in SI as “the rule of the gun.”⁸⁶

OFN weaves a more complex narrative of the rule of law than does the EC Mission Report. It identifies symptoms of failure in the democratic legislative process, and not simply judicial failure, as evidence of the absence of the rule of law:

⁷⁹ *Id.* at 24.

⁸⁰ *Id.* at 23.

⁸¹ *Id.*

⁸² *Id.* at 25.

⁸³ OFN, *supra* note 27 at 19.

⁸⁴ *Id.* at 1, 3.

⁸⁵ *Id.* at 27.

⁸⁶ *Id.* at 43.

There is no effective Cabinet process; real power and decision making occurs outside the formal political arena. A shadow state has emerged in Solomon Islands—a patronage system centred on the ruling cabal’s control over resources. The state has been gutted from the inside, and parliament largely serves as an avenue for access to dwindling resources by political players.⁸⁷

But both reports focus on failures of legal and political institutions, rather than the structural deficiencies in the country’s economic system, as the root cause of crisis. Just as the EC Mission Report sees the economic problems in SI as the result of political tension, rather than the political problems as the result of economic tension, so OFN characterizes the situation as a “slow-burning political and security crisis [which] has paralysed the country’s capital, stifled its economy, disrupted government, discouraged aid donors, and inflicted suffering and hardship on its people.”⁸⁸ It does leave some room for economic variables as causal factors,⁸⁹ but the central narrative is one of legal pathology: the SI’s ailment is a failure of the modern state, in particular its failure to provide impartial and reliable justice:

The primary problem besetting Solomon Islands is the absence of law and order. The incipient civil war was averted, only to be replaced by endemic, low-level violence and intimidation by former militants in Honiara and parts of rural Guadalcanal and Malaita, as well as periodic problems in Western Province...The dubious motives of 1999 and 2000 have gradually shaded into a broader pattern of outright criminality facilitated by the availability of firearms and the absence of an effective police force.⁹⁰

2. Prescription: add rule of law and stir ...

The similar pathologies of the EC Mission Report and OFN play out not only in the resemblances between their diagnoses of the SI problem, but also in the nature of the prescription they provide for a remedy. Both prescriptions might be summarized by the phrase “add rule of law and stir....” Both focus on rebuilding the centralized, impartial institutions of rule-generation and rule-enforcement—that is, procedural justice—rather than dealing with underlying economic inequities.

Both prescriptions recognize that the rule of law does not simply come to be, but must be created socially, through the presence of an impartial sovereign authority. This is the transition, the treatment, that the EC Mission Report and OFN envisage for SI: the transition to modern, Western sovereignty. The two documents adopt, however, very different approaches to how this might be made to come to pass.

The EC Mission Report suggests that outsiders need to focus on capacity creation, generating an indigenous sovereign, indigenous rule of law. It acknowledges, however, that this “hands-off” strategy may face serious obstacles to success:

⁸⁷ *Id.* at 24.

⁸⁸ *Id.* at 6.

⁸⁹ *See, e.g., id.* at 18.

⁹⁰ *Id.* at 23.

It appeared to the mission that even where ... assistance was meant to directly assist a return to law and order, the local situation often undermined the effectiveness of ... initiatives. The mission saw one of several Australian donated police vehicles obviously being used as a commercial taxi in Malaita, a practice which independent observers confirmed has been routine. It was also learned that a gunman started demanding toll at a bridge restored with Australian assistance in North Malaita. Both Australian and EC-funded infrastructure projects in that region have recently floundered due to the unresolved security situation and disputes among Malaitan groups.⁹¹

Recognizing these obstacles, the EC Mission Report raised the prospect of outside intervention, under UN auspices.⁹² This, the authors claimed, would require only a small armed intervention force with a mandate to disarm militant groups.⁹³ This approach assumes that by removing arms from private circulation, the challenge to the state's legitimate monopoly of violence is defeated, allowing the state to reassert the rule of law.

The EC Mission Report also recognizes that some reforms may need to be made to the process of rule-generation, as well as rule-enforcement, to ensure the political legitimacy of the rule of law. These might include constitutional reform producing a greater regional devolution of power.⁹⁴

OFN offers a diagnosis of the SI's ailment similar to that of the EC Mission Report. It suggests, however, that the state of SI's degeneration is more advanced than previously accepted. That diagnosis makes possible the prescription of a more intrusive intervention. The first step in this prescription is to demonstrate that previous attempts at treatment have failed. OFN lays out details of outside aid to SI,⁹⁵ concluding that the treatment has amounted to nothing more than palliative care: "There is little expectation that the current measures being taken by Australia and the wider international community—valuable though they are—will do more than palliate the crisis."⁹⁶

The problem was, in the OFN diagnosis, that the central nervous system of the SI, the state, had collapsed so far that a more intrusive intervention was necessary:

The point has now been reached that simply providing more aid to the Government in Honiara is unlikely to fix the problems, and could well end up exacerbating them, because the Solomon Islands Government is now incapable of using further aid effectively. So if we are to do more, we will need to become more deeply engaged on the ground ourselves.⁹⁷

⁹¹ EC Mission Report, *supra* note 27 at 27.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.* at 32.

⁹⁵ *Id.* at 25-26.

⁹⁶ OFN, *supra* note 27 at 3.

⁹⁷ *Id.* at 7.

The medical calculus is also changed, according to OFN, by the new viruses of terrorism and transnational crime, parasites which feed off and breed in failed states like the SI, risking infection to the surrounding region:

Without an effective government upholding the rule of law and controlling its borders, Solomon Islands risks becoming—and has to some extent already become—a petri dish in which transnational and non-state security threats can develop and breed... this kind of legal vacuum so close to our shores would make Australia significantly more vulnerable to transnational criminal operations based in or operating out of Solomon Islands—drug smuggling, gun-running, identity fraud and people smuggling, for example. Perhaps even terrorism: the weakness of security institutions means that Solomon Islands’ capacity to monitor people movements is poor... there would be a high likelihood that such problems would prove contagious to other countries in the region...⁹⁸

OFN consequently prescribes a more radical intervention, a restoration of the SI’s nervous system for the benefit of regional public health. Like any modern, Western medical intervention, this intervention would be based on the patient’s consent. The core liberal value of individual autonomy demands consent as much in humanitarian intervention as in surgical intervention—except where the state lacks legal capacity, where it is an entirely “failed state.” OFN repeatedly asserts that any outside intervention must be carried out only with SI’s consent.⁹⁹

OFN prescribes a kind of life-support for SI. It suggests that the capacity of the SI’s nervous system to immunize itself against threats, to repair itself and regenerate an impartial sovereign and the rule of law, has been critically damaged. Consequently, SI should be hooked up to an external life-support system, a legal apparatus injecting a third-party’s donated sovereignty, stimulating the growth of rule of law.

What would this operation look like? OFN proposed a two-phase remedy. The first phase would arrest development of the disease, “restore law and order in and around Honiara” by injecting “a substantial police force of around 150 personnel drawn from donor countries, along with judicial and correctional personnel.”¹⁰⁰ This injected group would “be under the control of an ad hoc multilateral agency representing donor governments and acting on behalf of the people of Solomon Islands”¹⁰¹—an impartial third sovereign. The same agency would take temporary control of government finances.¹⁰² This multilateral agency, which OFN dubbed the “Solomon Islands Rehabilitation Agency,” would temporarily exercise part of SI sovereign authority.¹⁰³ The second phase of the operation would rebuild the country’s immune and nervous systems, “focus on building Solomon Islands’ capacity for effective government, by helping to build new political structures and security institutions, and helping to address underlying social and economic problems.”¹⁰⁴ It would last around 10 years.¹⁰⁵ OFN envisages this phase as building

⁹⁸ *Id.* at 13-14.

⁹⁹ *See, e.g., id.* at 4.

¹⁰⁰ *Id.* at 4.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.* at 39.

¹⁰⁴ *Id.* at 4.

on existing aid programs such as AusAID's Law and Justice Institutional Strengthening Program, allowing a fundamental reconstitution of Solomon Islands political and civil institutions, including a federalization of the constitution, and the retraining of personnel and regeneration of institutional capacity.¹⁰⁶ It also advocates an increased emphasis on private enterprise to stimulate a revenue stream permitting the state to discharge its obligations of health and education provision.¹⁰⁷

OFN's prescription involves a more radical, longer-lasting intervention than that advocated by the EC Mission Report. Nevertheless, the underlying pathologies are the same. Both reports prescribe a course of treatment based first and foremost on the restoration of procedural justice: the strengthening of state enforcement capacity and the building of the rule of law. OFN advocates the reform of the rule-making process, to ensure this aspect of procedural justice also has sustainable social legitimacy. It also goes so far as to recognize the need for economic reform, advocating a liberal economic agenda, giving the state the role as arbiter of market processes and provider of health and education services, rather than the redistributor of wealth.

Neither prescription countenances any role for the state in transforming the underlying social structures in SI. Neither prescription advocates a treatment that deals with questions of distributive justice in SI, or even speaks of institutions—such as a truth commission—which might reveal the social desire or capacity for such fundamental transformations. Both diagnoses focus on the lack of rule of law; both treatments provide a remedy whose active ingredient is rule of law. “Failed state? Problems transitioning to post-colonial democracy?” they ask. “Just add rule of law and stir ...”

PART IV. TREATMENT: OPERATION HELPEM FREN

In January 2003, the Australian Foreign Minister, Alexander Downer, wrote in a national newspaper:

Sending in Australian troops to occupy the Solomon Islands would be folly in the extreme. It would be widely resented in the Pacific region. It would be difficult to justify to Australian taxpayers. And for how many years would such an occupation have to continue? And what would be the exit strategy?

The real show-stopper, however, is that it would not work—no matter how it was dressed up, whether as an Australian or a Commonwealth or a Pacific Islands Forum initiative. The fundamental problem is that foreigners do not have answers for the deep-seated problems afflicting Solomon Islands.¹⁰⁸

By July 24, 2003, Australian troops were in SI.

¹⁰⁵ *Id.* at 4, 45.

¹⁰⁶ *Id.* at 45 *et seq.*

¹⁰⁷ *Id.* at 46.

¹⁰⁸ *The Australian*, January 3, 2003, available at <http://www.cdn.info/industry/i030108/i030108.html>, last visited December 10, 2003.

OFN came at a time when the Australian government was seriously reconsidering its policy towards the South Pacific region. The Australian Parliament was in the last stages of an inquiry into that policy, which, when released in August 2003 backed the interventionist approach adopted in both OFN and OHF, and called for the institutionalized pooling of sovereignty in a Pacific Economic and Political Community.¹⁰⁹ OFN included contributions from key political players in SI, including the incumbent Governor-General, Sir Fr John Ini Lapli, calling for more active intervention by Australia.¹¹⁰

The Australian Government began a serious investigation into the possibility of direct, “cooperative intervention.”¹¹¹ In early June 2003 it invited Prime Minister Kemakeza to Canberra to discuss options. A team of Australian officials visited Honiara from June 10 to 13, 2003 to investigate further.¹¹² On June 25, 2003, the Australian government decided to undertake a regional assistance mission to the Solomon Islands. A special meeting of the Foreign Ministers of the Pacific Islands Forum (PIF)—the local regional grouping—was called in Sydney on June 30, 2003, and endorsed the plan.¹¹³ On July 4, 2003, the SI Governor-General, Sir John Lapli, wrote to Australian Prime Minister John Howard, formally requesting regional intervention. On July 11, 2003, the Solomon Islands Parliament passed a motion endorsing the operation, and on July 17, 2003, it unanimously passed facilitating legislation (the *Facilitation of International Assistance Act 2003* (SI)). On July 22, 2003, the Australian government agreed to deploy personnel to Honiara. The first deployments took place on July 24, 2003.¹¹⁴

The official justifications for the intervention mirrored the pathologies presented in the EC Mission Report, and especially OFN. The Australian Government described SI’s ailment as produced by a colonial legacy of lack of state capacity, exacerbated by ethnic conflict.¹¹⁵ Prime Minister Howard described the problems this way in an address to Australia’s Commonwealth Parliament: “Even beyond the damage caused by the ethnic tensions that erupted in 1998, corruption has strangled many of the institutions vital to good governance, and violence has become endemic.”¹¹⁶

¹⁰⁹ See A PACIFIC ENGAGED, *supra* note 49 at xiii, Recommendation 1.

¹¹⁰ OFN, *supra* note 27 at 32-37.

¹¹¹ The Hon. Alexander Downer, MP, “Our Failing Neighbour: Australia and the future of the Solomon Islands,” Speech at the Launch of the Australian Strategic Policy Report, June 10, 2003, *available at* http://www.foreignminister.gov.au/speeches/2003/030610_solomonislands.html, last visited on November 23, 2003.

¹¹² AGREEMENT, DONE AT TOWNSVILLE ON 24 JULY 2003, BETWEEN SOLOMON ISLANDS, AUSTRALIA, NEW ZEALAND, FIJI, PAPUA NEW GUINEA, SAMOA, AND TONGA CONCERNING THE OPERATIONS AND STATUS OF THE POLICE AND ARMED FORCES AND OTHER PERSONNEL DEPLOYED TO SOLOMON ISLANDS TO ASSIST IN THE RESTORATION OF LAW AND ORDER AND SECURITY, [2003] ATS 17, National Interest Analysis, *tabled* September 9, 2003, para. 9, *available at* <http://www.aph.gov.au/house/committee/jsct/september2003/treaties/sinia.pdf>, last visited December 12, 2003; *see also* Mr. W. Noel Levi, CBE, PIF Secretary General, “Presentation to the United Nations—Regional Organizations 5th High Level Meeting on ‘New Challenges to International Peace and Security, Including International Terrorism’ & the Regional Initiative in Solomon Islands,” Press Statement 83/03, PIF Secretariat, Suva, July 29, 2003.

¹¹³ Pacific Islands Forum, “Forum Foreign Affairs Ministers Meeting, 30 June 2003, Sydney, Australia, Outcomes Statement,” Press Statement 75/03.

¹¹⁴ See Hansard, *supra* note 50 at 18198.

¹¹⁵ See Hon. Alexander Downer, MP, Minister for Foreign Affairs, “Statement to Parliament on the Regional Assistance Mission to the Solomon Islands (RAMSI),” August 12, 2003, *available at* http://www.dfat.gov.au/media/transcripts/2003/030812_downer_in_pment.html, last visited on November 23, 2003.

¹¹⁶ Hansard, *supra* note 50 at 18197.

Howard described ethnic tensions as creating the conditions for a descent into “criminal lawlessness,” with a breakdown in law and order leading to economic decline—rather than economic injustice leading to the undermining of the authority of the state.¹¹⁷ In a document prepared as part of the supporting material for legislation introduced into the Australian Parliament in connection with the operation, the Government described the situation in SI in similar terms:

Criminal lawlessness replaced ethnic tension as the main problem for the stability of the country. The country’s institutions have been greatly weakened and, in some cases, turned against the people they are meant to serve. Corruption became rife. Government, continually operating in an environment of threat and extortion from militants, has been unable to function, and government finances are in tatters. Severe economic decline has resulted—it is estimated that real gross domestic product has shrunk by one-third over the past few years.¹¹⁸

The Pacific Islands Forum’s statements reflected a similar legal pathology, characterizing SI’s economic and social decline as the result of a failure of law and order.¹¹⁹ Similarly, the Australian Government shared OFN’s assessment of the risk of infection, repeatedly characterizing the situation in SI as a threat to regional security, including Australian security.¹²⁰

Subscribing to this diagnosis, it followed that the Australian-led intervention would largely reflect the prescription laid out in OFN. Operation Helpem Fren was built around an intervention force of 300 police from Australia, New Zealand, Fiji, Papua New Guinea and Tonga, backed up by 1,800 troops from across the region—said to be the largest military expeditionary force in the South Pacific since World War II. The key mandate of the restoration force was “restoring law and order.” This reflected Phase One of the OFN prescription. Phase Two would focus on

¹¹⁷ Hansard, *supra* note 50 at 18198. The Australian Opposition, which supported the RAMSI intervention, appears to have taken a slightly more nuanced approach:

Despite some impressive leaders who have done their best to build a responsible and effective government in Honiara, the Solomon Islands have been inflicted with endemic corruption, resource exploitation and, as a result, economic stagnation. These pressures came to the surface in 1998 and 1999 in the form of ethnic disputes over land and jobs between the Malaitans and the Guadalcanalese. Violent clashes between the two groups resulted in many casualties on both sides without any clear political resolution to the underlying problems of land ownership and lack of economic opportunity.

Id. at 18203.

¹¹⁸ National Interest Analysis, *supra* note 112 at para. 7.

¹¹⁹ See PIF Press Statement, *supra* note 113.

¹²⁰ See Hansard, *supra* note 50 at 18198, 18201; National Interest Analysis, *supra* note 112 at para. 5. This risk assessment was matched by a changed intervention calculus, radically influenced by a number of developments outside the Pacific. First, the U.S./U.K./Australian military intervention in Iraq made conceivable a preemptive regional intervention strategy, at least one built on the patient’s consent, and the consent of their nearest-of-kin (here represented by the PIF). The Australian-led intervention grew partly out of a changed strategic calculus, considering the costs of direct intervention to be outweighed by the benefits of prevention and cure. For a reference to this changed calculus, see Hansard, *supra* note 50 at 18201. Second, there may have been indications in early 2003 that SI was taking a course that would create specific opportunities for terrorists. For example, one commentator points out that SI indicated it would move to create an open shipping register as a revenue-raising mechanism, just weeks after three Tonga-flagged vessels were identified by U.S. authorities as transports for al Qaeda men and materiel: see Michael Maher, *Danger Islands*, THE BULLETIN, April 23, 2003.

rehabilitating the SI economy and developing state capacity. The government also adopted the OFN prescription of a 10-year course of treatment.

Indeed, the only key difference between OHF and the prescription presented in OFN was in the international legal technology¹²¹ used: where OFN had recommended the use of an external life-support system, in the form of an external multinational agency, SIRA, to which SI would temporarily cede parts of its authority, OHF in the end relied on placing external personnel within the sovereign structures of SI. Thus Australian Federal Agent Ben McDevitt, the leader of the police component in OHF, was sworn in as Deputy Commissioner of the RSIP.¹²² Similarly, Nick Warner, the senior Australian diplomat in charge of the whole intervention was made a political “advisor” to SI Prime Minister Allan Kemakeza.

This arrangement was predicated on SI consent to intervention. That consent is legally manifested in three forms:

- a letter dated July 4, 2003, to Australian Prime Minister John Howard from the Solomon Islands Governor-General, His Excellency Father Sir John Ini Lapli, requesting assistance, on the advice of the Solomon Islands Cabinet;
- the regional Agreement governing the status of personnel engaged in OHF;¹²³ and
- the *Facilitation of International Assistance Act 2003* (SI) unanimously passed by the Solomon Islands Parliament, entering into force July 22, 2003.¹²⁴ Key aspects of this law include:
 - conferring of the status of RSIP officers on foreign police personnel;
 - authorization of foreign forces to “use such force as necessary” to maintain law and order, maintain essential supplies and services, ensure protection and safety of persons and property, respond to natural catastrophic events and support and develop Solomon Island institutions;
 - permission for regional military personnel to use police powers;

¹²¹ I adopt the term, to highlight the colonial genealogy of both SI’s problems and the solutions the West continues to adopt, from Anthony Anghie, *Colonialism and the Birth of International Institutions: Sovereignty, Economy and the Mandate System of the League of Nations*, 34 N.Y.U. J. INT’L L. & POL. 513 (2002).

¹²² The Commissioner is William Morell, a Manchester police official paid for by the EU.

¹²³ AGREEMENT, DONE AT TOWNSVILLE ON 24 JULY 2003, BETWEEN SOLOMON ISLANDS, AUSTRALIA, NEW ZEALAND, FIJI, PAPUA NEW GUINEA, SAMOA AND TONGA CONCERNING THE OPERATIONS AND STATUS OF THE POLICE AND ARMED FORCES AND OTHER PERSONNEL DEPLOYED TO SOLOMON ISLANDS TO ASSIST IN THE RESTORATION OF LAW AND ORDER AND SECURITY, available at <http://www.austlii.edu.au/au/other/dfat/treaties/2003/17.html>, last visited December 12, 2003.

¹²⁴ See COMMONWEALTH PARLIAMENT OF AUSTRALIA, JOINT STANDING COMMITTEE ON TREATIES, REPORT 55: TREATIES TABLED ON 9 SEPTEMBER 2003 24-25 (Canberra, Australian Government Printer, 2003). For further discussion see MARK PLUNKETT, STRESS-TESTING SOLOMON ISLANDS PEACE OPERATIONS SCENARIOS 20-22 (Key Centre for Ethics, Law, Justice and Governance, Griffith University, July 31, 2003), on file with the author.

- immunization of foreign personnel from local charges and laws, including customary, civil, criminal, disciplinary and administrative laws and jurisdiction;
- a mechanism for SI Parliament to annul SI consent to the presence of the intervention force; and
- the penalization of illegal weapons possession.¹²⁵

The international legitimacy of OHF was also assured by UN support. This came in the form of a statement from the UN Secretary-General, Kofi Annan,¹²⁶ and a Press Statement by the UN Security Council President, on behalf of the Council.¹²⁷

Operationally, OHF has had stunning success. As early as August 14, 2003, Harold Keke surrendered, together with the leadership of the Guadalcanal Liberation Front.¹²⁸ Keke negotiated his peaceful surrender in return for RAMSI protection and custody aboard *HMAS Manoora*, and the opportunity for a “fair trial” at which he could outline the reasons for his militancy.¹²⁹ Following his arrest, Keke was released into RAMSI custody by the RSIP, because of fears for his safety.¹³⁰ He was charged with attempted murder, and later with the murder of a SI Member of Parliament, as well as for his involvement in the murder of six Anglican missionaries whose bodies were exhumed from a mass grave on the Weather Coast by RAMSI.¹³¹ His deputies were similarly charged for their offences.¹³² On October 16, 2003,

¹²⁵ See Haidi Scarlett Willmot, PricewaterhouseCoopers Legal, *Operation Helpem Fren: Australia and the Solomon Islands*, in PLN NEWS, Winter No. 2, 2003, available at <http://www.pln.com.au>, last visited November 23, 2003.

¹²⁶ See UN Doc. SG/SM/8811, New York, August 5, 2003:

“Statement attributable to the Spokesman for the Secretary-General

The Solomon Islands

The Secretary-General commends the countries of the Pacific Islands Forum for the collective action to support the Government and people of the Solomon Islands in their quest for the restoration of law and order and stability.

He has taken note of the leadership exerted by Australia and New Zealand, in close partnership with other countries in the region, in response to the request for assistance from the Government of the Solomon Islands.

The Secretary-General recognizes the particular importance of the unanimous support for this concerted regional initiative undertaken within the framework of the Forum’s Biketawa Declaration. The Secretary-General hopes that the prompt restoration of normalcy in the Solomon Islands will quickly lead to the regaining of national harmony and facilitate a peace-building process. He wishes to emphasize that the United Nations system is fully prepared to contribute actively to such a process.

There was never any question of OHF being authorized by a Chapter VII Resolution of the UN Security Council, since it was clear that China would veto any draft resolution, on the basis that Solomon Islands had long recognized the Republic of China (Taiwan) (in exchange for significant bank loans and other pecuniary benefits).

¹²⁷ UN Doc. SC/7583, August 26, 2003, available at

[http://www.reliefweb.int/w/rwb.nsf/6686f45896f15dbc852567ae00530132/ea5bc0afc36d1bd285256d8e00713ad1?](http://www.reliefweb.int/w/rwb.nsf/6686f45896f15dbc852567ae00530132/ea5bc0afc36d1bd285256d8e00713ad1?OpenDocument)
OpenDocument, last visited November 24, 2003.

¹²⁸ *Keke Surrenders to Solomons Intervention Force*, THE NATIONAL, August 14, 2003, available at <http://www.antenna.nl/ecsiep/conflict/si/22-8-03.html>, last visited on December 13, 2003.

¹²⁹ *Id.*

¹³⁰ See *Keke Hidden from Solomons Police for Safety*, PNG POST-COURIER, September 17, 2003, available at <http://www.antenna.nl/ecsiep/conflict/si/30-9-03.html>, last visited November 23, 2003.

¹³¹ Radio Australia News, *Solomons rebel leader Keke charged with murder*, September 11, 2003.

¹³² Radio Australia News, *Solomon Islands court charges militants for murder*, September 12, 2003.

Jimmy Lusibea (a.k.a. “Rasta”), the leader of the MEF, was arrested by RAMSI.¹³³ Other militia leaders were also arrested,¹³⁴ including Andrew Te’e, chief commander of the IFM.¹³⁵ 100 days in, more than 340 people, including 25 police officers, were in RAMSI or RSIP custody.¹³⁶ A 3-week gun amnesty netted approximately 3,700–3,850 guns.¹³⁷ With the arrest of Te’e, the head Australian police official in the OHF force declared “that the rule of law had returned to Solomon Islands after the ethnic conflict that ended in August with Australian military intervention.”¹³⁸

Official media releases routinely referred to these arrests, charges and weapons surrenders as signs of the intervention’s “success.” Criminal justice solutions were routinely represented as dealing with the SI problem, bringing the rule of law to a lawless, criminal vacuum.

So swift was this “success” that by early November 2003, the Australian Government had indicated its intention to cut Australian military numbers from 1700 to 600 over the following month. OHF began to shift its focus from policing to other aspects of the “rule of law,” particularly a focus on regularizing economic and financial processes in government, or “good governance.”¹³⁹ Already in August 2003 OHF began to work on restructuring the SI budget.¹⁴⁰ In September it oversaw a shake-up of personnel in Government ministries.¹⁴¹ This was followed by internal investigations within RSIP, leading to charges against some police officers, on offences ranging from embezzlement to murder.¹⁴²

It is impossible to deny that OHF has been a spectacular success—so far. By all accounts, there has been a massive decline in violence in SI, and a corresponding incline in living standards and—perhaps more importantly—hope and optimism. There has been no serious violence between the intervention forces and Solomon Islanders. This short-term success, no matter how spectacular, does not, however, guarantee long-term success. To date, OHF has removed only the symptoms of the SI ailment, disabling militant groups. A significant question remains: is it a

¹³³ ABC Online, *Warlord, Police Officer Charged in Solomons*, October 16, 2003, available at <http://www.antenna.nl/ecsiep/conflict/si/22-10-03.html>, last visited on November 23, 2003.

¹³⁴ Solomon Islands Broadcasting Corporation, Pina Nius, *Major Malaita Eagle Arrested*, October 4, 2003, available at <http://www.antenna.nl/ecsiep/conflict/si/22-10-03.html>, last visited on November 23, 2003.

¹³⁵ See *Key Solomons militant charged with murder*, SYDNEY MORNING HERALD, December 9, 2003, available at <http://www.smh.com.au/text/articles/2003/12/08/1070732146569.html>, last visited December 10, 2003.

¹³⁶ ABC News Online, *Solomons intervention head hails progress*, November 1, 2003, available at <http://www.abc.net.au/news/newsitems/s980180.htm>, last visited November 24, 2003.

¹³⁷ ABC Online, Pina Nius, *Dramatic Improvement in Law and Order*, October 2, 2003, available at <http://www.antenna.nl/ecsiep/conflict/si/22-10-03.html>, last visited on November 23, 2003; Radio Australia, *Thousands of Guns Collected in Solomons*, September 3, 2003, available at <http://www.antenna.nl/ecsiep/conflict/si/30-9-03.html>, last visited on November 23, 2003.

¹³⁸ *Militant charged with murder*, HERALD SUN, December 8, 2003, available at http://heraldsun.news.com.au/common/story_page/0,5478,8103685%255E1702,00.html, last visited December 11, 2003.

¹³⁹ Solomon Islands Broadcasting Corporation, Pina Nius, *RAMSI to Audit Government Ministries*, October 2, 2003, available at <http://www.antenna.nl/ecsiep/conflict/si/22-10-03.html>, last visited on November 23, 2003.

¹⁴⁰ ABC News Online, *Intervention Team to Take Over Budget*, August 18, 2003, available at <http://www.antenna.nl/ecsiep/conflict/si/22-8-03.html>, last visited on November 23, 2003.

¹⁴¹ Solomon Islands Broadcasting Corporation, *Top Government Officials Fired in Solomon Islands*, September 10, 2003, available at <http://www.antenna.nl/ecsiep/conflict/si/30-9-03.html>, last visited November 23, 2003.

¹⁴² Agence France-Presse, *Solomon Islands police officers held*, November 11, 2003.

treatment which will deal only with symptoms, or does it also deal with causes? Is it a cure for SI's ills?

PART V. PANACEAS, PLACEBOS AND SIDE EFFECTS: A CRITIQUE OF THE LIBERAL PATHOLOGY

The question we confront is the extent to which contemporary legal pathologies deal adequately with the underlying causes of the conflicts to which intervention is addressed. This is an enormous question, both in its complexity and its import. I do not pretend to provide an answer. In this Working Paper I seek, instead, through the SI case history, to provide some insights that may prove useful to future theorists.

The legal pathologies offered by the EC Mission Report, OFN and the Australian Government, and subscribed to by a range of other key actors¹⁴³ contrast the unhealthy lawlessness of SI society with a healthy state, ruled by law. This pathology elides the illegal and the a-legal, the illegal and the pre-legal. It is not founded on a crude racialism characterizing a certain race as inherently extra-legal, but it nevertheless draws connections—often poorly defined—between ethnic characteristics, culture and traditions, on the one hand, and criminality, on the other. The pre-modern ethnic society, ruled by blood ties, *wantok*, *kastom* and the rule of the gun is contrasted with the modern legal state, ruled by law.

Part of the reason that these connections between ethnicity and criminality are poorly defined is because economic motivations for violence are, by their very nature, considered illegitimate within the liberal legal pathology. As it presupposes a properly-functioning polity, a healthy state, the liberal model offers no room for resort to violence to achieve economic agendas. They should, instead, be achieved through non-violent political struggle. So when we attempt to explain events in an unhealthy state using this healthy-state template, we cannot find legitimate, rational or acceptable links between economic agendas and violence. Economic violence is reduced to “greed,” contrasted with political “grievance.”¹⁴⁴ Thus, SI leaders who resort to violence to achieve their constituents’ economic agendas are accused of corruption, looting and mafia-style behavior, rather than a rational (if bloody) strategy for transforming power structures and generating social change.

This approach compares apples and oranges, healthy and unhealthy states. The liberal model presupposes a neutral state apparatus that distributes economic opportunity fairly.¹⁴⁵ To adapt the

¹⁴³ For example the Pacific Islands Forum: *see* PIF Statement, *supra* note 113. Amnesty International adopted a similar diagnosis of problems in SI: “Despite 18 months of ethnic violence and intensive Commonwealth-led peace efforts, no one has been held to account for dozens of killings, kidnappings and the displacement of over 20,000 people.” AMNESTY INTERNATIONAL, SOLOMON ISLANDS: CIVILIANS AT RISK FROM FALLOUT OF COUP ATTEMPT, 6 JUNE 2000, AI Index ASA 43/002/2000, News Service Nr. 108. *See also* AMNESTY INTERNATIONAL, SOLOMON ISLANDS—HUMAN RIGHTS ABUSES ERODE PEACE TALKS, 7 SEPTEMBER 2000, AI Index ASA 43/007/2000, News Service Nr. 169.

¹⁴⁴ *See* Paul Collier, *Doing Well Out of War*, in GREED AND GRIEVANCE: ECONOMIC AGENDAS IN CIVIL WARS 90 (Mats Berdal and David Malone, eds, 2000). For recent critiques of this approach *see* THE POLITICAL ECONOMY OF ARMED CONFLICT: BEYOND GREED & GRIEVANCE (Karen Ballentine and Jake Sherman, eds, 2003).

¹⁴⁵ It is not possible to present here a full account or critique of the liberal notion of state neutrality in its relationship with the market. The key liberal idea is that in assessing economic claims, the state should be neutral to religious, ethnic or other non-economic factors.

words of George Gray, a member of the IFM, quoted at the beginning of this Working Paper, it presupposes a state built on “fairness,” not “injustice.” Liberal legal pathology consequently fails to provide a coherent explanation of the connections between distributive injustice and armed violence. It presumes that the state distributes justly, so it cannot countenance distributive injustice as a form of state failure, nor violence as a reasoned response to that failure.

The conclusion we must draw is that where distributive injustice is a key component of state failure, narrowly liberal legal pathologies which do not deal with underlying economic grievances may provide only temporary remedies. A pathology predicated on the pre-modern/modern, atavistic/Enlightened dichotomy risks treating only symptoms, and not causes, because it risks inadequately dealing with underlying socio-economic grievances. It risks being not a panacea, but a placebo.

We see these risks in the liberal legal pathologies offered for the SI. We see it, for example, in their failure to problematize the notion of “ethnicity.” Kabutaulaka, a Solomon Islander, has offered a damning critique of what he describes as ethnic “essentialism.” As he characterizes it, the essentialist argument is that “the Solomon Islands nation-state is a colonial construction with diverse cultures and ethnic groups, many of whom have been—both prior to and after the colonial era—rivals in activities such as trade and war.”¹⁴⁶

He points out that “[s]uch an argument, however, ignores the fact that Solomon Islanders have lived, traded, befriended, intermarried, worked, worshipped and studied together for many years both prior to and after the colonial era.”

“[E]thnicity alone,” he concludes, “may be a source of identification and social mobilisation for those involved in the crisis, [but] it is insufficient as the primary factor explaining the crisis.”¹⁴⁷ His central point—shared by a number of other authors who come from, or have spent significant periods in SI¹⁴⁸—is that ethnicity is a political resource in SI, a social fact, contested and constructed. It is not a pre-social fact.

Kabutaulaka provides a dynamic account of how this contestation has occurred during the last 6 years, stating that

[t]o a certain extent the perceived homogeneity of the two main groups involved—Guadalcanal and Malaita—was created during the crisis and functioned only when there was the perception of a common enemy: those from the other island. However, when that common enemy ceases to exist then the reason for social mobilisation also collapses.¹⁴⁹

¹⁴⁶ KABUTAULAKA, *supra* note 27.

¹⁴⁷ *Id.*

¹⁴⁸ See, e.g., RUTH LILOQULA AND ALICE ARUHE’ETA POLLARD, UNDERSTANDING CONFLICT IN SOLOMON ISLANDS: A PRACTICAL MEANS TO PEACEMAKING, (State, Society and Governance in Melanesia, Research School of Pacific and Asian Studies, Australian National University, Discussion Paper 00/7 (2000)); and see BENNETT, *supra* note 34.

¹⁴⁹ KABUTAULAKA, *supra* note 27.

He describes techniques for the mobilization of ethnic identity including the adoption of pre-European identifiers for a group, such as “Isatabu” for the entire island of Guadalcanal, and attempts to link blood to place, e.g.: “If I die in this war, not a single drop of my blood will be spilled on the soil of another island. It will simply spill on my mother, Isatabu.”¹⁵⁰

Gray offers a related account of the deliberate linking of traditional ceremony to contemporary politics:

During the crisis, traditional rituals and practices became important in the search for a common Guadalcanal identity. They were both the weapons as well as the justification for committing violence... Before any man joined the war, he was required to sign in at a base and spend several weeks at the camp. This was like an initiation period, when various traditional rituals and ceremonies were carried out to prepare the men for war. It was also at this time that sacrifices of pigs were offered to ancestral spirits who were believed to take care and defend the *malaghai* (warriors). Furthermore, special betel nut limes and clubs (*ghai tabu*) were blessed and used as weapons to weaken and confuse enemy soldiers.¹⁵¹

As Kabutaulaka points out, characterizing all groups from the main SI island as Guadalcanalese overlooks the group divisions within the island of Guadalcanal which emerged during and after the TPA process in October 2000. A group from the Tasimauroi (Weather Coast), led by Harold Keke, and motivated by different socio-economic concerns, split away from the group from the northern side of Guadalcanal, the Tasimboko.¹⁵² The creation of a framework for peace with the ethnic enemy, the Malaitans, led to fissures along different non-ethnic socio-economic lines. Ethnicity lost its capacity for mobilization, its political function.

Kabutaulaka also offers a more nuanced analysis than outsiders of the mobilization techniques of Malaitan groups. He notes that “the task of constructing a single ethnic identity was much more difficult [for the Malaitans] given their diverse language groups and intense traditional rivalries.”¹⁵³ In response, the Malaitan leadership sought to create a perception both that “Malaitans were the exclusive target and victims of the Guadalcanal uprising—an argument which ignored victims from other islands,”¹⁵⁴ and that the Malaitan group was historically unitary. He describes the circulation of an “undated document titled *Malaita Perspective*”—distributed during the heights of the crisis which asserted that “the people of Malaita are the descendants of the seven tribes of Jacob”¹⁵⁵—the lost tribe of Israel. This attempt to create and mobilize a common ethnic identity through a shared Christian heritage was only partially successful, as the splintering of the Malaita Seagull Force from the main MEF group in April 2000 suggests.

¹⁵⁰ 1(3) ISATABU TAVULI (March, 2000), *quoted in* KABUTAULAKA, *supra* note 27.

¹⁵¹ GRAY, *supra* note 2 at 28-29.

¹⁵² Bennett suggests that the same socio-economic divisions—particularly the centralization of government infrastructure and services around Honiara—which underlie the Malaita/Guadalcanal tension also underlie the divisions between northerners and southerners on Guadalcanal: BENNETT, *supra* note 34 at 8.

¹⁵³ KABUTAULAKA, *supra* note 27.

¹⁵⁴ *Id.*

¹⁵⁵ MALAITA PERSPECTIVE 3 (undated), *cited in* KABUTAULAKA, *supra* note 27.

Attempts to constitute the crisis in ethnic terms were also, Kabutaulaka argues, greatly assisted by both the media and the state. He argues that the key media providers available in SI—particularly international broadcasters such as the Australian Broadcasting Corporation, but also local media organizations—reported the crisis in simplistic ethnic terms, failing to come to grips with the complex socio-economic forces at work. He details how key state institutions and actors created a public theory of crisis framed in discourses of ethnic motivation, linked to criminal greed and simple irrationality. The parties to the conflict were, in the words of a former RSIP Police Commissioner, “vague, ill-defined, philosophy-free groups given to lawlessness.”¹⁵⁶ As Kabutaulaka explains, “[t]he use of terms such as “militants”, “criminals”, etc. pushes discussions away from the initial socio-economic and political, the impact is to neutralise them and subsequently to make them secondary to the overriding claim of group tensions based on primordial ethnicity.”¹⁵⁷

The clinical device of “ethnicity” thus offers a false positive: it looks like a good way of explaining civil conflict, but in fact it does little to deal with the underlying socio-economic tensions which manifest themselves in “ethnic” form. To overcome this false positive, we need to engage in a much deeper, much richer analysis of the socio-economic dynamics of a place. We need an alternative account of the genealogy of SI’s suffering.

That alternative account is available in the writings of a number of commentators, primarily indigenous to SI. They present a different pathology, a different story of the causes of SI decline. It is a story shot through with the thread of distributive injustice.

It begins with an account of the movement of excess Malaitan labor to other islands, particularly Guadalcanal, as a result of colonial head taxes¹⁵⁸ and U.S. military infrastructure projects during World War II. It highlights how these movements were exacerbated by the notion of one state, one labor market underlying the right to free movement and settlement enshrined in the 1978 Independence Constitution.¹⁵⁹ It recalls the threat of the resource-rich Western Solomons on the eve of independence to break away, or to form an independent state with Bougainville.¹⁶⁰ It notes the gap between the formal sovereign state born in 1978 and the reality of national unconsciousness. So big was this gap between the nation conceived and the nation born that a

¹⁵⁶ PACIFIC ISLANDS MONTHLY, July 1999 at 24, cited in KABUTAULAKA, *supra* note 27.

¹⁵⁷ KABUTAULAKA, *supra* note 27.

¹⁵⁸ JUDITH A. BENNETT, WEALTH OF THE SOLOMONS: A HISTORY OF A PACIFIC ARCHIPELAGO, 1800 – 1978, at 151, 189 (University of Hawaii Press, 1987).

¹⁵⁹ For further discussion of the problems of transferring Western political institutions to Melanesian society see PETER LARMOUR, WESTMINSTER IN THE PACIFIC: A “POLICY TRANSFER” APPROACH (State, Society and Governance in Melanesia, Research School of Pacific and Asian Studies, Australian National University, Discussion Paper 01/1 (2001)); PETER LARMOUR, ISSUES AND MECHANISMS OF ACCOUNTABILITY: EXAMPLES FROM SOLOMON ISLANDS (State, Society and Governance in Melanesia, Research School of Pacific and Asian Studies, Australian National University, Discussion Paper 00/1 (2000)); and SAMA ALISIA, PARTY POLITICS AND GOVERNMENT IN SOLOMON ISLANDS (State, Society and Governance in Melanesia, Research School of Pacific and Asian Studies, Australian National University, Discussion Paper 97/7 (1997)).

¹⁶⁰ See R.R. Premdas, J. Steeves and P. Larmour, *The Western Breakaway Movement in Solomon Islands*, in 7(2) PACIFIC STUDIES (1984).

former Prime Minister could write fourteen years later that “Solomon Islands or the Solomon Islands Community has never been a nation and will never be a nation.”¹⁶¹

This alternative account contests the myth of SI’s “statehood.” In this account, SI is not a failed “state,” since its state capacity was never properly developed in the first place. This absence of state capacity was evident not only in the social legacy of colonization, but also its economic legacy. As Kabutaulaka puts it, “the British left behind a group of islands largely undeveloped and an economy dependent almost entirely on the exploitation of natural resources by foreign multinational companies. Infrastructural development was concentrated on the northern coast of Guadalcanal...”¹⁶²

This dependence on the global resource extraction market created dangerous and unsustainable economic dynamics underneath the veil of SI sovereignty. For example, while 49 percent of SI population lived in the provinces of Santa Isabel, Makira/Ulawa, Temotu and Malaita in the decade 1971–1981, in the same period only 15 percent of formal sector employment was located there, much of the rest being located in Honiara and around the large infrastructure projects on Guadalcanal’s northern coast. In Malaita the contrast was particularly stark: 31 percent of the national population, but only 7 percent of formal sector employment. These were the disparities that drove migration to Guadalcanal.¹⁶³

Labor, capital and profits all flowed into Honiara after independence. Taxation from primary industries flowed into the coffers of a government system far removed from everyday Solomon Islanders. Tensions over this economic dynamic were exacerbated in 1997, when the Ulafa’alu government proposed the restructuring of the Solomon Islands Plantation Limited (SIPL). Established in the early 1970s, SIPL, the nation’s key palm oil producer and exporter was 68 percent owned by the British-registered Commonwealth Development Corporation (CDC), 30 percent owned by the SI government and 2 percent owned by traditional landowners. By the mid 1990s, it provided roughly 20 percent of SI GDP. The Ulafa’alu government, under pressure from the World Bank, IMF and key bilateral aid donors, such as Australia, proposed a program of structural adjustment and privatization including the sale of two-thirds of its 30 percent share in SIPL to the CDC. The remaining 10 percent would be sold to Solomon Islanders but managed by the Investment Corporation of Solomon Islands (ICSI), the national government’s investment agency.¹⁶⁴ In 1998 the Guadalcanal Provincial government demanded that instead of selling its 20 percent share in SIPL to CDC, the national government should give it to the Provincial government.¹⁶⁵ In February 1999, amid accelerating violence, the Provincial government

¹⁶¹ Mamaloni, *supra* note 33 at 10. See also C. Jourdan, *Stepping-stones to National Consciousness: the Solomon Islands Case*, in *NATION MAKING: EMERGENT IDENTITIES IN POSTCOLONIAL MELANESIA* 127 (R.J. Foster, ed., 1995).

¹⁶² KABUTAULAKA, *supra* note 27.

¹⁶³ See Greg Fry, *The South Pacific in a changing global context*, paper delivered to “Brisbane Dialogue: Creating Better Futures in the South Pacific,” Foundation for Development Cooperation, Brisbane, November 2000; ABIGAIL MAKIM, *GLOBALISATION, COMMUNITY DEVELOPMENT, AND MELANESIA: THE NORTH NEW GEORGIA SUSTAINABLE SOCIAL FORESTRY AND RURAL DEVELOPMENT PROJECT (State, Society and Governance in Melanesia*, Research School of Pacific and Asian Studies, Australian National University, Discussion Paper 02/1 (2002)); J. CONNELL, *MIGRATION, EMPLOYMENT AND DEVELOPMENT IN THE SOUTH PACIFIC: COUNTRY REPORT No. 16, SOLOMON ISLANDS* at 12 (Noumea: South Pacific Commission, 1983).

¹⁶⁴ M. Chapman, *Population Movement: Free or Constrained*, in *INDEPENDENCE, DEPENDENCE, INTERDEPENDENCE: THE FIRST 10 YEARS OF SOLOMON ISLANDS INDEPENDENCE* 75 (R. Crocombe and E. Tuza, eds, 1992).

¹⁶⁵ KABUTAULAKA, *supra* note 27.

presented a list of *Bona Fide Demands*, including a demand for 50 percent of all SIPL revenues.¹⁶⁶

The dispute over the distribution of equity in and revenues from SIPL is a good example of the underlying economic disputes at the heart of the SI conflict. But it is not the sole economic factor. Perhaps more important were disputes over land. Many Guadalcanalese, especially men, sold customary land to immigrants from other islands. Traditionally, Guadalcanal has been inhabited by matrilineal societies where females are the custodians of land.¹⁶⁷ The sale of land by males—together with a common lack of consultation between land-sellers and members of their tribe (*laen*)—led to many land disputes, as title was contested.¹⁶⁸ The key role of land is evident in the slogan adopted by the IFM: “Land is Our Mother, Land is Our life, Land is Our Future.”¹⁶⁹ One IFM leader (recently arrested and charged by OHF for murder) pointed to the complex dislocations produced by the forced integration of indigenous cultures, with their close associations to land, into a globalized liberalized marked system, where the alienability of land as a chief source of capital was assumed. Andrew Te’e wrote, in a piece entitled “Land is Sacred to Me,” and published in the March 2000 edition of *Isatabu Tavuli*:

... there is a trend occurring world wide where many indigenous and original owners of land have been forced to shift away from “living” life, to just simply “surviving” it. This shift occurs when the original owners of land are marginalised in the name of “development” for the benefit of the nation-state. The shift is caused by government policies and legislation as well as the actions of huge corporate industries that do not respect the land and those who originally belong to it.¹⁷⁰

Control over land, or territory, bears a close relationship to sovereignty and political autonomy. The alternative account of the sources of conflict in SI highlights a long history of calls for regional autonomy in Solomon Islands politics and constitutionalism.¹⁷¹ Indeed, the United Nations Development Program continues to run a program facilitating SI’s first steps towards federalism.

This alternative account suggests that the label of “ethnic tension” is a placebo. It does not come to grips with the complex socio-economic forces at work in SI. It cannot account for—and therefore cannot treat—the deep-seated tensions caused by the misfit between, on the one hand, the liberal democratic nation-state and liberalized market economy that international society

¹⁶⁶ Guadalcanal Province, *Bona Fide Demands of the Indigenous People of Guadalcanal*, February 1999. Cited in KABUTAULAKA, *supra* note 27.

¹⁶⁷ KABUTAULAKA, *supra* note 27.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ 1(3) ISATABU TAVULI 4 (March, 2000), cited in KABUTAULAKA, *supra* note 27.

¹⁷¹ See Ben Bohane, *Honiara Hurdles*, in THE BULLETIN, August 27, 2003. See also the recent SI Parliamentary discussion of federalization, discussed in State Government Task Force, *Background Information on the Proposed State/Federal Government System for Solomon Islands*, March 18, 2002, on file with the author. For a discussion of the tension between corrective forms of transitional justice and constitutionalism see Ackerman, *supra* note 27 at 69-98.

continues to demand of SI and, on the other, the complex interaction of traditional social structures with the global market economy.¹⁷²

The participants in the SI conflict did not need grandiose theories of “legal pathology” to understand these complex social forces; they lived them. But it is important to recognize that this alternative account more closely matches what these combatants themselves have characterized as their motivations for participating in the conflict than the dominant diagnosis of “ethnicity” and “criminality.” We can verify this because some of them have recorded their thinking. George Gray, who fought for the IFM, ascribes four goals to that group:

- to chase settlers out of Guadalcanal, especially Malaitans;
- to pay back for the Guadalcanal people murdered since the establishment of Honiara;
- to ensure that Guadalcanal Province and people benefit equitably from the income that they contribute to the state;
- to ensure that settlers respect the local people and their cultures.¹⁷³

He suggests that Guadalcanalese have been formally articulating their cultural, social and economic grievances since independence.¹⁷⁴ He explains how this brought him to take up arms:

¹⁷² Much could be said about the relationship between OHF and the preparation of SI for further integration into the global market economy. Some left-leaning commentators have noted Australia’s role in advocating—and perhaps now implementing—the structural adjustment programs of the Bretton Woods Institutions in the period since 1997: see, e.g., World Socialist Web Site, Editorial Board, *Behind the Solomons intervention: Australia stakes out its sphere of influence in the Pacific*, August 15, 2003, available at <http://www.wsws.org>, last visited on December 12, 2003. These commentators may see support for their critique in the movement by Australian government officials towards advocacy of a single regional economic community, in the wake of OHF. This began with advocacy for a single labor market by the Australian Parliamentary Committee charged with reviewing Australia’s regional policy: see *A PACIFIC ENGAGED*, *supra* note 49. The theme was then taken up by the Howard Government, which began to discuss with Pacific leaders the possibility of a “pooled governance” approach to economic life in the Pacific, specifically in order to prop up “small, failing states,” through economies of scale. Australian Prime Minister John Howard explained the idea as follows:

The reality is that, with the greatest goodwill in the world, many of these countries are too small to be viable in the normal understanding of that expression and we really have to develop an approach that I could loosely call, you know, pooled regional governance. You have to... it applies with airlines, it applies with policing, it applies with a whole lot of other things. But it's just not possible if you've got an island state of fewer than 100,000 people to expect to have all of the sophisticated arms of government.

The Hon. John Howard, Press Conference Transcript, Parliament House, Canberra, July 22, 2003, available at <http://www.pm.gov.au/news/interviews/Interview382.html>, last visited on December 13, 2003.

Ideas considered included dollarization of the region, the creation of a currency board, pooling of justice services, creation of a regional terrorism analysis and response mechanisms, the creation of a single regional airline and shipping line, and possibly the creation of a single Pacific labor market: see Iggy Kim, *Howard's Pacific Colonialism: Who benefits?*, GREEN LEFT WEEKLY, August 20, 2003. The pooled governance approach would further the agenda initiated by the Pacific Islands Countries Trade Agreement (PICTA) and the Pacific Agreement on Closer Economic Relations (PACER), which, in the words of PACER, “are intended to provide ‘stepping stones’ to allow the Forum Island Countries [FIC, the under-developed PIF countries] to gradually become part of a single regional market and integrate into the international economy” by 2012.

¹⁷³ GRAY, *supra* note 2 at 22. See also TARCISIUS KARA KABUTAULAKA, *A WEAK STATE AND THE SOLOMON ISLANDS PEACE PROCESS* (East-West Center Working Papers, Honolulu, No. 14, April 2002).

I joined because I believed that Guadalcanal and her people had, for a long time, been unfairly treated in the name of constructing this nation-state called Solomon Islands. This was evident in the way in which revenues were distributed, development projects were planned, and the control that people from other islands impose upon us and our island. However, the most important issue that inspired me to join the Guadalcanal militancy was what I perceived as the disrespect that settlers (especially Malaitans) had towards our people and our land.¹⁷⁵

I wanted a country where my people's resources are used for their benefit and not that of "strangers." I wanted a society where people showed mutual respect for one another and no one island group tries to be dominant.¹⁷⁶

Harold Keke presented a similar perspective in an interview with a nationally circulated Australian magazine, *The Bulletin*, in July 2003: "For too many years until now, our demands for a federal system with state government for Guadalcanal and other provinces have been ignored. The Malaitans still want to control Guadalcanal because we have the wealth and the economy here. That's why we now stand for independence."¹⁷⁷

Exceptionally, some international diagnosticians have recognized these connections between economic dynamics, cultural difference and violence, including some in the West. As Oxfam Community Aid Abroad put it:

The genesis of the current crisis is not a matter of "tribalism" or "ethnic violence." It is a political and social conflict arising from the interaction of local struggles for power and resources—particularly land, paid employment and services—and global economic trends in trade and aid which disadvantage small island developing states.¹⁷⁸

* * *

We have our alternative diagnosis. Of course, distributive injustices may have played a more prominent role in producing violence in SI than in many of the contexts in which TJ and other contemporary legal pathologies are generally thought appropriately to operate. That may raise issues of generalizability of the conclusions we draw from this case-study. On the other hand, we might argue that SI provides a useful case-history precisely because of the starkness with which issues of distributive injustice stand out. An SI case-study allows us to identify the weakness of traditional TJ conceptions in dealing with such issues where other case-histories do not draw this weakness out. It follows simply that where distributive injustice is a key factor in state failure, it must also be a key issue addressed by TJ and other remedies.

¹⁷⁴ GRAY, *supra* note 2 at 26.

¹⁷⁵ *Id.* at 23.

¹⁷⁶ *Id.* at 25.

¹⁷⁷ Ben Bohane, *Rebel Hell*, THE BULLETIN, July 30, 2003.

¹⁷⁸ Oxfam Community Aid Abroad, *Australian Intervention in the Solomons. Beyond Operation Helpem Fren: An Agenda for Development in the Solomon Islands*, August 2003, available at <http://www.caa.org.au/world/pacific/solomons/report.pdf>, last visited November 23, 2003.

But it is also arguable that distributive injustice *has* played a key role in many of the conflicts with which we associate the TJ enterprise. Regime violence is often directed precisely at protecting an elite's privileged access to power not only for power's sake, but for the pecuniary benefits that flow from wielding political power. Think of South Africa, of Peru, of Burma, of Zimbabwe... Even the violence of Communist regimes was directed, in a sense, at perpetuating a system of distributive injustice, by preventing citizens from choosing an alternative politico-economic system to that imposed by the state. Perhaps we are simply so conditioned by our adherence to liberal pathologies that we cannot see, or have not appreciated, distributive injustice as a cause of violence, even when it has been present. If that is true, then this case-history is all the more useful, helping us to see these situations anew.

Merely amending our diagnosis is not sufficient. In fact, what we are considering is amending the whole pathology. And that requires, equally, providing alternative remedies. Contemporary legal pathologies, with their focus on the restoration of impartial policing, technical governance processes and even state capacity building, provide a treatment which goes a long way to treating many of the symptoms of situations like that we find in SI. But equally, by placing an excessive emphasis on individual accountability, they risk failing to deal with structural liabilities, failing to treat the social and economic dynamics which entrench injustice, incubating violence.

Transitional justice, as an element in this course of treatment, shares this risk. Its focus on the transition from arbitrary, unaccountable government, to accountable, democratic governance brings a focus on processes, rights and, usually, criminal justice. It risks drawing attention away from the long-term need for distributive justice reform. Perhaps it is not quite a placebo: a placebo has no effect, while transitional justice and its related liberal legal pathologies clearly have a positive effect. The danger is rather that, by purporting to provide a complete answer, a panacea, transitional justice and other contemporary legal pathologies may have the unintended side effect of simply suppressing—or perhaps quietly exacerbating—a disease of violence with deeper, socio-economic structural causes.

PART VI: AN ALTERNATIVE MEDICINE: FROM TRANSITIONAL TO TRANSFORMATIVE JUSTICE

The challenge is to replace this false panacea, together with its potential side effects, with a more effective treatment. It is a challenge

to increase the access of the majority of Solomon Islanders to the economic and social services and development opportunities that can improve their living conditions within their locality. Whilst it is recognised that problems of survival demand cooperative solutions that place the common good above narrow self interest, a widening capitalistic mentality promotes the interests of individuals and the minority over groups and the majority.¹⁷⁹

What is needed, then, is a treatment which transforms society and its power structures, particularly development and economic opportunities, going beyond a mere transition from an authoritarian to democratic state. Absent that transformation of distributive opportunities and benefits, we will continue to reproduce the tension

¹⁷⁹ LILOQUA AND ARUHE'ETA POLLARD, *supra* note 148 at 3.

between continuing to tread the old pathways to power and the demands of the global economy. What fitted the political economy of Solomons societies prior to 1896 sits askew the systems designed for the diffusion of wealth on a wider scope than to a mere handful of local people and transnational companies.¹⁸⁰

Much of the TJ enterprise has, to date, been concerned with transitions from repressive political systems to more liberal political systems. This may be in part because of the role of TJ in the post-Cold War transformation of formerly communist regimes.¹⁸¹ It is understandable that post-communist societies would choose to deal with past governmental and social failures not through collective, economic restructuring but through liberal, rights-based frameworks. But a country like SI has had political freedom and democracy since independence: what it has lacked is true economic freedom, freedom not only of access to markets, but of access to capital and profits. The transition needed in a situation like SI is a transformation of the economic dynamics between the state and society. As OFN recognized, it requires a transformation of a colonial legacy:

Solomon Islands has always been weak. Recent events are in many respects the culmination of many years. In the South Pacific, the introduced institutions of the modern nation-state have been overlaid on top of a multiplicity of indigenous political structures. The latter have proven to be remarkably adaptable and their resilience in the face of colonial and post-colonial transformations provides the broader basis for the continuing weakness of the state. The crisis in Solomon Islands is less about the collapse of a coherent, functioning state, and more about the unravelling of the apparatus of colonial rule.¹⁸²

This thinking gives us two key lessons. First, it tells us that TJ, like other contemporary legal pathologies, is primarily an enterprise in state-building. Second, it reminds us that our conception of the state is often a narrowly liberal one, which separates “politics” from “economics.” On occasion, our approach may need to be not simply about the transformation of political and legal institutions, but also economic institutions.

The liberal agenda inherent in OHF could have been expressed in a number of different legal forms. For example, the “cooperative intervention”¹⁸³ could have been characterized not as an attempt at state rehabilitation or state building, but as a cooperative discharge of SI’s sovereign

¹⁸⁰ BENNETT, *supra* note 34 at 13.

¹⁸¹ *See generally* TEITEL, *supra* note 9.

¹⁸² OFN, *supra* note 27 at 27.

¹⁸³ In form, at least, the regional intervention in SI bears striking resemblance to the regional military “cooperative intervention” in Grenada in October 1983 led by the United States of America. Both interventions involved a multinational regional force, heavily dominated by a regional hegemon, taking control of a tropical island, formerly a British colony, nominally after a request from that island’s Governor-General. The Grenada expedition was highly controversial. The SI intervention has not been controversial. The difference lies not simply in the different social contexts in which the interventions occurred (the difference between U.S. and Australian power, the Cold War context v. the post-Cold War context), but chiefly in the contestation of local consent. In Grenada, the U.S. presence was met with open hostility. RAMSI has, in contrast, been welcomed to SI. For accounts and legal analysis of the Grenada expedition *see* 78 AMJ. INT’L L. 131-175 (1984).

obligations to protect its citizens and residents,¹⁸⁴ or as a cooperative discharge of its human rights obligations, including its obligation to provide judicial remedies.¹⁸⁵ This only serves, though, to highlight the narrow cast of transitional justice in its contemporary form. For example, the obligation to protect is usually considered as an obligation to protect individuals from massive violence. It is not considered an obligation to protect from poverty, or from deprivation of education or other development opportunities. It casts social goods almost wholly as political and civil rights, not as economic and social rights. In doing so, it makes protection a matter of procedural justice and individual rights, rather than group rights and distributive rights. Similarly, the controversies in the transitional justice literature and jurisprudence are about the extent to which a state should be obliged to expose perpetrators of human rights violations to criminal justice, rather than a debate about which types of human rights violations should be dealt with by criminal justice.

What this signifies is that the liberal focus on retrospective vindication of rights may itself present an obstacle to the marriage of TJ and a distributive justice agenda. Again, it is Ruti Teitel who provides the best exposition: “Whatever reform transitional justice-seeking implies, it is limited and determinate, and couches the economic question in terms of human restitution for known past losses.”¹⁸⁶

For TJ to deal with distributive justice it must move beyond questions of restitution for past wrongs, towards transformation of the present structures which threaten to reproduce those as future wrongs. What is needed is a *transformative* justice, not simply a transitional one.

What is this *transformative justice*? It is an approach to the TJ enterprise which emphasizes the need for conflict-riven societies not only to transition from one form of government to another, one public architecture to another, but also to transform themselves, their private dynamics, at the same time. As Erin Daly has described,

Transition suggests movement from one thing to another—from oppression to liberation, from oligarchy to democracy, from lawlessness to due process, from injustice to justice. Transformation, however, suggests that the thing that is moving from one place to another is itself changing as it proceeds through the transition; it can be thought of as radical change. A nation in transition is the same nation with a new government; a nation in the midst of a transformation is reinventing itself. Because

¹⁸⁴ See ICISS, *supra* note 15.

¹⁸⁵ The extent of this obligation in the transitional justice context remains contested: *see, e.g.*, Tepe v. Turkey, Eur. Ct. H. R., Application No. 00027244/95, 20003; *Barrios Altos case*, Chumbipuma Aguirre et al. v. Peru, Inter-Am. Ct. H.R., Ser. C, No. 75, 2001 (March 14, 2001); Laureano Atachahua v. Peru, Communication 540/1993, UN Human Rights Committee, 1 BHRC 338 (March 25, 1996); Velasquez Rodriguez, Inter-Am. Ct. H. R., Ser. C, No. 7, 1990; Bámaca Velásquez, Inter-Am. Ct. H. R., Ser. C, No. 4, 1987; Muteba v. Zaire, Communication 124/1982, UN Doc. Supp. No. 50 (A/39/40) at 182 (1984) (March 25, 1983); *see also* Diane F. Orentlicher, *Settling Accounts: The Duty to Prosecute Human Rights Violations of a Prior Regime*, 100 YALE L.J. 2537 (1991); Naomi Roht-Arriaza, *State Responsibility to Investigate and Prosecute Human Rights Violations*, 78 CAL. L. REV. 451 (1990).

¹⁸⁶ Teitel, *supra* note 1.

transformation entails a recreation of the culture, it fulfills the promises of reconciliation and deterrence that transition alone cannot achieve.¹⁸⁷

Does this mean anything more than that transitional societies need to consider economic injustice, as well as political injustice and human rights violations, if they are to achieve a lasting peace? I believe it does mean more.

First, it alerts us to the fact that what we perceive to be “transitional” justice may be largely dependent upon our perspective. As Ruti Teitel has noted: “What is deemed just is contingent and informed by prior injustice. Responses to repressive rule inform the meaning of adherence to the rule of law. As a state undergoes political change, legacies of injustice have a bearing on what is deemed transformative.”¹⁸⁸

Elsewhere, Teitel has highlighted the resulting dangers:

Post-Cold War transitional justice has, in large part, displaced broader reform projects, and appears to represent a move away from progressive politics... Weak and failed States accept the difficulties of extensive political and institutional change and turn, instead, to alternative management strategies, such as religion and medicine, as ways of treating the effects of past violence. This orientation is also seen in the persistent emphasis in transitional justice on a historical, rather than prospective, orientation of society—on the emphasis on preservation and record-keeping, which put off robust reforms for the future.¹⁸⁹

But this passage may also point to an alternative medicine. It would focus on institutional reform, negotiated discussions of the way forward, and political compromise. It would attempt to build a state on a foundation of experiences of fairness, not out of experiences, lived and relived, of injustice.

This brings us to the second set of implications arising from our shift from transitional to transformative justice. Existing transitional justice techniques and mechanisms may need to be reconsidered, and perhaps reconfigured, in light of this broader transformative logic.¹⁹⁰ The issues surrounding amnesties and truth commissions provide examples. We can see how they relate to transitional and transformative justice by looking at the role they have played in thinking about post-conflict SI.

Although not well publicized, the concept of amnesty and the idea of a truth commission have both had roles in attempts at resolving violence in SI. In 2000, the New Zealand government facilitated a major peace-building dialogue on *HMNZS Te Kaha* for Solomon Islands NGOs and

¹⁸⁷ Erin Daly, *Transformative Justice: Charting a Path to Reconciliation*, 12 INT’L LEGAL PERSPECTIVES 73 (2001/2002).

¹⁸⁸ Ruti G. Teitel, *Transitional Jurisprudence: The Role of Law in Political Transformation*, 106 YALE L.J. 2009, 2014 (1997).

¹⁸⁹ Teitel, *supra* note 1 at 901.

¹⁹⁰ For another discussion of the implications of a transformative approach for institutional design in TJ see Daly, *supra* note 187 at 96-100.

churches.¹⁹¹ The forum produced a Communiqué,¹⁹² recommending a qualified amnesty, involving truth and reconciliation processes and no amnesty for sexual violence. The Communiqué states:

TRUTH AND RECONCILIATION

25. There are at least two sides to every conflict. Our own conflict is no exception. Just as there are genuine grievances on all sides, so too there have been appalling acts on all sides. In order to achieve the reconciliation that will allow us to live together in harmony once more, the truth of what has taken place between us must be exposed. There can be no justice without truth. Truth and reconciliation processes have become important steps in peace making in many other parts of the world. The work of the South African Truth and Reconciliation Commission chaired by Archbishop Desmond Tutu is the best-known international example.

26. A Truth & Reconciliation Commission must be established as an integral part of the Peace Process. The granting of amnesty must be conditional on satisfactory testimony before the truth and reconciliation Commission. Special legislation should be prepared for this purpose and introduced in the next sitting of parliament.

AMNESTY

27. Subject to fulfilling the disarmament and Truth & Reconciliation requirements it is recommended that amnesty be considered for all those involved directly in militant activities during the ethnic tensions. This includes militants of both the IFM, MEF and other groups involved in the conflict in all parts of the Solomon Islands. It is suggested that special legislation be prepared for this purpose and introduced during the next sitting of Parliament. Such legislation must specify those offences covered by the amnesty. This amnesty relates only to acts of lawlessness that have occurred during the current conflict and will not apply to acts and crimes committed prior to the conflict or that are committed after peace has been formally established. The exact dates covered by the amnesty should be acceptable to stakeholders.

28. Amnesty would be conditional upon fulfilment of the requirement of disarmament and the truth & reconciliation within a reasonable time frame having regard to the provision of evidence. Those wishing to be considered for amnesty must apply individually to the Amnesty, Truth and Reconciliation Commission.

29. There is the need to establish an Amnesty, Truth & Reconciliation Commission.

¹⁹¹ Oxfam CAA, *supra* note 178 at 24.

¹⁹² See *National Peace Conference Communiqué*, available at <http://rspas.anu.edu.au/melanesia/RTF/PeaceConferenceCommuniqueSolomons.rtf>, last visited on November 24, 2003.

The Townsville Peace Agreement, negotiated later that year by militant groups—without civil society groups present—adopted a different course. It provided an amnesty for stealing and possession of weapons,¹⁹³ as well as a general amnesty for participation in military operations in the “ethnic crisis,”¹⁹⁴ covering criminal liability for arms and ammunition offences,¹⁹⁵ killing,¹⁹⁶ property offences¹⁹⁷ and traffic offences.¹⁹⁸ It also provided immunity from civil liability for these acts.¹⁹⁹ Amnesty was conditional only on weapons surrender. No provision was made for a truth and reconciliation commission; instead, Part Five of the Agreement provided for the creation of a weak Peace and Reconciliation Committee,²⁰⁰ provided permission for “various parties to the conflict...to involve themselves in face-to-face dialogue,”²⁰¹ and mandated a vague “public display of forgiveness and confession.”²⁰² Predictably, while the SI Parliament passed legislation (the *Amnesty Act 2000* (SI)) giving effect to this blanket amnesty, little attempt was made to discharge the reconciliation provisions of the Agreement, and the weapons surrender was only partly successful. The blanket amnesty met with varying responses: supported by many, including the Australian government that brokered the TPA, it was condemned by others, such as Amnesty International.²⁰³

With the TPA now expired and its underlying methodology abandoned, there has been a revival of calls for a truth and reconciliation commission.²⁰⁴ Amnesty has also become a live issue. OHF used a weapons amnesty to disarm large portions of the population of SI militants. At first it was unclear whether this would be extended to a general amnesty. Prior to the arrival of foreign forces, the Prime Minister, Sir Allan Kemakeza, appeared to indicate that consideration was being given to the issuing of certificates of amnesty, and suggested that foreign police could “only deal with new crimes, not old crimes.”²⁰⁵ Some Solomon Islanders argued that the TPA and the *Amnesty Act 2000* (SI) did not stand in the way of prosecutions for crimes committed after the signing of the TPA but prior to RAMSI’s arrival.²⁰⁶ It soon became clear that OHF officials were intent on prosecuting militants for crimes committed since the TPA was signed.

¹⁹³ TPA, *supra* note 62, Part Two, art. 3(1).

¹⁹⁴ *Id.*, Part Two, art. 3(2).

¹⁹⁵ *Id.*, Part Two, art. 3(2)(d)(1)(a).

¹⁹⁶ *Id.*, Part Two, art. 3(2)(d)(1)(b).

¹⁹⁷ *Id.*, Part Two, art. 3(2)(d)(1)(c).

¹⁹⁸ *Id.*, Part Two, art. 3(2)(d)(1)(d).

¹⁹⁹ *Id.*, Part Two, art. 3(1) [second].

²⁰⁰ *Id.*, Part Five, art. 2.

²⁰¹ *Id.*, Part Five, art. 1(a).

²⁰² *Id.*, Part Five, art. 1(b).

²⁰³ AMNESTY INTERNATIONAL, SOLOMON ISLANDS: A BLACK DAY FOR HUMAN RIGHTS, December 19, 2000, ASA 43/013/2000, no. 239/00.

²⁰⁴ Bruce Edwards, *Call for Solomons truth and reconciliation commission to probe civil war*, AGENCE FRANCE-PRESSE, October 27, 2003, available at <http://www.reliefweb.int/w/rwb.nsf/6686f45896f15dbc852567ae00530132/f53cb7d13b6f91e0c1256dcc004d8bb1?OpenDocument>, last visited on November 24, 2003.

²⁰⁵ Craig Skehan and Tony Allard, *Solomons PM sets rules; ignore old crimes*, SYDNEY MORNING HERALD, June 28-29, 2003.

²⁰⁶ See Bishop Terry Brown, *Building a strategy for the Solomons*, AUSTRALIAN FINANCIAL REVIEW, July 18, 2003.

The legal situation may, however, have been complicated by moves within the Solomon Islands government to extend the effect of the Act by notice: Author’s Interview with Australian Government Official, New York and Canberra, December 11, 2003.

What attitude does the transformative justice approach suggest we should adopt on these issues? The key principle must be that the utility of amnesty and truth commissions should be assessed not simply in terms of how they will affect transition (to democracy), but how they will affect social transformation, including on questions of distributive injustice.

Seen in this light, we can appreciate that one of the problems with amnesty is that it may forego a key opportunity for the state to forge a social transformation agenda, by punishing perpetrators of human rights violations, and by providing the occasion for the motivations for violence to be put on the public record. Amnesty works against the transformation of a culture of impunity into a culture of accountability. More than this, amnesty means foregoing a key narrative moment in the life of the state and society. Trials offer the opportunity for the contestation of historical truths, and the creation of an officially sanctioned historical record. It seems clear that part of the reason Harold Keke and other militants have cooperated with the intervention force is that they look forward to the opportunity, while on trial, to prevent their version of events, to explain their motivations for taking up arms, and in particular to point to the distributive injustice at the heart of the SI state/society relationship. By ruling a hard and fast line between the past and the present, amnesties may in fact prevent the kind of societal self-examination which trials can, in the right setting, facilitate.²⁰⁷

On the other hand, the very adversarial (or at least contested) nature of criminal trials may only serve to deepen divisions within a society.²⁰⁸ This is less, however, an argument for amnesty or other forms of impunity, as for a modulation of the processes by which officially-sanctioned historical truths are generated. In a post-conflict society, the difficult process of societal self-examination may need to occur within a more neutral space, one not predicated on the penal power of the state. It is, in a way, an argument in favor of truth and reconciliation commission style mechanisms.

Truth commissions provide a key site for a transformative approach to justice.²⁰⁹ Equally, though, the lessons we have drawn in this paper speak to questions of *how* a truth commission should seek to produce this transformative justice. The key conclusion here is that a truth commission should not only deal with questions of individual accountability, but equally with issues of systemic liability, structural causation and institutional accountability. Truth commissions have a capacity which individualized criminal justice does not have to transform understanding of social phenomena, including cultural fault-lines and distributive injustice. This can be amplified by deliberate examination of the role of specific groups, institutions, social sectors or associations, along the investigative lines of the South African Truth and Reconciliation Commission.²¹⁰

²⁰⁷ For a recent and useful discussion of amnesties see William Burke-White, *Reframing Impunity: Applying Liberal International Law Theory to an Analysis of Amnesty Legislation*, in 42 HARV. INT'L L.J. 467 (2001). See generally Gwen K. Young, *Amnesty and Accountability*, in 35 U.C. DAVIS L. REV. 427 (2002).

²⁰⁸ See Daly, *supra* note 187 at 105-106.

²⁰⁹ See generally *id.*

²¹⁰ For a discussion of the South African Truth and Reconciliation Commission in transformative terms see Johnny De Lange, *The Historical Context, Legal Origins and Philosophical Foundations of the South African Truth and Reconciliation Commission*, in LOOKING BACK/REACHING FORWARD: REFLECTIONS ON THE TRUTH AND RECONCILIATION COMMISSION OF SOUTH AFRICA 16-17 (Charles Villa-Vicencio and Wilhelm Verwoerd, eds, 2000).

There is clear scope for such an investigation in SI. The *Te Kaha* Communiqué offers evidence that a truth and reconciliation commission would receive strong support from civil society. At the top of its mandate must be an inquiry into the dynamics of distributive injustices in SI, in particular divergent approaches to land ownership and inheritance. As Bishop Terry Brown has written, “The immediate answer is not...to encourage more and more alienation of land including land ownership by foreigners. Before there can be any more alienation of land, the customary land situation has to be sorted out—otherwise endless conflict will ensue.”²¹¹

In early September 2003, the head of the Solomon Islands National Peace Council, Paul Tovua, urged the government to set up a commission of inquiry into land ownership on Guadalcanal.²¹² But a commission of inquiry cannot adequately deal with these issues without inquiring into their links to militancy, and the underlying cultural tensions. Such an inquiry requires a broadly inclusive approach, hearing the voices of a wide range of actors: militants, victims, business, church groups, government, police, even outsiders such as aid donors. A broad-ranging truth and reconciliation commission would be well suited to discharge such a mandate.

Another lesson from the transformative justice approach is that for transitional justice to be successful, it must facilitate not only social transformation, but also the individual transformations, the transformations of individuals, that add up to that larger institutional and social transformation. Transitional justice must not simply condemn and punish, leaving underlying causes untouched; it must help transform individuals’ identities and interests, helping them to find a way out of the system which produces and reproduces violence and injustice. It reconstitutes society through individual acts of transformation and reconciliation. This may require social programs which assist individuals to apologize for past wrongs; or it could involve demobilization, disarmament and rehabilitation (DDR) programs, aiding militants to transform their economic interests and social identities, for example through trauma counseling or education.²¹³ The law should be used to restructure social institutions in a way that creates incentives for individual transformation, for example through reforms to land tenure systems.

Equally, though, the transformative approach to justice tells us that we need to design solutions to transition problems that take account of the particular social context in which they arise.²¹⁴ One opportunity, in SI, may be to take elements of traditional approaches to restorative justice, particularly the tradition of material compensation for past wrongs. This could prove a controversial suggestion, given the role of the abuse of this tradition in escalating the crisis between 1998 and 2000. Certainly, the intervention force at present seems to have adopted a policy of discouraging compensation talk, in favor of imposing the dominance of criminal justice discourse and the authority of the centralized state, with its monopoly over the power of public dispute resolution. For example, when in late October 2003 villagers from Turarana in central Guadalcanal demanded money and pigs as compensation for the actions of Stanley Kaoni (a.k.a.

²¹¹ Brown, *supra* note 208.

²¹² Radio Australia, *Exiles Seek to Reclaim Guadalcanal Land*, September 9, 2003, available at <http://www.antenna.nl/ecsiep/conflict/si/30-9-03.html>, last visited November 23, 2003.

²¹³ See GRAY, *supra* note 2 at 30-31.

²¹⁴ See generally Daly, *supra* note 187.

“Satan”), RAMSI was reported to have “advised people who continually demand compensation to stop their actions.”²¹⁵

Nevertheless, it is important to recognize that adaptation of this tradition may prove one way to connect the modern institutions of the state with the traditional institutions of SI societies. As Bennett has suggested,

Compensation is an ancient element of Melanesian culture, but it is found in all cultures, for example, in the Western law of torts. It can clear the way for reconciliation, lessening bitterness. But when it comes to major offences, such as murder, the introduced law, rightly or wrongly, has become the prime tool for over eighty years for punishing perpetrators. This law is less dependent on the status or gender of the parties concerned, offers a more objective exposition of evidence and a predictable range of punishments. Yet when the introduced law seems not to solve the problem, when the complainants do not activate its processes say, because of little faith in the police, there is a tendency to return to the old way.²¹⁶

The focus must be on compensation as the occasion for structural and social transformation, perhaps as the ceremonial symbol of a deeper change. This is not a process of restitution in the Western sense, in the sense of the replacement of something taken away, the vindication of an injured right. Traditional Melanesian compensation rites exhibit a symbolic transformative logic, wiping away past wrongs and acting as a symbolic commitment to a changed, shared future.

Perhaps more important than the success of identifying such transformative processes is the *attempt* to identify them. Searching for these vehicles for transformation may itself provide a transformative vehicle, the catalyst for the social transformation which SI needs if it is to become a nation-state built on fairness, and not injustice. There are encouraging signs that officials at the highest levels in OHF recognize that OHF must not provide mere criminal retribution, or even simply the restoration of law and order, but a long-term program of social transformation. Graham Fletcher, the head of the SI Taskforce at Australia’s Department of Foreign Affairs and Trade, has written

We as outsiders are doing whatever we can to give Solomon Islands a chance to pull out of the downward spiral. But we are realistic. There are some fundamental and difficult issues—land, distribution of resources, reconciliation, interaction between modernisation and traditional practices etc—these are not ones that outsiders can resolve. What we want to do is establish stable conditions in which these can be worked through by Solomon Islanders.²¹⁷

At the same time, the search for transformative solutions in SI will represent, in microcosm, the reconception which TJ and other contemporary legal pathologies must go through if they are to

²¹⁵ Solomon Islands Broadcasting Corporation, *Solomons Villagers Demand Payments for Warlord’s Deeds*, October 20, 2003, available at <http://www.antenna.nl/ecsiep/conflict/si/22-10-03.html>, last visited November 23, 2003.

²¹⁶ BENNETT, *supra* note 34 at 14.

²¹⁷ Fletcher, *supra* note 67 at 3.

rise above their liberal limits, to find a way adequately to deal with the questions of distributive justice which lie at the root of so much of the violence in the world today. Without that transformation, TJ risks remaining a modern manifestation of Alvaro de Mendaña de Neyra's *conquista spiritual*, promising transcendent justice while replicating the conditions of injustice.