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Creating CBI programs in South Pacific small island states: The question of *nationhood* (Part 1)

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Research Paper (Part 1 of 3)

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Part 1

Abstract

This article discusses the matter of nationhood in regards to the design of Citizenship by Investment (CBI) programs in South Pacific small island States. The matter of nationhood is complex and the concept differs in some regard to places where it originated from. It is perfectly fine to be different, may be a great advantage, but if differences in the perceptions and acceptance of ideas and broader concepts underlying citizenship are not taken into account, then there may in consequence emerge certain flow on effects in regards to the matter of CBI design, global expectations and as to the reconciliation with established CBI programs in the global market of membership entitlements (residence and citizenship).

I. Introduction

When creating CBI programs in South Pacific small island states, policy- and lawmakers, as well as advisers may need to take into consideration a variety of issues: This is because, some Western concepts such as nationhood, and in consequence, nationality/citizenship, may be interpreted, ranked or being perceived and accepted rather differently in the South Pacific small island states. With Benedict Anderson (in his seminal ‘Imagined Communities’, 1983), it has become commonplace for scholars to assert that nations are historical fictions, ‘imagined communities’, emphasizing their invented, ideological nature. These ideologies have taken a principal place in the Western paradigm of the nation in the spirit of Westphalia. What then does the concept nationhood mean in the context of the South Pacific and how does it relate to citizenship by investment (‘CBI’), the direct sale of citizenship absent any or meaningful periods of naturalization? This is truly a difficult and complex question, with at least one easy answer: It means something different to other regions and countries in the world. It may in other words be based on the unique experience of the South Pacific itself, a region containing far more Ocean than land, with cultures scattered across the deep blue sea which, thankfully, are not comprehensible nor expressible through legal-political principle and doctrine alone. Nationhood here has perhaps never evolved in any linear or exact way simply replicating the experience in other places. Nationhood was, from the goals and hopes attached to it before and since independence, and since its formal inception, somewhat assimilated, transplanted, quarantined into the local fabric of law, custom and culture. I propose that the concept of nationhood has since metamorphosized into something different in the South Pacific, a concept in its own right, perhaps, something more flexible and less rigid than nationhood in other places, but infused by culture, with some of the metes-and-bounds of the concept not having been (fully) adopted. If this hypothesis proves correct, CBI planners over here are in for a ride (and rightly so), and experience tells us that this may be correct. Allow me to also assume that the question posed by this paper, the evolution of the concept of nationhood, is of

utmost importance not exclusively so, but specifically also for CBI planners, government internal experts or industrial external advisers and NGOs.

It is but an idea that the fiction of citizenship comes with absolute certainty as to its meaning. With the nation-building exercise in the South Pacific an ongoing one, it may be understandable why CBI has not (yet) fully settled in the region either. Only a smaller number of states has active, running CBI programs, such as is the case for Vanuatu. Many, if not most, however, are in the planning stages of CBI programs, completely revised, revamped, reconstituted from the shadows of the past proto-programs. However, history repeats itself, and it is not entirely certain that past mistakes and issues have been completely resolved, nor, that they are as such resolvable in their entirety.

II. The metes- & bound of Nationality & Citizenship & the CBI experience

Nationality and citizenship have long been used interchangeably, with citizenship outlining the municipal sphere and nationality the international law dimension of the connection between the citizens and the state. Today, they virtually fall together in most cases, and the reasons for this are complex.

In a constitutional-legal sense, and somewhat tautological, citizenship is given to those who fulfill the formal legal requirements of citizenship, warranting a look behind the veil of who the people are to whom the elusive concept of citizenship is to apply.

Anyone is principally free to purchase a passport, subject to certain standards including fulfilment of criteria including due diligence checks. The question in view of nationhood is whether nationhood is a static concept fulfilling the same expectations and core functions it may do in other places.

Just as CBI is formal legal transactional, somewhat generic, may still be in a process of formation into something else, the concept of nationhood in the South Pacific appears as a

formal legal one, with Constitutions and their Preambles and visions outlining to some extent the metes and bounds. However, it may be the level of material meaning assigned to the concept that may not always be entirely clear, leading to ambiguities, some fragmentation and incoherence, all the way affecting CBI meaning, planning and structure.

Citizenship exists on paper -at law-, as well as in the people's imagination, in relations to what they think the law ought to contain, conflating citizenship's morals and politics. This difference between the 'is and ought' of citizenship is vested at the heart of the concept, resulting in its many misperceptions conflating what citizenship is to mean morally or from a political identity point of view. Nationality, just as citizenship, is at times overloaded with hopes and expectations between morals, justice, identity and other factors.

The concept of nation in the South Pacific could perhaps be viewed as some form of local mystery, but it really should not be too enigmatic. To place the valuable contributions and observations made in this forum, for instance, on Vanuatu's CBI experience, into a perhaps more holistic picture, going back to the foundations of CBI and CBI reform in the region, focus is to be on the somewhat elusive principle of nationhood, a concept itself placed between or at the borders of law and politics, referring to the polity in its international law sphere as well as placing focus on its municipal dimension. This is akin to the demarcations between citizenship and nationality mentioned above.

III. Pre- & Post Colonialism, Independence & Pacific

Nationhood

Even any evolved nationhood may not be able, nor should it perhaps be viewed to necessarily express all these things that people would like to expect and view through it but which are by far predating the nation.

In other words, and broadly speaking, what actually constitutes a nation in the sense of the South Pacific paradigm would perhaps emphasize all structures of government, with strong focus on local political stakeholders, be based from the ground-up, pertaining to a customary

culture of local chiefs, traditions, family structures and other bodies, networks functioning akin and taking the responsibilities of local council. Local rule was what defined the Pacific experience for some time, coming also with the benefit that local conflict was limited to local level, and the general absence the need for higher ordering principles of power, unless a uniform voice for the country was to be found to be speaking as one, itself a difficult and time-consuming process. This may in some way remind of the principle of subsidiarity, perhaps somewhat able to showcasing that matters be taken on the level of governance where they fall due, before, unduly, becoming elevated to a higher rank of power, such as the level of the nation. Pending the circumstances, the level of power of the nation, and the voice of that nation, may, at least in the past, be more rarely summoned than in the West. It may then not surprise that in some of the Pacific Nations, such as in Samoa, the emergence of nation has at first been one in relation to other states, with a unified view on country becoming necessary so to define the country in regards to others.

We may need to go back to the pre-colonial and colonial periods to understand the meaning of ordering paradigms such as nationhood. Indigenous sovereignty prior to colonialism has been widely acknowledged.

Colonial discourse then (such as Sylvia R. Masterman, with *The Origins of International Rivalry in Samoa, 1845-1884*, 1934: 194) was adamant that chaos would ensue after colonial rule:

‘We have seen the islands [...] pass from a state of primitive but happy disorder to a condition of semi-civilized but unhappy confusion [...] until the bewildered Samoan chiefs, distraught by intrigues, begged that the burden of government might be lifted from them.’

The Pacific perspective on the meaning of nation (and, as I argue here, to derivatives of nation, such as the concept of nationality and citizenship), is perhaps slightly closer to what Ton Otto and Nicholas Thomas in their work ‘*Narratives of Nation in the South Pacific*’ (1997, 4) so poignantly describe:

‘Once independence had been gained [...] the fundamental opposition between indigenous people and colonial powers was displaced by a far messier array of local divisions, relating variously to precolonial antagonisms between different indigenous populations, the simultaneous exacerbation of conflict and suppression of warfare during the colonial period, uneven development and corruption. The most obvious expression of this is the Bougainville war, but many more localized or primarily non-violent conflicts could be noted, in most other Pacific states. [W]hile a historian or anthropologist could unambiguously endorse the movement towards independence, and take continuing colonial hegemony to be immoral, there is no obvious stance and no wide agreement (either among scholars or within the countries concerned) about Bougainville separatism, the factional struggles within the Vanuaaku Pati, or the postcoup regimes in Fiji. If many anthropologists would empathize with the aims of the pro-democracy movement in Tonga, they might do so uneasily, only too aware of the degree to which democracy has promised so much more than it has delivered in other parts of the world.’

Liberal scholars typically support self-determination for indigenous peoples and advocate an autonomous nationhood. The idea of autonomy implies that ‘indigenous’ is itself an unproblematic and settled category on which a better nation would be able to rest. Often, the very concept of indigenous status can be viewed as a limiting one, leading to further issues.

Given the emphasis on local custom and precedence, it is likely that even the pre-nation state constructs of cultures predating colonization were ambiguous and politically contested, not settled. A simple anticolonial posture is necessary but nothing of substance, appears somewhat insufficient to constitute decolonized history.

This is of course not to say that the replacement of colonial powers was coming with alternatives, and independence was achieved with struggle, spirit and tears. However, the question could be asked whether the pre-colonial experiences may have already been somewhat incoherent and incompatible with the superimposed concept of nationhood (and

vice versa). As Otto and Thomas assert, independence has at times led to centralizations of power, and local isolated conflict became to some extent elevated to national level. The result really is one of ongoing incompatibility of the concept of nationality in its implementation compared to other states of the world.

The construction of island- as well as all histories, is an inherently political question. Time is needed for CBI to be established, and CBI will remain in all Pacific domains an unsettled question. This is because even the question of nationhood is an unsettled one at this time and for the time being.

END OF PART ONE (to be continued with Part II)