

Legitimacy in fragile post-conflict situations – why it matters for peacebuilding and conflict transformation

Framing paper for the Berghof project ‘Addressing legitimacy issues in fragile post-conflict situations to advance conflict transformation and peacebuilding’

1. Introduction

Today fragile states and situations are presented as being of major concern for both security and development policies. Conventional wisdom holds that fragility of state institutions and internal as well as transnational violence are closely related. State fragility is seen to lead to violent conflict and violent conflict to enhanced fragility, failure or even collapse of states. Regions of violent conflict and state fragility are perceived as potential breeding grounds and safe havens for transnational terrorism, weapons proliferation and organized crime, thus posing severe security threats, not only for the state and society in question, but also for neighbouring states and the international community at large. In other words: fragile and failed states are ranked as “one of the most important foreign policy challenges of the contemporary era” (Krasner and Pascual 2005, 153). At the same time, this challenge is also of major concern for development policies and development assistance; state fragility and accompanying violent conflicts are major impediments to sustainable development.

For these reasons, state-building in the regions of the Global South that are plagued by fragility has become a central preoccupation of the security and development agencies of OECD countries today. Over the last years a highly diversified state-building industry has emerged which - according to Francis Fukuyama’s dictum that “learning to do state-building better is thus central to the future of world order” (Fukuyama 2004, 120) – is engaged in respective endeavours in a host of ‘fragile’ places all over the world, from Kosovo to Somalia and Afghanistan to the Solomon Islands.

Policies and assistance have very much focussed on building state institutions and improving their capacities as a means for securing effectiveness, mainly with regard to the machinery of central government and core areas of administration (such as the judiciary, the police, finance etc.). In comparison, issues of legitimacy have played a somewhat secondary role. Legitimacy, however, is a key factor for the stability and resilience of socio-political order. Lack of

legitimacy, on the other hand, is a core ingredient of fragility. “Once legitimacy is lost, the social contract that ties people to the state is eroded, and the state risks losing the allegiance of its citizens to other political actors” (Menkhaus no date 91). This enhances the probability of disruptive, or even violent, internal conflicts: “when the vast majority of citizens believe in a state’s legitimacy, they will be unlikely to engage in civil or uncivil disobedience. Conformity to laws will generally prevail. Conversely, the weaker the belief in legitimacy, the greater is the potential for conflict” (Cook 2003, 112).

Legitimacy is frequently mentioned in central policy guidance documents, albeit with few practical consequences so far. The Paris Declaration of March 2005 for example addresses the need to deliver effective aid in fragile states and declares as the “long-term vision for international engagement in fragile states (...) to build legitimate, effective and resilient state and other country institutions” (Paris Declaration on Aid Effectiveness, point 37). In their preamble, the OECD – DAC Principles for Good International Engagement in Fragile States and Situations commit the international donor community to assist in “building effective, legitimate and resilient state institutions, capable of engaging productively with their people to promote sustained development” (OECD-DAC 2007, preamble). The European Union in its ‘response to situations of fragility’ likewise commits itself to “building effective and legitimate political systems” (Council 2007, point 12). The focus of practical interventions, however, has been clearly on capacities and effectiveness; the Paris Declaration is a good example in this regard: legitimacy is mentioned, but not dealt with when it comes to practical strategies and commitments. The underlying assumption is that legitimacy will somehow automatically result from capacity and effectiveness. It is only recently that issues of legitimacy have gained more prominence in their own right. Importantly, the OECD-DAC’s Fragile States Group (which in early 2009 merged with DAC’s Network on Conflict, Peace and Development Cooperation (CPDC) to form the OECD-DAC’s International Network on Conflict and Fragility – INCAF) has given legitimacy prominence in its deliberations. Its State Building Task Team presented initial findings on ‘state building in situations of fragility’ in August 2008 which address legitimacy as “both a means and an end for successful state building” (OECD-DAC 2008, point 3); in March 2009 it hosted an international workshop on ‘strengthening state legitimacy in fragile situations’¹. It now acknowledges that in fragile settings “legitimacy may be a highly contested notion” which has “multiple sources” and that “understanding the sources of legitimacy must be central to external interventions in statebuilding efforts” (OECD-DAC 2011, 12).

¹ At this workshop the findings of several academic teams who had been commissioned with research on the problem of legitimacy of the state in fragile situations were presented and discussed. See in particular the reports prepared by Bellina et. al. 2009 and Clements 2008. On the basis of these reports OECD published a paper on state legitimacy in fragile situations (OECD 2010), and legitimacy is also addressed in the organization’s latest comprehensive text about state-building (OECD-DAC 2011).

These are important steps in the right direction. So far too much emphasis has been on capacities and effectiveness, thus nurturing an approach to state-building as a technocratic exercise which ignores or negates its highly political nature. Issues of legitimacy are directly linked to questions of power and authority, and hence are intrinsically political. Bringing legitimacy to the forefront therefore means to acknowledge the political character of state formation. Accordingly, the latest OECD-DAC monitoring survey on the implementation of the Principles for Good International Engagement in Fragile States and Situations recommends to “recognise that statebuilding is a fundamentally political process. It is dependent on constructive state-society relations that shape expectations and build a sense of trust and legitimacy” (OECD-DAC 2010, 11).

Positive as it is, however, this shift is still conceptualised too narrowly. In the mainstream political and academic discourse on state fragility and state-building there is a continuing lack of understanding of legitimacy issues. The focus is exclusively on the legitimacy of the institutions of the state, and, accordingly, only one specific type of legitimacy is acknowledged, namely the rational-legal type.² By contrast, it will be argued here that other types of legitimacy and their sources are of major importance in fragile situations and that a decisive feature of fragility exactly is that state legitimacy of the rational-legal type is contested. We shall argue that fragile situations are characterised by the co-existence, interaction and mutual permeation of different types of legitimacy which leads to the hybridisation of political legitimacy in the context of hybrid political orders. We need to know much more about the interface of different types of legitimacy and about the hybridisation of legitimacy. This framing paper wants to set the scene for more detailed research which is going to be conducted in the Berghof project on legitimacy issues in fragile post-conflict situations.

Using Max Weber’s three ideal types of legitimate authority – rational-legal, traditional and charismatic – as a starting point, we hypothesize

- that non-rational-legal types of legitimacy (traditional, charismatic, and hybrid) are of major significance in fragile situations,
- that they matter in processes of conflict transformation, peacebuilding and state formation,
- that external actors who are interested in supporting those processes have no choice but to engage with different types of legitimacy and their multiple sources in a constructive manner.

² The OECD Principles for Good International Engagement in Fragile states and Situations are typical in this regard: they direct international engagement to “supporting the legitimacy and accountability of states by addressing issues of democratic governance, human rights, civil society engagement and peacebuilding” (OECD-DAC 2007, point 3). More recently, discussions in the context of OECD-DAC’s INCAF have taken the debate a step further; see for preliminary results OECD 2010 and OECD-DAC 2011.

Contrary to Max Weber's modernist assertion which stipulates that rational-legal legitimacy will trump other types of legitimacy in the course of history and will become dominant (albeit contaminated by remnants of traditional and charismatic aspects), we posit that political order and governance in post-colonial developing countries will, for the foreseeable future, be characterised by hybrid forms of legitimacy. Moreover, we argue that fragility and related violence can only be overcome and sustainable peace and political community be built if this hybridity is acknowledged and the modernist notion of the supremacy of rational-legal legitimacy is dismissed. In the following, this line of argument will be elaborated in a preliminary way in order to provide a framework for the planned more detailed case study research. In doing so, we shall also draw on previous research regarding fragile regions and situations in the South Pacific.³

2. Legitimacy – clarification of the concept

Max Weber's famous definition of the state as "a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory" (Weber 1991, 78) gives prominence to the concept of legitimacy. Statehood is not only built on monopolized force (that is merely on means of enforcement and coercion at the hands of the rulers), but also on legitimacy (that is on consensus of the ruled)⁴. Power combined with legitimacy makes political authority.⁵ "Stable systems of political authority do not rest on a monopoly of coercion alone: this state monopoly also has to be anchored in the cultural order of society. A political order needs legitimacy (...) Weber precisely distinguished political authority from mere power relations by resort to the notion of legitimacy. His concept of legitimacy is intended to give an

³ We were first confronted with the problems of different sources and types of legitimacy in the Pacific island countries in the context of an AusAID-funded project 'Towards Effective and Legitimate Governance: States Emerging from Hybrid Political Orders' which was carried out by ACPACS researchers from June 2007 to April 2008. ACPACS was commissioned by AusAID's Fragile States Unit (FSU) to provide new perspectives on the issue of fragile states and state-building, particularly in the South Pacific. ACPACS conducted comparative case study research addressing several Pacific island countries, namely Vanuatu, Papua New Guinea, Bougainville (as an autonomous region of Papua New Guinea), Solomon Islands, Tonga and also East Timor. For a summary of results see Boege et al. 2008b.

⁴ The idea of the social contract between state and society (the citizens) is another way to frame this relationship: citizens give consent to be governed by the state in exchange for protection by the monopolised force of the state.

⁵ Power can be said to be legitimate if a) it is acquired and exercised in accordance with established rules, b) the rules can be justified by reference to beliefs shared by both the rulers and the ruled,, c) there is evidence of consent by the subordinate to the particular power relation (Beetham 1991, 16, also 19).

answer to the question of when and why people obey” (Jung 2008, 34). Authority “implies a minimum of voluntary compliance, that is, an interest (...) in obedience” (Weber 1978, 212); and this is achieved by “the belief in legitimacy” (ibid., 213). Every form of domination therefore “attempts to establish and to cultivate the belief in its legitimacy” (ibid., 213). This aspect of ‘belief’ is crucial in Weber’s concept of legitimacy: “In general, it should be kept clearly in mind that the basis of every authority, and correspondingly of every kind of willingness to obey, is a *belief*, a belief by virtue of which persons exercising authority are lent prestige” (Weber 1978, 263). Legitimate authority constitutes mutual obligations. The belief of the governed in the powerholders’ right to rule is bound by the commitment of the latter to also adhere to the rules which constitute legitimate authority. The “main way in which the powerful will maintain their legitimacy is by respecting the intrinsic limits set to their power by the rules and the underlying principles on which they are grounded. Legitimate power, that is to say, is limited power: and one of the ways in which it loses legitimacy is when the powerful fail to observe its inherent limits” (Beetham 1991, 35). Legitimacy can thus be defined as the “belief of a political community that a rule or institution ought to be obeyed” (Papagianni 2008, 49), with the ‘political community’ comprising both the rulers and the ruled.

This is legitimacy in the empirical or ‘sociological’ sense - as opposed to normative or ‘philosophical’ legitimacy. The differentiation between legitimacy in a normative sense and in an empirical sense – made by Keohane and others – is of major significance for the purposes of the research envisioned in this project. “To say that an institution is legitimate in the normative sense is to assert that it has *the right to rule* (...) An institution is legitimate in the sociological sense when it is widely *believed* to have the right to rule” (Keohane 2007, 4; also Buchanan and Keohane 2006, 405).

For the question of fragility or resilience it is the latter that matters, and this is why in this project we focus on legitimacy in the empirical sense.⁶ That something is legitimate in the normative sense does not necessarily mean that it is legitimate in the empirical or sociological sense, and vice versa (D’Agostino 2005, 17). Empirical legitimacy is constituted by the belief of a considerable majority of those who are governed in the rightfulness of any given domination (while the belief of only the ruling elite in its right to rule is not sufficient to constitute empirical

⁶ The OECD-DAC makes the following differentiation: “The concept of legitimacy is used to describe: i) the acceptance of political authority by a population, or, ii) political authority that is acquired and exercised according to certain socially acceptable normative standards and criteria” (OECD-DAC 2008, footnote 1). The first understanding clearly refers to empirical legitimacy; the second can be read as either again addressing empirical legitimacy or addressing normative legitimacy, depending on who decides what the ‘socially acceptable normative standards and criteria’ are – it can either be both the rulers and the governed who share the belief that certain standards are acceptable (empirical legitimacy), or the rulers alone who declare certain standards as being acceptable (normative legitimacy); this latter option also can comprise external or international actors.

legitimacy).⁷ It “refers to patterns of voluntary compliance that are based on a sense of normative obligation, rather than on sanctions and control. So understood, the concept defines a factor that may greatly reduce the costs, and increase the effectiveness, of governing” (Scharpf 2007, 17; see also Franck 1990, 26). This is so because most compliance is unproblematic and only occasional deviance needs to be policed (Hurd 1999, 400).

Empirical legitimacy can derive from either process or performance. Process (or procedural) legitimacy is the legitimacy stemming from procedures which are believed to constitute the right to govern, e.g. elections, legal procedures, rules, accountability mechanisms, participatory and transparent decision-making, but also heredity of royal or chiefly status, or divine selection. Performance legitimacy on the other hand is concerned with the outcomes of acts of governance which are believed to constitute the right to govern, e.g. security for citizens in their everyday lives, a functioning health and education system, economic and social well-being of the populace, but also distribution of gifts or performance of miracles (Inbal and Lerner 2007; OECD-DAC 2008; Bellina et al. 2009). Performance legitimacy, in other words, is “legitimacy through providing services to citizens” (Brinkerhoff 2007b, 6). At its core it is legitimacy due to the fulfilment of security and welfare functions.⁸ It therefore hinges on the capacity and effectiveness of institutions of governance. In this project, we analyse the process and performance legitimacy of state and non-state actors who are engaged in conflict transformation, peacebuilding and the formation of political community.

Some say that “performance legitimacy is arguably the more significant influence on citizens’ views” (Wheeler, Graves and Wesley 2006, 11), while others posit just the opposite, namely that process or input(-oriented) legitimacy is more important than performance or output legitimacy: “fair procedure not policy outcomes are the most important factor affecting the legitimacy of a power relationship” (Seabrooke 2002, 24). This implies that “where there is less input-oriented legitimacy, there is more need for output-oriented legitimacy, and governmental effectiveness becomes all the more important” (Inbal and Lerner 2007, 59). While in general it is assumed that

⁷ In fragile situations it might be the case that state institutions enjoy legitimacy in the eyes of the majority of people in certain areas of the state (e.g. in the capital city and major urban centres), but not in other areas (e.g. rural and remote boundary regions), and certain measures taken by state institutions and external actors who want to assist in peacebuilding and state-building might strengthen the legitimacy in the eyes of certain quarters of the population, but not others. These variations are of major concern for both political practice and research.

⁸ The OECD-DAC stresses the significance of both performance legitimacy (“that can, for example, arise from effective and equitable service delivery”) and process legitimacy (“for example the constitutional rule of law, appropriate accountability mechanisms”) (OECD-DAC 2008, point 3). Bellina et al. – following Scharpf (1999) – mean the same when they talk about “input” and “output” legitimacy (Bellina et al. 2009, 15). Inbal and Lerner (2007) similarly differentiate between output-oriented legitimacy and input-oriented legitimacy, Beisheim and Dingwerth (2008, 8) between input or throughput and output legitimacy. OECD 2010 uses the terminology “input or process” and “output or performance” legitimacy (OECD 2010, 8).

effectiveness leads to outcomes which constitute legitimacy, another approach focuses on the reverse causal link, arguing that legitimacy is needed to be capable to achieve positive outcomes (see e.g. Englebert 2000). Englebert makes a strong argument that “legitimate states perform better than their nonlegitimate counterparts” (Englebert 2000, 135). Based on statistical evidence he demonstrates that (lack of) legitimacy determines the capacity, performance and economic growth in African states and concludes that “deficits of state legitimacy are therefore at the core of the developmental failure of many African states” (ibid., 173).

It might be most appropriate to conceive of effectiveness and legitimacy as being mutually reinforcing, with effectiveness enhancing legitimacy and legitimacy supporting effectiveness. In any case, “exploring the relationship between efficiency and legitimacy” (Tadjbakhsh 2009, 648) is of major importance for the improvement of peacebuilding and state-building - and for research which aims to support peacebuilding and state-building (and, accordingly, for this project).

Another differentiation is between vertical and horizontal legitimacy. Vertical legitimacy is legitimacy in the Weberian sense, it is about (the belief in) the right to rule, about responsible authority and voluntary submission. Horizontal legitimacy on the other hand refers to the attitudes and practices of (e.g. ethnic or religious) groups within a society towards each other. It is about mutual respect, acceptance and tolerance between members and groups of society (Ohlson 2008, 137). Horizontal legitimacy will not be considered in a systematic manner in our research. We are going to deal primarily with vertical legitimacy, whereas horizontal legitimacy will only occasionally be addressed under circumstances in which it is closely linked to issues of vertical empirical legitimacy.

Finally, the difference between international and domestic legitimacy has to be taken into account. If states and governments are seen as legitimate by their peers in the international system of states, they enjoy international legitimacy. They are recognized as sovereign equal members of the international community of states. This international recognition makes it possible for governments to engage in international relations, become members of international organizations, establish diplomatic ties to other states, negotiate international treaties, participate in activities of the international community of states and not least secure international assistance, most notably, for developing countries, in the form of official development assistance. International donor agencies and individual donor countries can play a key role in conferring or withholding external legitimacy.

External or international legitimacy is no doubt of political importance, but it “does not automatically translate into domestic, bottom-up legitimacy” (Bellina et al. 2009, 36). Rather, it “can be at odds with domestic sources of legitimacy” (Concepts and Dilemmas 2008, 17). States which enjoy international legitimacy can be extremely fragile (if they lack internal or domestic legitimacy), and states which lack international legitimacy can nevertheless be surprisingly

resilient and stable if the citizens of the state hold a firm belief in their legitimacy (that is they enjoy internal or domestic legitimacy). Thus international legitimacy “is probably the least important for stability and resilience” of a given state (Concepts and Dilemmas 2008, 25). It is only the indirect effects of external or international legitimacy that may have an impact on the internal or domestic legitimacy of a given state, e.g. substantial inflows of aid from donors might allow governments to pursue policies that support the legitimacy of state institutions, or international legitimacy can be used against the aspirations of secessionist groups. In this project we will not deal with issues of international legitimacy directly, but only with regard to its effects on empirical domestic legitimacy.

3. Max Weber’s three ideal types of legitimate authority

Given the centrality of legitimacy for understanding domination and authority, Weber set himself the task “to classify the types of domination according to the kind of claim to legitimacy typically made by each” (Weber 1978, 213).

In doing so, he came up with three ideal types of legitimate authority, namely legitimacy based on (1) Rational grounds – “resting on a belief in the ‘legality’ of patterns of normative rules and the right of those elevated to authority under such rules to issue commands (legal authority). (2) Traditional grounds – resting on an established belief in the sanctity of immemorial traditions and the legitimacy of the status of those exercising authority under them (traditional authority); or finally (3) Charismatic grounds – resting on devotion to the specific and exceptional sanctity, heroism or exemplary character of an individual person, and of the normative patterns or order revealed or ordained by him (charismatic authority)” (Weber 1968, 46; see also Weber 1978, 215).

Rational-legal authority is based on the obedience “to the legally established impersonal order” (Weber 1978, 215). Persons bestowed with authority can demand and expect obedience and exert power only “by virtue of the formal legality of their commands and only within the scope of authority of the office” (Weber 1978, 216). They themselves (elected presidents or parliamentarians, ministers, bureaucrats etc.) are subject to this impersonal order. Authority rests with the office and not with the person. The public sphere as the sphere of legitimate authority and the private sphere are clearly separated. Laws and administrative acts are submitted with the claim to rationality, given in written form and enacted, processed and implemented by a standing bureaucratic administrative staff whose members are appointed based on qualification and merit. “(S)ubmission under legal authority is based upon an *impersonal* bond to the generally defined and functional ‘duty of office’. The official duty (...) is fixed by *rationality established* norms, by enactments, decrees, and regulations, in such a manner that the legitimacy of the authority becomes the legality of the general rule (...)” (Weber 1991, 299).

This type of impersonal formalized bureaucratic domination is the cornerstone of the modern Western type - 'Weberian' – state. The belief in the rule of codified law and in the rightfulness of the activities of its agents (that is: the institutions of the state, the state bureaucracy) constitutes rational-legal authority.

Traditional authority is based on the obedience to traditional rules (customs) which are upheld by persons bestowed with (often hereditary) traditional status, e.g. kings, clan chiefs, village elders etc.. Relations between rulers and ruled are relations of personal loyalty. "Obedience is owed not to enacted rules but to the person who occupies a position of authority by tradition" (Weber 1978, 227). This obedience, however, "is owed to the master only by virtue of his traditional status. He is thus on his part strictly bound by tradition" (Weber 1978, p. 231). Norms of customary law which underpin traditional legitimacy are "not formal principles, as in the case of legal authority" (Weber 1978, 227), but informal unwritten guidelines which are relatively fluid and adaptable to the specifics of certain contexts and cases. There is no distinction between a public and a private sphere.

Gerontocracy, patriarchalism and patrimonialism are classical forms of traditional domination.⁹ Traditional domination either completely lacks a bureaucratic administrative staff (as is the case with gerontocracy and patriarchalism), or – in the case of patrimonialism - this staff is underdeveloped in comparison to the bureaucracy in the rational-legal context, its members are recruited by the ruler according to non-rational criteria (e.g. kinship obligations instead of knowledge and merit), and they are personally bound to the ruler and solely answerable to him, that is they are not agents of the impersonal order as in the rational-legal context, but agents of the ruler.

Finally, Weber uses the term charismatic authority with regard to "a certain quality of an individual personality by virtue of which he is considered extraordinary and treated as endowed with supernatural, superhuman, or at least specifically exceptional powers or qualities" (Weber 1978, 241, see also Weber 1991, 295-296). The charismatic leader can claim obedience of his followers on the grounds of his special extraordinary personal qualities (as a prophet, a war hero, a demagogue, a healer, a sage or sorcerer etc.), and his followers or disciples do obey and follow because of their belief in his extraordinary qualities. "If they recognize him, he is their master – so long as he knows how to maintain recognition through 'proving' himself. But he does not

⁹ "The term gerontocracy is applied to a situation where so far as rule over the group is organized at all it is in the hands of elders (...) who are the most familiar with the sacred traditions" (Weber 1978, p. 231). Patriarchalism is the situation where "a particular individual governs who is designated by a definite rule of inheritance" (ibid.). Gerontocracy and patriarchalism "are the most elementary types of traditional domination where the master has no personal administrative staff" (ibid.). By contrast, patrimonialism arises "whenever traditional domination develops an administration and a military force which are purely personal instruments of the master" (ibid.). "Patriarchalism is by far the most important type of domination the legitimacy of which rests upon tradition (Weber 1991, 296).

derive his 'right' from their will, in the manner of an election. Rather, the reverse holds: it is the *duty* of those to whom he addresses his mission to recognize him as their charismatically qualified leader" (Weber 1991, 247). The charismatic leader "gains and maintains authority solely by proving his strength in life. If he wants to be a prophet, he must perform miracles; if he wants to be a war lord, he must perform heroic deeds. Above all, however, his divine mission must 'prove' itself in that those who faithfully surrender to him must fare well. If they do not fare well, he is obviously not the master sent by the gods" (Weber 1991, 249). Intense emotionality characterizes charismatic authority which does not refer to customary rules or statutory law, but to (the belief in) miracles, magical powers, oracle, revelation and inspiration from some other-worldly 'irrational' sphere. The charismatic leader decides and rules by virtue of revelation, intuition and his own will, and he chooses trusted members from the midst of his followers to act as his agents.

Charismatic authority challenges both rational-legal and traditional legitimacy, it is of a 'revolutionary' quality, it makes "a sovereign break with all traditional or rational norms" (Weber 1991, 250). "Since it is 'extra-ordinary', charismatic authority is sharply opposed to rational, and particularly bureaucratic, authority, and to traditional authority (...) charismatic authority is specifically irrational in the sense of being foreign to all rules. Traditional authority is bound to the precedents handed down from the past and to this extent is also oriented to rules. Within the sphere of its claims, charismatic authority repudiates the past, and is in this sense a specifically revolutionary force" (Weber 1978, p. 244). It is "not an 'institutional' and permanent structure, but rather, where its 'pure' type is at work, it is the very opposite of the institutionally permanent" (Weber 1991, 248). Rational-legal and traditional authority are antagonistic in many ways, but they have in common a most important peculiarity: permanence (Weber 1991, 245). This is in stark contrast to charismatic authority which is inherently unstable.¹⁰ Charismatic leaders therefore often strive for transition of charismatic domination into a rational or traditional form in order to ensure sustainability, to organize succession and to maintain power, e.g. in the form of establishing a new church or a hereditary kingdom, based on hereditary charisma. The agents of the charismatic leader who must make a living out of their 'calling' are particularly interested in this routinization of charismatic authority (Weber 1978, 249). This routinization of charisma can take the form of either traditionalisation or legalization (Weber 1978, 250, 252).

Max Weber himself stressed the point that these are ideal types of legitimacy and that none of these three ideal types "is usually to be found in historical cases in 'pure' form" (Weber 1978, 216). He did not "claim that all empirical structures of domination must correspond to one of these 'pure' types. On the contrary, the great majority of empirical cases represent a combination or a state of transition among several such pure types" (Weber 1991, 299-300). In real life, various forms of 'contamination' of the pure types can be found. Rational-legal authority is often

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permeated to a certain extent by traditional or charismatic elements; for instance a faith healer or TV evangelist in a Western state who also gets elected as a politician maintains aspects of his charismatic legitimacy in his new political role. Nevertheless, however, he derives his right to rule from a rational-legal system in the first place (based on a constitution, electoral laws, elections etc.). He is bound by the rules of that system, and his legitimacy rests with the belief of citizens in the rightfulness of those rules. Hence he is able to exert authority due to the belief of citizens in the legally established impersonal order, and not due to the belief of his followers in his exceptional personal qualities, although this belief might have made his election success possible in the first place.

Our concept of hybrid legitimacy, which will be elaborated in more detail later (see 5.4.) transcends these instances of ‘contamination’ of the ‘pure’ ideal types of legitimate domination. We argue that the hybridization of legitimacy is a permanent and genuine feature of political order in post-colonial societies in the Global South, with originally different societal and cultural sources of legitimacy coming together and constituting hybrids, in particular traditional-rational hybrids. Max Weber remained caught in the modernist assertion that finally rational-legal legitimacy will trump the other types of legitimacy; he therefore could think of ‘combinations’ as only transitional phenomena. By contrast, we take Max Weber’s insights about “combinations of several concepts” (Weber 1991, 300) as starting point for conceptualizing hybridization of legitimacy as the dominant and permanent form of political authority in our case study countries.

Before we go on to sketch aspects of legitimate authority in the Pacific region in the light of this approach, we must briefly explain what we mean when we talk about hybrid political orders.

4. The context: hybrid political orders

Our previous research in the Pacific led us to question some of the essentials of the current mainstream discourse on so-called fragile states and situations as well as its corollary, the promotion of conventional state-building along the lines of the western OECD model state. We have commenced to develop the concept of hybrid political orders as an alternative analytical instrument to grasp the realities of statehood and governance in fragile regions of the Global South (Boege et. al. 2008; Boege et. al. 2009; Boege, Brown and Clements 2009). Our starting point is the observation that the western-style Weberian state, towards which both the fragile states discourse and state-building policy are oriented, hardly exists in reality outside the OECD. Many states in the ‘rest’ of the world are political entities that do not closely resemble that model state. In fact, “a compelling case can be made that it is the modern Weberian state that is the exception” (Menkhaus no date, 87). Our research found that in the Pacific Island countries state institutions are not the only institutions that fulfill functions that, in the model Western state, are

clearly state obligations. ‘The state’ often has little relevance to many people in rural areas. In countries like Solomon Islands, Vanuatu or Papua New Guinea local non-state customary institutions which have their roots in the pre-colonial past of those places, still play an important role in the everyday life of the majority of people and communities.

Despite the efforts of colonial administrations and newly independent post-colonial states to impose state-based modes of governance on communities, local customary institutions have shown considerable resilience and adaptive capacity.¹¹ Customary law and indigenous knowledge as well as locally rooted social entities—extended families, clans, tribes, religious brotherhoods, village communities—and traditional authorities such as village elders, clan chiefs, healers, big men and religious leaders, determine the everyday social reality of large parts of the population even today, particularly in rural and remote peripheral areas. Moreover, state institutions are to a certain extent ‘infiltrated’ and overwhelmed by these ‘informal’ indigenous societal institutions and social forces which operate according to their own logics and rules within the state structures. This leads to the departure of state institutions from the Weberian ideal type in post-colonial societies. They are captured by social forces that make use of them in the interest of local, mostly kinship-based, entities (wantokism as it is called in Melanesia; *Wantok* is translated as one talk, for (members of) one language group). Furthermore, the state introduces sites of centralised power that then become objects of competition for these entities.

On the other hand, the intrusion of state agencies impacts on non-state local orders as well. Local customary orders are subjected to deconstruction and re-formation as they engage with and are incorporated into state structures and processes. Customary institutions do not remain unchanged; they respond to and are influenced by the mechanisms of the state apparatus. They adopt an ambiguous position with regard to the state, appropriating state functions and ‘state talk’, but at the same time pursuing their own agenda under the guise of the state surface.

This complex nature of governance is further complicated by the emergence and growing importance of institutions, movements and formations that have their origins in the effects and reactions to globalisation, including warlords and their militias in outlying regions, gang leaders in townships and squatter settlements, vigilante-type organisations, ethnically based protection rackets, millenarian religious movements, transnational networks of extended family relations or

¹¹ Contemporary ‘customary institutions’ are of course *not* the institutions of the pre-contact and pre-colonial past. Societies everywhere in the world have come into contact with outside influences; they have not been left unchanged by the powers of—originally European—capitalist expansion, colonialism, evangelism, imperialism and globalisation. This holds true even for the most remote parts of the Global South. In practice therefore there are no clear-cut boundaries between the realm of the exogenous ‘modern’ and the endogenous ‘customary’; instead processes of assimilation, articulation, transformation and/or adoption are at the interface of the global/exogenous and the local/indigenous (Rumsey 2006; White 2006). Nevertheless, the use of the terms ‘custom’, ‘customary institutions’ etc. is helpful because they expose specific local indigenous characteristics that distinguish them from introduced institutions that belong to the realm of the state and civil society.

organised crime or new forms of tribalism. Some of these new formations manage to seize power in certain regions of the territory of a given state (be it a remote mountainous peripheral location or a squatter settlement in the capital city). They have the capacity to exert violence against outsiders and the capacity to control violence within their respective strongholds. Often combinations of forces from the customary sphere—like chiefs, traditional kings, religious authorities and their constituencies—and forces from the sphere of the new formations—like warlords and their militias, ethnic or millenarian movements – can be found. Clan leaders might become warlords (or warlords might strive for an authoritative position in the customary context) or tribal warriors might become private militias. Again, as in the case of the relationship of introduced state institutions and indigenous customary societal institutions, a situation of mutual permeation and blending emerges.

These processes are processes of hybridization of governance, they constitute what we call hybrid political orders. In hybrid political orders, diverse and competing authority structures, sets of rules, logics of order and claims to power co-exist, overlap, interact and intertwine, combining elements of introduced western models of governance and elements stemming from local indigenous traditions of governance and politics, with further influences exerted by the forces of globalisation and associated societal fragmentation (in various forms: ethnic, tribal, religious...). Accordingly, in hybrid political orders different types of legitimacy can be found that co-exist, compete, interact and blend, and hybrid forms of legitimacy prevail.

We use the terms ‘hybridisation’ and ‘hybrid’ to characterise these processes and political orders because they focus on the combination of elements that stem from genuinely different societal spheres which follow different logics, and because they affirm that these spheres do not exist in isolation from each other, but permeate each other and, consequently, give rise to specific political orders that are characterised by the closely interwoven texture of their separate sources of origin.

A key research question of our project is: what are the sources and types of legitimacy in post-conflict hybrid political orders?

5. Legitimate authority in fragile situations: complex and in flux

The following is a preliminary exploration of legitimacy and its hybridization in contemporary post-conflict societies, mainly drawing on examples from the South Pacific. It is meant to lay the ground for and give orientation to more in-depth research that will be conducted in the course of the research project, with East Timor, Bougainville and Somaliland as case studies. For our research purposes we use Max Weber’s three ideal types of legitimate authority as starting points.

5.1. Rational-legal legitimacy: visible but superficial

At first sight, rational-legal legitimacy appears to reign in the South Pacific. Nominally the Pacific countries are constitutional liberal democracies, based on the rule of law and clear, formalised procedures. Governments and administrations lay claim to legitimacy on this basis. This is also the basis for the recognition of these states as legitimate members of the international system of states by other members of that system.

Although states and governments in the Pacific region are legitimate in a normative sense and enjoy international legitimacy,¹² a closer look at the realities of empirical legitimacy on the ground reveals a more complex picture. Liberal democratic systems, although well established on paper, do not provide for much internal empirical legitimacy as such. For many people these systems are alien, difficult to understand and often perceived as being incompatible with the local understandings of legitimacy authority.

The competitive dimension of liberal democratic elections as well as the notion of a formal political opposition, for instance, is alien to custom in Pacific communities, and persons that come into positions of power on the basis of such competition are not necessarily seen as legitimate authorities. The win-lose logic of elections is alien to the consensus-oriented mentality of Pacific islanders who strive, whenever possible, for outcomes that allow everybody to keep his or her face and to maintain good relationships (that is not to ‘lose’ and be forced into ‘opposition’). Elections, their conduct and results can be perfectly legal, but at the same time they – as well as the elected – can lack legitimacy. With regard to East Timor, for example, Jose Trindade points to the fact that the legitimacy of today’s national leaders in East Timor “comes from the elections, which for most Timorese is still an alien idea. This created confusion among many people because for now the former legitimate leaders are out of power and replaced by national leaders who do not (yet) have the appropriate legitimacy in the spiritual sense” (Trindade 2007, 22). Drawing also on the East Timor experience, Tanja Hohe is questioning the mainstream international approach: “In international eyes, elections give political leaders legitimacy to assume a mandate for governing the country and exerting power. To create a legitimate government for international purposes, elections are often conducted as single events and followed by the withdrawal of the international community, leaving behind an

¹² The only exception at the time of writing is Fiji. A military coup in December 2006 overthrew the elected government, and in April 2009 the constitution was abolished. Hence there is no basis for normative rational-legal legitimacy. Accordingly, the state of Fiji does not enjoy international legitimacy. The United Nations and other international organizations as well as neighbouring countries, Australia and New Zealand in particular, have declared the current regime in Fiji illegitimate. The internal empirical legitimacy of the current military regime is contested. The regime, of course, claims that it enjoys such legitimacy. It can be assumed, however, that large parts of the population do not believe in the regime’s right to rule.

internationally-recognized new or old regime without local legitimacy” (Hohe 2002, 83).¹³ She has shown how local elections for so-called ‘village development councils’ according to Western democratic procedures which were introduced to communities in East Timor in an early post-conflict phase by external actors (World Bank and United Nations) went awfully wrong because they were not in line with local traditional processes of selection of legitimate leaders and of decision-making; those elections thus had legal, but illegitimate outcomes and therefore did not foster democracy, but – much to the contrary – discredited ‘democracy’ as an alien imposed concept (Hohe 2004).

Elections are an important issue with regard to external legitimacy, that is legitimacy in the eyes of the international community of states and other external actors, but less salient with regard to internal legitimacy.¹⁴ There is a tendency of (Western) outsiders to over-accentuate the potential of democratic procedures to establish legitimacy. The assumption that elections are central for establishing empirical domestic process legitimacy, conventional wisdom in Western political science, is not necessarily verified by Pacific experiences (Boege et al. 2008; Boege 2008; White 2006). Rather, they support Papagianni’s sceptical position with regard to the legitimizing potential of elections (Papagianni 2008, 60). This also holds true for constitution-making processes. Although inclusive and participatory constitution-making can build rational-legal legitimacy in fragile post-conflict situations, its ‘foundational’ quality (that is: generating shared norms, values and goals in divided societies) is often over-estimated (as Inbal and Lerner (2007) demonstrate). Participation as such does not necessarily contribute to legitimacy. “In order to bolster state legitimacy, the process of public participation itself needs to be perceived by the public as legitimate” (Papagianni 2008, 63).

Office holders in government or administration do not enjoy authority primarily as elected representatives or appointed servants of the citizenry. Rather, their legitimacy (also) stems from sources beyond the rational-legal realm of the state and its procedures. For example, they came to positions of power because they were selected to stand for elections in the formal liberal democratic process due to their status in kin groups like extended families, clans or tribes. Accordingly, their points of reference are not ‘citizen voters in constituencies’, but members of their kin group. They enjoy legitimacy not because of the belief of citizens in the electoral

¹³ This local legitimacy in the case of East Timor stems from appointment through traditional authorities who have a spiritual relationship to the ancestors,. The traditional authorities “know the origins of all families and which family is ‘royal’ and is therefore entitled to be a political leader. Only through this status is the new political leader ancestrally legitimized and capable of successful rule with the full acknowledgement of the population” (Trindade 2008, 8). Trindade therefore recommends that elected leaders should also be bestowed with traditional legitimacy by performing traditional rituals and using traditional sacred objects (Trindade 2007, 48).; see also Brown 2009.

¹⁴ Ghani and Lockhart observe “that establishing legitimacy requires certification by international actors. Given the emphasis placed on elections as a central mechanism of legitimacy, the premise has been not only on statebuilding but on the building of democratic states” (Ghani and Lockhart 2007, 297).

process as a means to endow authority, but because of the belief of members of communities in their customary right to lead; they are not so much legitimate authorities because they have been elected according to liberal democratic processes, but because they can refer to other sources of legitimacy, and these are usually rooted in custom and culture. For instance, in East Timor today community leaders are elected by the communities in formal local elections, and these elections are run by the state, and the elected persons receive state funds, but more often than not persons are ‘elected’ who enjoy legitimacy as members of the traditional ruling families, with traditional leadership being hereditary, handed down through bloodline from fathers to sons. Thus the form of the process is democratic (elections), but its content remains traditional, and only because of this the result of the process is legitimate (Hohe 2002; Brown 2009). Moreover, elected leaders themselves “do not necessarily understand, follow, adopt or even necessarily believe in the legitimacy of the formal institutions associated with the so-called OECD institutions which are being advocated and pursued by the international community” (Hogg and Leftwich 2008, 1).

Similar to elections, other features of a rational-legal political system are also rather weak sources of legitimacy. The ‘rule of law’ is a case in point. Legality, the judicial system, the courts and the law enforcement agencies are at the core of rational-legal domination; the belief in ‘the law’ is the most important source of legitimacy in constitutional states. Not so in the hybrid political orders of the Pacific. Here legal pluralism reigns; the statutory law of the state co-exists with a host of customary laws which in the framework of one and the same state might differ considerably from one community to the next. The state is not – as in the OECD ‘Weberian’ model state – a sphere of a unitary law which equally applies to the whole territory of the state and to all the citizens of the state. Rather, several legal systems co-exist, overlap, intertwine and at times compete with and contradict each other. The statutory law of the state constitutes only one source of legality and legitimacy alongside a variety of unwritten customary laws and, at times, religious legal systems (like the Sharia). People might not (only) see the state law as legitimate, but also (and even to a larger degree) customary law. Compared to locally rooted customary law(s), the state law is often seen as foreign law, and it does not generate internal empirical legitimacy for the institutions of the state and for the state-based formal justice system. The legitimacy of the latter can be challenged and undermined by customary law and local non-state justice mechanisms or it can be imbued with elements of customary law (as, similarly, customary law can also be imbued with elements of codified state law). As with elections, ‘the law’ does not necessarily bestow state authorities with domestic empirical legitimacy (but with normative legitimacy only). The rule of (statutory) law and a functioning justice system in the state context is also over-estimated by external Western observers as a means to establish legitimacy.

The same holds true for accountability and transparency. Accountability of those in power and transparency of their ways to govern are crucial dimensions of rational-legal legitimacy in the modern state context. Accountability includes three fundamental elements: “(1) standards that

those who are held accountable are expected to meet; (2) information available to accountability-holders, who can then apply the standards in question to the performance of those who are held to account; and (3) the ability of these accountability-holders to impose sanctions: to attach costs to the failure to meet the standards” (Keohane 2007, 8; also Buchanan and Keohane 2006, 426). The need for information means that transparency is essential for accountability. In a Western ‘Weberian’ state context people expect accountability and transparency of this type, and only if these expectations are met, state institutions enjoy legitimacy.¹⁵ Again, not necessarily so in the hybrid political orders of the Pacific. The demand for formal accountability and transparency can be rather weak. From the customary local context people are used to other forms of accountability (particularly in the form of reciprocity) and other ways of holding people in power to account, for example by interference of the non-human world – god(s), spirits, magic. Furthermore, people are used to limitations of transparency in the local cultural context - not everything is disclosed in public, specific information is only accessible for those eligible to get this information. State actors who follow the Western principles of accountability and transparency therefore do not necessarily foster their empirical legitimacy as this might lead to behavior which is not seen as legitimate in the local cultural context (for instance disclosing information to non-eligible outsiders).

To summarize: rational-legal processes in the liberal democratic state context are a questionable source of legitimacy in hybrid political orders in the Pacific.

Rational-legal output or performance legitimacy is similarly limited. As capacities and effectiveness of state institutions in Pacific island countries are deficient, the services that they are able to deliver are deficient too. Deficiencies are particularly discernible with regard to the most basic public goods such as order and security, education and health. State authorities that do not deliver in these fields lack legitimacy.¹⁶ As effectiveness of state institutions is lacking, performance or output fails as a means to gain and maintain legitimacy.

Lack of legitimacy, on the other hand, also impacts negatively on capacities; “a state’s capacity relates to its degree of legitimacy” (Seabrooke 2002, 29). If capacities and effectiveness on the one hand and legitimacy on the other are mutually reinforcing, with effectiveness enhancing legitimacy and legitimacy supporting effectiveness, vicious circles evolve if either effectiveness or legitimacy are lacking. “In fragile situations a lack of legitimacy undermines the creation of

¹⁵ On the importance of transparency for rational-legal legitimacy see Buchanan and Keohane 2006, 427-429.

¹⁶ The intensity of expectations plays a role of course. “If the state does not, or cannot, reconcile societal expectations, state legitimacy will erode” (Concepts and Dilemmas 2008, 74). If, however, people do not expect much from state institutions anyway, the legitimacy of these institutions is not negatively affected by non-performance. But where there are no expectations there is most probably no legitimacy either.

state capacity: and a lack of capacity in turn undermines legitimacy” (OECD 2010, 8; see also *ibid.* 15, 20).

This vicious circle becomes particularly clear when looking at taxation. One reason for the lack of state capacity is the lack of state income through taxes. The unwillingness of large parts of the population to pay taxes is a strong indicator of the weakness of legitimacy of states in the Pacific. Hence legitimacy weaknesses are reinforced by cyclical patterns: a narrow tax base leads to lack of capacities leads to lack of legitimacy leads to unwillingness to pay taxes - and so on. Moreover, when there is no visible relationship between taxation and service delivery, the legitimacy of the state suffers.

Furthermore, often non-state actors such as churches, NGOs, external donors or community networks are more reliable and more visible as service providers than state institutions, and this has negative impacts on state legitimacy as “legitimacy accrues to the service provider rather than the state” (Concepts and Dilemmas 2008, 40).

Finally, if and when services are actually provided by state institutions, this is often due to the personal relationships between representatives of the state (e.g. members of parliament or the government, or high-ranking public servants) and their social reference group (family, clan, tribe...). People come to enjoy state services not as citizens and taxpayers, but as members of a kin-based clientelistic network, and the power-holder who oversees the delivery of services does so not in his role as a representative of the state, but as a patron with access to state resources. So what is strengthened by this manner of service delivery is not the rational-legal legitimacy of state institutions, but the legitimacy of the individual person who makes service delivery possible. It is not the impersonal abstract order of the state, but the personal relationships that are perceived as responsible for the output (e.g. a school or a health post); legitimacy is bestowed to the person, not to the office held by the person.

All these factors impede rational-legal output or performance legitimacy of state authorities in hybrid political orders in the Pacific.

5.2. Traditional legitimacy: deeply rooted but challenged

In hybrid political orders like in the Pacific island countries, the relative weakness of the rational-legal legitimacy of state authorities is matched by the relative strength of the traditional legitimacy of local non-state customary authorities. Here customary law and customary forms of governance are critical for the everyday life of the people.

People are tied into a network of social relations as community members and a web of mutual obligations, and these obligations are understood as being far more meaningful and powerful

than obligations as a 'citizen'. Legitimacy rests with the leaders of the community in the first place, not with the state authorities. And this legitimacy is of the traditional type. The belief in the right to govern and the obligation to obey is "a matter of personal loyalty within the area of accustomed obligations" (Weber 1968, 46), grounded in the belief in the sanctity of customary rules. "In the case of traditional authority, obedience is owed to the *person* of the chief who occupies the traditionally sanctioned position of authority and who is (within its sphere) bound by tradition" (Weber 1968, 46).

In pre-colonial times, positions of authority were often hereditary, legitimised by a belief system in which supernatural powers, the spirits of the ancestors and other spirit mediums had the power to legitimise or de-legitimise those in positions of authority.

Even hereditary positions, however, could not be taken for granted. They were embedded in relations of mutual obligations of rulers and subjects, and only if and as long as the rulers fulfilled their obligations and responsibilities towards the community and its members they enjoyed legitimacy. If they failed to use their authority for the good of their communities, there were ways of de-legitimising them, particularly by withdrawing the approval of the supernatural powers, the gods and spirits. Here a form of accountability comes into play that is fundamentally different from accountability in a rational-legal context, namely the "other-worldly dimension of accountability" (Kelsall 2008, 21).

Traditional leadership in the Melanesian regions of the Pacific was and is often based on a mix of inherited rights and personal abilities and achievements, with no fixed ownership of e.g. chiefly title. Hence there can be – and often is – a lot of uncertainty and disagreement about who is a 'real' leader or chief, meaning that legitimacy is contested. This is even more so the case with regard to the status of *bigman* which continues to be widespread in Melanesia. The status of a *bigman* as a power-holder in a community is achieved, not ascribed through heredity. It can be challenged at any time and must be reinforced through continuous efforts in the economic, political and cultural spheres. A *bigman* has to establish and hold together a constituency of followers through outstanding capabilities and achievements, for example in oratory, peacebuilding, warfare, arranging communal work, feasts, rituals and marriages, and sometimes also in magic, and special relationships with the spirit world. He has to be knowledgeable in the customs, genealogy and history of the community. Above all he must be capable of distributing gifts to his followers on an on-going basis, so as to forge and reaffirm links of obligation from their side. As he has no other means at hand to secure his status – in particular, no means of enforcement and coercion – his legitimacy rests on these capacities (*reference for bigman!*).

From what has been said so far it is clear that the traditional legitimacy of leaders in the customary community context comprises both output legitimacy and process legitimacy. In the output or performance dimension, legitimacy primarily rests on the allocation and redistribution of wealth and the maintenance of the wellbeing of the community, provision of security for the

community and its members, upholding order and dealing with conflicts. Redistribution is central. It forges relationships between leaders and members of the community and establishes the community members' belief in the leaders' right to govern. If leaders neglect their redistributive obligations, they lose legitimacy and their leadership will be challenged (by aspiring alternative leaders, or by intervention of other-worldly powers like the spirits of the ancestors, or by charismatic personalities).

In the process dimension, legitimacy rests on well established sacrosanct rules (like heredity of chiefly or other status) that are perceived as having been installed by supernatural powers and having been valid since time immemorial. But the process dimension also has more secular, pragmatic and changeable aspects. Permanent communication and consultation with the (eligible) members of the community and with the supernatural powers is necessary to maintain legitimacy. In order to maintain legitimacy, leaders have to successfully organise inclusive consultation and to achieve consensus. The circle of community members who are included in such consultation, however, can be rather confined. Here Weber's 'gerontocratic rule' comes into play. Often old men are eligible to be included in consultation and communication, whereas women and the young are excluded. This, however, does not put traditional legitimacy into question, because this exclusion corresponds with customary sacrosanct rules, dignified by the spiritual powers and by continuous practice over long periods of time. Although chiefs or elders or *bigmen* were not elected and not subject to formal mechanisms of accountability, they have to make sure that their decision-making processes are inclusive and consultative, geared towards achieving a high degree of consensus within the (eligible members of the) community.

Thus the stakes are high in Pacific communities with regard to legitimate authority. It is understandable then that rational-legal legitimacy in the state context in some ways actually fails to measure up in comparison to traditional legitimacy, for example in terms of redistribution, inclusiveness and consultation. There is a widespread feeling among people in the Pacific countries that leaders in parliament or government, once they have been elected and are in office, forget to look after their people on the ground, and that they are not accessible for communication any longer. And this is compared to the traditional leaders who live with their people in the village and have to listen to them constantly.

Having said that, it also has to be acknowledged that traditional authority today is faced with serious challenges. The outside 'modern' world has intruded into even the most remote regions of the Pacific. 'Purely traditional' circumstances (that is pre-colonial and pre-contact) cannot be found anywhere. As has been said before, traditional societies have come under the influence of external forces such as colonialism, evangelism, imperialism and globalisation. This of course impacts on traditional authority; 'tradition' is in flux, and it is an issue of constant debate what the adequate 'traditional' process and performance criteria actually are that constitute traditional legitimacy. 'Tradition' nevertheless is still perceived as the linchpin of the legitimacy of chiefs, elders, big men or other power-holders, albeit challenged at times. People are aware that there

are other non-traditional types of authority, and they have opportunities to compare and (to a certain extent) to choose. The model of the liberal democratic state provides an alternative in the form of rational-legal legitimacy, and although people do not necessarily embrace this alternative enthusiastically, they are aware that it does exist.

The realm of what has come to be called civil society also offers new models of leadership and understandings of legitimacy. The world of (mostly donor-funded) NGOs and community-based organizations, of business associations and other private forms of associations (from sports clubs to women's councils), not to forget the churches, generates experiences, knowledge and ideas that can lead to the questioning of traditional authority. Members of communities who in the customary context are disadvantaged or marginalized can take opportunities to challenge traditional authority by referring to those new institutions and ideas. Women and youth in particular, who often are excluded from gerontocratic or patriarchal forms of traditional authority, can turn to formal courts, the media or other introduced institutions to challenge the rule of chiefs and village elders and thus cast doubt on the legitimacy of traditional authority. Powerful external actors, such as donor agencies who have considerable funds at their disposal, can also challenge traditional authority through criticism of customary law and by not showing respect for traditional legitimacy because they perceive it as being incompatible with principles of rational-legal governance (e.g. rule of law). Add to this massive external commercial interests and economic actors (e.g. in the field of mining, logging or fisheries) whose presence is seen as crucial for economic development, but who are willing to accept rational-legal legitimacy only and who have great difficulties in engaging with traditional leaders, and one gets an idea of the immense pressure bearing down on traditional legitimacy. Under such pressures, traditional legitimacy is changing constantly. Moreover, pressure does not come from the rational-legal side alone, but also from the charismatic.

5.3. Charismatic legitimacy: erratic but resilient

“In the case of charismatic authority, it is the charismatically qualified leader as such who is obeyed by virtue of personal trust in him and his revelation, his heroism or his exemplary qualities” (Weber 1968, 46-47). Weber particularly makes mention of “military and prophetic charisma” (Weber 1978, 252). In fact, both military and prophetic charisma play an important role in hybrid political orders in the Pacific today.¹⁷ Prophet-like personalities can be found in

¹⁷ Another type of charismatic leader that is not commonly found in the Pacific, is the leader of national struggle for liberation during the phase of decolonisation. Father Walter Lini in Vanuatu or Jean-Marie Tjibaou in New Caledonia/Kanaky might have been exceptions. In Africa, Asia and Latin America charismatic leaders were much more important (e.g. Nkrumah, Kenyatta or Sekou Toure in Africa, Ho Chi Minh in Asia or Fidel Castro in Latin America). For the significance of “charisma acquired through the nationalist phase of the decolonisation process” in Africa see Englebert (2000, 98).

the churches as well as at the head of so-called cargo cults or other social-spiritual movements that are rooted in customary social structures and at the same time try to make sense of modern external influences. Furthermore, in the context of violent conflicts a warlord-like type of military charismatic leadership has emerged.

The military charismatic leaders enjoy legitimacy because of their skills and successes in waging warfare and securing benefits for their followers by violent means, both in material terms (loot, bounty, extortion money etc.) and in terms of status, prestige and honour. These charismatic leaders are often members of the younger generation, with no or only modest prior status in the customary or the state sphere. Their legitimacy is rather fragile, confined to their group of followers and contested by other competing warlords as well as by traditional and legal-rational authorities. In the process dimension, their legitimacy is linked to their quality as military leaders; they gain leadership and committed foot-soldiers by means of military success. Military success is also the basis of performance legitimacy as it opens avenues for accumulating material and immaterial goods (loot or esteem as warriors) and distributing them among the followers.

In the violent conflict in the Solomon Islands (1998-2003) charismatic military leaders also played a rather prominent role. The main parties to the conflict were militias – like the Isatabu Freedom Movement (IFM), the Malaita Eagle Force (MEF), the Guadalcanal Liberation Front (GLF) or the Marau Eagle Force. They were formed outside the state sphere (although the MEF collaborated with the security forces of the government) as well as outside the sphere of traditional authority (although they received some endorsement from some traditional leaders). Their leaders therefore had to draw on charismatic sources of legitimacy. In fact, some charismatic leaders emerged (like Harold Keke, the leader of the GLF), but their claims to legitimacy remained highly contested, and their domination was rather short-lived. After the intervention of RAMSI (the Regional Assistance Mission to Solomon Islands) in 2003 most of these leaders were brought to justice (as in the case of Harold Keke) or just disappeared into their communities of origin.

In the so-called tribal wars in the highlands of Papua New Guinea charismatic military leaders also play a role; the leaders of so-called rascal gangs in certain parts of PNG, not least in urban environments, can enjoy some charismatic authority, but the borders to merely criminal behavior are fluid, and the charismatic ‘legitimacy’ of gang leaders is highly questionable of course. More localized low-intensity violent conflicts that every now and then flare up in other Pacific countries can also lead to the emergence of local charismatic military leaders, but their area of influence is usually rather limited and they do not last long as charismatic leaders.

Things are different, however, in the Bougainville case. The protracted violent conflict on the island of Bougainville in Papua New Guinea (1989 to 1998) produced some warlords who enjoyed and still enjoy charismatic legitimacy. Even today, after more than ten years of peacebuilding, some areas on the island are under their control. They still have substantial groups

of followers who believe in their legitimacy. Both the rational-legal authorities of the emerging Bougainville state and the traditional authorities of the communities have to reckon with these charismatic warlords and have to try to find a *modus vivendi* with them, albeit with the final aim to strip them of their legitimacy and either reintegrate them into the socio-political order or to isolate them to such an extent that they can be dealt with according to the rule of law (or, for that matter, according to customary law). This project will address charismatic military leadership on Bougainville in more detail.

In some instances there is more or less open conflict between young charismatic warrior-type leaders and traditional authorities from the older generation; in some instances arrangements between young and old leaders are struck which are supposed to enhance the legitimacy of both, e.g. the traditional authorities can utilize the warrior leaders for the protection of their communities, or the warlords can utilize traditional authorities for legitimizing their own activities. In some instances state institutions fight warlords and deny their legitimacy upfront; on other occasions, however, state institutions utilize warlords against other warlords. Often charismatic warlords are co-opted into the rational-legal system of governance, particularly in post-conflict situations. This has been the case in Bougainville (as well as in Afghanistan and in many African post-conflict situations). They are often provided with some position in the state apparatus and thus change from charismatic leaders into rational-legal authorities (without losing the charismatic aspects of legitimacy altogether, and often without embracing the rational-legal aspects wholeheartedly). On other occasions, charismatic leaders “form uneasy alliances with traditional authorities. The combination of traditional tribal sources of legitimacy (e.g. the Pashtunwali, the customary law of the Pashtuns) and religious Islamic sources of legitimacy in Afghanistan, Pakistan and other parts of Central Asia is a case in point” (OECD 2010, 38).

Alternatively they can lose their legitimacy entirely, turning into leaders of criminal gangs, or being taken to justice because of their deeds during the violent conflict (as has been the rule in the Solomon Islands), or retreating to their communities of origin and becoming ordinary community members again, sometimes as wealthy and respected business men.

In any case, warlord-type charismatic leadership in Pacific conflict and post-conflict situations has so far been relatively short-lived in most cases, with the exceptions of the post-conflict situation in Bougainville where some warlords have managed to maintain their leadership roles for more than a decade already.

By contrast, the other type of charismatic leadership, the prophetic one, has shown considerable endurance in the Pacific. Charismatic leaders of churches and of indigenous spiritual movements (often labeled ‘cargo cults’) play a much more important role in the Pacific than the leaders with military charisma. It poses a challenge to traditional legitimacy, and the relationship with rational-legal authority is uneasy at best.

Although the individual prophetic charismatic leader might often only manage to sustain legitimacy for short periods of time, this type of charismatic leadership has been around in the Pacific for a long time. Individual leaders are in danger of losing their followers rather easily when they fail in delivering on their promises, that is when heavenly intervention is not visible or cargo does not appear. In the eyes of the followers this means that the leader was unable to prove himself, and as a consequence he loses legitimacy, and his fellowship disperses. As the leader failed in the dimension of performance legitimacy (no miracles or cargo), process legitimacy (divine selection) is automatically in doubt. “If proof and success elude the leader for long, if he appears deserted by his god or his magical or heroic powers, above all, if his leadership fails to benefit his followers, it is likely that his charismatic authority will disappear” (Weber 1978, p. 242). The failure of individual prophetic leaders, however, does not lead to the vanishing of this type of leadership altogether. The long and ongoing history of ever new waves of so-called cargo cults and the more recent advance of Pentecostal churches in the Pacific are proof to the contrary.

The island of Tanna in Vanuatu is famous for its cargo cult tradition, most notably the Jon Frum movement which started in the 1930s and is still very much alive today. The movement was led by several successive charismatic prophets. Over the last years, however, a new charismatic leader called Prophet Fred (Fred Nasse) gained a substantial following on Tanna. He challenged the Jon Frum people by criticizing their ‘heathen’ attitudes, and he presented himself as a prophet who had been sent by god to unite the people of Tanna under the banner of Christianity. God told him that He would deliver messages to him which he was to share with the people of Tanna. Prophet Fred perfectly fits Weber’s dictum: “The holder of charisma seizes the task that is adequate for him and demands obedience and a following by virtue of his mission” (Weber 1991, 246). He impressed people by foreseeing (and preventing, as he claimed) a number of natural catastrophes and other events (e.g. the 9/11 attacks in New York). He persuaded people to leave their villages and give up their subsistence economy in view of the imminent arrival of large amounts of cargo. As this did not eventuate, his followers were forced to take from the gardens of Jon Frum people, which of course caused conflicts. In 2004 these conflicts escalated violently, and the government had to send in para-military forces to quell the violence. Customary reconciliation ceremonies finally led to a resolution of the conflict. In the following years, Prophet Fred lost legitimacy and followers. The Jon Frum movement on the other hand has transformed itself and adapted to the structures of the rational-legal state: it figures as a political party and takes part in elections; its leaders are members of parliament (and at times even of government); it even has its own website on the internet, and 15 February is ‘Jon Frum Day’ in Vanuatu. Charismatic authority has been transformed into rational authority (at least to a certain extent). The Jon Frum movement is thus a good example for the routinization of charismatic authority in the form of legalisation.¹⁸

¹⁸ On the John Frum movement see Bonnemaïson 1994, Brunton 1981 and Lindstrom 1990 and 1993.

Another example of a cargo-cult type of a charismatic leader is Noah Musingku on Bougainville. Musingku established money pyramid schemes in Solomon Islands and Papua New Guinea and swindled thousands of people of enormous amounts of money.¹⁹ He is under criminal charges for fraud in these countries; state authorities present him as a dangerous swindler. He managed to flee to his home in Bougainville where he again convinced many people to give him their money and where he established a territorial base in the southern part of the island, protected by a group of hard-core well armed militants left over from the prior violent conflict on the island and protected by the trust and support of a large group of followers. The authorities of the state cannot get hold of him because any such attempt would risk the re-emergence of violent conflict. Musingku has promised several times already that large amounts of money would be distributed to the people who invested in his U-Vistract scheme, announcing precise dates when airplanes loaded with the money (at times accompanied by Queen Elisabeth II or then President George Bush) would land at certain airstrips in the south of Bougainville. These dates so far all have passed without the delivery of the money. This negatively affected Musingku's performance legitimacy, and he lost followers. But so far his legitimacy has not collapsed entirely. He also tried to transform charismatic legitimacy by establishing a 'kingdom' in his area of influence (The Kingdom of Pabalaba), declaring himself 'king' and establishing a 'royal government' – which is another example of the routinization of inherently unstable charismatic legitimacy. Musingku's charismatic leadership will be analyzed in more detail in the course of this project.²⁰

Movements like Prophet Fred's or Noah Musingku's as well as Pentecostal churches and other fundamentalist religious groups can challenge the legitimacy not only of traditional authorities, but also of state institutions, at least in the local context. Accommodating charismatic leadership and rational-legal authority can be much more difficult than accommodating traditional and rational authority, given the fundamentalist demand for domination made by charismatic authority, with its rigorous claim to exclusivity which cannot accept any other sources and types of legitimacy. The rise of fundamentalist religious movements in several regions of the Global South (e.g. fundamentalist churches not only in the Pacific, but also in Africa and Latin America, as well as extremist Islamist movements in Central Asia and the Middle East) is proof of the viability of the prophetic type of charismatic authority.

¹⁹ More details on Musingku and his 'U-Vistract Financial Systems' in Bainton and Cox 2009, 2-8, and in Regan 2010, 117-120.

²⁰ For other examples of the significance of charismatic leadership and authority in the context of the Bougainville conflict see Hermkens 2007.

5.4. Hybrid legitimacy – prevalent but fluid

In the Pacific (and elsewhere in the Global South) the relatively new notion of the rational legitimacy of state institutions has not displaced traditional (and charismatic) legitimacy of local institutions which have much older and deeper cultural and socio-political roots and which at the same time are capable to adapt to new circumstances. In fact, the importance of traditional legitimacy is highlighted exactly because of the intrusion of another type of legitimacy and the unavoidable interaction with it. People have the opportunity to compare different types of legitimate authority, or even more: they are forced to compare them, and rational-legal authority does not necessarily win in such a comparison. Thus there can be a considerable gap between the empirical legitimacy on the one hand and normative legitimacy as upheld by (external) actors devoted to Weberian notions of rational legitimacy on the other.

In Pacific island countries today approximations to the rational-legal, traditional and charismatic types of legitimacy sit side by side. The different types of legitimacy do not only co-exist, but they exert influence on each other and interact. Different kinds of combinations of different types of legitimacy can be found. What is highly improbable for the foreseeable future is that one type of legitimacy will supersede and substitute for the others. Proponents of rational-legal legitimacy might wish that this type of legitimacy will dislodge the other types, and they might even be convinced that this is going to happen in the course of ‘development’ (based on their belief in some sort of modernization theory), but history so far has shown otherwise. Traditional and charismatic forms of legitimacy are very much alive and influential, they are here to stay, and flowing from this resilience hybridization of legitimacy is the dominant feature of political authority. Hybrid legitimacy stems from sources of rational-legal and traditional (and at times also charismatic) legitimacy and their combination. Hybridisation of legitimacy means that the people’s belief in the power-holders’ right to rule and the power-holders’ claim to the right to rule combines elements that stem from genuinely different societal and cultural sources. They do not exist in isolation from each other, but permeate each other and, consequently, foster hybridisation. Legitimacy in the Global South today is as a rule some form of hybrid legitimacy.²¹

Attempts to incorporate traditional institutions into state structures in order to utilize traditional authorities for the strengthening of state capacity and legitimacy is one striking example of this hybridization. In recognition of the relative weakness of the capacity and legitimacy of state

²¹ The ‘Leaders, Elites and Coalitions Research Programme’ stresses the significance of hybrid legitimacy in the context of its interest in issues of leadership for development. Its ‘analytical leadership framework’ is explicitly “based upon hybrid combinations of Weber’s tripartite typology of ‘pure’ forms of authority” (Ver 2009, 22).

institutions and the relative strength of traditional authorities, governments have come to rely on the latter for performing certain state functions.

The 're-traditionalisation' in some sub-Saharan African states is a case in point. Traditional leaders were largely discredited in the post-independence era because they had often been incorporated into (indirect) colonial rule as instruments of the colonial powers, and the new political elites of the independent states attempted to do away with them as anachronistic and reactionary forces of the past. But traditional forms of governance and legitimacy persisted, and finally the authorities of the independent states – like their former colonial rulers – realised that it might be more promising to co-opt them rather than try to suppress and displace them. Over the last several years in a number of African states, legislation has "(re)incorporated traditional leaders officially into state hierarchies in recognition of their ongoing influence as local players" (Kyed and Buur 2006, 2; see also Buur and Kyed 2007).²² de Sousa Santos states with regard to Mozambique that "one of the most visible modernizations of traditional authority lies in the way that modern state elites seek out non-modern traditional legitimacy to reinforce their power"; and he adds: "However, this process also occurs in reverse (...) (Sousa Santos 2006, 61), meaning that traditional leaders might utilise their new position in the state context to reinforce their authority."²³ On the other hand, state institutions aim at utilizing traditional authorities for state purposes (e.g. tax collection) and thus as a means of reinforcing the authority of the state. State authorities are eager to benefit by association with sources of traditional legitimacy; "states recognizing 'traditional' sources of authority may well manage to ride on the coattails of their legitimacy" (Englebert 2000, 190). Recognition of traditional leaders is conceptualised as a practice that confirms the state's legitimacy.²⁴

As a result of the interface, rational-legal legitimacy is imbued with traditional legitimacy, and traditional with rational-legal, leading to the hybridisation of legitimacy. And according to context, certain dimensions of hybrid legitimacy are emphasized. Power-holders "are the more

²² Englebert says with regard to African states: "What is called for is recognition of the legitimacy and relative autonomy of these traditional systems and their integration into the management of contemporary countries (...). If the postcolonial state is to be legitimated, it cannot afford to destroy, repress, or even ignore these repositories of political legitimacy" (Englebert 2000, 191).

²³ At the same time, however, they are in danger of losing traditional legitimacy, precisely because they are now perceived as agents of the state; arrangements that make traditional authorities appear as state officials can easily undercut their traditional legitimacy. See for examples several contributions in Buur and Kyed 2007 and for Somaliland Wiuff Moe 2010, 13-14.

²⁴ Englebert says with regard to African states: "What is called for is recognition of the legitimacy and relative autonomy of these traditional systems and their integration into the management of contemporary countries (...). If the postcolonial state is to be legitimated, it cannot afford to destroy, repress, or even ignore these repositories of political legitimacy" (Englebert 2000, 191).

powerful the better they are able to (...) manoeuvre with different registers of legitimacy” (Lentz 1998, 59).

In fact, powerholders “are the more powerful the better they are able to combine their stakes in different fields of action and to manoeuvre with different registers of legitimacy” (Lentz 1998, 59). For example, when a government minister pays a visit to his home village he will stress his (inherited) status as chief and thus aspects of traditional legitimacy (and distribute gifts to his clients – gifts he can make in the first place because he gained access to resources as a minister); when the same minister pays a visit to a donor country he will stress his status as a democratically elected representative of his people and thus an aspect of rational legitimacy (and ask for more donor money for the development of his country). In other words: this person “foreground(s) the contextually most relevant element of legitimacy” (Lentz 1998, 62, see also Jung 2008, 38).

This person who is a government minister and a village chief enjoys hybrid legitimacy. With regard to the process dimension of legitimacy it can be assumed that it is not so much the process of democratic elections and ministerial appointment that bestows him with legitimacy, but the process of heredity (which allows him to stand for elections and get elected in the first place), and with regard to the performance dimension of legitimacy it is the capacity to distribute goods to his kin – which is mainly due to his position as minister.

Such forms of hybrid legitimacy can be found at all levels of formal state government, from the central to the local. For instance, in East Timor community leaders are elected by the communities in formal local elections, and these elections are run by the state and the elected persons receive state funds, but more often than not persons are ‘elected’ who enjoy legitimacy as members of the traditional ruling families, with traditional leadership being hereditary, handed down through bloodline from fathers to sons. Hence indigenous customary practices and introduced practices merge, and the result is hybridisation of legitimacy which allows for “the convertibility and complementarity of ‘traditional’ and ‘modern’ political office” (Lentz 1998, 61).

Frictions and tensions are nevertheless inherent in this convertibility and complementarity. The discord between the *bigman* concept of leadership in many Melanesian communities and the requirements of representative liberal democracy provide an example. A *bigman* has to affirm his customary status and legitimacy by means of distributing gifts to his kin, while an elected politician is obliged to act in the interest of the common good, not pursuing the interest of kin group members, but of citizens. Clearly, a *bigman* who is at the same time a politician will have problems reconciling these two roles. Situations can evolve in which *bigmen* must become politicians, as only then will they get access to state coffers which make it possible to distribute gifts to their kin, and politicians must first be *bigmen*, as only then can they rely on the support of a loyal kin-based constituency. A mutual give-and-take relationship between politicians and

supporting communities tends to evolve whereby a politician gains power and legitimacy through his capacity to amass wealth and redistribute at least part of it to his supporters, and these will re-elect or otherwise support the politician if he has proven sufficiently generous and thus managed to maintain performance legitimacy. This provides a rationale for the re-election of ‘corrupt’ politicians, who – in the ideal world of rational-legal legitimacy – would have been de-legitimised, but who still enjoy traditional legitimacy (exactly because of their ‘corrupt’ behaviour). What might be perceived as de-legitimising corruption in the context of rational-legal authority can be an extension of reciprocity and exchange of gifts and thus confirm traditional legitimacy.

The dilemma of the bigman demonstrates that clientelism and corruption can be seen as legitimate – as long as they do not serve purposes of personal enrichment (only), but benefit a wider societal group (of kin, of wantoks), that is as long as they are perceived as forms of customary ways of reciprocity and redistribution – “redistributive corruption” (Kolstad et al 2008, 26). In this context, “personal gains are aimed at achieving a position of legitimate respectability recognized by all” (Chabal and Daloz 1999, 159).²⁵ Whether corruption is legitimate in an empirical sense is thus context-dependent, it can be legitimised as an extension of customary social practice (Kolstad et al. 2008, 27).²⁶ The co-existence of conflicting systems of rules and authority can lead to situations in which political leaders are at the same time legitimate and illegitimate, depending upon the cultural framework that is applied in the assessment of their actions.²⁷ As there are no universally recognised and accepted institutional

²⁵ In neopatrimonial rule in Africa “legitimacy is firmly embedded in the patrimonial practices of patrons and their networks” (Chabal and Daloz 1999, 16). It is the recognition which clients “bestow upon their leaders (or patrons) that determines the latter’s social standing and political status. Within such a context, they must at all times be seen to cater for those on whose support their political legitimacy rests. The sanction of electoral success only becomes operational when it is congruent with patrimonial politics” (ibid., 38). Hence neo-patrimonial “legitimacy depends on the ability to deliver to those who are linked with the political elites through the micro-networks of patronage and clientelism” (Chabal and Daloz 1999, 161).

²⁶ Corruption nevertheless can also be illegitimate in the customary context whenever it transgresses customary boundaries relating to excess, selfishness and personal greed. These boundaries, however, are fluid. Chabal and Deloz give African examples in which even extreme forms of ostentation are enhancing the legitimacy of (neopatrimonial) rulers (Chabal and Deloz 1999, 42-44).

²⁷ In an African context Kelsall made the observation that politicians “need for reasons of traditional legitimacy to deliver resources through personalised clientelistic networks to local communities. (These practices are) illegal because they contravene an imported ideological, legal and governmental system founded on a strong separation between public and private that has never existed in Africa (...). The lack of fit between local political culture and imported political institutions creates incentives for rule-breaking and opportunities for self-enrichment” (Kelsall 2008, 11).

rules of the political game, actors have to move between different games with diverging sets of rules, engage with them, negotiate their relationship and their own position with regard to these games and sets of rules - and in the process even create new rules.

The problem of corruption alerts us to the fact that hybrid legitimacy has at the same time both strengths and weaknesses. The strength comes from its flexibility and adaptability. According to social context, different dimensions of legitimacy can be foregrounded; whenever one source of legitimacy seems to fail, another source comes into play – in other words: different sets of reasons for the belief in the right to govern are on offer, and various registers can be played. The weakness comes from the inconsistencies and immanent contradictions of hybrid legitimacy. It is relatively easy to dispose these inconsistencies and proclaim incompatibilities. In the process dimension, for example, it can be said that legitimacy based on elections and legitimacy based on bloodline are incompatible, and one can insist on an either – or. If people who so far have believed in the complementarity of elections and heredity turn to believing in their incompatibility, problems will ensue. In the performance dimension, for example, the imperatives of (traditional) redistribution on the one hand and the imperatives of (rational) budget discipline and accountability on the other can be presented as being incompatible, and one can insist on an either – or. Again, this will lead to problems. In other words: because hybrid legitimacy combines elements that stem from diverse or even contradictory societal and cultural sources, world views and belief systems, hybrid legitimacy is volatile. It is not a given, a state that is reached once and for all, rather it is in permanent process mode, its elements have to be constantly re-articulated and re-negotiated in terms of (in)compatibility, complementarity, friction and contradiction.²⁸

We hypothesize that because of its strengths and its weaknesses hybrid legitimacy can play out in positive and in negative directions, either enhancing order and peace, or disorder and conflict, depending on the dominance of either complementarity or incompatibility. If and as long as the hybridisation of legitimacy, grounded in different sources and types of legitimacy is seen (by the rulers and the ruled) as leading to complementarity, hybrid legitimacy can enhance and sustain peace and order in communities and the society at large. If certain sources of legitimacy are perceived as being more valid than others and if contradictions and incompatibilities are perceived as being dominant, this will lead to disturbances and conflict. External actors with very determined views with regard to what constitutes legitimacy can exacerbate respective disturbances and conflicts by trying to impose their own notion of the (one and only) valid and

²⁸ Louise Wiuff Moe clearly makes this point with regard to the legitimacy of governance in Somaliland: “The emergence as well as manifestation of political order in Somaliland defy the modernist position that suggests an ‘evolutionary’ development from ‘tradition’ to ‘modernity’ as well as idealtypes of ‘traditional’ and ‘rational legal’/‘liberal’ authority and legitimacy as inherently distinct types. Instead, the case re-casts these as contributory sources in wider processes of legitimation and delegitimation of political order” (Wiuff Moe 2010).

acceptable form of legitimacy on communities, e.g. fundamentalist religious movements (charismatic legitimacy) or Western donors (rational-legal legitimacy).

5.5. Beyond Max Weber

In wrapping up this preliminary overview over types of legitimacy in post-conflict fragile situations, we'd like to conclude as follows: when one searches for the sources and forms of legitimate authority today, Weber's ideal types are of value as analytical tools, one can utilize them as a starting point, but one has to go beyond Weber, one has to disentangle the processes of "combination" (Weber 1991, 300) of multiple sources and different types of legitimacy, with hybridisation of legitimacy as a permanent and sustainable feature. This means not to conceptualise hybrid legitimacy as another – static – ideal type of legitimacy, but to think of it in the process mode, as ongoing hybridisation of legitimacy. This corresponds with our concept of hybrid political orders which makes the point that the various state and non-state civil society and local customary institutions are inextricably enmeshed in networks of governance. This conceptualisation will guide our research.

Accordingly, another key research question of this project is: How do the multiple sources and different types of legitimacy intersect and interact in post-conflict settings?

6. Engaging with the hybridization of legitimacy

Whereas in the 'Weberian' OECD states rational-legal legitimacy clearly prevails, in Pacific island countries the situation is far from that. Traditional authority still plays a major role, and in certain contexts – particularly in conflict and post-conflict situations – charismatic authority matters too; and it is highly unlikely that – as Weber and protagonists of modernization theories posited – rational legitimacy will replace traditional and charismatic legitimacy any time soon.²⁹ Instead there will be protracted periods of co-existence and mutual exertion of influence, leading to hybridization of legitimacy. This has a profound impact on the forms of governance, on peacebuilding and conflict resolution, and on the options for shaping political community.³⁰ Any

²⁹ Carola Lentz comes to the same conclusion based on African experiences: "contrary to Weber's grand historical model of a gradual shift from 'traditional' to 'rational-legal' domination, in contemporary Ghana and other African (and many non-African) countries these different types of authority and legitimacy co-exist and intersect" (Lentz 1998, 59).

³⁰ The notion of political community is intrinsically linked to the notion of legitimacy: "When several individuals share a common definition of what is legitimate, we say they constitute a community" (Hurd 1999, 388).

attempts to build sustainable political community will have to engage with the complexities of hybridization of legitimacy, taking into account contradiction and competition between as well as complementarity and combination of different sources of legitimate authority.

In this regard, the interface of Christianity and local custom in the Pacific provides an interesting historical example. The mainline Christian churches over time have developed mutually beneficial relationships with traditional authorities in the Pacific. Pacific islanders have been Christianised, and – originally European missionary – churches have been indigenised. Today the vast majority of Pacific islanders are devout Christian believers, and at the same time strongly adhere to their customs. Traditional authority is provided with additional legitimacy in a Christian context, and churches are provided with additional legitimacy as they are supported by traditional authorities. Today, custom-based and church-based legitimacy usually overlap and reinforce each other. So what can be observed is complementarity of two types of legitimacy, based on a combination of indigenous customary sources of legitimacy and (originally introduced) religious sources of legitimacy. The newly incoming evangelical and Pentecostal churches, on the other hand, are usually strongly opposed to indigenous customs and often fight them upfront. They challenge traditional legitimacy and intend to supersede it by another form of legitimacy. So this is a case of incompatibility of different types of legitimacy. The rigorous attitude of the Pentecostals is a cause of conflict over legitimate leadership in many communities in the Pacific today.

People in Pacific countries of course are aware that in their societies today different types of authority and leadership co-exist, most notably formal leadership in the context of politics and the state, and traditional leadership in the context of the villages and customary life (but also church leadership, leadership in NGOs or charismatic leadership of e.g. so-called cargo cultists). We assume that only few people today hold the opinion that one type of leadership should supersede the others. However, we also assume that there are differences in the assessment of the legitimacy of different kinds of leadership. Leadership based on traditional legitimacy (and, to a certain extent, on charismatic legitimacy) may be seen as more valid as leadership based on rational-legal legitimacy in the context of state functions and positions. Leadership based on personal and social standing is regarded as more legitimate than leadership via function and position. This is the reason why there are very influential leaders outside the formal state system - even above the local level; they often combine traditional and charismatic legitimacy. Even more common seem to be combinations of traditional and rational legitimacy (political leaders who also hold positions of traditional authority, or traditional authorities who enter upon state positions). In this research project we'll explore these assumptions.

People who are aware of and approve of different sources and types of legitimacy will only believe in the right to govern of authorities who are capable of combining these different sources and types. Accordingly, people and political elites try to find ways to 'marry' indigenous customary and communal institutions of governance on the one hand and introduced western

state (and civil society) institutions on the other (Boege 2008; Boege et al. 2008b) and thus to engage in a constructive way with the hybridisation of legitimacy. Bellina et al. talk about the “constructive interaction between diverse sources of legitimacy” (Bellina et al. 2009, 25). This is not without problems. It cannot be ruled out that under certain circumstances traditional authorities (and even more so charismatic leaders) might fiercely resist state institutions and policies so that the ‘marriage’ will not eventuate. We assume that so far, however, it has been more the ignorance and presumption of state actors (oftentimes assisted by external actors with a Western ‘state-building’ agenda) which was the major obstacle to a ‘happy marriage’. Again, we’ll explore these assumptions in the course of our research.

The ‘constructive linkage’ or ‘happy marriage’ scenario is a best-case scenario the realization of which needs immense political effort. It can lead to what can be called grounded legitimacy. This term, coined by Kevin Clements (Clements 2008), describes both a normative concept (a form of legitimacy that should be strived for as it is conducive to peacebuilding and state formation) and an emerging empirical reality – at least this is our assumption, and we shall explore this assumption in this research project.

What can already be said at this point is that several promising approaches to accommodate different forms of legitimacy can be found in the Pacific. In some countries an official, constitutionally defined co-existence – and sometimes blending – of traditional and rational-legal authority can be found. Tonga’s constitutional monarchy, for example, combines the traditional legitimacy of the king and the nobles with their rational-legal legitimacy as heads of state and members of parliament. The process of democratization which is well under way in Tonga at present, is not aimed at superseding traditional legitimacy, but at adjusting it to changing circumstances (MacLellan 2009). The National Council of Chiefs (the Malvatumaui) in Vanuatu is a highly legitimate institution, and so are the chiefs at the various levels of socio-political life in Vanuatu. These local traditional authorities are situated outside the state structures and lack rational-legal legitimacy.

The Malvatumaui, however, is a constitutional body and as such part of the state apparatus, but at the same time its membership comprises of people who are selected because of their traditional legitimacy. The Malvatumaui thus provides an example for the negotiation of more formalized relations between traditional authorities and state institutions. The Malvatumaui represents hybrid legitimacy –grounded traditionally and at the same time endowed with state approval. Its members are customary chiefs with traditional legitimacy, as a body the council, however, is a state institution, accordingly, rational-legal legitimacy ‘colours’ and changes the legitimacy of the individual chiefs in their respective local context, and at the same time the customary roots of the legitimacy of its members ‘colours’ the legitimacy of the National Council and makes it a very particular state institution.

In Bougainville as well as in East Timor and Somaliland interesting processes of hybridization of legitimacy that contribute to the stabilization of peace and non-violent conduct of conflict are under way. These processes will be described and analyzed in greater detail in our research project which has as a third key research question: how can different forms of legitimate authority be constructively included in conflict transformation, peacbuilding and the formation of political community?

7. Challenges for external actors

We hypothesize that the deliberate attempts at ‘marrying’ introduced liberal democratic and indigenous customary institutions of governance and the respective types of legitimacy are more promising approaches to build working political entities under conditions of state fragility and political hybridity than simply trying to build states along the lines of the Western Weberian model based on rational-legal legitimacy. Rather than thinking of traditional (and charismatic) legitimacy in terms of some kind of anachronistic residual legitimacy that in the course of time will be trumped and superseded by rational legitimacy, it is important to acknowledge the fact that alongside rational-legal legitimacy other forms of legitimacy that are close to the traditional and charismatic type are enduring and, even more importantly, hybridization of legitimacy is the rule. Accordingly, external actors who are interested in supporting peacbuilding and state-building will have to search for options to actively and positively engage with the various types of legitimate authority.

Given that hybrid legitimacy prevails in post-colonial societal environments and given that hybrid legitimacy is here to stay for the foreseeable future, instead of trying to overcome and substitute it, it is more appropriate to work with it and to support the strengthening of hybrid legitimacy as a way to maintain peace and order and achieve development and good (enough) governance. This necessitates an understanding of “the multiple sources of legitimacy” of governing authorities (Dinnen, Porter and Sage 2010, 29) and deliberate policies of constructive articulation or positive mutual accommodation.

External actors who do their best to get things right by trying to substantiate (rational) legitimacy through improving the capacities, effectiveness, legal processes and performance of state institutions too often ask for disappointment and frustration, because for the people on the ground other issues are also (and even more) important when it comes to legitimizing governance.³¹ External actors tend to “disregard the existing plurality of legitimating beliefs”

³¹ East Timor provides a telling example in this regard. Here the “new liberal state does not yet carry legitimacy among its people (...). This is because of the focus of the internationals on creating empty institutions rather than dealing with the pressing problems of the everyday life (...). In the eyes of local societies and their complex

(Scharpf 2007, 17) and to assume as a quasi natural matter of life that state institutions have legitimacy *per se*. As has been shown this is a fundamentally misguided assumption. External actors will have to “identify the legitimating beliefs that are in fact held by the target populations” (Scharpf 2007, 17) of their interventions; they will have to look beyond the forms of legitimacy with which they are familiar, which they value most and which they would prefer to introduce (impose) in fragile situations. In other words: external actors will have to put much more effort into trying to understand the local people’s concepts of legitimate authority, to widen their understanding of legitimacy and to acknowledge that non-rational types of legitimacy matter. They will therefore have to engage with non-rational-legal legitimate authorities if they want to assist peacebuilding and state formation in fragile situations – even if the practices of those authorities do not necessarily conform to Western principles of legitimate authority. “Thus a central challenge for donors is to recognize that what they consider to be the most effective and legitimate form of state building is not necessarily considered legitimate by domestic actors” (Bellina et al. 2009, 4). There can be a wide gulf between what people on the ground deem to be legitimate authority and what proponents of the Western state-building agenda think they should deem to be legitimate authority.³² This gulf cannot be bridged by education (citizens education, voters education, building demand for better governance etc.) alone, nor by capacity-building and improved effectiveness, nor by any other externally driven donor programs (benign/benevolent as they may be).³³ Rather, engagement with the non-rational types of authority and nurturing their positive potential, is imperative so as to forge benevolent local-liberal hybrid forms of political community which are empirically legitimate exactly because they acknowledge the local. Such engagement with the “liberal-local hybrid” (Richmond 2009a, 167) might lead to governance structures which look quite different from the Western Weberian state, but might nevertheless be capable of providing security, peace and order and development.

Accordingly, a final set of key research questions addresses the prospects and problems of external intervention: how can external actors engage with different types of legitimate authorities and, through such engagement, assist in conflict transformation, peacebuilding and formation of political community? What are the limits of engagement – or the particular dilemmas of engagement in specific contexts, and how might they be addressed?

groupings, the state is merely a vehicle for local elites and international interests” (Richmond and Franks 2008, 198).

³² This does not only hold true for Pacific countries, but also for many so-called fragile states (see e.g. for Afghanistan Tadjbakshs 2009) and even for OECD countries with indigenous or cultural minorities. In Australia, for example, there are “important differences between Indigenous and non-Indigenous views about what constitute ‘legitimate’ governance arrangements (...) To be judged as legitimate by Indigenous people governance arrangements need to be developed *by them* as a result of informed choice” (Hund and Smith 2007, 24).

³³ As an example for such a narrow approach to “constructing legitimacy” see Higashi (2009) on East Timor.

These are challenging questions as the course of engagement suggested here for external actors is of course burdened with all sorts of problems. First and foremost there are normative dilemmas in supporting traditional authorities and customary institutions insofar as they might violate internationally accepted norms and standards - of constitutional democracy, of human rights and of women's rights in particular. Hence the legitimacy of external donors pursuing such a course of engagement can easily be challenged in their own domestic context where the norms of rational legitimacy reign. Another obvious obstacle is the fact that donors are obliged to channel their activities through state institutions of the host country. State actors might not be happy with activities that can enhance the legitimacy of non-state actors which are (or are perceived as being) in competition with state authorities; the state institutions and their legitimacy can be undermined by collaboration with non-state actors.. Although the guise of rational-legal legitimacy of state institutions veils the realities of hybrid legitimacy only thinly, the façade of the rational-legal state is still upheld (oftentimes with the external actors in mind who have to be pleased in order to maintain international legitimacy and to guarantee the constant inflow of resources). Finally, there are obvious cultural obstacles for direct communication between external actors who come from a Western cultural background and with deeply internalized beliefs in rationality in general and rational legitimacy in particular on the one hand and local people who were brought up and live in a completely different cultural context and hold completely different beliefs on the other. Often there is also just a lack of knowledge of the local culture and a lack of cross-cultural awareness which makes it impossible to engage with non-rational-legal authorities (or might even lead to interaction which does more harm than good).

External actors may find that access to non-state authorities is easier via 'bridging' institutions, that is institutions which can act as intermediaries. 'Bridging' institutions - committed to local custom, but at the same time able to engage with government, state institutions and external actors - can play a vital role in making different forms of legitimate authority collaborate for peace, development and political community. They are knowledgeable about the different forms of legitimacy, they respect them, and they are in a position to support them in constructive articulation. They can address critical issues such as the relation between human rights and customary law, or the role of women and their empowerment and participation in decision-making and leadership. External actors who often have very strong "convening power" (Leftwich 2009, 24) can make use of this power in collaboration with bridging institutions. Bridging institutions can organize dialogue between protagonists of civil society, state and the customary sphere, presenting the everyday life and the worldviews of the communities to governments and donors, and representing the latter's concepts back to people in communities. The Malvatumauri National Council of Chiefs in Vanuatu and the Vanuatu Cultural Centre provide examples of such bridging institutions in the Pacific. Engaging with and assisting such institutions might at times necessitate donors to "be much more open to unorthodox political arrangements that encompass traditional aspects of legitimacy" (OECD 2010, 57) and to reach

beyond the comfort zone of a ‘civil society’ which all too often is imposed and sustained by external actors and shaped in the image of donors’ domestic societies.

The utilization of bridging institutions can be a promising way for external actors to overcome problems regarding the support of non-rational-legal forms of legitimate authority, and this in turn can address legitimacy problems of these external actors themselves. It must not be forgotten that the legitimacy of donors is itself questionable. So far external actors have not paid much attention to scrutinizing their own legitimacy. External peacebuilders and donors often do not seem to reflect on whether they enjoy legitimacy with the people on the ground; the possibility that they themselves might be illegitimate actors in the eyes of the people whom they have come to help does not arise in open discussion. There tends to be a common assumption “that because they advance liberal goals, their actions are de facto considered legitimate by the local population” (Bellina et al. 2009, 34), but this is not necessarily the case. They think of themselves as being legitimized by the rational norms they adhere to and by the fact that they were commissioned with their work by both the home and the host governments. And again, their focus is much more on the effectiveness of their operations than on their legitimacy. “Institutional scrutiny of liberal peacebuilding and development relates mostly to questions of efficiency: how to best implement reforms, what sequencing and speed to use, how to avoid corruption, and how to co-opt local elites who may be resistant to change. But not much scrutiny is undertaken of the legitimacy of the model, especially for fragile transition and post-conflict situations” (Tadjbakhsh 2009, 648). This is because “in essence, peacebuilders tend to assume that the internationally established legitimacy of the liberal principles that they advance will automatically translate into domestic legitimacy of the state as viewed by the local population. While the normative pull of liberal principles are [sic!] unmistakable, it is an open question whether different domestic groups see such principles as legitimate – especially when these are effectively being imposed from the outside rather than being developed through negotiations and debate domestically” (Sending 2009, 15).

External actors have a tendency to blame local people for not acknowledging their –the external actors’ - legitimacy. This means to ignore the very essence of empirical legitimacy and to cling to a narrow normative definition of legitimacy which is utterly useless in this context. Sending makes this point very clear. He criticises the assumption “that the international (liberal) standards that peace operations, and peacebuilding efforts, adhere to are what *really* provides them with legitimacy. This amounts to invoking a *normative* definition of legitimacy where legitimacy is linked to general concepts of right and good (i.e. human rights), and it is thus possible that some actors “perceive” of this legitimacy in the wrong way – that they have misperceptions about what is and what is not legitimate in a normative sense. (...) In an *empirical* reading of legitimacy, by contrast – one following from Weber’s discussion of the matter – to talk about “perceived legitimacy” is nonsensical since legitimacy is, by definition, established and maintained through

the perceptions, or beliefs, people may have regardless of their normative content” (Sending 2009, 17).

In other words: there is a remarkable gap between the local populace’s understanding of legitimacy and external actors’ understanding, with the latter focusing on rational-legal legitimacy and at the same time ignoring, under-valuing or rejecting non-rational-legal forms of legitimacy. Our research project is designed to address this gap and provide a more profound and more comprehensive understanding of the different types of legitimate authority and their sources in post-conflict situations as well as their interface and interaction so as to improve (external support for) conflict transformation and peacebuilding. Accordingly, the research will finally lead to proposals for constructive collaboration of different types of legitimate authorities and recommendations for external actors how to constructively engage with these authorities in the interest of conflict transformation and peacebuilding.

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