

# RECONSTRUCTING CUSTOM

## The politics of homophobia in Vanuatu

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Custom is often employed in South Pacific countries by those who occupy the hegemonic role of defining the post independence national ethos. It is used in a sense that is deeply conservative. It indicates features such as rejection of the central role of the state, anti-reformism, quasi-mystical reverence for the place of tradition and an incrementalist and anti-rationalist view of social change. This usage of custom also lends itself to a kind of ideological blending with the principles of nationalism, a factor which disposes it to the manipulations of those who are concerned with inventing the new post-colonial social and political order. It is this usage of custom with which this article is most concerned.

In a world order dominated by nationalism with its concomitant respect for self-determination, the notions that 'homosexuals' and/or 'homosexual rights' are Western constructs, and that it would be ethnocentric to develop or impose international human rights standards relating to homosexuality, have significant political force. Invoking custom, therefore, becomes a powerful rhetorical strategy for Pacific Island nations to use in denying the recognition of homosexuals.

Although custom is used politically by all Pacific Island nations, this article only examines the ways in which custom is (re)constructed in Vanuatu. Vanuatu provides an excellent subject for several reasons. First, its constitutional structure reflects the difficult tensions between democratic human rights, custom and Christianity that are found in many Pacific Island nations. Second, several incidents involving homosexuality have been reported in its newspapers over the last few years. In Pacific Island countries where it is 'taboo' to talk about sex, this media coverage provides a very useful way of examining the role that custom plays in shaping society's attitudes towards homosexuality. Last, Vanuatu, unlike most independent Pacific Island nations, does not criminalise adult same-sex sexual behaviour, so the criminality of homosexuality is not used in debates about the place of homosexuality in society and the state's reaction to it.

### Background: the politics of custom in Vanuatu

Vanuatu, previously known as the New Hebrides, is a country in the Western South Pacific made up of over 80 islands. It is home to approximately 110 indigenous cultures. Although these cultures are predominantly Melanesian, each culture has a distinct language and variations in tradition. From formal colonisation in

1906<sup>1</sup> through to Independence in 1980, Vanuatu was jointly ruled by French and British administrations in an arrangement known as the Condominium. The influence of missionaries from the 1800s onwards has been significant, and it is now estimated that around 95% of the indigenous population is Christian.<sup>2</sup>

The New Hebrides National Party (NHNP), formed in 1971, was one of the first organised groups that campaigned for independence and expressed the politics of nationalism. One of its first public statements began:

Our aims in forming a National Party are to preserve the New Hebridean people; their culture and their ways of life are in danger of large scale settlement by Europeans.<sup>3</sup>

Culture was constituted as a reactionary symbol to be used as the basis for political mobilisation for decolonisation. Nationhood was seen as being the end goal of decolonisation, with the national purpose being to protect and project the cultural past. The cultural underpinnings of nationhood, with its ideological insistence on cultural homogeneity, inevitably affected the political imagination. Despite the fact that the group of islands that now make up Vanuatu did not form a single entity until they were defined as the New Hebrides by colonisers, a single, imagined, New Hebridean people and New Hebridean culture became the justification for the creation of Vanuatu.

On gaining independence in 1980 Vanuatu adopted a *Constitution* that reflected the major influences of its past history and its struggle for decolonisation. It is constituted as a sovereign democratic state and as such recognises the individualistic human rights that are at the heart of modern Western democracies. The preamble states that the country is founded on 'traditional Melanesian values, faith in God, and Christian values'. These three concepts (Westminster style democratic government, custom in the sense of tradition, and Christianity) form a contestable and potentially precarious foundation for the country, as the ideologies present in each are not readily reconcilable. Vanuatu's legal system is similarly problematised by the presence of conflicting ideologies, with French civil law, English common law and customary law all being recognised as equally valid sources of law.<sup>4</sup>

Although the foundation of Vanuatu is incongruous, it is, perhaps, politically inevitable. The justification for the creation of the nation of Vanuatu centred around the politically imagined symbol of a common culture/custom which arises from an equally imagined

#### REFERENCES

1. *Anglo-French New Hebrides Convention 1906*.
2. N and N Douglas (eds), *Pacific Islands Yearbook* (1994).
3. Howard Van Trease, 'Colonial Origins of Vanuatu Politics' In Howard Van Trease (ed), *Melanesian Politics: Stael Blong Vanuatu* (1995) 21.
4. Article 95 *Constitution of the Republic of Vanuatu*.

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common ethnicity and/or bloodline. In order to maintain and solidify the national identity this symbol needs to be continued, an occurrence best achieved by formalisation. Along with the formal recognition of customary law, the creation of the National Council of Chiefs or Malvatumauri in 1977 and its subsequent recognition in the *Constitution* is one of the most notable ways in which the symbol of culture/custom has been formalised. The Malvatumauri is 'composed of custom chiefs elected by their peers sitting in District Councils of Chiefs'.<sup>5</sup> It functions as the authoritative body of knowledge on custom, with its constitutional role being:

30.(1) The National Council of Chiefs has a general competence to discuss all matters relating to custom and tradition and may make recommendations for the preservation and promotion of ni-Vanuatu culture and languages.

(2) The Council may be consulted on any question, particularly any question relating to tradition and custom, in connection with any bill before Parliament.

The entire structure of the Malvatumauri, based on the concept of 'chiefs' and 'paramount chiefs' is itself an artificial construction. As Lindstrom explains, the concept of chief owes a considerable amount to colonial administrators and missionaries who sought to use people who had some local authority to help with the maintenance of colonial order. People who became colonial Assessors or church Elders could then use this authority to advance claims to positions in custom. Positions, rights and obligations, and modes of authority shifted. The word chief does not exist in a number of local languages, and did not appear in Bislama until well into the colonial period.<sup>6</sup>

In the pre-independence political discourse no distinction was made between culture, custom and tradition, and the three remain indiscriminately mixed. This is at least in part because Bislama, the national language of Vanuatu, itself does not distinguish the concepts. *Kastom* is used to denote both traditional ways and culture, although the word *kalja* has recently entered the language. A signifier for the concept of custom that exists outside of tradition does not currently exist.

The ideology of nationalism, the psychology of decolonisation and the semantic complication created by Bislama all contribute to the popular understanding that the 'custom' that Vanuatu is based on and that is being upheld by the Malvatumauri and government is the various indigenous peoples' customs or traditions.

However, in a country of 110 different cultures any pronouncements on a national custom are necessarily inventions, products of the contemporary politics of modern nation states. This 'custom' is rather a constructed symbol, used to justify a nation built on an uncomfortable syncretism of custom, Christianity and modernity.

### Homosexuality in Vanuatu's *Kastom*

Same-sex sexual behaviour does exist, or has existed, in at least some *kastom* in Vanuatu. The most detailed studies that have been made of male same-sex sexual behaviour in Vanuatu have focused on the Big Nambas of Malekula.<sup>7</sup> Same-sex sexual behaviour amongst the Big Nambas women has also been noted.<sup>8</sup> There are further anecdotal reports of same-sex sexual behaviour in *kastom* in other parts of Vanuatu, although little has been reliably recorded.<sup>9</sup>

The lack of reliable records does not indicate that same-sex sexual behaviour is/was absent from *kastom*, however. Similarly, the literature that suggests that homosexuality is absent from Vanuatu is unreliable. Rather, as Herdt notes, in much anthropological literature 'we find homosexual practices either denied, coded as absent or treated as unique'.<sup>10</sup> Whether anthropologists' own prejudices have caused them to see same-sex sexual behaviour as aberrant behaviour rather than as part of the cultural context that is being investigated, or whether political motivations have prevented ethnographers from being free to report on same (or any) sexual behaviours without violating the trust of the people they have been investigating, same-sex sexual behaviour is undoubtedly under-represented in anthropological literature.

Similarly literature that suggests the absence of same-sex sexual behaviours in Vanuatu is suspect. In the words of Simpson, 'there have been too many generalisations about the sex-life of primitive peoples. These often suggest uniformity and stress the natural, uninhibited, utterly "normal" nature of native sexual relations — which is not the true picture.'<sup>11</sup>

Given the noted incidence of male same-sex sexual behaviour in other Melanesian countries it is unreasonable to presume that, other than in the documented incidence of the Big Nambas, same-sex sexual behaviour is not present in the *kastom* of Vanuatu. While not all *kastom* in Vanuatu recognises same-sex sexual behaviour, it is undoubtedly legitimate behaviour in some of them.

5. Article 29(1) *Constitution of the Republic of Vanuatu*.

6. Lamont Lindstrom, 'Chiefs in Vanuatu Today' in Lamont Lindstrom and Geoffrey M White (eds), *Chiefs Today* (1997).

7. For further information see M Allen, 'Homosexuality, Male Power and Political Organisation in North Vanuatu: A Comparative Analysis' in Gilbert Herdt, (ed), *Ritualised Homosexuality in Melanesia* (1984).

8. Observations by Tom Harrison that 'the [Big Nambas] women have developed a parallel pleasure system of their own, much less elaborate than the male' were reported in Colin Simpson, *Islands of Men* (1955) 123.

9. Pentecost Island, eg, was formerly known to planters as 'the home of homosexuality', (ibid); The Director of the Department of Culture has recently stated that homosexuals have existed in Vanuatu 'throughout the centuries' ('Churches Criticise Henry' *Trading Post* Issue 441, 21 April 1999, 9).

10. In Gilbert Herdt (ed), *Ritualised Homosexuality in Melanesia* (1984) 3.

11. Colin Simpson, above n 8.

## Custom and homophobia

Despite the fact that same-sex sexual behaviours are part of some *kastom* the position of the Malvatumauri is that same-sex sexual behaviour did not feature in Vanuatu's past. The Malvatumauri's response to a group of 40 lesbians coming to one of the resorts is illustrative. This, it was reported in the government-owned newspaper 'sent shock waves in (sic) Port Vila — not because it is unusual but because it's threatening local culture and [is] an embarrassment to the pride of Christianity in the country'.<sup>12</sup> The position of the Malvatumauri was clear:

The Malvatumauri National Council of Chiefs said it will not accept any behaviour that is a danger to Vanuatu culture and which contradicts traditional beliefs and custom values. 'Has (sic) the management of the resort seek (sic) our approval before the arrival of the guests, we would have given them our disapproval', said Council Secretary Chief Sandy Ishmael. He said the council's message is clear. Homosexuality is immoral and must be vigorously discouraged.

The Malvatumauri's stance was similar in a report that arose after an episode of domestic violence between two lesbians:<sup>13</sup>

According to Chief Mariasua [chairman of the Malvatumauri] homosexuality is something foreign. 'Custom chiefs hate this kind of relationship and don't want it to grow.'

He went on to say:

If a woman wants to marry, marry a man. This system of woman to woman, man to man, is against the creation of God.

While there are undeniably gender issues also involved in these two incidents, in neither of the reports does the Malvatumauri distinguish between lesbianism and homosexuality in general.

The popularly expressed view also adheres to the view that homosexuality does not accord with custom. One news column asked people what they thought about homosexuals.<sup>14</sup> In their responses three of the four respondents referred to the fact that it was not in line with custom.

### Why is custom reconstructed so as to exclude homosexuality?

The question to be addressed, then, is why is custom reconstructed in such a way as to exclude homosexuality from the contemporary national ethnic identity?

The first point is that *kastom* Melanesian same-sex behaviour does not equate to the Western concept of homosexuality. In the West:

Homosexuality appeared as one of the forms of sexuality when it was transposed from the practice of sodomy onto a kind of interior androgyny, a hermaphroditism of the soul. The sodomite had been a temporary aberration; the homosexual was now a species.<sup>15</sup>

Homosexuality as identity is a recent and Western phenomenon. In Melanesia, identity based on sexuality is not a relevant concept. The same-sex sexual behaviours recorded are ritualised, serving wider purposes. Herdt notes three modes of sexual contacts:<sup>16</sup>

1. Sexual contacts may be culturally and/or individually organised and defined exclusively by the choice of the sex of one's partner.
2. Sexual contacts may be defined and organised according to their social purpose.
3. Sexual contacts may be defined according to the acquisition of a scarce commodity.

Only the first mode lends itself to the construction of identity based on sexuality. However, the second two modes of sexual contact delineate sexual contacts (not only homosexual but heterosexual) in Melanesian *kastom*.

*Kastom* is undeniably operating in changed social conditions in the late 20th century, so has changed social significance. The recognition of homosexuality by custom undeniably requires a transformation of *kastom*, adapting behavioural standards defined under the second two modes of sexual contact to operate under the first. However, the question of why homosexuality is excluded from the (re)constructed custom remains. The constructors of custom are continually in a process of transforming *kastom* in light of modern politics. Why has the transformation of *kastom* read homosexuality as a foreign evil, when just as equally the transformation of *kastom* could read homophobia as a foreign evil?

### The Christianisation of custom

The easiest answer to these questions is that, because most of Vanuatu is now Christian, custom has come to represent Christianity (in its most conservative forms). Indeed, the quotes from the Malvatumauri above, with the use of 'immorality' in the first situation and the direct reference to God in the second, support this answer. However, although this answer is superficially plausible, it relies on the unsatisfactory premise that the people of Vanuatu are either conscious of the

12. 'The Tourist Dollar That's Being Questioned' *Vanuatu Weekly Hebdomaire* 22 August 1998.

13. Reported in 'We Respect their Rights but we Don't Encourage it' *Trading Post* Issue 386, 3 October 1998.

14. The question was 'Olsem wanem long ol man mo woman we oli jus blong mared autsaed naturel wei?' or 'what do you think about men or women who choose to marry outside the natural way?' (*Trading Post* Issue 387, 7 October 1998) The ways in which the language shapes the discourse on homosexuality would make an interesting study.

15. Michel Foucault, *The History of Sexuality: Volume 1 An Introduction* (1976) 43.

16. Gilbert Herdt, above n 11, xii–xiii.

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deception inherent in the construction of custom yet continue to support it or are too unaware to notice the deception.

If, however, one considers the foundations of the nation, a more satisfactory answer can be provided. Custom, Christianity and modernity (in the form of a rights-based democratic state), the three concepts that form the foundation of Vanuatu form, as stated earlier, an uncomfortable syncretism. Democracy, representing the forces of modernisation and individualism, is ideologically opposed to the conservatism inherent in both (some forms of) Christianity and custom. Using a viral analogy democracy can be seen as an attacking virus on the organisms of custom and Christianity. Custom and Christianity, both fighting off the same disease align themselves into a relationship of symbiosis in order to survive. The question of which is the symbiont of the other, or who is the dominant partner in the relationship, is unclear. Although the immediate answer seems to be Christianity, because it seems to have affected custom more than custom has affected the juggernaut of Christianity, Christianity was not, and could not have been, the central motif for the creation of the nation of Vanuatu. Central aspects of *kastom* such as 'the worshipping of false idols' certainly have remained despite the influence of Christianity, lending support to the idea of a cultural symbiosis wherein each partner adapts its 'fringe' principles to ensure that its central aspects are continued.

In order to maintain the symbiotic relationship, both organisms need to adapt. The acceptance of homosexuality by custom would affect its relationship with Christianity. As same-sex sexual behaviour is a covert aspect of *kastom* rather than a conspicuous practice, and is not a universal practice anyway, to risk the relationship in order to transform *kastom* to support homosexuality would not be politic. On the question of its stance towards homosexuality, custom therefore adopts the conservative Christian rhetoric.

### *The incursion of the Western family unit into the culture of Vanuatu*

Although the relationship between Christianity and custom undoubtedly plays a significant role in the creation of homophobia using custom, there are other influences on the (re)construction of custom. Custom, while endeavouring to shape the societies of Vanuatu, must also remain in alignment with the culture(s) (in the anthropological rather than racial sense of the word 'culture') of Vanuatu in order to maintain legitimacy.

The conservative Western notion of the family unit is becoming the prevalent way of organising society in (at least urban) Vanuatu, and has thus become part of the culture.

The, again conservative, Devlinesque fears of the effects that recognising homosexuality would have on the family and therefore society also become relevant to the culture of Vanuatu.<sup>17</sup> Custom, in the sense of conspicuous cultural forms, is modified. The ambiguity or mutability of the concept of custom allows the understanding of 'custom = tradition' to, somewhat perversely, Westernise the construction of the family unit while maintaining its legitimacy as a symbol of tradition. The conservative Western fear that homosexuality will affect the family unit therefore becomes part of the reason for (re)constructing a custom that is homophobic.

### *The interaction between the concept of homosexuality and kastom taboos*

A further difficulty with the transformation of *kastom* to create an environment accepting towards homosexuality is the manner in which this would affect other aspects of *kastom*. This difficulty is possibly the only legitimate (being purely *kastom-ary*) reason for reluctance to (re)construct custom to recognise homosexuality. As stated above the concept of homosexuality involves (at least in its currently prescribed sense) identity based on sexuality; sexuality inevitably becomes overt. There are undeniably taboos preventing the discussion of sex in general in public (although these same taboos do not operate in a same-sex environment). If people are permitted to position their identity around sexual behaviour they will inevitably be threatening the taboos on discussing sex.

### **Homosexuality and the law**

The prevalent construction of custom as being 'anti-homosexual' is not reflected in the criminal law. The *Penal Code* (Cap 135) only criminalises consenting same-sex sexual acts with people under the age of 18, with the penalty being two years imprisonment.<sup>18</sup> This is slightly higher than the age of consent for girls in heterosexual sexual relationships, which the *Penal Code* (Cap 135) sets as 15. The penalty for having sex with a girl under the age of 15 is five years imprisonment.<sup>19</sup>

The provisions of the Vanuatu *Penal Code* are unusual in the Pacific region, as most other Pacific Island nations criminalise homosexual sexual acts. However, it would be a mistake to interpret the provisions of the *Penal*

17. Public comments by Marilyn Tahī, Director of the Women's Centre Against Violence that homosexuality should not be encouraged because it 'does have social implications' ('We Respect their Rights but we Don't Encourage it' *Trading Post*, Issue 386, 3 October 1998) and that homosexuality 'would be like a fire on our culture' ('The Tourist Dollar That's Being Questioned' *Vanuatu Weekly Hebdomaire* 22 August 1998) reflect this strain of reasoning.

18. Section 99 *Penal Code* (Cap 135).

19. Section 97 *Penal Code* (Cap 135). This provision of the *Penal Code* is gender specific and does not make it illegal for an adult woman to have sex with a boy aged less than 15 years.

*Code* as being an intentional signal of state approval, or at least neutrality, towards consenting same-sex sexual relationships between adults. Section 99 of the *Penal Code* (Cap 135), which deals with 'homosexual acts' appears to have antecedents in colonial criminal legislation. Section 14 of the schedule to the colonial *Native Criminal Code Joint Regulation 12 of 1962* made it a criminal act to commit an 'unnatural offence with anyone under the age of 18'. There were differential penalties depending on the age of the sexual partner: if the sexual partner was under 13 then the penalty was five years imprisonment and if the sexual partner was between the ages of 13 and 18 then the penalty was two years imprisonment. While this joint regulation was more favourable to homosexuals than the laws existing at the time in the colonial powers of England and France one can speculate that the publication of the British Home Office *Report of the Departmental Committee on Homosexual Offences and Prostitution* (the Wolfenden report) in 1957, which recommended the decriminalisation of homosexuality, had some impact on the drafting of the joint regulation of 1962.

Further, Vanuatu's criminal law cannot be considered to be truly autochthonous. The contemporary *Penal Code* was commenced in 1981, soon after Vanuatu was granted independence. At the time Vanuatu did not have the human resources to draft its own legislation so the Code would have been prepared by external drafters. Even now, more than 20 years after independence, much legislation continues to be created with the help of external consultants and state law remains largely unreflective of the *volksgeist*.

As an indication of the divorce between criminal laws and custom one can look at a recent example in which immigration laws were used to revoke a homosexual expatriate's residency permit, apparently on the ground that homosexuality was against Christianity. In a letter to the newspaper in relation to this matter the then Attorney General stated: 'The fundamental rights guaranteed in the Constitution are founded on among other things, Christian principles ... God certainly does not condone marriage[s] between consenting males let alone homosexuality no matter how legalistic the matter may be provided for under any laws.'<sup>20</sup> The actions of state authorities in revoking a permit, despite the acknowledged fact that homosexual behaviour is not illegal, serves to illustrate the gap between the *Penal Code* and the *volksgeist*.

## Conclusion

The question that this article has attempted to address is why custom is (re)constructed in such a way as to create an atmosphere of homophobia. There is no single reason for this, but rather 'legitimate' *kastom-ary* concerns, the growing importance of the Western conception of the family unit and Christianity combine to shape the contemporary construction of custom. This exploration of the relationship between custom and homophobia may help to explain or understand some of the dynamics of sexuality in the contemporary South Pacific.

It must be remembered that contemporary custom is a fluid, organic and mutable concept. Custom is undoubtedly used as a hegemonic device. Contemporary custom maintains its legitimacy on the stated idea that it is the upholder of the common past in modern society but is an imagined symbol, which incorporates much more than the past into its pronouncements on what custom is/what society should be. Custom will change as society does. Just as there has been a long slow shift in peoples' values towards homosexuals in Western countries we cannot expect customary attitudes towards homosexuality in Vanuatu to remain forever static. It is hoped that ideas in this article will be of some small assistance to those who are engaged in unpicking the layers of rhetoric that surround homosexuality in the South Pacific as they try to construct a more accepting environment in which people can establish their own identities.

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20. Quoted in Anita Jowitt and Nena Hicks, 'Human Rights and Accountability of Government Action — A Comment' (1997) 1 *Journal of South Pacific Law* <www.vanuatu.usp.ac.fj/journal\_splaw/Working\_Papers/Jowitt&Hicks1.htm> at 2 January 2005.