

Making History, Becoming History: Reflections on the Alleged Failure of the Fiji Constitution

Brij V. Lal*

When the telephone call came in early March 1995 from Jai Ram Reddy, Fiji's Leader of the Opposition and the long term leader of the Indo-Fijian community, asking me to be his nominee on the Constitution Review Commission, I was naturally overwhelmed. The appointment was not unexpected – I had been asked about my willingness to serve several months earlier – but the enormity of the task ahead dawned on me at that moment. Many friends in Fiji had cautioned me. The review, they said, was a charade, a cynical exercise in public relations by a coup-tainted Government eager to refurbish its image in the international community. Rabuka was still Rabuka: leopards do not change their spots. The presence of Tomasi Vakatora, a member of the cabinet sub-committee whose recommendations had formed the basis of the contested 1990 constitution, proclaimed the Government's real intention. But I was undeterred. At a celebratory dinner with friends that evening, my son Niraj, then just eleven, piped up proudly. "Dad", he said innocently, 'You have taught history and written history. Now you can make history and then become history.' Nervous laughter greeted his innocent remark.

Niraj was more prophetic than anyone of us realised. Four tumultuous years after the Commission completed its report, Fiji is back on the road to ruin. The 1997 Constitution, based on our Commission's report, unanimously approved by Parliament and blessed by the Great Council of Chiefs, lies in limbo. A democratically elected Government, with an absolute majority, was ousted by a coup and the country was subjected to a reign of terror and violence unprecedented in Fiji's history. The fabric of

* Brij V Lal works in the Division of Pacific and Asian Studies, The Research School of Pacific and Asian Studies at the Australian National University.

race-relations, just beginning to be repaired after years of strain following the coups of a decade earlier, is in tatters. The economy is down, and the best and the brightest are looking for greener pastures elsewhere. The May coup and the ensuing mayhem have taken Fiji back by a generation. As I write (in November 2000), the people of Fiji are intensely debating the future political direction of the country, including the formulation of a new constitution.

The Fiji saga has received more than its share of regional and international attention. Coups attract attention, because there is something deeply unsettling and immoral about using the bayonet to overturn the verdict of the ballot box, not once but three times within thirteen years: the first time as tragedy, the second time as farce. Fiji also raises questions asked in other multi-ethnic countries in the developing world. What framework of Government is appropriate for multi-cultural, multi-ethnic nations like Fiji (or Guyana or Malaysia)? How and in what ways should the constitution of a country enlarge and enrich the common space of equal citizenship without infringing the unique and uniquely rich cultural and spiritual traditions of its various components which make up the larger society? Fiji also raises questions about the tension between the privileged claims of the first settlers, the indigenous people, and those of the later settlers. Should blood rather than belief be the basis of political affiliation, ideology rather than primordality? Our Commission had provided a set of recommendations to resolve these complex questions, but these are not favoured by the latest coup makers and their supporters. A vision has vanished beyond recall.

A war of words is raging between the beneficiaries of the coup in the interim administration and those deposed from power, to win the hearts and minds of the local people and of the international community. The deposed government insists that any constitutional solution to the present crisis should be sought within the framework of the 1997 Constitution; its reinstatement is for them a prerequisite for any future dialogue and reconciliation. However, the coup supporters insist that the 1997 Constitution is dead and buried; that a fresh start, favouring indigenous Fijian interests and needs, is necessary to resolve the crisis.¹ What the outcome will be remains unclear. I am unconvinced that the Constitution has failed the people of Fiji. More to the point, the people of Fiji failed the Constitution. It will take many years of toil and tears to recover what Fiji has lost in its moment of madness, just as it did following the 1987 coups.

The destroyers of the 1997 Constitution have advanced many arguments to support their 'cause'. Let us begin with a 26 points document that George Speight and his supporters circulated to the Great Council of Chiefs soon after hijacking Parliament.² Their point is that the 1997

¹ I draw on Interim Prime Minister Laisenia Qarase's address to the United Nations, 8 September 2000.

² A copy of this document is in my possession courtesy of Australian Broadcasting Commission's Chief Diplomatic Correspondent Graeme Dobbell.

Constitution was not in the interests of the Fijian people, seen in the rejection of it by a majority of the Fijian provinces, that the Constitution was not properly explained to the Fijian people, and that it was introduced by stealth. The Democratic principles, which the Constitution enshrines, are in their view, a foreign flower unsuited to the Fijian soil, and antithetical to the central tenets of indigenous Fijian society. They further argue that the Chaudhry Government was 'Indianising' the public sector by appointing more Indo-Fijians to senior positions. Chaudhry, they said 'has a long history of arguing for racial equality under the umbrella of democracy whilst pursuing an underlying secret agenda of entrenching the interests of Indians in Fiji as supreme'. The Prime Minister was confrontational in his style and insensitive to Fijian interests and concerns, particularly in relation the ever sensitive issue of land. His Government, they said, had 'contributed to the impoverishment and disaffection of indigenous Fijians and his rule was the culmination of thirty fraught years of modern indigenous Fijian leadership that have sacrificed the economic and cultural well being of Fijians for the advancement of a few'. In short, both the Constitution, as well as the Government elected under it, did not serve the interests of the indigenous people and so had to be removed by force. In other words, Speight and his gunmen did what most Fijians had secretly desired. Speight thus should be a hero, and not treated as a treasonous criminal.

There are two sets of issues here, one constitutional and the other political, one involving rules and regulations of Government and the other dealing with the way the party in Government promulgated policies promised in their election manifesto, and handled the business of administration. The two have often conveniently been conflated in Fiji, the shortcomings of the Government of the day hitched to the supposed shortcomings of the Constitution, and the Constitution blamed for the outcome of the election. The coupling of the two is a politically expedient but unconvincing ploy; they need to be separated and considered separately.

The 1997 Constitution was not introduced by stealth, because it was preceded by the most comprehensive process of review and consultation ever carried out in Fiji, far more so than even the 1970 Constitution. That process began with the appointment of the Constitution Review Commission.³ Its members were chosen by Parliament who also drew up the Commission's Terms of Reference. These required the Commission to review the 1990 Constitution and to produce a report recommending constitutional arrangements which would meet the present and future needs of the people of Fiji; promote racial harmony, national unity and the economic and social advancement of all communities, while at the same time taking into account internationally recognised principles and standards

³ This is covered in B Lal, *Another Way: The Politics of Constitutional Review in Post-Coup Fiji* Canberra: NCDS Asia Pacific Press, 1998.

of individual and group rights, guaranteeing full protection and promotion of the rights, interests and concerns of the indigenous Fijian and Rotuman people, and having full regard for the rights, interests and concerns of all ethnic groups in Fiji.

The Commission itself widely consulted. It travelled to all the provinces and major settlements throughout the group and received well over 800 written and oral submissions from individuals, non-government organisations, church and community groups and all the major political parties. These submissions were printed in the media and broadcast over television and radio. The Commission also commissioned research papers from local as well as overseas experts on the matters that it was called to consider. These, too, were published.⁴ In addition, the Commission visited three countries with constitutional arrangements which had some bearing on the Fiji case, these included Malaysia, a multi-racial country with a significant indigenous population enjoying constitutionally guaranteed affirmative action policies; Mauritius, a small island state in the Indian Ocean whose constitutional structure had facilitated enviable economic growth that far outstripped Fiji's but which, at the time of independence in 1968, had lagged behind Fiji in virtually every sphere; and South Africa which, in the mid-1990s, was engaged in a massive effort to formulate an appropriate Constitution to facilitate the change from apartheid to a multi-party democracy.

The Commission's thoroughness and sensitivity received wide praise both locally as well as internationally. Introducing the report to the Parliament, President Ratu Sir Kamisese Mara commended the Commissioners 'first for their willingness to undertake this important task, and second for the devotion and commitment they and their staff have shown in accomplishing it. We are all very much in their debt'. Prime Minister Sitiveni Rabuka extended his 'warmest gratitude and congratulations for a work well done.' He went on: 'The Commission had painstakingly canvassed views and consulted widely throughout Fiji. With meticulous care and with patience, they then compiled their report. The unanimity with which they have submitted their recommendations clearly demonstrates the seriousness with which they had approached their task, and their determination to speak as one is suggesting to us the best way forward for our country. The Opposition leader Jai Ram Reddy was equally fulsome in his praise of a 'thorough and comprehensive document.'⁵ Internationally, the Commission's *modus operandi* was recommended by the Commonwealth Secretariat and the United Nations Electoral Assistance Division as a model for other constitutional review exercises.

⁴ A selection of them can be found in B Lal and T Vakatora (eds), *Research Papers of the Fiji Constitution Review Commission* (Vol. 1 *Fiji in Transition* and Vol. II *Fiji and the World*) Suva: University of the South Pacific (School of Social and Economic Development) 1997.

⁵ The quotations are from the *Report of the Joint Parliamentary Select Committee on the Report of the Fiji Constitution Review Commission*. Parliament of Fiji, Parliamentary Paper 17 of 1997.

A joint multi-party, multi-ethnic Joint Select Parliamentary Committee considered the Commission's report for a whole year. Its report, which formed the basis of the Constitution, was debated in Parliament and approved unanimously. Subsequently, the Great Council of Chiefs blessed the document unreservedly. It is true that many provincial councils had rejected the Commission's report at the instigation of its leaders, who opposed the review process. But, the same people were also members of Parliament, indeed members of the Joint Parliamentary Select Committee, all who had approved the Constitution, as well as the Great Council of Chiefs. Neither is it valid to argue that the Constitution could not be understood by ordinary people because it was not translated into the Fijian language (or Hindi, for that matter). Translating a complex document such as a Constitution is not an easy task, although the Citizens Constitutional Forum, a non-government organisation, explained its basic features in all the three principal languages of Fiji. But more importantly, the people who worked against the Constitution were not ordinary, unlettered Fijians, but members of Parliament who understood the document and had voted for it.

Is democracy a foreign flower unsuited to the Fijian soil? It is, of course, true that democracy is foreign to Fiji, but so too are some of the most cherished institutions and practices of modern Fijian society.⁶ The Fijian state itself is a creation of British colonialism, because before the middle of the 19th century, the islands of Fiji comprised a warring collection of *matanitu* (traditional confederacies) clamouring for political supremacy, a semblance of which was eventually achieved under Ratu Seru Cakobau, the self-styled king of Fiji. Christianity, too, is a foreign flower, having arrived in the islands via Tonga in 1835. The Great Council of Chiefs, the powerful umbrella organisation of traditional Fijian leaders, the established principles of Fijian land tenure are all, in different degrees, foreign flowers in Fiji.

The advocates of the foreign flower argument ignore the fact that Fiji had practiced a kind of democracy since independence in 1970. The legitimacy of a democracy was not questioned because the Fijian establishment always won. The point is, it was only when they lost power; in 1987 and in 1999, that the issue was raised. But even the Interim Administration does not question the validity of a democratic form of Government for Fiji. They simply want a democracy that will always put Fijians, or more correctly, the most vocal sections of them, in power. It also has to be stressed that the independence of the Constitution, and those that followed it, included entrenched provisions which effectively quarantined indigenous Fijian interests from general public debate, giving the power of veto over them to the representatives of the Great Council of Chiefs in

⁶ For more discussion, see B Lal, 'Rhetoric and Reality: The dilemmas of Contemporary Fijian Politics,' in *Culture and Democracy in the South Pacific*, Suva: Institute of Pacific Studies, 1992 at 97-99.

the Senate. That was as it should have been, and those protective provisions were the product of national consensus. If we jettison democracy and all that it represents, the sovereignty of Parliament as the repository of the people's will, an independent judiciary, an impartial civil service, what alternative do we put in its place? Monarchy? Ethnocracy? Theocracy?

Some coup supporters argue that the 1997 Constitution did not protect the 'paramouncy of Fijian interests'. These words have a peculiar origin in Fijian history, their significance distorted by meanings invested in them by different groups over the years. Many have mistakenly traced these words back to the Deed of Cession in 1874, by which Fiji became a Crown Colony. Those words are not found there. Instead, it records the chiefs' desire to 'tender unconditionally' the sovereignty of the islands to Queen Victoria and her successors, 'relying upon the justice and generosity' of Her Majesty in dealing with her subject peoples. Cession, chiefs hoped, would promote 'civilisation' and 'Christianity', both foreign flowers, in the islands along with a secure and stable Government, also foreign flowers. In response, the Crown promised that 'the rights and interests of the said Tui Viti and other high chiefs, the ceding parties hereto shall be recognised so far as is and shall be consistent with British Sovereignty and Colonial form Government'. This represents paramouncy within parameters. In early colonial usage, 'paramouncy of Fijian interests' meant the protection, and the insulation of those institutions and social practices which had a particular significance to the Fijian people, their land tenure system, 'native policies' designed to preserve the neo-traditional structure of their society, a separate system of administration, matters of chiefly titles and genealogies. On these matters, the view of the Fijian people through the Great Council of Chiefs prevailed. The European planters invoked the principle in the 1920s, not to support Fijians, but to halt political equality demanded by Indo-Fijians. Nonetheless, until the middle of the 20th century, the words were used in a protective sense.

That changed when independence became imminent in the 1960s. Then, Fijian leaders began to interpret the 'paramouncy of Fijian interests' to mean 'political paramouncy'. This was most forcefully articulated in 1964 in the now famous 'Wakaya Letter'.⁷ In it, Fijian leaders laid down the precondition for further political change towards greater internal self-government, including declaring Fiji a Christian state, seeking security of land ownership, demanding Fijian parity in the public service, recognising a continuing constitutional link with Britain, a link 'forged in a spirit of mutual trust and goodwill [that] that should never be severed' and 'building on and strengthening the spirit and substance of the Deed of Cession'. The Letter was a negotiating document, and a successful one as well. The 1965 Constitution gave Fijians two additional seats

⁷ A copy of this is reproduced in B Lal, *Broken Waves: A History of the Fiji Islands in the 20th century*, Honolulu: University of Hawaii Press, 1992 at 189.

over the Indians, thus upsetting the principle of balance which had underpinned the colonial pattern of political representation, and sowing seeds of further political instability for the remainder of the 1960s. The 1970 Constitution camouflaged the issue through a complex system of political representation. Fijians and Indo-Fijians had 24 seats in a 52-seat Lower House, 10 elected on national or cross-voting seats and 12 on straight communal seats. General Voters had 5 seats. The fact that General Voters tended to side with Fijians, and the Indo-Fijian community prone to splitting, ensured the dominance of the Fijian leadership. But more than politics, the fact that paramount chiefs were at the helm of national leadership, Ratu Sir Kamisese Mara, Ratu Sir Penaia Ganilau, Ratu Sir George Cakobau, and Ratu Sir Edward Cakobau, assured Fijians of the continuity with the past.

The conventional wisdom of communal compartmentalisation that underpinned Fiji's political system, that ethnicity would drive the engine of party politics, was threatened by social and economic developments and the widespread changes they brought in their wake.⁸ Modern, multi-racial education opened up new doors. Urban drift introduced people to new and often unsettling challenges. The video and then the electronic revolution introduced ideas and values once inaccessible or alien. Improved communication and increased cash cropping in rural areas brought the subsistence sector more centrally into the modern, monetary economy. New horizons opened, more opportunities presented themselves, and old assumptions about politics changed. They manifested themselves in the emergence of a multi-racial Fiji Labour Party in 1985 whose non-racial social and economic philosophy challenged the old order. Seen this way, the coup of 1987 represented an effort to turn the clock back, by force.

Three years later, the post-coup administration decreed a new Constitution weighted in favour of the indigenous Fijians to 'realise the aims of the coup'. Important offices of state, including the office of the Prime Minister, were reserved for them. Special, racially exclusive affirmative action programs for Fijians and Rotumans were legislated. And in the Parliament, the indigenous Fijians enjoyed an outright majority of seats. Of the 71 seats in the House of Representatives, they had 37. Election to Parliament for indigenous Fijians took place from their traditional provinces. Urban Fijians, more than a third of the Fijian population, were severely under-represented. With rural weighting and an outright Parliamentary majority, the architects of the 1990 Constitution hoped that Fijians would always remain in power, that Fijian political paramountcy would prevail. That did not eventuate. Soon after the formation of a Great Council of Chiefs' backed party, the Soqosoqo ni Vakavulewa ni Taukei, splintered, rival parties forming to contest its legitimacy, including the Mara-backed Fijian Association Party and the All Nationals Congress

⁸ See, example, M Taylor (ed), *Fiji: Future Imperfect*, Sydney: Allen and Unwin, 1987.

launched by Apisai Tora in the west. Part of the fragmentation arose from dissatisfaction with Rabuka's erratic leadership, a part of it from class tensions (Rabuka, a commoner, had beaten high Ro Lady Lala Mara for the presidency of the new party) and a part of from regional factionalism. Electing candidates from provinces encouraged provincial loyalties, paralysing the operation of effective party politics with a national agenda and vision. Rabuka's party won the 1992 election but not in sufficient numbers to form Government on its own. It could do so only with the support of the Fiji Labour Party backed, in the main, by the Indo-Fijian community, the very people so recently deposed.

The clear lesson of 1990 was that Fijian numerical supremacy in Parliament was no guarantee of Fijian political paramountcy. That fact was clearly demonstrated further in the 1999 elections where Fijian fragmentation reached endemic proportions, with some twelve ethnic Fijian parties contesting the election.⁹ It was the division among the Fijians, not political unity among Indo-Fijians, that led to the fall of the Rabuka Government. Since the coup of 19May, regionalism and confederacy-based politics have become rife and have divided the Fijian community as never before. And they are not likely to end anytime soon. There are other things to note as well. Precisely what constitutes 'the Fijian interest', besides those things already given water-tight protection in the 1997 Constitution, remains unclear. Fijian interests are much more diffuse now than ever before. Over forty per cent of the indigenous population now lives in urban and peri-urban areas, exposed to all the challenges of living in a complex monetary economy. Increasingly their needs are not the needs of their rural counterparts. Weighting representation in Parliament in favour of the rural dwellers, as election from the provinces will inevitably entail, will marginalise urban Fijians even more.

Given the diversity of Fijian society across class and region, the goal of permanent political unity also puts enormous strains on the Fijian community. It is difficult, if not impossible, the Commission argued, for one party to accommodate the multiplicity of interests that embrace Fijians. It also puts strains upon its traditional institutions. The Great Council of Chiefs' sponsorship of one political party divided the Fijians who wanted that body to provide leadership to all Fijians irrespective of political affiliation. The emphasis on Fijian unity also means that Fijians would not be free to vote out a Fijian Government if it did not deliver what they expect. Those expectations go beyond fulfillment of the Government's election promises to improve the conditions of life for Fijians, for Fijians, like other citizens, want the same standards of integrity, efficiency and effectiveness from those they elect. The idea that a Fijian Government must be maintained in office at all costs has grave consequences for political accountability. It requires setting aside the normal democratic

⁹ This election is covered in B Lal (ed), *Before the Storm: 1999 General Elections and the Dilemmas of Contemporary Fijian Politics*, Canberra: Asia Pacific Press, 2000.

controls on a Government's performance in office, and this is bad for the Fijian community, as well as for the country as a whole.

Supporters of the coups invoked various international instruments on indigenous rights in support of their claim for political paramouncy. Their argument rests on a misreading of these instruments. The conventions most commonly cited in support are the 'ILO Convention No 169 on Indigenous and Tribal Peoples' and the draft 'Declaration on the Rights of Indigenous Peoples'.¹⁰ The ILO Convention was adopted in June 1989 as a revision of 'ILO Convention No 107 on Indigenous and Tribal Populations'. Convention 107 had assumed that all relevant decisions on the living and working conditions of indigenous and tribal peoples would be made by the Government and that eventually the indigenous and tribal peoples would be assimilated into the broader community. But the goal and philosophy of assimilation is discredited, and the Convention 169 accepted that the indigenous and tribal peoples would continue to enjoy a separate cultural identity within the national society. The draft Declaration provided for greater autonomy for these groups within states where they and their lands were now situated. It is important to realise that these and other instruments applied, or were intended to apply, to indigenous and tribal communities whose lands, culture and separate identity were at risk of marginalisation as a result of colonisation, such as the Hawaiians, Maori and Australian Aborigines as well as tribal groups in North and South America. For that reason, they were not wholly relevant to indigenous Fijians who had always enjoyed autonomy in the management of their administrative affairs and who were secure in the possession of their lands and a vibrant cultural identity.

At the heart of these instruments lie two ideas: that indigenous peoples will remain a distinct community and that they will enjoy equal rights with other members of society. The clear inference is that, at the national level, the political and other rights of the indigenous and tribal peoples are exactly on the same footing as those of other members of the national society. Both instruments see the special rights of indigenous peoples as distinct communities as supplementing the fundamental human rights and freedoms they already share with all other citizens. Nothing in either instruments gives an indigenous people superior or paramount rights in participating in the Government of their society. Sometimes, indigenous activists raise the issue of 'self-determination'. The Declaration (Article 3) provides: 'Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'. But the phrase 'freely determine their political status' refers to their political status in taking control over their own affairs, not to their political status as it affects their participation in the national Government. The Article does not

¹⁰ Here, to avoid misrepresentation, I am following the report of the Fiji Constitution Commission, 40-52.

sanction secession. Nor does 'self-determination' authorise a particular 'people' within a country, whether or not indigenous, to exercise political domination over other 'peoples' as citizens. No political community, by reference to either 'self-determination' or 'sovereignty,' can legitimately claim that it has political rights that entitle it to a position of dominance over other groups forming part of the same national society.

The word 'right' is often used in conjunction with sovereignty and self-determination. What are Fijian rights? An important Fijian right is the right to land ownership. This guaranteed through the recognition in the *Native Lands Act* to customary title. The *Native Land Trust Act* provides that Fijians may not dispose of their lands except to the Government through the Native Land Trust Board. Fijian traditional fishing rights are protected by the *Fisheries Act*. And the Constitution gives all landowners, including indigenous Fijians, the right to a share of the royalties from the exploitation of minerals in the subsoil of their land or the seabed over which they have traditional fishing rights. Fijians also have rights to their traditional institutions, including the Great Council of Chiefs (GCC), and other separate administrative systems set up for their governance under the *Fijian Affairs Act*. The 1997 Constitution for the first time recognised the Great Council of Chiefs as a constitutional body and empowered it to nominate both the President as well as the Vice-President of the republic. The separate system of Fijian administration is also protected. But political paramountcy is, and cannot be, a right. As mentioned above, international standards, including the two instruments dealing with indigenous peoples, and the concepts of 'self-determination' and 'sovereignty' give no support to that proposition.

Some Fijians also argue that they have a 'right' to affirmative action programs. This is a complex area involving an interplay of many perceptions about the present circumstances of different communities, the philosophy of giving state assistance to individuals by reason of their membership of a particular community or group, the principles upon which appointments should be made to public service, how programs for the benefit of a particular community or groups are reconciled with the right of equality before the law and freedom from discrimination on the constitutionally prohibited grounds, the desirable balance between the resources used for those purposes and other social justice programs for the needy members of all communities, and the question of whether the assistance given to enhance the position of particular communities and groups achieves the desired results.

Nonetheless, affirmative action for the indigenous Fijians was an accepted fact of public policy in post-independence Fiji. Since the 1970s, for example, following the report of the 1969 Education Commission, fifty per cent of all Government scholarships for tertiary education was reserved for them on a parallel block basis, despite demonstrably inferior performance. The Fiji Development Bank initiated a number of commercial and business schemes to assist indigenous Fijians in the commercial

sector,¹¹ a function which the National Bank of Fiji assumed between 1987 and 1995. After 1987, the Government set up special funds to purchase freehold lands and give them back to the indigenous landowners. And a special scholarship fund was set up by the Fijian Affairs Board for indigenous Fijian students to gain tertiary qualifications. The result of these efforts did not match expectations.

The 1990 Constitution explicitly provided for affirmative action for indigenous Fijians and Rotumans. Section 21, entitled "Protection and Enhancement of Fijian and Rotuman interests", authorised and directed Parliament to put in place affirmative action programs for their benefit:

'Parliament shall, with the object of promoting and safeguarding the economic, social, educational, cultural, traditional and other interests of the Fijian and Rotuman people, enact laws for those objects and shall direct the Government to adopt any program or activity for the attainment of the said objectives'.

The cabinet could authorise Government departments and statutory commissions to reserve scholarships and other training opportunities and business permits and licences to attain the aims of the section. The Constitution also contained specific provisions which sought to secure a minimum fifty per cent representation of Fijians and Rotumans in departments and among the holders of judicial and legal offices.

There is no quarrel with the principle of affirmative action, but the selective manner of its application, and failure to reach expectations, became a bone of contention. No matter of sensitive public policy, such as affirmative action, can succeed if there is no public or national consensus about it. In the case of post-coup Fiji, there was none. Nor is any program of this kind likely to succeed unless the specific goals to be achieved, and the means through which they are to be achieved, are clearly indicated. To succeed, they must set out the performance indicators for judging the efficacy of the program in achieving its goals, and the criteria for selecting the individuals who will be entitled to the privileges and advantages. A blanket 'Fijian' or 'Rotuman' criterion is not good enough because, as mentioned above, these communities are as diverse as others in the distribution of wealth among them. Prescribing ethnicity as the criteria for affirmative action is problematic for other reasons as well. For one, it ignores other criterion, such as gender (and there is a gross under-representation of women in the public sector). For another, it assumes that other communities, in particular the Indo-Fijians, do not need affirmative action. This is not true, as the level of Indo-Fijian participation in the public sector has been declining markedly. In 1985, Fijians made up 46.4% of established public servants, Indo-Fijians 48% and general voters and expatriates 5.6%. The corresponding figures in 1995 were Fijians 57.3%,

¹¹ See Lal (*Broken Waves*) above n 7 at 232-235.

Indo-Fijians 38.6% and general voters and expatriates 4.1%. In 1995, of the 31 permanent secretaries, 22 were Fijians, 6 Indo-Fijians and 3 were general voters. Furthermore, virtually every study of income levels and poverty in Fiji in recent years has shown that, among Fijian and Indo-Fijian households, each group has a roughly comparable percentage living in poverty.¹² And although Indo-Fijian households, on the whole, had higher incomes than did Fijian households, incomes were significantly less equally distributed among Indo-Fijian households.

The Fiji Constitution Review Commission therefore recommended that the Government 'put in place not only affirmative action programs for the benefit of the Fijian and Rotuman people, but similar programmes for other ethnic communities, and for women, and for all other disadvantaged citizens or groups in the Republic of the Fiji Islands.' The Compact of the 1997 Constitution (section k) agreed that 'affirmative action and social justice programs to secure effective equality of access to opportunities, amenities or services for the Fijian and Rotuman people, as well as for other communities, for women as well as men, and for all disadvantaged citizens or groups, are based on an allocation of resources broadly acceptable to all communities.' The phrase 'broadly acceptable to all communities' is important: it implies consensus as well as the principle of proportionality. In effect it means that now that the Fijian and Rotuman people are over 50% of the population, they can legitimately claim over 50% of affirmative action in their favour.

The current interim administration has proposed re-implementation of a race-based affirmative action.¹³ It has promised to establish a Fijian and Rotuman Trust Fund to support indigenous development projects, a National Saving Scheme for Fijians and Rotumans to finance increased Fijian equity and other forms of participation in business as well as promising to invest in education, tax exemptions to Fijian companies for an unspecified period, setting up a Fijian Development Trust Fund and a Fijian Education Fund to provide scholarships to students and grants to Fijian schools, reserving 50% of Government shares in commercial companies for indigenous Fijians, and reserving 50% of all licences and permits as well as the same percentage of all Government contracts for indigenous Fijians. All this in addition to transferring all Crown Schedule A and B lands to the Native Land Trust Board and establishing a Lands Claims Tribunal to deal with longstanding claims for native land acquired for public purposes. These proposals are designed to appease the Fijian nationalist fringe: the interim administration wants to be seen to be

¹² Among them are reports by the Asian Development Bank and the World Bank. An early analysis along these lines is Stan Stavenuiter, "Income distribution in Fiji: An Analysis of Its Various Dimensions, with Implications for Future Employment, Basic Needs and Income Policies". The report was presented to the Central Planning Office, Government of Fiji, April 1983.

¹³ This is from Interim Prime Minister Laisenia Qarase's 'Fiji Blueprint,' published in the newspapers and on the internet.

implementing policies favouring Fijians. But such policies and initiatives have been in place for a long time and failed to deliver the desired outcome. It needs to be asked whether more affirmative action is the answer, or are the problems, in the commercial field, for example, more deep-seated and culturally based than money by itself cannot solve? And what of the principles of efficiency, accountability, transparency, merit and effective delivery of state services? Playing the 'race' card, blaming other ethnic groups for the poor performance of indigenous Fijians, as is often done, is no longer convincing. Deeper soul searching about the role of culture and tradition would yield more fruitful results.

In my opinion, then, the 1997 Constitution did not fail. The people of Fiji failed the Constitution. The next question is: did the People's Coalition Government fail, or in some way dilute Fijian interests? The Peoples Coalition Government was a coalition of disparate political parties with diverse interests and agendas.¹⁴ They came together not necessarily because of a shared vision for the nation but because of what might be termed 'negative' sentiments. The Fijian parties in the Coalition joined the Labour Party because they wanted Rabuka out of office as punishment for the sorry record of his Government in the 1990s, tainted as it was by mismanagement, corruption, indecisive leadership and the scandals in his private life. They also opposed the 1997 Constitution which Rabuka, working closely with the Indo-Fijian Leader of the Opposition Jai Ram Reddy, had been instrumental in shepherding through Parliament. The Christian Democratic Alliance, a member of the People's Coalition, for instance, wanted Fiji to become a Christian state and the Constitution reviewed to address Fijian concerns, especially the issue of Fijian political paramountcy. Soon after forming Government, rifts emerged among them. A faction of the Fijian Association Party opposed the Government in which its own leader, Adi Kuini Bavadra Speed, was the Deputy Prime Minister. Apisai Tora, the founding leader of another Coalition partner, the Party of National Unity, attacked the Prime Minister and opposed the Government even as two of his own colleagues were members of the Cabinet. So the Government was hobbled from within by internal criticism and division that questioned its unity and cohesiveness.

The Labour Party was the dominant partner in the Coalition with 37 out of the 71, seats giving it an outright majority in Parliament. But because the Constitution prescribed compulsory power sharing in cabinet, with any political party with more than ten per cent of seats in Parliament entitled to be invited to become part of Government, Chaudhry had to share power with other parties not in his coalition. His hands were tied. As leader of the largest party in Parliament, Chaudhry became Prime Minister although several of his own colleagues would have preferred an indigenous Fijian in that office. Chaudhry did the right thing, though

¹⁴ For more discussion, see B Lal, *A Time to Change: The Fiji General Elections of 1999*, Canberra: Australian National University (Department of Political and Social Change), 1999.

perhaps the manner in which he attained that office might have been different, through more consultation and dialogue. The fact that the President, Ratu Sir Kamisese Mara, persuaded recalcitrant Fijian parties to rally behind Chaudhry in whose Government his own family members were Ministers, raised suspicions about his dynastic ambitions long distrusting of Mara's rule and personal ambitions for himself and his traditional power base in the eastern parts of Fiji. Since Chaudhry was able to secure the President's support along with that of factions of Fijian parties, his coalition was seen, rightly or wrongly, as a strategy to divide the Fijians, successfully practising the kind of politics Fijian leaders had played with the Indo-Fijian community since independence.

Chaudhry's own personal style compounded problems. An intelligent and battle-hardened trade union leader, he had been the single most painful thorn in the side of post coup regimes, his uncompromising defence of the trade union movement and the principles of non-racial democracy earning him enemies among important, unforgiving sections of the Fijian community. Although there were more Fijians than Indo-Fijians in the Cabinet, there was no doubt in his opponents' minds that real power was wielded by Chaudhry, who himself controlled the portfolios of Prime Minister and Minister of Finance, Sugar, Public Service and Information. Such centralisation was consistent with his personal style of leadership as well as a tacit acknowledgement of a dearth of ministerial talent in his Coalition. Some of his decisions invited public criticism, such as appointing his own son, not a civil servant, as his personal secretary on the public payroll, which resulted in him being criticised for practising the very kind of nepotism that he had condemned while in opposition, and created the perception of the Government favouring its own grew among those already disapproving of it. The Government's confrontational approach to the media did not help matters. To every criticism and every opposition, the Government responded with the mantra of mandate: it had the peoples' mandate to implement policies promised in its manifesto. The Government, of course, did have the mandate, but astute political leadership in Fiji would have understood that Parliamentary mandate is one among several mandates in Fiji. Repeated invocation of the mantra of mandates irritated those already fearful of the Government's huge majority in Parliament. The Government's hectic legislative program, institutional reforms, and shedding deadwood from the public sector heightened those fears.

The issue which raised the greatest emotion was land, not the ownership of it, but the imminent expiry of 30 year leases granted under the *Agricultural Land and Tenant Act* first passed in 1969. Some Fijian landowners wanted their land back either to cultivate it themselves, re-zone it for commercial or residential purposes, or use the threat of non-renewal to extract more rent from their tenants. They were led by Marika Qarikau, head of the Native Land Title Board, an abrasive, hard line nationalist who used every means possible, from addressing the provincial councils

to using the network of the Fijian Methodist Church, to rally the landowners behind him and against the Government. The Government did not contest the right of the landowners to reclaim their land but nor, on the other hand, could it ignore the plight of tenants, most unskilled, poor, uneducated, evicted from the land, thus causing a massive social problem for the country. The Government offered the displaced tenants \$28,000 to get started in some other occupation, and the landlords \$8,000 to equip themselves as cultivators. It was a pragmatic interim solution to an intractable problem.

At the same time, the Government attempted to establish a Land Use Commission (LUC) to work with landowners to identify idle land to put to productive use, including, if possible, re-settling displaced tenants on them. With Qarikau on a warpath, the Government went directly to the landowners, and sent a delegation of chiefs to Malaysia (Sarawak) to familiarise themselves with the work of a similar commission there and to dispel any fears they might have about the Government's intentions. To everyone's surprise, the chiefs returned impressed, but by then Qarikau had already orchestrated an unqualified rejection of the proposal from many provincial councils. Qarikau feared that if the LUC concept became successful, the power of his own political base, the NLTB, might be irredeemably impaired. With provincial criticism swirling, the Government did what it should have done in the first place: it took the proposal to the Great Council of Chiefs, which blessed it and asked the Government and the Native Land Title Board to work co-operatively to finalise the details.

This hard fought victory was short-lived, for just as the Government felt it was gaining an upper hand over its critics, protest marches began around the country, led in virtually every instance by defeated politicians – Ratu Tevita Bolobolo, Apisai Tora, among others. They gained momentum, energised by the Government's dismissive stance towards the marches as the work of a few misguided miscreants. The cry of 'Fijian rights in danger' rallied many behind the re-invigorated Taukei Movement, and roadblocks and threatening anti-government banners went up. The climax came on 19 May when George Speight and six other armed gunmen hijacked Parliament, tore up the Constitution and unleashed a reign of terror and violence upon an unsuspecting population.

Even if the Chaudhry Government was not everyone's choice, even if it was drunk on the power of its numbers in Parliament, to justify a coup on these grounds is plainly untenable. For, if style were the criteria, then coups would be the order of the day in many of the most advanced democracies of the world. To say that just because Chaudhry was unacceptable to the nationalists, that no other Indo-Fijian should ever aspire to lead the Government of Fiji equally boggles the mind. Whether it realised it or not, the Chaudhry Government was forced to share the political space with competing centres of power. No law affecting the indigenous Fijians could be changed without the support of the nominees of the Great Council of Chiefs in the Senate. The *Fijian Affairs Act* specified the rules

and procedures for the governance of indigenous Fijians. The power of the Native Lands and Fisheries Commission to adjudicate ownership disputes among indigenous Fijians was absolute. There were no programs put in place for indigenous Fijians by previous Government that the Chaudhry Government threatened to cancel, beyond asking for more accountability and transparency in their administration.

In one respect, however, the People's Coalition Government did threaten the established habits of thought and political behaviour in Fiji. In however small a way, its emphasis on non-racial solution to the country's deep-seated social and economic problems threatened to undermine the way of thinking which, for so long, had seen the country's problems and its solution through the prism of race and ethnicity. Those who saw race not only as a 'fact' of life but also a 'way' of life saw the Chaudhry Government undermining a system that had kept them in positions of power for more than a generation. Many had over the years been led to believe that only a Fijian Prime Minister, not an Indo-Fijian, could be trusted to govern the country in which Fijian interests would be secure. Chaudhry's success, as seen in soaring public opinion polls on the eve of the coup in May, would have undermined a fundamental tenet of their beliefs. Chaudhry had to go before he and his vision for Fiji got too deeply entrenched.

The interim administration has proposed a new Constitution which, it says, must enshrine Fijian political paramountcy. In his address to the United Nations in September, the Interim Prime Minister hinted at the kinds of things that the Constitution might include. Since over 50% of the population are Christian, Fiji might be declared a Christian state. And he has said the amount and value of land ownership should also be reflected the composition of Parliament. The SVT is more specific.¹⁵ Indigenous Fijians, it says, must have 70% of all Parliamentary seats, Fijian culture and language should be made the national language and culture, the first past the post system should be used in national voting, as opposed to the alternative voting system prescribed in the 1997 Constitution, open (non-racial) seats should be turned into national (cross-voting seats where the ethnicity of the candidate is specified but all vote) seats, and there should be greater decentralisation of political, fiscal and administrative structures. The salience of these points can be debated at length, can a small island state like Fiji, for example, afford the financial burden of more decentralisation? Why national seats when everyone knows them to be compromised and discredited? Why first past the post system when it is regarded universally as obsolete? Why give the Fijian people the right to vote and then insist that they vote for only Fijian candidates for political leadership? Decentralisation is fine in theory, but Indo-Fijians are excluded from Fijian provincial and tikina councils.

The real issue underlying the SVT's demand is Fijian political

¹⁵ A copy of this is available on the internet site, *fijilive*.

paramountcy. A Fijian must be the Head of State as well as of Government and, if possible, of important statutory positions as well. Fiji has travelled that route before, under the 1990 Constitution, with disastrous results. The question for the Fijian people is not a Fijian as the Head of Government, but which, or what kind of, Fijian. For some Ratu Sir Kamisese Mara was the 'wrong' kind of Fijian leader. Others rejected Sitiveni Rabuka because he was a commoner, albeit an uncommon one. Dr Timoci Bavadra, too, could not be trusted. For yet others, George Speight, now calling himself Ilikini Naitini, is an unacceptable face of Fijian nationalism. Increasingly, too, many Fijians are thinking in terms of their provinces and confederacies, all wanting to take turns at the helm of ship of state. Taking turns: that is what the debate is about, not about social, economic and national development in an era of unprecedented change and globalisation.

Now, Fijians will take turns without the 'threat' of Indo-Fijian dominance. Thousands of Indo-Fijians left the country after the coups of 1987, and now many more will leave, depriving the country of much needed talent and skills. The reduced number of Indo-Fijians will open up space for more debate among Fijians as provincial, regional and confederacy tensions and rivalries come to the fore, as they have already begun to do after 19 May. Their situation is aggravated by the absence on the national scene of experienced and trusted leaders with overarching national influence. With the departure of Ratu Sir Kamisese Mara has ended the rule of paramount chiefs tutored for national leadership by the colonial Government in the years following the Second World War. The newer generation of Fijian leaders are embroiled in local and regional politics, their wider influence limited or tainted by involvement in the events of the last decade or so. In the absence of any other alternative, Fijian people may discover the 'foreign flower' of democracy as their political saviour.

In recent months, I have often revisited in my mind the work of the Fiji Constitution Review Commission. I continue to be inspired by its vision of Fiji as a vibrant multi-ethnic democratic state that celebrates the indigeneity of Fiji, recognises the equal rights of all citizens, maintains the separation of church and state, provides a basis on which all citizens can describe themselves by a common name, and encourages every community to regard the major concerns of other communities as national, not sectional, concerns. A multi-ethnic state, I believe fervently, should strive for multi-ethnic Government achieved through the voluntary cooperation of political parties, or increased support for a genuinely multi-ethnic party. It must recognise and celebrate the distinctive character of its diverse constituent parts while enlarging the common space and opportunities of equal citizenship. Consensus not coercion is the way forward to genuine reconciliation. The Fijian powers that be may wish to turn the hands of the clock back, but it would not do the clock any good. The Fijian tragedy once again underlines the fundamental truth that those who do not learn from history are condemned to repeat it.