

Cultural Autonomy

Its implications for the nation-state

The Belgian Experience

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Preface

Members of the autochthonous race, sir, that is to say the Fijians [indigenous Fijians] of this country should play an important and responsible role in national politics and as has been suggested and recommended in the Report, some members of the Upper House will be nominated or appointed by the Council of Chiefs. I think by doing that, we are going to prove to the country, in particular to the Fijian people, our sincerity that we would like to provide a tangible and effective way of protecting their land, protecting their customs, their culture and their way of life generally. This indeed is a privileged position that they will occupy in the future Legislature of this country... We want to see that all their fears about their lands and other matters, as mentioned, are allayed once and for all. The sword will be in their hands.

Siddic Koya¹

Following the promulgation of the new Fijian constitution, now referred to as the 1997 Constitution, the Fiji Labour Party (FLP) together with its coalition partners formed government in May 1999. While this was the second time the FLP in coalition had been elected to government, it was the first time it was headed by an Indo-Fijian who became Prime Minister.

Mahendra Chaudhary's reign as Prime Minister lasted only a year. He and members of his cabinet were taken hostage by a George Speight and seven armed 'gunmen' on 19 May 2000. One would have thought given the few number of kidnappers a rescue of the Prime Minister and Cabinet in particular by the Fiji Military Forces, which prides itself in its military prowess was obvious and a relatively easy task.

However, this was not to be. The ineptitude, inertia and reluctance displayed by the military and other law enforcement agencies in the first few weeks of the crisis allowed the kidnappers a free hand in mustering support at the parliamentary grounds, for their 'cause', holding the Prime Minister and his Cabinet in captivity for 56 days.

The cause apparently was the re-assertion of indigenous Fijian paramouncy *vis a vis* indigenous rights. The very election of an Indo-Fijian Prime Minister together with his supposed insensitivity to indigenous Fijian institutions such as the Native Land Trust

¹ Fiji Legislative Council Debates (1970) vol. II, p. 56.

Board ('NLTB') and the *Bose Levu Vakaturaga* ('BLV') were espoused as threats to indigenous rights, self-determination, land, culture, governance and autonomy.

However, it quickly became apparent that these stated reasons were but a facade to reinstate certain members of the opposition and those who had perceived their positions and status under threat by the new government.

Just as the four week old Bavadra Labour coalition government had been removed from office in 1987 as it was deemed to be too 'Indian', despite Bavadra himself being an indigenous Fijian and Prime Minister, so was the Chaudhary led government cast aside to make way for those who were part of the establishment.

While the manoeuvrings and clientalism of the establishment clique is intriguing, invariably epitomising machiavellianism and at the best of times moral impairment – illustrating the nuances of the *real politik*, Fijian style – the fact remains that the mantra of indigenous Fijian paramountcy and the necessity to maintain the 'sanctity' of separate indigenous Fijian administration were and continue to be very potent ideas demonstrating different notions of group and citizen loyalty and identity.

Indeed, it is so persuasive that a supposedly professional military force, the police force, the bureaucracy and certain members of the judiciary were not just passive bystanders and, therefore tacitly approved the actions of the establishment, but were in fact instrumental in facilitating the successful dismantling of the institutions of the State and undermining the rule of law. Their loyalties were not to the post independent nation-state of Fiji but ostensibly to the separate Fijian administration – cultural autonomous institutions – created by the British, with some merit, at the time of colonisation, to protect indigenous rights.

Introduction

But autonomy can also be fragmenting, pigeonholing and dividing societies. Sometimes in an attempt to preserve the integuments of a state, autonomy is so structured that it is difficult to find the common grounds on which communities can find a moral or political basis for coexistence.

Yash Ghai²

The replacement of external conflict with internal strife has the potential to neutralise the very existence of a nation-state. Autonomy within this context has gained currency as a political, legal and indeed a practical device to facilitate and negotiate the differences and demands exerted on the nation-state by internal protagonists/factions in an effort to negate what is now surely a clichéd metaphor – communal/ethnic conflict.

While the concept and indeed practice of autonomy or some configuration of it has been around arguably for thousands of years, it has recently gained acceptance and prominence in (re)structuring the modern nation-state, preserving it and allowing the formation of asymmetrical relationships between the centre and the periphery, and/or between the different groupings.

The practicality and success of autonomy in 'reconciling' seemingly disparate groups within the state boundaries - groups which could not function under one system, one citizenship - has been demonstrated in recent times by the new constitution of Bosnia Herzegovina and arrangements in place in Kosovo. Such devices give different groups self-governance or 'control over affairs of special concern to them, while allowing the larger entity those powers that cover common interests'³ and concomitantly maintain the territorial integrity of the State.

Neo-Liberals who espouse multicultural citizenship⁴ by (re)emphasising the right to cultural difference of minority groups and individuals *vis a vis* the State also view autonomy as a means of making the state more neutral in practice and ultimately more responsive, in tune with its citizens at large. Yet the granting of autonomy has implications for the nation-state and for the groups and individuals within it.

² Ghai, Y. (ed.) *Autonomy and Ethnicity – Negotiating Competing Claims in Multi-ethnic States*, Cambridge University Press, Cambridge, 2000. P. 24

³ *id.* p. 8.

⁴ Kymlicka, W. *Multicultural Citizenship – A Liberal Theory of Minority Rights*, Clarendon Press, Oxford, 1995.

If groups (and individuals within those groups) recognised as homogenised entities pledge their 'first' loyalty to their own institutions of autonomy rather than to the official nation-state or the centre then it is an enormous paradigmatic shift from the classical Liberal view of citizen-state relationship. This shift could in all likelihood weaken the very foundation of the Liberal nation-state. The asymmetrical relationships not only transmute 'notions of the organisation of the state, the rationalisation of public power and homogenising mission of the state'⁵ but it has ramifications on citizenship, loyalty, identity and nationhood.

Indeed while autonomy invariably emphasises the particular or conversely the existence of difference(s) between the state and other groups, there is an assumption that individuals with the identified entities have similar needs, problems, and experiences. Paradoxically, autonomy at the state level allows for heterogeneity but its functioning is reliant on homogeneity or at least assumptions of homogeneity within the identified groups. Emphasis on the particular could lead to the neglect of *inter alia* issues such as socio-economic disparities and gender bias within the supposed monolithic groups. In this sense autonomy allows for the addressing of possible inequalities between groups but could relegate or delay intra group injustices.

Similarly, while a 'group culture' and/or cultural institutions facilitated under autonomy maybe feasible at a point in time, it could become redundant over a period given the changing needs of the 'autonomous people' and the circumstances around them. Indeed governing a group via autonomous institutions, which do not reflect their aspirations and address their specific concerns, could prove to be disastrous for the members of the 'homogenised' group' and exert unwarranted pressure on the nation-state. Under these circumstances the continuation of such autonomous institutions could only serve and benefit a few.

There are also further queries in relation to autonomy. While autonomy may be a good device for negating ethnic conflict or protecting minority groups, should autonomy continue in perpetuity? Or should autonomy have a sun set clause? Indeed when identifying and forming autonomous group or institutions what factors should be taken into consideration? When a group is identified whose view would and/or should be considered when forming these institutions? Would not there be a

⁵ *supra* note 2, p. 2.

tendency, when forming these institutions under autonomy, to favour particular groups? Once formed should not the form of autonomy take heed of changes around it and within the group? Does unchecked autonomy ultimately lead to disunity both within the group and the nation-state since it reinforces a singular mindset within the group but marked identities outside creating disloyal citizens? Does multicultural citizenship in this sense create an impotent and dysfunctional state? - a state wherein loyalties are divided? Which institutions should prevail in the event of a clash between the institutions of the state and the institutions created under autonomy? Accordingly, if the state is to be strengthened would not it be better to put in place a strong Bill of Rights which protects, incorporates and guarantees rights - both *inter* and *intra* the identified groups?

While it is beyond the scope of this paper to provide answers to all the questions raised above, it will however, examine the experience of cultural autonomy using the Liberal framework in the then colony and now Republic of Fiji. It will demonstrate *vis a vis* the Fijian experience that:

- Autonomy, in this instance cultural autonomy could be an effective device at a particular point in time to protect minority groups or more appropriately groups that have been or are under threat. While there is doubt about its altruistic motives it is certain that the British Colonial Government's creation of separate 'cultural' and administrative institutions *vis a vis* autonomy, provided the much warranted protection for indigenous Fijians, who were the vulnerable group at the time of colonisation. It ostensibly prevented *inter alia* the complete loss of indigenous culture and land as experienced by other indigenous communities in the colonised world. It also arguably buffered the indigenous population from outright exploitation at a time of tumultuous change, which could have left them alienated in their own land.
- The development of autonomous institutions in Fiji has over the years created very stratified and rigidified structures, homogenising indigenous Fijians. They have created an elite group of chosen/hereditary leaders, and a clientele network resulting in institutions, which no longer have the capacity to provide for and respond to the changing needs of the indigenous Fijian people and the nation-state of Fiji. Accordingly autonomy should be relevant to and keep up with the changing times and demographics. What happens on the ground, so to speak, must be reflected in the institutions.

- The manner in which the separate institutions reacted to and were utilised following the election of the Labour coalition governments and their subsequent overthrow in 1987 and 2000 demonstrated that the separate institutions were perceived to be and indeed viewed themselves to be independent of the institutions of the state. Autonomy or more appropriately the institutions of autonomy can become completely independent at the expense of superseding the institutions of the state – coming into direct conflict with the state and creating and perpetuating the ethos of the particular and difference. This ultimately creates not only a very weak state but also stunts the growth of nationhood.
- In other words cultural autonomy could provide benefits to minority groups however culture based institutions could get caught in a time warp and subsequently not be responsive to the changes and needs of the group which has autonomy. Indeed one of the effects of creating culturally autonomous institutions which invariably is in relation to the 'other' is the homogenising of the identified group. This process increases the propensity to relegate and ignore intra group inequalities and injustices such as socio-economic and gender issues. At the same time, by placing too much emphasis on culturally autonomous institutions, individuals and groups could have the tendency to not only become insular but also to have negligible levels of allegiance to the nation-state.

Chapter one sets out the 'conceptual kit'⁶ and examines the liberal theoretical framework and related discourse, which will assist in assessing and analysing the lessons to be learnt from the practice of cultural autonomy in Fiji.

Chapter two sets out the background against which autonomy was granted in Fiji. It examines the possible rationale behind the setting up of these institutions and its impact. It also details some of the practices of autonomy, which were at the behest and instigation of those elites who controlled the state namely the eastern chiefs and the colonial administrators. The control of these autonomous institutions by elites not only disallowed nation building but suppressed the viability of these institutions given their changing constituency and the environment in which that constituency existed.

⁶ This phrase is borrowed from Oommen, T. *Citizenship, Nationality and Ethnicity*, Polity Press, Cambridge, 1997.

In writing this paper I have also drawn upon material from a previous thesis of mine *Constitution making in Divided Societies – Fiji a Case Study*, in particular in the first section of chapter 2. Wherever I have done so is footnoted.

Fijian/s is used as the term applicable to all Fijian citizens, as it should be. Ethnicity is emphasised only when it is necessary to explain specific ideas or interpretation of events. The terms indigenous Fijians and Indo-Fijians are when referring to ethnic categories. 'Fijians', 'Indians', 'Europeans' 'Part-Europeans' and 'Chinese' are used when referring to communalistic ideas.

Chapter 1

Liberalism and the Nation-State

If the loss of morally authoritative voices – God, the nation – is the inevitable outcome of economic globalisation and cultural diversification, then answers to moral questions must be sought elsewhere. If cosmopolitanism can be understood as a way of living with diversity – and with the loss of certainty which is corollary – then cosmopolitanism may be an important part of the answer. But the problem of creating social practices and institutions through which diversity can flourish remains. There is little which suggests that those which are coming into existence will do a better job than the nation-state.

Ross Poole⁷

The⁸ phenomena and trajectory of globalization has brought about 'powerful processes of cultural, social, economic and political change, which challenge past beliefs about the nature of sovereignty'⁹ of nation-states. The marketization of the global economy and the growing hegemony of organizations such as the World Trade Organization have to a large extent eradicated the monopoly of power states once dictated over their subjects, citizens, territories and policies.¹⁰

We now talk about the global citizen, the global community and multiple citizenships. Accordingly it would appear then that, the doctrine of sovereignty of nation-states is merely 'a work of contrivance, unnatural, factually dubious and [even] morally objectionable'.¹¹

Furthermore notwithstanding the fact that post modernism and the advocates of multicultural citizenship have critiqued the relevance of and the ability of the nation-state to represent and indeed tolerate the differences within its boundaries, 'the fall

⁷ Poole, R. *Nation and Identity*, Routledge, London, 1999, at 165.

⁸ I have referred to a previous paper of mine *The Security Council, Chapter VII & Human Rights: A Critical Assessment* in writing this paragraph and the one after it.

⁹ Evans, T. 'Introduction: power, hegemony and the universalization of human rights' in Evans, T. (ed), *Human rights fifty years on: A reappraisal*, Manchester University Press, Manchester, 1998, at 12.

¹⁰ It is interesting to note that states themselves are willing to jettison their claims to sovereignty when signing up with WTO, which compels countries to amend domestic laws. For example compliance with TRIPS.

¹¹ Pemberton, J. 'The "End of Sovereignty"?' in Fry, G. & O'Hagan, J (eds.) *Contending Images of World Politics*, MacMillan Press, London, 2000, 91 – 105, at 101.

and/or break up of the former communist bloc countries such as Yugoslavia and their inability to maintain order and protect the rights of individuals and individuals belonging to particular groups has provided ammunition to many that the modern nation-state as we know it cannot and should not continue as a form of ideology and practice.

Yet on the other hand while the (nation-) state on the globalized world stage is increasingly challenged and seemingly insignificant it is and continues to be the only form of community/people organisation and institutional modality. Indeed the current structures of international politics, organization and law are founded on notions of sovereignty of the nation-state.

It is within this somewhat paradoxical position of the contemporary nation-state that this chapter takes a snapshot of the key components which constitute the ideas behind the liberal nation-state, the dominant paradigm of nation-state modality.

In doing so it seeks to tweak out from the plethora and maze of literature the salient notions which *inter alia* identify the reasons for the centrality of the individual within the nation-state, which is also defined. The recent discursive challenges to the individualistic approach by culturalists is highlighted. Culturalists argue that by denying the centrality of culture, the individual cannot be fully autonomous in the liberal sense.

The Autonomous Individual

There is thus no need to look for alternatives to liberalism or to jettison the individualism that lies at its heart. We need, rather, to assert the fundamental importance of individual liberty or individual rights and question the idea that cultural minorities have collective rights.

Chandran Kukatha:¹²

The individual occupied the political space created by secularism following Enlightenment, marking the break from the sacred to the temporal and the beginnings of classical Liberal philosophy. Assisted by the precipitation of Protestant Christianity, arguably the Liberal importance of the individual - more appropriately the European individual¹³ - was a reaction to *inter alia* the paradoxical effects of the marriage between feudalism and the church, communalism and tyranny/monarchy.

Liberalism declared that the individual was free from the ecclesiastical church and monarchies/feudal lords. The individual was to make *his*¹⁴ choices free from tyranny and decide what should be the social good. The ability of the individual to make choices, based on reason¹⁵ was predicated on autonomy, 'one of the central liberal values'.¹⁶ Autonomous individuals were to influence their lives by making informed conscious choices exercising 'the right to choose'¹⁷ for and by themselves.

Individuals within this framework fundamentally want well-being for themselves and decide in isolation, for and by them, what is good. Individual autonomy therefore is seen as 'self-creation'¹⁸ in that the values, commitments and identity of the various individuals are decided by the individuals within society by themselves or a level playing field. The self-creation and self decision aggregates into the composition of the social good.

¹² Kukathas, C. 'Are there Cultural Rights?', *Political Theory*, Vol. 20 No. 1, February 1992 105-139, p. 107.

¹³ Non-Europeans in particular the natives in the Colonised lands were in the classical Liberal Philosophy not deemed to be privy to the rights enjoyed under Liberalism.

¹⁴ Similar to non-Europeans women were also, initially not deemed to be privy to the rights enjoyed under Liberalism.

¹⁵ Mill, J. 'On Liberty' in Cahn, S. (ed.) *Classic of Western philosophy*, Hackett Publishing Company, Indianapolis, 1990, p. 1108.

¹⁶ Parekh, B. 'Decolonising Liberalism' in Shtromas, A. (ed.) *The End of 'isms' - Reflections on the Fate of Ideological Politics after Communism's Collapse*, Blackwell Publishers, Oxford, 1994, p. 95.

¹⁷ Freeman, M. 'Are there collective Human Rights?' in Beetham, D. (ed.) *Politics and Human Rights*, Blackwell Publishers, Oxford, 1995, p. 34.

¹⁸ *supra* note 16, p. 95.

Possessing the moral right to exist as an individual, individuals were to interact with other individuals as equals on the basis of a social contract which led to the formation of the government or a commonwealth¹⁹ - or a state.

¹⁹ Van Dyke, V. 'The Individual, The State, and Ethnic Communities in Political Theory' in *World Politics*, vol. 29, No. 3, April 1977, pp. 346-347.

The nation-state

...the political character of nationalism, its liberalism or illiberalism, is linked not to its civic or ethno cultural basis, but rather to the status position of those who articulate it, and to the developmental optimism or pessimism which underlies its construction.

David Brown²⁰

Today the only legally and internationally recognised form of community organisation' as the name suggests is that of the sovereign nation-state. It has over the past two centuries become the primary and most recognised form and apparatus of organising and controlling societies, peoples and indeed individuals.

Following Westphalia, the demise of European fiefdoms and monarchical rule the nation-state became the primary form of, for want of a better phrase, community organization. The philosophy and idea of the nation-state evolved over a period and was exported and spread through the world primarily after European decolonisation of its territories.

Only nation-states are parties to United Nations Charter and signatories to international conventions. The United Nations charter Article 2 of the Charter, which sets out guiding principles to which the UN and its organs must adhere to, to achieve UN goals, elaborates, that the '[o]rganization is based on the principle of sovereign equality of all members²¹. It is evident that Liberal notions of the sovereign and autonomous individual equal to all others were and are transmuted to the nation-state.

However, as observed by Kaplan and Kelly '[t]he 1989 *Oxford English Dictionary* tracks the lexeme "nation-state" back only to 1918²². Yet as acknowledged and rightly so, this so called 'late arrival of the hyphenated noun'²³ does not mean that it did not exist as a concept and practice prior to 1918.

The nation-state were initially, arguably, two separate entities. The state originally was the property of the monarch. Accordingly the state was the chattel of the ruler or

²⁰ Brown, D. *Contemporary Nationalism*, Routledge, London, 2000, p.2.

²¹ Article 2(1).

²² Kelly, J. and Kaplan, *Represented Communities – Fiji and World Decolonization*. The University of Chicago Press, Chicago, 2001, at 2.

monarch and all which lay within the state that being the territory and the people within it. Nations on the other hand were generally deemed to be linguistic and cultural entities. However, with industrialization and the permeation of Liberalism the seemingly two separate entities, the nation and the state evolved into the political nation-state where sovereignty lay with the people – the nation – and represented by the government – the state.

The state

While classical or neo-classical Liberalism did not and does not place much emphasis on the state, it is deemed to be neutral between different individuals who may have different conceptions of what is the social good. Indeed Hobbes and Lock did treat the commonwealth somewhat in a by the way manner as primarily was placed on the individual. Subsequently the state was and is viewed to provide negative rights or liberty in which the state can only use power or interfere with the individual to prevent harm to other individuals. Similarly the state is neutral when the social good is decided by the different and diverse individuals who are all deemed to be equal and allowed freedom of association. Accordingly the 'just state' is 'group blind' and 'neutral between rival conceptions of the good'.²⁴

Nation (and nationalism)

Given the primacy of the individual, the nation within Liberalism is viewed as an 'aggregation of individuals' rather than as a 'collective entity'.²⁵ As seen earlier the nation gives the government organisation the moral and arguably the legal authority to be 'recognis[ed] as a free and independent sovereign state'.²⁶

Subscription to this nation is by 'critical reflective' individuals whose beliefs are based on his or her 'own reasoning'.²⁷ Such a nation or nation-building is important since it is:

*instrumental to achieving the good of liberal citizenship, which, in turn is supportive of liberal political principles of justice and respect for diversity.*²⁸

²³ *Id.*

²⁴ Modood, T. 'Multiculturalism, Secularism and the State' in Bellamy, R. & Hollis, M. *Pluralism and Liberal Neutrality*, Frank Cass, London, 1999, p. 85.

²⁵ Van Dyke, V. 'Collective Entities and Moral Rights: Problems in Liberal-Democratic Thought', *The Journal of Politics*, Vol. 44, 1982, p. 21.

²⁶ Cottam, M. & Cottam, R. *Nationalism & Politics*, Lynne Rienner Publishers, London, 2001, p. 2.

²⁷ Buttle, N. 'Critical Nationalism: a liberal prescription?' *Nations and Nationalism* 6 (1), 2000, 111 – 127, p. 114.

The nation in this sense provides and facilitates positive values and thereby creates a common identity²⁹, an identity which aspires for justice, fairness and diversity. Accordingly if such a shared national identity, 'characterised by mutual reciprocity' is not maintained then there is a danger that 'social justice cannot be sustained over a long period of time'.³⁰

This view of the nation by Liberals also means that it will reject nationalism particularly if it erodes the individual's centrality in the schema of the nation-state and replaces it with a collective identity which is ultimately deemed to be 'morally parochial, politically divisive and only of temporary relevance'.³¹ Accordingly a liberal nationalist will be someone who gives 'primary loyalty and identifies with the greatest intensity'³² with the liberal valued nation. This is commonly referred to as civic nationalism³³, which allows the space for difference or diversity but does not place primacy on it and at the same time provides the commonality in liberal values to form a coherent nation-state. Civic nationalism therefore is the narrative which forms the political community binding individuals through a common and equal citizenship.

Citizenship and the nation-state

The development and notion of the citizen are intrinsically tied to the development of Liberalism.³⁴ The ontology of free and equal individuals within the Liberal framework lent itself to notions of egalitarianism and universalism. Within this framework the relationship of the citizen with the state had a 'vertical dimension' to it in which individuals were members of an 'enduring entity and confer[red] legitimacy on the state'.³⁵

These notions provided the much needed impetus to the architects of the French revolution. However, the French republican notion of citizenship moved away from individualism and stressed the collectivist notions of citizenship. Fraternity in this sense was equal a currency to liberty and equality.³⁶ This paradigmatic shift had a

²⁸ Moore, M. Normative justifications for liberal nationalism: justice, democracy and national identity, *Nations and Nationalism* 7 (1), 2001, 1-20. p. 3.

²⁹ *supra* note 27, p. 117.

³⁰ *supra* note 28, p. 2.

³¹ *supra* note 27, p. 112.

³² *supra* note 26, p. 2.

³³ see Seymour, M. 'Quebec and Canada at the crossroads: a nation within a nation', *Nations and Nationalism* 6 (2), 2000, 227 - 55, p. 227 - 237.

³⁴ Faulks, K. *Citizenship*, Routledge, London, 2000, p. 21.

³⁵ Book review, *Publius*, Spring 2000, vol. 30, Number 2, p. 121.

³⁶ *supra* note 34, p. 31-32.

profound impact on the legal status of the citizen within nation-states. It provided the proclivity to stress cultural conformity before the granting of citizenship, while ostensibly opposing ethno cultural particularism.³⁷ This led to the 'nationalisation of the state' and 'blended the issue of political loyalty and trustworthiness with that of cultural conformity'.³⁸

This notion of citizenship assumes a particularism and loyalty in which also exists like the nation, a 'horizontal dimension' which:

*entails a positive relationship and identification with fellow citizens "as valued members of the same civic community." Citizenship, therefore, "binds the citizenry to the state and each other"*³⁹

In this sense arguably such citizenship can provide two kinds of identity for the individual - the ethnic/cultural and the civic.⁴⁰

³⁷ Silverman, M. 'Rights and Difference: Questions of Citizenship in France', in Hargreave, A. & Leaman, J. (eds.) *Racism, ethnicity and politics in Contemporary Europe*, Loughborough University,

³⁸ Bauman cited in *id*, p. 257.

³⁹ *supra* note 35.

⁴⁰ see *supra* note 33, 227 - 55 and *supra* note 34, p. 36.

The short comings of Liberalism?

Others, such as linguistic minorities, multicultural groups and women, seek to participate in the existing institutions of the dominant society, but in way that recognise and affirm, rather than exclude, assimilate and denigrate their culturally diverse ways of thinking, speaking and acting.

James Tully⁴¹

Critics of Liberalism argue that the centrality of individualism is too abstract a concept given the 'ground realities' of how human beings function and relate to one another. Consequently and furthermore it is argued that it is delusional to believe that individuals relate to the state simply as individual citizens and not as members of a cultural group. Accordingly, then, given the normative practices of nation-building, including the symbolisation of the nation, and citizenship processing, the state is not neutral and invariably susceptible to ignore cultural groups that are on the periphery. Liberalism in this sense is 'unduly limited'⁴² and subject to chauvinistic majoritarianism.

'Culturalists' like Kymlicka have argued that in deciding the social good and accordingly the self-worth, the individual does not do so in a bubble rather he or she is influenced by their culture. Culture in this sense is seen to be:

synonymous with a 'nation or 'a people' – that is as an inter-generational community, more or less institutionally complete, occupying a given territory or homeland, sharing a distinct language and history.

And if culture is important to maintain one's self worth then one must not only be allowed to let this culture exist but it must also be recognised in the public forum. The Liberal practice of relegating corporate entities to the private realm is rejected by culturalists.

Furthermore given this arguably primordial attribute of culture it is argued the state apparatus will have a 'natural' tendency to be influenced by a culture and the nation-state therefore will be partisan in its selection of national markers and representation.

⁴¹ Tully, J. *Strange Multiplicity*, Cambridge University Press, Cambridge, 1995, p. 4

⁴² *supra* note 19, p. 343.

In order to prevent such non-representation and indeed promote democracy culturalists argue that when governments for example decide what conceptions of the 'good' must be taught in schools, it must also address what language it must be taught in.⁴³ For it is simply not enough to decide what the good is because the identity of the person is very much intertwined with one's culture and language is part of culture. Accordingly accessibility to language/culture will give one that freedom, that autonomy which in turn assists one in deciding what the social good is. As an addendum then, culturalists argue that it is a fallacy for Liberals to argue that the identity of a person is not influenced by culture.⁴⁴

Therefore, governments must recognise and protect cultures since those individuals who are part of a peripheral and vulnerable cultural group would be subsumed by the bigger group and not have a sense of identity and self worth,⁴⁵ thereby denying the individual a key Liberal objective.

It is within this context that the liberal concept of the autonomous individual is extended to the autonomy of cultural groups - seen as a device to assist those who are not only potentially under threat by a dominant group but also to negotiate and deliver those groups which already have been the victims of subjugation, to realise their self-worth.

⁴³ Kymlicka, W. *Contemporary Political Philosophy*, Clarendon Press, Oxford, p. 231 - 232.

⁴⁴ Arthur, J. 'Identity and Multicultural Politics' in Bellamy, R. & Hollis, M. (eds.) *Pluralism and Liberal Neutrality*, Frank Cass, London, 1999, p. 143 - 144.

⁴⁵ *id.*

Chapter 2

Cultural Autonomy

Appeals to the past are among the commonest of strategies in interpretations of the present. What animates such appeals is not only disagreement about what happened in the past and what the past was, but uncertainty about whether the past really is past, over and concluded, or whether it continues, albeit in different forms, perhaps. This problem animates all sorts of discussions – about influence, about blame and judgement, about present actualities and future priorities.

Edward Said⁴⁶

To understand and analyse as it was then called, separate native administration – the apparatus for cultural autonomy – it is important to examine indigenous Fijian society prior to its inception.

In looking at history, this section draws from the numerous narratives of Fijian history and focuses on those events and conditions which had a direct and thematic bearing on the setting up of a separate Fijian administration.

Needless to say what constitutes or is history is subjective. Reliant on the historian's perspective and the context of narration, Fijian history has taken many forms. Some events and subsequent meanings are over emphasised while others equally, if not more important, are scantily referred to or altogether omitted.⁴⁷

The Orientalist approach in colonial and missionary narratives is displayed by those who wrote disparagingly of or condemned all indigenous customs and practices primarily focussing on barbaric acts and tribal warfare.⁴⁸ Some likened the indigenous peoples to children and paradoxically as noble savages. Later works painted indigenous Fijians as proud warriors, whose traditions and customs were beyond reproach, unaffected by the passage of time.

⁴⁶ Said, E. (1993) *Culture and Imperialism*, Chatto and Windus, London, p. 1.

⁴⁷ I have used and referred to passages from Chapter 1 of *Constitution Making in "Divided Societies" – Fiji a Case Study*, in this section.

⁴⁸ See Calvert, J. 'Mission History', *Fiji and the Fijians*, Volume II. Oceania Printers Limited, Suva, Fiji, 1858/1985; Williams, T. 'The Islands and their Inhabitants', *Fiji and the Fijians*, Volume I. Oceania Printers Limited, 1858/1985.

Invariably colonial intentions, administrators, policies and attitudes are portrayed as benevolent, wise and protective, in particular of indigenous culture, lifestyle and people. Such interpretations were and are simplistic to say the least and invariably inaccurate.

*Origin and heterogeneity*⁴⁹

Oral tradition, the speculations of early ethnologists and the fanciful surmise of local antiquarians are not convincing in their reconstructions of Fijian origins.

Peter France⁵⁰

After European contact, in particular after Cession, numerous theories, often fanciful, were expounded to address the 'problem of the origin and racial composition of the Fijian people [and] the wider unresolved enigma of the original settlement of the islands of the Pacific'.⁵¹

A popular story of origin suggests that the first Fijians may have come from Africa, in an enormous canoe, the *Kaunitoni*. However, France in his seminal work concludes that this story of origin is nothing but a fable. He found this story of 'tradition' not authentic but the product of a newspaper essay competition organised by the then Fijian language newspaper, *Na Mata* in 1892. He concluded that, despite the lack of indigenous authority to substantiate this myth, it gained acceptance because of a growing Fijian national consciousness following the Deed of Cession.

Concrete anthropological, archaeological and linguistic evidence suggest that the Fijian islands were settled by a series of sea faring settlers from the West Pacific who were part of the Lapita culture which extended from New Guinea to Tonga to Samoa.⁵²

Although the lifestyle of Fiji's first inhabitants, particularly prior to European contact, has not emerged very clearly it is evident that quite distinct and separate groups existed throughout the islands. The succession of sea faring settlers dispersed throughout the islands over a period of time, forming their separate identities and social organisation.

⁴⁹ I have used and referred to passages from Chapter 1 of *Constitution Making in "Divided Societies" - Fiji a Case Study*, in this section.

⁵⁰ France, P., *The Charter of the Land - Custom and Colonization in Fiji*, Oxford University Press, Melbourne, 1969; p. 5.

⁵¹ *Id.* p. 3.

⁵² *Id.* p. 22.

France, a former administrator in the separate Fijian administration notes that objective accounts of Fijian lifestyle before the arrival of Europeans can be ascertained through the *tukutuku raraba* or narrations.

These narrations were required during the Colonial era to help ascertain and delineate for the Native Lands Commission in establishing which tribes could lay claim to which lands. The *tukutuku raraba* explained a tribe's origins.⁵³

The *tukutuku raraba* suggest social arrangements and political allegiances were neither rigid nor constant as opposed to what was expected and created under the organisations and institutions, which were created to administer indigenous Fijians after the formation of the colony. It was fluid. Members of tribes would venture out to acquire more land when numbers grew. Movements at times were dependent on the 'whim of the chief...or the threat or existence of a state of war with a neighboring chieftom or between the tribes of their own area.'⁵⁴ However this is not to say there was constant warfare between the tribes, as depicted by early orientalis, for the *tukutuku raraba* also tells of long periods of *sautu tale na vanua* – the land prospered again.⁵⁵

Nonetheless only twenty-one out of the six hundred *tukutuku raraba* chronicled in 'Viti Levu and the adjacent islands...tell of a tribe which claims to occupy the site on which it was founded'.⁵⁶

The various groups in the islands varied significantly in their structure and organisation. The groups in the East and the southern east, influenced by the Tongans were lot more hierarchical and rigid in political authority and structure.

The primary unit was the *itokatoka*, consisting of a group of closely related households, a collection of which formed the *mataqali*. With some exceptions, 6 *mataqali*, or those who has a common ancestor god⁵⁷, formed the *yavusa*. The collection of *yavusa* with common interests, such as adjoining landowners, formed 'a

⁵³ *id.* p. 10.

⁵⁴ *id.* p. 11.

⁵⁵ *id.* p. 12.

⁵⁶ *id.* p. 13.

⁵⁷ Routledge, D. *Matanitu – The Struggle for Power in Early Fiji*, University of the South Pacific, Suva, 1985, p. 28.

wider body politic, the *vanua*.⁵⁸ The *vanua* was marked by the 'swearing of military allegiance and special ceremonies of installation, including the conferring of title linking the chief with the locality...'.⁵⁹ However, this type of political organisation was neither homogenous nor static. The 'perfect arrangement of one *yavusa* to one village is and was a non-existent ideal'.⁶⁰ Nonetheless given the propensity of to have centralised authority the easterners were also prone to create larger body politic by way of 'conquest and formalisation of tributary...*Matanitu* as these federations were called were flexible and fragile alliances, requiring to be held together in main by force'.⁶¹

Just as there were linguistic differences, the political and societal arrangements in the West of the islands were less stratified, allegiances parochial and consequently conquests were far less important. The structures were far more egalitarian. Indeed the Land Claims Commission when visiting the inland areas such as Colo were 'struck by the absence of chiefly customs'⁶² and chiefs when giving orders had to be discrete.⁶³ Similarly it was found that the people from Ra were 'notoriously egalitarian and paying little formal respect to their chiefs'.⁶⁴

⁵⁸ Sutherland, W. *Beyond the Politics of Race – An alternative history of Fiji to 1992*, Political and Social Change Monograph 15, Department of Political and Social Change, Research School of Pacific Studies, ANU, Canberra, 1992, p. 10.

⁵⁹ *supra* note 57, p. 28.

⁶⁰ *id.*

⁶¹ *id.*

⁶² Norton, R. *Race and Politics in Fiji*. University of Queensland Press, Queensland, 1990, p.

⁶³ *id.*

⁶⁴ Frazer, R. quoted in *id.*

Europeans and turbulence⁶⁵

The White settlers are striving to subvert the King's government, so as to reduce the Fijians to serfdom and a feud has begun by her Majesty's subjects whose principle object is to kill off the Fijians and acquire by murder, treachery and fraud their lands...They are incapable of exercising the privileges of self-government with justice or with any regard for the welfare of the great bulk of the population.

Sir Hercules Robinson⁶⁶

Europeans came or stumbled onto the Fiji Islands as whalers, mutineers or victims of mutinies, merchants, runaway convicts, explorers, blackbirders, settlers, farmers, emissaries, sailors, traders, colonists and missionaries. Contact between Europeans and the indigenous population occurred primarily in the Eastern and Northern parts of the islands.

While initially 'dreaded by the natives who were overawed by the murderous effects of their firearms, the Europeans who came to blackbird, for beche de mer and sandalwood heists, as merchants and traders, quickly sought patronage of the local chiefs to provide shelter, influence and commerce. As trade became lucrative and the lure of profits brought more entrepreneurs or potential entrepreneurs to the Islands, it was not uncommon for early Europeans to support chiefs in areas such as Rewa and Bau, in their quest to extend eastern chiefly dominance into other areas. Indeed in one of the major battles between Rewa and Bau known as the battle of Kaba, European patronage in particular for Bau, had tremendous ramifications on the outcome - the defeat of Rewa - and subsequent truce. Needless to say Cakobau's conversion to Christianity also had a lot to do with the support he received from the Europeans.

Indeed the missionaries had strategically sought to influence and manipulate the political environment through the assistance of the Tongans, already Christians, to tacitly wage war against the heathens. Conquests in this sense had an added potency - the politicization of Christianity resonating in contemporary Fiji - Christianity versus heathenism or *IValu ni Lotu*. Indeed Cakobau probably converted

⁶⁵ I have used and referred to passages from Chapter 1 of *Constitution Making in 'Divided Societies' - Fiji a Case Study*, in this section.

to save himself from constant agitation from Ma'afu, the Tongan who controlled the outer Eastern Islands and exerted considerable influence in other parts of Eastern, Northern and South Eastern parts of the Islands. While Cakobau was a heathen, Ma'afu had the support of the missionaries, who in turn had the ear of other Europeans. Indeed these evangelists realised that the 'prerequisite to the mass conversions which would mark the beginnings of real progress...'⁶⁷ was dependent on the conversion of the Eastern chiefs. Following Cakobau's victory at Kaba missionaries converted indigenous Fijians in droves. They discarded their old religion for the new and:

*Cakobau's victory..was construed as a demonstration of the inefficacy of old beliefs and people began to be prepared to listen to missionary teaching instead merely reaping what physical benefits they could from the missionary presence.*⁶⁸

Old beliefs and practices were replaced by the European church and ideas. Concomitantly the introduction of written Fijian (oral in tradition) by the missionaries allowed the dominance of new linguistic concepts of behaviour, cohesion and control.

W. T. Pritchard, the first British Consul to the Islands was of the opinion that 'Fiji' should immediately be made a colony and quickly sort to identify a local authority who could cede Fiji to Britain. In his quest for a local authority, Cakobau was styled *Tui Viti* or the King of Fiji and was Pritchard's choice. However, Cakobau's new title was of no substance without foreign propping and enforcement. Earlier in 1854 the inappropriateness of his title was apparent during an inquiry conducted by the British 'into his alleged misdeeds against Europeans'⁶⁹ when he:

*stated the extent of his dominions; the smallness of which, as compared with the country at large, caused much amusement to those who had been styling him 'King of Fiji.'*⁷⁰

With cotton prices soaring because of the civil war in the United States, a flood of cotton planters arrived in Fiji to take advantage of the boom. Fiji, in particular the

⁶⁶ Confidential dispatch from Sir Hercules Robinson, Governor of New South Wales to the Earl of Kimberley, 27 January, 1873, quoted in SahuKhan, S. *The Constitution of Fiji*, unpublished doctoral dissertation, University of Auckland, 1975, p. 47-48.

⁶⁷ *supra* note 57, p. 71.

⁶⁸ *id.* p. 87.

⁶⁹ *id.* p. 84.

⁷⁰ *id.*

Eastern and Northern parts of Fiji, became a frontier town. New arrivals brought with them more black birded labour 'paraphernalia of commerce'⁷¹...chaos and lawlessness, acts of tyranny⁷² and of course the need for individual ownership of land. The impact of these new arrivals and the general presence of the Europeans in the Pacific had a tremendous impact on the local communities and undoubtedly influenced and permeated in its affectations of indigenous societal arrangements and developments.

In short, the presence of the 'aspiring capitalists,...fugitives from justice and other undesirables'⁷³ had an overwhelming impact on the environment around them. Their presence afforded the commercialisation of goods and services and threw into chaos the power balances between the various indigenous Fijian chieftainships.

At the same time the European flotsam and jetsam required political stability, institutions for enforcement of uniform law and a system of government to organise the emerging capitalist state. They exerted pressure on the Eastern chiefs to form some assemblance of a national government. However, since the different indigenous and political groupings had hitherto not functioned as a European modelled nation-state, such an idea was alien and indeed unworkable given the fact that no one chief had control over all the islands.

In 1865 seven chiefs, all from the east, agreed to a presidential style of the government at the prompting of local European settlers. The president under the proposed government was to be elected from within the seven and the term of office was for one year. This system and agreement was never put to the test since it did not get a chance to be implemented. Other attempts in 1867 and 1869 to form a constitutional national government failed.

Finally in 1869 the European settlers and the eastern chiefs agreed to a system of constitutional monarchy. The government was centred around Bau with its capital in Levuka on the island of Ovalau. The constitution provided for the Kingdom of Fiji, giving effect to an executive, judiciary and legislature.

⁷¹ Legge, J. *Britain in Fiji*, MacMillan & Co. Ltd, London, 1958, p. 46

⁷² As noted in *id.* 'It was said that no navigation was needed to Fiji; one had only to follow the course of the drifting gin bottles'.

⁷³ *supra* note 58, p. 17.

Immediately prior to and during the term of this government, attacks on European settlers became frequent.⁷⁴ The government was not able to fully control all the regions, in particular in the west and the inland of Viti Levu.

In response, Cakobau employed 'native troops'⁷⁵ led by Europeans in punitive attacks to establish the new government's rule and law. Its ministries were controlled tacitly by Europeans and 'rested upon the support of the whites'.⁷⁶ The increasing puppet role played by Cakobau, the imposition of harsh taxation upon the natives and his government's inability to curb blackbirding, caught the attention and raised the ire of the Aborigines Protection Society and the Anti-Slavery Society in London.

While pressing for annexation, the New South Wales colony noted:

the deplorable description of the character and design the majority of the white settlers in Fiji...they serve to prove how unsuitable the present constitution of Fiji is to conditions existing in these islands, and how hopeless it is to expect that any government established on such principles could ever be able to protect from oppression and spoliation the native population of the country...

While the New South Wales concern was ironic given its own treatment of the indigenous people in the colony it however wanted to:

*effect greater control over Island labour which was accompanied by abuses and atrocities which had aroused strong indignation in England and Australia.*⁷⁷

It is amidst this background of dynamic change and tumultuous social upheaval that Cakobau noted:

[i]f matters remain as they are, Fiji will become like a piece of driftwood on the sea, and be picked up by the first passer-by. The whites who have come to Fiji are a bad lot. They are mere stalkers on the beach...Of one thing I am

⁷⁴ *supra* note 71, p. 46 and see also Derrick, R. *A History of Fiji*, Government Printer, Suva, 1946, p. 244.

⁷⁵ Derrick, R. *id.*

⁷⁶ *id.*

⁷⁷ Gillion, K. *Fiji's Indian Immigrants*, Oxford University Press, Melbourne, 1962, p. 1-2.

*assured that if we do not cede Fiji, the white stalkers on the beach, the cormorants will open up their maws and swallow us.*⁷⁸

This probably explains his unconditional offer of cession to the Britain since he observed:

*By annexation the two races, white and black will be bound together, and will be impossible to sever them. The interlacing has come...; law will bind us together, and the stronger nation will lend stability to the weaker.*⁷⁹

In England, Gladstone who pushed the policy that the acquisition of colonies should only be based on a profit loss analysis was swept out of office in early 1874. His replacement Disraeli believed otherwise.⁸⁰

The Deed of Cession was signed in Levuka on 10 October 1874. Only one chief from the West was party to the Deed.

⁷⁸ Quoted in *supra* note 75, p. 248

⁷⁹ Quoted in *id.*

⁸⁰ *id.* p.246.

Dissent and Homogenization

Now some of you belonging to this small part of the interior, and which is of such easy access, have been acting in an unruly manner lately; and while all the rest of Fiji is at peace, some of you alone are causing disturbances by bad conduct...Plant plenty of food, instead of going about making disturbance.

Sir Arthur Gordon⁸¹

Following cession, Sir Hercules Robinson the then Governor of New South Wales and representative of Britain at cession, was to administer the nascent colony until the first substantive Governor Sir Arthur Gordon found his way from Mauritius.

However, prior to Gordon taking office on 1 September 1875, Robinson put in place provisional administrative arrangements immediately after the signing of the Deed of Session. An executive Council was created and the laws of New South Wales were to apply in instances where no local proclamations were made. A 'General Court' was established and four stipendiary magistrates were appointed for the administration of native affairs. The Islands were divided into 12 'provinces'⁸² headed by Provincial chiefs, *Rokos*. District chiefs reported to the provincial chiefs. It was gazetted that:

*no sale, transfer, or assignment of land, or of any interest in land, after the date of Cession, would be recognised pending the settlement of titles to land acquired before that date.*⁸³

After being told by local missionaries that the Cakobau government's policy on a uniform money taxation system was 'evil'⁸⁴, and oppressive for 'the natives', Robinson also gazetted a new regime in taxation. All indigenous males 'between the ages of sixteen and sixty should be liable to contribute twenty days' labour on public works in his Province'⁸⁵ in lieu of money taxation, unlike the rest of the population.

⁸¹ Address of Sir Arthur Gordon to the Chiefs gathering in Navola in Gordon, A. Fiji: Records of Private and of Public Life, Volume I, R. & R. Clark Limited, Edinburgh, 1897, p. 389

⁸² These provinces were Ba/Yasawas, Bua, Cakaudrove, Kadavu, Lau, Lomaiviti, Macuata, Nadroga, Namosi, Ra, Rewa, and Tailevu/Naitasiri.

⁸³ *supra* note 71, p. 153.

⁸⁴ *id.*

⁸⁵ *id.*

Gordon's rule began ominously. In 1875 nearly thirty thousand of the one hundred and thirty five thousand indigenous Fijians died of the introduced measles.

Gordon also had to contend with indigenous resistance to the Colonial administration and policies. The hill tribes in central Viti Levu and the Westerners who had resisted relatively successfully against centralised authority from the east in the form of Cakobau government now had to deal with the colonising government from the east also.

A grouping in inland Viti Levu, *Luve ni Wai* (Children of the Water) from an area called Colo resisted Colonial control and actively attacked villages that were seen to be Colonial friendly. Their rebellion and subsequent suppression known as the 'little war'⁸⁶ was the most bloodiest and brutal.

While it was essential to quash any resistance to his administration, it was equally imperative for Gordon that his policies were not seen 'as a punitive campaign against natives by a 'white Government'.⁸⁷

In fighting the *Kai Colos*, Colonel Pratt had resisted the usage of natives against natives and wanted reinforcements from British India, However Gordon was opposed to the idea as his:

*desire for native assistance in the war was to secure their support for the new Government's system of law and order, and at the same time to prevent the growth of a continuing hostility on the part of the defeated tribes.*⁸⁸

Accordingly Gordon obliterated all indigenous rebellion by primarily using Easterners as troops, sending indigenous Fijians to war against one another.

Gordon, having taken care of the indigenous dissidents, now could at will complete the homogenising mission of the indigenous constituency and embark upon instituting separate native administration unhampered.

⁸⁶ Gordon, A. *Fiji: Records of Private and of Public Life*, Volume II, R & R. Clark Limited, Edinburgh, 1901, p. 1- 137.

⁸⁷ *supra* note 71, p. 215.

⁸⁸ *id.* p. 216.

Rationale

...the Queen sent me, a Chief of Great Britain, out here to govern Fiji, to put an end to discord, murder, and cannibalism, and to rule all alike and to prevent oppression...all this could not be if Fiji were ruled by a native Chief..

Sir Arthur Gordon⁸⁹

There is no doubt that Gordon was the chief architect of the separate native administration. His setting of the foundations of the consequent regulations and institutions which ostensibly gave cultural autonomy was unchallenged and unhampered even long after his departure from the Fiji Islands. Accordingly it is important to examine, albeit briefly, the factors which influenced Gordon and his mind set.

Gordon, as France notes subscribed to the new human sciences, a trend of those times. He was very much influenced by the evolutionary anthropological studies, which *inter alia* advocated unilinear development of people. This attitude also resonates with the Millsian perspective which stated that non-Europeans were only fit for a 'government of leading strings'.⁹⁰

Indeed his sense of benevolence was also no doubt influenced by what has been eluded to as the ethnocentric and romantic view of the Pacific. In the orientalist discourse at that time, resonating in contemporary views of the Pacific and its occupants, there was amongst others a belief and portrayal that the islands and islanders were naïve and exuded innocence, needing protection.

Consequently Gordon believed the indigenous Fijians had to be buffered from the rigours of the everyday capitalist/commercialised life, which the European settlers had evolved to handle and handle well. Indigenous Fijians needed guidance to slowly ease them into the next stage of evolutionary development as it were. In the meantime Gordon decided the indigenous Fijians needed protection from the 'other' the European settler, in particular the unscrupulous ones.

Gordon's perchance for the romantic Pacific, and arguably histrionics, was illustrated with his insistence that he be installed as the head chief of Fiji. Indeed he took great

⁸⁹ Address of Sir Arthur Gordon to the Chiefs gathering in Navola in Gordon, A. *Fiji: Records of Private and of Public Life*, Volume I, R. & R. Clark Limited, Edinburgh, 1897, p. 388

pleasure at his Installation. In his acceptance speech he set the tone for what was to come and encapsulating his attitude towards the indigenous population and separate administration;

You the Chiefs, you are Chiefs of the people; but I again am the ruler of you the Chiefs. Let there be no vain excuses; let the scheming practices be forever abandoned...Chiefs, like me, never tell falsehoods; it is a most un-chieftain-like practice; all that I tell you shall be perfectly true. The ownership of the land is with you, it shall not be taken from you; but if you wish to give away or sell land, it shall be decided by me whether or not it be sold. . . Now Chiefs, you must know that the great Queen has sent me to govern Fiji: ...I shall make all necessary laws for you the natives and also laws relating solely to the whites...Any useful native customs shall be retained but improper customs let them be given up.⁹¹

Yet at the same time it appears that Gordon was also motivated by a number of other factors which were not exactly benevolent. He arguably was more realistic. The new colony did not have regular British troops. The indigenous population greatly outnumbered the Europeans and the massive casualties in the war between the Pakeha and the Maoris in New Zealand were 'fresh in Gordon's mind'.⁹² In addition the willingness of the indigenous population to submit to the demands of a newly created colonial (nation-) state was not guaranteed.

⁹⁰ *supra* note 16, p. 90.

⁹¹ Address by Sir Arthur Gordon to the Chiefs at the Installation Meeting at Bau in *supra* note 98, p. 210-211.

⁹² *supra* note 58, p. 25.

Settler sentiment

Gordon's strategy in dealing with the 'natives' in general and the consequent non-alienation of land was incompatible with economic aspirations of the settlers. The settlers who were merchants, traders and investors and happened to be Europeans were numerically inferior to the 'coloureds'. Given their numbers the settlers felt their security and maintenance of their privileged status and capital could only be guaranteed by the subjugation of the indigenous Fijian – the native peasant – and later the indentured labourers – the Indian worker.

Initially the settlers attempted to resolve their wants and anxieties by petitioning Gordon to free more land. Indeed he was accused of being a friend of the blacks. In responding to this allegation Gordon retorted:

It may be so. I confess I do not like to see a man put upon on account of his colour; but this is certain – I have no sympathy with those whose philanthropy demands that they should think little of their own race and colour. My sympathy for the coloured race is strong; but my sympathy for my own race is stronger.⁹³

Gordon did not relent on the land issue nor did he relent on separate administration.

The settlers attempted to override Gordon by seeking cooperation with other colonies in the region and eventually by openly utilizing ethnicity to gain political and constitutional supremacy. In 1883 a group of settlers petitioned the Australian Convention:

With a view to incorporating Fiji with the federal colonies in the event of federation being deferred, or, as an alternative, that the constitution of this colony may be assimilated as far as possible to the representative form of government existing in the Australian colonies.⁹⁴

The settlers also made attempts of incorporation with New Zealand and Victoria, but to no avail.

⁹³ *supra* note 89, p. 184.

⁹⁴ quoted from Ali, A. 'Fiji Political Change, 1874 – 1960' in Lal, B. (ed.) *Politics in Fiji – Studies in Contemporary History*, Allen & Unwin, Sydney, 1986, p. 2-3.

Separate Administration

...when a native population also outnumbers, by more than fifty to one, the strangers dwelling among them, it is not safe even if practicable, to deny to the natives a large measure of self government. I was also aware that it was not enough to abstain from seeking hastily to replace native institutions by unreal imitations of European models, but that it was also of the utmost importance to seize the spirit in which native institutions had been framed, and develop to the utmost extent the capacities of the people for the management of their own affairs without exciting their suspicion or destroying their self respect.

Sir Arthur Gordon⁸⁵

Separate Administration set in train a whole set of rules, regulations, institutions and systems which governed from the most mundane to the high political aspects of indigenous life. The point being that it permeated through every facet of the indigenous life.

The development of the separate Fijian administration can be delineated broadly into three phases. In the first phase the system was formalised, various Councils created and, society regimented accordingly and cultural autonomy consolidated.

Phase Two saw the creation of the Fijian Affairs Board, another body administering specifically indigenous Fijian society and a (re) structuring and (re) organising of the culturally autonomous institutions created under Gordon. The system was to be renamed from Native Administration to Fijian Administration. Ratu Sukuna was the chief architect of these amendments which were seen to be essential to arrest the perceived growing insignificance of the culturally autonomous institutions. The (re) regimenting was seen to be essential to protect the indigenous population from the turbulent changes in society and the supposed growing excesses of the 'other'.

Phase three dealt with the period from independence till the present day. During this period the separate administration was very much influenced by the politics of ethnicity epitomised by the chiefly backed Alliance party. The institutions of separate administration in post independent Fiji were somewhat dormant and only came to life when the Alliance government lost the elections in 1987.

⁸⁵ *supra* note 86, p. 198-199.

Phase 1

As long as the native population outnumbers the European by a hundred to one, it is through these chiefs that the country will be most peaceably, cheaply and easily governed – and the Governor has already observed that in those districts where for one or another cause the Chiefs have lost their hold on the people, the administration of affairs is attended with difficulty and confusion unknown elsewhere. If deprived of position and employment they would, not improbably, from being docile and useful instruments, become a constant source of trouble if not danger.

Sir Arthur Gordon⁹⁶

Native administration started off with the promulgation of the Native Affairs Ordinance of 1876. It essentially regularised the 'interim' measures and organisation of the indigenous population put in place by Robinson within the new Colony and added further regulations and Councils creating a hierarchical administrative regime.

At the pinnacle of these institutions was the Native Regulation Board. The Board comprised of the Governor, a minimum of 6 members nominated by the Governor and at least 2 Councillors from the Legislative Council.⁹⁷ The Board was to make regulations for the well being and good governance of the 'native' population.⁹⁸

The Board laid down numerous regulations governing the day to day lives of indigenous Fijians. These ranged from preventing the indigenous Fijian from entering towns, compelling them to grow crops, punishment for fornication, manner in which marriages and divorces were to be conducted and by whom and to cater for the needs of the chiefs in their respective provinces. This practice, referred to as *lala*, was seen as oppressive at times but was deemed necessary to support the new administrative regime but with various checks such as under Ordinance No. 3(1) of 1877:

[a]ny Chief who shall oppress the people may be charged with vaka taurara before the Roko Tui and Stipendiary Magistrate, and if the charge appears well founded, it shall be reported by the Roko Tui to the Governor, to be dealt with by him.

⁹⁶ Gordon to Legislative Council, 21 December 1876, cited in *supra* note 77, p. 7.

⁹⁷ Ordinance XXXV of 1876.

Although at the same time Ordinance number 3(3) also provided that:

the people of the land shall obey and respect their Chiefs and Magistrates in all things lawful according to their customs

Enshrining concepts such as *lala* within a regulatory regime and deeming it to be part of the culture or custom of all indigenous Fijians led to its imposition in those areas which were less stratified and parochial prior to colonisation. Such regulations meant the imposition of new obligations and the receipt of new privileges hitherto not experienced. It also meant that *lala*, being supported by a regulation, made it compulsory which may not otherwise have been prior to colonisation when the chief had not been a fit and proper chief.

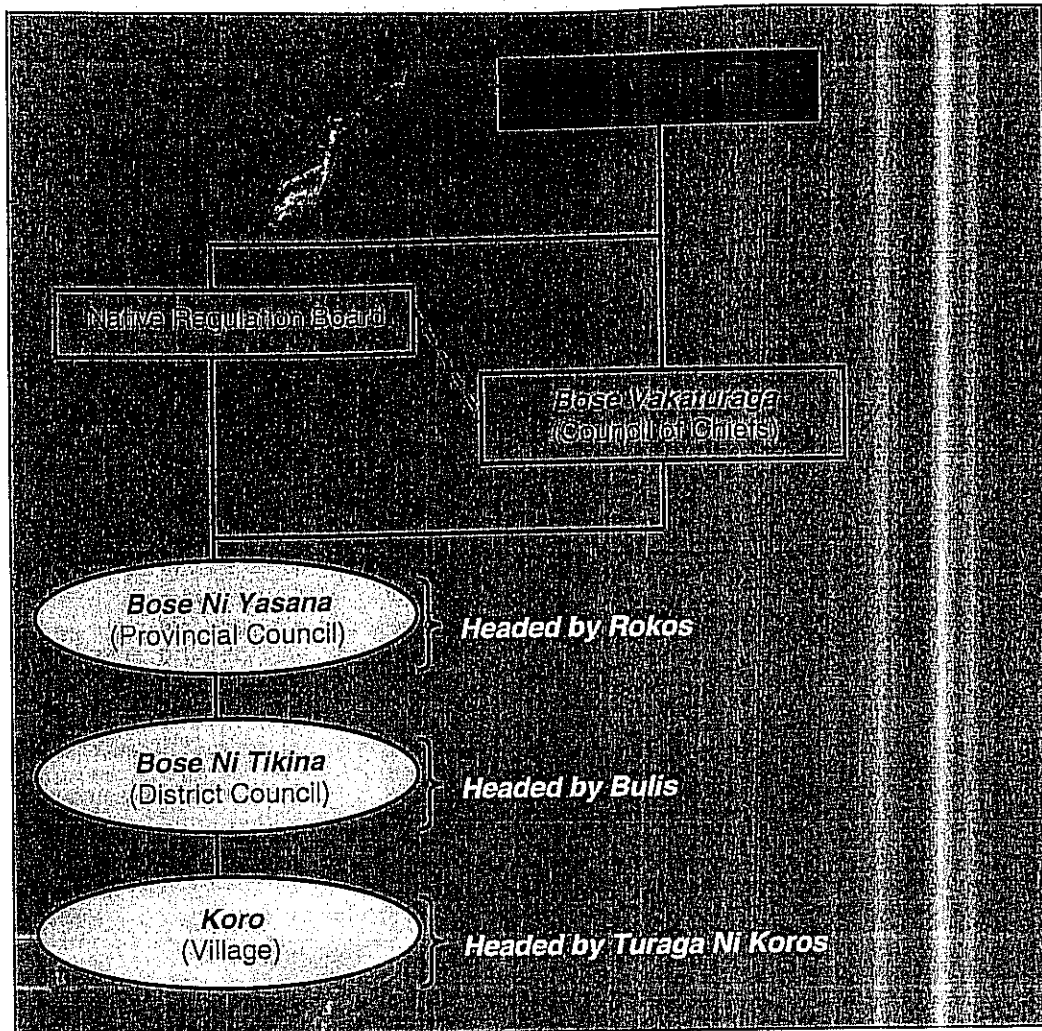
A completely new institution was created under separate native administration, the Council of chiefs or *Na Bose Vakaturaga*. As stipulated in Regulation Number 1 of 1877, the Governor was the 'root of the Council' and he alone could open and close the proceedings of the *Na Bose Vakaturaga* which met annually. Only the *Roko Tuis* could vote and ask questions. The Council of Chiefs was for all intents and purposes a deliberative body with no national legislative ability but it influenced and shaped significantly the regulations made by the Native Regulation Board. Indicative of the Governor's supremacy - being its 'root' - was demonstrated not only through Gordon's demagoguery at numerous Council meetings but also when he threatened in December 1877 to 'dissolve the *Bose* and never hold another' after finding out that some of the members of the *Bose* were drunk.⁹⁹ Gordon's relationship with the *Bose* has been described as despotism.¹⁰⁰ Needless to say the status accorded to the Governor passed later to those who took his position or were close to him in the pecking order.

The *Roko Tuis* were the head of the provinces (*Yasana*) and were appointed by the Governor. The *Bose Vaka Yasana* or Provincial Council meetings were held bi-annually. The Provinces were subdivided into districts (*Tikina*) and head by *Bulis*. Below the *Bulis* were the *Turaga-ni-Koros* or the village head men. The *Bulis* held monthly meetings of the District Council (*Bose ni Tikina*) These officials were salaried staff of the Colonial government via the Secretary of Native Affairs.

⁹⁸ See Ordinance XXXV of 1876.

⁹⁹ *supra* note 86, p. 653.

¹⁰⁰ *supra* note 50, p. 108-109.



The application of the above positions and titles being applied uniformly over Fiji again led to anomalies since it was not indigenous to all parts of it. The title of Roko Tui was taken from the Tailevu and Rewa. The title of Buli was taken from Bua. Initially the application of these titles caused confusion as demonstrated by the following anecdote:

The title Roko Tui is a stranger to those of the Province of Bua, as it was not the title of their position according to the customs of the land...a certain old man of Nadivanua in the district of Nadi in the Bua Province...thought the Roko was something from the land of the white man, which had been presented by the Government to the province of Bua...When the people of the District of Nadi were all assembled in the public square, Fatu Tevita Suraki, the Roko Tui Bua, was seated on a raised seat, and this old man asked in a whisper from some of them: 'Where is the Roko?' and then

someone replied to him: 'Don't you see him seated there?' Then the old man appeared astonished and said: 'Oh! cripes! The roko is a man orsooth; I thought it was some metal thing.'¹⁰¹

Another arm of the administrative regime was the creation of the District Courts, presided over by native stipendiary magistrates to enforce native customs and law as regulated by the Board. The native district magistrate had powers of summary jurisdiction over the natives. Appeals from these courts were to the Provincial Courts consisting of 'at least one native and one European magistrate'. If an accused wanted to appeal the decision of the district it had to be 'made on the day of his trial' as provided for under Regulation 2(II)(8). Needless to say such provisions made it difficult to appeal decisions even though the court proceedings were conducted in the Fijian language. The accused was invariably unrepresented.

The Court proceedings were formal and the Regulations laid out the format of documents to be issued in any proceedings and separated civil from criminal proceedings.¹⁰² The language of the documents was in English but they were translated into the Fijian language. Warrants, information of complaints, summons to defendant amongst other documents definitely were not indigenous practices. Of course it did not take into account that most of the indigenous population were not literate. Indigenous society prior to the introduction of the written language was oral based and the written language introduced by the missionaries, at most times operating under the auspices of the Colonial government, allowed the dominance of new linguistic concepts of social behaviour, cohesion and control.

The magistrates as judicial officers were not strictly independent of the administrative arm of both the apparatus of the cultural institutions and the central government. The *Bulis* who were responsible for the welfare of the village, ensuring that it was clean, keeping an eye out for adulterers, organising the building latrines, policing evil speaking and slander also acted as the prosecutors of those who breached the regulations. The European district commissioner closely monitored and influenced the court.¹⁰³

¹⁰¹ Quoted in *supra* note 50, p. 108.

¹⁰² see Regulation 2(III) 36.

¹⁰³ For overlapping of jurisdictions between the native officials and the Colonial administrators see also an account by Scarr, D. 'A Roko Tui for Lomalviti: The Question of Legitimacy in the Fijian Administration 1874-1900', *The Journal of Pacific History*, vol 5, 1970, p. 5-6.

The pervasive nature of the courts, the highly regulated life and the hierarchical administrative and council system resulted in the new legislated practices and customs being applied to all indigenous Fijians. This also meant that these legislated practices and 'customs' were set in stone those and deemed to be 'traditional', consequently discounting customs that were not included in the new autonomous regime.

Essentially the autonomous institutions were rural based in that they catered for and were centred on a rural based community, which it was. Despite being taxed, although somewhat differently to the European population, the indigenous population was ostensibly buffered from the exploits of and exposure to the outside capitalist and individualistic society. The only formal contact with the outside world was through the chiefs.

A corollary to the institutions of separate native administration was the establishment of a new land tenure system. Just as the political system prior to British colonisation was heterogeneous and fluid so too were rights pertaining to the ownership of land prior to European contact.

There was no specific and uniform land tenure system throughout the Fiji Islands. As noted in France's seminal work in unravelling the orthodoxy of the land tenure system, the idea of communal ownership and neat correlations between *mataqalis* and their ownership or lack of ancestral lands were non-existent.

Indeed there were numerous accounts of European settlers being the beneficiaries of land alienated unilaterally by chiefs who did not consult their tribal members¹⁰⁴. *Mataqali* ownership and accrual of land to specific *mataqalis* were unclear and varied from region to region. Indeed the term was unclear in the first place.¹⁰⁵ As noted by one of the *Bulis* in the province of Serua, 'my father's *mataqali* is called N. tokalau – mine Nadruadrua, and my son's Nabatilili'¹⁰⁶.

When Gordon asked the Council of Chiefs to 'outline the traditionally recognised rights to land' the chiefs did not address past modes of ownership which indicated that it was too fluid a concept. Instead of talking about 'what was', they suggested

¹⁰⁴ *supra* note 50, p. 121.

¹⁰⁵ Quoted from 'Notes of the proceedings of a Native Council' 1878, 50, NLC quoted in *supra* note 50, p.46.

¹⁰⁶ Quoted from 'Notes of the proceedings of a Native Council' 1878, p. 50 in *supra* note 50, p.112.

ways in which ownership should be decided. What they wanted was a far cry from communal ownership. As suggested by the Tui Bua and agreed by Ma'a'u and the other chiefs in Council, given the confusion surrounding land ownership, land should be divided individually 'so that each man might plant for himself'¹⁰⁷. Indeed they proposed that:

*[t]hen let the land be divided among the occupants of it according to the families of the landholders, taking due consideration of each person's rank and position, whether they be Chiefs of the highest or minor rank, of the Chiefs of tribes, or elders of families or landowners; and then let the land be divided in portions to the people individually, or in large blocks to families or tribes.*¹⁰⁸

The various Land Commissions set up by Gordon to ascertain what 'time immemorial'¹⁰⁹ practices there were in respect of native ownership of land and 'hereditary rights', were consistently told by the indigenous population that land ownership in the period prior to colonisation, was fluid: land ownership changed frequently; lands 'could pass from chiefs to their commoners in return for services'¹¹⁰; as a result of social interaction or assistance during war; land was transferred to meet dowry obligations and in regards to *vasu* obligations¹¹¹.

Yet Gordon, like other untrained ethnocentric anthropologists of his time, influenced also in this instance by traditional patterns of Scottish landownership some three and four hundred years prior to Cession, and who subscribed to the idea that there must be some 'time immemorial' practices of landownership resembling communal ownership in particular by a group of people who had not 'evolved into a modern society', was not convinced despite the glaring evidence provided by the indigenous peoples, to the contrary.

Although reticent to having customary land tenure regulated, the chiefs finally relented in December 1879 to Gordon's insistence 'that there shall be but one general custom for all Fiji'.¹¹² As France notes the unanimous support of the chiefs for the new regulations in respect of the new land tenure system was surprising and

¹⁰⁷ *supra* note 50, p. 110.

¹⁰⁸ *id.* p. 111.

¹⁰⁹ *id.* p. 124.

¹¹⁰ *id.* p. 120.

¹¹¹ *id.*

¹¹² *id.* p. 113.

a momentous turn around. Accordingly it was deemed that in relation to land tenure and its inalienability:

*The beginning and the end of the matter is this: we repeat, and with one voice solemnly declare the true and real ownership of land with us is vested in the mataqali alone, nor is it possible or lawful for any mataqali to alienate its land.*¹¹³

With this cooperation from the new elite Gordon's separate administration was sealed. While it distorted the political structures and land ownership and tenure systems it did from one perspective protect indigenous Fijians from the application of laws and systems which it arguably would have suffered under. It also protected the indigenous Fijians from suffering the same fate as other indigenous groups in particular regarding the arbitrary alienation of land which had it taken place in all likelihood could have reduced indigenous Fijians to serfdom to the European settler. Yet at the same time these protections created a new orthodoxy and new elite. It also set in train a particular view of what was to be 'culture', what institutions were to govern 'culture' and indeed who were to be the beneficiaries of that 'culture'.

However, all cultures must be organic to relevant change in society and it is with change in demographics that these cultural institutions were under strain in the second phase of separate administration.

¹¹³ quoted in *id.* p.113.

Phase 2

The term Fijian includes two distinct classes, whose interest are to a greater or lesser extent opposed, viz: the chiefs and the commoners – what is the gain to one is often the loss to the other. To me their interest seems to be as distinct as those of the patrician and the plebeian, or of noble and serf...if they commoners try to accumulate property, it is taken from them.

Sir Everard Im Thurn¹¹⁴

Prior to and during Sukuna's revamping of the cultural institutions created by Gordon, the socio-economic and political dynamics of the colony had changed significantly.

With endorsement from the Council of Chiefs, Governor Im Thurn, who started his commission in 1904, put in train policies to freeze up lands for to be used for plantations and to allow 'native owners to sell or lease lands to fellow native Fijians'¹¹⁵. While this was seen to be a major step in the land tenure system and a boost to the economic development of the colony, Im Thurn was also motivated by the idea that individualism needed to be injected into the indigenous Fijian society to 'prepare [indigenous] Fijians for the rigours of modern society'¹¹⁶. He also noted that there were socio-economic disparities within the indigenous Fijians primarily between the commoners and chiefs and their elite network.¹¹⁷

Gordon who by this stage had become Lord Stanmore argued from London that 'Fijians were not in position to deal with Europeans'¹¹⁸ individually and any change in the land tenure system and consequently the separate administration would lead to unrest by the indigenous Fijians. Im Thurn who had the benefit of assessing the reaction to his policies first hand as he was in Fiji retorted that Gordon's policy of separate administration and the land tenure were 'designed to meet very special circumstances in Fiji which had since changed'¹¹⁹. He also noted that the change in policy was received enthusiastically by most indigenous Fijians and objected to by a small group of chiefs from Bau who 'who resented the efforts made to restrict their dictatorial rights and to give more freedom to Fijian individuals'.¹²⁰

¹¹⁴ quoted in Chappelle, A. 'Sir Everard Im Thurn's policy of individualism for Fijians', *Fiji Society* 12, 1970, p. 53.

¹¹⁵ Lal, V. Governor Sir Everard Im Thurn's reforms to Fiji's land policy, 1904-11 in Routledge, D. *Papers in Pacific History*, SSED Student Papers Series No. 1, Suva, 1985 p. 44.

¹¹⁶ *supra* note 58, p. 42.

¹¹⁷ *supra* note 114.

¹¹⁸ *supra* note 15, p. 47.

¹¹⁹ *id.*

¹²⁰ *id.*

The European members of the Legislative Council also pushed for an end to the separate taxation regime¹²¹ and wanted to do away with separate administration or at least wanted 'radical change'¹²² since it was not 'effective in its administration of the natives'.¹²³ Indeed because of this pressure and the apparent fallibility of the separate administration, more apparent in some provinces than in others, *ga'ala* was introduced whereby 'more individual 'petty production'¹²⁴ was encouraged and independent employment was allowed¹²⁵. Some European members of the Legislative Council wanted indigenous Fijians to be made 'free men'¹²⁶ by ridding them of separate administration, which they also viewed as being financially mismanaged.

The prevalence of these ideas and attitudes had an impact not just on the administrators within the colony but it also progressively eroded the stranglehold separate administration had on individual members of the homogenised group of indigenous Fijians.

Yet the European settler representatives in the Legislative Council made an about turn in their individualisation mission, when the *girmityas* started agitating for the right to vote and common franchise based on a common roll.

Without examining in detail the interesting campaign and agitation of the *girmityas* to gain common franchise and a common roll for the colony, it is suffice to note that it was based on the notion of equal citizenry rights of all British subjects in the colony. As Legislative Council member Vishnu Deo stated:

Today I stand for the recognition of the principle of common and equal rights of citizenship. I want assure my friends the European elected members that there is no desire in us to seek preponderance in this Council. I would not mind if the honourable members on my right represented me in this Council if they were elected on a common electoral roll. Some are afraid, I know Sir, that in time to come Indians will swamp the Europeans but I submit that that

¹²¹ Legislative Council Debates 29 September 1911 (Turner, Hedstrom and Marks).

¹²² Legislative Council Debates, 3 September 1917 (Marks).

¹²³ Legislative Council Debates, 3 September 1917 (Scott).

¹²⁴ Durutalo, S. *The Paramountcy of Fijian Interest and the Politicization of Ethnicity*, South Pacific Forum Working Paper No. 6, USP Sociological Society 1986, p. 17.

¹²⁵ 'Burn Report', Legislative Council of Fiji, Council Paper no. 1 of 1960, report of the Commission of Enquiry Into the Natural Resources and Population Trends of the Colony of Fiji 1959, p. 33.

*question would never arise if and when we are on a common roll as British subjects. However, I wish to make it quite clear that we do not wish to impose our civilisation, and we have no desire to deprive the Fijian native of his rights and of his liberties. We want to remain in Fiji and we want to see British justice meted out to all her citizens.*¹²⁷

The common roll and common franchise was denied and although the *girmiyas* and their descendants, the Indo-Fijians, males at that time, were given the right to vote it was along the lines of ethnic representation. Indigenous Fijians did not, as sanctioned by the Council of Chiefs, have the right to vote. The council of chiefs nominated 'Fijian' members to the Legislative Council. By denying commoner indigenous Fijians the right to vote it consolidated the status of the elite.

The Indo-Fijian insistence that all citizens had the right to vote on a common roll was perceived by the European mercantile class to be a threat to their economic, political and social interests and status. Consequently European Council representatives and the mercantile class now sought to forge a new camaraderie with the indigenous Fijian elite, namely the chiefs and their cliental. This camaraderie and the nature of it is best encapsulated by the idea of a settler JJ Ragg who urged chiefs to:

*Endeavour to permeate the whole of the Fijian race with the fixed idea that the granting of the franchise and equal status to the Indians in Fiji would mean the ultimate loss of all their lands and rights and later their final extinction from the face of the earth.*¹²⁸

This new camaraderie was a turn around and ironic because, prior to the Indo-Fijian demands for a common roll, the European settlers and the Colonial Government somewhat subtly advocated the dismantling of separate development and instilling individualism within the indigenous Fijian population. Now, however, separate administration led by the indigenous elite which could be co-opted and all with the maintenance of a homogenised indigenous Fijian grouping, in opposition to the new 'other' - the Indo-Fijian - was seen to be essential to the survival of the European settlers, the Colonial Government, the elite.

¹²⁶ Legislative Council Debates 29 September 1911 (Turner).

¹²⁷ Legislative Council Debates, 5 November 1929, p. 179-180.

¹²⁸ quoted in Gillion, K. *The Fiji Indians*, Australia National University Press, Canberra, 1977, p. 74.

Indeed in their numerous petitions during the nascent days of the colony to the colony's successive governor from Gordon's times and to the colonial secretary in London, the settlers has always argued for male franchise but only for 'British subjects' not Indians, Fijians or aboriginal Polynesians'.¹²⁹ By 21 March 1904, generally viewed as the date of publication of the colony's first constitution, franchise had been granted on the basis of ethnicity but only to 'Europeans'. Indigenous Fijians were represented by 2 unelected members appointed by the governor after 6 names were submitted to him by the Native Council of which he was the 'root'.

By 1915 the settlers, the 'Europeans' and 'part Europeans' had successfully pushed for an amendment to the *Municipal Institutions Ordinance* which prevented those who could not read, write and speak the English language from qualification as voters (and candidates) in municipal elections. This amendment severely minimized the opportunities of Indo-Fijians and indigenous Fijians who comprised the bulk of the population from participating in urban politics, culture and development.

With the political and constitutional demands of equal citizenry and the consequent deliberate ethnicisation of these demands, World War II and a fiscally restrained British Empire as the background, Sukuna introduced the new-look separate administration under the Governorship of Mitchell who wanted a 'single native authority with a single accounting system'¹³⁰ and which was incorruptible and efficient.¹³¹

Sukuna, an educated and articulate member of the indigenous elite, was a product of separate administration. His Oxford training was paid for by the Colonial government. He was a paid member of the civil service *vis a vis* the native administration and climbed his way up the civil service hierarchy to become the adviser on native affairs in 1943. His father Ratu Joni Madraiwiwi who opposed franchise for the commoner indigenous Fijian was a former member of the Legislative Council.

The 1944 Fijian Affairs Ordinance created the Fijian Affairs Board which replaced the Native Regulations Board. The Fijian Affairs Board quickly set in train the Fijian Affairs Regulation which provided the plethora of rules governing the lives of indigenous Fijians in the rural village setting in a similar vein to what had been done previously.

¹²⁹ Fiji Royal Gazette(1905) p. 105 cited in SahuKhan (1975) p. 51.

¹³⁰ West, F. 'The Establishment of the Fijian Administration: Part I Sir Lala Sukuna' publisher/journal unknown, article sourced from USP library pac JQ6301.W46.

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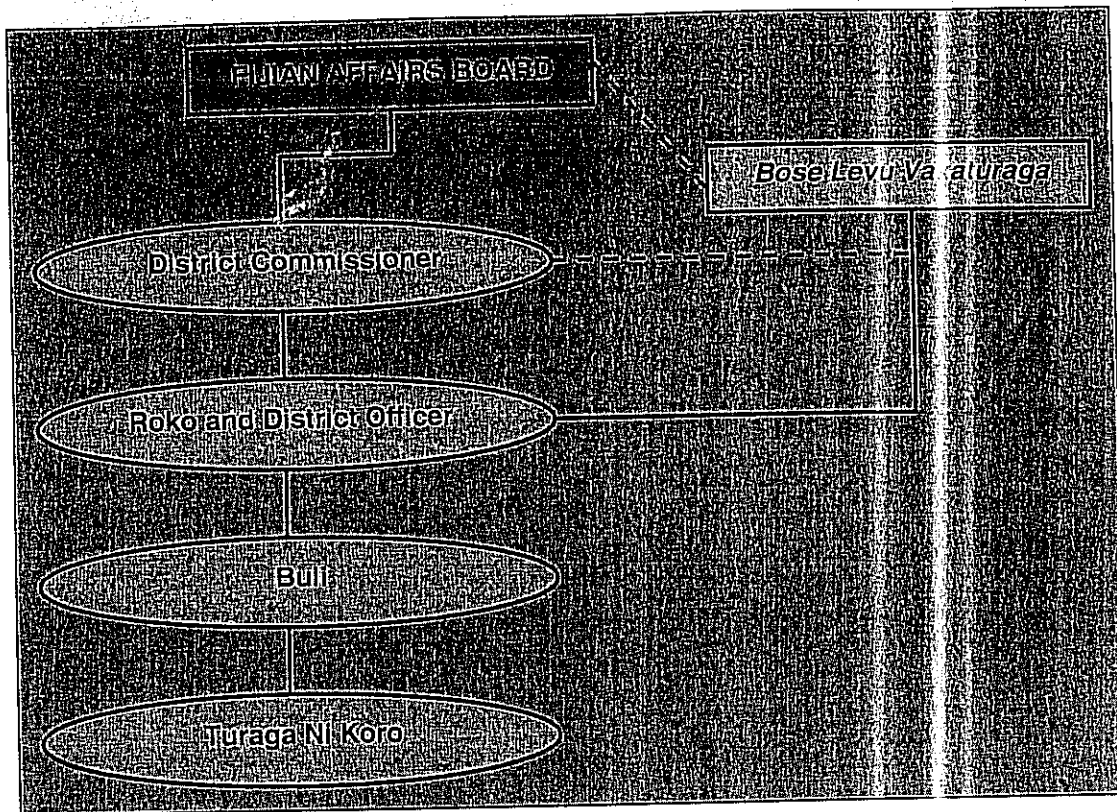
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¹³⁰ West, F. 'The Establishment of the Fijian Administration: Part I Sir Lala Sukuna' publisher/journal unknown, article sourced from USP library pac JQ6301.W46.



The number of provinces was reduced to 14 which had grown to 19 from the original 12 when Gordon promulgated the system demonstrating the arbitrariness or at least the flexibility of provincial boundaries. The drawing up of boundaries was also at times politically driven in that provinces that could have been a threat to Sukuna were subsumed into larger ones headed by more amenable chiefs.¹³²

The positions of District Commissioners and Officers were created in the hierarchical system to improve the seemingly waning authority of Native administration. A Native Affairs Secretary replaced the Adviser on Native Affairs. Sukuna was the first Secretary for Fijian Affairs.

Sukuna, when introducing the new legislation, told the Legislative Council that 'Fijian life and thought' had been essentially the same for over 50 years¹³³. However, while not denying the need to change, he believed it should all be gradual and only through the 'Fijian' institutions. In this respect he stated:

¹³¹ see *id.*

¹³² for example the province of Navosa was made part of Nadroga. The *ka levu* o Nadroga was more amenable to Sukuna's leadership than the Navosa chieftainship. Asce tained from discussions with chiefly clan members from Navosa.

¹³³ Legislative Council Debates 22 September 1948, p. 162 (Sukuna).

Now some of us regard equality as a sacred thing that should be bestowed on all communities – social equality, equality of opportunity, and equality before the law. So do I: but all in good time when every community has acquired the necessary elements that go to make equality a good.¹³⁴

He also stated that any move to discard the separate administration which he regarded as an indigenous institution, and to replace it with 'democratic forms of government' could lead to one party rule resulting in 'violence and murder, misery and hunger'¹³⁵. Those who opposed the common roll on the basis of ethnicity and the alleged resultant domination by one ethnic group no doubt influenced Sukuna's views and policies. This was clearly demonstrated by Sukuna's address to the Council of Chiefs gathering when telling them to 'pull their socks up'¹³⁶:

We need clearly to understand and be always conscious of the fact that we can no longer be sure of our people continuing to follow us provided they appreciate that our authority is better than that of everyone else, that as a result of our forethought and energy they prosper – that is, when we cease to rely on status to see us through and when we prove once more that we possessed both the qualification and the authority to rise to the occasion as our ancestors possessed. If we confine ourselves to pleasure seeking only, no useful purpose will be served in maintaining our chiefly status. If we are merely decorative our position is finished forever or will soon be tossed aside when some other race rise to the fore.¹³⁷

The fear of the 'other', was now against the Indo-Fijian as opposed to the previous 'other' the European settler. The need to preserve the predominance of the indigenous Fijian elite through rigidified structures, despite the socio-economic changes and exposure to new forms of acculturation and membership of voluntary organisations such as wider community clubs, associations, trade unions was seen and portrayed to be imperative.

¹³⁴ Legislative Council Debates 1944 sourced from West, F. 'Problems of Political Advancement in Fiji' in *Journal of African Administration*, sourced from USP Library reference is pac JQ 6301 W49 1961.

¹³⁵ Legislative Council Debates, 22 September 1948 p. 164.

¹³⁶ *supra* note 124, p. 20.

¹³⁷ quoted in *id.*

Between 1950 and 1960 the colony underwent enormous socio-political changes and turbulence. The 'number and intensity of trade union strikes'¹³⁸ predominantly by the sugar cane farmers increased significantly and more indigenous Fijians became 'proletarianised'¹³⁹ and moved to urban areas. The cost of living also increased significantly.

The gold miners, most of whom were indigenous Fijians, led one of the major strikes. The government's response was the implementation of the *Industry Dispute Ordinance*. The legislation effectively meant that workers demands and strikes were to be 'assessed in terms of national interest'¹⁴⁰. The oil workers strike of 1959 included strikers from predominantly the 2 supposedly divided ethnic groups – the indigenous and Indo-Fijians. Initially the government's heavy handed tactics failed to quell the strike. Riots ensued in which merchant shops and big businesses were targeted since the strikers viewed them to be the main beneficiaries of an unfair and racist system. All big business was 'European'. The elite chiefs at the instigation of the colonial administrators and the merchant class diffused the strike by reigning in 'their' commoners by resorting to notions of group solidarity in reference to the other and loyalty to the colonial state.¹⁴¹

Between 1956 and 1960 three reports regarding the population of Fiji but more specifically in relation to separate administration were undertaken. The M Dougall Report of June 1957 which examined the 'whole of the Fijian Administration finances'¹⁴² concluded *inter alia* that customs and traditions needed to change 'if the Fijians are to make progress in a very competitive world'¹⁴³.

The Spate's comprehensive report of April 1959 which examined the 'economic problems and prospects of the Fijian people' brought to the fore that separate administration was no longer useful. He noted that Sukuna's interpretation of culture and his solution through a (re) structured separate administration 'were biased by his half-conscious vested interest in a society in which chiefs were chiefs'¹⁴⁴. Recognising that in pre-cession society chieftainships were subject to change and dynamic, Spate also concluded that separate administration and the proponents and

¹³⁸ *supra* note 58, p. 85.

¹³⁹ *id.* p. 89 – 93.

¹⁴⁰ see Bain, A. 'Vatukoula – Rock of Gold: Labour in the Goldmining Industry of Fiji 1: 30 – 1970' unpublished doctoral dissertation, Australian National University, 1987.

¹⁴¹ *supra* note 58, p. 98 – 101.

¹⁴² Fijian Administration, Report of R. S. McDougall, CBE, County Treasurer of Hertfordshire, England, p. 1.

¹⁴³ *id.* p. 13.

beneficiaries of the system were inattentive to the 'trends in Fijian thinking and life which are independent of or opposed to the hierarchical or communal outlook'.¹⁴⁵

The three member Burns 'Commission of Enquiry into the Natural Resources and Population Trends'¹⁴⁶ in Fiji regarded it as essential that 'the Fijian should enjoy as much personal liberty as any other British subject'¹⁴⁷ – the impediment to the attainment of this liberty was, it concluded, separate administration and its effects. It brought home the fact that leadership within the indigenous population was the preserve of a few and there was no room to allow differing views given that

*Inasmuch as the Fijian people, who are those most directly affected by the activities of this [Indigenous Fijian] Administration, are represented in the Legislative Council by five 'unofficial' members who are all members of the Fijian Affairs Board, which it self controls the Fijian Administration.*¹⁴⁸

One of the recommendations of the two Reports (Burns and Spate) was put into practice when indigenous Fijians were given the right to vote, that is franchise was extended to women in the 1963 colony. The chiefs had been opposed to extending the franchise to the commoners since the early part of 1900. The Burns report which wanted the 'Fijian administration to become the foundation of multi-racial local government'¹⁴⁹ was ignored as was almost every other recommendation.

With the extension of franchise and more self-rule directed by the British Labour Government for the colony, the Fijian Association became the official chief-sanctioned party for indigenous Fijians. It almost immediately formed a coalition with the European Electors Association, to be called the Alliance Party. The Alliance Party headed by Mara was vehemently opposed to a common roll. If independence meant common franchise and a common roll then the Alliance wanted Fiji to remain a British colony. The Alliance would only consent to independence talks if 'Fijians combined with General Electors had the majority in the new proposed parliament. This consolidated the perpetuation of ethnic politics in the new independent nation-state of Fiji.

¹⁴⁴ Legislative Council Paper No. 13 of 1959, p. 7.

¹⁴⁵ *Id.* p. 32.

¹⁴⁶ Legislative Council Paper No. 1 of 1960.

¹⁴⁷ *Id.* p. 16.

¹⁴⁸ *Id.*

¹⁴⁹ West, F. 'The Establishment of the Fijian administration. Part II 1954-1965 Moves towards Reform' in *Journal of Administration Overseas*, 6(1) Jan 1967, 43- 49, p. 49.

The reports did however lead to reorganisation within the administration and other internal inquiries. In 1967 the insignificance of the essentially rural based 'Fijian' court system and related regulations was realised and in 1968 they were completely abolished and all citizens of Fiji were subject to the same jurisdiction and court system.

Phase 3

To accept nativism is to accept the consequences of imperialism the racial, religious and political divisions imposed by imperialism itself. To leave the historical world for the metaphysics of essences like negritude Irishness, Islam or Catholicism is to abandon history for essentializations that have the power to turn human beings against one another; often this abandonment of the secular world has led to a sort of millenarianism if the movement has had mass base, or it has degenerated into small-scale private craziness, or into an unthinking acceptance of stereotypes, myths, animosities, and traditions encouraged by imperialism. Such programmes are hardly what great resistance movements had imagined as their goals.

Edward Said¹⁵⁰

Apart from the regularisation of the Ordinances into Acts following independence there were no significant changes to the system of separate administration although the colony had now become a (nation-) state in its own right.

The Ministry of Fijian Affairs and the Fijian Affairs Board dealt with matters that were deemed to be 'Fijian'. These included the promoting of indigenous Fijian culture, processing and distribution of scholarships, business and entrepreneurship schemes and of course providing support to the various Councils created under the Fijian Affairs Act. These responsibilities which fell within the ambit of the Ministry of Fijian Affairs and the Board could have been easily carried out by other governmental ministries for example the ministries of Commerce and Regional Development.

As an initiative of the East West Centre where Mara - high chief, prodigy of Sukuna, head of the confederacy of Tovata, leader of the Alliance Party and Prime Minister of post independent Fiji, questioned the appropriateness of 'administrative systems based largely on the legacies of the colonial era'¹⁵¹, a review of the 'Fijian Provincial Administration' was undertaken. This culminated into the Cole report¹⁵² which essentially recommended that the various arms of separate administration should be rigidified and separate courts be reintroduced. These recommendations were not heeded.

¹⁵⁰ *supra* note 46, p. 276.

¹⁵¹ Quoted from *Government Systems Project: the Fijian Provincial Administration Review - Regional Report*, East West Center, Honolulu, 1985, p. 2.

¹⁵² Parliament of Fiji, Parliamentary Paper No. 55 of 1985.

Following the election and its overthrow four weeks later, the Bavadra Labour coalition government was accused of being anti-Fijian by the very fact that it won office. The loss by Ratu Mara of his Prime Ministership even though to another indigenous Fijian but who was not part of the elite, was portrayed as an affront to indigenous aspirations and paramountcy the clichéd terms to continue separate administration and the resultant elite cliental.¹⁵³

Following the overthrow of the democratically elected Bavadra government the coups were also legitimated through predominantly the *Bose Levu Vakaturaga*. In turn the events of the coups in 1987 gave the *Bose Levu Vakaturaga* authority, power, status and publicity – a new lease of life in the now independent Fiji. It became the pseudo-parliament, the rallying point of identity, guardian of indigenous Fijians and, whatever it proclaimed was legitimate and had to be adhered to. However, its rise to prominence in 1987 as the supreme authority on political legitimacy was short lived since as during the Colonial and Alliance Government administrations, its role was to support the elite establishment.

Prior to the national elections being held under the 1990 Constitution, in 1992, the BLV launched a political party, the *Soqosoqo Vakavulewa ni Taukei* (SVT). The SVT won office in 1992 and again in 1994 following dissolution of parliament after some of its back benchers voted against the budget. However it was convincingly defeated in the 1999 national elections.

Three reports¹⁵⁴ examined the Fijian administration system between 1990 and 1999 primarily concentrating on the role of the *Bose Levu Vakaturaga*. The gist of these reports concentrated on the *Bose Levu Vakaturaga* providing leadership to the indigenous community and how best to do so. One of the reports called for a reduction in the tension between individualism and communalism while recognising that community life was dependent on the 'people serving the chiefs and the chiefs

¹⁵³ See Robertson, R. & Tamanisau, A. *Fiji Shattered Coups*, Pluto Press, Leichhardt, 1988, p. 64 – 68.

¹⁵⁴ Leadership Development – Report of the scoping mission into leadership development needs of the members of the Great Council of Chiefs of Fiji [Bose Levu Vakaturaga] and other related matters, undertaken by Sir Ian Thomson between 15 July 1996 and 10 August 1996; Na I Vola Tukutuku ni Komiti Ni Bose Levu Vakaturaga Ka Lesi Me Dikeva Na Noda Vakaduavatataki Na I Taukei (The Bose Levu Vakaturaga Committee on Fijian Unity); and, Vellutaki Vakaturaga – Na I Vakadei Ni Sautu Ni Noda Vanua Kei Na Vakatorokaketaki Ni Kawa I Taukei, January 1997 (Chieftly Leadership: The basis of peace in our country and development of indigenous people, January 1997).

...
serving the people' – it was a reciprocal arrangement¹⁵⁵. None of these reports questioned the viability of the continuation of separate administration and/or the impact of separate administration in the context of the nation-state of Fiji.

Similar to the events proceeding the overthrow of the Bavadra government in 1987 the Chaudhary government, elected in 1999 had to contend with the accusations that it was insensitive to the indigenous aspirations and paramountcy. Again it was seen to be a threat to separate administration in particular when the Chaudhary as the 'Indian' attended the *Bose Levu Vakaturaga* proceedings which he as Prime Minister was entitled to. As Prime minister he was also entitled to be on the Board of the Native Land Trust Board.

Following the kidnapping of Prime Minister Chaudhry and his cabinet on 19 May 2000 and the ensuing break down in law and order, the Council of Chiefs once again was momentarily put in the limelight. It was again short lived but this time its enunciations and resolutions during the crisis was not given the same credibility as it was in 1987 namely by the captors and their supporters.

Recently the Qarase Government commissioned a review of separate administration to identify 'a new approach to administration that accounts for the changing patterns of behaviour amongst Fijian people and their changing aspirations and desires'¹⁵⁶. The report which has not been made public already has its detractors, so much so that the Government commissioned another committee to give to it a report after examining the recommendations of the original report. The second committee's findings will 'keep its recommendations confidential'¹⁵⁷.

¹⁵⁵ Vellutaki Vakaturaga – Na I Vakadel Ni Sautu Ni Noda Vanua Kei Na Vakatorocaketaki Ni Kawa I Taukei, Janueri 1997(Chiefly Leadership: The basis of peace in our country and development of indigenous people, January 1997) see clauses 19.1.4 and 19.8, p. 57-58.

¹⁵⁶ Ministry of Fijian Affairs Review of the Fijian Administration, Final Report, Volume I, February 2002, p. 127.

¹⁵⁷ 'Review of report on Fijian structure complete', *The Sunday Times*, April 20, 2003, p. 2.

Chapter 3 Analysis

There are indeed well-known and very important issues about the social and political stability of liberalism and of outlooks historically associated with it. It is from concrete discussion of those issues, rather than from debate about logical possibilities, that weaknesses emerge. Equally, it is from social and historical reality that we are likely to be instructed in liberalism's strengths, and to be reminded of the brutal and fraudulent simplifications which, as a matter of fact are the usual offerings of its actual enemies.¹⁵⁸

The concept of *dhimmis* existed within the constitutional arrangements of caliphates in which minority groups in particular 'peoples of the book' (Jews and Christians) were given protection and allowed a certain degree of self-government 'under their own personal law'¹⁵⁹ over matters that were private to them while operating and living within the boundaries of the territory of the caliphate without compromising its sovereignty. Similarly the Ottomans developed the millet system whereby minority religious groups were allowed autonomy, self-government by paying a special tax. The respective religious leaders not only became the conduits of collecting the tax for the Ottoman sovereign but also became the 'subordinate partners' whilst organising 'the cultural life according to their own precepts'.¹⁶⁰

The 1555 Peace of Augsburg and the 1815 Congress of Vienna, set the grounds for the modern nation-state to afford and indeed recognise that 'minority groups' do exist within its borders and may be prone to subjugation and/or discrimination. Accordingly they would need protection either through constitutional arrangements which would allow for specific autonomy – territorial and/or cultural – or the provision of anti-discriminatory legislative provisions.

The protection of minorities in recent times has taken another dimension. As seen in chapter one culturalists such as Kymlicka have argued that true Liberal principles cannot be realised unless culture or more specifically group culture is recognised as an inherent feature and make up of all individuals and accordingly societies. This

¹⁵⁸ Berlin, I. and Williams, B. 'Pluralism and Liberalism: a Reply', *Political Studies* (1994), XLI, 306-309 (304).

¹⁵⁹ Coulson, N. *A History of Islamic Law*, Edinburgh University Press, Edinburgh, 1997 (reprinted), p. 27.

¹⁶⁰ Eide, A. 'Cultural Autonomy: Concept, Content, History and Role in the World Order' in Suksi, M. (ed.) *Autonomy: Applications and Implications*, Kluwer Law International, The Hague, 1998, p. 262.

reality it is argued must be factored into constitutional and legal arrangements and if cultural autonomy is a consequence of the recognition of the centrality of culture then so be it.

Cultural autonomy in this sense is at variance with territorial autonomy since the 'scope of self management is limited to cultural aspects'¹⁶¹ and only to those that 'belong' to the specific culture. It is 'self rule by a culturally defined group in regards to matters which affect the maintenance and reproduction of their culture'.^{1 2}

¹⁶¹ *id.* p. 252.

¹⁶² *id.*

Outcomes of autonomy

*Cultural autonomy might lead to parallel – that is, separated – cultures instead of integrated. Such segregation would be too high a price to pay for protection from cultural assimilation. Hence autonomy reaches its limits when the separation of the minority from the majority jeopardizes the unity of the state.*¹⁶³

Protection

As seen in chapter 2 the arrival of the new settlers to Fiji, many of whom at the best of times were unscrupulous and who brought together with them *inter alia* completely new ideas and practices of social, political economic organisation, a new and indirectly state sponsored religion, ideas of 'the native' and disease posed a momentous threat to the culture and indeed existence of the various and disparate groupings of individual indigenous Fijians. The 'self government' accorded to indigenous Fijians through separate administration in the last part of the last century gave coherence to the colonial state while ensuring the survival and identity, albeit a new one, of the indigenous population.

Separate administration meant that a population which had just been depleted by a third, was buffered from assimilating into the growing and overwhelming exploitative nature of colonisation, its culture and consequences. While the land owning systems put in place were contorted to fit in with separate administration it nonetheless halted blatant alienation of land as experienced by most other indigenous groups throughout the colonised world. The doctrine of *terra nullius* did not apply in colonial Fiji thanks to separate administration.

This organisation of the colonial state which halted the 'structural debasement or decay'¹⁶⁴ of indigenous culture would be seen by culturalists such as Kymlicka as ensuring a just liberal state. The provision of a 'societal culture'¹⁶⁵ and usage of culture facilitating the identity process to give meaningful choices to individual indigenous Fijians to decide the social good and ensure self worth would be the fulfilment of a liberal objective and outcome.

¹⁶³ Heintze, H. 'On the legal understanding of autonomy', in Suski, M. (ed.) *Autonomy: applications and implications*, Kluwer Law International, The Hague, 1998, p. 21.

¹⁶⁴ Dworkin, quoted in Kymlicka *Multicultural Citizenship*, p. 83.

¹⁶⁵ *supra* note 4, p. 84.

From this perspective and given the fate of other indigenous groups during colonisation, cultural autonomy via separate administration would appear to be meritorious. However, as demonstrated by the Fijian experience, cultural autonomy does also have negative tendencies, amongst which is suppression of individualism and the development of a fractured nation-state.

Homogenisation

The setting up of a culturally autonomous institution lends itself to a homogenising process and mission. Since it is invariably in relation to a 'the other' the dialectics of autonomy presupposes that the group thinks and acts as a group because of outside forces. Cultural autonomy does not allow for heterogeneity within the identified group and at the very least characterises individuals within the group as thinking and aspiring alike and having the same wants and needs. This feature of autonomy is essential for its viability.

When setting up separate administration in Fiji the egalitarianism and parochialism of the political and social structures in the West were ignored and the apparent matrilineal society in the north was replaced by patriarchy. The Baian dialect became the official 'Fijian language' and the institutions of separate administration although foreign to most parts of the islands were deemed to be part of the indigenous political and social structure. These institutions did not merely tinker with indigenous systems they represented an external imposition in order to homogenise and consolidate the power of a few.

Homogenisation does also lead to a single narrative of the culture. The formalising of the indigenous Fijian nation meant a conservative (re-)writing of history which consolidated the position of the new leaders under separate administration.¹⁶⁶ In this sense a sanitised history is presented, the liberation of the noble savage from the shackles of barbarism and cannibalism because of European benevolence and Christian ethos and, then to be guided by the righteous chiefs.

What is taught in schools forms part of the grand narrative of the homogeneous group ignoring the heterogeneity, the dynamism of indigenous Fijian society prior to separate administration manifested through those such as Apolosi Nawa, the Tuka

¹⁶⁶ Thomas, N. 'Taking sides: Fijian Dissent and Conservative history - writing', *Australian Historical Studies*, vol. 24, no. 95, October 1990.

movement and the rebellion of the kai Colos.¹⁶⁷ The dissenters are castigated and denigrated to be mere aberrations, a laughing stock, those who were uncivilised and not cultured – not *vakaturaga* – not the desirable. However, as seen the building up of homogeneity on an artificial edifice and without the recognition of individual differences cannot be sustained.

Indeed as demonstrated by the experience in the Indian sub-continent the artificial homogenising of the Muslim cultural group prior to partition was vulnerable to the heterogeneous groupings within this group. The creation of Bangladesh and the current demarcations within Pakistan along the lines of other 'cultural' markers are a testimony to the heterogeneous characteristic of the original Muslim cultural group in pre-independent British India.

Homogenisation in this sense seeks to cloud over and obfuscate differences within the group and essentialise not just history but culture itself.

Cultural determinism and monoism

Kymlicka's view that culture is essential to one's identity assumes *in er alia* that culture is free from control and is not the monopoly of the few. It also assumes that the individual needs only one culture and that that culture is not outdated, it is vibrant. Given the immense emphasis given to 'culture' it gives it a primordial character.

If one were to ignore its subjectivity, given the variations within the Fiji group prior to separate administration and its subsequent lack of recognition, the formalisation and regulation of the one indigenous Fijian culture set out by the separate administration, reflected a culture at a particular point in time. Culture in this sense was captured and made static. This disallowed necessary changes and the dynamism required for culture to reflect and keep abreast of the changes in society, the society to which the culture is applicable to in the first place.

The formalisation and the freezing of indigenous Fijian culture have meant that its:

charter for future behaviour rests on a vision of unchanging principles from the past since it exaggerates the static aspect of history and promotes the

¹⁶⁷ Chapelle, A. 'The Fijian Voice in Fiji's Colonial History', *Journal of Pacific Studies*, vol. 1, 1975, p. 47 – 62.

*Idea of cultural preservation and maintenance whilst simultaneously urging initiative, self reliance, and innovation from its younger members.*¹⁶⁸

Furthermore if cultural institutions are set up with certain individuals as guardians of those institutions and who have the monopoly over the interpretation and determination of what culture and tradition is or ought to be then they become extremely powerful in societies where culture and tradition are used to legitimate subservience, domination, and indeed constitutions and coups. In addition if only a select few become culture and tradition makers then they will have tendency to perpetuate, reify and uphold aspects of culture and tradition which protect their own status.¹⁶⁹ As Epeli Hau'ofa observes:

*It is the privileged who can afford to tell the poor to preserve their traditions. But their perceptions of which traits of traditional culture to preserve are increasingly divergent from those of poor, because in the final analysis it is the poor who have to live out the traditional culture, the privileged can merely talk about it, and they are in a position to be selective about what trait they use or more correctly urge others to observe.*¹⁷⁰

Given the above, culture is then not the impetus for achieving one's self-worth since the culture maintained is for self-preservation of the elite few and the convenient tool for management of the masses.

Indeed as seen from the Fijian example when Sukuna imposed the second phase of separate administration he justified it on the basis that indigenous culture had not changed for decades and indeed was not prone to do so and would only do so under the guidance of the chiefs. Such ideas held currency despite the changes in the ground realities. Individual indigenous Fijians like Sukuna and Mara were being educated abroad and influenced by other cultures, they were joining the work force and becoming and were in fact members of the wider society.

¹⁶⁸ Griffin, C. 'Thinker, Teller, Soldier, Seller...Language, Culture and Development in Fiji' *Pacific Perspective*, 12:2 (1983), p. 13 quoted from Lawson, S. 'The myth of cultural homogeneity and its implications for chiefly power and politics in Fiji' 1990 *Society for Comparative Study of Society and History* p. 812-13.

¹⁶⁹ I have drawn upon material from my thesis in this paragraph.

¹⁷⁰ Hau'ofa, E. 'The New South Pacific Society: Integration and Independence' in Hooper, A. et. al. (eds.) *Class and Culture in the South Pacific*, Centre for Pacific Studies of the University of Auckland and Institute of Pacific Studies of University of the South Pacific, Auckland & Suva, 1987, p. 7.

To state the obvious changes in society also mean that individuals of the cultural group have different levels of exposure to both their 'own culture' and to 'others'. Just as indigenous Fijians were then being influenced by ideas, peoples and places so are all peoples today.

Just as the culturalists argue that individuals are not in a vacuum to decide what the social good is, so too is the member of a cultural group not caught in the *one* cultural bubble. We are, in particular in this day and age, subject to and influenced by multiplicity of cultures with the distinction between one's own culture and the other culture or cultures becoming blurred. In other words we do not use one culture to decide the social good, give to ourselves and decide on what constitutes or at least contributes to our identity.

Elitism and authoritarianism

Cultural autonomy does have a tendency to create and promote elitism – new elitism in the sense that a select few and their network of support are selected, generally as opposed to elected to represent and be the gate keepers of their group. Cultural autonomy and their institutions are generally created in times of uncertainty or at least impending threat to the recognised group. And while the choosing of elites maybe the only solution at that point in time, the continuation of the chosen leaders for a sustained period leads to elitism and institutions under which they are selected become self serving.

European contact in Fiji was primarily in the East/North which consequently led to the confirmation of a new chiefly elite from those regions. This led to the establishment of a cartel of hereditary leadership families and their cliental network. Madriwiwi Sukuna's father), Sukuna, Cakobau, Mara, Ganilau and lately Qarase have all been beneficiaries of this bias forged through the perpetuation of the separate administration.

On the other hand those such as Bavadra and Gavidu, Westerners were not accepted and were outsiders – did not represent indigenous Fijian culture - since they encroached upon the territory of the establishment clique.

Concomitantly the bona fide of whether such elitism in fact represents the constituency is in doubt. As seen separate administration bestowed new benefits to the select few who supported the system, discarding former systems of representation and accountability. As seen chiefs prior to separate administration

could be dethroned so to speak if they did meet the needs of the commoners.¹⁷¹ Indeed through the new hereditary and patriarchal system female chiefs were given less importance than their male counterparts. Needless to say the male chiefs did not object to the system which gave them more rights and privileges hitherto not experienced.

It is also seen that elites will compromise or at least relegate the interest of their own culture and people to maintain their positions. When Council member A. V. Ragg under the guise of 'Safeguarding the Fijian Race'¹⁷² sought to wade off calls for a common roll as opposed to a communal roll the continuation of which would benefit the chiefs, he stated:

Those who know natives well, know that what they most lack, and what, if they are ever to be true men, if they must somehow acquire, are the qualities of mind and soul that are expressed in the word "character". But character is just what the natives have not. We, who work for and among them, know too painfully, how deficient in all manly qualities they are. Courage, honour, firmness, pure ambition, truthfulness, unselfishness – these and kindred qualities are all too rare...¹⁷³

Ragg's blatant racism and denigration of indigenous Fijians and culture was not objected to not even by Sukuna or any of the chiefs. However, when the same Ragg some 9 months later (14 March 1947) decided that the "Dual System of Government"¹⁷⁴ – separate administration – had to be dismantled or at least had to be devolved, Sukuna amongst others was at his berating best to defend these institutions. Interestingly only then did he condemn Ragg for his earlier characterisation of the indigenous Fijians some nine months after the event but only after Ragg attacked the separate administration - the power base of the chiefs and their cliental network.

In addition while the Europeans and Indo-Fijians were given the right to vote in the early 1900's and late 1920's respectively, franchise was not extended to indigenous Fijians until women received it in 1963. One of the primary reasons for this late arrival

¹⁷¹ Baba, T. 'from Millpond to mainstream: Challenges to Fijian Leadership' in Chand, G. & Naidu, V. (eds.) *Fiji: Coups, Crises, and Reconciliation, 1987 – 1997*, Fiji Institute of Applied Studies, Suva, 1997 and Dakuvula, J. 'Book review: race, class and rebellion in the South Pacific', *Pacific Perspective*, 9(1), 1980.

¹⁷² Legislative Council Debates, 16 July 1946, p. 163 – 214.

¹⁷³ Legislative Council Debates, 16 July 1946, p. 167 (Ragg).

¹⁷⁴ Legislative Council Debates, 14 March 1947, p. 107 – 127.

of franchise was because the chiefly elite who represented indigenous Fijians in the Legislative Council since the early 1900's objected to the extension of franchise to their people since they deemed their own people not to be fit to use their own minds to vote.¹⁷⁵ This was far from the truth and such attitudes could only be attributed to the elite maintaining and needing to control their power and influence which gave them access to scarce resources of the state.

Of course when the franchise was extended to commoners and they were given the vote, the elite insisted that it be only on an ethnic/cultural basis communal basis and the party that would represent that would be sanctioned by the Council of Chiefs. The Alliance, SVT and now the SDL (although perhaps to a lesser extent) are the manifestations of the confluence of cultural identity and markers, communal representation and elitism.

These practices have perversely led to a system wherein culture was manipulated and deemed to be the very institutions which preserve the status of the elite. Insidiously notions of the *vanua* and indigenous culture have been represented by and seen to be synonymous with the existence of *tikina* and provincial councils and of course the *Bose Levu Vakaturaga* – institutions of cultural autonomy.

The above characteristics and experiences of cultural autonomy are relevant for the now 'liberated' Iraq for example. When the coalition forces choose the interim government will they persist as indicated through the media with a federal system based on homogenised cultural groupings? Indeed these groupings stem from preconceived notions as to who or what group of individuals constitute a group in the first place. Within this group making process some groups are either given exaggerated significance or not given significance at all when perhaps they should be. By making a group are we neglecting the differences that might exist within the groups? There maybe secularist, communist and theocrats within say the *Shia* grouping. It also raises issues of who within the group should be selected. Do the selected few actually represent the wishes of the people of that group assuming it is a group in the first place?

Indeed will the select few, a substantial number of exiles, who have coalesced to coalition interests, be willing to hold and participate in democratic elections in the next two years as has been stated. Will they by virtue of being selected as

¹⁷⁵ For example see Sukuna's speech.

representations of those groupings exploit differences between groups come election time or will they be willing to let each individual Iraqi vote along individual lines based on policy issues rather than group politics?

Relegation of justice and compartmentalisation within the nation-state

The development and maintenance of particularism or particularistic groups 'tends to impose more far-reaching restrictions and obligations on individual members than the merely "negative" duty to leave other individuals alone.'¹⁷⁶ And if restrictions and obligations are decided by few then the chances of injustices which occur within the group can be left unaddressed.

This has over the years led to the suppression of different voices within the indigenous Fijian grouping. The working class interests expressed through the oil workers strike in the 1950's and the Vatukola mine workers strike have all been suppressed by the reference to group interests. As observed by Rata in her excellent analysis of the rise of what she has called 'neo-tribal capitalism'¹⁷⁷ she demonstrates how the elite and the cultural makers tend to replace 'class consciousness and the resultant 'class identification' by 'ethnic identification'. The worker is turned into the 'person-in-community' transposing them into the seemingly 'depoliticised' location within the tribe.¹⁷⁸ Consequently the issues pertaining to working hours and conditions are relegated to the private realm. The plight of the gold mine workers in Vatukola who predominantly are indigenous Fijians has been neglected over the years since a number of the chiefs and the company officials of the Emperor Gold mine have been ~~in cohorts with each other~~. Indeed it is interesting to note the then CEO of Emperor Gold Mine was one of the key financiers of protests/marches and a protestor himself against the ~~new Bavadra Government~~ in 1987.¹⁷⁹ Recently when a Senate member moved a motion to address the plight of the gold mine workers it was defeated solely on the basis that it was 'not moved by a 'Fijian' and not sanctioned by the Council of Chiefs. No member of the *Boselevu Vakatuaga* has subsequently raised the issue.

The separate court system also discriminated against women. Indeed recent calls for the reintroduction of these courts do not take into account the inadequacies of the customary laws in particular those that pertain to women. While adultery was

¹⁷⁶ Stolzenberg, N. 'A Tale of Two Villages', in Shapiro, I. & Kymlicka, W. (eds.) *Ethnicity and Group Rights*, New York University Press, New York, p. 322.

¹⁷⁷ Rata, E. *A Political Economy of Neo-Tribal Capitalism*, Lexington Books, Lanham 2000, p. 33.

¹⁷⁸ *id.* p. 226 – 227.

deemed to be an offence under Fijian Regulations, rape was not. Indeed, offences such as 'Girl absenting herself from village' is not only gender bias but contrary to the current constitution of the Fijian Republic.¹⁸⁰

As demonstrated by *Mohammed Ahmed Khan v Shah Bano Begum*¹⁸¹, the expansion of cultural laws tend to be not only the premise of conservative men but their interpretation of customary laws are averse to changes in society and the development of jurisprudence.

Alternatively as lamented by Edelman, the extremely conservative rabbinical courts have handed down its decisions without taking into consideration the demographic and societal changes around it and thereby denied the building up of a 'common civic culture... even among the Jewish population of Israel'.¹⁸²

Particularism also restricts the movement of peoples across the cultural demarcations. It is taboo to talk about the internal workings of another cultural group or for an 'outsider' to talk or act on behalf of individuals in another group. Unless of course, you were approved speakers or experts like the colonial *turagas*. Such restrictions are not conducive to viewing issues that affect the citizens of the state and the addressing of nation-state issues at a national level. Indeed it compartmentalizes the cultural groups and fulfils stereotypes.

It is apparent that only the European members of the Legislative Council, the colonial administrators and the chiefs could talk about and indeed represent indigenous culture and people. In the post independent state of Fiji the same attitudes prevailed. This obviously meant over a period of time that those who were not approved speakers on indigenous Fijian culture and peoples deemed themselves to be irrelevant in such matters.

When the second phase of the Fijian regulations were introduced Legislative Council member Vishnu Deo remarked:

¹⁷⁹ *supra* note 135, p. 66 – 67.

¹⁸⁰ See also *submission on the Proposal for the Establishment of Fijian Courts*, Women's Crisis Centre to the Beattie Commission, undated.

¹⁸¹ (1985) 2 Sup. Ct. Cases 556.

¹⁸² Edelman, M. *Courts, Politics and Culture in Israel*, University of Virginia Press, Charlottesville, 1994, p. 71 – 72. [in ERD. 10/201 (YG)].

*I wish to take this opportunity of repeating what I have said in this Council several times before, that in the matter of Fijian administration by the chiefs and the Fijian people, the Indian community has no desire at any time to interfere in their affairs ... I am not here to criticise or point out any flaws in the Regulation;*¹⁸³

Deo's reluctance not only demonstrated the cultural demarcations but also the stereotyping that was or had already been created. For on the same day high chief Edward Cakobau remarked:

*I have come across critics of Fijian society who say that Native Regulations should be abolished and the Natives should come under one law as members of the other two communities. To my mind the critics have overlooked the fact that existing in this heterogenous community are 3 races whose mental growths are different, whose interests have little in common and who reach different mental levels.*¹⁸⁴

Of course such attitudes restrict movements into the spatial space provided in political and social arena of the nation-state. Issues which pertain to the nation-state are reducible to cultural or as in this case ethnic markers obfuscating over pertinent political, social and economic considerations.

When the motion was moved to nationalize the sugar industry, the European members accused the mover of the motion to be an Indian ploy and Vishnu Deo had to prove the bone fide of his motion:

*The Hon member mentioned India. I am not an Indian in the sense that I was born in India or come from India. It has not been my good fortune to this date to visit India. I was born here; I am Fijian by birth just as the Hon. Member is. I do not know why he dragged India into this debate. I was not asking that nationalization should be done for the Government of India for the Indian population in Fiji. If nationalization was to take place, Sir it would be for the Government of Fiji or the Labour Government in the United Kingdom under whose jurisdiction this colony is governed.*¹⁸⁵

¹⁸³ Legislative Council Debates, 22 September 1948, p. 165 (Deo).

¹⁸⁴ Legislative Council Debates, 22 September 1948, p. 165 (Edward Cakobau).

¹⁸⁵ Legislative Council Debates, 21 December 1945, p. 501 (Deo)

The motion was defeated and while it indicated what Sutherland refers to as the 'historically forged alliance between white capital, the colonial state, the chiefs and the newly emergent Fijian bureaucratic bourgeoisie'¹⁸⁶ it nonetheless was indicative of the fact that nation-state issues had long been subject to an ethnic analysis.

Ratuva in his in depth analysis of the economic and political benefits which have flowed to the elite and their cliental network through the maintenance of separate administration, also notes that it has 'helped institutionalise ethnic separation [and] ensured the dominance of the ethnic schema as a way of justifying its communalistic agenda'.¹⁸⁷

¹⁸⁶ *supra* note 58, p. 63.

¹⁸⁷ Ratuva, S. *Ethnic Politics, Communalism and Affirmative Action in Fiji: A critical and comparative Study*, unpublished PhD Thesis, University of Sussex, 1999, p. 68.

Conclusion

Why should there be poverty in the village? The place is your own yet you are imprisoned. We are telling you to wake up! We want to give you the rights that God gave you. Think for yourself who you are – You are a man! We want to give you the honour and dignity due to you. You are a man, you are an individual, and I respect you. But for goodness sake your old chiefly system must go! It is not helping you, it is not helping this island, it is not helping us. So let's change and move forward!

Siddiq Koya¹⁸⁸

As seen from the Fijian experience, cultural autonomy has a place within a nation-state to provide protection to a group at a particular point in time or for a period of time.

It is also evident that cultural autonomy has its limitations. Its application as a long term solution if the one nation-state is to be maintained is in doubt since it entrenches particularism and a divided nation-state. It promotes culture/ethnicity as the *modus operandi* leading to the politics and constitutions of ethnicity. This is at the expense of addressing pertinent citizenry concerns. Cultural autonomy therefore potentially could lead to communal politics since it is vulnerable to the dictates of elites who are prone to manipulating 'symbols around which ethnic groups coalesce. These symbols make interethnic violence appear just, honourable and legitimate.¹⁸⁹

Consequently, in order to ensure a viable and stable nation-state, cultural autonomy (and its institutions) must devolve or at least evolve to not only reflect changes in society but also to ensure the development of a common citizenship within the nation-state.

A common and equal citizenship does not necessarily mean the erosion of one's culture, one's identity. Nor for that matter does the devolution of a separate indigenous Fijian administration in Fiji's case mean a loss of identity.

¹⁸⁸ Siddiq Koya quoted in *supra* note 62, p. 95-96.

¹⁸⁹ Harvey, F. 'Primordialism, evolutionary theory and ethnic violence in the Balkans: Opportunities and constraints for theory and practice', *Canadian Journal of Political Science*, XXXIII:1 (March/mars 2000) 37 – 65, p. 42.

To maintain one's self-worth culture needs to be dynamic and vibrant. Capturing it in institutions makes culture parochial, irrelevant, prone to manipulation and serves only the interest of a few.

Indeed while 'we need cultural meanings we do not need homogenous cultural frameworks...we need culture but we do not need cultural integrity'.¹⁹⁰ In other words we do not derive meanings for ourselves from only one culture however, we are influenced by and subject to a whole gambit of ideas, values and cultures.

Indeed even if we were to actively participate 'in the identity politics of a cultural group [it] is in no sense inconsistent with [a] national identity'.¹⁹¹

As seen from the Fijian experience the continuation of separate indigenous Fijian administration has restricted the growth of a 'coherent national narrative, in politics, myth or ritual'¹⁹² It is testimony to the continuation of communal politics at a national level and also the rise of e.g. ethnically based trade unions after the overthrow of governments.

It is in this sense that addressing of national issues via reference to cultural institutions has ethnicised rather than nationalised socio economic issues.

It has also resulted in group identity politics being facilitated in the Republican constitution even though concerns of discrimination and possible subjugation could be addressed via a comprehensive Bill of Rights. The 1997 constitution does have a comprehensive Bill of Rights but its viability is questionable given the heavy emphasis on group rights and the lack of a healthy jurisprudence pertaining to individual rights.¹⁹³

Therefore, cultural autonomy must have a sunset clause. Its prolonged continuation will place a stranglehold on the very members it seeks to protect and will concomitantly disallow the critical cultural space in which a just, vibrant and coherent nation-state can flourish while embracing diversity.

¹⁹⁰ Waldron, J. 'Minority cultures and the cosmopolitan alternative' in *University of Michigan Journal of Law Reform*: 25, Spring and Summer 1992, 16 - 27, p. 16.

¹⁹¹ Karst, K. 'Bonds of American Nationhood' in *Cardozo Law Review*, Vol. 21: 1141, 2000, p. 1171.

¹⁹² *supra* note 22, p. 123.

¹⁹³ Ghai, Y. undated transcript of lectures and questions and answers sessions at ANU(?).

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