

Towards Racial Harmony A New Constitution for Fiji

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EXECUTIVE SUMMARY

Repeated ‘constitutional accidents’ have shown that Fiji’s internal stability, security, peace, and prosperity cannot be guaranteed by the centralisation of governance and shuffling political influence around according to who has the power.

This *Issue Analysis* argues for small government in Fiji. Most human interactions should be left to voluntary exchanges in markets. Residual collective action should concentrate on protecting property rights and freedom of contract whilst avoiding all discrimination. Economic competition is, after all, ‘racially blind’. Experience has shown that even ardent political foes truck and barter peacefully and voluntarily in markets, as was, for example, the case during the recent Balkan and Afghan conflicts. Once people trade, they learn to trust each other—first in commerce, later in other walks of life. Markets are therefore the way to racial harmony. By contrast, political action relies on factions, divisiveness and coercion. When actions are coordinated through politics, opportunistic leaders are likely to exploit social or racial divisions for their own political ends.

The protection of property rights in Fiji requires that the Fijian clans (*matagali*) be given full property rights to their own land. The well-intentioned, de facto socialisation of Fijian lands should be abandoned. Only when clans and families have full control over their most valuable assets will Fijians learn to be enterprising.

The ‘Malaysian model’ of preferential racial discrimination cannot solve inequalities between ethnic Fijians and Indo-Fijians. A blueprint to do so would be politically divisive and counterproductive.

Much could be gained by the devolution of centralised political power. Most coordination of economic life can be left to free markets. What remains for collective action can to a large degree be handled by cantons; that is, autonomous local governments that exploit local loyalties and local knowledge. These cantons should compete along the lines of competitive federalism. Such a constitutional design would help with the decentralised discovery of diverse solutions to the many conflicts that have accumulated at the central government level. The competitive federal approach should be supplemented by direct democracy; namely, citizen-initiated referenda that allow citizens to overturn the administrative and legislative measures of local or national government.

The greatest enemy to peace and prosperity in Fiji is the tyranny of the status quo. The country’s unique problems demand new ground rules and unconventional solutions.

FIJI'S FUNDAMENTAL PROBLEMS

The citizens of Fiji, like most others in the South Pacific, have not done all that well over the past generation in fulfilling fundamental and universal human aspirations. Fiji's good start at independence as a peaceful, well-administered, medium-income country was not followed by sufficient economic growth. Now the very fabric of a racially harmonious, just and secure country is in jeopardy. Whereas many citizens in countries that were poorer than Fiji a few decades ago are now participating confidently and profitably in the globalised economy, backsliding, fear and pessimism prevail in Fiji.

It is therefore little wonder that violent civic conflicts and rebellions erupt periodically, that constitutional arrangements are revisited time and again, and that the Fiji community is now searching for new rules that promise to fulfil better the aspirations of its citizens.

Fijian citizens face a critical challenge. It is not an option to cling to traditional institutions, drift and be left behind. Modernising some of the ground rules of community life in order to prosper and become a secure and peaceful community—constitutional rejuvenation—seems the only viable path forward. The initiative has to be taken by the people of Fiji. The time has long passed when constitutional concepts could be imposed from outside. All an outside observer can do is offer ideas that have worked elsewhere and that may help in Fiji, if properly adjusted.

What follows here derives from a personal interest in constitutional economics and economic development and is proffered for discussion because of doubts about the centralist-statist constitutional models now under consideration.

Material progress and institutional modernisation

One of the central lessons to emerge from the study of economic development is that sustained improvements in living standards depend on appropriate changes in the fundamental rules (or institutions) that govern social and economic interaction. We now have overwhelming evidence that the quality of the 'economic constitution' correlates directly with the level and growth of real incomes.¹ The citizens of Fiji were able to discover some of the benefits of freer economic institutions after 1987 when deregulation and greater economic freedom brought economic growth for a while.

In the box below, we explain the reasons why economic constitutions that guarantee basic economic rights are absolutely essential for sustained economic growth, and, in the box on page 4, why Fiji's *mataqali* land rights need to be freed from central bureaucratic controls in the interest of mobilising enterprise and material advancement.

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Coordination and the 'Economic Constitution'

Human productivity and hence living standards depend crucially on the effective coordination of numerous specialised producers. They can either be coordinated by a plan, which an authority adopts and implements, or by spontaneous interactions of individuals who obey shared rules.

Planned coordination occurs in firms, where the boss directs workers according to a business plan, or in government under a leader who has been selected and appointed by inherited status, acclaim or election. Spontaneous coordination can be observed in a swarm of fish who swim and feed in orderly ways; no leader directs them. Another example is the market place where private buyers and sellers are coordinated by the invisible hand of prices. Such spontaneous coordination is effective because all follow the same rules.

In the market economy, the core rules are credibly enforced property rights, freedom of contract and non-discrimination. These rules form the software of the capitalist system that enables the hardware—the machines, the infrastructures

Economic freedom, democracy and racial harmony

A constitution that guarantees basic economic freedoms has further important benefits.

First, it fosters civil and political freedom and favours democratic forms of government. It also controls arbitrary political power. It is no coincidence that the open capitalist economies of East Asia not only grew fast, but also became vibrant new democracies. By contrast, those communities that lack fundamental economic freedom live in poverty and are often plagued by political discord.

A second important side effect of a free economic constitution is that people of different social and racial backgrounds who interact voluntarily and as equals in markets tend to do so peacefully because this is in their mutual interest. When everyone has a stake in the market, civil war becomes too costly to contemplate and habits of constructive compromise are learnt. During the wars in the Balkans and Afghanistan, for example, people from various groups met peacefully in market enclaves to truck and barter.

Trading overcomes traditional enmities and leads to mutual familiarity—first in business, then in other walks of life. Mutual distrust is turned into win-win cooperation and companionship as people develop a selfish interest in the prosperity and enterprise of their neighbours and partners.² By contrast, coordination by government requires the formation of factions and coalitions in which power and coercion, winners and losers, are the name of the game. It should be noted that socialism and the suppression of market activity in Sri Lanka and parts of the former Soviet Union paved the way for subsequent racial politicisation and civil war.

A flourishing market order requires small government, whose main role is to provide all citizens with trust-inspiring ground rules for their cooperation. The citizens and groups have to be protected without discrimination from thuggery, fraud and the abuse of power (protective function). The redistribution of wealth and incomes and the production of services, which are then allocated by political decisions, can only play small and subsidiary roles under such a constitution of economic liberty. When most coordination is left to markets, the prize of holding political office is of limited material value to groups who win (temporary) control of government. Politics is then not so divisive.

Government works better if it is small and modest. Top-down political coordination should be confined to where it has clear-cut advantages over more decentralised forms of coordination. Market coordination is an effective way to economise on scarce administrative talent and resources to enforce central decisions. It is also an effective controller of corruption and a training ground for the skills and attitudes that the Fijian population will need to earn their place in the global economy.

and labour—to function well. Communities worldwide have therefore adopted these institutions, and refusals to do so generally result in poverty and conflict.

Constitutional economics has taught us that simple societies can be coordinated by plans and hierarchies of command, but that more complex systems demand spontaneous ordering. New technologies, new market opportunities and new ways of producing for the global economy can only be discovered fast enough by self-motivated competitors. Spontaneous ordering is often more effective because people cooperate voluntarily. Centralised public choice requires coercion, induces corruption and always imposes high agency and compliance costs. In case of doubt, markets (private choice and voluntary cooperation) produce superior outcomes. This lesson was learnt from the stagnation and eventual collapse of the Soviet economy. Likewise, traditional village economies will not make the transition to prosperity and will not master interaction with international traders and investors if the villagers refuse to play by the fundamental and simple rules of respected property rights, free contracts and non-discrimination.

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Land Ownership and the *Mataqali* System

The experience in many different cultures and periods has shown that secure property rights to one's own labour, one's own inventions, real capital assets, and land are essential for economic development and citizenship. Only when people have secure property rights and can be confident that they will benefit from using their assets, will they invest effort and knowledge to exploit their property. Only then will enterprising people with drive and ideas be able to raise capital for their projects and contribute to overall economic growth.³

Property rights can be held individually, but they can also be owned, used and disposed of by associations, firms and small communities, such as under the Fijian *mataqali* system. What matters is not individual or group ownership as such, but that the owners face the full costs and benefits of their decisions and are free to decide.

It may well have been sensible a few generations ago to establish a bureaucracy to protect Fijian clans and villages from exploitative or deceitful land buyers. However, the result of formalising *mataqali* land rights and subjecting them to the dictates of the central authority of the paternalistic Native Land Trust Board amounted to the *de facto* socialisation of tribal land. In the 1940s, bureaucratic controls were formalised during the Attlee government under the influence of British Fabians. As in any system of socialised ownership, the Native Land Trust Board bureaucrats have little incentive to explore better land uses, indeed who are only inconvenienced by experimentations with new land uses. The restrictive control by administrators does not make economic sense at the start of the 21st century.

Now Fijians are informed about the opportunities of possible land uses, are educated to manage their own clan's land, and are in a position to evaluate costs and benefits of alternative land uses intelligently. All bureaucratic control of native land should therefore be abolished, and unfettered full property rights should be handed back to the *mataqali* themselves. They can then decide what to do with their land in view of all the costs and benefits of unrestricted land use. Without effective direct control of their most valuable material assets, Fijians will not always be able to make the best use of them and thereby learn to be enterprising.

With economic freedom, different *mataqali* will discover different ways of using their land and distributing the benefits, be it through freely negotiated leases, land-holding corporations that farm the land, or other ways. The conditions in which the property owner's freedom to sell the land as freehold—a normal part of full property rights—should be circumscribed is a difficult issue, which only Fijians can decide for themselves. International experience shows, however, that any such abridgement of full property rights is patronising and an obstacle to discovering enterprising new uses of assets.

Group rights: conflict versus individual liberties

Such a liberal economic constitution is the diametric opposite of solving problems of inequality by confiscation and redistribution of wealth, income or education opportunities to poorer or politically influential groups. Because it was tried there explicitly and in a major way, this model of positive racial discrimination is sometimes referred to as the 'Malaysian model'.

From the standpoint of constitutional economics, such preferential discrimination conflicts both with the protection of private property and the principle of non-discrimination. The state cannot protect private property and, at the same time, confiscate it for allotment to another group. Redistributive interventions undermine incentives to work, save, take risks and innovate—the very drivers of economic progress. They politicise communities and corrupt political life.⁴

In the case of Malaysia, easy loans, preferential access to education, government jobs for Malays, and direct interventions in industry led to a

proliferation of government and limitations on economic freedom during the 1970s. Established Chinese and European businesses went out on an ‘investor strike’ in the late 1970s, which even copious spending of oil and gas revenues could not overcome. Capital flight set in and the currency weakened.

In response to this situation, much of the direct interventionism in industry was abandoned, laying the foundation for an economic boom throughout the 1980s. The official target of raising Malay capital ownership could not be realised other than by the subterfuge of big public investments in business being counted as ‘on behalf of the Malay community’. In reality, a large part of the Malaysian economy was socialised and an exclusive coterie of political cronies and bureaucrats took control of huge business assets.⁵ As time went on, this induced government to regulate economic life more and more intrusively, and often arbitrarily. Much of the coordinative capacity of markets was destroyed. Political influence peddling eroded the very economic freedoms on which long-term prosperity is built. Malaysia’s economy is now rated as ‘mostly unfree’ and has to be propped up by capital and exchange rate controls.⁶

This was not always the case. From the 1950s to the early 1970s, Malaysia’s was one of the freest economies, with secure property rights and good enforcement of contracts. This laid the basis for the rapid overall economic growth of subsequent decades. Many Malays have made considerable material progress in the past two decades, but this has been primarily the outcome of better education, a move to the cities and modern industries—all a natural by-product of rapid aggregate growth first, and costly redistribution policies second.

Transferring this model to Fiji would be perilous. First, Fiji does not have a dynamic, well-connected and diversified business community, such as the Chinese in Malaysia, that could withstand substantial redistributive interventionism. Nor does it enjoy the dynamic neighbourhood of ASEAN. Secondly, the Fijian government cannot rely on bountiful oil and gas revenues or the international credit of Malaysia with which to prop up a redistribution experiment. Third, administrative talent to monitor and enforce the proper productive use of preferential credit and subsidies seems even scarcer in Fiji than in Malaysia. Finally, what was still possible in the 1970s is no longer feasible in the 21st century. The economic consequences of racial discrimination are now signalled more speedily and assessed more critically, as the Malaysian government discovered in the Asian financial crisis of 1997-98 when it was forced to peg the exchange rate and impose harmful capital flows. The political consequences—with the former Deputy Prime Minister in jail on unconvincing charges—have not yet been played out fully.

Direct interventions to redistribute wealth on racial grounds therefore seem no more than a counterproductive, politically divisive blueprint for Fiji’s economic decline.

Globalisation, competitive federalism and constitutional constraints

What feasible alternatives does international experience suggest?

First, we should note that neither the model of the nation state, which developed in Europe from the 18th century, nor colonial models of centralised governance seem a good guide to a constitutional design for Fiji’s future. Instead, Fijian citizens should think through their current problems without preconceived ideas on the basis of fundamental liberal principles. The sole aim should be to make Fiji secure, peaceful, prosperous and ‘globalisation fit’.

The communications revolution and other aspects of globalisation are now de-emphasising the nation state and empowering local communities.⁷ Small, cohesive and well-governed local communities are attracting mobile capital, expertise and enterprise, and thriving. In turn, local identity and cohesion even of rather remote communities benefit from exposure to information, knowledge and competitive impulses from the global economy.

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A shift in emphasis to smaller communities suits Fiji's geography and traditions. Much of the power of governance—the very source of sovereignty—should be shifted to small regional entities, which we shall call 'cantons'. Cantons could be organised at the local, district or provincial level, thus taking traditional and existing bounds and discontinuities into account.⁸

Each canton would have its own small and fairly autonomous administration under an elected Chief of Canton, its own local courts and its own small, elected local parliament. At the national level, there would be a similar division of powers, with a national Court of Justice to oversee local courts and to act as the ultimate arbiter in matters of law.

The national administration would be in charge of a limited number of exclusive responsibilities, such as defence, foreign affairs, criminal justice, general principles of taxation and free internal trade and movement. The national government would also fund the operation of an independent Court of Auditors and an independent Central Bank. In addition, it would lend support to the office of the national President, who is proposed and elected by the majority of members of cantonal parliaments for a long period of tenure.

The various cantons should be self-reliant and free to compete by offering different styles of administration. This would reflect the traditions of pre-colonial Fiji, including government by confederated tribes (*matanitu*). At the local level of government, traditions of village democracy and traditional allegiances can be drawn upon to control and inform local political choices. Much of the present conflict would thus be decentralised and alternative administrative solutions could be tried out.

The *matanitu* system discussed here is an adaptation of the model of 'competitive federalism' that works so well in nations such as Switzerland and the United States.⁹ It is now inspiring numerous countries, from Britain and Spain to China and Indonesia, to move in the direction of a devolution of central powers. In Fiji, where there are diverse local problems and where no one can know the solutions to big national problems, the political and economic competition among cantons would be a promising discovery procedure for constructive administrative solutions.

For the model of competitive federalism to work, it is essential that:

- (a) there is little overlap between national and cantonal governments (exclusive assignment of tasks);
- (b) most tasks of government are devolved to local government;
- (c) cantons are bound to finance the tasks they take on from taxes and debts that they raise (fiscal equivalence);
- (d) free trade and exchange throughout the nation are guaranteed, and;
- (e) 'subsidy wars' between cantons are prohibited.

To limit the size of government, a new Fijian constitution should also contain formal constitutional constraints on the proportion of national and cantonal taxation and debts in cantonal or national production, similar to what Economics Nobel Prize winner James Buchanan has been advocating for the United States.¹⁰

Citizen-initiated referenda

An important supplement to controlling the power of politicians and to giving people an active stake in political life is the citizen-initiated referendum. Direct democracy based on such referenda is practised to various degrees in Swiss cantons and parts of the United States, among others. Citizens who have the right to overturn legislative and administrative actions have a greater sense of participation and are more content.¹¹ They tend to vote for less government and taxation but for more education expenditure than jurisdictions without citizen-initiated referenda.

Fiji's political life would greatly benefit from this instrument of direct democracy, because all citizens in a canton or nation would ultimately have a direct say in politics, irrespective of what racial or other group controls political power. Discrimination against a particular group is much less likely when the majority of all citizens has the right to overturn collective actions. The citizen-initiated referendum turns inhabitants into true citizens and the people into the ultimate sovereign. The model has worked well in fostering harmony and prosperity in previously strife-torn and small-scale states such as Switzerland.¹²

Nowadays, modern computer technology offers cheap and flexible ways for citizens to vote in citizen-initiated referenda. Fiji could well leapfrog into the 21st century if tamper-proof computer terminals were installed in primary schools and were made accessible after school hours to all resident voters.

Conclusion

The ideas outlined here draw on the insights of constitutional economics and the sort of constitutionalism that considers citizens as individuals with inalienable rights who determine their lives, either on their own or in association with others. This seems the best guarantee for avoiding the pitfalls and conflicts of race-based, top-heavy constitutions and coercive interventions. It would equip the Fijian population of all backgrounds for success in the open global economy of the 21st century.

Some of the concepts discussed here will be unfamiliar and are untested in Fiji circumstances. However, the political and economic situation has deteriorated to an extent where the tyranny of the status quo has to be broken by innovative thinking. There is no reason why Fiji should cling to the idea of a statist constitution and try to divide centralised political powers between groups. A more promising path seems to be constitutional innovation: de-emphasising collective power, devolving much of it to private action in markets, and dispersing what remains—as far as possible—to local government.

Unique problems call for innovative solutions.

* Professor Kasper led an Australian team that prepared the study *Fiji: Opportunity from Adversity?* (Sydney: The Centre for Independent Studies, 1988) and co-authored, with P. T. Bauer, and S. Siwatibau, the policy monograph, *Aid and Development in the South Pacific* (Sydney: The Centre for Independent Studies, 1991). In the early 1970s, he was an adviser to the Malaysian Treasury when the Malaysian government embarked on its policy of positive racial discrimination.

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To illustrate the principles of a citizen-focussed, 'colour-blind' constitution that incorporates the solutions discussed above, we have drafted a 'greenfields constitution', i.e. a design that starts afresh, disregarding the 1997 Constitution and its predecessors. The draft is short and written in plain English, so that—it is hoped—all can read and understand it. Only simple constitutions can become the living intellectual property of the people.

This draft, together with a list of some relevant background readings, is available free of charge on request from the Public Relations Officer, Centre for Independent Studies, PO Box 92, St Leonards, NSW 1590, Australia tel: +61 2 9438 4377; fax: +61 2 9439 7310, or by emailing renee@cis.org.au.

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Endnotes

- ¹ J.D. Gwartney and R. Lawson, *Economic Freedom of the World* (Vancouver: The Fraser Institute, 2000); *2001 Index of Economic Freedom* (Washington/New York: Heritage Foundation/*Wall Street Journal*, 2001); W. Kasper and M.E. Streit, *Institutional Economics—Social Order and Public Policy* (Cheltenham, UK/Northampton, US: Edward Elgar, 1998), 452-456.
- ² A. Rabushka, *A Theory of Racial Harmony*, (Columbia, SC: University of South Carolina Press, 1974). With regard to Fiji in the 1980s see also W. Kasper, J. Bennett, and R. Blandy, *Fiji: Opportunity from Adversity?* (Sydney: The Centre for Independent Studies, 1988), 34-39.
- ³ H. de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else* (New York: Basic Books, 2000).
- ⁴ For an excellent and exhaustive investigation see T. Sowell, *Preferential Policies, An International Perspective* (New York: William Morrow, 1990).
- ⁵ W. Kasper et al., *Fiji: Opportunity from Adversity?*, 157-161.
- ⁶ The *2001 Index of Economic Freedom* prepared by the Heritage Foundation and the *Wall Street Journal* consider the once free market economy of Malaysia ‘mostly unfree’, ranking it a mere 75th out of 155 countries, similar to Uganda or Mongolia, and way below the other ASEAN countries except the Philippines. See *2001 Index of Economic Freedom*, 255-256.
- ⁷ J. Naisbitt, *Global Paradox—The Bigger the World Economy, The More Powerful its Smallest Players* (Sydney: Allen & Unwin, 1994).
- ⁸ Cantons could vary in size, say from 20 000 to 80 000 inhabitants, so that the Republic of Fiji might be divided into some 15 to 20 cantons, possibly a somewhat greater number than the present 14 provinces.
- ⁹ W. Kasper, *Competitive Federalism: Promoting Freedom and Prosperity* (Perth: Institute of Public Affairs, 1995), and *Competitive Federalism Revisited: Bidding Wars, or Getting the Fundamentals Right?* (Perth: Institute of Public Affairs, 1996).
- ¹⁰ J. M. Buchanan, *The Limits of Liberty: Between Anarchy and Leviathan* (Chicago: Chicago University Press, 1975), and ‘The Constitution of Economic Policy’, in *Public Choice and Constitutional Economics*, ed. G.D. Gwartney and R.E. Wagner (Greenwich, US: JAI Press for Cato Institute, 1988), 103-114.
- ¹¹ See also G. de Q. Walker, *Initiative and Referendum: The People’s Law* (Sydney: The Centre for Independent Studies, 1987)
- ¹² B. Frey, ‘Direct Democracy: Politico-Economic Lessons from Swiss Experience’, *American Economic Review* 84:2 (1994), 338-348; B. Frey and R. Eichenberger, *The Democratic Federalism of Europe, Functional, Overlapping and Competing Jurisdictions* (Cheltenham, UK/Northampton, US: Edward Elgar, 1999)