Electoral provisions of the Constitutional Review Commission of Fiji

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Fiji’s 1990 Constitution was designed to protect and promote the interests of indigenous Fijians’ disproportionate parliamentary representation, more influence for the Great Council of Chiefs, affirmative action in the public service, and the reservation of the office of Prime Minister for indigenous Fijians. Its affirmation of indigenous rights attracted some sympathy in the region, but the Constitution was also criticised for its racially discriminatory provisions, particularly towards the Indo-Fijians. The 1990 Constitution, however, contained provisions for its own review. A commission to review the constitution was appointed in March 1995. Its chairman was Sir Paul Reeves, a former Archbishop and Governor-General of New Zealand. The other two members were Tomasi Vakatora, a Fijian businessman and former cabinet minister, and Dr Brij Lal, an academic historian at the Australian National University. The Constitutional Review Commission (CRC) submitted its report to the President of Fiji in September 1996.

The Commission made far-reaching recommendations for Fiji’s future constitutional arrangements. In the Commission’s view, Fiji’s future lay in the encouraging of the emergence of multi-ethnic governments. To that end, it recommended the adoption of the Alternative Vote (AV) in multimember constituencies which would provide incentives to political parties to field a multiethnic slate of candidates, either on their own or in coalition with other parties.

The State, Society and Governance in Melanesia project funded a workshop, held at the Australian National University in January 1997, to assess the CRC’s recommendations on the new electoral system. The workshop brought together the former Commissioners (Reeves, Vakatora and Lal, and their Counsel, Alison Quentin-Baxter), Professor Donald Horowitz, whose arguments about voting in ethnically divided societies had influenced the Commission, and other academics and students with interests in electoral systems and Fiji politics. Members of the Select Committee of the Fiji Parliament which was then reviewing the CRC report were invited to the workshop, and several were able to attend.
Achieving heterogeneity by multimember constituencies

Donald Horowitz argued that politicians will be more moderate on ethnic issues if they have to rely on the votes of people of other communities. He contrasted this approach, which he called ‘vote pooling’, with ‘seat pooling’, where coalitions are formed after the election. These coalitions, he said, quickly broke down without the backing of voters. He stipulated three conditions for pre-electoral coalitions in divided societies: party proliferation (so no party can govern alone); heterogeneous, or mixed constituencies (so that candidates cannot rely on the votes of their own group alone); and ‘strong electoral incentives to make vote pooling politically profitable’, particularly the Alternative Vote.

Fiji currently uses a First-Past-the-Post system where the candidate with the largest number of votes wins. Under the CRC’s proposals for AV, voters would rank candidates in their order of preference. The candidate with the lowest number of first preferences would be eliminated, and his or her preferences distributed among the remaining candidates until a winner emerges, that is, one who has the majority of votes (50 per cent + one) (CRC 1996: paras 1-0.6–10.11).

Horowitz was clear that AV would not encourage accommodative behaviour on its own. Constituencies also needed to be heterogeneous to induce candidates to appeal outside their own ethnic group.

Can sufficiently heterogeneous constituencies be drawn up in Fiji? The answer depends on demography and an acceptable threshold for heterogeneity. The CRC made its own calculations, finding the choice between single-member and three-member constituencies did not affect the potential for heterogeneity in the more densely populated areas in the western Division, Macuata and the Greater Suva and Nausori area. Using three-member constituencies made it marginally easier to achieve a reasonable degree of heterogeneity by combining the less densely populated areas, such as the maritime provinces, with other areas having similar interests (CRC 1996:314, para 10.50).

The CRC was prepared to accept as heterogeneous ‘a mixed population ranging from more or less equal balance between Fijians and Indo-Fijians, to a proportion as high as 85–90 per cent of one community and 15–20 per cent of the other’ (CRC 1996:315, para 10.51). In the latter situations there might be few pickings for ethnic moderates.

To resolve this difficulty, Horowitz proposed that constituencies large enough to be heterogeneous need not be ‘multi-member’. Two or three members could be separately elected by the same large, heterogeneous, electorate. Candidates competing for one seat would compete only with each other, and preferences would not be transferred between the seats. However, some felt this might be confusing. Also, it was untried.

In either case, several contributors pointed out the onerous responsibility that the use of the electoral system to achieve ethnic accommodation put on the Constituency Boundaries Commission. Careful calculations, independent judgements, and unfamiliar combinations of population would be required to achieve and maintain the heterogeneity if the CRC’s scheme was to work.
The priority of multi-ethnic government

David Arms questioned the priority CRC gave to multi-ethnic government, and the subordination of other democratic values to it (though as Yash Ghai pointed out, the CRC was required to do so by its Terms of Reference). Horowitz pointed out that the arguments for AV are quite different from the arguments about electoral systems in homogeneous countries (proportionality, party strength, relations with constituents, and seat bonus for FPP).

Some participants questioned the view that Fiji was, in fact, ‘deeply divided’ by race. They cited the amiable day-to-day interactions between members of different ethnic groups, or the importance of other social divisions such as class or region (see Sutherland 1992). Different views of the salience of ethnicity were also expressed in different interpretations of ‘the events of 1987’. Were these the last gasp of colonially-inspired racism, or a mild precursor of the violence that might come if ethnic tensions were not addressed?

The relationship between recommendations

The Commission and several participants emphasised the interconnectedness of its recommendations, but the workshop focused only on the electoral system. Other recommendations, such as the proposal for a ‘Compact’, and those dealing with human rights or indigenous institutions were meant to reassure communities, and encourage accommodation between them. Seamlessness is particularly important for the electoral system to encourage power-sharing. The CRC’s approach is self-consciously indirect, but Ghai argued that it put too much reliance on the electoral system to achieve power-sharing that could be achieved in other ways. Inability to achieve heterogeneity in constituencies may weaken the electoral incentives on politicians which in turn may reduce cooperation in government. The evidence from Mauritius, with accommodation in spite of an electoral system, shows how other factors may be important.

Consociation and/or integration

The Commission contrasted two approaches to encouraging inter-ethnic cooperation: its own integrationist approach, that used the electoral system to encourage parties to seek support from more than one ethnic group; and the ‘consociational’ approach, which assumed communal voting, and sought to achieve accommodation between leaders. The two approaches follow Horowitz’s distinction between vote pooling (which creates continuing electoral pressure on leaders to accommodate) and seat pooling (which he found to be unstable).

‘Consociation’ was defined classically by Lijphart (1977:25) in terms of four features: a grand coalition government; mutual vetoes to protect minority interests; proportional representation, employment and expenditure rules in the public sector; and community autonomy. There has been much written about the degree to which the 1970 constitution was consociational and the relevance of the model to Fiji (for example, Premdas 1986:118 and 1993). Horowitz argued that consociation had, in fact, failed to produce accommodation in countries that tried it. Leaders were easily tempted to abolish the restraints it imposed. Ghai suspected the CRC of a ‘doctrinal
objection’ to post-election coalitions.

Taken as a whole, the CRC’s report has consociational elements, such as the idea of a ‘Compact among the people of the Fiji islands’, separate Fijian institutions, reserved seats, and the proposal that the composition of the state services, including the army ‘broadly reflect the ethnic composition of the population’ (CRC 1996:472, para 14.26). The CRC argued that it did not favour its approach ‘to the exclusion of relevant aspects of the consociational model’ (CRC 1996:312, para 10.38).

The National Federation Party–Fiji Labour Party submission to the CRC had taken a consociational approach with its proposal for constitutionally mandated power-sharing, though its proposals for thresholds to get into Parliament and Cabinet, and for ethnically inclusive parties, were more ‘integrationist’.

The issue in the workshop was whether the outcomes expected by the application of electoral incentives might not be guaranteed directly by constitutionally mandated power-sharing—at least for a transitional period. Such guaranteed outcomes would also, politicians pointed out, be easier to explain to their constituents. Horowitz pointed out that elections were intrinsically unpredictable, while institutions could only hope to reduce ethnic conflict, not eliminate it altogether.

The interests of politicians and parties

The interests of politicians and parties, rather than voters, are crucial to the achievement of accommodative behaviour. Heterogeneous constituencies and Alternative Voting guide the vote-maximising politician to take the interests of other ethnic groups into account.

Arms recognised that some politicians’ behaviour might be expressive (for example of ethnic identity) rather than rational and instrumental. The CRC’s scheme assumes that at least some politicians are rational, in the sense that they calculate the best way of maximising their votes and chances of re-election (even if this involves appeals outside their ethnic group). Horowitz argued it would work if just some politicians are rational, hewing to the centre while leaving the fringes to the extremists.

The CRC recognises the critical role parties play in the political process: ‘in our view the formation of a government must continue to depend on the party system’ (CRC 1996:79, para 5.48). The CRC’s scheme requires a proliferation of parties in the different communities, so that no one can govern alone. While they would be bound by the Compact, the CRC does not seek to regulate the parties’ internal mechanisms for selecting candidates or admitting members (matters addressed in the NFP-FLP submission). Arms sees parties as potentially obstructive of voters’ wishes (for example, in dealing with criticism that minority parties may exercise undue influence, he points out that the real villain is party discipline). Good or bad, Ghai wondered if parties would continue to play the central role they have in Fiji politics. They are much weaker elsewhere in Melanesia.

Ben Reilly’s work on Papua New Guinea, however, suggests strongly that AV can encourage accommodative behaviour in heterogenous constituencies without parties. The calculations, deals and exchanges involved in vote pooling are simply made by individual candidates relying on concentrations of support.
The relative importance placed on the electoral system is partly because it seems to be the most manipulable part of the political system, that most conducive to ‘engineering’, though the interests of the current generation of politicians may deter change. They may rationally resist choosing rules that would subject them to unwelcome incentives.

The interests of politicians were also involved in Horowitz’s cautionary words about the outcomes of constitutional bargains, which might not lead to the best outcomes, and the dangers of transitional measures.

Several contributors also noted the ability of politicians and parties to adapt any given system to their advantage. Reilly showed how vote pooling took hold over several elections in Papua New Guinea, while Mathur described politicians and parties learning from early conflict. Part of the historical thrust of the CRC’s report is to learn from the failures of the past, both in 1970 and 1990. Clearly an indirect system like the CRC recommended will need time, and several elections, to work.

The possibility of democracy in Fiji

Horowitz identified the limits on democracy in a deeply divided society. Democratic elections assume no permanent majority or minority, and that voters may switch between parties. In divided societies, people are assigned identities at birth, and parties tend to attach to them.

Much depends on what is implied by ‘democracy’: the CRC took it to mean ‘governed by the people through their elected representatives’ (CRC 1996:66, para 5.13), though the CRC also put great emphasis on human rights. The scheme of heterogeneous constituencies, party proliferation and AV may be valuable in moderating inter-ethnic conflict, but they do not by themselves enhance democracy. Other parts of the CRC’s report, for example those dealing with human rights, expand the conditions for democracy in Fiji, but that is a secondary criterion for evaluating the electoral system, which is aimed at inter-ethnic accommodation. That was the basis of Arms’ critique.

Several participants at the workshop questioned whether it was appropriate to talk about a ‘return’ to democracy in Fiji in the face of entrenched chiefly power, Fijian traditions, ethnic divisions, and a politicised military. For Ravuvu, ‘Democracy was an illusion, a facade, a parting whim of a colonial power that had itself only practised dictatorship’ (1991:87). Scarr concludes ‘the independence constitution itself was not democratic at all’ (1988:23). Lawson points to the system’s intolerance of an opposition becoming the government (1991:287–8). Comparative research on the social conditions for democracy finds that landowners are generally resistant to democratisation. A linkage between constitutional and land issues is often made in Fiji (Larmour 1994).

Other issues of ‘state, society and governance in Melanesia’

The relationship between the electoral system and ethnic conflict is of significance more widely in Melanesia (the scope of the project that sponsored the workshop). A return to Alternative Voting has been canvassed for Papua New Guinea, particularly by Tony Siaguru (Reilly 1997:6). Vanuatu provides
an example of the use of a simple form of Proportional Representation to reassure linguistic minorities (Van Trease 1995a: 145–50). The ethnic impact of voting systems and constituency boundaries is also an issue in New Caledonia, where a large indigenous minority coexists with the descendants of settlers, and recent migrants, in what is constitutionally part of France.

Conceptually, the CRC’s indirect approach to achieving multi-ethnic government is consistent with new approaches to governance that rely less on restraints and more on incentives. Their approach assumes rationality—at least among sufficient voters and politicians—to elect an accommodative coalition. Such indirect approaches may be particularly relevant to so-called ‘weak states’ in other parts of Melanesia, but the analysis of the conditions for AV to achieve ethnic accommodation shows that it requires some strong institutions, particularly Boundaries Commissions. The political parties that play a central role in the CRC’s scheme are also much weaker, or absent, in other parts of Melanesia, though Reilly showed that AV could nevertheless encourage accommodative behaviour between candidates themselves, regardless of the party system.

Note

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References


