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Encouraging electoral accommodation in divided societies

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The constitution recommended by the Fiji Constitution Review Commission is the result of a careful process of investigation and deliberation that produced an extraordinarily rich and well-reasoned report. One important aspect of the report that might otherwise go unnoticed requires mention at the outset. The Commission took its mission to embrace the need for a cross-national examination of constitutional possibilities for countries situated similarly to Fiji. The report includes serious consideration of the experience of other states and of international standards applicable to the matters within its terms of reference. In this respect, the report does not exactly break new ground, but it carries the effort to a new level of seriousness and sophistication. First and foremost, then, the Commission conceives of constitution-making as a comparative exercise. The Commission learned everything it could from experience elsewhere and made its recommendations in the light of that experience and Fiji's own experience. There is no doubt whatever, in view of practice elsewhere and of emerging standards of human rights, that the Commission was entirely correct to proceed as it did.

Like the Commission, I intend to set the electoral system issues that face Fiji in a comparative framework. I want to focus on the

political institutions a polity like Fiji may wish to adopt and comment on some problems of process involved. Divided societies need special institutions to foster political accommodation, and they need a coherent, consistent set of them. The most powerful lever of political engineering for conflict reduction is the electoral system. Accordingly, I intend to evaluate the merits of various electoral systems and mechanisms for fostering accommodative coalitions and reducing conflict. Finally, I shall have some generally discouraging words about the relationship of negotiation to the institutions created by negotiation. As I shall show, there is a disjunction between process and substance that is likely to affect constitutional outcomes.

I start with three propositions

- institutions should aim not for love but accommodative behaviour
- it is important to get institutional arrangements right from the beginning
- it is best to build in incentives for participants to comply with the intentions of constitution-makers.

In severely divided societies, no constitution can make the contending groups love each other. What a constitution can do is to foster accommodative behaviour. It can reduce conflict by providing security for groups, including them in the political system, and decreasing the incidence of zero-sum outcomes. What it cannot do, except perhaps over a very long period of time, is transcend ethnic identity, create wholly new, supraethnic identities, or alter dramatically the feelings of group members about members of other groups. Fortunately, maximal goals of this kind are not necessary. That is my first proposition.

My second relates to prospects for correcting constitutional mistakes. The conventional wisdom, that if agreements are flawed at the outset they can be fixed later, is misguided. It is not usually possible to amend a system in mid-course. Interests quickly crystallise around whatever arrangements were initially adopted. As a result, even if the institutions fail in their public objectives, there are actors whose private success will depend on the maintenance of the arrangements. Electoral systems everywhere are difficult to change for exactly this reason. In a divided society, consensus on any institution is rare, much less consensus on truly apt institutions, and it is a fallacy that whatever the parties agree to will be not only

acceptable but durable. An agreement only indicates what was acceptable to the parties concerned at a particular moment. The existence of an agreement is no evidence that it embodies the best arrangements or the most durable arrangements. It is a mistake to exaggerate the importance of reaching an agreement, at the expense of its substance and content. There is a need to choose apt arrangements and to do so at the outset.

The more enduring and effective arrangements for conflict reduction are those fortified by internal incentives rather than by external constraints. By constraints, I mean admonitions to do something, even if it is not in one's interest. By incentives, I mean principally those that operate on politicians and that harness their self-interest to the cause of conflict reduction, regardless of personal feelings. Such incentives make moderation pay. Institutions that tell political leaders what they should do or must do are less effective than institutions that make it in the interest of leaders to behave in an accommodative fashion.

Mechanisms for conflict reduction

Incentive-based institutions that give politicians a stake in moderation need to be put into a broader context of mechanisms that produce conflict reduction. There are at least four such mechanisms.

First, inter-ethnic conflict may be reduced by dispersing it. Proliferating the points of power may take the heat off of a single focal point. One way to do this is by scattering power among institutions at the centre, as the United States' political system does. If the capture of no single body or office will suffice for any ethnic group to gain complete power, then ethnic conflict may lose some of its capacity to inspire fear that the worst is about to come to pass. Dispersal may also take a territorial form, involving the creation of lower-level units with important policy functions. Either way, politics becomes a more diffused game than it is when all of power can be captured by capturing parliament alone.

Second, inter-ethnic conflict (between groups) may be reduced by arrangements that emphasise intra-ethnic conflict (within groups) instead. Intra-ethnic conflict is usually, though not always, less dangerous and violent than inter-ethnic conflict. If intra-ethnic conflict becomes more salient, this may reduce the energy available for conflict with other groups.

Third, inter-ethnic conflict may be reduced by policies that create incentives for inter-ethnic cooperation. Electoral inducements for coalition may be one way to heighten the incentives for cooperation. Certain territorial arrangements may also do this. Inter-ethnic cooperation may be more likely where intra-ethnic divisions are present, since links may be easier to forge between portions of groups than between groups that are cohesive and undivided. Generally, intra-ethnic solidarity provides the leeway for inter-ethnic cooperation, but often not the incentives. Intra-ethnic competition provides the incentives but sometimes not the leeway. That is because political leaders who do not need to compete for the support of their group, since they have a monopoly position, are able to deal across group lines, whereas those whose position is vulnerable to competitive outbidding need to be cautious about making concessions to other groups. However, those who have monopoly support among their own group, especially if it is a majority group, do not need to cooperate across group lines, whereas those who do not have such a monopoly could usually enhance their support by such cooperation, provided their competitive position permits them to engage in such cooperation.

Fourth, inter-ethnic conflict may be reduced by policies that encourage alignments based on interests other than ethnicity. In deeply divided societies, it seems unlikely that non-ethnic lines of cleavage, such as those based on social class or territory, can be manipulated so as to displace ethnic cleavages. If they could, ethnic conflict would not be the intractable force that it is. But some measures may provide the impetus for non-ethnic lines of cleavage, like class or territory, to compete for attention with ethnic cleavages.

Mentioning these mechanisms implies no judgement of likelihood that any regime will seek to utilise any given mechanism. Nor does it tell us how to choose among these, although sometimes they are mutually reinforcing. Intra-ethnic divisions and inter-ethnic cooperation often go together. A divided group more often needs outside help. Where conflict is reduced, one of these mechanisms is generally involved.

Electorally, the way to induce politicians to be moderate is to structure voting arrangements so politicians must rely, in part, on votes delivered by members of a group other than their own. Such incentives are effective because those votes will not be forthcoming

unless the candidates receiving them can be portrayed as being moderate on inter-ethnic issues. Consequently, any compromises achieved at the top will be supported by electoral incentives at the bottom. Politicians respond to them from a basic desire to be re-elected. What I call vote pooling—the dependence, in part, on votes of members of groups other than one's own—works at the voter level, not at the level of an élite deal.

Vote pooling

To explain why vote pooling is so crucial, it is necessary to understand clearly the main difficulty of democracy in a divided society. Democratic results are difficult to attain with permanent, ascriptive (birth-based) majorities and minorities, such as 60 per cent A and 40 per cent B. In a divided society, ascriptive minorities tend to be permanently excluded. Anyone who thinks two-party systems are always superior to multiparty systems ought to consider the implications of two-party politics when a great cleavage divides the As and Bs. Two parties overlaid on ascriptive majorities and minorities reinforce bipolar politics.

Democratic elections presuppose no permanent majority and minority. They assume the existence of floating voters, some fraction of electors who are not permanently committed to any party and who may therefore shift their votes and open the possibility of altering the electoral outcome. The problem of engineering democracy in a divided society entails coping with the dual problem of ascriptively defined groups and the propensity for parties to follow group lines and become ethnic parties. The only floating that takes place in a system where parties represent only their own groups is centrifugal. In response to compromise and moderation at the centre, some voters move to extremist parties, but they do not float across the ethnic cleavage.

What electoral incentives can be created for inter-group moderation? Is it enough that no party receives a majority of seats and therefore two or more than two parties must form a coalition in order to govern? If that is enough, then List-system Proportional Representation (PR) is a good system, because it helps proliferate parties. This system permits each party to put up a list of candidates. Each voter then votes for one or another party list, each of which is numbered in order of the party's preference for its own candidates.

Candidates at the top of the list are elected first. Often no party secures a majority of seats, necessitating a coalition to form a government.

Unfortunately, however, the need to form a coalition is not enough to induce moderation on potentially divisive issues. In many severely divided societies, such coalitions have had to be formed, but they fell apart at the first divisive issue, leaving inter-group relations worse than before (for examples, see Horowitz 1985:369–78). A post-electoral coalition, formed merely to gain a majority of seats, generally does nothing for inter-group accommodation. What is needed is an incentive to compromise in the first instance, not merely an incentive to coalesce after the election. What is needed, then, is a pre-electoral coalition, formed to pool votes, not just seats.

Pre-electoral coalitions of parties representing more than one ethnic group do not form easily in severely divided societies. Three conditions are necessary to bring them into being

- party proliferation, so no one party can form a government alone
- heterogeneous constituencies, consisting of a mixture of members of each group, so candidates cannot be sure of election on the votes of their own group alone
- strong electoral incentives to make vote pooling politically profitable.

Seat pooling

Contrast coalition formation after elections, where parties merely pool seats to secure a legislative majority. Under seat pooling, if five ethnic parties each have 20 per cent of seats, any three can form a government by pooling seats. None needs to seek votes from voters outside its own group. And no inter-group compromise will result. If, however, there are strong incentives to vote pooling, candidates must appeal outside their group to succeed, in order to be elected to office. Politicians seek to pool votes before the elections rather than seats after. To be elected president of Nigeria in 1979, a candidate needed a plurality in the whole country plus at least 25 per cent of the votes in at least two-thirds of the then 19 states. The technique was based upon plurality plus distribution of the vote. Since territory was a proxy for ethnicity, a candidate whose vote was spread over many states necessarily had support from many groups. No one could be

elected without being a pan-ethnic figure. The incentives continue if the politician wants to be re-elected. The mechanism is simple: a candidate cannot attract B votes without attending to B interests.

At independence, the Malaysians, without electoral engineering, stumbled into such a situation. For a variety of idiosyncratic (and non-replicable) reasons, one Malay and one Chinese party had formed a coalition to pool each other's votes in heterogeneous constituencies. To do so, they had to compromise. Those compromises saved Malaysia from becoming a truly deadly society for more than 15 years. The coalition was located at the centre of the party spectrum, flanked by extreme parties whose *raison d'être* was opposition to the coalition's compromises.

Once it was established, the coalition was locked into the centre position, committed to the compromises, because the centre parties could not compete with the extremes for the votes of extremists. Likewise, the extremes, which thrived on the sell-out argument, were not able to form a coalition with each other or with a centre party of the other group. The extremes were less attractive as partners to those in the middle. So the spectrum was divided into three: roughly 50 per cent in middle, and roughly 25 per cent on each flank. The parties on either flank could not form a government alone, while the centre coalition saw the continuing benefits of pooling each others' votes.

This may be a good model for Fiji—an accommodative centre coalition flanked by less accommodative parties. It is exactly what was wanted for Northern Ireland in the power-sharing experiments of 1973. Those elections came at a time when British government specified that no post-electoral government would be permitted to take office unless it was committed to power-sharing. That meant not merely inter-group accommodation but also actual participation of Catholic-based parties, as well as Protestant-based parties, in government. The basic idea of an accommodative inter-group coalition was certainly on the right track.

Single Transferable Vote

The problem in Northern Ireland was the electoral system, based on the Single Transferable Vote. It was thought conducive to proliferation of parties, so that coalition would be necessary. But the next set of assumptions, sound in principle, did not work out in practice.

In the Single Transferable Vote, voters cast ballots for candidates, not parties, in order of voters' preference. In a multimember constituency, with 4 seats but 10 candidates, a voter might cast up to 10 preferential votes. This opens up possibility that some of those votes might be cast for candidates across the sectarian or ethnic divide. By contrast, List-system Proportional Representation requires that votes be cast for a single party list, so there is no way to transfer votes across group lines, if parties are ethnically based, as they tend to be in severely divided societies. The voter is locked within his ethnic party. The hope in Northern Ireland was that there would be intergroup vote transfers that would help elect people who were moderate on ethnic issues, because they had been elected on votes provided by voters of both groups.

The Single Transferable Vote requires multimember constituencies. To be elected a candidate must receive an appropriate quota of votes. The quota depends on the number of seats in the constituency: the larger the number of seats, the smaller the quota required. Once a candidate is elected, surplus votes (above the quota) cast for the candidate are transferred to the candidates who stand next in preference among the candidate's supporters. Here is how the quota is determined

$$\text{Quota} = \frac{1}{\text{Number of seats} + 1} + 1$$

Applying this formula in a three-member constituency, it takes only one-fourth of the total vote plus one to be elected. It is easy to win a seat and therefore easy to win a seat based on the votes of voters of one's own ethnic group alone. Under the Single Transferable Vote, as indicated, surplus votes (after a candidate has met his quota) get transferred. If candidates anticipated needing such transfer to get elected, agreements across the sectarian divide to secure them would have been made and would have fostered moderation, as vote pooling does.

The problem in Northern Ireland was that, because of the way the Single Transferable Vote works, it was relatively easy for candidates to get elected, and to get elected on votes of their own group members, so they did not need to negotiate for reciprocal transfers.

The agreements were not made, and the transfers did not appear. A new Protestant party sprang up to oppose power-sharing. It and other Protestant parties opposed to inter-ethnic coalition secured 35 per cent of vote, compared to 27 per cent for the Protestant party committed to power-sharing. When the power-sharing cabinet took office, even the Protestant party committed to power-sharing, fearful of erosion of its support, rejected the arrangement, thereby dooming it. According to the assessment of Richard Rose

The electoral system offered parties no incentive to seek votes across the religious divide, because the chances of winning an extra seat by adding a few votes from the other community were much less than the chances of appearing 'soft' on the issues which were of central concern within the party's home community (Rose 1976:78).

The concept of vote pooling is sound, but the task is to change these calculations, by making it harder to get elected without agreements leading to vote transfers across group lines. It is the threshold for election that is the key. The Nigerians added a second requirement to having most votes: distribution. Distribution across territory was a proxy for distribution across ethnicity. Another way is to use a majority threshold. The need to get to a majority creates stronger incentives to make deals for inter-group vote pooling.

Alternative Vote

A more promising system is the Alternative Vote. It yields more proportionality than First-Past-the-Post but less than List-system PR. Its effectiveness lies in its being a preferential and a majority system. Voters list preferences in order, and each candidate needs a majority to win. Suppose a country is divided into two ethnic groups, the As, with 80 per cent of the population, and the Bs, with 20 per cent. The As, however, divide their support equally between two political parties, the A party and the A₁ party, whereas the Bs concentrate their support in the B party. Under many electoral systems, competition between the A and A₁ parties will centre on the issue of who is more pro-A and anti-B. Under Alternative Voting, which requires a majority threshold for victory, some A candidates and one of the A parties will find reason to behave more moderately toward the Bs, in order to secure their second preferences. With a majority threshold, they cannot be elected in any other way.

The President of Sri Lanka is now elected this way, and a similar system has been used widely in Australia. The Sri Lankan system works as follows

- if there are more than 2 candidates, each voter may vote for 3 or 4 or however many candidates there are, in order of preference
- if no candidate receives a majority, the election commission determines who the two leading candidates are
- other candidates are eliminated
- the preferences of all those voters whose first preference was eliminated are reallocated between the two leading candidates
- second preferences then count as if they were cast as first preferences
- whoever then receives a majority wins the election.

That is one way to do the counting in an Alternative Vote system. Another is to drop off bottom candidates, one at a time, reallocating the second and subsequent preferences of the voters who supported them, until a single candidate receives a majority of votes, based on his or her own first preferences plus reallocated preferences of candidates who have been eliminated. This is the way the system works in Australia. Either way, for present purposes, the result is the same. The winning candidate owes his victory to the fervent support of his own supporters plus the more modest support of those whose more fervent support was given to candidates who were eliminated.

The Commission, it will be noted, chose a third way to tally preferences (Fiji CRC 1996:319, para 10.69)—a way that is, in my view, more complicated and less desirable than either of these two ways. It also recommended multimember seats, in which all candidates compete against all other candidates (Fiji CRC 1996:296, para 9.167), making the process of transferring preferences unusually cumbersome.

Those recommendations do not in any way impugn the validity of the Commission's reasoning about Alternative Voting, which is impeccably correct. The tallying technique recommended by the Commission can easily be discarded in favour of one of the more commonly accepted methods: it entails only one paragraph of the Commission's report. By the same token, there is no need to have multimember constituencies. Indeed, Alternative Voting works well

in single-member constituencies. In multi-ethnic societies, however, those constituencies need to be significantly heterogeneous for Alternative Voting to foster inter-ethnic vote pooling. This suggests one of two possibilities: if significant heterogeneity is available at the geographic size level customary for constituencies in Fiji, then all that is needed is to draw the boundaries to maximise heterogeneity of the open seats. If achieving such heterogeneity requires much larger constituencies than Fiji has customarily had, then it would be possible to draw boundaries for larger constituencies, in which two or three separately-elected seats would be located. These would not be multimember seats; two or three members would have to be elected by the same electorate to fulfill the requirement of constituency scale for heterogeneity, but candidates competing for one seat would compete only with candidates competing for that same seat, and preferences would be transferred only within single seats. Neither of these solutions is in any way radical or difficult to implement. Alternative Voting would work smoothly with either.

What needs to be borne in mind is that the Commission was entirely on the right track in pursuing the goal of vote pooling. Alternative Voting, a modest modification of First-Past-the-Post, in that it substitutes a majority threshold for victory for a plurality threshold, is perfectly apt for this purpose in Fiji. It is an electoral system that meets the tests of simplicity of operation, lack of ambiguity in producing electoral results, and conduciveness to the goal of inter-ethnic accommodation. If there is party proliferation and if candidates cannot win the election on a plurality, then many contests will be decided on second, and possibly even third, preferences. That is the feature that induces candidates and parties to behave moderately toward those voters who are not among their most ardent supporters. The votes of those voters are still valuable.

How does this work out in a divided society? To illustrate how Alternative Voting would work and how it would produce conciliatory results, consider an imaginary conversation between party leaders seeking the presidency in Sri Lanka, where Alternative Voting is used. Suppose two Sinhalese candidates are contesting the election. The first estimates 40 per cent first preference support, and the second estimates 35 per cent. There is also a Sri Lankan Tamil candidate, who can count on perhaps 10 to 12 per cent of all first preference votes. A meeting is convened between the first Sinhalese

candidate and the Tamil candidate. Since no candidate will have a majority of first preferences, the discussion centres on the subject of Tamil second preferences. The Tamil leader is asked whether he would be willing to urge Tamil voters to give their second preferences to the first Sinhalese candidate. He replies that his ability to do so depends on the Sinhalese candidate's willingness to be hospitable to Tamil aspirations. Otherwise, his appeal to Tamil voters to cast second preference ballots for a Sinhalese candidate would be futile. Before long, concrete policy issues are being discussed. By the end of the negotiations, the first Sinhalese candidate has emerged as decidedly more accommodating on Tamil issues than the second Sinhalese candidate. A compromise is reached.

Knowing of this bargain, the second Sinhalese candidate will probably seek to differentiate himself from the first, by becoming less accommodating on Tamil issues, in order to attract hardline defectors who are displeased by the compromise commitments of the first Sinhalese candidate. For this reason, accommodation of Tamil interests will lose the first Sinhalese candidate some Sinhalese first preferences. It will be noted that the first candidate cannot go overboard in accommodating the Tamils, if he is to have a net gain from the transaction. But he can compensate, to some extent, for the loss of hardline Sinhalese votes by appealing to the other minorities in Sri Lanka as well. They, too, can offer votes to conciliatory Sinhalese candidates. The 50 per cent threshold means that, every time there are more than two candidates, parties need to search hard for pockets of votes to reach a majority. If there were more than two Sinhalese candidates, the majority threshold would be harder to reach, the extreme Sinhalese vote would be more divided, and the votes of minorities would be both more valuable and less risky to attract. In an Alternative Voting system, then, inter-group compromise can become useful in getting elected, whereas in most other systems compromise makes it more difficult to get elected (Horowitz 1991:193).

Obviously, this system can work for each parliamentary seat as well, provided constituencies are heterogeneous. As the Sri Lankan example shows, party leaders will take over the job of arranging the exchange of votes between supporters of moderate candidates. Of course, not all of the incentives of Alternative Voting point to moderation. As indicated, there will be some votes to be had by being

anti-Tamil and by being opposed to the first candidate's concessions to the Tamils as a sellout of Sinhalese interests (although, of course, it is not a sellout but merely a compromise). Alternative Voting does not narrow the party spectrum or draw all parties toward the moderate centre. It does create centripetal forces, to be sure, and the hope of inter-ethnic accommodation depends on them. But it also differentiates the spectrum into the moderate centre and, again, the extremes on the flanks. Under propitious conditions, one of the Sinhalese parties will be able to secure more votes under Alternative Voting by behaving moderately toward the Tamils, and that moderation, which induces vote pooling, is the price of winning the election.

Note that Alternative Voting is all incentives—there are no constraints at all, except the constraint of desiring election and the constraint of needing 50 per cent-plus-1 to get elected. These mechanisms of vote pooling work at a mainstream voter level, not at the level of a deal among the élite over the voters' heads. Alternative Voting uses an electoral market to encourage compromise, and party leaders respond to the market in votes, not to mere exhortations that they should behave virtuously (compare Lijphart 1977).

Another virtue of these arrangements is that they put majorities and minorities into real participation in power, not in the sense of officeholding but in the sense of influence. There is often a tradeoff between officeholding and influence. For ethnic officeholding, List-system PR is best. For influence in plural societies, a system that builds in incentives for moderation is best.

To be sure, there is an undeniable lure to guaranteed officeholding in divided societies. A 40 per cent minority that is offered 40 per cent of the cabinet seats will be sorely tempted, for the alternative may be to win 40 per cent of the legislative seats and, because the majority party gets to form the government, none of the cabinet seats. More often than not, however, such guaranteed officeholding proves illusory. The victory of the 60 per cent party was not dependent on the votes of the 40 per cent party, and the strong tendency will be for the 40 per cent party's cabinet participants to be considered peripheral to government. If inter-ethnic disputes arise, those minority ministers are likely rather quickly to find themselves on the opposition benches again. In short, arrangements like these fail because they are not underpinned by political incentives that are likely to bind both sides, and they are not underpinned by votes.

Consequently, in divided societies, officeholding is decidedly inferior to influence. On the other hand, it is much more difficult to neglect commitments made to members of groups other than one's own when those members are among the voters (albeit a minority of those voters) who were responsible for one's election. The best way to assure moderation, in short, is through floating voters. Floating voters are rare in divided societies, but their numbers can be increased through preferential electoral systems.

An important word about the difference between Alternative Voting and First-Past-the-Post (FPP). First-Past-the-Post is a plurality electoral system, and it often produces odd results. Very commonly, a party with less than half the total vote nonetheless receives more than half the seats in a plurality system, and sometimes a party may gain a majority of seats even if it wins fewer votes overall than a competitor party. These tendencies in FPP can cause very severe problems of governmental illegitimacy in divided societies. AV has none of these problems, for, by definition, it requires a majority to win each and every seat, and so it produces a majority consisting entirely of members supported, at some level of preference, by more than half of their electorates every time. Where political legitimacy is a rare commodity, this is an important advantage.

Electoral literature and electoral engineering: implications for Fiji

The standard academic literature on electoral systems emerged from studies in mainly homogeneous societies. Accordingly, it is concerned with issues that are, at best, marginally relevant to inter-ethnic accommodation. These are the questions that have been central to the literature

- *Proportionality*, which only matters if minority officeholding is more important than influence
- *Strength or weakness of party organisations*. List-system PR is conducive to strong party centres, while FPP gives more weight to constituency organisations.
- *Relationship between legislatures and their constituents*. List-system PR is inimical to constituency accountability.
- *Seat bonus for FPP*. FPP systems may provide stable governments by giving the winners a greater proportion of seats than votes, but at the cost of underrepresentation of

minorities, and, as indicated, of frequently excluding a majority of voters from electing the government. In ethnic party systems, FPP simply facilitates minority exclusion, by providing a seat bonus to the largest party.

Some of these objections can be met by amending the electoral system, but in ways likely to discourage inter-ethnic cooperation. For example, if one mitigates the absence of constituent accountability in List-system PR by moving to constituency Proportional Representation, great harm will be done to the representation of dispersed minorities. With four seats to a constituency, a 15 per cent minority in that constituency could be ignored. The same applies to permitting voters to change the order of election on a list. In Sri Lanka, where this is possible in parliamentary elections, Sinhalese voters move Sinhalese candidates up and Tamil candidates down on the list. Likewise, Alternative Voting provides less proportionality than does list-system proportional representation, but that is much less important than its provision of strong incentives to vote pooling.

In summary, to obtain moderation, an electoral system needs to encourage vote pooling across group lines. Vote pooling in turn requires

- party proliferation, so that no party can necessarily form government alone
- heterogeneous constituencies, so that candidates cannot be sure of election on the votes of their own group alone, and
- electoral incentives that make vote pooling politically profitable, incentives such as the need to achieve a majority or the need to demonstrate support distributed across the country.

Process and outcome

Finally, I want to discuss the limits of compromise in constitutional design, including the design of electoral systems. There is a difference between a constitution and a contract, and there is a crucial disjunction between the **mode** of decision-making and the **content** of accommodative arrangements. Bargaining, reciprocity, and exchange are ways that groups agree to arrangements that may moderate their conflict. The outcome of these processes is compromise. In crafting institutions to facilitate inter-ethnic compromise, however, there is a need for something other than a compromise. There is a need for

consistent, coherent institutions of accommodation that prevent backsliding into conflict. It would be better if there are several redundant institutions. To use an engineering analogy, if one measure fails, there will be a backup. In Nigeria, for example, the president was elected on a vote pooling formula, but the legislature was not. The latter, with its built-in incentives for conflict, overwhelmed the former. The presidential electoral system was alone in fostering accommodation. And it was not enough by itself. In 1983, the Second Republic was terminated by a military coup. Malaysia started with heterogeneous constituencies and vote pooling, but only some politicians were elected on such marginal votes from other groups. Each constituency delimitation produced fewer and fewer heterogeneous constituencies, and cooperative arrangements eroded. The disjunction between process and substance is very serious and difficult to overcome. Incentives to moderation need to be built in at every step, wherever there is an office to be elected. Unfortunately, however, the process of bargaining over a constitution is usually at odds with the coherence of the product.

Since this kind of consistent constitutional plan is so difficult to adopt, in most severely divided societies incentives to conflict outweigh incentives to compromise, and many of them have succumbed to the unfavourable balance of incentives. Fiji has a unique opportunity to create structures conducive to a future of inter-ethnic accommodation. The constitutional technology exists. The Commission has already drawn on much of it, and it has produced a quite coherent plan of the sort that would be very unlikely to emerge out of a process of bargaining. It would be a shame if that plan were fragmented into bits and pieces, some adopted, some rejected, so that the outcome was a set of institutions only some of which conducted to accommodation. It would be especially unfortunate because, with the Commission's work in place, all that is really required are some imaginative constitutional engineers prepared to build a strong system.

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