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Fiji Constitution Review Commission recommendations for a new electoral system for Fiji

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An electoral system is a means to an end, not an end in itself. Nor is there a perfect electoral system, neutral in its content and implications, tailor-made to suit every occasion and every need. Very often, a country's electoral system is the result of historical accident or, in the case of the former colonies of the European powers, a legacy inherited at the time of independence. Although they may be inappropriate or unsuited, indeed even harmful to the larger interests of the country, politicians are often reluctant to discard them in favour of other more appropriate and relevant alternatives because of, among other reasons, habit, inertia or simply the dread of the unknown: better the devil you know than the one you don't.

Yet, electoral systems play a critical role in shaping not only the the nature and direction of the political process of a country but also the foundations of its political culture. They reward certain kinds of policies and strategies and punish others. They influence the composition of political parties and determine the nature of the relationship between them. They structure the relations between the voters and their representatives in parliament. They can reward the politics of moderation or they can encourage the politics of extremism, depending upon the incentives the system provides. In short, the stability of a political system depends greatly on the way its electoral system

functions. In divided societies, Donald Horowitz argues, the electoral system is a vital tool in the arsenal of constitutional engineering.

The Fiji Constitution Review Commission was clearly aware of these thoughts as it set out to review the 1990 constitution. The vision that underlies its work is spelt out in its report and captured in the subtitle, 'Towards a United Future'. The Commission revisited past efforts at constitution-making, tested the assumptions which informed both the 1970 as well as the 1990 constitutions and explained why, in its view, they were wanting or inappropriate. It concluded that the 1990 constitution was not only not a product of consensus among the people of Fiji, but did not meet their widely-shared desire for a system of government that took proper account of Fiji's multi-ethnic character. It encountered widespread and irrefutable evidence of mutual respect, trust and cooperation among the various ethnic communities in Fiji, and concluded that it was the country's 'constitutional arrangements [which] seem to make people's individual ethnicity a barrier to effective cooperation' (Fiji CRC 1996:5). The way forward for Fiji, the Commission concluded, was 'to encourage the emergence of multi-ethnic parties or coalitions' (Fiji CRC 1996:5).

The choice of the electoral system that the Commission recommended was greatly influenced by this overarching objective: to foster multi-ethnic cooperation and a multi-ethnic government. The Commission was convinced that this objective was widely shared by the people of Fiji, though they naturally differed about how to attain it or the extent to which Fiji should move in the direction of multi-ethnic bridge-building in the political arena. In its report, the Commission made a number of recommendations that aim to achieve that goal. The Preamble it recommends acknowledges the culturally rich and diverse character of the country. The Compact provides a (non-justiciable) framework for the principles upon which the conduct of the government should be based, and the interests and values which need to be recognised in the formation of governments. Its recommendations on Affirmative Action emphasise the need for more non-racial inclusiveness, while taking proper account of the interests and aspirations of the communities indigenous to Fiji. Its recommendations on the functioning of branches of the public sector underline the importance of transparency and effective accountability.

All this is to emphasise the overarching vision of the Commission and the need to look at its recommendations in their totality.

The Commission recommended the retention of a 70-seat Lower House, to be called the *Bose Lawa*. Forty-five of these seats would be elected from 15 three-member open, heterogeneous, constituencies made up of members of the different communities, with no constitutional restriction or reservation of race either for the voters or the candidates, and 25 reserved seats of which 12 would be for Fijians, 10 for Indo-Fijians, two for General Voters and one for Rotumans. The Upper House, to be called the *Bose e Cake*, presently a totally nominated body, would comprise 35 seats, of which 28 would be elected from the 14 provinces (two each), again with no constitutional restriction or reservation of race, one from Rotuma, and six appointed by the President on the advice of the Electoral Commission to represent groups (ethnic, cultural, religious, and the like) which are under-represented in the *Bose Lawa*. The President would also be elected, without debate, at a joint sitting of both houses of Parliament from a list of three to five names submitted to them by the *Bose Levu Vakaturaga*. All elections of candidates for seats in the *Bose Lawa* and the *Bose e Cake*, as well as the election of the President and Vice-President, would be held under the preferential system known as the Alternative Vote (AV). Citizens of Pacific island origin would again vote with members of the Fijian community rather than as general voters; and citizens of mixed descent would have the option of regarding themselves as members either of their father's community or their mother's community for voting purposes (but not for any other constitutional purpose, and without any effect on any matter relating to the ownership of land).

What follows now is the Commission's reasons for choosing the AV over other systems. To prevent distortions or misunderstanding and to keep intact the integrity and spirit of the report, the ensuing text, with only minor editorial interventions (in the interests of clarity and economy), is taken from the Commission's report. The aim is to lay before the reader as accurately as possible the Commission's thinking on the subject. This is not the place nor the time to respond to various comments and criticisms which have been made of the Commission's choice of the electoral systems, though I allude to some of them at the end of this text.

The choice of voting systems

Fiji, like most other former British colonies, inherited the First-Past-the-Post (FPP) system used in Britain, where the candidate winning most votes is the one who gets elected. This is a logical system when the choice is between only two candidates. But if the choice is between more than two candidates, the situation is different. Then, a plurality system may mean that the winning candidate receives less than 50 per cent of the votes—that is fewer votes than those received by the competing candidates when their votes are added together. If there are three candidates, A, B and C, who receive 45 per cent, 40 per cent and 15 per cent of the votes respectively, it is possible to imagine that some of the 15 per cent who supported C might have preferred B to A, if it was impossible to elect C. A further disadvantage of FPP is that the number of successful candidates belonging to a particular party who are elected under FPP must be added up, to determine whether or not that party has a majority. Conceivably a party getting a majority of the votes in the election may not get a majority of the seats because its supporters are unevenly distributed through all constituencies. Their candidates will be elected only if they obtain more votes than any other candidate in the constituency for which each is standing.

Various ways of modifying the plurality system have been devised to ensure that the winning candidate gets an absolute majority (more than 50 per cent) of the votes cast. One is to hold an election under FPP, but if no candidate in the constituency obtains more than 50 per cent of the votes, a subsequent ballot is held between the two highest-polling candidates, or those who have received a specified percentage of the votes. AV is based on the same principle, but avoids the need for a second election at a later date. It is a refinement of the FPP system in that it requires voters to rank candidates in the order of their preference. To be elected, a candidate must have a majority of the votes cast. It will produce the same result as the FPP system if one or more candidates receive 50 per cent plus 1 of the first preference votes. If there is only one seat to be filled, the candidate who passes this threshold and has the greatest number of votes will be declared elected. Only if no candidate reaches the threshold when first preferences are counted, will it be necessary to count and allocate second and subsequent preferences.

Then, if the election is for a single-member constituency, the candidate with the lowest number of first preferences is eliminated. In the second round of counting, the ballot papers giving a first preference to that candidate are re-examined, and votes are allotted to those of the remaining candidates for whom the voter has expressed a second preference. After the second preferences are added to the first preferences for the candidates still in the running, the candidate with the lowest number of votes is again eliminated, and so on, until one of the candidates has obtained the required quota. The Alternative Vote system can be used in multimember, as well as single-member constituencies.

Unlike the Single Transferable Vote (STV) system, which need not necessarily require voters to indicate preferences in respect of all candidates on the ballot paper, AV requires voters to indicate preferences in respect of all or most candidates. Otherwise, all ballot papers may be exhausted before any candidate obtains the quota. There must in any case be a fall-back provision under which the candidate with the greatest number of votes is elected, but if this happens regularly because voters have failed to indicate sufficient preferences, the advantages of AV as compared with FPP will be lost. Also, under the AV system, the election of the successful candidates does not, as in proportional representation (PR) systems, depend on the proportion of votes cast for the candidate. However, it is argued that, like PR systems, AV mitigates the winner-takes-all aspects of FPP and generally achieves better proportionality of seats-to-votes than the FPP system.

Plurality systems like First-Past-the-Post and majority systems like the Alternative Vote may be contrasted with proportional systems, where the seats a party receives in Parliament are broadly proportional to the number of votes it receives, either in all constituencies or in a separate vote treating the whole country as a single constituency. Of the three main types of proportional system, the Commission received submissions in favour of two: a system based on Party Lists and STV. The latter had been recommended for open seats by the Street Commission in 1975. The submissions expressed limited interest in the Mixed Member Proportional system (MMP) adopted in post-war Germany, and recently in New Zealand. The general inclination was to wait and see how that system operates in New Zealand.

List-system PR allocates seats to parties in proportion to the number of votes won by the party using one of several recognised formulae. The party managers decide the names and the order in which they should appear on the lists. Frequently, this gives better opportunities than most systems to include women and members of minority groups sufficiently high on the list to win a seat, but it is often seen as giving too much power to the party and not enough to individual voters. If the system treats the whole country or major regions of a country as a single constituency, the List-system also fails to provide the important links between a voter and his or her member. Measures to reduce the size of the constituency represented through the list, or to open the list to variation by individual voters deprive the system of the simplicity and proportionality it would otherwise have.

Under the STV system, the constituencies must be multimember because the allocation is based on the range of preferences within the constituency. The greater the number of members, the greater the proportionality. As in the case of AV, the voter numbers the candidates in order of preference. But under STV, the underlying principle is the distribution of fractions of a single vote. If any fraction of the vote is not needed to help elect the candidate of the voter's first choice, or cannot be used because the candidate has been eliminated, it is transferred at a discounted value to help elect the candidate of second choice, and so on. The quota needed to secure election is the lowest possible, taking account of the number to be elected. In a three-member constituency it is just over 25 per cent. If three candidates each get just over 25 per cent, no other candidate can get more.

The criteria for choosing a voting system in ethnically divided societies

Recent years have witnessed a proliferation of literature on the best voting system for ethnically divided societies. The Commission's work is not concerned exclusively with the relative merits of plurality systems, majority systems and proportional systems as ways of turning votes into seats. It focuses on the extent to which each is likely to bring about the representation of different ethnic communities and give them the opportunity to participate in

government. The Commission had access to analyses of the advantages and disadvantages of the voting systems in use or proposed for use, in a number of ethnically divided societies, including South Africa, Malaysia, Sri Lanka, various African and Caribbean states, Lebanon, Cyprus and Northern Ireland, as well as the consociational democracies of western Europe like Switzerland, the Netherlands and Belgium.

Political scientists base their analysis of voting systems on the assumptions that politicians are motivated by the desire to be elected and re-elected. They see the voting system as probably the most powerful instrument for shaping the whole political system, because it encourages politicians to behave in ways that maximise their chances of electoral success. There is general agreement that, in an ethnically divided society, at least to begin with, political parties are likely to be ethnically based. The objective is to find ways of encouraging such parties to come together for the purpose of governing the country in a way that gives all communities an opportunity to take part. However, scholars disagree about the kind of voting system that will produce this outcome partly because of the differing perceptions about the importance of proportionality, as compared with other likely consequences of particular voting systems, and partly because of differences of opinion about the consequences of particular voting systems.

Identifying and ranking the criteria

In identifying the criteria for judging voting systems for use in Fiji, the Commission focused mainly on the voting system for electing candidates for the recommended 45 open seats in the *Bose Lawa* because it saw those seats as providing the main stimulus for the emergence of a multi-ethnic political culture in Fiji. The Commission recommended that a single voting system should be used, not only for the election of members in the *Bose Lawa* and the *Bose e Cake*, but also for the election of the President and Vice-President. Therefore the system chosen has to be suitable for all these purposes.

The criteria the Commission considered relevant included those set out in the *New Zealand Report of the Royal Commission on the Electoral System* (1986), suitably adapted where necessary to take account of Fiji's different circumstances. The Commission ranked the

criteria in the order of their importance, while bearing in mind the Royal Commission's own conclusion about how a voting system should be chosen

If a system is designed to achieve one particular objective, the likelihood of meeting together objectives may thereby be lessened. The best voting system for any country will not be one which meets any of the criteria completely but will be one which provides the most satisfactory overall balance between them, taking account of that country's history and current circumstances

The Commission's own list of the relevant criteria is as follows

- encouragement of multi-ethnic government
- recognition of the role of political parties
- incentives for moderation and cooperation across ethnic lines
- effective representation of constituents
- effective voter participation
- effective representation of minority and special interest groups
- fairness between political parties
- effective government
- effective opposition
- proven workability
- legitimacy.

Encouragement of multi-ethnic government

The consistent theme of the Commission's report is that the encouragement of multi-ethnic government should be the overriding objective of constitutional arrangements for the Fiji Islands. It must therefore appear at the head of the list of criteria. The voting system must be one which promotes the emergence of multi-ethnic governments. The Commission also sees political parties as playing a key role in the political process. The voting system should take full account of the fact that the goal of political parties is to be elected and to be re-elected. Everything in the experience of Fiji confirms that the nature of the voting system moulds the character of political parties. They respond to the forces which will determine their success or otherwise at the polls.

Political scientists differ about the best way of encouraging moderation and cooperations across ethnic lines. Some argue that, in

order to come together in stable multi-ethnic coalitions or perhaps a multi-ethnic party, political parties must have strong electoral incentives to take account of the interest of other communities. The voting system can provide these incentives by making it in a party's interests to enter into arrangements not only for seat pooling, but also for vote pooling.

The pooling of seats refers to the formation of coalitions where parties that do not have enough seats to govern alone agree to cooperate to achieve a legislative majority while vote pooling refers to arrangements where parties exchange votes across party lines to secure the election of candidates who would not win otherwise. Parties will pool votes if sufficient candidates of each ethnically based party, or component of a party, are marginally dependent on the support of voters in other ethnic communities. A contrary view is that the voting system need not itself be directed to producing inter-community accommodation. The consociational model assumes that people will continue to vote communally. Therefore, the voting system should ensure that, through its party or parties, each community is represented in proportion to its size. However, unlike the communal system of representation, the system should not channel members of communities into monolithic blocks, but allow the emergence of cross-cutting interests and identities, so that no one community gains sufficient electoral support to govern alone.

The parties representing different communities will still need to come together in a coalition in order to govern. Ideally, all ethnic parties will be members of an all-embracing 'grand coalition'. This, it is said, calls for sufficient willingness to compromise and accommodate each others' interests. The viability of the coalition should be reinforced by giving communities maximum autonomy, even veto power where necessary, in the things that concern them most. The difference between the two approaches is that the first uses incentives that are essentially self-serving in order to induce or reinforce accommodations, while the second uses agreements to cooperate, and constraints in the form of exclusive or veto powers. These rely for their effectiveness on the wisdom and tolerance of political leaders.

In the case of Fiji, the Commission considers that electoral incentives are necessary to reinforce accommodations among ethnic communities. The pre-1987 system focused on the need for their

adequate representation, but this alone did not bring about multi-ethnic governments, reflecting perhaps an artificial solidarity within communities resulting from representation through communal seats elected from a communal roll. But because present realities require the retention for the time being of some reserved seats, it is important to induce political parties to exercise moderation and take initiatives to cooperate. A voting system that provides strong incentives would be a strong candidate for adoption. That does not mean favouring the incentives approach over aspects of the consociational model. The important interests of communities or groups should be safeguarded by veto powers. The Compact recommends principles and processes designed to secure respect for the interests of all communities, reassuring them 'that their rights and interests will be protected, even if changes are made to the electoral arrangements', and recording 'the peoples' recognition of the principles on which the conduct of the government is based' (Fiji CRC 1996:82). The value of farsighted leadership should not be discounted in reaching agreement to put new arrangements in place.

The criteria just discussed can be used to evaluate the AV system. In recognition of the role of political parties will play in bringing about multi-ethnic government, it is important to provide incentives for moderation and cooperation through the voting system. That objective can be attained better through the AV system than any of the other systems mentioned. For the AV system to work effectively, two preconditions must be met: a multiplicity of parties based in the various communities, and heterogeneous constituencies.

A multiplicity of parties

Ethnic communities in Fiji have never remained united in support of a single political party. Some parties are already committed to encouraging multi-ethnic membership. The willingness of members of the various communities to support such a party depends on whether it will take account of the interests of all communities. There is already a base for cooperation among communities and parties, which could be strengthened by electoral incentives for communities to cooperate rather than compete. Such incentives might lead to the formation of a widely-supported multi-ethnic party. But even if this did not happen, they would encourage cooperation among moderate parties based in the different communities. The spread of parties in

Fiji suggests that not all may wish to reach out for multi-ethnic support. Some may remain ethnically based. But this disadvantage could be overcome if moderate parties based in another ethnic community are more attractive to some voters than more extreme parties within their own community. Exclusively ethnic parties still have a useful role in preventing multi-ethnic parties or coalitions from going too far in fostering the interests of any one community.

Heterogeneous constituencies

Heterogeneous constituencies are required because of the likelihood that the candidate or candidates of an ethnic party may be unable to succeed if supported only by members of that community, an outcome all the more likely if there is competition with other parties also based in that community. The design of constituencies deliberately to improve the chances of success of a particular party or community or social class or interest group is wisely condemned as 'gerrymandering'. Nonetheless, constituency design can also be a legitimate element of a voting system, specially in an ethnically diverse society; everything depends on the purpose for which constituencies are designed in a particular way.

The use of constituencies in Malaysia and Mauritius illustrates these points. In both these countries, the constituencies originally drawn by the British administrators were relatively homogeneous, to secure the representation of all ethnic groups in proportion to their size. It was assumed that each constituency would elect a member from the predominant ethnic groups. In Malaysia, enough constituencies nevertheless had a sufficiently mixed population to enable Chinese voters to influence the election of some Malay candidates. They could not dominate, but they could not be ignored. However, since the riots of 1969, constituencies have been more heavily weighted in favour of Malays, reducing the ability of Chinese voters to influence electoral outcomes. In Mauritius, every two of the original ethnically based constituencies were combined to form heterogeneous constituencies, each electing three members. Elections largely are contests between coalitions of ethnically based parties sponsoring a multi-ethnic slate of candidates in each constituency. Ethnicity has therefore become less important than political ideology in determining the outcome of elections and the composition of Parliament.

The Commission asked whether, given the residential pattern of the different communities within Fiji, it would be possible to create heterogeneous constituencies, each having roughly the same number of inhabitants, within a tolerance of 10 to 15 per cent. The principle of equality may be departed from to the extent expedient

in order to take account of geographical features, the boundaries of existing administrative and recognised traditional areas, means of communication and density and mobility of populations (Fiji CRC 1996:314).

One exercise involved the drawing of 45 single-member constituencies and the other to producing 15 constituencies, each of which could be represented by three members. These exercises showed that 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.

Heterogeneity within the constituency was understood as a mixed population ranging from a more or less equal balance between Fijians and Indo-Fijians, to a proportion as high as 85 to 90 per cent of one community and 15 to 10 per cent of the other. This last figure represented the limit of reasonableness in constituencies which included island populations consisting mainly of Fijians. The average distribution was 60 per cent of one community and 40 per cent of the other. It is entirely possible to draw constituency boundaries in Fiji to achieve a reasonable heterogeneity. The question now is how Alternative Voting, coupled with heterogeneous constituencies and a multiplicity of parties, can provide strong electoral incentives for cooperation among communities.

The nature of the incentives

Obviously, the best method of inducing vote pooling is to avoid inter-ethnic competition. A multi-ethnic party or pre-election coalition can put up a multi-ethnic slate of candidates. Ethnic parties based in different communities can agree not to contest a particular seat in a

constituency where one community is outnumbered, in return for a corresponding favour in another constituency where that same community predominates. Such arrangements are more likely between moderate parties than between more extreme ones. One way in which AV provides incentives for vote pooling is by requiring the winning candidate to obtain more than 50 per cent of the votes. In a heterogeneous constituency, this threshold increases the need for the winning candidate to have multi-ethnic support. The second is by requiring voters to rank candidates in the order of their preference. The candidates with the lowest totals of preferences at each level are eliminated and preferences at the next level are allocated to those still in contention until a candidate is found who has more than 50 per cent of the votes.

Although the successful candidate may not have been everybody's first choice, he or she must be broadly acceptable to over half the voters in the constituency.

The AV system allows parties to trade preferences. They may decide to put up competing candidates because their supporters may wish to give their first preferences to candidates of their own party and ethnicity. However, the party least likely to succeed may be willing to encourage its supporters to give their second or third preferences to the candidate of the other party, in return for reciprocal support, in the same constituency or in another where the ethnic balance is reversed. The effect of a preferential system like AV is to keep alive the value of second, third and subsequent preferences as the weakest candidate is eliminated after each round of preferences is counted.

Only moderate parties with conciliatory policies are likely to trade preferences and persuade their supporters to honour the agreement. The system therefore encourages the emergence of such parties. It may be feared that, in response to the perceived pressures created by open seats and heterogeneous constituencies, ethnically based parties may not be willing or able to cooperate across the ethnic divide, but may coalesce into single ethnically based parties, one or other of which might be able to win an outright majority. In the long run, however, such united positions would be a reversal of the evident tendencies for ethnic communities to divide their support among two or more parties based in that community. It would also

run counter to the experience of some other ethnically divided countries. There is no actual experience of AV with open seats in heterogeneous constituencies in an ethnically divided country, but an analogy can be drawn from the experience of Mauritius and Malaysia, both of which have open seats under FPP. The Malaysian experience is relevant, even though there has always been a large Malay party in a dominant electoral position, and constituencies have become less heterogeneous since 1969. In neither country have small, ethnically based parties coalesced into larger ethnic parties. Even a large ethnic party like the main Malay party the United Malay National Organisation, which can govern alone, is committed to the perpetuation of the multi-ethnic coalition now called the National Front.

AV's potential to provide electoral incentives to moderation and cooperation may be contrasted with such incentives under other voting systems. Under FPP, a candidate can be elected with substantially less than 50 per cent of the votes. The voter has no way of indicating a second or third choice if the candidate who is the voter's first choice is unsuccessful. Some voters may, however, decide not to vote for their most preferred candidate, if that candidate has a very poor chance of success. They may feel that such a vote would be 'wasted'. Preferences may be expressed under some Proportional Representation systems, but their effect is quite different. The object is to elect a number of candidates in proportion to the number of votes received by the party. List-system PR requires that votes be cast for a single party list. Although some systems have been devised under which voters may make choices across party lists, it is argued that, if parties are ethnically based, there is no practicable way of inducing voters to exercise such an option. STV has the advantage of allowing voters to express second, third, or subsequent preferences for individual candidates the same way as AV does. But because STV is designed to be proportional in its outcomes, the quota that each candidate must obtain in a three-member constituency is just over 25 per cent. This may be compared with the just over 50 per cent required under AV.

The overall effect of proportional systems compared with AV or even FPP is that, if people vote communally, ethnic parties can expect to succeed in getting a number of candidates elected in proportion to the number of their community members in the constituency, and

therefore in the country. This is irrespective of whether they are moderate and seek to reach accommodation with the ethnic parties of other communities. If a party wishes to appeal to voters in other communities by putting up a multi-ethnic list, it has to calculate whether this will attract more voters from those other communities than the number it will lose from its own. Set alongside the reserved seats proposed to be retained in Fiji as a transitional measure, any proportional system would, in our view, offer few incentives to parties to become more multi-ethnic in their composition or more willing to take account of the interests of all communities.

In terms of the extent to which it provides electoral incentives for moderation and compromise, AV is to be preferred to either List-system PR or STV, the proportional representation systems advocated in some submissions. AV is also to be preferred to FPP, though FPP is more conducive to moderation and compromise than PR systems. For this reason alone the adoption of AV is favoured. Additionally, AV adequately meets the other criteria the Commission adopted for judging electoral systems.

Effective representation of constituents and AV

Experience in Fiji shows that voters expect close links and accountability between individual members of Parliament and their constituents. It is important for voters to see themselves as represented not only by the member elected to the seat reserved for their community, but also by the member for their open seat constituency. Communal representation has obscured the usual expectation that a member of Parliament serves all the people in the constituency whether or not they support the member's party, and does so regardless of the community to which they belong.

The AV system requires the election of candidates to represent territorial constituencies. It is suited to the recommended single-member reserved seat constituencies and also the three-member open seat constituencies. In this respect it compares with FPP and STV (except that STV requires multimember constituencies). It is to be contrasted with List-system PR if, as suggested in one submission, the whole country were treated as a single constituency. Voters usually feel strongly that they want to know who their member is and to have access to him or her both individually and as a group with common interests arising from their residence in a particular

geographical area. In 1995 when the Commission visited South Africa, there were strong indications that, for this reason, the List-system PR used as the only feasible way of conducting the first democratic election in that country was likely to be modified. (In its final form the constitution requires only that the electoral system must result, in general, in proportional representation, leaving the details of the system to national legislation).

The introduction of List-system PR in a Fiji-wide constituency might be acceptable if combined with representation through open seat constituencies, as under MMP, but if List-system PR were to be combined with reserved seats, the members for reserved seats would tend to be seen as people's 'real' representatives. It might be hard for List-system members to associate effectively with them, even though belonging to the same party, and it would be harder still if the member's ethnicity was different from that of the community to which the seat belongs. STV has the defect of allowing constituency representation to become a dominant preoccupation. Because the threshold is so low, each party is likely to nominate more candidates than there are seats. Therefore, each candidate is competing not only with candidates of other parties, but also with other candidates belonging to the same party. Consequently, members representing the same party in a particular constituency sometimes seek to outdo one another in their commitment to constituency work, to the neglect of other Parliamentary duties. They may also concentrate on obtaining reciprocal support for constituency projects, to the detriment of a national outlook.

Under AV, the problems of intra-party competition in multimember constituencies can be avoided by adding first, second and third preferences together before the candidate with the lowest number of votes is eliminated. This facilitates the adoption of party slates under which the party may ask voters to give their first preferences to A, their second preferences to B and their third preferences to C. As all preferences have equal weight when added together, it would be wrong to eliminate B or C before taking account of voters' second and third preferences, as well as first preferences. The Commission proposes that the AV system should be applied in this way in elections for the three-member open seats in the *Bose Lawa*.

Effective voter participation and AV

If individual citizens are to play a full and active part in the political process, they should have a real choice among political parties and their candidates. They should feel that their vote will affect the outcome and will be of equal weight to the votes of other citizens. The voting system, and, in particular the ballot paper, should be one they can understand and use effectively in order to cast valid votes.

The AV voting system would give citizens a considerable opportunity to affect the outcome of the poll by expressing preferences among individual candidates. It is sometimes argued that, by requiring voters to indicate preferences for all or most candidates, it forces them to give at least some support to candidates they would otherwise not be prepared to vote for. This is more of a philosophical than a practical problem, but to mitigate it we propose that votes should be treated as formal if voters express preferences for a least 75 per cent of the candidates. It is also possible to have rules preserving the validity of the ballot paper even if candidates accidentally fail to number preferences correctly beside the names on the ballot paper. For example, they may put in the same number more than once, or omit one number in the numerical sequence. To make sure that the election always produces a valid result, it should be provided that, if the requisite number of candidates has not reached the quota when all the preferences have been distributed, those with the highest number of votes should be deemed elected. Generally, the high level of literacy in the Fiji Islands will mean that few voters will have any difficulty in numbering the candidates in the order of their preference beside the names of particular candidates. Certainly, the Commission envisaged no difficulty in the elections of the single-member for each reserved seats. The number of names on the ballot paper is not likely to be more than three or four.

However, there are likely to be at least three times that number of candidates on the ballot paper for the three-member open seats. To assist people in marking the ballot paper, and also to encourage parties to exchange preferences and assist them in delivering them in accordance with the agreement, the Commission proposed that an

‘above the line/below the line’ ballot paper should be used for elections to all seats. The ballot paper for the election of candidates for the multimember seats in the Australian senate provides a model. Voters wishing to vote on a ‘ticket’ basis need only tick the name or symbol of the party, coalition or independent candidate whose ticket they wish to support. The effect is to allocate that voter’s preferences in the order predetermined by the party, coalition or candidate, and registered with the Electoral Commission. If the voter wishes to indicate a different order of preferences, he or she is free to do so by putting numbers beside the names of the candidates in the bottom part of the paper.

There should be a statutory requirement that the Electoral Commission must ensure that voters are given full information about the consequences of choosing a particular ticket. The Act should provide that, if a ballot paper is marked both above and below the line, it should not, for that reason alone, be treated as informal. If the preferences indicated below the line are otherwise formal, they should be regarded as the expression of the voter’s intentions and counted accordingly. If, however, the preferences below the line are themselves informal, the vote for the party ticket, if formal, should be treated as expressing the voter’s choice.

The principle of eliminating the lowest-polling candidate in each round of preferences and redistributing the preferences of the voters whose candidates are eliminated, until one candidate reaches the quota, is easily understood. Voters do not need to concern themselves with the mechanics of counting and distributing the preferences. These are relatively complicated and time-consuming. However, they are less complex than the allocation of surplus votes at a discounted value under STV, and training the requisite number of electoral officers for the purpose of conducting elections under the AV system can be arranged without too much difficulty. The process of vote counting and distribution is done openly. Candidates’ agents will quickly understand and follow how it is done.

Effective representation of minority and special interest groups and AV

The voting system should ensure that parties, candidates and members of Parliament are responsive to minority groups and special interests. This is particularly important in those cases where

the minority group is required to belong to, or is in competition with, a larger ethnic community for the purposes of political representation. AV does not have the same capacity as proportional systems to secure the election of representatives of every group in the country which chooses to organise politically and can win a minimum share of the votes. However, the need for a candidate to achieve an absolute majority means that no candidate can afford to neglect any small pocket of voters who might be willing to give their support in exchange for a policy which takes account of their interests. Just as AV encourages appeals across ethnic lines, so also it encourages appeals to women and to minorities with special interests. In this respect it is greatly superior to FPP. However, it is difficult to gauge whether, under AV, parties would seek to gain wider support by nominating more women and members of minority groups as candidates than they do now under FPP. The evidence suggests that, under a proportional system, it is easier for candidates from disadvantaged or minority groups to win election. However, this advantage is outweighed in Fiji by the disadvantages of a proportional system.

Fairness between political parties and AV

When they vote at elections, voters are choosing between alternative party governments as well as alternative constituency members. The voting system should encourage competition between potential majority parties or pre-election coalitions, so that voters can make a clear choice about the identity of their future government. At the same time the voting system in its method of turning votes into seats should not have the effect of unfairly excluding the representation of small parties, provided they win a significant share of the vote.

However, the voting system does not need to allow for the representation of every small party with just enough votes to justify an allocation of a seat of a percentage basis—1.4 per cent in a house of 70 members. Carrying the representation of minority interests to extremes creates a danger that they will be able to exert pressure out of proportion to their number. It should also be kept in mind that some of the support for minority parties results from ‘protest’ voting. A vote for the small party may not represent the voter’s expectation that it will become the government or even win a seat. Rather it may express unwillingness to support any of the larger parties which

have a realistic chance of winning the election or at least obtaining representation. Finally, the voting system should not produce a consistent pattern of electing governments that have less than 50 per cent of the total number of votes cast in the election. In contrast to the position in New Zealand, that has not happened in Fiji. Most if not all governments that have taken office in Fiji since 1970 have received a majority of the total number of votes.

AV is not designed to secure the representation of political parties in proportion to their share of the total votes cast in the election. In this respect it has some of deficiencies of FPP, though not to the same extent, because of the need for a candidate to win majority support. Taking account of all preferences which become effective, it would be virtually impossible for a party to win an election without obtaining a majority of the overall votes. Some argue that AV has the same tendency as FPP to favour larger parties at the expense of smaller ones. They consider that this tendency is exacerbated when AV is used in multimember constituencies, as it was in the Australian Senate between 1919 and 1946. The AV system was then replaced by STV with the object of securing the fairer representation of all political parties in the Upper House. The question of encouraging the fair representation of ethnic communities was not at issue, so too much should not be read into the decision to make the change.

Even if the disproportionality of AV is greater in multimember seats than in single-member seats, multimember constituencies for open seats are nevertheless desirable. They are likely to encourage multiracial party slates, not only across the country as a whole, but also in individual constituencies. This seems likely to make individual voters more willing to cast their votes on the basis of party, not ethnicity. The encouragement of such a development is yet another essential building block in enabling parties to adopt moderate policies and to broaden their electoral support across ethnic lines. If the consequence is that, as not under FPP, smaller parties may not be represented in proportion to the number of votes they receive, that seems a small price to pay.

The Commission also considered the question of fairness to parties in the context of drawing constituency boundaries. It accepted that problems of fairness would not arise under a proportional system of representation. Under such a system, parties will get a number of seats in proportion to the number of votes they

receive, regardless of the way in which boundaries are drawn. However, the advantages of putting in place heterogeneous constituencies for the open seats outweighs any difficulty that may arise in also being fair to parties. Any change in the voting system, including the transition from a system of exclusively communal seats to a mixed system of reserved and open seats, will require all parties to rethink their policies and to decide on the groups to which they will appeal. The situation is quite unlike that which can arise when boundaries under an existing system need to be revised. In those circumstances there may be real questions about interfering with the representation of areas from which particular parties have traditionally drawn support.

The initial drawing of new constituency boundaries will be an essentially political process calling for both fairness and compromise, if the essential objective of homogeneous constituencies is to be achieved. Once the new constituencies are in place, we envisage that the only major change in the distribution of the population would call for an adjustment of their boundaries. It is possible that the objective of heterogeneous constituencies may run counter to the instinct of parties that constituencies should bring together the groups that have traditionally supported them. That instinct will have to be resisted. The objective of heterogeneous constituencies will need to be agreed upon as part of the overall political settlement under which new constitutional arrangements are put in place.

Effective government and AV

The voting system should allow the election of Governments that have the support of a sufficient legislative majority to enable them to act decisively. In normal circumstances they should also be able to obtain Parliamentary approval of their budgets and defeat Opposition no confidence motions, so that reasonable stability is assured. The passage of other legislation should not normally be seen as an issue of confidence. The Government should have sufficient flexibility about the means of implementing its policies in legislation—if not the policies themselves—to allow the proposed Parliamentary select committee system to function effectively.

As a majoritarian, not a proportional system, AV is likely to encourage the emergence of a strong party or pre-selection coalition government. AV, with its requirement that candidates win majority

support, not a mere plurality as under FPP, should mean that relatively small swings in the electoral support for particular parties will not have the effect of putting governments into or out of power. However, strong and stable government should not, in itself, be seen as an overriding goal of the voting system. Even if an ethnically based party were to win a majority of the seats in the *Bose Larwa*, it should not necessarily signal immediately its ability and willingness to form a government on its own. Under the Compact, it would be bound to consider the objectives of multi-ethnic government and the duty to take the interests of all communities into account. It would therefore need to consider whether other ethnic parties could and should be drawn into a coalition government.

Second, if a multi-ethnic pre-election coalition wins an election, it is still a coalition, though we believe it is likely to have a stronger base for remaining united than a coalition which comes into existence after an election because no party has the necessary majority to govern alone. Third, what cannot be excluded, even under AV, is the need for parties, none of whom has a sufficient majority to govern alone, to form a governing coalition after an election. For some time to come, the people of the Fiji Islands will be juggling the two variables of party and ethnicity. It would be surprising if the introduction not only of a new voting system but also the reconstitution of both houses of Parliament took some time to settle down. But it can be said that AV is just as likely as FPP, and more likely than a proportional system, to produce strong and stable governments.

Effective opposition and AV

The voting system should ensure that, as well as effective government, there is also effective opposition. It should not be one under which relatively small swings in electoral support can have the effect of unduly reducing or eliminating the representation of the Opposition party or parties. It is difficult to foresee the character and composition of future Opposition parties if the goal of multi-ethnic government is achieved. However, AV is less likely than FPP to allow relatively small swings in voter support not only to bring about a change of government but also to give it an overwhelming majority. The equitable representation of Opposition parties is more assured under proportional representation, but, in the circumstances of Fiji,

the greatest need is the encouragement of multi-ethnic government through the AV system in the manner described above.

AV as a proven system

The people of Fiji should adopt a voting system that has been successfully used elsewhere, preferably in the region. No unexpected problems would be likely to arise, and there would always be ready access to technical advice and help. AV is used for the election of candidates to single-member seats in the Australian House of Representatives and the lower houses of most Australian states. From 1919 to 1946 it was used in the Australian Senate to elect candidates to multimember constituencies. Apparently it is also used in multimember constituencies in Nauru. STV is used in electing the members of the Australian Senate, the lower house in Tasmania and the single chamber legislature in the Australian Capital Territory. New Zealand, in implementing MMP, is gaining experience with party lists. All three systems have shown themselves to be workable in actual operation in other countries over a considerable period.

Legitimacy of elections under AV

Under this heading the New Zealand Royal Commission said

Members of the community should be able to endorse the voting system and its procedures as fair and reasonable and to accept its decisions, even when they themselves prefer other alternatives (quoted in Fiji CRC 1996:327).

The Royal Commission saw this criterion as a test of whether the requirements of all of its proceeding criteria had been adequately met. In a society like Fiji, legitimacy means that the members of all communities must be able to accept election results as fair and needing to be upheld, even when they themselves would have preferred another outcome. On this basis, legitimacy as a criterion deserves a higher priority, but we have left it at the end of the list because it still measures the overall effect of the voting system.

This Commission's basic argument is that multi-ethnic government is in the interests of all communities in Fiji. If this is accepted, then the electoral arrangements must not be unfairly weighted in the interests of any one community. In any event, there is no guarantee that a weighted system will produce the desired result in all circumstances. If it does not, the reaction is to think that the

electoral system has failed the interests of the community which sees itself as disadvantaged. Their likely response is that in order to remedy the situation, the system should be made even more lopsided. The electoral system should not favour one community more than another, but that this alone is not sufficient. If the goal was the certainty that all communities will be proportionally represented, there might be no reason to move away from a system under which all seats are reserved on a fair basis. But that would not in itself lead to multi-ethnic government.

Within a fair electoral system, the people of Fiji should adopt a voting system that helps to dissolve the present link between ethnicity and party. If all ethnic groups are adequately represented in the Government party or parties and in the Cabinet, then, so far as that outcome is facilitated by the voting system, that system should be seen as legitimate. The Commission concentrated on the election of candidates for the 45 open seats in the *Bose Lawa*, because the voting system will have its most important effect in that context, but it also saw AV as encouraging multi-ethnicity in the election of members to represent at least some of the provinces in the *Bose e Cake*. In the election of the President and Vice President by the Electoral College constituted by the members of both houses, the need for an absolute majority under AV provides a necessary guarantee that the choice will have widespread support across the political spectrum. For that reason it will be regarded as legitimate.

This is not the first time that the AV system has been proposed for electing members for the reserved seats which need to be retained for the time being. The Street Commission made a similar recommendation in 1975. That body saw the need for the successful candidate for a reserved seat to obtain more than 50 per cent of the votes as an advantage, compared with the possibility of election by a minority of the votes cast in the constituency under FPP. AV will add to the legitimacy of the election of reserved seat members. The dynamics affecting elections for reserved seats will be changed, not only by the move to the AV system, but also by all the other changes affecting the composition of the two houses of Parliament and the election of their members. Overall, the incentives for moderation applying to the election of other members of Parliament will also affect the election of members for the reserved seats.

The Commission concludes that all elections of candidates for seats in the *Bose Lawa* and the *Bose e Cake*, as well as the election of the President and Vice-President, should be held under the preferential system known as the Alternative Vote; that the 45 open seats in the *Bose Lawa* should be filled by voting in 15 three-member heterogeneous constituencies, that is, constituencies in which there is a mixed population made up of members of the different ethnic communities. The detail of conducting elections by the Alternative Vote should be provided for in an Electoral Act, which should, among other things, provide

- in elections for the 3-member open seats in the *Bose Lawa*, the first, second and third preferences given to each candidate should be added together, before the candidate with the lowest number of votes is eliminated
- votes should be treated as formal if voters express preferences for at least 75 per cent of the candidates
- there should be rules for preserving the validity of the ballot paper, so far as possible, even if candidates fail to number preferences in the correct numerical sequence
- if the requisite number of candidates has not reached the quota when all the preferences have been distributed, those with the highest number of votes should be deemed elected
- in the election for all seats, an 'above the line/below the line' ballot paper should be used. In the top part of the ballot paper voters should be given the opportunity to vote on a 'ticket' basis, indicating support for the candidates in an order of preference registered by a party, coalition of parties or independent candidate. If the voter wishes to indicate a different order of preferences, he or she should be free to do so by putting numbers beside the names of the candidates in the bottom part of the paper
- the Electoral Act should require the Electoral Commission to ensure that voters are given full information about the consequences of choosing a particular ticket
- the Act should also provide that, if a ballot paper is marked both above and below the line, it should not for that reason alone, be treated as informal. If the preferences indicated below the line are otherwise formal, they should be

regarded as the expression of the voter's intentions and counted accordingly. If, however, the preferences below the line are themselves informal, the vote for the party ticket, if formal, should be treated as expressing the voter's choice.

The determination of constituency boundaries

The constituency boundaries for all seats in the *Bose Lawa* should be drawn so as to divide the Fiji Islands into the requisite number of territorial constituencies for each category of seats. So far as possible, each should contain an equal number of inhabitants of the relevant category, and should ensure that the inhabitants of every constituency can be effectively represented, taking into account geographical features, the boundaries of existing administrative and recognised traditional areas means of communication and density and mobility of population. In addition, the constituencies for the open seats should be required to be heterogeneous.

This recommendation departs from the criteria in section 48 of the 1990 Constitution by referring to 'inhabitants' rather than 'adult inhabitants'. The Commission proposes the change to reflect the principle that members of Parliament represent all inhabitants of their constituencies, regardless of age or eligibility to vote. Another relevant factor is that the census data relating to the distribution of the total population is readily available. The Constitution allows the principle of equality of the population to be departed from in order to take account of other relevant factors. We consider that, in principle, the variation should not be greater than 10 per cent on either side of the norm obtained by dividing the relevant population figure by the number of constituencies. However, we think it would be too restrictive to impose this target as a constitutional limit, particular in drawing the boundaries of the open seat constituencies which are required to be heterogeneous. That requirement is basic to the idea that the open seats should act as a catalyst for a move away from ethnic politics. If need be, we therefore see it as overriding the requirement for equality.

Reserve constituencies

There will need to be 12 reserved seat constituencies for Fijian voters, 10 for Indo-Fijian voters, 1 for Rotuman voters and 2 for general voters. The starting point will be the number and distribution of the

members of the population regarded as belonging to a particular community for representation purposes. However, it would not be practicable to apply these rules when determining the distribution of the population belonging to each community. The Constitution should therefore refer to the distribution of inhabitants classified for census purposes as Fijians or Pacific islanders, Indo-Fijians, Rotumans, and persons not belonging to any of those ethnic communities.

Open seat constituencies

There will also need to be 15 open seat constituencies, each electing three members. Although the distribution of the ethnic communities will not be relevant for the purpose of applying the principle that constituencies should have an equal number of inhabitants, it will be relevant in fulfilling the requirement that open seat constituencies must also be heterogeneous. Again, account should be taken of the distribution of the population as classified for census purposes. It may not be feasible to specify the degree of heterogeneity required, but the open seat constituencies should be as heterogeneous as possible. In some cases this criterion may need to be fulfilled in innovative ways, for example, by placing more weight on lines of communication than on traditional ties. Through their elected members in the reserved and open seats in the *Bose Lawa* and the provincial seats in the *Bose e Cake*, all the people of Fiji will have the opportunity to be represented in a variety of ways which will take full account of their range of interests.

Constituencies for the election of the members of the *Bose e Cake*

There will be no need to determine the boundaries of constituencies for the purpose of electing members of the *Bose e Cake*. The boundaries of the provincial constituencies should be the provincial boundaries prescribed under the *Fijian Affairs Act*. The boundaries of Rotuma should be those referred to in the definition of 'Rotuma' in the Rotuma Act.

Constituencies Boundaries Commission

The task of determining the boundaries of constituencies for the election of members of the *Bose Lawa* should continue to be carried out by a Constituency Boundaries Commission. The Constitution

should require the Constituency Boundaries Commission to determine the initial boundaries of all constituencies on the basis described above. It should also require the Constituencies Boundaries Commission, in the year following each census, to review the boundaries of all constituencies and decide whether or not they require revision to take account of changes in the distribution of the population as a whole, or of the members of any community. The Constitution should also empower the Constituency Boundaries Commission to review and redetermine all or any constituency boundaries at any other time during the intervals between each census (at present 10 years), if it has reason to think that such a review and redetermination might be desirable on those grounds. After the Constituency Boundaries Commission has reviewed constituency boundaries on any occasion, it should be required to report its findings to Parliament with an explanation of the reasons why it has decided either to redetermine boundaries or not to do so.

The procedures to be followed by the Constituency Boundaries Commission in determining or redetermining constituency boundaries should be prescribed by Act. Such an Act would require the Constituency Boundaries Commission to give notice of its proposed determinations and hear objections before making a final determination. Once made, the boundaries should continue to be final. They should not be subject to appeal, but judicial review should be available to test whether the Commission has acted within its powers and in accordance with the prescribed procedures.

Although the Constituency Boundaries Commission will only need to exercise its functions periodically, we consider that it should be a standing Commission. Otherwise there is a risk that constituency boundaries will not be reviewed as and when necessary. Its membership should be entirely separate from that of the Electoral Commission. The functions of the two bodies are quite distinct. The composition of the Constituency Boundaries Commission should take account of the fact that, although constituency boundaries should be drawn as impartially and fairly as possible and in accordance with the constitutionally prescribed principles, any determination of boundaries inevitably has political implications. The Commission should therefore consist of three members holding office for terms of three years. The Chairperson should be a person who is, or is qualified to be, a judge of a superior court in the Fiji

Islands, and should be appointed by the President acting in his or her own deliberate judgement, after consultation with both the Prime Minister and the Leader of the Opposition. The two other members should be appointed by the President on the nomination of the Prime Minister and the Leader of the Opposition respectively.

No qualifications should be specified for members other than the Chairperson, but no person should be qualified to be a member of the Commission if at any time during the four years preceding appointment he or she has been a member of Parliament or an elected member of the council of any municipality, as defined in the *Local Government Act* (Cap. 125). A serving member of the public sector, the police or the military forces should also be disqualified. The Constituency Boundaries Commission should also be subject to the general principles and rules applying to all Commission established by the Constitution.

The names of constituencies

It is fair to say that not much imagination has been shown in naming constituencies in Fiji. The names of the main cities and the provinces have been used, with the addition of a reference to the relevant point of the compass if it was necessary for a geographic area to be subdivided. In addition, the designation of a member for a communal seat has included a reference to his or her community.

The names of the provinces and Rotuma should be used exclusively to describe the constituencies for election to the *Bose e Cake*. As now, the members for a particular providence will each be entitled to use the designation 'Senator for Rewa', or whatever the province might be. However, the constituencies in the *Bose Lawa* will take account of, but will not be based on, provincial boundaries. Although some seats in the *Bose Lawa* will continue to be reserved, the member should no longer be identified by reference to his or her community. This not only puts undue emphasis on communal identity, but will also become less practicable in the light of our recommendations for identifying the voters belonging to each community for voting purposes. Fiji should do what is done in other countries and give constituencies distinctive names that prevent them from being confused with areas that have recognised geographic boundaries. Constituencies for all the seats in the *Bose Lawa* might be named after well-known physical features, like

mountains or rivers, or after local flora and fauna. By way of example, the following list of names might be considered.

Suggested *Bose Lawa* constituency names

Open seat constituencies

1. Uluigalau (Cakaudrove)	9. Medrau Sucu
(Naitasiri North)
2. Seatura (Bua)	10. Toma ni Ivi (Ra)
3. Babasiga (Macuata)	11. Suka (Ba-Lautoka)
4. Veianuyanu
(Lau-Lomaiviti-Rotuma)	12. Dobu (Ba-Tavua)
5. Tebara ni Siga (Tailevu)	13. Naloto (Nadi Yasawa)
6. Vunivadra (Rewa)	14. Voma-Cakaubalavu
(Namosi-Serua-Kadavu)
7. Korobaba (Rewa)	15. Maseki (Nadroga-Navosa)
8. Waimanu (Naitasiri South)	

Reserved seat constituencies

Fijians including other Pacific islanders (local flowers)

1. Mocololo	6. Seniuci
2. Kukuwalu	7. Tomole
3. Lagakali	8. Buasala
4. Cevuga	9. Maba
5. Kurukoto	10. Saku

Indo-Fijians (local fish)

1. Babale	6. Ulavi
2. Saqa	7. Walu
3. Kawago	8. Kanace
4. Kawakawa	9. Nuqa
5. Kurukoto	10. Saku

General voters (local fruit trees)

1. Dawa	2. Kavika

Rotumans

- (To be chosen by Rotumans)

The right to be entered on reserved seat consistency

A number of submissions expressed concerns about the existing rules governing registration on the various communal rolls. First, a number of Fijians raised questions about linking registration in the *Vola ni Kawa Bula*, which is a register of customary rights in land, with the classification of a person as a 'Fijian' for voting and other

constitutional purposes. The Commission agrees that this link puts too much strain on the integrity of both systems and should be removed. The Constitution should deal only with the right to be entered on a roll for a Fijian reserved seat constituency. It should not define a 'Fijian' for any other purpose. For example, it should not be concerned with the question of who is a 'Fijian' for the purpose of being eligible for nomination as President—a matter safely can be left to the *Bose Levu Vakaturaga*—nor with the duty of the government to establish programs promoting ethnic justice for 'Fijians'. If necessary, the requisite Act can set out exactly who is eligible to benefit from a particular program.

Second, many members of the various Pacific island communities in Fiji expressed unhappiness about the fact that the 1990 Constitution had removed them from the Fijian roll and included them on what is usually called the 'general' roll. They considered that they had little community of interest with most of the other voters on that roll. None of them had succeeded in being selected to a seat belonging to the general voters' community. One suggested solution was the allocation of a communal seat to their community, an idea the Commission was unable to accept. Alternatively, they suggested that they should be restored to the Fijian roll, on the ground that many of them were *vasu*¹ and lived closely with the Fijian community. Because we view the retention of the reserved seats as a transitional measure, we consider this solution is the better one. We therefore propose that Pacific islanders should be eligible to vote in the Fijian reserved seat constituencies.

Third, a number of submissions from members of all communities expressed unhappiness about the fact that persons have always been classified as 'Fijians' and 'Indians' for constitutional purposes by reason of patrilineal descent. The only exception allowing for descent to be traced through the mother has been if the identity of a person's father is not known. In those cases where persons of mixed descent have been brought up in their mother's community rather than their father's, the provision has inflicted personal hardship by requiring people to vote as members of a community to which they do not belong.

Rotumans are not affected in the same way, because section 156(b) of the 1990 Constitution classifies a person as Rotuman if of Rotuman descent through either the father or the mother. This gave persons of

mixed Rotuman and Fijian or Indian descent through the father a choice of rolls. The original 1970 provisions were unduly preoccupied with having clear roles which could be applied automatically. Recognition of descent through the father was acceptable to Fijians because the customary right to land is usually based on descent through the father rather than the mother. However, as proposed above, the right to vote in a Fijian reserved seat constituency should not depend on having a customary right to land.

By returning Pacific islanders to the Fijian roll, many persons descended from an indigenous Fijian through their mother will acquire the right to vote in Fijian reserved seat constituencies. It would be unfair if other citizens also descended from an indigenous Fijian through their mother were not given the option of voting as members of the Fijian community. The Commission proposes that a person should be allowed to be registered on the roll for a Fijian reserved seat constituency if descended, through either the male or the female line, from an indigenous inhabitant of the Fiji Islands (other than Rotuma) or any other island in Melanesia, Micronesia or Polynesia. Similarly, a person should be permitted to register on the roll for an Indo-Fijian reserved seat constituency, if descended, through either the male or the female line, from a person who was originally from the subcontinent of India. A person who is descended, through either the male or the female line, from an indigenous inhabitant of Rotuma should have the right to be entered on the roll for the Rotuman reserved seat constituency.

A reference to 'the male line or the female line' would allow descent to be traced back through the generations on either side of the family, obviating any question of discrimination on the ground of a person's sex and give persons of mixed descent a choice. People will only want to change their present registration if it cuts across their sense of personal identity. The number is likely to be very small.

The right to be registered on the roll for a general reserved seat constituency should remain residual, so that registration is open to all persons who have no other options or, if they have the option of registering on another roll by reason of descent through the male line or the female line, but not both, have chosen not to exercise it.

No one may be registered on the roll for more than one reserved seat, open seat or provincial constituency. The Commission's

proposals will foster a stronger sense of shared identity among all those who are registered on the roll for a particular constituency.

Some concluding comments

I now close this contribution with some comments of my own. The electoral recommendations of the Commission have been subjected to some criticism. Some of the comments have been illuminating, providing the basis for informed and vigorous discussion of the topic. Contributions to the Workshop² and chapters in this volume fall in that category. But some criticisms have been unnecessarily strident and petty, and some driven by political considerations or other personal agendas. That is to be expected, I suppose, given that the Commission's recommendations represent a significant shift away from the electoral system currently in Fiji. At the Workshop a number of views were aired. Perhaps the most persistent criticism concerned the Commission's recommendations for electing members on AV from multimember constituencies. The system had been abandoned in number of countries, it was said. Others feared that AV in multimember constituencies would throw up unpredictable results. Yet others pointed out the supposed superior qualities of other electoral systems. In response, it was said that Fiji already had multimember constituencies for the Fijian seats, and the fear of capricious results were exaggerated, even unfounded. Tomasi Vakatora reiterated the Commission's consideration that the AV in multimember constituencies was the best way to realise the vision that underlay its work: the attainment of multi-ethnic government in Fiji. If, however, there was a reluctance to go that route, then, but only then, it might be adopted in single-member constituencies. That system is widely practiced, including in Australian federal elections. AV in single-member constituencies would delay the achievement of the Commission's vision, but it was still far preferable to proportional representation systems.

I return to the point I made at the beginning. An electoral system is a means to an end, and not an end in itself. The most important objective, perhaps the overriding objective endorsed by the Commission, was to encourage the formation of multi-ethnic parties (or coalitions) and governments in Fiji that broadly reflected the multi-ethnic character of the country, that fostered nation building,

reinforced the value of integration and cross-ethnic cooperation, rather than accentuating divisions in society, that put the national interest ahead of communal interests. The Commission's considered view, a view that I have found absolutely no reason to change, was that the Alternative Vote was the electoral system best likely to achieve that objective: of taking Fiji towards a united future for all its people.

Note

1. *Vasu* means the mother's brother's son, who has a right known as *vasu* in his uncle's village to take whatever he wants from his uncle's goods.
2. 'Electoral systems in the governance of divided societies: the report of the Fiji Constitution Review Commission', 17 January 1997, National Centre for Development Studies, The Australian National University, Canberra.

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