

9

In George Speight's shadow

On 25 August 2001, Fiji once again went to the polls, under the 1997 multiracial constitution that George Speight and the Fiji military forces had declared abrogated, but which had been upheld by the High Court and subsequently by the Fiji Court of Appeal. The holding of the elections was a significant achievement in the circumstances. Nonetheless, instead of resolving the country's political difficulties and healing wounds, it ended up polarising ethnic relations even further, embroiling major political parties in an acrimonious debate about power sharing mandated by the constitution.

A record twenty-six, mostly indigenous Fijian, political parties registered to contest the elections, but only eighteen fielded candidates for the 71-seat lower house. Interim Prime Minister Laisenia Qarase's Soqosoqo ni Duavata Lewenivanua (SDL), launched on the eve of the elections, won 32 seats, deposing Mahendra Chaudhry's Fiji Labour Party who won 27. The coup-supporting Conservative Alliance Matanitu Vanua (CAMV), among whose successful candidates was George Speight himself, won 6 seats, the National Federation Party one and the breakaway New Labour Unity Party (NLUP), formed by Dr Tupeni Baba, deputy prime minister in the People's Coalition government, and independents won two each. The smaller splinter parties failed to make an impact. What was surprising was the failure of more established parties which had fared well in the past, including the Fijian Association Party (FAP), a senior partner in the People's Coalition government, and the Soqosoqo ni Vakavulewa ni Taukei (SVT), the party in power for much of the 1990s.

George Speight, awaiting trial for treason, cast a long shadow over the campaign. Indigenous Fijian political parties competed with each other to court his supporters, promising to fulfil his agenda of enshrining Fijian political paramountcy in perpetuity. Otherwise, there was little public enthusiasm for the election. The electorate was genuinely pessimistic and apprehensive. On the Indo-Fijian side, there was a pervasive feeling of fear and anxiety; the memory of May 19 was still fresh. 'Fijians will do whatever they want', a voter told me. 'What's the point of voting?' The low voter turnout—78.6 per cent—and a surprisingly large number of informal votes, indicated indifference and protest. On the Fijian side where the voter turnout was equally low, there was dismay and disillusionment at the large number of parties, with divergent and sometimes diametrically opposed agendas, despite the efforts of the Methodist Church to forge a semblance of political unity. Public confidence in the most important institutions of the state was at its lowest ebb, their reputation for professionalism, independence and integrity tainted or otherwise compromised. Among them was the police force. The *Daily Post* summed up the popular perception.

The force remains under-paid, badly equipped, lacking in skills, demoralised, lacking in a leader with the moral authority to preach to his men and women, let alone the people of Fiji. The force under Mr [Isikia] Savua has been linked with complicity in last year's political crisis. Many a police officer has said that the police did not act when they were needed during the riots in Suva city because they had not received the relevant instructions from the top (*Daily Post*, 21 August 2001).

Isikia Savua was eventually cleared of illegality and complicity in the coup by a closed tribunal headed by Chief Justice Timoci Tuivaga, but without abating public scepticism. One observer called the inquiry 'a fraud' facilitated by the chief justice, a 'person who has come under attack from legal sources in Fiji and internationally for facilitating the abrogation of the constitution and for continuing to frustrate legal challenges to the abrogation of the constitution' (*Fiji Sun*, 11 August 2001). Labour Party president Jokapeci Koroi accused Savua of having 'deliberately misled the government by giving assurances that there was nothing to worry about. Mr Savua must go' (*Fiji Sun*, 13 August 2001). Savua continued for a while as police commissioner, with a tarnished reputation, until he was posted to the United Nations as Fiji's permanent representative.

The army, too, was diminished in public esteem. It managed to restore law and order after the hostages were released from 56 days of incarceration, but not before it was shown to be infected by the dangerous virus of indiscipline, insubordination and provincialism. Members of the army's Counter Revolutionary Warfare Unit, established by Sitiveni Rabuka after the 1987 coups, was instrumental in the execution of the coup. Several senior military figures professed public sympathy for Speight's agenda but disapproved of his method, though precisely what method they would have approved they did not specify. In November 2000, a section of the army mutinied, killing five soldiers and injuring scores of others. The brutal violence that the army used to quell the mutiny remains a source of great bitterness and tension in the Fijian community—who were unable to comprehend the possibility of the Fijian army ever fighting Fijian civilians. President Josefa Iloilo granted immunity to the regular soldiers, while mutineers were tried and sentenced to various periods of imprisonment.

Another institution that lost credibility in their independence and integrity in the immediate aftermath of the coup was the judiciary, with a local daily newspaper pleading with the judges to 'wake up, grow up and, importantly, stop bickering' (*Fiji Times*, 29 August 2001). The role Chief Justice Tuivaga, played or did not play—the advice he gave the president in resolving the crisis which later proved to be unconstitutional, his early acceptance that the constitution had been abrogated, his authorship of a decree abolishing the Supreme Court—became matters of intense public dispute, leading the Fiji Law Society to call for his immediate resignation. The chief justice rebuked judges who disagreed with his interpretation or otherwise showed independence, and rewarded those who sided with him. His unexpectedly harsh attack on Justice Anthony Gates of the Lautoka High Court, who had upheld the constitution, was typical. Tuivaga accused Gates of not 'recognising and respecting the hierarchy of administrative power and authority with the judiciary of this country', and advised him to 'explore other work environment where the rules of administrative propriety do not apply' (Fiji High Court File CJ/WF/9 as cited in *Fiji Times*, 28 August 2001). Tuivaga defended himself. 'I have been chief justice for 20 years, in the driver's seat, and I know what is good for this country and what I did

was good for the country' (*Daily Post*, 1 September 2001). He had accepted the *de facto* government as 'a matter of political reality', and intervened to 'ensure that the maintenance of law and order and justice in this country was not to be frustrated by any ineffective administrative court machinery' (Supreme Court File CJ/WF/9). The Court of Appeal, however, thought otherwise.

The social costs of the political crisis were visible. These included poverty, joblessness, prostitution, growth in the population of squatter settlements fringing major urban centres, people evicted from expiring leases living in makeshift camps in Valelawa in Vanua Levu and at the Girit Centre in Lautoka, women from broken homes, single mothers, unemployed with the closure of garment factories established under lucrative tax regimes in the 1980s. Since the crisis of 2000, there was a marked increase in the suicide rate, particularly among women (*Pacnews*, 31 August 2001). Many workers suffered from pay cuts and reduced working hours, thus completing the vicious cycle of poverty and despair.

The economy, which was beginning to show signs of growth after the 1999 elections, suffered a severe downturn, with a projected 1 per cent growth rate. Foreign investment once again dried up, and many local big businesses yet again moved their financial assets overseas. A few large ones are now operating in Fiji as foreign companies. Investor confidence, severely shaken by the crisis and continuing uncertainty about Fiji's political stability, took a dive, while the economy suffered from the huge cloud over the sugar industry, which provided over 40 per cent of the country's export earnings and 15 per cent of the gross domestic product, and employed nearly 150,000 people (P. Lal 2000). The anticipated loss of preferential access to the European Union was one problem.

But the more immediate issue was the fate of farmers whose leases under the Agricultural Landlord and Tenant Act (ALTA) began to expire. The government and the Native Land Trust Board wanted ALTA to be replaced by the Native Land Trust Act (NLTA) because they saw ALTA as favouring tenants—making the termination of expiring leases more difficult and remuneration for landlords less attractive. The essential difference between the two was that NLTA provided for rolling 5–30-year leases, rather than minimum 30-year leases, giving landowners the opportunity to reclaim their land earlier if they so chose. Under ALTA,

the rent was assessed at a fixed 6 per cent of the unimproved capital value, while under NLTA, it was to be assessed at the current market value and a percentage of production, to the benefit of landowners. Other provisions of the Act generally favoured the landowners. The land problem is inevitably politicised, both by the leaders of the farming community and by those representing the landlords, to the detriment of the economy. In many cases where leases were not renewed, land was lying fallow, slowly turning to bush, while the displaced tenants, dismayed to see their life's work ruined, sought shelter in refugee camps and looked for alternative employment.

The fabric of national society was strained. While ostensibly things looked calm—people went about their business, intermingled in the workplace, on the sports field, around the *yagona* bowl, more so in parts of Fiji not directly traumatised by the events of 19 May—but hidden behind the rhetoric of multiculturalism and reconciliation lay deep suspicions and raw prejudices, more widespread now than in Fiji's recent past. People who once had genuinely moderate views sought shelter and succour in extremist ethnic camps. Many Indo-Fijians, although politically opposed to Mahendra Chaudhry, supported him as 'their only hope' against the Fijian nationalists. Many Fijians similarly supported Laisenia Qarase. Some might see the widening divide between the two ethnic groups as confirming the historical pattern of race relations in Fiji history, but that would be a mistake. The two communities have cooperated in the past; the prominent example being in the review of the 1990 constitution. And there was genuine regret on all sides at the racial turn Fiji politics had taken.

I have already said that in Fiji, race relations tend to get polarised at election times. The race card has long been a part of the zero-sum game politicians have played. A semblance of normalcy returns as political tempers cool. While relations were tense, it would be a mistake to draw a picture of two solidly united groups, at the edge, at each others' throat, ready to explode. The truth is that both the communities are internally divided by class, regional origins and culture. Not all Fijians, for instance, wanted the 1997 multiracial constitution revoked, nor Fiji to be turned into a Christian state. Some demanded special affirmative action programs for Fijians, while others did not. Some wanted George Speight and his

co-conspirators pardoned while others insisted on a proper trial. The deeper cracks, the confederacy and dynastic politics which surfaced in the aftermath of the coup, are still there, papered over for the moment. Fijian leaders recognise that the political unity of all Fijians under a single banner is an evanescent dream. Fijians rallied behind Rabuka in the early 1990s only to fragment later. Large numbers supported Qarase in 2001 but over a dozen Fijian political parties, including the newly launched the National Alliance Party, will contest the general elections scheduled for 2006.

Strong support for Chaudhry among Indo-Fijians should be read in a similar light. They rallied—and continue to rally—behind him because of the spectre of violence and discrimination that threatens them at the hand of the Fijian nationalists. But deep divisions exist. In the 2001 election campaign, more than in previous ones, there was open talk of the difference between Gujaratis and the descendants of the girmitiyas, and between North and South Indians. The National Federation Party was portrayed as a party of the Gujaratis and the South Indians. Several community leaders spoke with dismay about the damage reference to regional and cultural origins during the election campaign had done to social relations at the local village level. Whether, or how, the internal frictions and divisions manifest themselves in future political realignments would be watched with interest.

The turnout at the polls in 2001 was low; a mark of fear, apathy, indifference and protest and, possibly, the absence of fear of non-collectable fines for not voting. Many Indo-Fijian voters also stayed away because of intimidation, fearing reprisal from Fijian landlords as well as the nationalists if they voted for Labour, which everyone assumed they would. The percentage of invalid votes was a staggering 11.69 per cent compared to 8.69 in 1999. The campaign itself lacked the verve and excitement normally associated with election campaigns in Fiji. There were a few large rallies in selected centres, but most of the campaigning was done in small pocket meetings. Television advertisement played a larger role this time than before, featuring party manifestos and policy positions. There was lengthy debate among leaders of all the major parties, though this generated more heat than light. Interestingly, all the major parties used the internet, several with their own web sites, publicising

their manifestos and accomplishments. The internet was largely for overseas supporters and fundraisers as few outside the major urban centres in Fiji had access to computers. The calibre of candidates among Indo-Fijians was markedly inferior to the 1999 line-up, featuring a lacklustre list of retired schoolteachers and public servants and others looking for a second career. This was in contrast to the calibre of Fijian candidates, especially in the SDL, which featured accomplished, if politically inexperienced, professionals most of whom had served in the interim administration. Fijians saw a future in politics; Indo-Fijians did not, at least not with any expectation of taking a leading part in the nation's affairs. Many had sent their families abroad, and they themselves would migrate if they could.

The road to the August elections began with the hijacking of the Fijian parliament on 19 May 2000 holding members of the People's Coalition government hostage for 56 days. George Speight and his wide circle of supporters, defiant and uncompromising, sought to have themselves installed as the new government, preferably with the endorsement by the Great Council of Chiefs. A number of appointments to an interim administration were in fact announced but then abruptly withdrawn and lists revised when negotiations failed. The besieged president, Ratu Sir Kamisese Mara, sought, albeit unconstitutionally, to wrest control of the unfolding events, offering an olive branch to the rebels with the promise to review the constitution to take account of their concerns. He failed because the rebels saw him as a part of the problem—an aging, imperious leader unwilling to give up power, out of touch, seeking personal advantage for himself and harbouring dynastic ambitions. Unable to stamp his customary authority, Mara vacated office under armed protection on 29 May, allowing the army to impose martial law and a curfew in the urban areas.

Following Mara's resignation, the army installed a military government headed by Commodore Voreqe (Frank) Bainimarama. He became executive head of government, and was advised by a Military Court of Advisors. Their main aim was to secure the release of the hostages and the return of stolen weapons. After a long and frustrating series of meetings with the rebels, the military managed to negotiate the Muanikau Accord, which freed the hostages. The rebels were promised amnesty if

they surrendered the arms stolen from the military's armoury. But when the rebels reneged, making further impossible demands from their new holdout at Kalabu, the army, its reputation already bruised and battered by the hostage crisis, its inaction the subject of derisive comment about its much-vaunted professionalism, retaliated with a brutality that shocked the Fijian community. The army eventually subdued the rebels and established a semblance of law and order, but its brutal tactics left a legacy of bitterness among Fijians, planting the seed for a violent mutiny several months later.

On 3 July, the interim military government announced a 19-member cabinet to run the country till 2002; it hoped that by then a new constitution would be in place and fresh elections could be held under it. The military saw the main task of the interim administration as rehabilitating the economy, and drawing up the terms of reference for a new constitution review commission. The commission would 'consider particular constitutional issues of concern to indigenous Fijians', including strengthening the role of the Great Council of Chiefs 'in the national affairs of the state', a race-based affirmative action for Rotumans and Fijians, and recognition of traditional and customary laws of the indigenous community (*Pacnews*, 3 July 2001). The commission began hearings in mid August 2000, but met immediate public opposition, both for the manner in which it was appointed, by an unconstitutional interim administration without consultation with the major political parties, and for the composition of its membership. The four Indo-Fijians on it were all Christians, representing only a tiny percentage of the Indo-Fijian community, and none enjoyed the confidence of the community at large. The chair of the commission was Asesela Ravuvu, a long time advocate of Fijian paramountcy and one of the vocal hardline Fijian nationalists. His presence and unguarded utterances compromised the commission, with the Indo-Fijians boycotting the hearings *en masse*.

The commission was suspended in January 2001 following a high court ruling upholding the 1997 constitution and declaring its appointing authority, the interim administration, illegal. Nonetheless, a small four-member subgroup prepared a summary report that, for the most part, blamed the Indo-Fijians for the problems facing the Fijian people. The Indo-Fijians were characterised as *vulagi*, visitors, who should, but did

not, accept their proper culturally sanctioned role to serve, or at least be subservient to, the *tankei*, the owners of the land. Indo-Fijians used ‘democracy, equality, and human rights to discourage and outmanoeuvre Fijian political efforts and aspirations to regain that nationalism and the power which had been ceded in 1874’, the report argued. The Indo-Fijians, moreover, ‘did not consider the Fijian people’s demands for the paramountcy of their interests and the return of all government authority into Fijian hands’. The solution to Fiji’s political problems? Fijians ‘must rule it [Fiji] and feel secure that they shall not be dominated in their own house. This is the only solution to long-term political stability, peace and prosperity’. The political leadership of the country should always remain in Fijian hands, the authors argued ‘within a time frame to allow others to be eventually assimilated and accepted as Fijians’.¹ Laisenia Qarase promised to be guided by the spirit of the report, adding provocatively that since Fijians owned 83 per cent of the land, they should have proportionate dominance in parliament.

On the economic front, the government promised a number of initiatives to revive the stagnant economy. It proposed to lower the corporate tax rate for all tax payers, introduce investment and accelerated depreciation allowances, lower duty rates on construction materials and capital items, permit exporters access to world priced inputs, introduce a duty suspension scheme for all regular exporters with a record of compliance. Four months later, following the example of the post 1987 initiatives, the Qarase administration embarked on a ‘Look North’ policy, seeking export markets and fresh investment input from East Asia (*Fiji Times*, 5 December 2000). Fiji backed Japan’s effort to become a permanent member the United Nations Security Council, and supported China’s membership of the World Trade Organization. China gave the Royal Military Forces F\$1.8 million dollars, and Japanese aid similarly increased. But not for long. The financial crisis humbled the Asian tigers and the promised large-scale investments did not materialise. Given the imperatives of international financial investment, it is fair to surmise that they never will.

These initiatives were overshadowed by, or subsumed under, the interim administration’s ‘Blueprint for the Protection of Fijian and Rotuman Rights and Interests, and the Advancement of their Development’, presented to the Great Council of Chiefs by Qarase on

13 July 2000. The blueprint proposed to transfer all crown or state land to the Native Land Trust Board, set up a Land Claims Tribunal to 'deal with long-standing historical land claims' for 'land acquired for public purposes', establish a Development Trust Fund for Fijian training and education, give Fijian landowners more royalty for resources extracted from their lands, the payment determined by the cabinet and not parliament, exempt Fijian-owned companies from company tax for a period of time, reserve 50 per cent of the licences (import, permits) for Fijians as well as 50 per cent of government contracts. These initiatives were not new. Many such schemes had been tried in the past and had failed, but the administration was less concerned about the internal coherence and viability of its proposal. It was more attuned to the blueprint's appeal among Fijian voters.

In May 2001, the administration announced a 'Blueprint for Affirmative Action for Fijian Education'. Long on vision and rhetoric but short on specifics, the blueprint proposed a ten-year affirmative action program for the 'development of a new generation of indigenous Fijians, proud of their traditions and cultural heritage, and imbued with a hunger for education for individual development and success; and of a national society with indigenous Fijians competing successfully in all fields of endeavour towards national socioeconomic development'. The aim was to

...develop and transform all Fijian schools into centres of cultural and educational excellence to promote, facilitate and provide the quality education and training Fijian students need for their own individual development, and to adequately equip them for life in a vibrant and developing economy. To inculcate into Fijian parents the understanding that education is the key to success in life and to therefore place the education of their children highest on their list of priorities.

These would be realised through the establishment of an advisory Fijian Education Board, strengthening community participation, providing access to quality education and training at all levels, upgrading the qualification of Fijian teachers, mounting special programs to meet the needs of Fijian school leavers, strengthening education in rural areas, and providing for a system of review to monitor the progress of the aims of the blueprint.

As shown in earlier chapters, Fijian education has long been a national problem. Failure rates, especially at secondary and tertiary levels have

been alarming for years, despite nearly four decades of affirmative action. An estimated 90 per cent of Fijian students dropped out between 1988 and 2000. In 1988, 11,000 Fijian children enrolled in class one, but thirteen years later, only 1,247 were in form seven. There has been little proper accounting for the failure rate, and the allocation of more money would not necessarily solve the problem. The interim administration's 'racial' approach neglected certain complexities of educational activity in Fiji. Only Fijian schools, so designated, were eligible for funds earmarked for Fijian education. Yet, there were many non-Fijian schools which Fijian children attended; in some instances—Pandit Vishnu Deo Memorial School in Samabula, DAV Girls College and Suva Sangam High—they comprised the largest numbers. Yet, these schools did not qualify for special assistance, discouraging Fijian parents from sending their children to non-Fijian schools, shielding them from a competitive learning environment they would inevitably encounter later in life.

The interim administration had its critics who saw the blueprint as Qarase's ploy to pay off militant elements who were behind the 19 May event. Dr Isimeli Cokanasiga of the Fijian Association Party argued that the blueprint would 'not benefit Fijians who were hardworking, successful, talented, smart and ambitious', but those who were 'blue-blooded, losers, lazy, dumb and ambitious' (*Fiji Times*, 13 November 2001). Qarase was undeterred. His policies, backed by all the advantage of incumbency and the state purse, proved popular among Fijians and accounted for the party's victory in the elections. Buoyed by popular support and unable to form a united Fijian political front, Qarase, a politically inexperienced merchant banker of mixed record, launched his own political party, the Soqosoqo ni Duavata ni Lewenivanua, in May. Qarase targeted the Fijian voter as his first electoral priority, and brazenly committed the public purse to that end.

There was much movement and activity on the Labour side as well. Released from captivity, the members of the deposed government pleaded their cause to the international community already outraged by Speight's coup. Australia, New Zealand and the United States responded with trade and 'smart' sanctions banning coup supporters from entering their countries. In July, Labour filed a case in the Lautoka High Court before Justice Anthony Gates challenging the abrogation of the constitution. It

argued that the attempted coup of May was unsuccessful, the declaration of a state of emergency invoking the doctrine of necessity by President Ratu Sir Kamisese Mara unconstitutional, and the purported abrogation of the 1997 constitution void. The People's Coalition government remained the legitimate government 'in view of the [inability of the] interim military government and Speight's group to reach an agreement on governing the country'.² For its part, the interim administration argued that the applicant, Chandrika Prasad, a farmer fleeing terror in Muaniweni in southeastern Viti Levu, who had sought temporary shelter at the refugee camp at the Giritmit Centre, and in whose name Labour had instituted the legal proceedings, had no *locus standi* to mount the court case. His action was an 'abuse of process', 'scandalous, frivolous and vexatious'.

Justice Gates, however, thought otherwise. He agreed that the coup had failed. 'It never achieved any legitimacy', he declared, because it had breached established procedures for amending the constitution. He then turned to the contentious 'doctrine of necessity', on which the state had rested its case. The doctrine justified extra-legal intervention in exceptional circumstances, through military takeover, for instance, to preserve peace, order and a semblance of government when the state is paralysed. But it could not be used to legitimise or consolidate the extra-legal usurpation of the power of the state. 'The doctrine does not permit necessity to be used as a means of subverting the existing constitutional structure either by abrogating the existing legal order or by bypassing the path laid out for lawful amendment'. 'Whatever is done however should be done in order to uphold the rule of law and the existing constitution', Gates ruled. 'Necessity cannot be resorted to in order to justify or support the abrogation of the existing legal order. The doctrine is valid only to protect not destroy'.

The interim administration, too, was illegal, in Gates' opinion. The 'rule of law means that the suspended state of affairs and the constitution return to life after the stepping down of a responsible military power and after the conclusion of its work for the restoration of calm for the nation. The nation has much for which to be grateful to the military, and may yet have further need for its assistance to maintain stability. There is no constitutional foundation of legality for the interim administration'.

The pre 19 May parliament was still in existence. Ratu Mara still remained president. The '*status quo* is restored. Parliament should be summoned by the president at his discretion but as soon as possible'.

Gates' was a courageous decision that caught the interim administration, and most people in Fiji, by surprise. Nonetheless, to its credit, and against the advice of some hardliners, the administration agreed to appeal the decision before the Fiji Court of Appeal, Fiji's highest court after the abrogation of the Supreme Court following the May coup. The full bench met in March, chaired by Sir Maurice Casey of New Zealand, and consisting of Justices Ken Handley of Australia, Gordon Ward of Tonga, Sir Maori Kapi of Papua New Guinea and Sir Ian Barker of New Zealand. The interim administration was represented by two Queen's Counsel (Nicholas Blake and Anthony Molloy) and the respondents by Australian legal academic George Williams and the high profile human rights lawyer Geoffrey Robertson, QC. The appearance in the court of case of such a distinguished cast ensured high drama and unusual amounts of international interest.

The court first considered the state's contention that the abrogation of the constitution was justified because the electoral system—preferential voting—had produced an outcome detrimental to Fijians, that the first-past-the-post method of voting would have given a more balanced result, that 1997 constitution had weakened protection of indigenous Fijian rights guaranteed under previous constitutions, 'so that the new government under an Indo-Fijian prime minister could disregard and erode the rights of indigenous Fijians'. On the system of voting, the court concluded that under the first-past-the-post system, one of the Fijian parties, the SVT, would have won more seats (from 8 to 17), and Labour three fewer (34 instead of 37), but overall, the People's Coalition would have won 45 seats (increased to 47 with the addition of two VLV candidates to the cabinet). 'Whichever system had been used, the voting figures would have made the FLP the largest individual party by a substantial margin'. The court similarly rejected the claim that Fijian rights could be eroded by the government of the day, noting the ironclad guarantees in the constitution. No significant issue touching indigenous concerns could be passed without the consent of the Fijian people themselves, specifically without the support, in the Senate, of 9 of the

14 senators nominated by the Great Council of Chiefs. Any 'attempt by the government to change the law in relation to land or to indigenous rights by stealth was impossible under the 1997 constitution and any suggestions that it needed to be replaced on that ground cannot be substantiated'. Nor did the court uphold the doctrine of necessity as a justification for abrogating the constitution.

Had a new legal order been created by the coup? Had the revolution succeeded? The interim administration argued that it had. It was now firmly in control of the country, it claimed that the machinery of administration was functioning, and the population had acquiesced. Fiji's continued diplomatic relations with the international community also attested to its legitimacy and authority. The court ruled otherwise. Several human rights and community organisations had presented affidavits showing curtailment of basic freedoms. The existence of emergency legislation inhibiting public expression of dissent was proof enough of continuing public disquiet about events in the country. 'The people must be proved to be behaving in conformity with the dictates of the *de facto* government', the court concluded, and the interim administration had not furnished convincing evidence to support its claim, thus failing the test of acquiescence. Summing up, the Fiji Court of Appeal ruled that the 1997 constitution remained the supreme law of the country. It had not been abrogated. And the parliament had not been dissolved but prorogued on 27 May for six months. But on one issue—whether the president had in fact resigned of his own accord—the court ruled that he had, contradicting Gates' judgment. Ratu Mara was no longer the President of Fiji. The vice president, Ratu Josefa Iloilo, had assumed the office of president.

The much anticipated decision of the Court of Appeal did not create the havoc in the country that some had predicted (or hoped for). Instead, the Great Council of Chiefs, the interim administration and the military, after some public misgivings about its ability to maintain law and order, agreed to respect the decision. What was the way forward? The court's decision divided the Labour Party. One faction, led by Deputy Prime Minister Tupeni Baba, preferred a broad-based government of national unity from among the members of the deposed parliament. Baba, a politician of thwarted ambition with a shaky power base, whose strident

criticism of Mahendra Chaudhry's style was public knowledge, would lead that government with other Fijian parties, including the SVT. What Fiji needed, he said, was more breathing space to heal the wounds of the coup, not another acrimonious election in an heightened atmosphere of racial tension.

Chaudhry disagreed. He would never agree to be a part of any government that included people who were 'connected even remotely' to the coup (*Pacnews*, 5 March 2001). But some in the Labour Party tentatively explored the possibility of having the Christian Alliance, Speight's party, in a multiparty Labour government.³ The national interest, Chaudhry said, 'would best be served if we were to go for fresh elections'. Accordingly, Chaudhry advised the president to dissolve the parliament after reconvening it to deal with constitutional issues raised by the opposition parties. Astonishingly, in his letter to the president, he even agreed to reconsider the alternative vote system, of which had been staunchly opposed. 'The People's Coalition has an open mind on this and is prepared to discuss changes to bring back the first-past-the-post system' (People's Coalition government media release, 7 March 2001).

The president disregarded the advice of both the factions. Instead, he listened to the senior officers of the army who met him soon after the Appeal Court's ruling. The military expected the president to observe the spirit of the constitution, but added emphatically that 'as a matter of national interest we cannot afford to have Mr Chaudhry and his group back' (*Fiji Sun*, 4 March 2001). The army, now a central part of the Fijian political equation and the ultimate guarantor of public security, could be ignored only at the country's peril. Even Chaudhry's own colleagues agreed, including his deputy prime minister, Adi Kuini Speed, who urged her former leader to 'use good sense and realise that it is going to be very unstable if he returns as prime minister. It will be very dangerous because of what has happened' (*Fiji Times*, 5 March 2001). In an act of astounding constitutional contortion, President Iloilo swore in his nephew, People's Coalition Minister Tevita Momoedonu as acting prime minister, and asked him to advise dissolution of parliament, which Momoedonu did. Iloilo accepted the advice and Momoedonu's prompt resignation, and reappointed the Qarase's caretaker administration to prepare the country for general elections. Chaudhry challenged the

constitutionality of the president's action, but was unsuccessful.

The announcement of elections in August paved the way for the next phase as political parties geared up for elections. Fragmentation and confusion were the order of the day. The People's Coalition fractured. Tupeni Baba resigned from the Fiji Labour Party in May to form his own New Labour Unity Party, accusing his former leader of trampling on 'dialogue, compromise and consensus', of being insensitive to Fijian concerns and problems, of an absence of 'fair and equitable distribution of power' within the party. Chaudhry, Baba said bluntly, was a 'dictator' (Fiji Labour Party campaign material). The disunity among Fijians was worse. In western Viti Levu, Apisai Tora, ever-mercurial, formed yet another political party, the Bai Kei Viti, to challenge the Party of National Unity; the party that he himself had launched to contest the 1999 elections. Competing for the same vote, on an almost identical platform, they cancelled each other out, thereby decreasing western Fijian voice in national affairs both were keen to secure. The SVT regrouped under the leadership of Filipe Bole, but it was pale shadow of its former self, unsure of its identity, uncertain about its future direction, confused about its electoral tactics and strategy, and contradictory in its political pronouncements.

The Fijian Association, under its ailing leader, Adi Kuini Speed, was divided and drifting, unable to articulate a coherent vision. The Nationalist Vanua Tako Lavo Party had its predictable agenda for Fijian nationalism and political control appropriated by other 'mainstream' political parties. Among them was the newly formed Conservative Alliance Matanitu Vanua Party, conceived on the island of Vanua Levu by supporters of George Speight and the coup. The party wanted the 1997 constitution replaced with one that gave Fijian political control. 'We can't have immigrant people run the government; political control must be related to the ownership of resources that fuels Fiji', thundered one of its leaders, Ratu Rakuita Vakalalabure (*Fiji Sun*, 5 September 2001). The party rejected the ALTA, demanded greater landowner control over the exploitation of natural resources (forests, fisheries, minerals), and compensation for past government projects on alienated Fijian land. It also wanted Speight and his co-conspirators granted amnesty. Speight, the party claimed, was not a terrorist but a political prisoner, not a traitor but a hero of the 'Fijian cause', a latter-day Sitiveni Rabuka.

Laisenia Qarase's Soqosoqo ni Duavata ni Lewenivanua was the mainstream Fijian 'nationalist' party. Its unabashedly pro-Fijian agenda and deep animosity to Mahendra Chaudhry, which intensified as the campaign progressed, increased its appeal among Fijian voters. The SDL portrayed itself as the party best positioned to realise the aims of the Speight coup, trumpeting the undoubted wealth of bureaucratic and technocratic talents among the rank of its candidates. It, too, would review the constitution to entrench Fijian paramountcy. It would set up a Land Claims Tribunal to investigate land claims by landowners. The Fijian Blueprint was its manifesto for the indigenous community, and the SDL committed itself to its full implementation. And the Qarase administration blatantly used the advantage of incumbency to the maximum: practising pork-barrel politics at its worst (or best), improving roads, building bridges, donating money to schools in marginal Fijian constituencies, providing farming implements, brush cutters, outboard motors and generators (*Sunday Times*, 2 September 2001). Loyalists were placed in strategic decision-making positions in the public service and statutory organisations. The powerful Methodist Church lent the party its own considerable support, 'threatening eternal damnation for those not supportive of whomever it support[ed]' (*Sunday Times*, 2 September 2001). Well funded, sharply focused, uncompromising and strident in its defence of Fijian interests, the SDL easily out-gunned its Fijian rivals.

Apart from the advantage of incumbency, Qarase was helped by the division and lack of drive in other Fijian parties. A good example was the performance of the SVT. Its new leader, Filipe Bole, a veteran politician, adopted a moderate, multiracial stance. He defended the 1997 constitution and criticised Qarase's nationalist rhetoric. Bole also saw no problem working with Chaudhry. The party's manifesto emphasised social and economic issues—health, education, jobs, infrastructure, reforming the value-added tax system, helping first-time home buyers (*Daily Post*, 29 July 2001)—making its platform virtually indistinguishable from that of its rivals.

But many in his own party did not share Bole's vision. Among them was former SVT leader, a coup-supporting nationalist, Ratu Inoke Kubuabola, for whom there was a 'Fijian consensus that the 1997 constitution does not adequately safeguard the indigenous rights and

aspirations' (*Daily Post*, 16 August 2001). On Chaudhry, Kubuabola declared the Labour leader 'must accept reality; he is not a man of peace, he is for confrontation; he is trying to take what is not his for the taking. The reality should tell Mahendra Chaudhry why he just doesn't qualify to lead this country' (*Daily Post*, 24 August 2001). Mere Samisoni, the SVT candidate for Lami, was an ardent supporter of the Speight coup, supplying food to rebels at the parliamentary complex. Berenado Vunibobo, with nationalist leanings, was likewise linked to the Speight camp. He was, moreover, a member of the Constitution Review Commission that were lobbying for the constitution changed. The SVT also suffered the indignity of its sponsorship by the Great Council of Chiefs being severed on the eve of the elections. The party which had started with much promise and which had been in power throughout the 1990s was clearly hobbled by doubt about its purpose and identity, unable to articulate a vision that resonated with its primary constituency, the indigenous Fijians. That role had been usurped by the SDL. And the SVT's newly minted but generally unconvincing politics of moderation was undermined from within its ranks and attacked by other Fijian parties.

Labour's success in winning 16 seats was due to its own innate strengths as well as the weaknesses of its opponents. Baba was unable to entice to the NLUP other senior members of Labour equally displeased with Chaudhry's style and who had been reprimanded for indiscipline and purported insubordination (Krishna Datt and Pratap Chand, for example). Baba, a former academic prone to ponderous intellectualising, had no political base of his own, and Labour supporters accused him of treachery at a time when unity was imperative. The party's new style election campaign, featuring pop singers and football players, was ridiculed by an electorate demanding, and accustomed to, a more serious approach to political campaigning. Baba's handing out of food parcels to squatters and other urban poor, smacked of vote buying, similar to the tactic adopted by the SDL. Perhaps most damaging of all to NLUP's claim to be clean and transparent was the revelation that a convicted fraud, Peter Foster, had bankrolled the party's campaign to the tune of F\$200,000 (*Pacific Island Report*, 13 August 2001).⁴ This revelation made a mockery of Baba's call for transparency, accountability and good governance, and he paid the price. Baba lost his seat, although two of his colleagues won.

The other major threat to Labour was the National Federation Party. In 1999, NFP had won a third of the Indo-Fijian votes to Labour's two-thirds. The NFP had much ground to cover, and ultimately it was not up to the task. One problem was leadership. The retirement from politics of its long-term leader, Jai Ram Reddy, had left a huge gap. The resignation of Biman Prasad, an academic economist and newcomer to politics, just two days after being elected leader compounded the problem. His replacement, Attar Singh, a trade unionist, was unable to erase the image of a weakened, drifting party searching for a leader. The NFP's moderate and conciliatory approach, its emphasis on social and economic issues, which looked suspiciously like a facsimile of Labour's manifesto, lacked appeal in an atmosphere charged with racial tension. Chaudhry could, and did, claim the mantle of Indo-Fijian leadership.

The NFP's electoral tactic of highlighting its role in the political and economic development of the country—its role in the achievement of Fiji's independence, in the Denning Arbitration, which had caused the departure of the Colonial Sugar Refining Company from Fiji, in the negotiation of the Agricultural Landlord and Tenant Act, even its role in the successful review of the 1990 constitution—carried little weight with voters reeling from unemployment and poverty, and profoundly ignorant of history. The NFP's traditional support base had eroded over the years, captured by Labour—the sugarcane growers were with the Labour Party-affiliated National Farmers' Union, as were public servants, teachers and workers. The emigration of thousands of Indo-Fijians since the coups of 1987 had robbed the party of supporters who might have been more sympathetic to NFP's moderate stance and multiracial vision. Labour's claim that the NFP was yesterday's party, supported by rich businessmen, some of whom had allegedly supported the Speight coup, did not help. In the end, the NFP was unable to capture the imagination of people looking for a party to lead them into the future, not one harking to its past glories.

The other minor Indo-Fijian parties were similarly ineffectual. Among them was the Justice and Freedom Party, formed by Dildar Shah after the May coup. Holding the United Kingdom and Australia responsible for the introduction of Indians to Fiji and, by extension their present troubles, the party demanded compensation from them as well as

permanent residence for Indo-Fijians in Australia. The plight of Indo-Fijians in the camps in Lautoka and Vanua Levu served to heighten the appeal of their position. But the single-issue tactic failed, its cause emotionally appealing but legally unsustainable. The indentured workers had come under a contract, an agreement, which entitled them to return to India at the end of five years, at their own expense, or at the government's expense after ten. Most had chosen, voluntarily, to stay on in Fiji, acquired Fiji citizenship and participated in the affairs of the country as full citizens. To be sure, indenture was a harsh, brutalising experience, but it was not slavery, at least in the technical sense. Voters sympathised with the party's cause but rightly thought its realisation impractical.

But Labour won seats not only because of the weakness of its opponents. Chaudhry was an astute, skilful politician, perhaps the most adroit in the country, and the only Indo-Fijian political leader of national stature. Many rallied to him for that reason, just as many Fijians supported Qarase. To some Chaudhry appeared arrogant and confrontational, but his supporters saw him as strong, fearless and principled. There was an enormous amount of emotional sympathy for what Chaudhry and his colleagues had endured at the hands of the parliament hijackers: the humiliation and the beatings, the imminent threat to their lives. And yet, despite it all, they had remained undaunted. As Chaudhry said at his rallies, 'they put a gun to my head and I didn't flinch. Why should you be afraid to vote for me?'

Leadership aside, Labour's other campaign claim was its record of government. They had removed value-added tax on essential food items, generated employment (6,400 jobs) and investment (F\$300 million worth of hotel projects approved), improved infrastructure, cracked down on tax evaders, achieved a remarkable 6.6 per cent of economic growth, and F\$47 million budget surplus in just the first three months of 2000. They were overthrown not because they had failed but because some vested interests (and others who felt otherwise marginalised) felt threatened. Labour wanted to complete the task they had begun. They had done nothing wrong; they were the wronged party. The Indo-Fijian electorate listened sympathetically, understood the message and responded overwhelmingly in support, especially those who were

desperately poor and without hope. The Fijian nationalists' shrill attack on Chaudhry stiffened their resolve.

The election produced a stalemate, with neither SDL nor Labour winning an outright majority of seats. Both parties then began negotiations with the Conservative Alliance, the moderates and the independents to form a multiparty government required by the constitution. That Chaudhry was seeking a coalition with the party whose members had masterminded the coup against his government a year earlier was full of irony, but then, in 1992, Chaudhry had supported Sitiveni Rabuka, the architect of the 1987 coups. Initially, the Conservative Alliance grossly overplayed its hand by demanding amnesty for Speight and his co-conspirators, a voice in senate nominations and, most improbably, deputy prime ministership for Speight. To their credit, both Qarase and Chaudhry flatly refused the amnesty demand. Realising their strategic error, the Conservative Alliance dropped their demands and agreed to join Qarase's SDL government; political opportunism won over political principles. Qarase also successfully enlisted two independents (Savenaca Draunidalo and Marieta Ringamoto) and New Labour Unity Party's Kenneth Zinck to his side. He had formed a multiparty government, as the constitution demanded.

That, however, was not enough. The constitution (Section 99) provides that in establishing the cabinet, the prime minister must invite all parties whose membership in the House of Representatives comprises at least 10 per cent of the total membership of the house to be represented in proportion to their members in the house. If the party declined the invitation, the prime minister could then nominate members of his own party or a coalition of parties to fill the places in the cabinet.

As the leader of the largest party in parliament, Qarase was thus constitutionally obliged to invite the Labour Party to join his cabinet. This he did, reluctantly, hoping that Chaudhry would decline the invitation. According to the formula provided for allocating the number of seats in the cabinet in the Korolevu Declaration (Parliamentary Paper 15/1999), Labour was entitled to 8 of the 20 cabinet seats and SDL 12. Qarase, who had already stated that the idea of working with Chaudhry as an anathema, argued that Labour's and SDL's policies were diametrically opposed, as they indeed were, and that Labour's inclusion in cabinet would be a prescription for political paralysis.

The policies of my cabinet will be based fundamentally on the policy manifesto of the Soqosoqo Duavata ni Lewenivanua, as the leader of this multiparty coalition. Our policies and your policies on a number of key issues of vital concern to the long-term stability of our country are diametrically opposed. Given this, I genuinely do not think there is sufficient basis for a workable partnership with your party in my cabinet' (*Daily Post*, 14 September 2001).

Chaudhry, however, thought otherwise. He accepted the invitation. 'What fool in politics would like to be in opposition when he can be in government', he observed (*Fiji Times*, 11 September 2001). Personal differences between the two leaders were of secondary importance, Chaudhry wrote to Qarase. 'We believe that common conviction on rebuilding the nation in a spirit of reconciliation must supersede all else. The issue of policy difference can be resolved in a frank and fair discussion designed to reach consensus and understanding' (*Daily Post*, 17 September 2001). Qarase was unmoved. He argued now that Chaudhry had laid down conditions that he found unacceptable. Chaudhry, he said, wanted to have a hand in the allocation of cabinet portfolios. He wanted to act as 'opposition' within cabinet, thus undermining the principle of consensus and collegiality. Chaudhry denied Qarase's charge of conditionality, and pressed for urgent negotiation, pointing out that as prime minister he had invited into his cabinet parties whose policies, too, were different from Labour's but who had managed to form a coherent government. When Qarase refused, Chaudhry sought the president's intervention. But the frail president, increasingly dependent on advisors openly sympathetic to the cause of Fijian nationalism, refused, swearing in Qarase and his cabinet.

Qarase's intransigence was the predictable result of many factors. Among them is his personal antipathy to Mahendra Chaudhry. Qarase would have been able to work with another Indo-Fijian leader, his supporters say, less abrasive, less confrontational, someone like Jai Ram Reddy. But personality was only a part of the equation. Political survival was at stake too. Qarase knew that if he did not deliver on his electorally appealing but poorly costed promises to the Fijians and appease the nationalist fringe he would suffer the same fate as his predecessors. Qarase's main aim was to keep Fijians united and on his side. To that end, he worked hard to co-opt all potential Fijian adversaries and dissidents into his circle. Apisai Tora, the opportunistic western Fijian

rebel, was appointed to the senate. Ratu Tevita Momoedonu, another westerner, was appointed Fiji's ambassador to Beijing. Ratu Epeli Nailatikau, the amiable high Bau chief and a loyal deputy prime minister in the interim administration, was appointed speaker of the House of Representatives. The president of the Methodist Church, Reverend Tomasi Kanailagi, a powerful figure in the Fijian community and privately a staunch supporter of the coups, was rewarded with a seat in the senate. The nationalist chair of the Constitution Review Commission, Aselesia Ravuvu, was there as well. Ratu Finau Mara, the jobless son of the former president, was made the roving Ambassador to the Pacific Islands. The politics of patronage knew no bounds.

Meanwhile, Mahendra Chaudhry filed a motion before the Court of Appeal against the government for breach of Section 99 of the constitution. When the Court of Appeal ruled in Labour's favour, the government appealed to the Supreme Court. By the time the Supreme Court delivered its verdict, a year had passed. During this period, attempts were made, notably by the Honolulu-based East West Center, to initiate dialogue through '*talanoa*' sessions of informal consultations. Nothing happened, except restatement of hardened positions. In parliament the government continued to pursue its pro-Fijian policies, while some of its ministers indulged in inflammatory rhetoric. For instance, the minister of social welfare and women's affairs likened Indo-Fijians to 'noxious weeds' but she was not reprimanded. A plea made to the chief justice to expedite the Supreme Court case fell on deaf ears. Neither the chief justice nor the Qarase government was in a hurry for an early resolution of the constitutional crisis.

The Supreme Court heard the case on 18 June 2003 and delivered its judgment a month later (Supreme Court of Fiji Civil Appeal no. CBV0004/20025, 18 July 2003). The case relied on the interpretation of Section 99 of the constitution. The section provided, among other things, the prime minister must establish a multiparty cabinet whose composition 'should, as far as possible, fairly represent the parties represented in the House of Representatives'. The parties entitled to be in cabinet should have at least 10 per cent of the seats in the house. The prime minister could invite parties with less than 10 per cent membership of the house, but the selection would be deemed to have been from the

prime minister's own party. And, importantly, in selecting persons from other parties for appointment as ministers, the prime minister 'must consult with the leaders of those parties'. The government's case turned on narrowly technical grounds. It argued that the word 'invitation' created no entitlement for any party to participate in cabinet, that the prime minister's invitation was 'no more than a mandatory first step before the commencement of good faith negotiations for a multi-party government', and that the principles of Westminster system of absolute secrecy of cabinet deliberations and the collective responsibility of cabinet to the House of Representatives would be severely compromised in a multiparty arrangement where the parties did not pursue a common policy but instead contemplated opposition within cabinet and the government.

The Supreme Court ruled otherwise. The constitution was not an abstract impractical document, as the state had argued. It had been 'drawn up with an eye to political realities and likelihoods. The construction to be placed on it in accordance with its spirit should not be directed or heavily influenced by the possibility of circumstances which the framers may have discounted as highly improbable', it ruled. The prime minister was under precise, emphatic obligation to invite all parties that met the 10 per cent threshold to be part of the cabinet. The invitation was more than a 'mandatory first step'. 'This is not simply an invitation for their members to be there without any agenda or policies of their own. This is a provision which advances the central constitutional purpose of power sharing'.

Was a multiparty cabinet inherently unworkable? Again, the Supreme Court did not think so because cabinet deliberations were 'subject to the requirements of collective responsibility and confidentiality which are recognised in the constitution as aids to effective government'. Everyone accepted that. 'This may mean a more difficult cabinet to manage than a cabinet whose members belong to the same party or coalition that has worked out some consensus before its formation. But this is the kind of cabinet that is envisaged by the constitution and it cannot be rejected as unworkable in principle because of that difficulty'. Division of opinion in cabinet was nothing new, the court argued, and the constitution, in particular Section 99, aimed to 'encourage debate on contentious policies including debate across party lines'. Finally the court ruled that there

was an obligation on the prime minister to ‘negotiate in good faith at least to the extent necessary to ensure that his invitation is a genuine invitation and is maintained as such. An invitation issued on conditions which are incapable of satisfaction will not meet that obligation’. Political posturing that Labour had allegedly engaged in when Qarase offered the invitation was not to be construed as rejection of the offer. The spirit of power sharing which lay at the heart of the constitution had to be honoured.

The government accepted the Supreme Court ruling. The prime minister outlined three options at his disposal (*Pacific Island Report*, 24 July 2003). He could call for a fresh election, but that would not only be expensive but also would not resolve the issue at hand unless both parties agreed jointly to amend the power-sharing provision. He could ‘start with a clean slate’, resign and then, on reappointment, establish a new cabinet. The third option was to retain the present numbers and add to them the appointments from the Labour Party. Qarase rejected the second option because, with only 32 seats in a 71-member House, he could not be certain of reappointment. ‘Politics in its fundamental form is about survival. If you don’t survive, you cannot carry through on your policies and serve the people’. Nor could he jettison his other partners in the government, for that would be tantamount to political suicide. ‘The political reality’, Qarase said, ‘is that we are not free to make changes to our policies without first consulting the members of our parties, right down to the constituency level. We are bound by the trust people have placed in us’.

He settled upon the third option. He offered 14 seats to Labour in a cabinet of 36. Labour argued that it was entitled to 17 ministers, and mounted further legal challenge only to be told that the prime minister could invite members from the upper house to the cabinet in excess of those prescribed in the formula. Qarase had observed the letter of the law, but not its spirit. He offered Labour minuscule ministries with insignificant budgets: an ‘insulting offer’ Labour called it. Consultation stipulated in the constitution did not mean ‘concurrence’, Qarase argued, with Supreme Court support, and proposed to select members from the Labour party without Chaudhry’s approval. Chaudhry himself along with some of his other high profile colleagues would be kept out.

The problem in the end was not constitutional. The constitution was clear about the rules of the game. The real problem was political. Power sharing, although difficult, is achievable given goodwill and understanding and a desire to develop a common ground. But it is fraught when the major players are constantly at loggerheads about the most basic issues of public policy. Labour wanted the perpetrators of the coup to face the full brunt of the law; the government had within its ranks many who were openly sympathetic to, or actual participants in, the violence that overthrew the Chaudhry government. Labour wanted an independent enquiry into the plundering of the public purse for political purposes; the government was reluctant to probe misconduct because the politics of patronage and support for local interests aided its election. Labour wanted race-based affirmative action policies abandoned; government regarded them as non-negotiable pillar of its political agenda. The two had contrasting views on land-leasing arrangements. The list of differences is endless. Professor Yash Ghai, the eminent constitutional expert, put the issue succinctly. 'No constitution will work properly if those who operate it have regard only for sectional interests; the constitution poses a more explicit challenge than most to work in the interest of the whole nation. It speaks—are the politicians listening?' (*Sunday Times*, 16 September 2001). Evidently not.

Notes

- 1 A copy of this never publicly released report is in the author's possession.
- 2 For a lawyer's account, see Williams 2000.
- 3 A senior Labour Party member has confirmed that this option was canvassed, but no formal offer was made.
- 4 Foster was jailed for 18 months by a British court in 1996 for a fraudulent weight-loss scheme, and fled to Australia while on parole.