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Democracy and Respect for Difference: The Case of Fiji

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DEMOCRACY AND RESPECT FOR DIFFERENCE: THE CASE OF FIJI

Joseph H. Carens*

TABLE OF CONTENTS

Introduction	549
I. A Short History of Fiji	554
A. Native Fijians and the Colonial Regime	554
B. Fijian Indians	560
C. Group Relations	563
D. Colonial Politics	564
E. Transition to Independence	567
F. The 1970 Constitution	568
G. The 1987 Election and the Coup	572
II. The Morality of Cultural Preservation: The Lessons of Fiji	574
III. Who Is Entitled to Equal Citizenship?	577
A. The Citizenship of the Fijian Indians	577
B. Moral Limits to Historical Appeals: The Deed of Cession	580

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C.	Justice and Citizenship	581
1.	Who Belongs?	582
2.	Equal Citizenship	584
D.	Justice and History	585
E.	Democracy Versus Cultural Preservation?	588
IV.	Justice, Moral Relativism, and Cultural Difference	589
V.	Justice, Culture, and History: How Difference Matters	593
A.	Moral Questions	593
B.	The Moral Justification of Cultural Preservation: An Overview	594
C.	Objections	597
D.	Permissibility and Contingency in Morality . . .	598
VI.	Continuity and Change in History, Culture, and Morality: The Issue of Land	599
A.	Objections to Colonial Land Policy	599
B.	Context and Contingency in the Evaluation of the Past	601
C.	Cultural Change, Moral Legitimacy, and Contemporary Land Policy	603
D.	Is Cultural Preservation Always Paternalistic? Inalienability and Interests	606
VII.	Authenticity, Interests, and Democracy: Three Challenges to the Moral Legitimacy of Chiefly Authority	608
A.	Authenticity and Cultural Change	609
1.	Colonial Promotion of Chiefly Rule	610
2.	How Much Continuity Is Enough? Who Decides?	612
B.	Is Chiefly Authority Good for Fijians?	617
1.	The Liberal Challenge to Fijian Culture . .	617
2.	Defending Fijian Difference	620
3.	Minimal Moral Standards and the Good Life	623
C.	Democracy, Chiefly Authority, and Fijian Difference	629

INTRODUCTION

This Article is part of a larger project in which I am exploring some normative questions about political community, in particular questions about who belongs to a political community, what may be expected of members, and what moral claims outsiders may advance against the community. I will focus here on questions about the relationship between political communities and culture.

For American readers of this Journal, the phrase "preservation of minority cultures" may evoke images of Native Americans, Old Order Amish, or perhaps ethnic groups seeking to maintain aspects of their cultural and linguistic heritages in the face of the homogenizing pressures of a modern, bureaucratic, mass-consumption society. For someone writing from a Canadian perspective, as I do, it also brings to mind francophones and their demands for greater autonomy for Quebec. Looking beyond North America, one might think of Islamic immigrants in Western Europe trying to maintain their religious traditions, of Kurds in the Middle East seeking to preserve a language and culture against the pressures of four different states, of Afrikaners in South Africa trying to protect their minority culture in new ways now that the old ones have failed, or of the many ethnic groups in conflict in Eastern Europe over issues connected to the minority position of one or more groups within a political unit.

I introduce these examples of preserving minority cultures as a way of suggesting the moral complexity of the topic. Few people would either endorse or oppose every effort at cultural preservation on the list. But how should we discriminate among them? When is it justifiable to try to preserve a minority culture and by what means? And who may legitimately do so? May a political community play a role in preserving a minority culture? Ought it to do so? Or, alternatively, ought political communities to avoid becoming involved in efforts at minority cultural preservation?

These questions, like the Symposium as a whole, focus on the preservation of minority cultures, but the word "minority" evokes its opposite "majority" and hence the same sorts of questions about the preservation of majority cultures. Should it be assumed that majority cultures do not need preserving or, alternatively, that a majority will see to the preservation of its own culture? The two assumptions have significantly different implications, however, since the latter implies a political involvement in culture

that the former seems to eschew. We should pay attention, therefore, to the ways in which what we think about the responsibilities of political communities for majority cultures affect our views of their responsibilities for minority cultures as well.

To what extent should our answers to these normative questions about the preservation of minority cultures be dependent on specific political, historical, or indeed cultural contexts, and to what extent are the answers generalizable? For example, contrast the recent Canadian image of incorporating immigrants into a cultural mosaic—ostensibly aiming at the preservation of the immigrants' distinctive cultural heritages while weaving them together into a new whole—with the older American image of the melting pot—ostensibly blending people of different origins together so that the origins are not preserved in any recognizable way.¹ Leaving aside the question of whether the social realities of the two countries correspond in any way to these images, is either preferable as a general ideal of the way that political communities ought to respond to cultural differences, or is there no such generalizable ideal? Perhaps there is a range of morally permissible ideals. Does this mean that different political communities simply may choose among them on the basis of the majority's preferences, or are there other moral considerations that ought to count?

I so far have deliberately used the phrase "political community" rather than "state" in order to leave open the question of what political units might act to preserve culture. In the modern world, we tend to equate "political community" with the term "state," but many people feel stronger ties to some smaller political unit, often because they share some crucial elements of culture, like language, with the majority of those in the smaller unit but not with the majority of those in the state. For example, many francophones living in Quebec identify themselves more strongly as Quebecers than as Canadians. When I said above that the phrase "preservation of minority cultures" brought to mind francophones in Quebec, I wrote as an anglophone Canadian. Most francophones in Quebec think of themselves as members of a

1. Cf. Howard Palmer, *Mosaic Versus Melting Pot? Immigration and Ethnicity in Canada and the United States*, 31 INT'L J. 488, 488-528 (1976) (arguing that the mosaic/melting pot distinction arose largely out of differing political, historical, and economic events rather than from differing social attitudes towards assimilation).

majority culture because they think of Quebec, not Canada, as their primary political community, even though Quebec is a province and Canada a state. (Some of those who regard Quebec as their primary political community want it to become an independent state, but others do not.) At the same time, Quebecers think of their (majority) francophone culture as vulnerable and threatened because of the predominance of anglophones, not only in Canada but in North America as a whole. They therefore support vigorous political action to maintain and promote (majority) francophone culture.² So, even the categories "majority" and "minority" can be ambiguous in significant ways.

Finally, there is the question of what it means to preserve a minority culture or to try to do so.³ Sometimes those opposed to such efforts try to show that minority cultural preservation is self-contradictory or impossible in practical terms.⁴ This may be true in particular instances, but that sort of argument cannot possibly rule out all attempts to preserve minority cultures. As the examples cited in the beginning of this Article should make clear, there are many circumstances in the world today where the question of what people legitimately may do in order to preserve a culture cannot be settled by defining cultural preservation as an impossibility. Still, this sort of challenge does force people who are sympathetic to at least some efforts to preserve minority cultures, as I am, to clarify their understanding of what that entails.

Suppose that the following generalizations about culture apply to most, or all, of the minority cultures that people want to preserve: (1) cultures evolve and change over time; (2) cultures are influenced, directly and indirectly, by other cultures; (3) cultures contain conflicting elements; (4) cultures are subject to many different, often conflicting, interpretations, by both

2. See KENNETH MCROBERTS, *ENGLISH CANADA AND QUEBEC: AVOIDING THE ISSUE* 9, 40 (1991).

3. See generally Peter H. Welsh, *Repatriation and Cultural Preservation: Potent Objects, Potent Pasts*, 25 U. MICH. J.L. REF. 837 (1992).

4. In his contribution to this Symposium, Jeremy Waldron sometimes uses this sort of *reductio ad absurdum* argument to criticize attempts to preserve minority cultures. See Jeremy Waldron, *Minority Cultures and the Cosmopolitan Alternative*, 25 U. MICH. J.L. REF. 751, 763-64 (1992).

members and outsiders;⁵ (5) the extent to which a particular culture provides value and meaning to the lives of the people who participate in it may vary among the members of the culture and may itself be a topic of interpretive dispute; and (6) members of one culture may be exposed to, have access to, and even participate as members in one or more other cultures.

Can one acknowledge all these claims about cultures and still talk sensibly about preserving a culture? I think so, and I will try to say why in this Article. The claims draw our attention to important concerns about continuity and change, authenticity and authority, involvement and evaluation. I will discuss how such concerns should affect our moral reflections upon cultural preservation.

To explore these issues, I will take up the case of Fiji, a small island state in the South Pacific. Why Fiji? First, I think that it offers a compelling illustration both of the reasons why attempts to preserve minority cultures are sometimes morally justifiable and of the reasons why attempts to preserve minority cultures are sometimes morally problematic. Second, Fiji is unfamiliar, unlike the United States or Canada or the other sorts of cases that readers are likely to know. In my view, the abstract, general theories of political philosophers tend to be shaped and limited by a few key examples that the theorists use to illustrate their principles, sometimes only implicitly because they assume that their readers will have the same cases in mind. In an important recent book, Will Kymlicka argues that contemporary liberal theorists like Dworkin and Rawls are blinded by the case of blacks in the United States, wrongly extrapolating from *Brown v. Board of Education*⁶ the conclusion that special rights for minorities are always incompatible with the liberal commitment to equal citizenship.⁷ Kymlicka effectively uses the examples of aboriginals and francophones in Canada to make the case that special rights for cultural minorities may be a way of implementing a commitment to equal concern and respect.⁸ But Kymlicka's examples also limit his theoretical analysis in ways that I hope a discussion of Fiji will make clear.

5. Sometimes the disagreement will be about who is a member and who is an outsider, but often there are interpretive disagreements between members, between outsiders, or between members and outsiders where the membership status of the interpreters themselves is not an issue in dispute.

6. 347 U.S. 483 (1954).

7. See WILL KYMLICKA, *LIBERALISM, COMMUNITY AND CULTURE* 140-46 (1989).

8. See *id.* at 186-90.

To be sure, Fiji is just one more case with its own limitations and idiosyncrasies. No theorist can discuss every case, and, if one attempts to be exhaustive, one risks losing one's theoretical perspective altogether. But I think there is a lot to be gained by multiplying unfamiliar narratives if we can draw out the implications of these narratives for familiar theoretical positions. My basic strategy is to articulate our intuitive judgments about particular cases in terms of theoretical principles and to examine and criticize our theoretical principles in light of their implications for a wide range of cases.⁹

In this Article, "The Case of Fiji" is inevitably the story that I tell about Fiji. Any such narrative is an interpretation. It is bound to contain controversial and contestable elements and to reflect, in ways of which I am only partly conscious, my own particular angle of vision. Someone else would tell the story differently. But that does not mean that there is no point in my trying to tell it.

In what follows, I will first offer a capsule history of Fiji. I then will identify some of the moral questions that emerge, both for the inhabitants of Fiji and for us as observers. I will present some tentative answers to these moral questions, reflecting as I go on what this tells us about the possibilities and limits of normative theory, but also trying to note where my normative judgments rest upon features of the story that I think others would want to contest and trying to indicate how alternative readings of the history would affect the normative judgments, if at all. In general, I feel more confident about the importance of the questions I am asking than about the accuracy of my answers, more certain about the inadequacy of theories that do not take these issues into account than about the adequacy of my own theory. I will try to keep that sense in view as I proceed.

9. This bears some affinities to what Rawls calls "reflective equilibrium," although Rawls himself gives little explicit attention to the intuitive moment of this method. See JOHN RAWLS, *A THEORY OF JUSTICE* 20–21, 48–52 (1971). The principal difference is that I want to give weight not just to what Rawls calls "our considered convictions of justice," but also to our intuitive, less considered judgments about a range of relatively unfamiliar but real issues and cases. I do this on the assumption that those intuitive judgments may be shaped by relevant moral considerations that are obscured in our theories by the too familiar contours of the issues or cases about which we have "considered convictions." Part of the task of the movement between case and theory is to try to bring those relevant but obscured considerations to light and to incorporate them into our moral theory, thus refining out theoretical principles. Of course, the process of reflection may also lead us to revise our initial intuitive judgments.

I. A SHORT HISTORY OF FIJI¹⁰A. *Native Fijians and the Colonial Regime*

Fiji is a collection of islands in the South Pacific, originally settled thousands of years ago by people of Melanesian origin.¹¹

10. There is an extensive scholarly literature on Fiji, and thus inevitably much scholarly debate about how to interpret Fiji's past and present. Part I of the Article is intended to provide a descriptive background so that the reader can think intelligently about the particular theoretical questions that I subsequently address. I have tried as much as possible to present a summary overview which does not prejudice the normative discussion to follow. In other words, I hope that the account I am providing in this section would be accepted as accurate both by those whose primary sympathies lie with the efforts to preserve a distinctive Fijian way of life and by those whose primary sympathies lie with the Fijian Indians or with attempts to transform Fijian society in directions required by liberalism, capitalism, and/or democracy. The principal sources for my account in this section are the following: AHMED ALI, *PLANTATION TO POLITICS: STUDIES ON FIJI INDIANS* (1980); TIM BAYLISS-SMITH ET AL., *ISLANDS, ISLANDERS AND THE WORLD* (1988); CYRIL S. BELSHAW, *UNDERNEATH THE IVI TREE: SOCIAL AND ECONOMIC GROWTH IN RURAL FIJI* (1964); ALAN BURNS, *FIJI* (1963); I R.A. DERRICK, *A HISTORY OF FIJI* (3d ed. 1957); E.K. FISK, *THE POLITICAL ECONOMY OF INDEPENDENT FIJI* (1970); PETER FRANCE, *THE CHARTER OF THE LAND: CUSTOM AND COLONIZATION IN FIJI* (1969); K.L. GILLION, *FIJI'S INDIAN MIGRANTS: A HISTORY TO THE END OF INDENTURE IN 1920* (1962) [hereinafter GILLION, *FIJI'S INDIAN MIGRANTS*]; K.L. GILLION, *THE FIJI INDIANS: CHALLENGE TO EUROPEAN DOMINANCE 1920-1946* (1977) [hereinafter GILLION, *CHALLENGE TO EUROPEAN DOMINANCE*]; MICHAEL C. HOWARD, *FIJI: RACE AND POLITICS IN AN ISLAND STATE* (1991); BRIJ V. LAL, *GIRMITIYAS: THE ORIGINS OF FIJI INDIANS* (1983); BRIJ V. LAL, *POWER AND PREJUDICE: THE MAKING OF THE FIJI CRISIS* (1988) [hereinafter LAL, *POWER AND PREJUDICE*]; VICTOR LAL, *FIJI: COUPS IN PARADISE* (1990) [hereinafter LAL, *COUPS IN PARADISE*]; ISIRELI LASAQA, *THE FIJIAN PEOPLE: BEFORE AND AFTER INDEPENDENCE* (1984); STEPHANIE LAWSON, *THE FAILURE OF DEMOCRATIC POLITICS IN FIJI* (1991); J.D. LEGGE, *BRITAIN IN FIJI, 1858-1880* (1958); TIMOTHY J. MACNAUGHT, *THE FIJIAN COLONIAL EXPERIENCE* (1982); ALEXANDER MAMAK, *COLOUR, CULTURE AND CONFLICT: A STUDY OF PLURALISM IN FIJI* (1978); R.R. MAYACAKALOU, *LEADERSHIP IN FIJI* (1975); ADRIAN C. MAYER, *INDIANS IN FIJI* (1963) [hereinafter MAYER, *INDIANS IN FIJI*]; ADRIAN C. MAYER, *PEASANTS IN THE PACIFIC* (2d ed. 1973); JOHN NATION, *CUSTOMS OF RESPECT: THE TRADITIONAL BASIS OF FIJIAN COMMUNAL POLITICS* (1978); ROBERT NORTON, *RACE AND POLITICS IN FIJI* (1977); G.K. ROTH, *FIJIAN WAY OF LIFE* (2d ed. 1973); DERYCK SCARR, *FIJI: POLITICS OF ILLUSION* (1988) [hereinafter SCARR, *POLITICS OF ILLUSION*]; DERYCK SCARR, *FIJI: A SHORT HISTORY* (1984) [hereinafter SCARR, *FIJI: A SHORT HISTORY*]; DERYCK SCARR, *RATU SUKUNA* (1980) [hereinafter SCARR, *RATU SUKUNA*]; Ahmed Ali, *Fiji: Political Change, 1874-1960*, in *POLITICS IN FIJI* 1 (Brij V. Lal ed., 1986); Roderic Alley, *The Emergence of Party Politics*, in *POLITICS IN FIJI*, *supra*, at 28; Chandra Jayawardena, *Culture and Ethnicity in Guyana and Fiji*, 15 *MAN* 430 (1980); Brij V. Lal, *Politics Since Independence: Continuity and Change, 1970-1982*, in *POLITICS IN FIJI*, *supra*, at 74; Robert Norton, *Colonial Fiji: Ethnic Divisions and Elite Conciliations*, in *POLITICS IN FIJI*, *supra*, at 52.

11. Even discussion of the ancient history of Fiji is fraught with contemporary political overtones. Some who are critical of governmental efforts to preserve Fijian culture in the nineteenth and twentieth centuries, and especially of the centrality accorded the chiefly class in those efforts, argue that the original settlers of Fiji had a more egalitarian culture and social structure which persists, to some extent, today in Western Fiji. The strongly hierarchical orientation of contemporary Fijian culture, these critics say, comes not from the original Melanesian settlers but from later arrivals from Polynesia, who

The current population is around 715,000.¹² In the nineteenth century, Europeans began to arrive in the islands—first as traders, then as missionaries, later as commercial farmers.¹³ They formed alliances with some of the Fijian chiefs, facilitating attempts by those chiefs to centralize power.¹⁴ In 1874, as a strategy for dealing with internal political conflicts and external political and economic pressures, the high chiefs of Fiji ceded dominion of the islands to the British Crown.¹⁵ The formal Cession was unqualified, but the chiefs apparently did receive verbal assurances that the new government would keep the interests of the Fijians paramount.¹⁶ Arthur Gordon, the first governor of the colony, apparently took these assurances very seriously (to the dismay of the European settlers) and developed a number of policies to protect traditional Fijian society as he understood it.¹⁷ In particular, he instituted an administrative system for governing the Fijians through their traditional rulers and in accord with their own customs; he prohibited the sale of Fijian land; and his administrative system discouraged the employment of Fijians as agricultural workers on European plantations.¹⁸

arrived periodically as peaceful migrants but also as armed invaders a thousand years ago. See, e.g., HOWARD, *supra* note 10, at 16–18. By drawing attention to the cultural diversity within the Fijian tradition, and by linking the contemporary chiefly establishment to people who were not the original inhabitants and who used violence to establish their presence, these critics hope to undercut the claims of the chiefs to a central and legitimate place in Fijian culture and tradition.

By contrast, some of those who are sympathetic to the chiefly class and to the efforts at cultural preservation, in which the chiefly class has played a central role, present a picture of Fiji's ancient history in which the original settlers developed Polynesian culture in Fiji and neighboring Tonga, while later migrations brought different cultural elements from other parts of Melanesia. In this account, concern for status and the other elements of a chiefly culture were present from the beginning. See, e.g., SCARR, *FJI: A SHORT HISTORY*, *supra* note 10, at 1–3. While I make no attempt to settle this particular issue, I discuss below the moral relevance of historical claims about continuity and change with regard to the chiefly class in Fiji. See *infra* part VII.A.

12. See HOWARD, *supra* note 10, at 3; LAL, *POWER AND PREJUDICE*, *supra* note 10, at 15.

13. LEGGE, *supra* note 10, at 9–10, 44.

14. *Id.* at 63–67.

15. LAWSON, *supra* note 10, at 147–58; SCARR, *FJI: A SHORT HISTORY*, *supra* note 10, at 51–76.

16. MACNAUGHT, *supra* note 10, at 1.

17. Ali, *supra* note 10, at 2.

18. *Id.* at 2–3.

The colonial system that Gordon instituted to preserve traditional Fijian society transformed it profoundly. As one scholar puts it:

The regional varieties of kinship and social organization in old Fiji, the underlay of colonial reconstruction, defy summary analysis and description: suffice to emphasize here that the colonial order devised and imposed new, very much simplified principles of authority and territorial organization which may or may not have meshed with pre-existing sociopolitical realities.¹⁹

Gordon's system of administration created provinces and districts and established formal lines of authority from the village to the district to the province. He assigned chiefs to fill these positions largely, though not exclusively, in accordance with his perception of their hereditary status and rank. This scheme drew more upon the strongly hierarchical arrangements of eastern Fiji than of other regions, altering them as well, and thereby strengthening the role of chiefs in Fijian society.²⁰ Gordon also established the Council of Chiefs, a periodic assembly of the provincial leaders and other lesser officials, to advise the governor on Fijian affairs.²¹ Most Fijians and non-Fijians came to see this new group as the final authority on the interpretation of Fijian custom and tradition.

To secure the inalienability of Fijian land, Gordon and later administrators somewhat arbitrarily chose the *mataqali*, a kinship or household group, as the "authentic" land-owning unit.²² Moreover, the administrators defined the *mataqali* in law in a way that corresponded to practice in only one part of Fiji. In contrast, the previous system of land tenure had been much more complex, informal, and fluid.²³ Gordon also gave legal sanction to customary obligations such as the obligation to provide one's chief with certain goods and services (*lala*) or to work under his direction on communal projects which included such tasks as building and maintaining houses, improving the water supply, clearing land, and providing visitors with food.²⁴ More broadly,

19. MACNAUGHT, *supra* note 10, at 3.

20. LAWSON, *supra* note 10, at 68.

21. *Id.* at 69.

22. MACNAUGHT, *supra* note 10, at 9.

23. *See id.* at 9.

24. *Id.* at 5-7.

native Fijians were legally required to obey their chiefs "in all things lawful according to their customs."²⁵ To reinforce the prohibition on Fijians indenturing themselves on the plantations, he made it an offense for Fijians to leave their villages for more than sixty days without the permission of local authorities and arranged for taxes to be paid in kind and on the basis of collective assessments, rather than in cash by individuals.²⁶

Under this regime, native Fijians were participants in a distinctive culture and way of life that had significant continuities as well as discontinuities with what had preceded colonization. Most native Fijians lived in rural villages, rather than in towns or on independent homesteads.²⁷ The villages were the center of their social and economic life. The local authorities were chiefs, not Europeans. Ordinary people spent their time in the tasks connected with subsistence agriculture and their communal labor obligations.²⁸ They had little contact with the cash economy. Various aspects of the culture and of the institutional arrangements emphasized cooperation and sharing within a hierarchical framework and discouraged individual acquisitiveness or the production of surpluses. Some villages were involved in trading networks, but again these were embedded in social relationships that sharply limited the possibilities for profit.²⁹ Native Fijians placed great emphasis on courtesy and customary modes of respect, as well as on public ceremonies and festivals which the chiefs were expected to sustain.³⁰

During the first decades of colonial rule, the land was sufficiently bountiful and the population sufficiently small to support the village way of life without strain. Indeed, in the first few decades, largely because of the introduction of new diseases such as measles, the native population declined substantially.³¹ During the first decade of the twentieth century, however, the population stabilized and then began to grow again. Over time, more of the best agricultural land was devoted to commercial farming, some of it farmed by native Fijians but most of it leased to others. Population growth put increasing pressure on the remaining land. More native Fijians found it necessary to work

25. *Id.* at 43 (citing regulations in force during Gordon's governorship).

26. LEGGE, *supra* note 10, at 235–36.

27. MACNAUGHT, *supra* note 10, at 64.

28. *Id.* at 68.

29. *Id.* at 69.

30. *Id.*

31. *Id.* at 13–14.

as wage laborers, acquired a taste for goods that could only be obtained for cash, and began to move to the towns.³²

These socioeconomic changes were accompanied and furthered by changes in the colonial administrative regime. Later colonial officials did not always share Gordon's enthusiasm for maintaining this Fijian way of life. They objected to the way that it limited individual freedom and penalized enterprise. They saw the chiefs as autocrats and exploiters of the commoners.³³ And they took various steps to free native Fijians from the bonds of communalism and to grant them the rights, privileges, and obligations of other British subjects.³⁴ In the early 1900s, one governor launched a major effort to change the rules on the inalienability of land and the related assumption that unoccupied land belonged to the Fijians.³⁵ The attempt ultimately failed because Gordon, now Lord Stanmore, was still alive and had great influence with the Colonial Office.³⁶

Other efforts at administrative change were more successful. By 1912, indirect rule had formally ended and native Fijians were formally subject to the direct authority of Europeans through a system of regulations that applied only to Fijians.³⁷ But much of that system had changed too. Restrictions on mobility for men were abolished, and while restrictions on the mobility of women remained, they were not as strict as the Council of Chiefs had requested.³⁸ Taxes were to be paid by individuals in cash. Obligations to provide *lala* to the chiefs had been restricted and reduced and disobeying the chiefs on matters of custom was no longer a legal offense.³⁹ Regulations restricting the hiring of Fijian labor were largely abolished. While the legal obligation of native Fijians to contribute to communal tasks remained in place, the new freedoms made it easier to evade those obligations and some Fijians, especially the young, did so. During this period, and in the next few decades, officials devised various schemes to encourage Fijians to take up cash farming and to adopt a more individualistic, profit-seeking orientation to economic activity.⁴⁰

32. *Id.* at 102-03, 107-08.

33. *Id.* at 12, 38-40.

34. See SCARR, FIJI: A SHORT HISTORY, *supra* note 10, at 114.

35. MACNAUGHT, *supra* note 10, at 30-32.

36. *Id.* at 36.

37. *Id.* at 43-44.

38. *Id.* at 102-04.

39. *Id.* at 43-44.

40. See *id.* at 145-47.

The effects of all these changes were not as great as the colonial officials had hoped or as some native Fijian leaders had feared. It was more an erosion than a dramatic transformation of village life.⁴¹ Usually, a Fijian villager would depart temporarily, for a few months or perhaps a year or two, to work for money in the fields or on the docks. Most people eventually returned to village life. Most of the attempts to encourage individualism failed, some of them disastrously so. Just before World War II, eight out of ten native Fijians still lived in villages.⁴² Still, it clearly was becoming harder to maintain the familiar Fijian way of life.⁴³

By the early 1940s, key British officials had become persuaded that their predecessors' experiments in promoting individualism had been failures and that the Fijian communal system had more merit than they had acknowledged.⁴⁴ They reestablished a system of indirect rule for native Fijians, although they did not reimpose most of the constraints on individuals that had been removed. The official goal of this reconstituted Fijian Administration was to maintain chiefly authority and Fijian village society, working

41. *Id.* at 103.

42. *Id.* at 64; *LASAQA, supra* note 10, at 34.

43. *MACNAUGHT, supra* note 10, at 103.

44. They were persuaded in no small part by the leading native Fijian official of the time, Ratu Sir Lala Sukuna, a remarkable figure who is acknowledged by his critics as well as his admirers to have been a person of extraordinary ability and vision. Sukuna was a member of a leading chiefly family, SCARR, RATU SUKUNA, *supra* note 10, at 1, and a profound student of native Fijian custom and tradition (which is not to suggest that he was an impartial interpreter). At the same time, he had been a student at Oxford, where he was drawn to the aristocratic conservatism of Sir Henry Maine. *See id.* at 29, 57-58. Thus, he moved easily between two worlds but was skeptical about the possibility of bringing those worlds together, at least in the near future. A 1944 speech in support of the return to indirect rule illustrates his characteristic approach to the problems of political and social change in Fiji. He offered a politic acceptance of the principles of equality and democracy as ideals, but denied their immediate applicability to native Fijian society on historical grounds. (In fact, in other contexts, it seems clear that Sukuna was hostile to democratic equality in principle for the sorts of reasons that critics since Plato have always advanced: democracy is directed at the satisfaction of the unregulated desires of the masses rather than at rule for the common good by the wise few. But such a view would have been difficult to defend publicly in the midst of World War II.) Sukuna advocated a gradual, evolutionary transformation of Fijian society in a democratic and egalitarian direction, but stressed the importance of preserving the strengths of the traditional Fijian way of life in the process of transformation. In practice, his reforms and policies placed far more emphasis on preserving chiefly authority, village society, and other aspects of the Fijian way of life, as he interpreted it, than on introducing cultural and institutional changes that might make it possible for native Fijians to adapt successfully to the liberal democratic, capitalist environment that was being imposed on Fiji by historical forces that it could not have resisted successfully, even if it had had the collective will to do so. For an excerpt from the speech, see *LAWSON, supra* note 10, at 113. For a sympathetic biography of Sukuna, see generally SCARR, RATU SUKUNA, *supra* note 10.

through those institutions to raise the Fijians on to a position of equality.⁴⁵ In principle, these officials (like their predecessors, even Gordon) recognized the need for some significant transformation of Fijian life. The government had an obligation to prepare native Fijians to participate in modern economic and political institutions, including the market economy and, eventually, democratic politics. Subsistence no longer would suffice. Greater educational opportunity, economic development, and an improvement in the material conditions of life of ordinary Fijians were essential. But, in the eyes of those who instituted the new system, this transformation was to be a gradual one and was to build on the strengths of the traditional Fijian system—for example, by emphasizing cooperative enterprise and development within the context of the village system.⁴⁶

By the early 1960s, the tide had swung again, at least to some extent. Two influential reports, both commissioned by the government, claimed that the Fijian Administration had proved far more effective at preserving the communal system of village life, including chiefly authority, than at fostering economic development for native Fijians.⁴⁷ In response to these criticisms, the remaining legal obligations to contribute labor to communal projects were abolished, electoral mechanisms were introduced in order to make local governmental authorities more accountable to ordinary Fijians, and new projects were introduced to encourage more native Fijians to establish themselves as individual entrepreneurial farmers.⁴⁸

B. *Fijian Indians*

When the Fijian Administration was reconstituted in 1945 in order to bring Fijians onto terms of equality,⁴⁹ the equality at which the native Fijians aimed was not only equality with

45. Ali, *supra* note 10, at 15–16.

46. *See id.* at 15–16; BAYLISS-SMITH ET AL., *supra* note 10, at 68–72.

47. LASAQA, *supra* note 10, at 156–57.

48. *See* BAYLISS-SMITH ET AL., *supra* note 10, at 74–76; MACNAUGHT, *supra* note 10, at 157–58; Ali, *supra* note 10, at 23–25. The reports made even stronger recommendations regarding land reform and the reform or abolition of the separate system of administration for native Fijians, but these recommendations were strongly opposed by the Council of Chiefs and were not adopted. *See* LASAQA, *supra* note 10, at 156–57, 163 (describing the chiefs' perspective on the reports).

49. Ali, *supra* note 10, at 15–16.

European colonists. By that time, native Fijians were no longer the majority in their own land, and they were very conscious of the economic and social progress of the group that was—the Fijian Indians.⁵⁰

When Fiji became a British colony, maintaining the Fijian way of life was not the only concern of the colonial government. The European farmers wanted labor for their plantations. Since the government had precluded the use of native Fijians (to the intense displeasure of the planters), some alternative source had to be found. To satisfy these demands, Gordon arranged for the importation of indentured workers from India, a system that finally ended in 1916 as a result of criticisms from India.⁵¹ Most of the workers stayed on after their labor contracts had expired, taking up agriculture on their own. There was also a small but steady stream of free immigrants from India, who came to set up small businesses or to engage in commercial farming. By 1921, Indians comprised thirty-nine percent of the Fijian population.⁵² By the mid-1940s, Indians outnumbered native Fijians, largely because of higher birth rates and lower mortality rates,⁵³ trends that continued until about the mid-1960s when the Fijian Indians constituted about fifty-one percent of the population and native Fijians about forty-six percent.⁵⁴ Since then, the relative difference between the two groups has

50. Most scholars who write about Fiji, including ones who are themselves of Fijian Indian descent or who are clearly sympathetic to Fijian Indians, distinguish between Indians and Fijians without any suggestion that this sort of terminology might be sensitive, although Mayer noted in the preface to his 1963 book that the term "Indo-Fijian" was adopted by a 1961 Commission and seemed preferable to "Fiji Indian" as a way of accurately identifying the status of the members of this community. See MAYER, *INDIANS IN FIJI*, *supra* note 10, at viii. A few recent scholars have adopted this term. I have followed majority usage, though I have tried for the most part to speak of native Fijians and Fijian Indians rather than simply Fijians and Indians, in part as a way of acknowledging the claims of Indian immigrants and their descendants to belong in Fiji. See *infra* part III. On the other hand, a graduate student at the University of Toronto, who grew up in Fiji and emigrated with his family to Canada, told me that in the circles he knew, people thought of themselves as "Indians" and would be insulted even to be called Fijian Indians, much less Indo-Fijians.

51. GILLION, *FIJI'S INDIAN MIGRANTS*, *supra* note 10, at 1-18, 164-89.

52. Ali, *supra* note 10, at 13.

53. *Id.* at 16.

54. LAWSON, *supra* note 10, at 172. I should note that Lawson's figure of 46% for native Fijians includes other Pacific Islanders and Rotumans who are sometimes treated as separate categories. Without them the figure for native Fijians would be 44%. See Ralph R. Premdas, *Ethnic Conflict Management: A Government of National Unity and Some Alternative Proposals*, in *POLITICS IN FIJI*, *supra* note 10, at 107, 119.

narrowed greatly, largely because of the greater emigration of Fijian Indians during the 1970s and 1980s.⁵⁵

The experience of the Indian immigrants was, of course, very different from the experience of the native Fijians. The indenture system was hard and degrading. It was impossible to maintain traditional Indian cultural patterns and values, especially the religiously sanctioned caste system, which required the careful separation of castes from one another in occupations, marriages, living arrangements, and many other aspects of social life. On the ships and plantations, these traditional distinctions largely disappeared.⁵⁶ New patterns of social differentiation eventually emerged, but on different bases. Religion was far less central to Indian social life in Fiji than it had been in India.⁵⁷ The Indians in Fiji emphasized more secular goals like material prosperity, social mobility, and individual achievement. They tended to focus on economic activity. This is not to say, however, that they abandoned Indian culture altogether.⁵⁸ In language, religion, dress, and social practices, the Fijian Indians maintained and preserved a distinct identity that clearly marked them as culturally different from both native Fijians and Europeans.⁵⁹

Upon being released from indenture, many of the Indians set up independent households on land leased from native Fijians.⁶⁰ The Indians engaged in commercial, rather than subsistence, agriculture, especially in growing sugar cane.⁶¹ Often they hired native Fijians as day laborers; sometimes these workers were the ones from whom the Indians were leasing the land.⁶² Occasionally, native Fijians refused to renew leases with the intent of engaging in commercial farming themselves.⁶³ But these attempts rarely were successful, and the Indian tenant farmers complained bitterly about the unfairness and insecurity created by refusals to renew leases. More politically effective complaints

55. BAYLISS-SMITH ET AL., *supra* note 10, at 151–53. The most recent census was in 1986. It reports native Fijians (not including other Pacific Islanders and Rotumans) as 46.2% of the population and Fijian Indians as 48.6%, *see* LAL, POWER AND PREJUDICE, *supra* note 10, at 15, but the gap undoubtedly has narrowed further since then because many Fijian Indians have emigrated since the coup, *see* SCARR, THE POLITICS OF ILLUSION, *supra* note 10, at 120.

56. *See* GILLION, FIJI'S INDIAN MIGRANTS, *supra* note 10, at 122–24.

57. *Id.* at 124–25.

58. *Id.* at 124.

59. *Id.* at 122–25.

60. NORTON, *supra* note 10, at 10.

61. *Id.*

62. *Id.*

63. Lal, *supra* note 10, at 81–82.

came from the Australian company holding a monopoly on sugar refining in Fiji, which feared a disruption in the orderly supply of sugar cane.⁶⁴

In 1940, in response to these complaints, the government with the agreement of the Great Council of Chiefs set up the Native Land Trust Board to control "all native land not required for immediate use and to administer such land in the best interests of the Fijians."⁶⁵ In practice, this meant that most of the land stayed in the hands of the Indian tenant farmers because they could pay the rent. Despite ongoing insecurities about long-term leases (which remain a crucial political issue today), Fijian Indians came to dominate commercial farming (replacing the Europeans) and small retail trade. Fijian Indians eventually took over significant parts of the transportation and construction industries as well.⁶⁶ Because the Fijian Indians also placed great emphasis on the acquisition of higher education, they filled more of the professions and many white-collar jobs.⁶⁷ Overall, Fijian Indians became much more successful economically than native Fijians.⁶⁸

C. Group Relations

At the beginning of the colonial period, there was almost no contact between native Fijians and the Indians who were brought in as laborers.⁶⁹ Contact increased a bit over time as the Indians left the plantations and set up independent homesteads, leasing land from the Fijians, or established small businesses which supplied goods to the Fijians.⁷⁰ Still, the dominant pattern was, and still is, one of separateness, a pattern reinforced by colonial policies.⁷¹

The gulf between the two groups is enormous. Fijians and Indians speak different languages. The native Fijians speak Fijian, the Fijian Indians mainly Hindi, although most members

64. GILLION, CHALLENGE TO EUROPEAN DOMINANCE, *supra* note 10, at 190–92.

65. *Id.* at 191.

66. Ali, *supra* note 10, at 16; Lal, *supra* note 10, at 82–83.

67. Lal, *supra* note 10, at 85.

68. Ali, *supra* note 10, at 16.

69. GILLION, CHALLENGE TO EUROPEAN DOMINANCE, *supra* note 10, at 13–14.

70. NORTON, *supra* note 10, at 10.

71. GILLION, CHALLENGE TO EUROPEAN DOMINANCE, *supra* note 10, at 13–14; Ali, *supra* note 10, at 8.

of both groups also speak English.⁷² They have different religions. The native Fijians are mostly Christians, having been converted in the nineteenth century. The Fijian Indians are predominantly Hindu, although a significant minority (fifteen percent) are Muslims.⁷³ Cultural practices with regard to diet, marriage, and family relationships also differ. Occupations tend to be dominated by one group or the other. In towns they live in different neighborhoods. There is almost no intermarriage between the groups, and there are few social friendships except occasionally at the elite level. Formally, the educational facilities and teachers are now shared in common, but there are two teachers' unions, one for each group.⁷⁴ Most unions and private associations are formally open but dominated by one ethnic group or the other. The army is composed overwhelmingly of native Fijians.⁷⁵

These social differences are accompanied by mutual suspicion and contempt. Racial stereotypes are pervasive. Native Fijians regard Fijian Indians as greedy, selfish, and cunning. Fijian Indians see native Fijians as lazy, uncivilized, and dupes of traditional authorities.⁷⁶ But despite these mutually hostile attitudes, there has been relatively little overt racial conflict. Most interactions occur in commercial settings and are marked by common courtesies. The extreme separation between the two groups has limited the arenas of competition and thus reduced the likelihood of conflict. Again, this is changing as more native Fijians seek advanced education and economic opportunities.⁷⁷

D. Colonial Politics

In politics, as elsewhere, the differences between native Fijians and Fijian Indians have been profound. From the early 1920s, Indians in Fiji agitated for equal citizenship among all the inhabitants of Fiji and a common franchise. In these early stages,

72. See Premdas, *supra* note 54, at 122-23.

73. *Id.* at 122, 124.

74. *Id.* at 123.

75. Hugh Tinker, *Fiji: A Post-Colonial Plural Society*, in THE MINORITY RIGHTS GROUP REPORT NO. 75: FIJI, 3, 4 (The Minority Rights Group ed., 1987).

76. See GILLION, CHALLENGE TO EUROPEAN DOMINANCE, *supra* note 10, at 14-15; LAL, POWER AND PREJUDICE, *supra* note 10, at 59; see also Norton, *supra* note 10, at 56 (stating that animosity between the two groups is "evidenced in the derogatory stereotypes many Indians and Fijians hold of one another").

77. Lal, *supra* note 10, at 85-88.

the focus of their demands was on the Europeans who had political rights and political power, not the native Fijians who likewise were excluded from the franchise. The Fijian Indians appealed both to a historic promise of equal treatment made at the beginning of the indenture system and to general principles.⁷⁸ The British offered only modest concessions, granting a limited franchise to elect three Indian members to a Legislative Council which had six elected European members and three appointed Fijian members.⁷⁹ The Indians objected that any assignment of seats on the basis of race was discriminatory and unjust, and that a system which gave the Europeans such a disproportionate share of power was patently unfair. They continued to press their demands for equality in whatever fora they could find. During World War II, for example, Indian leaders urged their followers not to serve in the army unless they were given the same pay and treatment as European soldiers.⁸⁰

During the postwar period, Fijian Indian leaders urged that Fiji adopt a system of self-government consistent with democratic principles.⁸¹ In the early 1960s, as it became clear that some sort of expanded electoral system would be introduced in Fiji as a step towards self-government, they organized a political party, the Federation Party (later the National Federation Party or NFP), which attracted the vast majority of Indian voters, but very few native Fijian or European voters, for the next two decades.⁸²

The native Fijian political experience was quite different. Early on, the Fijian leaders expressed fear of Indian political power, indeed Indian domination, even before Fijian Indians outnumbered native Fijians. As the population trends became clearer, Fijian fears increased.⁸³ Unlike the Fijian Indians, the native Fijian leaders generally did not resent European political superiority. They had come to trust that the colonial government indeed would put Fijian interests first and would interpret these interests as requiring the maintenance of traditional chiefly authority.⁸⁴ To be sure, there had been conflicts between Fijians

78. A document known as the "Salisbury Despatch" was the basis of the Fijian Indians' claim that there was a promise made. See LAWSON, *supra* note 10, at 129-30.

79. *Id.* at 141-42.

80. See GILLION, CHALLENGE TO EUROPEAN DOMINANCE, *supra* note 10, at 177-78.

81. Ali, *supra* note 10, at 20-22.

82. LAWSON, *supra* note 10, at 176-77; Alley, *supra* note 10, at 42-45.

83. Ali, *supra* note 10, at 7, 12-14.

84. *Id.* at 8.

and the European settlers who had pressed during the early years of the colony for policies and institutions more favorable to European interests. But, in the 1930s, the Europeans too began to feel threatened by the Indians and saw the strategic advantages of alliance with the native Fijians.⁸⁵ Previously, the Europeans had seen the principle of the paramountcy of Fijian interests as an obstacle to "rational" development (for example, with regard to land ownership); now they treated it as a rallying cry. So a political alliance between Europeans and native Fijians began to develop.⁸⁶

Native Fijian leaders were content with Fiji's status as a colony; in fact, the British pushed them towards independence. Fijian leaders did not yearn for democracy. They feared it as corrosive of traditional patterns of rule.⁸⁷ Native Fijian leaders themselves had insisted on the maintenance of a separate Fijian administration.⁸⁸ They did not press for the franchise, and they resisted it until it became inevitable.⁸⁹

During World War II, native Fijian leaders, in contrast to the Fijian Indian leaders, encouraged young men to join the British army without demanding equal pay or equal treatment with the Europeans. A substantial number volunteered, fought bravely, and returned to form the core of the Fijian armed forces. This historical experience was a major factor contributing to the continued predominance of native Fijians in the Fijian armed services.⁹⁰

So far I have spoken primarily about the native Fijian leaders. What about ordinary native Fijians? Did they share these attitudes? Certainly some did not. Some native Fijians resented the Fijian administration which constrained them in ways that the other inhabitants of Fiji were not.⁹¹ Some resented the privileges of the Europeans—their social, political, and economic domination. But when it came time to vote, they supported their chiefs.⁹² The native Fijians were enfranchised at the national level in 1963,⁹³ and, in the limited elections that

85. LAWSON, *supra* note 10, at 140–41.

86. *Id.*

87. *Id.* at 159; see Alley, *supra* note 10, at 28.

88. LAWSON, *supra* note 10, at 91–93.

89. See *id.* at 158–94; Alley, *supra* note 10, at 28–40.

90. See LAL, POWER AND PREJUDICE, *supra* note 10, at 55; MACNAUGHT, *supra* note 10, at 148–51.

91. See LAWSON, *supra* note 10, at 117–23; MACNAUGHT, *supra* note 10, at 110–11.

92. See LAWSON, *supra* note 10, at 165–67, 180–83; Alley, *supra* note 10, at 47–48.

93. MACNAUGHT, *supra* note 10, at 158.

followed, they supported their traditional rulers even in the face of some challenges by other Fijians.⁹⁴

E. Transition to Independence

The political reforms introduced by the British made it clear that constitutional change and ultimately independence were inevitable in Fiji.⁹⁵ In response, the Fijian chiefs began to organize a political party. Initially, the primary goal of the party was to persuade the British to adopt a constitutional system that would protect Fijian interests by entrenching native Fijian political superiority, including a formal guarantee that native Fijians would have an absolute majority in the legislature.⁹⁶ When it became clear that the British would not provide such a guarantee, the native Fijian leader Ratu Mara developed a strategy of creating a larger party with at least some support in all the ethnic communities of Fiji by creating alliances with other political organizations, including that of an Indian political rival of the National Federation Party.⁹⁷ The central core of support, however, was the native Fijian community. This party, the Alliance Party, has received the vast majority of native Fijian votes from the beginning of native Fijian participation in electoral politics.⁹⁸

In 1965, a constitutional conference was held in London with the participation of representatives of the three key ethnic groups in Fiji.⁹⁹ The British had hoped to develop an institutional arrangement for elections that would be acceptable to all, but the Fijian Indians insisted on a common electoral roll for voters and candidates, which the native Fijians and the Europeans rejected completely. The British finally introduced a modification of the previous arrangement of communal voting by increasing the number of seats for Fijians and Indians and by including some

94. LAWSON, *supra* note 10, at 166–67, 180–83.

95. Alley, *supra* note 10, at 28–29.

96. *Id.* at 32–33.

97. *Id.* at 34–40.

98. See LAWSON, *supra* note 10, at 207–08; Lal, *supra* note 10, at 95–96. The Alliance Party's hold on Fijian voters was challenged seriously only once—in 1977, by the Fijian Nationalist Party, which took a much harder line on the issue of Fijian superiority and indeed demanded the deportation of Indians from Fiji to India. See *infra* text accompanying notes 124–25.

99. LAWSON, *supra* note 10, at 171.

seats in which the candidates had to come from a specific community (Fijian, Indian, or "General," that is, other races), but all voters could vote for them.¹⁰⁰ The NFP denounced the arrangement because it continued to provide a strikingly disproportionate number of seats to the European population and maintained the principle of racial identification of all candidates.¹⁰¹ In the subsequent election in 1966, the NFP won all nine of the Indian communal seats but lost all of the "cross-voting" seats.¹⁰² Overall, the Alliance won twenty-three seats and gained enough of the Indian vote to give some credence to its claim to be a multiracial party, though not enough to call into question the credentials of the NFP as the representative of the Indian community.¹⁰³

The immediate aftermath of the 1966 election was marked by confrontation and bitterness. The Indian representatives soon boycotted the Legislative Council. Their seats were declared forfeit, and by-elections were held in 1968 in an atmosphere of racial tension and threats of violence.¹⁰⁴ The NFP again won all the seats.¹⁰⁵ Then things changed very quickly. Leaders of both groups seem to have become concerned about the possibility of deep and widespread racial confrontations. In addition, the leader of the NFP died and was replaced by someone more inclined to compromise. The leaders of the two parties engaged in discussions which led quickly to a new constitution and independence in 1970.¹⁰⁶

F. *The 1970 Constitution*

The new constitution, like the old, was built upon the principle of racial representation. It established a bicameral system based upon the Westminster model, but with a special role for the Upper House or Senate. The Senate had twenty-two members: seven nominated by the Prime Minister, six by the Leader of the Opposition, and one by the Council of Rotuma. The remaining

100. *Id.* at 171-72.

101. *Id.* at 172-73.

102. *Id.* at 176, 180.

103. *See id.*

104. *Id.* at 181-83.

105. *Id.* at 183.

106. *Id.* at 184.

eight were nominated by the Council of Chiefs, and they had effective veto power over an important range of legislation. No substantive changes could be made with regard to citizenship, the composition of parliament or the judiciary, or key legislation affecting native Fijians without the support of three-quarters of both Houses.¹⁰⁷ In addition, legislation affecting "Fijian land, customs or customary rights" required the support of at least six of the eight Council of Chiefs nominees.¹⁰⁸ Thus, the Senate institutionalized protections for chiefly authority and established Fijian rights and interests in key areas.

The House of Representatives had fifty-two seats. For twenty-seven of these seats, the communal seats, both the candidate and the voters were segregated by race. Thus, the Fijians had twelve seats for which only Fijians could vote, the Indians twelve seats for which only Indians could vote, and those who were neither Fijian nor Indian had three seats reserved for their voters. For the other twenty-five seats, the national seats, the candidates were to be selected on the basis of race, but elected by voters of all races. Of these, ten seats were reserved for Fijians, ten for Indians, and five for the "General Electorate."¹⁰⁹

This complex system was apparently designed with two goals in mind. First, the communal seats were intended to guarantee that each of the major ethnic groups would have some representatives looking out for its interests (as defined by the voters within the group itself).¹¹⁰ Second, the national seats were intended to encourage political parties to form alliances across racial lines.¹¹¹ For example, the NFP, which appealed primarily to Indians, had to find native Fijians willing to run under its banner in order even to contest the Fijian national seats in constituencies where Fijian Indians constituted a majority of the voters. It followed that each major party was likely to have members in its caucus who did not belong to the dominant racial group in the party.¹¹²

On the whole, the system appears to have achieved the first goal but not the second, at least not in a substantive sense. It is true that both parties nominated and elected candidates from the other racial group, but these candidates had only a marginal

107. LAWSON, *supra* note 10, at 188; Lal, *supra* note 10, at 76-77.

108. FIJI CONST. § 68(2) (1970), reprinted in 1 THE LAWS OF FIJI 17, 58 (Harold Picton-Smith ed., rev. ed. 1978).

109. LAWSON, *supra* note 10, at 187; Lal, *supra* note 10, at 76.

110. See LAWSON, *supra* note 10, at 195; Lal, *supra* note 10, at 76.

111. See LAWSON, *supra* note 10, at 172.

112. See *id.* at 194.

impact on the policies, rhetoric, and voter support of the parties.¹¹³ A native Fijian elected almost entirely with Indian votes was simply not a credible representative of the Fijian community; so too for Fijian Indians elected with Fijian votes. The major exception to this situation occurred when the candidate represented some disaffected subgroup; for example, Indian Muslims sometimes supported the Alliance Party rather than the Hindu-dominated NFP.¹¹⁴

The first election under the new constitution came in 1972, and, as in 1966, the results were a substantial victory for the Alliance Party, which won thirty-three of the fifty-two seats. Again, voting was divided overwhelmingly along ethnic lines, but the Alliance Party was able to make significant inroads into the Fijian Indian vote, averaging almost twenty-four percent of the vote in the Indian communal seats, and perhaps even more in some of the cross-voting national constituencies.¹¹⁵ In addition, the Alliance won four of the five seats reserved for candidates from the "General Electorate." By contrast, the NFP was able to win only about four percent of the native Fijian vote in the Fijian communal seats and perhaps as much as ten percent in the cross-voting seats. It fared little better with the voters from the "General Electorate."¹¹⁶ For the Alliance Party, then, the results of this first election suggested that the 1970 constitution would guarantee it continued political success. So long as it could maintain its solid support among native Fijians and the General Electorate, it seemed virtually to be assured of a parliamentary majority with only modest support from Fijian Indians.¹¹⁷

There were, however, two flaws to this way of thinking: one of principle and one of practical judgment. In the negotiations leading to independence, the two major parties had agreed that

113. *See id.* at 197.

114. *See id.* at 145-47.

115. *Id.* at 198-99.

116. *Id.*

117. The Alliance Party could count on the 12 Fijian communal seats and the three seats controlled by voters from the General Electorate. *See* LAWSON, *supra* note 10, at 198. In addition, half of the national cross-voting constituencies presumably would have a majority of voters who were native Fijians or General Electors, because these groups constituted roughly half of the electorate. In fact, because of the geographical separation of the two major ethnic groups, *see* Premdas, *supra* note 54, at 123, 125, most of the constituencies were dominated by one group or the other, with only a few likely to offer any opportunity for a close contest, even if the Alliance Party's support from Fijian Indian voters should decline. The three General Electorate seats thus provided a crucial buffer in the event that the Alliance Party should lose one or two of the constituencies that were closely divided between voters from the two major ethnic groups.

the arrangement for the House of Representatives would be regarded as an interim arrangement, valid only for the first general election.¹¹⁸ Both parties' leaders agreed to the appointment of a Royal Commission to work out a permanent electoral system for the House.¹¹⁹ It recommended that the system of communal seats be retained because ethnic identity was such a deep and pervasive feature of Fijian society that it was essential to provide some sense of security to whichever major group was in the minority and to the smaller minorities as well.¹²⁰ But the commission also recommended that the racial restrictions on the candidates for the twenty-five national seats be removed, and that five multimember constituencies be established and elected based on Single Transfer Vote. Apparently, the commission believed that this approach offered some hope for transcending the pattern of racially divided politics.¹²¹ It was also clearly a step in the direction of the common roll which Indians had been demanding for decades. The governing Alliance Party rejected the recommendations, partly out of the long-standing Fijian antipathy to a common roll and partly because the Alliance Party had been successful under the "interim" arrangement and the political implications of this new proposal were unclear. The leader of the NFP regarded this rejection as the betrayal of a moral commitment to accept the recommendations of the commission, and relations between the two parties once again deteriorated.¹²²

The Alliance Party's judgment about the advantages of the prevailing arrangement proved flawed in the next election when its hegemony over the native Fijian vote was challenged. One challenge came from a western Fijian chief who represented the long-standing grievances of native Fijians from that region against the eastern establishment. He managed to win the Fijian communal seat in his region.¹²³ The other challenge came from the formation of the Fijian Nationalist Party and was far more serious in terms of its potential to make inroads among the entire native Fijian electorate. Adopting slogans like "Fiji for the Fijians," this party advocated Fijian supremacy and even the

118. Lal, *supra* note 10, at 77.

119. This commission, the Street Commission, was appointed in 1975. *See id.* at 78.

120. *See id.*

121. *Id.*

122. *Id.* at 77-79.

123. LAWSON, *supra* note 10, at 211.

deportation of the Indian population.¹²⁴ The Fijian Nationalist Party received considerable popular support in the election of March/April 1977, winning one of the Fijian communal seats, gaining an average of almost twenty-five percent of the vote in the Fijian communal seats overall, and splitting Fijian ranks in some of the cross-voting national seats.¹²⁵ To meet this challenge, the Alliance Party adopted much stronger ethnic rhetoric in its appeals to native Fijians. This tactic and fear of the Fijian Nationalist Party drove some of the Fijian Indian voters away from the Alliance Party, reducing its support from twenty-five to fifteen percent.¹²⁶ The result of these dynamics was that the NFP emerged with twenty-six seats to the Alliance's twenty-four and one apiece for the two dissident Fijian groups.¹²⁷ The Alliance Party's ability to maintain so many seats despite these challenges to its base is indicative of the advantages of the existing system for the Party. Infighting and political ineptitude prevented the NFP from forming the new government,¹²⁸ but the lesson was clear. The existing constitution did not guarantee native Fijian control of parliament.¹²⁹

G. The 1987 Election and the Coup

When the NFP failed to form a government quickly in 1977, a caretaker government was established and new elections called which the Alliance Party won handily, due to great divisions within the NFP and the return of most native Fijian voters to its camp.¹³⁰ It won again in 1982, but with a reduced majority of only four seats.¹³¹ In the wake of that election, the Council of Chiefs passed a resolution calling for the reservation of two-thirds of the seats in the House of Representatives and of the positions of prime minister and governor general for native Fijians.¹³²

124. *Id.* at 205.

125. *Id.* at 209, 213.

126. *Id.* at 209-13.

127. *Id.* at 209.

128. *See id.* at 214-15.

129. *Id.* at 201-20.

130. The Alliance Party successfully argued that disunity among native Fijians would give victory to the party of the Fijian Indians. *See id.* at 217-19.

131. *Id.* at 231-32.

132. *Id.*

In 1985, the Fiji Trade Union Congress formed a new Labour Party with a native Fijian, Timoci Bavadra, as its leader. The two major parties had both adopted multiracial rhetoric at times in the past, but had built their electoral bases and constructed their strongest electoral appeals on ethnic grounds. By contrast, Labour's ultimate goal was to make common cause among the disadvantaged in Fiji, both native Fijians and Fijian Indians. To this end, it criticized both existing parties as dominated by economic and social elites insensitive to the concerns of ordinary people. It advocated a democratic socialist program that became more moderate over time but was clearly to the left of the other parties. As part of its program of social reform, the Labour Party explicitly attacked the existing administration of native lands, charging that it served primarily the interests of a privileged few.¹³³

Despite its avowed multiracialism, the leadership role of some native Fijians in the party, and its appeal to some urban middle class native Fijians, Labour drew most of its initial strength from Fijian Indians, in part because the NFP, the traditional home of Fijian Indian voters, was still divided and in disarray and in part because many more Indians than native Fijians belonged to the trade unions which had founded the party. Moreover, most of its criticisms were aimed, not surprisingly, at the government and the party that had been in power for the previous fifteen years. Equally unsurprising, the Alliance Party labelled it an Indian party, arguing that Bavadra and other native Fijians in leadership roles were figureheads, fronting for Indian interests.¹³⁴ This argument was all the easier to make when the Labour Party entered a coalition with the remnants of the NFP to contest the 1987 election. Labour entered the coalition because it feared that running separately would split the anti-Alliance vote and guarantee a sweeping Alliance victory. Labour saw defeat of the Alliance as the top political priority, and the NFP agreed to accept a lesser role in the Coalition.¹³⁵

The Coalition won the 1987 election, taking twenty-eight seats to the Alliance's twenty-four.¹³⁶ As in previous elections, the

133. See HOWARD, *supra* note 10, at 146–206; LAWSON, *supra* note 10, at 234–41.

134. LAWSON, *supra* note 10, at 234–35.

135. See *id.* at 239–41.

136. *Id.* at 250; see also HOWARD, *supra* note 10, at 223–24, 377–99 (providing a more detailed breakdown of the various Fijian voting districts). Of the 28 elected Coalition representatives, 19 were Fijian Indians, 2 were General Electors, and 7 were native Fijians. *Id.* at 223. Fourteen of the total came from Labour and 14 from the NFP. The

voters divided largely along ethnic lines. Although it is not possible to know exactly the ethnic voting patterns in the cross-voting constituencies, it is easy to see in the communal seats. In those, the Coalition gained, on average, only about 9.6% of the native Fijian vote.¹³⁷ The Coalition actually gained fewer total votes than the Alliance,¹³⁸ but it won all four national seats in which the electorate was fairly closely divided between native Fijians and Fijian Indians. In all the other constituencies, the margin was on the order of two to one for one ethnic group or the other, and each of these went along ethnic lines.¹³⁹

The election results led to some public protests, even rioting, by native Fijians, but things seemed to be settling down as the new Prime Minister, Bavadra, and his government appeared to take control. Then, a month after the election, the Fijian army staged a bloodless coup whose goal was, or quickly became, the firm establishment of native Fijian political hegemony.¹⁴⁰ Fiji has now severed its links with the British Commonwealth, established a republic, and adopted a new constitution that guarantees native Fijians a significant majority of the seats in Parliament, eliminates cross-voting, and strengthens the power of the chiefly establishment in the Senate.¹⁴¹

II. THE MORALITY OF CULTURAL PRESERVATION: THE LESSONS OF FIJI?

If there is one point that leaps out from a history of Fiji, it is that efforts to preserve native Fijian culture against the pressures of modern liberal economic and political institutions and values

cabinet was heavily weighted towards Labour, and much more evenly divided ethnically. Including Bavadra, the Coalition Prime Minister, it contained 10 (later 11) members from Labour and 4 from the NFP. Of these, 6 (and later a seventh) were native Fijians (including Bavadra), 7 were Fijian Indians, and 1 was a General Elector of part European and part native Fijian origin. *Id.* at 229; see also LAL, POWER AND PREJUDICE, *supra* note 10, at 12 (listing the members of the coalition cabinet and their party affiliations).

137. LAWSON, *supra* note 10, at 251.

138. LAL, COUPS IN PARADISE, *supra* note 10, at 185.

139. See HOWARD, *supra* note 10, at 224-26; LAWSON, *supra* note 10, at 250-52.

140. There were actually two coups, one in May 1987 and a second one in September 1987; however, for the purposes of this Article, I am referring to them as a single coup. For a more detailed discussion of the coups, see HOWARD, *supra* note 10, at 243-340; LAL, COUPS IN PARADISE, *supra* note 10, at 192-207; LAL, POWER AND PREJUDICE, *supra* note 10, at 77-90, 116-23; LAWSON, *supra* note 10, at 255-59, 263.

141. LAWSON, *supra* note 10, at 289-90.

lie at the heart of the story. But what conclusions should we draw from this? What does Fiji tell us about the morality of trying to preserve threatened cultures? To some, no doubt, the principal lesson will be the dangers of such attempts. To pursue cultural preservation is to emphasize cultural or ethnic identity. The coup in Fiji just confirms the worst fears of those opposed to the politics of identity: that it will legitimate the domination of those defined as "other," the ones who are not members of one's own group. Even if a cultural minority is not in a position to dominate, emphasis on identity will undermine the unity of the political community as a whole and, more importantly from a liberal perspective, will make it harder for individuals to define and to redefine themselves as they see fit.

There is a lot to be said for this view, but I think that it misses something important as well. When North Americans think of indigenous peoples, we tend to think of people conquered by the violence or ensnared by the deceit of European settlers and their descendants, people decimated by disease and driven from their lands, now impoverished and powerless minorities in countries overwhelmingly populated by the descendants of immigrants from other places. That has been the fate of indigenous peoples in North America and elsewhere, including Australia and New Zealand.¹⁴²

By comparison with these other indigenous peoples, native Fijians appear to enjoy an enviable situation. Their numbers, after an initial period of decline in the colonial era, stabilized and grew, and the most recent census showed that native Fijians constituted almost half of the population of Fiji.¹⁴³ Even before the coup and apart from the army, they have been relatively powerful in political affairs, especially in the decades since independence. If they have not achieved as much success in economic endeavours as other segments of the population, they have enjoyed a relatively secure material and social life. They certainly have not suffered from the extreme social disintegration—high

142. Australia and New Zealand were colonies that the European settlers in Fiji took as models, hoping that the colonial government in Fiji would adopt policies encouraging European settlement and leading to the development of Fiji along similar lines. See LAWSON, *supra* note 10, at 57; MACNAUGHT, *supra* note 10, at 1–2, 13; Ali, *supra* note 10, at 3. Had this course been followed, it seems highly doubtful that native Fijians would have fared as well as they did under the policies actually adopted. See generally HENRY REYNOLDS, *THE LAW OF THE LAND* (1987); HENRY REYNOLDS, *THE OTHER SIDE OF THE FRONTIER* (1982).

143. See *supra* note 55.

rates of unemployment, crime, alcoholism, and suicide—that has befallen many other indigenous groups.

It seems reasonable to attribute much of the present situation of native Fijians, and hence their relative well-being, to the fact that native Fijians have been able to maintain a relatively stable and coherent collective way of life over the last century or so. That fact in turn seems due in significant measure to the policies of cultural preservation pursued in Fiji. Moreover, it seems plausible to suppose that policies more in keeping with liberal individualism—for example an insistence on individual, alienable title to land as opposed to the collective, inalienable form of ownership adopted in Fiji—might have had disastrous consequences for native Fijians as such policies did elsewhere. But, if one accepts these claims, it would seem hard to conclude (at least without further discussion) that efforts at cultural preservation, even when this goes against the grain of liberal institutions, are always a bad idea from a moral point of view.

What makes the case of Fiji particularly rich and rewarding for purposes of theoretical reflection is its moral complexities and ambiguities. There are two groups in conflict here and both arouse our moral sympathies—at least they do mine. The Fijian Indians are the descendants of victims of an exploitative colonial labor system and a system of colonial rule that unjustly privileged Europeans over them. I admire the struggles and achievements of the Fijian Indians. Because their own appeals to liberal democratic principles are rooted in a history of challenges to European domination, I do not see how one could treat them as ideological rationales for the perpetuation of privilege. Instead, their liberal democratic principles appear as critical and constructive ideals—connected to the interests of the Fijian Indians, to be sure, but moral principles that have to be taken seriously.

On the other hand, the native Fijians appear in some respects to be an even more vulnerable and threatened group, given the history of indigenous peoples in the modern world. If one cares about human well-being, one has to worry about what makes people end up as badly off as most indigenous peoples and to ask what might prevent such a fate. The situation of the native Fijians invites reflection on one possible avenue of escape.

The attempt to preserve a distinctive Fijian way of life also opens a fruitful avenue for reflection upon the liberal commitment to pluralism. How open is liberalism, both in theory and in practice? What sorts of difference should liberals respect as a

way of affirming a commitment to equality, what sorts should they tolerate or accommodate, and what sorts should they preclude or reject? The answers to these questions are contested strongly, and I do not propose to try to settle all of those arguments here. But if liberals are ever going to be open to, even supportive of, nonliberal cultures and ways of life, it seems likely to happen in this sort of case where a traditional, nonliberal culture seems to be, or to have been, both viable and good for most of those who shared it and where it would be very costly in terms of human well-being if the culture were to disintegrate either from lack of support or from a deliberate (but unsuccessful) attempt at transformation. Yet the steps taken to preserve that culture do conflict in important ways with liberal institutions and ideals. So, exploration of this case may reveal a lot about liberalism and difference.

We cannot simply affirm or oppose cultural preservation on the basis of the Fiji story. Instead, we have to think more deeply about the case to see whether there are ways to reconcile our apparently conflicting sympathies for both groups. Can one criticize the coup but endorse institutions and practices that contributed to the sense of ethnic identity that lay behind the coup? Can one endorse an ideal of equal citizenship and insist that Fijian Indians are morally entitled to be treated as equal citizens, yet still defend the constitutional entrenchment of certain rights and privileges for the native Fijians? I will argue for an affirmative answer, with qualifications, to both these questions and try to show how they illuminate some of the issues in the debate over cultural preservation.

III. WHO IS ENTITLED TO EQUAL CITIZENSHIP?

A. The Citizenship of the Fijian Indians

I begin with a defense of the Fijian Indians' claim to equal citizenship and a critique of the coup. These are the points on which I would expect the least resistance from readers of this Journal, but one can never be sure these days about the people who read, and write for, law journals. Besides, the arguments on these matters will allow me to bring out some important points about cultural relativism and the moral relevance of history.

The slogan of the Fijian Nationalist Party, "Fiji for the Fijians," expresses the view of many native Fijians including those who supported the coup and the subsequent political reforms entrenching native Fijian hegemony. In this view, the Fijian Indians should be regarded as second-class citizens at best, perhaps even as temporary visitors to be returned to India or sent elsewhere as soon as possible. For many native Fijians, the fact that they are descended from the original inhabitants of the islands has been central to their self-understanding, their identity, their sense of themselves.¹⁴⁴ The centrality of land in Fijian culture suggests an attachment which goes far beyond its instrumental use and which is tied up with this sense of self. They care about Fiji and feel that it is rightly theirs. They are the Fijians. The others who live there are outsiders, immigrants, even if they were born and raised there. They place great weight on the Deed of Cession, the agreement which established Fiji as a colony and which, according to their interpretation, included a historic promise by the British government that their interests would be paramount.¹⁴⁵ In the native Fijians' view, this promise implicitly acknowledged that those who came to Fiji from other places and their descendants would not have the same sort of claim to membership.¹⁴⁶

The Indians in Fiji have a far more ambivalent attitude toward the land where they live. Virtually all of them were born and raised there, and in many cases their parents and grandparents were as well.¹⁴⁷ Certainly they do not belong anywhere else. They would not fit in traditional Indian village society, and few have any desire to live in India. On the other hand, they generally see Fiji as a land where their recent ancestors lived in harsh bondage, where their own contributions have never been acknowledged fully, and where they are still regarded as outsiders. Though they know of no other home, many do not feel

144. See LASAQA, *supra* note 10, at 22.

145. See LAWSON, *supra* note 10, at 58-60.

146. See *id.*; SCARR, FIJI: A SHORT HISTORY, *supra* note 10, at 100-03, 138-43. The Deed of Cession itself was actually unconditional and contained no explicit references to the paramountcy of Fijian interests. Nevertheless, Gordon, the first governor, claimed that oral assurances to this effect had been given to the Fijians, and he and later officials interpreted it in this way, so that it has become a formal convention, recognized in legislative acts and in the preamble to the 1970 Constitution, to read the Deed as providing some recognition of and guarantee for the special position of indigenous Fijians. See LAWSON, *supra* note 10, at 58-59.

147. By the early 1960s, over 90% of the Fijian Indians had been born in Fiji. MAYER, INDIANS IN FIJI, *supra* note 10, at viii.

Fiji to be home.¹⁴⁸ For many, India, or an idealized conception of India, is far more central to their identity than Fiji. Their relation to Fiji is far more instrumental than that of the native Fijians. Although some Indians call themselves Fijians in some contexts, many use the term exclusively for native Fijians.¹⁴⁹ Many more Fijian Indians than native Fijians emigrate, although the number is small.¹⁵⁰ More would probably go if they could get into Australia or Canada or the United States, where there would be greater economic opportunities than in Fiji.

Do these differences between Fijian Indians and native Fijians matter for the question of who ought to be a full citizen, entitled to equal rights and equal treatment within the political community of Fiji? The Fijian Indians say no. Like the native Fijians, they appeal in part to a historic promise by a British colonial official, in their case the Salisbury Despatch of 1875, which pledged that if the government of India would support the recruitment of Indian indentured labor for other British colonies, then Indian settlers, after completing their term of indenture, would enjoy "privileges no whit inferior to those of any other class of Her Majesty's subjects resident in the colony."¹⁵¹ But they appeal also to liberal democratic principles. They are morally entitled, they say, to be treated as full members and equal citizens, in no way inferior to the native Fijians.¹⁵²

I agree completely with the claim of the Fijian Indians. They ought to be treated as equal citizens. But my response is, in the first instance, an intuitive one. I will try to defend my view, but I should say at the outset that I have more confidence in the judgment than in the theory that I provide to justify it. To put it another way, whatever the limits of the positive argument I am about to offer, I suspect that most people will share my

148. See Ahmed Ali, *Indians in Fiji*, in *THE INDO-FIJIAN EXPERIENCE* 3, 23-24 (Subramaniam, 1979); Raymond Pillai, *Labourer's Lament*, reprinted in *THE INDO-FIJIAN EXPERIENCE*, *supra*, at 160.

149. See generally *supra* note 50.

150. BAYLISS-SMITH ET AL., *supra* note 10, at 153.

151. LAWSON, *supra* note 10, at 130 (quoting Public (Emigration) Despatch to India, no. 39 (Mar. 24, 1875) (emphasis omitted)). Unfortunately for this argument, the government of India did not agree to cooperate in the proposed schemes, so the status of the promise was clouded. Some have argued that it was a contingent promise and so no longer binding when the government of India rejected the offer. Others have argued that the promise of equal status was a background presupposition of all arrangements for indentured labor, and they cite subsequent administrative reports to support this claim. *Id.* at 128-31.

152. The arguments by Fijian Indians go back to their long struggle for a common roll. See GILLION, *CHALLENGE TO EUROPEAN DOMINANCE*, *supra* note 10, at 136.

intuitive judgment and I doubt that anyone will be able to offer a good argument *against* equal citizenship for the Fijian Indians.

*B. Moral Limits to Historical Appeals:
The Deed of Cession*

To begin with, I do not think that the appeal of the native Fijians to the Deed of Cession's supposed guarantee that their interests would be kept paramount plausibly can be used as a justification for the subordination or expulsion of the Fijian Indians, because if the guarantee meant what some Fijians have claimed that it meant, the British had no right to make such a promise. If A promises B to keep C and C's descendants in perpetual servitude in return for a promise by B to obey A, this promise provides no compelling moral reason for perpetuating the servitude of C and her descendants, if that servitude is itself unjust. In other words, a promise to do wrong deserves no moral respect and justifies nothing. So, to rely on the Deed of Cession's guarantee as a moral justification for the treatment of Fijian Indians, one would have to show that the British were morally justified in not treating the Fijian Indians equally.

I do not think, however, that Gordon and the others who promulgated the idea that the Deed of Cession guaranteed the paramountcy of Fijian interests actually intended the sort of dominance by native Fijians that some later interpreters have claimed that the Deed warrants. The real issue at the time was whether the interests of the European settlers would override any serious concern for the indigenous Fijians. Understood properly as a commitment to protect the Fijians against domination and exploitation by European settlers, the doctrine of the paramountcy of Fijian interests was morally defensible and indeed desirable. But such a commitment would not warrant any action towards the Fijian Indians, who were themselves clearly subjected to domination and exploitation by the European settlers in Fiji. Even if one argued that the British importation of Indian laborers violated the promise to protect the native Fijians' interests (an argument that is deeply problematic, given the crucial role of the Indians in preventing the exploitation of Fijian labor on the plantations and in contributing to the economic development of the island), it would not follow that the

Fijians would be justified in treating the Indians as less than equal citizens, much less in expelling them.¹⁵³

C. *Justice and Citizenship*

One way to think about the issue is to ask what justice requires, if anything, with regard to the citizenship status of native Fijians and Fijian Indians. Of course, a great deal of contemporary writing about justice starts with the assumption that the issue of membership in the political community is settled and the only question is what citizens owe one another.¹⁵⁴ But the case of Fiji shows why the question of who belongs also is vital. So, how should we think about that question?

The question has two parts: (1) who is entitled to citizenship? and (2) what sorts of citizenship are people entitled to? With regard to the first, I submit that, at a minimum, anyone born and brought up within the borders of a modern state is morally entitled to citizenship in that state.¹⁵⁵ Even for one not born and

153. One of the familiar moral conundrums of the real world is the fact that those in power often are able to arrange circumstances so that oppressed groups are pitted against one another. For example, landless peasants in Brazil now are encouraged by the powerful, including some governmental officials, to clear and settle land in the Amazon basin, displacing the indigenous people who have traditionally lived in that area. Lansing R. Shepard, *Vanishing Rain Forest*, CHRISTIAN SCI. MONITOR, Apr. 2, 1986, at 18. Is it wrong for the peasants to take over these lands? Speaking broadly, I think that the answer is yes, but it is easy to see why the peasants act as they do and hard to criticize them because they too are so clearly victims. Assume, for the sake of this argument, the following (which I take to be largely true but will not try to prove): The peasants are landless because most of the arable land is in the hands of a tiny, powerful elite. This is a highly unjust distribution, but land reform is not feasible because of the power of the rich landowners. The peasants are hungry, needy, and desperate, but any attempt to wrest land from the wealthy, though morally justifiable, would be doomed to failure. Taking the land of the Indians, which no doubt seems underutilized from the peasants' perspective as well as from that of the central government, is the only realistic option for them to improve their very bad situation. It is not justifiable, but it is perhaps morally excusable in a way that the behavior of the landowners is not, though their behavior, too, is perfectly understandable from the perspective of self-interest.

154. See, e.g., RAWLS, *supra* note 9, at 8.

155. I recognize, of course, that this principle is not part of international law and is not compatible with the citizenship laws of many countries, such as Germany, which does not grant citizenship as of right to the children of immigrants, even when those children have been born and brought up in Germany. I regard the German citizenship policy as morally indefensible. See Joseph H. Carens, *Membership and Morality: Admission to Citizenship in Liberal Democratic States*, in IMMIGRATION AND THE POLITICS OF CITIZENSHIP IN EUROPE AND NORTH AMERICA 31, 31-49 (William R. Brubaker ed., 1989) [hereinafter IMMIGRATION AND THE POLITICS OF CITIZENSHIP]. For a defense of the German citizenship

raised in a state, the longer one's residence, the stronger one's moral claim to belong and hence one's moral claim to citizenship. By these criteria, virtually all of the Fijian Indians have very strong claims to citizenship. With regard to the second question, I submit that citizenship in the modern state must be treated as a threshold concept. Once over the threshold, one is entitled to be treated as an equal. No modern state may legitimately have different ranks of citizenship. There should be no second-class citizens. To be a citizen ought to mean that one is an equal citizen. Hence, Fijian Indians must be treated as full members and equal citizens of Fiji. In support of both these claims, I will appeal both to abstract principles and to concrete intuitive judgments that I think are widely shared.

1. *Who Belongs?*—The first claim is the harder one to defend because it is less central to political theory and practice. But think of cases where a state has excluded people born and raised in the community from citizenship. Nazi Germany did it under the Nuremberg Laws. South Africa did it under apartheid. These were not the worst evils of either regime by any means, but surely their policies of exclusion from citizenship on the basis of race, religion, and ethnicity were connected centrally to what we find most morally abhorrent about those regimes. Of course, many contemporary states have citizenship laws that do not grant citizenship to everyone born and raised within its borders, and these policies do not arouse the same intuitive moral outrage as the policies of Nazi Germany and South Africa under apartheid. But that is largely because the implications of the formal citizenship policies are muted for the most part by other policies and practices that acknowledge *de facto* many of the moral claims of those born and raised within a state, especially their right to stay and to be treated with respect and dignity.¹⁵⁶ Moreover, until recently, the numbers of people in such a position typically have been quite small and so not very visible.

law, see Kay Hailbronner, *Citizenship and Nationhood in Germany*, in IMMIGRATION AND THE POLITICS OF CITIZENSHIP, *supra*, at 67, 67–79.

156. For example, “guestworkers” and their descendants in Germany enjoy most of the same social and economic rights that German citizens have, a fact that certainly makes their lives better than they would be if these benefits were tied more tightly to citizenship. The same separation of social, economic, and legal rights—apart from political participation—from citizenship can be found in almost all Western industrialized countries. See William R. Brubaker, *Membership Without Citizenship: The Economic and Social Rights of Noncitizens*, in IMMIGRATION AND THE POLITICS OF CITIZENSHIP, *supra* note 155, at 145, 160–62.

As a way of exploring your own intuitive sense of what justice requires, ask yourself what your reaction would be if Germany were to expel the hundreds of thousands of people born and raised in Germany by Turkish or Yugoslav or other immigrant parents. My own reaction is that any such expulsion would be morally reprehensible. But why? After all, the people in question are not citizens or entitled to citizenship in Germany under German or international law. Yet the Germans have not expelled them, even selectively on the basis of employment, despite some strong economic incentives and increasing internal political pressure to do so.¹⁵⁷ It is clear that many Germans think that it would be morally wrong to expel these people. Again the question is why?

One clue to the answer lies in language. These people are described by the Germans as "second-generation immigrants," though they have never lived anywhere other than Germany and sometimes speak no other language than German. Their children are described as "third-generation immigrants."¹⁵⁸ But an immigrant is someone who comes from somewhere else to live in a new country, not someone born and raised there. The parents or grandparents of these people were immigrants. They are not. This oxymoronic language reveals the moral contradictions at the heart of German policy. These people have a moral right to stay in Germany because they have a vital human interest in being able to continue to live in the community in which they were born and raised. The Germans know this, and this is why they cannot bring themselves to kick the people out. But they cannot quite bring themselves to acknowledge that they belong either, which is why they continue to call them "immigrants."

Any moral theory that claims to respect the moral equality of persons will set severe limits on the moral right of the state to expel inhabitants. The moral considerations that set limits on the moral right of a state to deny citizenship to the children of its current citizens or to strip people of citizenship and to expel them also set limits on the expulsion of people who have lived in a country all their lives, whatever their citizenship status. Adults who have spent most of their lives in a community have the same sort of moral right to stay, because they have the same

157. See Carens, *supra* note 155, at 33.

158. See Hailbronner, *supra* note 155, at 77 (referring to second- and third-generation immigrants in Germany).

sort of interest at stake.¹⁵⁹ Moreover, if “second- and third-generation immigrants” have a moral right to stay in Germany, as even most Germans concede, they also have a moral right to become German citizens if they choose, in part so that their moral position as members of the community can receive formal, legal acknowledgement and protection and in part so that they may participate in political life, on the familiar liberal democratic principle that people should not be governed without their consent.

The Fijian Indians are legal citizens of Fiji. But even if they were not, they would have a moral right to stay and to become citizens. It would be wrong to expel them.

2. *Equal Citizenship*—If the first part of the argument is granted—the right of the Fijian Indians to stay in Fiji and to keep the Fijian citizenship that they possess—the second part—the argument for equal citizenship—should be easier to establish. Again, states like Nazi Germany and South Africa that have openly rejected the principle of equal citizenship stand as the archetypes of moral wrong. No one has to debate the merits of their policies today. Of course, most Western states also denied formal equality of citizenship on the basis of race, class, religion, ethnicity, and gender in the not too distant past, but almost no one defends these practices today or suggests that we should return to them. On these issues there is a moral consensus, or as close to a consensus as one gets.

The crucial abstract principle underlying this consensus is the assumption of human moral equality, whether that is expressed in terms of the moral equality of persons, in terms of equal consideration of the interests of all individuals, or in some other form. This assumption is central to the modern liberal tradition. It is commonplace to argue that a commitment to the moral equality of persons entails a commitment to equal political citizenship.¹⁶⁰

Of course, acceptance of the principle of equal citizenship does not settle every question. What equality requires may be contested hotly. The principle of equal citizenship may permit or even require certain differences and distinctions among

159. The interest at stake is normally related to length of residence. There are important questions of degree here, and difficult questions about where it is or is not reasonable to draw a line. I am emphasizing clear cases, however, because length of residence is not a serious issue for the Fijian Indians.

160. See RAWLS, *supra* note 9, at 221–28 (providing a distinguished example of this commonplace argument).

citizens. Indeed, I will argue below that it permits some of the differences created by the 1970 Fijian constitution.¹⁶¹ A commitment to equality does not require us to ignore history. On the contrary, it requires us to pay attention to history in trying to judge what equality requires in particular circumstances. But a commitment to equal citizenship does not permit, in my view, a distinction among citizens on the basis of a difference in degrees of attachment to the community (whether putative or real), much less one that would purport to deduce that difference in attachment from ethnic identification. And indeed, those who cry "Fiji for the Fijians" are not claiming to articulate a view that regards the Fijian Indians as equal citizens; they reject the principle of equal citizenship. They are wrong to do so.

D. Justice and History

One of the questions that I am exploring in this Article is how history matters in moral analysis because the preservation of culture as a moral goal is obviously tied up with the claims of history. Now in some ways my argument clearly limits the role that history can play. The principle of equal citizenship means that native Fijians cannot legitimately say that their interests should count more than the interests of other citizens because they, the native Fijians, are descended from the original inhabitants of the islands while the other citizens are the descendants of more recent arrivals. But my defense of the principle of equal citizenship and of the Fijian Indians claim to equal citizenship is not simply antihistorical. I have just noted that historical factors may rightly influence our judgments about what equality requires. It is important to note also that the initial claim to a moral entitlement to citizenship is essentially a historical claim. It is the particular history of the Fijian Indians that establishes their moral claims in Fiji.

To explore the importance of this, it may be helpful to draw attention briefly to other cases involving immigrants where my own moral sense of who belongs and what justice requires is somewhat different from the case of Fiji. Take the case of recent French immigrants to New Caledonia. The number of Europeans in New Caledonia has increased greatly in the last few decades,

161. See *infra* part V.B.

with the result that nonnatives now outnumber natives. This development was, at least in part, the outcome of a deliberate policy by the French government encouraging immigration as a way of forestalling any demand by the natives for independence. In other words, it was a deliberate manipulation of the principles of equal citizenship and majority rule to maintain French hegemony over the island.¹⁶²

Suppose that a combination of native insurgency, international pressures, and changing world conditions led to independence for New Caledonia in the next few years. Would the recent French immigrants be entitled to claim equal citizenship? Do they belong? If it was wrong for the French government to have encouraged and facilitated their arrival in the first place—and from the story I have told, that seems clearly to be the case—does the fact of their having arrived give them legitimacy? On the one hand, there would be something perverse about rewarding the French policy with moral recognition for the new settlers. On the other hand, they are not soldiers obeying orders but individuals with lives and claims of their own. Are they to be held responsible for the policy? Should they have known better? What about earlier arrivals who have been there for many years? How about those of European descent who have been born and brought up there? The latter, at least, belong and are entitled to equal citizenship on the basis of my earlier analysis.¹⁶³ But if the French can delay long enough, a European majority will have grown up in New Caledonia with just this sort of claim.

This illustrates one of the deep puzzles about the relation between history and morality. On the one hand, if we simply accept the claim that the passage of time reduces the moral importance of the origins of a situation, we seem to create an additional incentive for those who do not care about morality to ignore it, namely, that over time those who care about morality will feel less inclined, indeed less entitled, to try to do anything about the injustice that has been perpetrated.¹⁶⁴ On the other

162. Letter from Pierre Messmer, Prime Minister, to his secretary of state at the French Overseas Department—Overseas Territories (1972), reprinted in MARC COULON, *L'IRRUPTION KANAK DE CALÉDONIE À KANAKY* 231 (1985).

163. See *supra* part III.C.

164. I cannot write these words today in the year of 1992 without thinking of the Serbian policy of "ethnic cleansing" in Serbia and Bosnia. Everything I read or see in the media indicates an almost universal moral condemnation of this policy, yet most of the current reports also suggest that many or most of the surviving victims of the policy are unlikely to be able or willing to return to the areas from which they were expelled. See, e.g., John F. Burns, *Survivors of Fallen Bosnian Town Add to Refugees*, N.Y. TIMES,

hand, it seems problematic to penalize present generations for what their ancestors have done.¹⁶⁵ These questions arise with respect to large minorities or even majorities introduced by other imperial powers into lands with existing populations with a long-standing cultural identity and tradition: the Chinese in Tibet and the Russians in the Baltics, to cite only a few.¹⁶⁶ I do not feel as though I have a clear answer to such cases. Whether one accepts or rejects the moral claims of the settlers, something of moral value is lost. But however one answers these difficult questions, they do not apply to the Fijian Indians, almost all of whom were born and brought up in Fiji and have known no other home.

Nov. 1, 1992, at A14. Diplomatic and economic sanctions are unlikely to last for long after the fighting stops, and indeed, it is not even clear what the moral point of continuing sanctions would be if there is no way to return the refugees. Perhaps the Serbians can be compelled to pay compensation of some sort, but that would be a small price to pay, from the Serbian perspective, to achieve the goals of their policy. Again, on most accounts today, it seems as though the Serbians already have achieved their goals in a way that could not be reversed except at greater human (and indeed moral) cost than the original policy.

165. David Hume made an even stronger claim about the ways in which the passage of time affects morality. He said, "Time and custom give authority to all forms of government . . . and that power, which at first was founded only on injustice and violence, becomes in time legal and obligatory." DAVID HUME, *A TREATISE OF HUMAN NATURE* 566 (L.A. Selby-Bigge ed., London, Clarendon Press 1888) (1739). Indeed, he argued that time alters even our moral evaluation of a given event so that "a king, who during his life-time might justly be deem'd an usurper, will be regarded by posterity as a lawful prince" if his family keeps the throne. *Id.*

Israelis sometimes speak of building "facts on the ground" with their settlements on the West Bank. See, e.g., Randolph Ryan, *Hope—and Apprehension—Among Arabs on Peace Talks*, *BOSTON GLOBE*, Aug. 14, 1991, at 19. This refers, I think, not just to sociological facts but to moral facts. Over time, even people who opposed the settlements initially may come to feel that it is not right to uproot those who have settled. This is not necessarily a cynical manipulation of morality by those promoting the settlements, because many Israelis feel the settlements are entirely justified morally but for reasons which are not persuasive to others. The latter will, however, feel their moral views of what justice requires shift the longer the settlements stay. In the same vein, some people would say that it was not right to displace the Palestinians to create Israel, but now that Israel exists and has existed for so long, it would be wrong not to accept its existence as legitimate. Those who see the founding of Israel as fully justified from a moral point of view might not be entirely happy with this qualified form of acceptance, but they would nonetheless welcome the support it provides when others advance challenges to Israel's basic existence. Of course, those now being displaced also are well aware of the ways in which time will weaken their moral claims (in the eyes of others, not their own) and so of the importance of resisting as vigorously as possible now, especially because they can expect that the moral sympathy they now receive from outsiders will fade over time. This is not a recipe for tranquility.

166. Small minorities do not pose quite the same kind of moral problem because acknowledging their claims will not affect the fundamental identity of the political community in the same way as acknowledging the claims of a new group with close to a numerical majority.

E. Democracy Versus Cultural Preservation?

I turn now to a critique of the coup, a relatively easy task if what has preceded is accepted. Some people have attempted to justify the coup on the grounds that it was necessary to preserve traditional Fijian culture, especially the collective Fijian ownership of land which was allegedly threatened by the new government.¹⁶⁷ So far as I can tell, there is no reasonable foundation for these allegations.

Some members of the new government, including the Fijian prime minister, had criticized certain aspects of chiefly rule, including the high incomes that some chiefs received from their share of land revenues. Greater security for tenant farmers was a long-standing and deep concern within the Fijian Indian community and one that the new government might have tried to address. And, reading between the lines, one might infer that some of those associated with the new government regarded the system of collective Fijian ownership of the land as outmoded and unjust. But there is no evidence that the new government had any intention of trying to alter the existing arrangements with regard to land or that they would have had the capacity to do anything, even if they so desired. As I noted above, Fijian land rights and the other central elements of the traditional way of life were constitutionally entrenched and the Council of Chiefs had an effective veto power over any changes in these areas, both substantively and procedurally through its veto over legislation affecting the judiciary.¹⁶⁸

To be sure, one easily can overstate the security provided by constitutional guarantees. If those with political power are unwilling to respect a constitution, its formal guarantees easily can prove worthless. But again, there is no evidence at all that the new government had any inclination not to respect the constitution or any effective capacity not to do so. On the contrary, it was the coup-makers who violated the constitution by overthrowing a democratically elected government that had

167. For the most explicit attempt to defend the coup, see EDDIE DEAN & STAN RITOVA, *RABUKA: NO OTHER WAY* (1988). For a critique of these rationales, see LAWSON, *supra* note 10, at 259-61.

168. See *supra* text accompanying notes 106-07.

operated scrupulously within the letter and spirit of the law. In sum, ungrounded fears about threats to the Fijian way of life did not and could not justify the coup.¹⁶⁹

IV. JUSTICE, MORAL RELATIVISM, AND CULTURAL DIFFERENCE

One way to characterize my argument is to say that the requirements of justice set moral limits to the pursuit of cultural preservation as a goal. One obvious challenge to this line of argument is to ask the question, "Whose justice?"¹⁷⁰ This raises the issue of the relation between respect for cultural difference—an ideal implicit in the goal of the preservation of minority cultures—and moral relativism. If different cultures embody different moral views, at least to some extent, isn't it a form of cultural imperialism to use the standards of one culture to judge another? Who are we to say what is just or unjust in Fiji? Indeed, in resisting international criticism of the coup, the most powerful line of argument that the native Fijians have been able to advance has been the claim that any

169. Some may find my wording altogether too cautious. They might say, "Suppose that the government had wanted to transform the traditional Fijian way of life, including its provisions regarding land ownership. That still would not justify a coup, at least so long as the government stayed within the law. That is what democracy is all about—the right of the majority to make changes." This is the sort of challenge that I imagine. But that response glides over some deep difficulties in constitutionalism and in democratic theory.

With regard to constitutionalism, who decides whether the government is staying within the law? One cannot assume American answers—which are themselves contested—to these questions. Recall that Fiji was a former British colony with a parliamentary system.

With regard to democratic theory, there is the familiar question of the limits to what the majority may do to the minority and what the minority is entitled to do if the majority transgresses those limits. Suppose, for example, that a democratically elected government, representing a majority of voters, is embarking on a program of religious or racial discrimination, even persecution, and that the minority—as is rarely the case—is in a position to prevent this through a coup. Is it evident that a coup never would be justifiable under those circumstances? I do not think so, although I would not say that these circumstances necessarily legitimate a coup. These are complex questions, but I do not propose to pursue them here because the problems that they raise simply do not apply to the case of Fiji or to the behavior of its government.

170. See generally ALASDAIR MACINTYRE, *WHOSE JUSTICE? WHICH RATIONALITY?* (1988).

Western criticism of the coup and of the treatment of the Fijian Indians is a form of neocolonial imperialism.¹⁷¹

I do not think that this challenge can be dismissed out of hand. There is a real danger that in making moral judgments about other societies, we will be led astray by misunderstandings or misinterpretations of practices and institutions different from our own. Anyone who has encountered the smug (and in important respects unfounded) sense of moral superiority of even the best of the nineteenth-century British liberals¹⁷² ought to feel some trepidation that his late twentieth-century judgments will be seen by later generations as similarly tainted. On the other hand, the first line of defense of every repressive security apparatus is the claim "If you understood our situation—which is very different from yours—you would understand why we have to do these things." It would be a moral mistake to take such claims about difference at face value.

So, we cannot and should not abandon the task of judging.¹⁷³ We *cannot* because such judging is implicit in as ordinary a daily practice as reading the newspaper. Part of what makes a story newsworthy is the assumption that it contains information that engages our moral sensibilities. Think of recent reports about Serbian-run death camps in Bosnia,¹⁷⁴ the Kurds' lack of food and fuel,¹⁷⁵ and the expulsion of Palestinians from Kuwait.¹⁷⁶ These stories are newsworthy in no small part because of the

171. See LAWSON, *supra* note 10, at 262. This line of defense, supported by other island states in the region, led the governments of Australia and New Zealand to retreat from what had initially been quite critical responses to the coup. See *id.* at 261–66. In my view, they have retreated too far, but I do not want to develop that argument here. In this Article, I am primarily interested in the question of how we judge such issues from a moral perspective as outside and unofficial observers. It may well be proper, at least in some circumstances, for public officials to feel more constrained in their criticism of other countries than private citizens. There is, of course, a certain irony in the native Fijian invocation of the charge of neocolonialism, given the resistance of the native Fijians to decolonization, but this does not prove the charge untrue.

172. See, e.g., JOHN STUART MILL, *CONSIDERATIONS ON REPRESENTATIVE GOVERNMENT* 81 (New York, Harper & Bros. 1862) ("As [a people] range[s] lower and lower in development, [representative] government will be, generally speaking, less suitable to them . . ."); JOHN STUART MILL, *ON LIBERTY* (1859), reprinted in *THREE ESSAYS* 5, 16 (Oxford Univ. Press 1912) ("Despotism is a legitimate mode of government in dealing with barbarians . . .").

173. For an instructive discussion of the problem of judging as an outsider, see Ronald Beiner, *In Nationalist Wonderland*, *JERUSALEM REP.*, June 6, 1991, at 44.

174. See Chuck Sudetic, *Road to Death in a Serbian Prison Camp*, *N.Y. TIMES*, Aug. 29, 1992, at A1.

175. See Chris Hedges, *Hungry and Cold, Kurds Turn to TV*, *N.Y. TIMES*, Feb. 12, 1992, at A12.

176. See Youssef M. Ibrahim, *Palestinians in Kuwait Face Suspicion and Probable Exile*, *N.Y. TIMES*, Mar. 14, 1991, at A1.

moral concerns that they evoke. We *should not* abandon the task of judging because no defensible moral view can really refuse all judgments about other societies. Consider again archetypal cases like slavery in the United States, the Holocaust under the Nazis, and apartheid in South Africa. Would a moral approach that refused to make judgments about such cases be worthy of serious consideration? When unarmed, peaceful marchers are shot down simply for objecting to the current regime or its policy, do we really need to inquire into the intricacies of local culture before expressing moral condemnation?

No one can defend murder on the grounds of cultural difference, and indeed no one tries to.¹⁷⁷ This means that there is a limit to any plausible claim of moral or cultural relativism. What that limit is, and where the appeal to cultural difference begins to have some moral bite, is precisely the issue that I am exploring, first by specifying here the limits to appeals to cultural difference in moral arguments about Fiji and then by arguing below that cultural difference does matter morally within those limits.

One answer to the challenge that we are imposing our own moral views on others is to note that the view that we should not do this is also one of *our* moral views. It is a characteristically liberal view really, one not shared by a number of other cultural perspectives. In one sense, it is a truism that we start from our own moral perspective. Where else could we start from? The point is that our moral perspective contains both moral principles about justice that we think apply to the actions of people outside our own society and moral principles about respecting the autonomy of others that we think limit our right to judge how others live their lives, individually and collectively. We normally suppose there to be some tension between these different principles but not an actual contradiction. So, the question is how to apply these different principles to the case of Fiji.

To answer this question, we must unpack it a bit. First, someone might argue that in raising the issue of equal citizenship and the liberal democratic principles that underlie it, I am introducing principles and ideals that are foreign to the traditions and cultural values of Fiji, that have no roots in the Fijian community. But this begs a crucial question about what the

177. Repressive regimes deny that they commit murder. They say that the protestors had guns or threatened the security forces in some way or that the massacre never really took place. Of course, if any of these claims were true, they would change our moral judgment.

community is and who belongs. For the challenges I have raised from a liberal democratic perspective are the very ones that Fijian Indians have been raising for decades in their demand for formal political equality among all citizens and a common franchise that does not recognize racial distinctions.¹⁷⁸ To claim that these liberal democratic principles are morally irrelevant to Fiji because they are not rooted in the culture of the Fijian community would be to accept a definition of the Fijian community that excludes or at least marginalizes the Indians who live there, to suggest that we think that they really do not belong.

Second, let us consider the culture of the native Fijians. Does it really entail a significantly different set of moral commitments from the ones I have drawn upon in defending the claims of the Fijian Indians? The key principle in my argument was the principle of moral equality, a principle central to the Christian tradition. Christianity has been an essential ingredient in Fijian culture for over a century,¹⁷⁹ and the Fijians do not attempt to defend their position by an appeal to pre-Christian values. Of course, some Fijian Christians deny that their religious commitments entail an obligation to respect the equal rights of the Fijian Indians.¹⁸⁰ But there were lots of official Christian apologists for slavery¹⁸¹ and for apartheid in South Africa.¹⁸² The point is that those who argued that slavery and apartheid were incompatible with Christian principles had the better of the argument. The critics of native Fijian domination have the better of the argument, too, and for the same sorts of reasons. For the most part, though, the Fijians have not attempted to mount a reasoned defense of the coup and the subsequent policy of subordinating the Fijian Indians, apart from the sorts of claims that I have already criticized above.¹⁸³

It is tempting to describe the coup as simply a power grab, but I do not think that such a description accurately would reflect the support for the coup and especially for the post-coup reforms among the native Fijian community. Many native Fijians do feel that the coup was justified. In that sense, there is a deep difference between their views and those of an outside observer like me. But again, I do not think that this difference reflects

178. See GILLION, CHALLENGE TO EUROPEAN DOMINANCE, *supra* note 10, at 130–56.

179. See LAWSON, *supra* note 10, at 8, 283–84.

180. Indeed, fundamentalism has a strong hold on the nativist movement. See HOWARD, *supra* note 10, at 318–19.

181. See DAVID B. DAVIS, THE PROBLEM OF SLAVERY IN WESTERN CULTURE 165–222 (1966).

182. See LEONARD THOMPSON, THE POLITICAL MYTHOLOGY OF APARTHEID 212–23 (1985).

183. See *supra* text accompanying notes 167–69.

a deep cultural difference about the nature of justice. To a large extent, what the native Fijians put forward are simply claims of identity and entitlement: "We are the Fijians; we were here first." The same sort of sense of identity and entitlement is common enough in other parts of the world, including Western Europe and North America, and has often led to much worse forms of repression of those defined as "other" than the Fijian Indians have suffered. So we have no need or warrant to appeal to special features of Fijian culture to account for these views, and, by the same token, they are just as subject to the moral criticisms (however ineffective these may be in changing behavior) that have been applied to those seeking ethnic domination in other countries.

V. JUSTICE, CULTURE, AND HISTORY: HOW DIFFERENCE MATTERS

Thus far, I have been arguing that cultural difference does not make much difference, at least to our judgments about Fiji. But now I want to turn to the aspects of the case where I think culture and history do matter in the sense of legitimating institutions and practices that might seem morally problematic at first glance, and that still seem morally problematic to other observers even after long reflection.

A. *Moral Questions*

There are two related sets of questions here. The first concerns the practices and the institutions that perpetuate racial separation in Fiji. What, if anything, differentiates these from South Africa's apartheid, which also is based on a commitment to separate development, or from former American practices of racial segregation? Are these various forms of separation compatible with shared membership in a political community? The second set of questions concerns the justification for entrenching the rights and privileges of one group and giving it an effective veto over change in key areas. Doesn't this simply perpetuate past inequalities in political power? Aren't these special vetoes incompatible with fundamental democratic

principles, especially since the rights that they protect are special ones, not enjoyed even formally by all citizens? I will give a brief version of my answers to these questions and then consider some objections that will allow me to explore them more deeply.

*B. The Moral Justification of Cultural Preservation:
An Overview*

Did the separate institutions that Fiji developed violate this principle of equal citizenship to which the Fijian Indians were and are entitled? I think not. Fiji's separate institutions were not like those of apartheid or racial segregation because they did not grow out of and perpetuate racial domination. On the contrary, most of these institutions were designed to protect native Fijians *against* domination, especially by the European settlers. In a more positive sense, they were intended to preserve traditional values and the Fijian way of life. But this was not dependent upon the subordination of any other group. Having a separate Fijian administration, for example, did not stigmatize the Indians and Europeans who were excluded from its jurisdiction or deprive them of any powers they ought to have possessed. By contrast, the refusal to grant Indians the franchise at a time when the Europeans had it clearly was a symbol and a contributor to the subordinate position of the Indians vis-à-vis the Europeans.

The separate Fijian institutions were different. Indeed, it seems likely that these institutions contributed to the economic subordination of native Fijians. Still, the Fijians wanted the insulation that the institutions offered, and the reduced economic opportunities may well have been a price worth paying for the possibility of prolonging the traditional way of life.

Today, that way of life no longer seems viable because of population growth and the desire for economic development. There are too many people and not enough land for a way of life based upon subsistence agriculture. An agriculture that aims at producing a substantial surplus is not as congruent with the values and practices of the traditional Fijian way of life. Moreover, many Fijians no longer are willing to live in the traditional ways. Even the Fijian leadership, in the past the group that has most emphasized the importance of maintaining

the traditional way of life, now expresses great concern about the relative position of native Fijians in the general economic competition.¹⁸⁴ As Fijians come to want the same things that other members of society do, the case for separate institutions declines.

There are two major qualifications to the picture that I have been drawing of benign but outmoded separate institutions. First, the ownership of land—there is no question that the fact that the native Fijians collectively own eighty-two percent of the land¹⁸⁵ has been a source of great power for them in relation to other groups. This is especially true in relation to the Fijian Indians, whose inability to buy land and whose insecurity about the length and renewals of leases have been a source of great unhappiness in their community.¹⁸⁶ Nevertheless, I think that the practices of prohibiting the sale of Fijian land and exercising central control over its administration have been and still are justified.

There are three key points to the defense of the policy on land ownership. First, prior to this prohibition, Fijians were selling land, mainly to Europeans, and there is every reason to believe on the basis of the experience of other colonies that without this arrangement Fijians would have given up ownership of their land without receiving any substantial long-term benefits in return and without foreseeing the consequences for their collective way of life. So, this arrangement did protect a vital Fijian interest. Second, Fijian dominance in this area is balanced by the dominance Indians have achieved in other areas of economic life. If native Fijians owned most of the businesses and occupied most of the key professional and white-collar positions as well, then it would be easier to make the case that this form of “cultural preservation” was merely a means of perpetuating unjust privilege. Third, despite the erosion of the traditional culture, it appears that the land is still central to the native Fijian self-understanding. The attachment to the land is not merely instrumental; it is constitutive of native Fijian identity. Like the previous condition, this one could change. If both conditions changed, the justification of this arrangement would be greatly

184. LASAQA, *supra* note 10, at 103.

185. See SCARR, *POLITICS OF ILLUSION*, *supra* note 10, at 10; Lal, *supra* note 10, at 81.

186. See MAYER, *supra* note 10, at 79–82; Ali, *supra* note 148, at 23.

reduced. None of this is meant to suggest that the administration of the land and the conditions imposed on tenants could not be improved.

The second qualification to the benign picture of separate institutions concerns the racial classification of political seats. Here my judgment coincides with that of the Street Commission.¹⁸⁷ Given the depth of racial divisions in Fiji, it was essential to provide some guarantee of representation to all three ethnic communities. To adopt a system that pretended to be racially blind in the Fijian context would have been to ignore the underlying social realities in a way that would not have improved them. Perhaps of equal importance, in the context of Fijian political history such an apparently neutral reform inevitably would have been perceived as a partisan triumph. But if Fiji is to have any sort of decent future, these deep racial divisions ultimately must be overcome. In this respect, the liberal democratic ideal of a common franchise does establish the ultimate goal toward which reforms should aim.

It is a commonplace critique of liberalism to note that formal equality may mask substantive and unjust inequality. This case illustrates a different, more unusual point. Formal inequalities may actually contribute to the goal of treating people as moral equals or giving their interests equal moral weight.¹⁸⁸

Let me turn finally in this overview to the question of the constitutional entrenchment of Fijian rights and their protection through the veto power given the Council of Chiefs in the Senate. The justification for this sort of special arrangement must be that the interests being protected are vital and yet vulnerable without these special protections. I already have argued that the interests were vital. As to their vulnerability, I suspect that the fates of indigenous peoples elsewhere, and even nearby, provided sufficient reason for Fijians to be concerned. As with the separate

187. See *supra* note 119 and accompanying text.

188. See KYMLICKA, *supra* note 7, at 199–200. But Kymlicka believes that it is possible to make this argument without making substantive judgments about the good, because, on his account of liberalism, such judgments must be left to individuals to make for themselves and the state must be neutral between competing conceptions. See *id.* I think that the case of Fiji will illustrate why that sort of neutrality is impossible. My own defense of cultural preservation in Fiji rests on my judgment about the goodness of the way of life that was being preserved, at least as against the historical alternatives that were available to native Fijians. This is not to say that it is appropriate for me to substitute my judgment about how Fijians are to live their lives for their own. One of the issues here is the relation between the substantive moral judgments of an observer and the substantive moral choices of agents. I will explore some facets of this issue below. See *infra* part VII.B.

institutions discussed above, the goal of these arrangements seems to be the protection of the native Fijians rather than domination by the native Fijians of the Fijian Indians. The Senate did not initiate legislation, and the veto power only affected the areas most relevant to the protection of native Fijian culture.¹⁸⁹ In short, here is an institutional arrangement specifically designed for the preservation of culture—potentially a minority culture, depending on demographic developments—that seems morally justifiable to me.

C. Objections

There are many objections that could be raised to the line of argument that I am taking, and most of them have been in what I regard as by far the best scholarly work on the politics of Fiji: Stephanie Lawson's *The Failure of Democratic Politics in Fiji*. Lawson's work is particularly valuable from my perspective because she is so clearly critical of most of the efforts to preserve Fijian culture that no one could reasonably accuse her of distorting her interpretation to favor preservation. Yet because she is so scrupulously fair-minded in her presentation, much of the evidence that she provides supports the case for cultural preservation in ways that she herself does not acknowledge or perhaps even recognize.

Lawson directs particular critical attention to what she calls the myth of Fijian cultural homogeneity. Much of what is called traditional Fijian culture, Lawson argues, is really a product of the colonial regime.¹⁹⁰ It created the Council of Chiefs and the separate Fijian administration and, in doing so, greatly strengthened the power of some hierarchical elements in Fijian society at the expense of other, less hierarchical elements. Diversity and dissent among native Fijians were repressed. Before the colonial regime, land was neither inalienable nor held by the communal units to which the colonial government assigned it. To the extent that native Fijians today think of themselves as sharing a common culture which entails respect for chiefly authority, this is the result of years of hegemony by chiefs and their representatives who

189. LAWSON, *supra* note 10, at 188.

190. *See id.* at 93–104.

have introduced a powerful system of socialization to convey a limited and inaccurate picture of Fijian culture.

According to Lawson, the costs of perpetuating this myth have been high. The separate institutions and formal racial divisions in colonial and independent Fiji that were defended in the name of the myth exacerbated racial divisions in Fiji and led to the emergence of a party system based on race. This in turn undermined the legitimacy of democratic politics, especially the idea of a democratic opposition that might succeed legitimately to power through elections, and ultimately led to the coup.¹⁹¹

Implicit, and sometimes explicit, in Lawson's book is a challenge to the very ideal of cultural preservation, at least if Fiji is to be taken as a model. A major part of the challenge focuses on the issue of authenticity and suggests the impossibility of authentic preservation of a culture. Doesn't the attempt to preserve a collective cultural identity inevitably falsify that identity by freezing it in some respects and transforming it in others, and in neither case responding to the internal imperatives of the culture itself? Who speaks for the collective? Doesn't external support for a cultural leadership show that there is something problematic about its claim to internal legitimacy? Shouldn't individuals be free to choose whether to accept, modify, or reject their inherited cultural identity, and isn't that freedom restricted when steps are taken to preserve a culture? These are the questions raised implicitly and explicitly by Lawson's book.

I think that one can give different answers to these questions from the ones provided by Lawson. I accept many of her descriptive claims about the development of Fijian culture, but I do not think that undermines its authenticity or legitimacy in the way that she suggests. To see why, we will have to look at some specific issues in more detail.

D. Permissibility and Contingency in Morality

As the analysis proceeds, it will be helpful to keep two distinctions in mind. The first is the distinction between what is morally permissible and what is morally required. Until now, I have been focusing largely on the latter sort of argument, claiming that it was morally required to treat the Fijian Indians

191. *Id.* at 1–11, 277–80.

as equal citizens and morally wrong to stage the coup. But I do not want to make so strong a moral claim about the efforts to preserve Fijian culture before the coup. Rather, I want to argue that most of the measures taken were morally permissible—that is, one possible set of steps it was legitimate to take even though other, quite different ones might also not have been wrong. In other words, these efforts at preservation were one morally permissible way to go, given the available options, even though there may have been other options that were also morally permissible and that might even be regarded as superior in some respects.

The second distinction is that between the evaluation of what has happened and the evaluation of what preceded. We should not assume that what did happen, had to happen. I have already made clear my condemnation of the coup and the subsequent policies of domination. It does not follow that the policies of cultural preservation that preceded it were morally blameworthy. The coup may not have been inevitable, and even if the policies of preservation contributed to its likelihood, as Lawson argues,¹⁹² it is possible that alternative policies would have been likely to lead to even worse consequences. In forming our moral judgments about what courses of action are morally permissible or blameworthy, we have to take into account the role of contingency and uncertainty in human affairs.

VI. CONTINUITY AND CHANGE IN HISTORY, CULTURE, AND MORALITY: THE ISSUE OF LAND

A. Objections to Colonial Land Policy

Let me begin with the issue of land rights. Lawson observes that Gordon, the first colonial governor, set up a uniform system of inalienable land ownership with the rights held in a particular communal unit. This was, she says, very much at odds with traditional practice.¹⁹³ First, land had not been inalienable prior to the colonial regime. More importantly, this communal unit had not been a landholding unit for most Fijians and had played

192. *Id.* at 6.

193. *Id.* at 73.

a relatively minor role in most Fijian communities prior to this colonial practice. Now it has now come to be seen by most Fijians as the traditional landholding unit, but the rigidities imposed by this arrangement have led to significant inequalities in ownership between different units because of variation in fertility and mortality among units.¹⁹⁴ Those inequalities could have been addressed under the more fluid, precolonial arrangements, but there is no easy solution today.¹⁹⁵

Suppose that everything Lawson says about the transformation of traditional practices is true or largely so. What should we conclude? Was it a good policy or at least a permissible one? One important question is what the alternative was and how good or bad that would have been.

The most likely alternative would have been a land policy designed to grant individual title to native Fijians and, more generally, to open up the land for fuller commercial exploitation. Would that have been desirable? Something like it was in fact tried. Lawson tells us that a later governor, Everard im Thurn, worried about the subordination of ordinary Fijians to their chiefs. He wanted to promote individualism among the Fijians, including a sense of economic ambition. To this end and as a way of reducing the chiefs' control, he wanted to have English taught in the village schools, not just to the children of the chiefs.¹⁹⁶ But his most dramatic innovation was a policy designed to reverse the previous assumption that "all non-alienated lands, occupied or otherwise, had Fijian 'owners'."¹⁹⁷ With the enthusiastic support of the European settlers, he tried to open up "underutilized" land for commercial purposes. Between 1905 and 1908, 105,000 acres were sold and 170,000 put under long-term lease, a significant portion of the best agricultural land in Fiji. Gordon, the first governor, was then in the House of Lords; when he learned of this policy, he used his influence to put an end to it, and it was not subsequently renewed.¹⁹⁸

Was Gordon's intervention and the failure of this new land policy to be regretted? Here is Lawson's own assessment: "It

194. *Id.* at 75.

195. *Id.* at 73-78.

196. *Id.* at 86-87. Lawson is not entirely clear about what became of this proposal, but it seems to have been dropped because of resistance from the chiefs and the missionaries who controlled most of the schools. The governor's persistence with his land policy may suggest where his true priorities lay.

197. *Id.* at 89.

198. *Id.* at 88-90.

was, of course, fortunate at that time that the European population was prevented from encroaching too far upon the land—whether the land was occupied or not. In other ways, however, the consequences have not been so fortunate¹⁹⁹ This seems a striking statement given Lawson's general position on preservation. What lies behind her ambivalence? In what ways was it fortunate and in what ways unfortunate?

With regard to the native Fijians, Lawson seems to think the prohibition on the sale of land was unfortunate because it reduced incentives for individual economic activity and because it was an integral part of Gordon's overall strategy of cultural preservation, which she sees as a conservative orthodoxy.²⁰⁰ But listen to what she acknowledges to be the advantage of the policy for the Fijians: it "discouraged an influx of white immigration which might have been expected had the land been thrown open for settlement. Unlike the neighbouring colonies of Australia and New Zealand, then, the indigenous population could not be pushed further and further off their lands to make way for white expansion."²⁰¹

If these are the advantages and disadvantages, the preferable course for Fijians seems clear. Australia and New Zealand were the models that the settlers wanted to emulate and that Gordon wanted to avoid. Whatever the economic and social costs to Fijians of Gordon's plan, they pale beside the costs of the alternative suffered by the indigenous peoples in Australia and New Zealand.²⁰²

B. Context and Contingency in the Evaluation of the Past

Lawson has articulated precisely the sort of considerations that I think ought to be taken into account in our moral judgments: plausible historical possibilities and factors that the actors facing a situation could reasonably be expected to consider. We cannot just compare the path Fiji actually took with some hypothetically benign course in which the Fijians harmoniously developed racially integrated economic and political institutions, effectively

199. *Id.* at 90.

200. *Id.*

201. *Id.* at 77.

202. *See supra* note 142.

transforming their cultural traditions in ways that enabled them to compete successfully as individuals with other groups, if that imagined course was not in any sense a real historical possibility. Of the two paths which were clearly open, Gordon's and the more liberal individualistic one pushed by his successor, I see no grounds even on Lawson's own account for preferring the latter, if one is concerned about the welfare of the Fijians in the short or long run. If there was some third and superior alternative, we need some specification of what it might have been and how it might have worked.

I must acknowledge that there is a danger in the emphasis that I am placing on the importance of historical context, namely, that one can accept too readily constraints which, however real, should themselves be subject to criticism. It is a deep problem for political theory as to how one is to incorporate the constraints of history without losing one's critical and theoretical perspective.

This dilemma is brought home all the more forcefully when we turn our attention to the group which has thus far remained offstage in this part of the discussion: the Fijian Indians. As Lawson notes, one major consequence of the policy on the inalienability of Fijian land is that the Indian population and their descendants were doomed by it to become and remain "a landless majority in their adopted country."²⁰³ If land is crucial to the well-being of the native Fijians, it is also crucial to the well-being of the Fijian Indians. Their insecurities about land are one of their central, long-standing complaints.²⁰⁴ Did and does the rule against alienation adequately respect their moral claims?

Certainly the costs of this policy for the Fijian Indians should count against it. Are the costs great enough to judge it on balance to have been or to be morally wrong? Again, thinking about this in historical context is perplexing. Should we ask whether the policy should have been adopted in the actual historical context, assuming that the system of indentured labor and white domination were to be in place? That seems odd. Surely both of those features of the colonial system were much more deeply problematic from a moral perspective than the inalienability of land. Why would we focus exclusively on the latter?

We could ask instead whether such a policy would have been justified if the rest of the colonial policy had been just, assuming

203. LAWSON, *supra* note 10, at 77.

204. See *supra* text accompanying notes 59-64.

that is not an oxymoron. But then we drift so far from reality that we begin to lose the bearings that we need to make an intelligent judgment about the question. Do we assume away white domination and the indenture system? How about the colonial government? How about the incursions of the European settlers that made becoming a colony seem like an attractive option to some of the Fijian leaders? Remember that the most powerful argument in favor of the policy is the role that it played in preserving the native Fijians from the fate suffered by indigenous peoples in Australia and New Zealand. Do we want to say that that fate was unfortunate but just? I doubt it. If not, when we remove injustice hypothetically from the situation, we remove much of the rationale for the policy. It was, after all, a defensive policy. The Fijians did not practice strict inalienability before the arrival of the Europeans, but alienability within the internal, noncapitalist Fijian context was not such a threat to the well-being of most Fijians.

Perhaps we should focus exclusively on the issue of land policy because altering it was a realistic possibility, as is evidenced by the actual, if temporary, change in the early 1900s, while the other morally problematic arrangements—such as white domination and indenture—were inevitable under the circumstances. But inevitable in what sense? What this really means is that the Europeans were so firmly in power and had such ability to defend their vital interests that no fundamental challenge to them could succeed. (Indeed, it is remarkable what Gordon was able to do to limit their claims.) But here we confront again the question of what should be taken as a given for purposes of moral theory and what should be subjected to critical analysis.

C. Cultural Change, Moral Legitimacy, and Contemporary Land Policy

It is tempting to try to avoid these conundrums by refusing to judge the past and skipping to the present. Some might say, "We cannot change history; we can only be just in our own time." From this perspective, we should ask only whether it is just now for the Fijians to hold their land inalienably in collective units. I will try to address that question, though I am afraid that the issues raised above about appropriate,

realistic constraints will not go away, and this is not only because the present will soon be the past.

The basic picture seems to be this: a somewhat fluid set of arrangements with regard to land in precolonial Fiji became much more rigid and fixed with the assignment of inalienable rights to collective units. This helped to protect the native Fijians from the disasters suffered by indigenous groups in neighboring colonies, but it also had the effect of changing Fijian culture, making land and these collective units more central than before. Now the threat of a European takeover of the land is greatly reduced, but the Fijians feel threatened by the Indians' desire for land. Ordinary native Fijians seem to feel a powerful attachment to the land and to have a lot at stake in their sense that they own the land, even when they do not live on it or work it themselves. Lawson herself indirectly attests to the power of this attachment when she notes critically that Fijian politicians have exaggerated the threat to Fijian ownership of the land that an Indian-dominated government would pose as a way of stirring up support for themselves and opposition to Fijian Indians.²⁰⁵ Her criticism of the tactic is entirely appropriate, but it is essential to see that the tactic can work only if native Fijians care about the land, at least—or perhaps especially—as a symbolic and cultural issue. In other words, the native Fijians themselves seem to regard continued Fijian ownership of the land as a vital interest.

We do not have to accept that perception at face value. One could argue, as Lawson does, that some of the features of Fijian culture are the product of a manipulative system of socialization.²⁰⁶ But I want to defer examination of that criticism to the discussion of chiefly authority. Instead, I want to focus here on the question of whether cultural change undermines the moral legitimacy of claims made in the name of culture.

I have noted how Fijian attitudes toward land were altered by the colonial policies designed to protect them. Is that a reason for discounting the present attachment? I do not see why. The Fijian attachment to the land clearly has deep, precolonial roots. Similarly, the communal units that own the land are not simply the creation of the colonial regime, even if they generally did not have ownership rights over the land before Gordon's policy.

205. See LAWSON, *supra* note 10, at 2–5.

206. See *id.* at 2.

Even if both the attachment to the land and the land-owning unit had been entirely created by the colonial regime, to take an extreme hypothesis, it is not clear why that would discredit them if people were deeply attached to them over one hundred years later. Remember, I am setting to one side the issue of manipulation of the culture for the sake of internal domination. By hypothesis, we are dealing with a case where the cultural commitments in question are neutral or benign in their effect on those who hold them, but where they derive, at least in part, from some source exogenous to the culture.

As I see it, all cultures are subject to exogenous influences. That does not, however, prove that there are no legitimate cultural commitments or attachments. What makes something a legitimate part of people's culture, regardless of its origins, is the fact that they have internalized it, made it their own, integrated it with other aspects of their culture. Of course, one can argue about whether that has actually occurred in a given case, but, as I have tried to suggest, the depth of the Fijian attachment to the land today does not seem to be in dispute. What people regard as important is, in some respects at least, contingent and variable. But if they see something as important, we should take it seriously if we wish to take them seriously. That does not settle the question of what is to be done in cases of conflicting claims. It does mean, however, that external observers should not pass judgment on the authenticity, and hence moral legitimacy, of some cultural commitment on the basis of its origins.²⁰⁷

So, native Fijians today are entitled to treat their land as a vital interest because of the role that it plays in their culture. But what about Fijian Indians? They have vital interests at stake here too. For the Fijian Indians, as far as I can tell, the concern with regard to the land is an economic interest rather than a cultural one. I do not mean to suggest that this economic interest is less vital. It may be more vital in some contexts. But it does suggest that some compromise might be possible that would respect the security interests of Fijian Indian farmers without challenging the cultural claims of native Fijians to ownership. It is a familiar legal point that ownership is a bundle of rights and that these rights can be organized differently for different

207. I emphasize external observers because claims about origins can sometimes play a role in internal debates within cultures about questions of authenticity.

purposes.²⁰⁸ Under these circumstances, it should be possible to find some arrangement that meets the concerns of both Fijian Indians and native Fijians. Under other circumstances, that might not be the case.²⁰⁹

D. Is Cultural Preservation Always Paternalistic? Inalienability and Interests

Let me turn to one final possible objection to perpetuating inalienable land rights, namely, that it is a form of paternalism. The argument goes something like the following. If individual Fijians or Fijian communal units do not want to sell their land, they do not have to do so. No one will force them to sell. If they do want to do so, and the chiefs want the land to be inalienable in order to prevent it, the chiefs are acting paternalistically.²¹⁰

Now the first point to note in response is that even Lawson does not seem to think this sort of argument would have been an adequate reason for permitting Fijians to sell land at the beginning of the colonial period. The implication of the passages that I cited earlier seems to be that the widespread alienation of Fijian land then, however voluntary, would have been a disaster for the Fijian people as it was for indigenous peoples elsewhere.²¹¹ One could perhaps argue that native Fijians today do not need as much protection against potential Fijian Indian domination as their ancestors needed against European domination. I think that there is something to that claim, but we cannot overlook the much greater economic success of the Fijian Indians²¹² and therefore the possibility that the ownership of land would become concentrated in their hands if Fijian land

208. See, e.g., *Hodel v. Irving*, 481 U.S. 704, 716 (1987); LAWRENCE C. BECKER, *PROPERTY RIGHTS: PHILOSOPHIC FOUNDATIONS* 18 (1977); Richard A. Epstein, *Property and Necessity*, 13 HARV. J.L. & PUB. POL'Y 2, 3 (1990); Thomas C. Grey, *The Disintegration of Property*, in *PROPERTY: NOMOS XXII* 69, 69 (J. Roland Pennock & John W. Chapman eds., 1980).

209. It is not unknown for two different groups to have powerful cultural attachments to the same land. In such cases, a just solution is harder, perhaps even impossible, to achieve. Nevertheless, we do not advance the cause of justice by denying that cultural concerns matter. That they do matter is sometimes the only thing that the conflicting groups can agree upon and must be the starting point for reflection.

210. At one point, Lawson quotes a passage from another author who develops this argument at length. See LAWSON, *supra* note 10, at 191 (quoting W.F. Newton, *Fijians, Indians, and Independence*, 42 AUSTRALIAN Q. 33, 38 (1970)).

211. See *supra* part VI.A.

212. See *supra* text accompanying notes 60–68.

were not inalienable. That outcome is a problem only if one accepts the argument advanced earlier that ownership of the land is central to Fijian culture and that a significant erosion of that culture would be bad for native Fijians. But that just throws the paternalism argument back one step further. If particular Fijians want to act in ways that undermine their own culture, why shouldn't they be free to do so? Isn't the attempt to preserve a culture through a practice like making land inalienable an unjustified form of paternalism?

In fact, it is neither paternalistic nor unjustified. As Russell Hardin has argued, making certain rights inalienable or restricting the range of actions of the members of a group to which one belongs is a perfectly intelligible way of protecting one's interests in a context in which collective action problems or externalities create incentives for individuals to act in ways contrary to their more important collective interests.²¹³ This is not necessarily a form of paternalism, if by paternalism one means requiring people to conform to policies or rules in ways that go against their own best judgment of their interests, but which others believe will be in their interest. When constraints instead are self-imposed as a way of avoiding collective-action problems, it is misleading to call them paternalistic.

From this perspective, the policy on inalienable collective ownership of land in Fiji is far less paternalistic today than it was when it was introduced. Then, it was primarily the result of a judgment by the colonial government about what would be good for the Fijians, not something that they had chosen for themselves. Today, by contrast, the policy has the strong and explicit support of a substantial majority of native Fijians.²¹⁴ Keeping land inalienable is not a form of paternalism, but rather a way of respecting the demands of most Fijians. Of course, this still leaves open the question of whether it is legitimate to require the minority of Fijians who do not share this view to conform to it, but that is a familiar problem in any context of democratic decision making, where choices must be made about collective goods in the absence of a consensus.²¹⁵

213. See RUSSELL HARDIN, *MORALITY WITHIN THE LIMITS OF REASON* 92–96 (1988).

214. This conclusion seems to me the obvious implication of Lawson's discussion of the way the issue plays politically, although she herself does not draw this inference. See LAWSON, *supra* note 10, at 2–5.

215. It is only libertarians who suppose that the solution to such problems is to deny that they exist by letting individuals decide for themselves.

In sum, the constitutional entrenchment of inalienable land rights is morally permissible because it offers one way to protect interests that most Fijians regard as vital and that would be vulnerable in the absence of this institutional arrangement because of collective-action problems. Is this arrangement morally required? I would not go so far as to answer this affirmatively in today's world because the Fijians gradually are integrating themselves into the market economy. As they do so, the moral urgency of maintaining the distinctive Fijian culture will diminish. There may well come a time when the maintenance of inalienable land rights would no longer be primarily a way of protecting a vital aspect of Fijian culture, but rather just a way of achieving economic advantage in relation to the Fijian Indians. If that should occur, the policy would no longer be morally defensible. When such a point is reached is, of course, subject to interpretation and debate like every other substantive moral judgment that one can make about this case or any other.

VII. AUTHENTICITY, INTERESTS, AND DEMOCRACY: THREE CHALLENGES TO THE MORAL LEGITIMACY OF CHIEFLY AUTHORITY

Let me turn now to the question of chiefly authority. The chiefs and their supporters have claimed that deference to chiefly authority has long been a central part of traditional Fijian culture. This was, at least ostensibly, an important part of the original justification for constructing a separate administration and giving the chiefs a key role in running it, that is, that this way of organizing colonial political and legal institutions was the most congruent with indigenous Fijian culture. Lawson objects that this account is based on a distortion of Fijian culture, that it serves the interests of the Fijian chiefs at the expense of the Fijian people, and that it undermines desirable democratic institutions and practices in Fiji as a whole.²¹⁶ I will explore each of these objections in turn.

216. See LAWSON, *supra* note 10, at 93–117.

A. Authenticity and Cultural Change

First, consider what I will call the issue of authenticity. I have touched on aspects of this issue already in my discussion of the place of land in Fijian culture, and now I will explore it further. In general terms, the problems posed by the issue of authenticity might be put as follows. Some people object to any effort at cultural preservation on the grounds that every culture is indeterminate and contested, and that the idea of preserving a culture inevitably privileges one particular understanding of the culture over others and rigidifies the culture in an artificial way.²¹⁷ That objection can be raised even when the efforts at preservation are being carried out by institutions like museums²¹⁸ and, even if (as often is not the case) the museum officials are members of the community whose culture the museum is trying to preserve. The objection takes on added force when political authority is involved. Is it morally legitimate for those with political power to promote their interpretation of a "shared" culture and to determine what measures shall be taken to preserve it? What, besides force, makes their view of the culture authoritative?²¹⁹

217. See Waldron, *supra* note 4, at 761–65.

218. See Welsh, *supra* note 3, at 841–46.

219. This problem is complicated further when it is a question of a minority culture, so that those from the minority culture who have political power within their own group are nevertheless subject, at least potentially, to political constraints from the majority outside the group. What if a minority within the minority appeals to this overall majority in the name of the minority's own culture which the dissidents may say those in power are not respecting? For example, native women in Canada have argued that the Canadian government should not permit them to be excluded from membership in their bands and expelled from their reservations for marrying nonnatives when the same rules do not apply to native men who marry nonnative women. When those sympathetic to native self-government argue that the native women should not use Western concepts of equality between the sexes to challenge traditional native practices, the women sometimes reply that the male chiefs are not following traditional native culture, which varied considerably from one tribe to another and often permitted women who married nonnatives to remain with their tribe. They point out that the exclusionary rule, at least in its universal form, was imposed by an earlier Canadian government in the name of Western patriarchal values that many native groups did not share, but which some male chiefs have come to accept because it suits their interests to do so. See KATHLEEN JAMIESON, *INDIAN WOMEN AND THE LAW IN CANADA: CITIZENS MINUS 79–88* (1978); Kathleen Gallivan, *Two Kinds of Indians: Native Women and Their Claims to Indian Identity 25* (May 1988) (unpublished manuscript, on file with the *University of Michigan Journal of Law Reform*). So far as I can tell, however, this particular sort of complication about who speaks in the authentic voice of the tradition has not yet arisen among the Fijians themselves, though variants of it perhaps are implicit in some of the challenges to the chiefs.

However problematic political efforts at cultural preservation may seem in a liberal democratic society—with its institutional mechanisms for deliberation, choice, and dissent by the citizenry—they are likely to seem even more problematic in societies where authority is said to rest on tradition rather than choice. How do we know that what is put forward as a “shared culture” is not merely a self-serving ideology designed to preserve existing patterns of privilege and power? How do we know whether those without power really accept and share this culture? If they are silent, is it because they agree or because they have no voice? If the traditional culture is to be preserved in the name of the people who share it, don’t we have to know what they think, how they see their own culture, and whom they regard as legitimate spokespersons?²²⁰ And even if ordinary people do accept the legitimacy of “traditional” authorities, how do we know that their acceptance is not just the product of a manipulative system of socialization?²²¹

1. *Colonial Promotion of Chiefly Rule*—All of these questions are relevant to the issue of chiefly authority in Fiji. Lawson points out that before Fiji became a colony, there was considerable regional variation in patterns of authority and social organization. While chiefs played some significant social role in all parts of precolonial Fiji, it was only in the eastern region of the main island that a strongly hierarchical pattern of chiefly rule predominated.²²² The colonial regime, with the cooperation of the eastern Fijian chiefs, defined this strongly hierarchical pattern as *the* traditional system of Fijian rule, using it as the

220. Perhaps someone will object that such a question entails the (moral) imposition of our own liberal democratic values on other cultures. But then the objector must explain why we ought to respect other cultures at all. As I argued above, it is not possible in practice to sustain a radically relativistic view of the morality of other cultures, that is, a view that sets no limits on what counts as morally legitimate social arrangements and cultural values. See *supra* part IV.

221. Now that Marxism is in such disrepute, terms like “false consciousness” are shunned. There are indeed good reasons to be wary of any claim that someone else’s self-understanding is false. One risks running roughshod over any view of the world that does not comport with one’s own. On the other hand, it would require a willful blindness to deny that manipulative socialization has played an important role in maintaining patterns of unjust domination with regard to race, class, and gender, both in our own society and in others. The challenge, therefore, is to find an approach which provides a critical perspective on societies, including our own, and which at the same time is open to the possibility of genuine and legitimate differences among people’s values and commitments. In one sense, this particular problem simply recapitulates the basic issue that this entire Article is addressing.

222. HOWARD, *supra* note 10, at 17.

key structural element for purposes of colonial administration.²²³ Different patterns were forcibly suppressed, and all of Fiji was required to conform to this model. Hierarchical relationships were formalized to meet the requirements of administration, and in some cases entirely new hierarchical institutions, most notably the Council of Chiefs, were created by the colonial regime.²²⁴ According to Lawson, this arrangement might be attributed as much or more to the familiar colonial strategy of indirect rule as to any real desire to respect traditional patterns of Fijian authority.²²⁵ At the very least, the hierarchical dimensions of Fijian culture were reinforced dramatically by the institutions of colonial administration. So, according to Lawson, chiefly authority in its current form is not a deeply rooted, long-standing element of a common Fijian culture, as its defenders would have it, but rather, in important respects, a relatively recent addition created largely to serve the needs of the colonial regime.²²⁶

If chiefly rule is as tainted by its colonial connections as Lawson argues, why do the Fijian people put such store in their chiefs today? Lawson's answer to this question seems ambiguous. At times, she emphasizes the chiefs' attachment to chiefly hierarchy.²²⁷ At other points, she seems to be saying that ordinary Fijians do accept chiefly hierarchy as central to the Fijian way of life, but only because the chiefs have established and maintained their position through fear, superstition, and propaganda.²²⁸ Among other techniques, Lawson says, the chiefs have insisted that they alone are authoritative interpreters of Fijian tradition, and then they use that interpretive authority both to bolster their claims to exercise legitimate social authority and to influence the understanding of particular social and political issues.²²⁹

Overall, then, Lawson argues that the chiefly hierarchy rests its claim to legitimacy on appeals to a traditional Fijian culture which it misrepresents. Because existing patterns of chiefly rule have deeper roots in colonialism than in precolonial Fijian culture,

223. *See id.* at 25.

224. LAWSON, *supra* note 10, at 63–69.

225. *Id.* at 60–64.

226. *Id.* at 97.

227. *Id.* at 100–07.

228. *Id.* at 100–04. Lawson explicitly uses the phrase “a century of propaganda” to account for why ordinary Fijians accept the current patterns of sociopolitical organization, including landholding, as long-standing and traditional for all Fijians, despite the evidence of historians to the contrary. *Id.* at 96.

229. *Id.* at 105.

chiefly hierarchy in its present form is not an authentic expression of indigenous Fijian culture.²³⁰ She explicitly considers and rejects an argument to the effect that what matters is the attachment of past and contemporary Fijians to their forms of social organization, including chiefly authority, rather than questions of historical origins. Lawson objects that such a position implies that “the legitimacy of the ‘tradition’ embodied in the uniform structure [of contemporary Fijian social organization] is not derived from any consideration of its origins, but from the purpose it has come to serve.”²³¹

2. *How Much Continuity Is Enough? Who Decides?*—Lawson’s objection is well worth considering. An appeal to tradition is a claim about continuity. If there is no continuity, doesn’t the appeal fail? To put it another way, attachment and interest are not the same as authenticity. The fact that people are attached to some institution or benefit from some practice tells us nothing about their relation to past institutions and practices. But isn’t the relation to the past what matters if the institution or practice is defended on the grounds of “tradition”?

Suppose that we answer the last question affirmatively. What sort of relation with the past, how much continuity, is necessary for something to count as “traditional”? To put it another way, under what circumstances does it make sense to talk of “preserving” some aspect of a culture? It makes no sense to insist that any element of change in an institution or practice renders it nontraditional. All cultures evolve and change. It is the sense of continuity within change that the idea of tradition evokes. Consider, as an analogy, the idea of being faithful to a constitution. As the debates over constitutional interpretation show, there are no simple answers to the question of what counts as continuity in constitutional law.²³²

Let us move from the abstract to the concrete. Was there enough continuity between precolonial Fijian culture and the institutions and practices created by the colonial regime to justify

230. Lawson never uses the word “authentic” but this concern is implicit in the logic of her critique. *See id.* at 93–94.

231. *Id.* at 99. Lawson’s argument comes in the context of a critique of Macnaught. *See id.* In my view, this is in part an unfair criticism. Pursuit of that issue, however, would take me too far from my main concerns.

232. *See generally* SANFORD LEVINSON, *CONSTITUTIONAL FAITH* (1988). Of course, one solution is to deny the possibility of continuity altogether, but, like all forms of radical skepticism, this is a difficult position to maintain. A more defensible position, which is compatible with (though not required by) what I have said in the text, is to insist that any particular claim to continuity is contestable.

a claim that the new order was traditional in some meaningful sense, that it was a way of preserving Fijian culture? Lawson herself seems to concede as much, saying, "The system did much to preserve the indigenous culture and way of life, even though some aspects of these were of dubious value."²³³ What is perhaps even more important is that the native Fijians themselves treated the continuity as significant.

If the question of authenticity is essentially a question about how to appraise a relationship with the past that includes elements of both continuity and discontinuity, it would seem reasonable to let the people whose culture and history are in question be the judges of whether contemporary institutions and practices should be regarded as authentically traditional.²³⁴ This is not the same as saying that whatever institutions and practices they accept are authentic. Rather, it is to say that whatever institutions and practices they accept as *traditional* are authentic. For example, most native Fijians seem to accept legislatures and elections as legitimate social institutions in the sense that no significant segment of the native Fijian population suggests that it would be appropriate today to choose political rulers purely on the basis of heredity or to rule by fiat. But no one claims that these institutions are traditional. Of course, people in a given culture may disagree among themselves about what is authentic. But, in the case of the Fijian people, there seems to be surprisingly little disagreement on such key issues as whether a deep attachment to the land and respect for chiefly authority are authentic elements of Fijian culture and whether the contemporary institutional incarnations of these values are legitimate.²³⁵

One scholar, who explicitly acknowledges the ways in which the arrangements of the colonial regime drastically modified traditional Fijian practices, asserts nonetheless that these arrangements were something that "Fijians rapidly made their

233. LAWSON, *supra* note 10, at 3. The quotation illustrates Lawson's skepticism about the merits of the traditional Fijian way of life, and that is another important issue to which I will turn shortly. But just as authenticity is distinct from the question of current attachment, so it is also distinct from the question of whether what is authentic is good on other grounds.

234. See Marie R. Deveney, *Courts and Cultural Distinctiveness*, 25 U. MICH. J.L. REF. 867, 876-77 (1992).

235. Lawson devotes several pages to a discussion of various manifestations of dissent or discontent by commoner Fijians with regard to chiefly rule in the Fijian Administration under the colonial regime. See LAWSON, *supra* note 10, at 117-23. What struck me in reading these pages was the relative paucity of examples that she could cite. In my eyes, these pages confirmed, rather than challenged, the conventional view that these arrangements were widely accepted.

own and defended tenaciously for a century as the bulwark of their neotraditional identity, of everything that was still distinctively Fijian."²³⁶ In other words, this is what the Fijians themselves thought that they could maintain of the old ways under new conditions, what they could preserve even if in changed form. If that description is correct, then chiefly authority, as institutionalized by these arrangements, ought to be considered an authentic part of Fijian culture. In other words, the issue of authenticity should not be used by people outside a culture to call into question institutions and practices that those within the culture regard as legitimate reflections of their heritage.

Suppose that the apparently widespread acceptance of such institutions and practices as authentic elements of the tradition is the product of lies and coercion. Suppose that those in power mislead ordinary people about their actual history and traditions, presenting relatively recent innovations as things that date back to time immemorial and repressing those who would challenge their hegemonic view of the culture.²³⁷ Can an authentic tradition and legitimate authority be built on lies and coercion? Presumably not. But one might also ask whether any actual system of political socialization is likely to be entirely free of myths and whether any actual form of political rule reproduces itself without the use of power. While truth and unfettered consent provide powerful critical ideals, we should not use those ideals to declare an actual political system, such as Fiji's, to be inauthentic and illegitimate, unless we are prepared to judge other actual systems by the same standards. But, if all actual systems fail to meet the standards, as I think clearly would be the case, then the most important task may be to calculate degrees of inauthenticity and illegitimacy, in short, to distinguish bad from worse.

If lies and coercion are really the key to a political system, then one would expect the legitimacy of the system to collapse when the lies are exposed and the coercion removed. The collapse of communism in Eastern Europe provides an obvious illustration. Decades of systematic socialization and indoctrination turned out to be extremely ineffective when criticism and choice were widely permitted.

236. MACNAUGHT, *supra* note 10, at 4.

237. Lawson suggests that the Fijian chiefs have done exactly that with regard to the arrangements regarding the land and chiefly rule. See LAWSON, *supra* note 10, at 104-11.

In Fiji, whatever coercion might have sustained the system of chiefly rule in earlier times—for example, the early colonial regulation legally requiring Fijians to obey their chiefs in all things lawful according to custom—long since has been removed.²³⁸ With the introduction of democratic elections, a clear route was open for dissatisfied native Fijians to challenge the hegemony of the chiefly establishment, and some have taken that route. For example, the chiefly establishment is dominated by chiefs from eastern Fiji, and native Fijians from the western part of Fiji have sometimes tried to build a political movement on the basis of regional dissatisfactions with the status quo. Even the Fijian Nationalist Party was, in certain respects, a reaction against the chiefly establishment, and it occasionally employed populist rhetoric against the chiefs.²³⁹ Much of the political rhetoric of the Fijian Labour Party provided an implicit challenge to chiefly authority and offered native Fijians an alternative political identity, based on social and economic interests rather than ethnicity and culture. But none of these political challenges was able to draw more than a relatively small number of native Fijians away from the Alliance Party (which represented the chiefly establishment), and then only for a brief period.²⁴⁰ As I see it, these political patterns confirm what most observers of Fiji report, that support for the chiefly leadership is not unanimous but is nevertheless very strong, even in the face of challenges to that leadership from within the Fijian community.²⁴¹ Of course, the chiefs enjoy political advantages because of their positions, but those in power always enjoy advantages even in democratic politics. The point is that it is not plausible to attribute the ongoing acceptance of chiefly authority to raw coercion.

But what about manipulation and deception? Again, the question of degree is important. Lawson and others object that the chiefly establishment misrepresents history and tradition, presenting a uniform picture of what was in fact a diverse

238. The coup is a form of coercion, of course, and one that I think renders the political system established by it illegitimate, as I have argued above. See discussion *supra* part III.D. But it is not this that Lawson has in mind in alleging the importance of coercion to chiefly rule. See *supra* text accompanying notes 222–26.

239. LAWSON, *supra* note 10, at 206–07.

240. Perhaps the Fijian Labour Party would have done so if it had been permitted to govern and had carried out the sort of cross-ethnic program to which it was committed, but the NFP/Labour Coalition appears to have won only about 9.6% of the native-Fijian vote in the 1987 election. See LAWSON, *supra* note 10, at 251.

241. See, e.g., Lal, *supra* note 10, at 96–98.

tradition and concealing the colonial origins of the institutions of chiefly authority. No doubt the defenders of chiefly authority do present a sanitized and mythical picture of the Fijian past, but some such mythologizing is a feature of the political culture and childhood socialization system of every society so far as I know. It is not a lie (even if it is a drastic oversimplification) to say that chiefly rule was the traditional form of authority in Fiji before colonial rule. Moreover, for the Fijian chiefs to pass on this mythical picture of the Fijian past, they had to have the initial cooperation of people who had lived through the actual past. If most people had found the discrepancies between the official picture and their own experience too jarring, they probably would have passed on an alternative understanding to their children. Nor is it clear why they would cooperate in a massive deception in the absence of effective coercion to require them to do so. It is easy, on the other hand, to understand why they would cooperate in a process of mythologization that they found congenial to their own sensibilities.

There is a second important point here about the limits to any claim that Fijian tradition, and especially chiefly authority, is based on deception. There was no significant censorship in Fiji before the coup. Scholarly books have been written debunking myths about the Fijian past,²⁴² and they are readily available in Fiji. One may object that these works are accessible only to an educated and sophisticated audience, but the contrast with societies that make a systematic effort to restrict and control information is significant. Again, political opponents of the chiefs were free to try to make use of these findings. In short, the fact that Fijian chiefs are not impartial purveyors of the truth about Fijian traditional culture does not prove that chiefly authority is inauthentic, that it is not really a significant element in Fijian traditional culture.

Lawson also emphasizes that "pre-Christian superstitions, together with some later Christian accretions, must be seen as having played at least as important a role in maintaining chiefly status and authority as any other factor."²⁴³ Suppose that her description is accurate. It is not clear why this would call into question the *authenticity* of chiefly authority so long as these "pre-Christian superstitions" and the "later Christian accretions" are

242. For example, Peter France launched a famous attack on the myths about Fijian tradition with respect to land. See FRANCE, *supra* note 10, at 120-28.

243. LAWSON, *supra* note 10, at 102.

seen as authentic parts of Fijian culture.²⁴⁴ This might provide grounds for criticizing the culture itself or at least certain aspects of it, but that is a different challenge to which I will turn next.

B. Is Chiefly Authority Good for Fijians?

Is chiefly authority a good thing for the Fijians, even assuming that it is an authentic part of their culture? This is a crucial question that takes us back to the issue of the relation between cultural difference and moral relativism and permits us to explore it further in a context where the arguments for respecting difference appear stronger to me. The position that I will defend is one that gives some weight both to universal norms and to particularity. Let me say at the outset, though, that I am uncertain about the views I am putting forward, and I feel the attraction of both more universalistic and more relativistic positions.

How should North Americans like me and most of the readers of this Journal try to answer a question like the one I have posed about the merits of chiefly authority in Fiji?²⁴⁵ Consider two alternatives: one criticizes Fijian culture, including chiefly authority, in the name of liberal ideals and standards, while the other defends it in the name of difference.

1. *The Liberal Challenge to Fijian Culture*—One possible answer to the question of whether chiefly authority is good for the Fijians is to say that what is good for the Fijians is

244. The introduction of Christianity into Fiji provides an interesting illustration of an outside cultural influence that is acknowledged by all, yet not rejected as alien even by most ardent Fijian nationalists. On the contrary, Christianity has become part of the Fijian way of life and is one of the features of that way of life that differentiates native Fijians from most Indians. See HOWARD, *supra* note 10, at 371; NORTON, *supra* note 10, at 12.

245. I will leave aside, though only for the moment, the question of how the role of chiefly authority among native Fijians affects the interests of others, especially Fijian Indians. Obviously, one important objection to chiefly authority is the claim that it subverts democratic culture and institutions within Fiji as a whole. I will return to this issue shortly. See *infra* part VII.C. For the moment, I want only to concentrate on the question of whether it is good for native Fijians.

I do not intend to exclude by inadvertence the possibility that we should not try to answer such questions at all. I have tried to indicate above why a principled refusal to judge other cultures at all seems to me both morally wrong and practically impossible. This does not mean, however, that we should not refrain from some sorts of judgments about other cultures, and I will explore the possibility below that this issue fits in that category. See *infra* part VII.B.3.

what is good for us, namely, liberal democracy and capitalism, with the accompanying culture of individualism and economic acquisitiveness.²⁴⁶ From this perspective, chiefly authority is bad because it is deeply contrary to these values.

From the beginning of the colonial period, and even earlier, many European observers of Fiji advanced this sort of argument. They regarded the chiefly hierarchy as exploitative and despotic. Of course, the nineteenth-century critics were not trying to bring economic equality and democracy to the native Fijians but rather liberal economic freedoms, especially with regard to land and labor. They saw chiefly authority as an obstacle to that because they saw it as a crucial element in Fijian communalism, a way of life that subordinated the interests of individuals to the interests of the community and especially, they argued, to the interests of the head of the community.²⁴⁷

Here is what they found objectionable about traditional Fijian life as they understood it: the members of a Fijian village were expected not only to show personal deference to the local chief but also to contribute to his material subsistence—farming for him, supplying him with mats and cloth, and so on.²⁴⁸ At the same time, they were expected to participate in a variety of tasks that one person could not easily do for himself, such as building houses and canoes, and to assist in the duties of communal maintenance. It was the chief's right and responsibility to call upon people to provide labor for such activities and to direct it.²⁴⁹ Also, people had extensive obligations to friends and relatives, most notably in the practice of *kerekere*, under which a person's friends and relatives could "request" her personal property, a request that it would be shameful to refuse.²⁵⁰ The conflict between these communal practices and any individual opportunities or incentives for industry and accumulation seemed both

246. As with its famous predecessor, "[what's] good for the country is [what's] good for General Motors," James Flanigan, *GM Saga a Lesson for America*, L.A. TIMES, Oct. 27, 1992, at A1 (quoting the late Charles E. Wilson, president of General Motors Corporation 40 years ago), my sentence creates an ambiguity about whether the relationship between subject and predicate is to be construed in terms of parallelism or causal dependency, and this in turn invites ironic speculation about whether the interests being served by the claim in the sentence are unconscious or conscious of their exploitative hegemony. On the other hand, I will argue below that this position—what is good for the Fijians is what is good for us—cannot be rejected entirely. See *infra* text accompanying notes 272–79.

247. MACNAUGHT, *supra* note 10, at 38–40.

248. The chief's entitlements were called his *lala*. *Id.* at 39.

249. *Id.*

250. *Id.* at 20–21.

obvious and objectionable to the early Europeans.²⁵¹ It was no wonder that the Fijians did not seek to go beyond subsistence agriculture in their economic activity.

What the European settlers wanted was to make it possible for individual Fijians to sell their land and their labor for cash, the latter primarily taking the form of indentured contracts to European planters. To facilitate this transformation, they wanted the colonial government to impose poll taxes on native Fijians,²⁵² a policy that had been adopted elsewhere with the desired effect of forcing people to supplement their employment in subsistence agriculture with some sort of activity that generated a money income. Of course, the colonial government did indeed have to raise taxes from the native Fijians, but to the dismay of the colonists, Gordon and his associates devised a system of indirect taxation, building on the *lala* rights of the chiefs so that ordinary Fijians effectively paid taxes in kind by working in communal fields whose produce, often a cash crop, eventually went to support the colonial government.²⁵³ In addition, as I noted above, Gordon prohibited native Fijians from engaging in indentured labor on the plantations on the grounds that the departure of men for the plantations would destroy the communal system of labor that made Fijian village life possible. Further, he prohibited ordinary Fijians from leaving their villages without the permission of their local chief and gave the chiefs the legal authority to enforce this and all traditional communal obligations. And, of course, he prohibited the sale of Fijian land and established a legal regime based on communal holdings.²⁵⁴

Gordon's contemporary critics did not argue that his efforts were objectionable on the grounds that they were transforming traditional Fijian culture, although, as we have seen, that claim is true in important respects. Rather, they objected on the grounds that Fijian culture was not worth preserving or that there was a positive moral obligation to transform it to fit with the norms of British liberalism.²⁵⁵ These sorts of arguments have been a staple of a certain kind of criticism ever since. Thus, two major reports, published around 1960 as part of the process of preparing Fiji for independence, blamed the economic backwardness of native Fijians (compared with other inhabitants of Fiji,

251. *Id.*

252. *Id.* at 2.

253. *Id.* at 6-8.

254. See *supra* text accompanying notes 15-30.

255. See LAWSON, *supra* note 10, at 57-58.

especially the Indians who obviously had not begun from a position of privilege) on the Fijian communal culture. Like the earlier critics, they saw chiefly leadership as a key element in maintaining that communalism and thus retarding the economic progress of native Fijians.²⁵⁶

More recent critics, like Lawson, have repeated these critiques of the negative economic effects of Fijian culture and added an emphasis on the conflicts between democratic values and the values on which chiefly authority rests. Since chiefly authority is acquired as a hereditary status and requires deference from commoners towards chiefs, it stands in deep and ineradicable tension with the democratic idea that the legitimacy of public authority should rest on the choices of the governed and with the ethos of equal citizenship required to sustain democratic institutions.²⁵⁷

What should we make of these criticisms? To those who have some sympathy for traditional Fijian culture and the attempts to preserve it, the criticisms may appear smug and supercilious, an example of what Macnaught calls a "cliched liberalism" that simply assumed the moral superiority of Western and especially British culture and too often ignored the actual devastating effects of social reforms based on such liberal premises in Fiji and elsewhere.²⁵⁸ So, let us turn now to that alternative.

2. *Defending Fijian Difference*—One approach to defending Fijian culture, including chiefly authority, celebrates its differences from the liberalism that purports to criticize it. Many of the very features of Fijian society that liberal critics have found so objectionable are the ones that have seemed most admirable to some of the colonial administrators and to many of the Western scholars who have written about Fiji. In particular, they have admired a communal culture that embodies principles of mutual caring and reciprocity, that places concern for the common good above individual advantage, and that discourages acquisitiveness

256. *Id.* at 109–10.

257. Lawson's principal argument is that the perpetuation of the neotraditional Fijian order, and especially its emphasis on chiefly authority, prevented the development of a sufficiently strong democratic culture to sustain the transfer of legitimate power from a party representing the chiefly establishment to a party representing Fijian Indians and, to a lesser (but potentially greater) extent, Fijian commoners. In this section, however, I want to focus on arguments about the merits of chiefly authority for native Fijians themselves, leaving for later a discussion of effects on Fijian Indians. *See infra* part VII.C. Part of Lawson's argument is that this undemocratic culture of chiefly authority was bad for the native Fijians themselves.

258. *See* MACNAUGHT, *supra* note 10, at 103.

and encourages respect for others.²⁵⁹ So, even at the level of moral ideals, Fijian communalism seems to many, including myself, to offer an attractive alternative to the possessive individualism of liberal capitalism.

At the level of practice, too, the contrast between Fijian communalism and liberal capitalism often favors Fijian communalism if one cares about the well-being of the ordinary person, and especially about those at the bottom. Macnaught, for example, draws attention to the almost complete absence of violent crime and destitution,²⁶⁰ as well as to the high quality of housing, in Fijian village society during the first decades of colonial rule. As liberal reforms took root, these conditions began to deteriorate.²⁶¹ E.K. Fisk stresses the protection that this way of life still provides against the risks of capitalism. A native Fijian commercial farmer or entrepreneur who fails is not bereft of all support. He always can return to the less affluent but secure existence of village life. Fijian communalism has not produced a high level of surplus or material affluence, but it has produced enough for the basic material wants of all, while maintaining a rich ceremonial and social life.²⁶² Given the experiences of other societies, there is good reason to suppose that a more rapid or radical transformation of Fijian culture in a liberal direction would not have improved the lives of most Fijians.

Let me add one qualification to all this. Most of these observers do not celebrate chiefly authority as such. They are apt to see chiefs as more responsive and responsible to the people, less exploitative and domineering than the critics see them.²⁶³ But, in the main, they see chiefly authority as an integral element of Fijian communal life and therefore something to be respected if one respects that way of life.

So far, I have described a defense of native Fijian culture that celebrates the ways in which it differs from much Western liberal individualism. There are two alternative forms of defense that also deserve mention. First, one might argue that Western liberalism is morally superior to Fijian culture but that it was not, or is not, readily applicable to Fiji. In this view, which has been embraced (if only for political reasons) by some Fijian

259. See, e.g., *id.* at 160–63.

260. *Id.* at 70.

261. *Id.* at 161.

262. FISK, *supra* note 10, at 45.

263. See, e.g., MACNAUGHT, *supra* note 10, at 38.

traditionalists²⁶⁴ and which fits as well with certain forms of British imperialist thought,²⁶⁵ any attempt to transform Fijian culture and institutions rapidly and radically in a Western liberal direction would cause more harm than good, because the history of Fiji has not prepared native Fijians to adapt well to such an alternative. From this perspective, chiefly authority is seen not as a good in itself or as an essential element in a culture that has more significant intrinsic merit than liberalism. Rather, the argument is simply that liberalism is not a viable alternative for historical reasons, and it is necessary to settle for the inferior but viable alternative of traditional Fijian culture. The great danger is that reform efforts could destroy the traditional culture without successfully replacing it with anything superior. The result would be anomie and disorder, a far worse condition for native Fijians than their situation under the traditional culture.

The other alternative is to defend Fijian culture on grounds that link cultural difference more closely to moral relativism. On this view, it is inappropriate, perhaps even wrong, for outsiders to pass judgment on the merits of Fijian culture, including chiefly authority, provided that it meets certain minimum moral standards, such as not sanctioning the murder of the innocent. Just as we ought to respect the rights of individuals to make their own decisions about the good life and how to achieve it, we must recognize that different individuals will define the good differently. Therefore, we ought to respect the rights of cultural collectives to develop and transmit their own understandings of value and goodness, recognizing that different cultural collectives will have different understandings and practices. For both individuals and collectives, some minimal standards must be respected, and how these are to be specified is bound to be contested. Moreover, it is always possible to define minimal standards that are so extensive and demanding that they really amount to a comprehensive universal morality that governs all significant aspects of individual and collective life. But if this subterfuge is not adopted, then the principle of not judging others—call it the “mind your own business principle”—tells us that we should refuse to answer the question that I posed at the beginning of this section about whether or not chiefly authority is a good thing for the Fijians. This question

264. See discussion *supra* note 42.

265. See, e.g., sources cited *supra* note 172.

is one that the Fijians themselves must decide on the basis of their own understanding of "the good."²⁶⁶

3. *Minimal Moral Standards and the Good Life*—The three different defenses of Fijian culture that I have identified stand in some tension with one another, perhaps even to the point of outright conflict. I am drawn most strongly to the first defense, the one celebrating the goodness of the Fijian way of life, yet I think that there is something to be said for each of the defenses and even for the opposing critique of Fijian culture in the name of Western institutions and values. There are two crucial issues here: the first is the question of how far minimal moral standards extend; the second is the question of whether we ought to make moral judgments about institutions and practices that meet minimum moral standards (whatever those may be), or whether instead we should simply acknowledge others' rights to conduct their lives as they see fit within the sphere of the morally permissible.

I already have argued for the applicability of minimal moral standards to Fiji in my critique of the coup and the relegation of Fijian Indians to the status of second-class citizens.²⁶⁷ Let me try to explore that issue further by taking up some hypothetical questions about the course of Fijian cultural evolution. According to the reports of early nineteenth-century visitors to Fiji, Fijian culture included such practices as the ritual killing of slaves in connection with the building of chiefly houses and canoes and the killing of a chief's widow upon the death of her husband.²⁶⁸ Suppose that these practices were still part of Fijian culture today. Would we be obliged not to pass judgment so as to respect their autonomy or their cultural difference from us? One could argue, of course, that we ought not to intervene to try to alter the culture because indigenous cultures like Fiji's tend to change with greater exposure to other cultures, and deliberate intervention to change a culture often does more harm than good. But could anyone argue that we should, as a matter of principle, show respect for such practices as killing slaves or widows because

266. The line of argument advanced in this paragraph has strong affinities to Michael Walzer's views. See MICHAEL WALZER, *SPHERES OF JUSTICE* 312–21 (1983). I am not sure, however, that he would agree entirely with it. The argument is also implicit, I think, in some of Will Kymlicka's positions, despite his explicit rejection of what he takes to be Walzer's relativism. See KYMLICKA, *supra* note 7, at 231–35.

267. See *supra* part III.A.

268. See SCARR, *FUJI: A SHORT HISTORY*, *supra* note 10, at 3–19; THOMAS WILLIAMS & JAMES CALVERT, *FUJI AND THE FUJIAN* 148–52, 161–68 (New York, D. Appleton & Co. 1859).

these practices constitute part of the cultural life of others? I cannot imagine how one would try to defend that view.

Suppose that someone did not try to defend a strong form of moral relativism directly, but rather tried to challenge the moral relevance of my example. It would be fair for the critic to point out that these sorts of reports tend to be characterized by bias, exaggeration, and misinformation; that the legal regimes of some Western states during the same period sanctioned both chattel slavery and the violent subordination of wives to their husbands; and that the question is purely hypothetical because Fijian culture has not included such practices for over a century.

Consider what each of these objections implies. The first merely suggests that we have the facts wrong or that there is some way to tell the story of these practices that will make them seem unobjectionable, without committing us to the principle that we should not judge other cultures. The second objection makes a valid historical point, but its implications for our moral reasoning are unclear. There is a problem of anachronism in making moral judgments about the past, but I do not think that this means we simply can refuse to make such judgments.²⁶⁹ Thinking about the past from a moral perspective is a lot like thinking about other cultures from a moral perspective. In both cases, it is easy and dangerous to adopt a smug and superficial assumption about the moral superiority of our own time and place, an assumption that enables us to avoid self-examination and self-criticism. In both cases, it can reasonably be argued, we have to pay attention to context and circumstance before passing judgment. But can we avoid judgment altogether? What would it mean to live in a moral world in which we made no moral judgments about past practices and actions? How would we know what to praise or to blame, what to preserve or to reform? A moral world unguided by the past seems, almost literally, unimaginable to me.²⁷⁰ But a moral world guided by

269. What would it be like to tell the story of slavery and its abolition in America without incorporating any moral judgments into the story? I do not mean to imply that the moral judgments are easy or uncontested. On the contrary, consider whether we should admire or despise (or both admire and despise) Abraham Lincoln, Robert E. Lee, and John Brown. These judgments are still debated today. For one thoughtful exploration of this period that is clearly informed by a passionate moral commitment, see ROBERT M. COVER, *JUSTICE ACCUSED* (1975). But what would it be like to feel obliged not to make any moral judgments about this history?

270. By "moral world," I do not mean simply a philosophical system, but a way of thinking that guides and informs actual moral judgments. In fact, there are few, if any, philosophical systems of morality that do not incorporate, implicitly or explicitly, judgments about the past.

the past is one in which we make moral judgments about the past. Similarly, a moral world informed by our knowledge of other cultures is one in which we make judgments about other cultures—judgments about what to condemn, what to admire, and what to accept as different.

The third objection, focusing on the hypothetical character of my question, I find more difficult to answer. On the one hand, I think actual cases are usually a more fruitful focus for reflection than hypothetical ones. Hypothetical cases tend to serve the interests of the argument for which they are constructed. Actual cases encourage reflection because of the complexity and ambiguity that they contain. They are more apt to take us in unanticipated directions and to broaden our sense of what matters. (That is why I chose to focus on the actual case of Fiji, rather than some imaginary island state whose history could be tidied up to serve the interests of the points I wanted to make.) On the other hand, this is a contingent judgment. Hypothetical cases can be illuminating and challenging, and I see no reason why they should be excluded in principle. Part of what I am trying to explore in this section is how much my moral judgments about the legitimacy of preserving Fijian culture are shaped by the fact that Fijian culture is not radically at odds with liberal values and institutions. To explore that issue, it seems helpful to imagine greater divergence than we find at present, and the most plausible sort of divergence is the kind that actually can be found in Fiji's past.

Suppose that no one wants to defend the killing of slaves or widows. Even with this consensus, we are still a long way from the institutions and practices of liberal democracies. For example, Michael Walzer supports the idea that basic human rights set some limits to what may be done to people in the name of culture, but he defends as just a hypothetical caste society in which the principles of hierarchy and caste differentiation are accepted by all of the members of the society, including those in the lower castes.²⁷¹ Fiji's most violent practices had disappeared by the

271. See WALZER, *supra* note 266, at 313–15. In my view, this example illustrates some of the problems of hypothetical cases. Walzer, while beginning with a description of an actual Indian village, goes on to assume a degree of uncoerced acceptance of caste norms that seems deeply problematic. It would have been more challenging if Walzer had pointed to an actual caste system or other contemporary inegalitarian social system that he thought defensible because the participants in it accepted its principles of distribution.

time of Cession or soon after,²⁷² but the colonial regime clearly included a number of illiberal policies. Take, for example, the restrictions on personal mobility, requiring people to get the permission of the chief to leave the village for any extended period, and the absence of formal democratic procedures for selecting rulers. Leave aside here the question of how we should judge such policies in their original context. Suppose these or similar policies were reintroduced today as part of the movement to preserve traditional culture. How should we respond?

It seems to me that we would be justified in criticizing such policies as a violation of individual freedom.²⁷³ Again, this does not mean that we should try to intervene in any way. I am not even interested here in the question of whether we should try to communicate this criticism to the Fijians. The question is whether this sort of judgment is a morally inappropriate form of cultural imperialism. I think not. These freedoms—the freedom to leave the village and to vote for officials—seem to me to be part of the minimal moral standards that any regime should be expected to meet. I do not mean to suggest that there could never be circumstances in which it would be justifiable not to meet these standards, but rather that they should be taken as norms that apply to all societies so that departures from them could not be justified simply by saying, “That is not the way we do things around here.” To justify violating these standards, one would have to show that the violation is necessary to meet some urgent public interest that could not be met in a way that respected the standards, and how eventually it will be overcome.

There is another reason why these freedoms set moral limits to Fijian institutions and practices: they are essential today to support the claim that Fijian culture deserves to be protected and preserved. One major argument for why we should respect native Fijian culture and attempt to preserve it is that this is

272. See LAWSON, *supra* note 10, at 45–47.

273. Some would see the policy establishing collective and inalienable ownership of land as a violation of individual freedom as well, but I would not. Property rights always are the creation of the state and always are constructed in ways that must be justified by reference to their effects not only on the owners but also on the other members of the community. Most defenders of private property offer precisely such a justification, arguing that individual and alienable forms of property ownership lead to greater benefits for all by creating incentives for the productive use of resources. For the classic exposition of this position, see JOHN LOCKE, *SECOND TREATISE OF GOVERNMENT* (1690). Whatever the merits of those arguments in other contexts, I have tried to show above why they were not apposite in Fiji at the time of colonization, despite the explicit use of such arguments by European settlers, and why they still are not compelling today.

what the native Fijians themselves want. That argument itself is built on democratic principles; people are entitled to get the kind of public policies and institutions they want, within limits. One major reason for believing that native Fijians want to preserve their culture, including some form of chiefly authority, is that they continue to live in the villages and they keep voting for political parties that make these concerns a central element of their appeals to the electorate.²⁷⁴ In other words, this claim about what native Fijians want has received considerable validation from the right of individual mobility and from liberal democratic processes of free and contested elections. Of course, we all know the weaknesses of such processes as methods of validating what people want. Freedom of movement can seem hollow if there is no reasonably attractive place to which one can go. People may not be satisfied with their choices in elections.

Whatever the weaknesses of liberal democratic procedures, they are far more reliable as indicators of what people want, in most cases, than are the alternatives. For example, we have much less sense about the extent and degree of popular support among native Fijians for the coup and its policies than for the Alliance Party and its policies. Some people argue that many of the recent "reforms" really are aimed not at Fijian Indians, but at Fijian commoners who have grown restive about chiefly authority and village life and might like to explore alternatives.²⁷⁵ The most persuasive challenge to that argument, in my view, is the evidence of voting patterns in the last election, which shows relatively little support among native Fijians for this alternative.²⁷⁶ But the critics might be right about the direction in which ordinary Fijian views are developing. Without a reasonably open, fair, and effective electoral mechanism, how will we know? Moreover, if the critics are right, would we want to defend the preservation of Fijian culture and chiefly authority against the wishes of the Fijian people?

That last question is not purely rhetorical. One could argue that the traditional culture (including chiefly authority) has been good for native Fijians, whether they know it or not, and that it should be preserved whether ordinary Fijians would vote for it or not. That is certainly the sort of position that Ratu Sukuna would have taken, given his skepticism about the relation

274. LASAQA, *supra* note 10, at 34; LAWSON, *supra* note 10, at 230.

275. *See, e.g.*, LAWSON, *supra* note 10, at 280–81.

276. *See id.* at 252 (stating that "the coalition did not make huge inroads into the Fijian vote").

between democratic processes and wise political rule and his confidence in Fijian institutions, including chiefly rule.²⁷⁷ I would not want to say that such an argument could never be valid, though I think that the chances of its being valid in the contemporary world grow increasingly remote. But I do not think that such an argument is plausible in Fiji today. Much of the recent history and recent experience of chiefly leadership does not inspire confidence in their ability to lead effectively or in their selfless dedication to the common good.²⁷⁸

In sum, minimal moral standards set significant constraints on morally permissible cultural variation. If the institutions and policies of independent Fiji before the coup seem morally permissible, as I have generally argued that they do, that is because they generally respected basic individual freedoms and political rights. Within the limits set by minimal moral standards, there can still be an important range of cultural variation. Here, it seems to me that the arguments in defense of Fijian culture are potentially complementary. One can think that Fijian culture ought to be respected and preserved both because it is the Fijians' and they want to preserve it, and because one has formed an independent judgment that it is an admirable culture that provides meaning and structure to the lives of the people who participate in it. On the whole, I think that the former judgment takes priority over the latter. As I argued above, it would be hard to defend preservation if the Fijians themselves did not want it. But the latter judgment adds weight. It is easier to defend limited departures from democratic norms for the sake of preserving a culture when the culture is one that evokes admiration, not just toleration.

Finally, if a moral defense is to be offered of the earlier policies and practices that constrained freedom and limited democracy, it should be one that emphasizes context and the limited range of feasible alternatives at the time, rather than one that seeks to deny the relevance of liberal democratic standards to Fiji in the name of cultural difference. On the other hand, not every aspect of the liberal tradition deserves equal weight. In particular, the possessive individualism that seems to animate so many critics of traditional Fijian culture reflects a vision of the human good that has itself been subject to considerable moral

277. See SCARR, RATU SUKUNA, *supra* note 10, at 140–41.

278. See LAWSON, *supra* note 10, at 277–82 (stating that, before the coup, the chiefly establishment feared that it was beginning to lose its hold over its people and criticizing its use of race “to incite fear and insecurity amongst Fijians”).

criticism on the basis of deeper liberal commitments.²⁷⁹ Whatever side one takes in this debate, the arguments should open up a space within democratic politics within which people are morally free to choose among competing visions of how society ought to be organized.

C. Democracy, Chiefly Authority, and Fijian Difference

I already have considered some of the crucial dimensions of the relation between chiefly authority and democracy in the previous section, but I want to conclude here by taking up the central argument of Lawson's book—that the vision of Fijian culture that emerged from the colonial regime, with its emphasis on the homogeneity of the native Fijian tradition and the centrality of chiefly authority, led inexorably to the definition of political differences along ethnic lines and undermined the legitimacy of democratic institutions in Fiji.²⁸⁰ In this view, the efforts to preserve Fijian culture would not have been morally justified, even if those efforts themselves had violated no moral principles and had led to the preservation of an authentic Fijian culture that was good for native Fijians, because of the inevitably negative impact of those efforts on democracy in Fiji and thus on the other citizens, especially Fijian Indians. By contrast, I want to argue that Lawson's account underestimates the contingency of the failure of democracy (though at one point she emphasizes this point herself²⁸¹) and fails to assess alternative feasible paths for political development in Fiji, thus implicitly underestimating their costs and overestimating the likelihood of their success.

Perhaps I should say at the outset that my own sympathies lie, like Lawson's, with the members of the Fijian Labour Party. I admire the goals they were pursuing—building a multiracial, democratic, and egalitarian society in Fiji—and I admire the skill and dedication with which they pursued these goals. By contrast,

279. See, e.g., C.B. MACPHERSON, *DEMOCRATIC THEORY: ESSAYS IN RETRIEVAL* 10–11 (1973) (arguing that a capitalist market society diminishes the equal individual freedom to develop natural capacities).

280. See LAWSON, *supra* note 10, at 1–2.

281. See *id.* at 286.

the Fijian chiefs appear, at least in the literature that I have read, to be a privileged elite primarily concerned with protecting their own interests.²⁸²

Why then would I try to defend the chiefs—not the coup—against Lawson’s critique? There are two reasons. The first is connected to democratic principles: people have a right to choose their leaders, even bad leaders. The vast majority (normally over ninety percent) of native Fijians have voted quite consistently for their chiefs or for a party built around chiefly leadership. Even in the 1987 election, which they lost, the chiefly leadership retained the support of an overwhelming number of native Fijians. Again, let me emphasize that I am not defending the coup or calling into question the legitimacy of the Bavadra government. The point is that if one were to ask which politicians spoke for most native Fijians, the answer would be obvious—just as in previous elections, if one asked which party spoke for most Fijian Indians, the answer would have been obvious.²⁸³

The second reason is related to culture. As I read the history of Fiji, the chiefs do have a central role in Fijian culture, even if one accepts the claims of critics, such as Lawson, that the chiefly establishment has exaggerated its role and obscured the diversity of Fijian culture. Most ordinary Fijians recognize their chiefs as significant social leaders, however much they may criticize them and complain about them in some contexts. Lawson rightly notes that this form of leadership stands in tension with democratic principles,²⁸⁴ but I do not think that provides sufficient grounds for rejecting its legitimacy altogether. On the contrary, if this cultural connection were not there, it would make no sense to turn to an institution like the Council of Chiefs when trying to select people who will be seen by native Fijians as plausible representatives for them on matters relating to culture and tradition. Of course, some members of the Council, under the pre-coup arrangements, held their seats simply because they held certain elective offices, a seat in Parliament for example. Others, however, acquired their position through heredity, not elections. To be sure, one could throw the question back one step further and ask whether an institution like the Council of Chiefs is morally appropriate. Here, I think the answer I offered earlier

282. See, e.g., *id.* at 279–81.

283. This claim needs to be qualified with regard to subgroups of Fijian Indians. See *supra* text accompanying note 114.

284. See LAWSON, *supra* note 10, at 1–2, 9–11, 243–44.

is sufficient: special protection for certain native Fijian cultural interests, such as land, was justified because the interests were both vital and potentially vulnerable.²⁸⁵

Let me turn now to the issue of contingency. Lawson's argument is that the separate administration and other institutions designed to preserve Fijian culture greatly contributed to the salience of ethnic identity in Fiji. This in turn led to the view that separate forms of political representation were desirable, and that led to the sense that representatives of the "other" group, Fijian Indians, could not legitimately hold political power over native Fijians, even as a result of free elections. Democratic principles were respected only so long as they put representatives of native Fijians in power.²⁸⁶

Clearly there is a lot to be said for this argument. But Lawson makes the sequence seem at times almost inevitable. It is always tempting to suppose that what did happen, had to happen. Yet she herself concedes that the coup was not inevitable. Rabuka, the coup leader, had two superiors who were loyal to the constitution. Had they received word about the plot, they might well have been able to forestall it. Bavadra's government probably would have stayed in power, and the story of Fiji would have a very different line of development.²⁸⁷

It is equally important to recognize that the absence of measures to preserve native Fijian culture would have provided no guarantee of postcolonial ethnic harmony. One has only to glance around the world to see that failures greatly outnumber successes when it comes to ethnic harmony and democratic government in postcolonial regimes.²⁸⁸ Before the coup, Fiji was widely cited as one of the most promising stories, a multiracial democracy with no ethnic violence.²⁸⁹ The contingent failure of that promise does not mean that the belief that it was one of the most promising societies was incorrect. On the contrary, if that prior judgment was correct, then that suggests that the efforts to preserve native Fijian culture were not necessarily bad, even from the perspective of their impact on the long-term prospects for building a democratic society in Fiji.

285. See *supra* part VI.

286. See LAWSON, *supra* note 10, at 4-6, 9.

287. *Id.* at 286.

288. See DONALD L. HOROWITZ, *ETHNIC GROUPS IN CONFLICT* 3-4 (1985) (listing numerous examples of ethnic conflict, including the recurrent hostilities in Northern Ireland, secessionist warfare in Burma, and Sikh terrorism).

289. See, e.g., SCARR, *POLITICS OF ILLUSION*, *supra* note 10, at 6 (noting Pope John Paul II's description of Fiji as a symbol of hope for the world.)

