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Democracy, Power and Indigeneity  
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## **Democracy, Power and Indigeneity**

### **Abstract**

This paper identifies a theoretical nexus between indigeneity and liberal democracy in three post-colonial contexts. Like democracy, the politics of indigeneity asks questions and makes assumptions about where power ought to lie and how it ought to be shared in relation to political inclusion and national sovereignty.

The paper argues that indigeneity's interaction with democracy highlights liberal theory's limitations, as well as the opportunities it provides to meet indigenous claims and conceptions of justice. Exploring the ideological tensions and commonalities between democracy and indigeneity allows the paper to contrast, in comparative context, the proposition that in Fiji, for example, democracy is 'a foreign flower' unsuited to the local environment, with the argument that liberal representative democracy can, in fact, mediate power in favour of an inclusive national polity.

## Introduction

Sitiveni Rabuka, who led the military removal of two democratically elected Fijian governments in 1987, viewed liberal representative democracy as a ‘foreign flower unsuited to Fijian soil.’<sup>1</sup> He insisted that the concept undermined the inherent right to paramountcy that first occupancy accorded native Fijians. The argument was apparently so strong that it justified the violent removal of two governments, setting aside the Constitution, and the transfer of sovereignty from the people to the military, which obtained power once again and by similar means in 2007. In the intervening period a putsch, whose instigators proclaimed themselves the legitimate indigenous rulers of Fiji, had also set democratic government aside and created a political impasse illegally resolved by military decision makers.<sup>2</sup> Democracy was positioned as a negative colonial legacy. But neither the military nor the putsch leader, George Speight, could advance a coherent alternative notion of power or admit a relationship between stable government, and indigenous self-determination. The effect was that indigeneity’s principal purpose of making the state responsive to indigenous aspirations became unattainable.

Rabuka’s logic suggests that if liberal democracy was a ‘foreign flower’ because it interfered with inherent indigenous political rights it would also be unsuited to other post-colonial societies. Yet for indigenous peoples liberal democracy remains deeply contested and from alternative perspectives, where indigenous peoples also constitute the majority population, liberal democracy guarantees the necessary space for indigenous political authority to resurface. The two perspectives share the view that

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<sup>1</sup> B. V. Lal, “Making History, Becoming History: Reflections on the Fijian Coups and Constitutions”, *The Contemporary Pacific*, Vol. 14 (2002), p. 148.

<sup>2</sup> Fiji Court of Appeal, 2000. *Republic of Fiji v Prasad*. Unreported.

extant indigenous political rights properly influence governments and that internal decolonisation requires re-balancing political authority. But they differ in their preparedness to juxtapose indigeneity with prevailing international ideas about state governance. Liberal democracy's limits and opportunities are shaped by competing attempts to define and direct it towards different priorities and interests. This contestation of power is the principal common characteristic of indigenous politics across jurisdictions.

A principled representative liberal democratic order shaped and influenced by indigeneity may not, in fact, be a noxious foreign flower but a medium for returning the balance of power to the native Fijian people and for guaranteeing the substantive participation of other indigenous peoples in their national polities. Alternatively, if liberal democracy is indeed an unsuited flower the central liberal problem remains: how should societies govern themselves in order to create peaceful relationships among people with different perceptions of the common good?

In making a majority/minority contextual comparison between Fiji on the one hand, and Australia and New Zealand on the other, the paper avoids a scholarly tendency to conflate minority rights with the claims of indigeneity in these latter jurisdictions. The comparison shows that negative power relationships in Australasia are not simply a function of minority status in a majoritarian representative democracy. It also demonstrates the complexity and diversity of the environments in which indigenous peoples pursue their political aspirations and highlights the argument that the claims of indigeneity, which are concerned with permanent rather than remedial or transitional rights, must hold equally well in post-colonial jurisdictions of majority indigenous populations for whom group rights are most certainly required to protect freedom and opportunities for political expression.

The fundamental questions for both indigeneity and liberal democracy are ‘who belongs and on what terms’? Societies do exclude. They do it as a means of protecting what dominant groups hold in common. But populist anti-indigenous sentiment still arises in Australasia in the absence of any clearly thought out position on the legitimacy of the majority imposing its will on the minority. A medieval understanding of a majority being ‘more likely to be substantively right than a minority’<sup>3</sup> often prevails in resistance to indigenous claims. This is, however, a simplistic and divisive approach to power which is better shared according to the common good and deeper principles of justice. There are grounds in justice for protection against unbridled majoritarian rule because democracies can in fact ‘produce outcomes... that are substantively unjust.’<sup>4</sup> Indeed, everybody ought to be included in the political life of the state. No one group should always and necessarily find itself on the losing side. Liberal democracy is potentially emancipatory and if it is to offer protection against the misuse of political power it must make group interests an important concern of the political system itself. Liberal democracy potentially protects and fosters active political participation, which is unlikely if there is systemic favour towards assumptions of political and cultural homogeneity.

### **Indigeneity and Liberal Democracy**

The politics of indigeneity engages with liberal theory from the perspective of extant political rights, arising from first occupancy of a distinguishable post-colonial territory. It is a developing theory of justice and political strategy used by indigenous peoples to craft the terms of belonging to the post-colonial state with reference to their

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<sup>3</sup> J. Mansbridge, “Using Power/ Fighting Power: the Polity” in Seyla Benhabib, ed., *Democracy and Difference. Contesting the Boundaries of the Political* (Princeton, 1996), p. 53.

<sup>4</sup> *Ibid.*, p. 57.

own aspirations. It is a discourse of both resistance and transformation presenting ‘a fundamental challenge to the prevailing social and political order’. Indigeneity requires colonial ideas about political arrangement, authority and power to make way for political spaces of indigenous autonomy.<sup>5</sup> Its effectiveness requires some juxtaposing of traditional notions of independent political authority with western political theory, to craft new bases for political engagement. In this way political theory may contribute to the possibilities for working out principled relationships for living together differently in the one national jurisdiction.

The politics of indigeneity is concerned with the recognition of difference based on first occupancy. Like liberal democracy it aims to secure freedom and liberty, but sees protection of group rights as preliminary to these wider goals. Group rights are preliminary to individual freedom as freedom requires access to language, customary use of land and resources, and culturally cognisant schooling and health care, for example. National sovereignty can not be reasonably shared without recognition of culturally framed and exercised rights, which in turn, demands public recognition of indigenous peoples as members of distinct communities with continuing claims on the nation state.

The claims can be summarised as a right to be different in some senses and the same in others – to speak a different language, but to enjoy the same employment opportunities, to elect members of parliament in different ways, but to expect the same opportunities to participate in parliamentary decision-making, and to own land according to custom while enjoying the same protection of property rights as other land holders.

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<sup>5</sup> A. Fleras, “The Politics of Jurisdiction: Pathway or Predicament.” in D. Long and O. Dickason, eds., *Visions of the Heart: Canadian Aboriginal Issues (2nd Ed)* Toronto, 2000), p. 112.

For indigeneity, difference is not just a matter of ideas and the personal merits of one candidate for public office over another, but is fundamentally concerned with what Phillips calls a ‘politics of presence’.<sup>6</sup> The politics of presence recognises that people themselves can be as important as their ideas in influencing individual voting preferences. This is not to say that indigenous voters will, as a matter of course, support an indigenous candidate, but to say that among the diversity of indigenous political positions there are likely to be commonalities of culture, background and experiences tending towards a collective desire for presence in legislative bodies. Certainly there are commonalities among citizens which allow non-indigenous people to represent indigenous voters on many issues, but where political positions arise from unique group experiences then representation from within the group becomes an essential guard against exclusion. It is on this basis that the politics of presence argues that the politics of ideas alone is ill-equipped to deal with the nature of exclusion: ‘when difference is considered in terms of intellectual diversity it doesn’t matter who represents the range of ideas’.<sup>7</sup>

But when questions of land and other cultural rights, the nature of indigenous schooling or policies to close gaps in indigenous health are under consideration the politics of presence becomes essential to a representative deliberative process.

Liberal democracy and indigeneity emphasise separate but intertwining conceptions of power. Liberal democracy serves indigeneity by potentially providing a way of mediating power relationships and reconciling indigenous nationalism with the harmonious sharing of national sovereignty, which short of expelling non-

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<sup>6</sup> Phillips, Anne, *-The Politics of Presence: The Political Representation of Gender, Ethnicity, and Race* (Oxford, 1995).

<sup>7</sup> *Ibid.*, p. 6

indigenous populations, is the only means indigenous peoples have of securing self-determination. At the same time, liberal democracy is served by indigeneity's constant reminder that it ought to be interested in the liberty and representation of *all* not just *some* people. Liberal democracy is ideally all-encompassing and inclusive.

Indigeneity's concern with collective rights means that it is also inevitably interested in correcting the effects of colonisation as a serious violation of individual liberty. Indigeneity gives theoretical expression to the recognition of differences based on first occupancy. Its interpretations of political rights evolve in response to its theoretical and political interactions with other discourses; its potency is a function of its engagement with liberal democracy as the prevailing internationally accepted framework of state governance. Together liberal democracy and indigeneity create opportunities for indigenous peoples to articulate their own conceptions of justice. Liberal democracy can then be crafted towards its inclusive potential.

Indigeneity is concerned with differentiation from the wider polity, but this does not inevitably or necessarily require political separation. Instead

one of the interesting consequences of the encounter between liberalism and its colonial past and present might be a more context-sensitive and multilayered approach to questions of justice, identity, democracy and sovereignty. The result would be a political theory open to new modes of cultural and political belonging.<sup>8</sup>

Such a theory can accord with indigenous aspirations because there need not necessarily be any inconsistency between collective group rights and the sovereignty of the entire polity. Kymlicka argues that the paradigm shift from democracy 'suppressing to accomodating' minority ethnic groups in the United States of America

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<sup>8</sup> D. Ivison, P. Patton and W. Sanders, "Introduction" in D. Ivison, P. Patton and W. Sanders, eds., *Political Theory and the Rights of Indigenous Peoples*, (Cambridge, 2000), p. 21.

has ‘actually played a vital role in consolidating and deepening democracy.’<sup>9</sup> There is a parallel with indigenous contexts which adds to the rationales for guaranteed indigenous parliamentary representation in Australia, New Zealand and Fiji, for example. In these jurisdictions emphasis on individual rights in isolation from the collective offers no real prospect for securing comprehensive individual freedom or the certainty of equal individual influence over the polity.

Democracy’s concern with liberty is its particular strength even though such a concern can never remain unqualified and unconstrained. Liberty, as Held puts it, is ‘limited’.<sup>10</sup> The limits, set out in Held’s model of democratic autonomy, are however, more likely to constrain the activities of the more powerful political actors in post-colonial societies. According to Held, one person’s liberty can not be at the expense of another’s.<sup>11</sup> All people are entitled to security ‘in their capacity of being citizens.’<sup>12</sup>

Held outlines four democratic criteria which would, if applied consistently and universally, make states more responsive to indigenous aspirations. Democracy, he argues, should provide for:

Protection from the arbitrary use of political authority and coercive power...

The involvement of citizens in the determination of the conditions of their association through the provision of their consent in the maintenance and legitimation of regulative institutions...

The creation of the best circumstances for citizens to develop their nature and express their diverse qualities...

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<sup>9</sup> W. Kymlicka, “American Multiculturalism and the ‘Nations Within’” in D. Ivison, P. Patton & W. Sanders, *Political Theory and the Rights of Indigenous Peoples* (Cambridge, 2000), p. 227.

<sup>10</sup> D. Held, *Political Theory and the Modern State: Essays on State, Power and Democracy* (Cambridge, 1989), p. 185.

<sup>11</sup> Ibid.

<sup>12</sup> H. Arendt, in D. Held (Cambridge, 1989), p. 187.

The expansion of economic opportunity to maximize the availability of resources...<sup>13</sup>

These criteria arise because ‘the capability of persons to determine and justify their own actions, with their ability to determine among alternative political programmes is the ‘core of the modern liberal democratic project’.<sup>14</sup> In practice, then, democracy at least offers indigeneity a political voice and recourse to judicial consideration of points of dispute with the legislative and executive arms of government.

Liberal democracy does not guarantee the elimination of injustice, nor does it guarantee that indigenous political aspirations will not be marginalized by its own decision making processes. But because liberal democracy recognizes the legitimacy of conflicting ideas and aspirations it potentially offers institutional means for the airing of grievances, hopes and aspirations, and indeed for proposing the constitutive elements of a more just political order, none of which was possible in the pre-democratic colonial environments of Australia or New Zealand. Nor is such possible in contemporary Fiji where the ideal of national sovereignty belonging to the people has been set aside.

In jurisdictions where sovereignty is held to reside with the people there is at least political space to propose an inclusive conception of sovereign political order. Contemporary Fijian politics well demonstrates that liberal democracy better provides theoretical and institutional opportunities for thorough deliberation and resolution of contested priorities than does any currently developed alternative regime. Indeed, self-determination cannot be reduced to the simplistic wish to overthrow governments on

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<sup>13</sup> D. Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Cambridge, 1995), p. 150.

<sup>14</sup> *Ibid.*, p. 149.

the assumption that control of the machinery of government necessarily equates to universal indigenous authority.

### **Democracy and the Politics of Inclusion**

Liberal democracy's relationship with indigeneity is paradoxical. It neither accommodates absolutely nor rejects entirely the general claims of indigeneity. There is a democratic parallel with indigeneity's concern for personal and collective freedom. Although contested, there is certainly a potential theoretical convergence between these two concepts of power and authority. Liberal democracy can limit elite powers of exclusion. Its basic premise is that government of the people ought to be by and for the people. But at the same time the concept can be more narrowly interpreted to restrict the terms of indigenous engagement in public decision-making. Restriction can occur to the point that for minority indigenous groups, assimilation into a culturally homogenous polity is positioned as an essential and necessary precondition for full democratic participation. Tensions between indigeneity and democracy surface where the polity is not, in fact, a culturally homogenous whole.

Homogeneity simplifies the aspiration for democratic popular sovereignty 'to form an entity and have a personality.' Yet democracy does not 'unfailingly [lead] to exclusion.'<sup>15</sup> Its exclusive capacity is not merely accidental, but nor is exclusion an essential and necessary constituent.

Democratic autonomy is enhanced, if as Benhabib proposes: 'the institutions and culture of liberal democracies are sufficiently complex, supple, and decentred so as to allow the expression of difference without fracturing the identity of the body politic or

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<sup>15</sup> C. Taylor, "The Dynamics of Democratic Exclusion", *Journal of Democracy*, Vol. 9 (1998), pp. 143, 146.

subverting existing forms of political sovereignty.’<sup>16</sup> But here, too, there are limits, as Benhabib herself addresses. The ‘claims of culture’ are conditional upon their consistency with wider norms of respect, equality and reciprocity.<sup>17</sup> Certain Fijian claims to exclude non-Fijians from national government fail this test. Military claims to be keeper of political morality at the exclusion of a freely chosen parliament are similarly wanting.

Benhabib is also reasonably concerned that the rights of culture ought not take precedence over the rights of the individual. Recent decisions of the Australian judiciary accepting alleged cultural practices as mitigating factors in cases of non-consensual sexual association of adult men with teenage girls arouse liberal democratic concerns. Setting aside the fact that the ‘cultural practice’ was contested within the community itself, and that the complainants found no connection between the post-colonial court’s interpretation of culture and their own self-determination, the case does ‘enable us to see most clearly the moral and political choices involved in advocating the preservation of traditional cultural identities over and above individual rights’.<sup>18</sup> The question for indigeneity is whether it views culture as a relic demanding preservation and never subject to internal let alone external questioning, or whether culture is a reference point and social context in which individual being is given identity – a context in which security and self-worth are provided. In this latter case cultural identities are subservient to the individual rights of group members and culture is worth preserving for its capacity to give substantive context to indigenous freedom.

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<sup>16</sup> S. Benhabib, “Introduction” in S. Benhabib, ed., *Democracy and Difference: Contesting the Boundaries of the Political* (Princeton, 1996), p. 5.

<sup>17</sup> Ibid.

<sup>18</sup> S. Benhabib, *The Claims of Culture: Equality and Diversity in the Global Era* (Princeton, 2002), p. xii.

Liberal democracy similarly requires that culture ought not be protected where it affronts the dignity and self-determination of its members. Kymlicka distinguishes ‘external protections’ and ‘internal restrictions’ to clarify the cultural rights that might be claimed without disturbing the principles of liberal democratic order. For Kymlycka, external protections could include land or linguistic rights and distinct opportunities for political participation justified by the intention to ‘protect a particular ethnic or national group from the destabilizing impact of the decisions of the larger society.’<sup>19</sup> External protections can be accepted by liberals if they are concerned with fairness and just political outcomes. On the other hand, Kymlicka continues, liberals ‘ought to reject internal restrictions which limit the right of group members to question and revise traditional authorities and practices.’<sup>20</sup> Debates over the role of the Great Council of Chiefs in contemporary Fijian politics illuminate the distinction that Kymlicka is trying to make.

Carens justifies the role of the Council on the grounds that indigenous Fijians endorse its political status and that it is part of a ‘systematic effort to protect a traditional way of life and to enable it to evolve over time’.<sup>21</sup> Lawson argues, in contrast, that this objective was never realised and that Fijian culture was actually undermined by institutionalised deference to chiefly authority. The system, she continues, served chiefly interests above those of ordinary Fijians and impeded the development of national democratic institutions. The suggestion is, then, that rather

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<sup>19</sup> W. Kymlicka, *Multicultural Citizenship: a Liberal Theory of Multicultural Rights* (Oxford, 1995), p. 37.

<sup>20</sup> W. Kymlicka, *Multicultural Citizenship: a Liberal Theory of Multicultural Rights* (Oxford, 1995), p. 37.

<sup>21</sup> J. Carens, *Culture Citizenship and Community: a Contextual Exploration of Justice as Evenhandedness* (Oxford, 2000), p. 201.

than democracy being antithetical to indigenous Fijian self-determination it is actually a guard against the misuse of traditional authority by chiefly interests.

There is a loose parallel between the institutional privilege of the Great Council of Chiefs and the proposal by the New Zealand Royal Commission on Auckland Governance to allow a mana whenua (people of the land) forum of regional iwi (tribes) to make an appointment to the Auckland City Council. The government rejected the recommendation that the 23 member Council include the mana whenua representative as well as two members elected by voters on the Maori parliamentary electoral roll. Yet the case remains interesting because of its reconceptualisation of the basis for guaranteed indigenous representation. The argument that *all* Maori, including those with no ancestral connection to the city of Auckland, ought to be separately represented, while local Maori would be additionally represented by an appointee of tribal elites, was based on the position that first occupancy *and* race were separate but complimentary grounds for guaranteed representation. If, however, it is mana whenua (first occupancy), as argued throughout this paper, not minority status or even race itself that creates the argument for guaranteed representation then there is no case for both categories of representation. Maori representation should make way for mana whenua.

The Royal Commission's recommended process for appointment of the mana whenua representative was however deeply problematic. It proposed appointment by a body incapable of guaranteeing an authentic mandate from the local tribal memberships. Nor could it guarantee extensive tribal participation in the selection of the appointing forum itself.

Like the appointment process to any public body transparency and the absolute guarantee of participation by all who are entitled to it is essential. The criteria for

entitlement to participate must be clear and protected in law. It must not be a lesser entitlement to that enjoyed by voters in general constituencies, and the process of appointment must be demonstrably accepted by the people.

The option for mana whenua representatives to be elected by secret ballot under the supervision of the city's Returning Officer ought to have been fully explored for its transparency, simplicity and its assured provision of free and equal opportunity to participate. Mana whenua representatives will participate equally in the governance of the whole city, so every citizen is entitled to confidence in the election process.<sup>22</sup>

It is inadequate to assume that the allegedly culturally constituted mana whenua forum is better equipped to make a representative appointment than a more widely participatory process such as an open election. Liberal democracy could reasonably dismiss any cultural claim to an elite appointment process on the grounds that its support by the people has never actually been tested or affirmed. Establishing the support of the people validates the claims of culture

Although in some circumstances liberalism reasonably limits the claims of culture, there do remain positions which actually remove culture from the individual and therefore undermine freedom and equality. The former Australian Prime Minister, John Howard (1996-2007), for example, developed a powerful assimilationist narrative to counter growing demands for indigenous self-determination: 'Son you're Australian; that's enough for anyone to be'<sup>23</sup> became a simple theme of his Prime Ministership. He was untroubled by the intellectual conflict between socially conservative emphases on homogeneity and liberal emphases on freedom.

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<sup>22</sup> D. O'Sullivan, "Maori Have a Right to Super City Seats as First Occupants. *The New Zealand Herald*, 7 April 2009. Auckland.

<sup>23</sup> J. Brett, "Relaxed and Comfortable: The Liberal Party's Australia", *The Australian Quarterly Essay* (Melbourne, 2005), p. 25.

Reconciliation and assimilation became the opposite sides of a nationally polarizing debate which contrasted limiting with expansive democratic interpretations. Underlying the assimilationist narrative was a normative racism as ‘cultural artefact’.<sup>24</sup> But even so it is not true that the modern state is necessarily ‘a compulsory association which organises domination’. Liberal democracy, in fact, constrains the capacity of post-colonial states to dominate, and while the state does monopolise coercive power<sup>25</sup> coercion is not always and necessarily negative for indigenous peoples. For example, guaranteed Maori representation in the New Zealand Parliament and the enactment of settlements to grievances under the Treaty of Waitangi when simple majority vote is likely to have prevented either.

Although self-determination had been official government policy in the 1970s and 1980s, progressive attention to land rights had begun also in the 1970s and the Keating Government (1991-1996) responded favourably to the *Mabo* decision, it remains that in more recent Australian history the coercive power of the judicial system (most significantly through the *Wik* decision) also imposed incremental developments in indigenous legal rights on the generally unsympathetic Howard Government (1996-2007). There is pragmatic truth in the general observation that: ‘While the state is the burden individuals have to bear to secure their own ends, it is also the basis on which it is possible to safeguard their claims to equal rights and liberties’.<sup>26</sup> The limiting factor is that liberal democracy only safeguards the right to

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<sup>24</sup> R. James, “Rousseau's Knot: the Entanglement of Liberal Democracy and Racism” in G. Cowlshaw and B. Morris, eds., *Race Matters: Indigenous Australians and 'our' Society* (Canberra, 1997), p. 57.

<sup>25</sup> M. Weber, “Legitimacy, Politics and the State” in W. Connolly ed., *Legitimacy and the State* (Oxford, 1984), p. 37.

<sup>26</sup> D. Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Cambridge, 1995), p. 145.

make these claims; it does not guarantee a political order that will ensure indigenous perceptions of equality and liberty.

Liberal political theory developed to respond to religious diversity. It follows that it ought to be able to consider the political and constitutional implications of ethnic diversity. Its purpose is to manage rather than to mask differences and to consider, not automatically dismiss conflicting ideas.

Men have different views on the empirical end of happiness, and what it consists of, so that as far as happiness is concerned, their will cannot be brought under any common principle, nor thus under an external law harmonizing with the freedom of everyone.<sup>27</sup>

Recognising differences does not counter liberalism's sacrosanct protection of individual rights. Individual identity must come from somewhere. It is heavily shaped by culture and derives meaning from communal relationships. Differences in political identities contribute to the differences in ideas that democracy requires for its own effectiveness. The ideas that compete for popular ascendancy are not confined to abstract philosophical positions; they include the simple proposition that indigenous perspectives ought to be seen and heard in the wider body politic.

The unity of society and the allegiance of its citizens to their common institutions rest not on their espousing one rational conception of the good, but on an agreement as to what is just for free and equal moral persons with different and opposing conceptions of the good.<sup>28</sup>

### **Liberal Democracy, Nationalism and Sovereignty**

Indian immigrants are as much victims of colonialism as native Fijians. Liberal democracy precludes their political exclusion. But on the other hand, how can one justify recourse to democratic ideas, when democracy is not an indigenous Fijian

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<sup>27</sup> I. Kant, *Kant's Political Writings* (Cambridge, 1970), pp. 73-74.

<sup>28</sup> J. Rawls, "Social Unity and Primary Goods" in A. Sen and B. Williams, eds., *Utilitarianism and Beyond* (Cambridge, 1970), p. 160.

concept, and when Fijians had little say in the mass Indian migration which dramatically re-shaped the local political order? Even the British Cabinet had accepted, at the time of independence, that Fijian dominance was just provided that there were 'adequate safeguards for all other communities.'<sup>29</sup>

Horscroft suggests that there is not, in fact, a conflict between Fijian indigeneity's paramountcy and liberalism's individual supremacy. '[P]aramountcy and equality can form a foundation for an inclusive national policy that respects all its citizens and is attuned to the protection of Indigenous culture and socio-economic well being'.<sup>30</sup> Paramountcy can be reconciled with non-indigenous claims to political inclusion. That is, if it is concerned with protecting indigenous land, resources, cultures and languages and the guaranteed participation of indigenous peoples in the political community, even to the extent of ensuring an indigenous majority in the House of Representatives. There is, however, an obtuse logic in the assumption that the rights of others must be subjugated for paramountcy to prevail as Speight argued in 2000 when he suggested that Indo-Fijian rights ought to be protected but that did not require or justify their participation in national governance.<sup>31</sup>

The corollary to the argument that Fijian independence ought not justify or require the domination of others is that native Fijians need not accept subjugation to allow others to protect their own freedom. Indigeneity need not claim privilege by taking rights from others, even though it does claim different rights on the basis of first occupancy.

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<sup>29</sup> E. Emery in R. Norton, "Seldom a Transition with Such Aplomb: From Confrontation to Conciliation on Fiji's Path to Independence", *Journal of Pacific History*, Vol. 39 (2004), p. 163.

<sup>30</sup> V. Horscroft, *The Politics of Ethnicity in the Fiji Islands: Competing ideologies of Indigenous Paramountcy and Individual Equality in Political Dialogue*, (Unpublished MPhil thesis, University of Oxford, 2002), p. 2.

<sup>31</sup> G. Fry, G. 2000. "Political Legitimacy and the Post-colonial State in the Pacific: reflections on Some Common Threads in the Fiji and Solomon Island Coups", *Pacifica Review*, Vol. 12 (2000), p. 299.

Since independence from Britain in 1970, national constitutions have strictly protected indigenous Fijian rights, meaning that ethnic difference is not the sole cause of contemporary political unrest. The coups were motivated by class politics and it was only afterwards that alliances of convenience were created with indigeneity to seek popular legitimacy. Bainimarama's resolve to 'clean up' a 'corrupt' indigenous led government in 2006 precipitated that year's coup. Corruption was not, however, new. Bainimarama simply reflected the prophetic as well as reflective nature of the *Fiji Times*' comment in 2001, that: 'Years of Fijian leadership [have] shafted indigenous people... their own people [have] been robbing them blind.'<sup>32</sup> In addition the repeated failure of parliamentary government and the political marginalisation of the Great Council of Chiefs removed any popular, institutional or cultural check on state power. This is in spite of the Council having its own nominees in the Senate and its senators enjoying the right of veto over indigenous affairs legislation.

Fijian political dominance seemed never to translate into real authority, influence and well-being. Qarase's was certainly a nationalist government pursuing policies of 'Fijian advancement'. But its affirmative action policies, for instance, were 'characterised more by play-offs among indigenous elites than a concern to raise standards for ordinary Fijians.'<sup>33</sup> Indigenous Fijians dominated national politics and there was always recourse to the political system to protect and promote native interests. What was missing was a fuller understanding of liberal democracy and its

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<sup>32</sup> *Fiji Times*, 7 April 2001.

<sup>33</sup> S. Lawson, S. 2004. "Nationalism versus Constitutionalism in Fiji", *Nations and Nationalism*, Vol. 10 (2004), p. 536.

implications for cultural strength and economic power in a nation where land is substantially Fijian owned.<sup>34</sup> As the *Fiji Post* has suggested

we are the most privileged and most protected indigenous community in the world. We have had 30 years of indigenous Prime-Ministership for Fijians; we have had all the permanent secretaries... but what have we done? We have 84% of the land. But I would say that Fijians are the poorest community not because of the other communities but because they have not been led by the people who care about Fijian people.<sup>35</sup>

The 1987 Constitution's requirement that a native person hold the office of Prime Minister was based on too narrow a view of the relationship between that office and fuller political authority. As the *Fiji Post* noted, the country had had a non-indigenous Prime Minister for only one of the last thirty years. Timoci Bavadra, whose government was the first to be forcibly removed in 1987, was an ethnic Fijian while the limited policy success for indigenous people of the Rabuka (1992-1999) and Qarase (2000-2001 and 2001-2006) governments powerfully illustrates the absence of any causal link between an indigenous Prime Minister and indigenous self-determination.

Parliamentary democracy disperses authority among the executive, parliament and judiciary, and no Prime Minister has authority to the point of being unconditionally free and powerful. Prime Ministerial authority is hindered by a multitude of constraints on national sovereignty so that when indigenous peoples, in whatever jurisdiction, speak of reclaiming sovereignty it is not the all-encompassing

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<sup>34</sup> V. Horscroft, *The Politics of Ethnicity in the Fiji Islands: Competing ideologies of Indigenous Paramountcy and Individual Equality in Political Dialogue*, (Unpublished MPhil thesis, University of Oxford, 2002), p. 4.

<sup>35</sup> *Fiji Post*, 24 August 2001.

commanding construct that many imagine. It is not a final and absolute authority. Nor is it ‘natural or inevitable or immutable.’<sup>36</sup>

Sovereignty ‘was originally an instrument of escape from rule by outsiders’,<sup>37</sup> yet for many indigenous peoples it has become simultaneously an instrument of entrapment as it shifted from indigenous societies to colonial and post-colonial states. It is emancipatory only in so far as it is located with the people as an all encompassing construct, rather than vested in some individual or institution from which indigenous peoples are excluded. If sovereignty belongs to the people it must, in the interests of cohesion, order and justice, belong to all the people. Exclusion from full and equal membership of the polity, either by virtue of race or alienation from the centre of military power undermines capacity for independent indigenous political authority.

If sovereignty is ‘popular’ then the populace must be defined either as an homogenous whole where minority voices are rightly subsumed, or as a body comprising many parts requiring some political solution to the question of how these disparate parts ought to share power and authority. The theoretical engagement of democracy with indigeneity offers one way of thinking about this question. It suggests that some rearrangement of sovereignty is implicit in the creation of more inclusive democratic orders while balancing the rights and expectations of indigenous peoples vis-a-vis all others. Liberal Democracy requires checks on unbridled majoritarian rule meaning that there must be constraints on popular sovereignty so that one group’s liberty is never at the expense of another’s.

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<sup>36</sup> R. Jackson, “Sovereignty in World Politics: a Glance at the Conceptual and Historical Landscape” in R. Jackson, ed., *Sovereignty at the Millenium*, ed. R. Jackson (Oxford, 1999), p. 10.

<sup>37</sup> *Ibid.*, p. 9.

Democracy is usually concerned with how territorial sovereignty is exercised. But for indigenous peoples a wider conception of sovereignty is advantageous; one which includes authority over resources, language and culture and the institutions which might safeguard these. 'In the absence of any alternative, Fijian people may discover the "foreign flower" of democracy as a political savior'.<sup>38</sup> Even for Fijian nationalists, democracy is only selectively a 'foreign flower'. Laisenia Qarase, for example, has argued that democracy is unsuited to Fiji,<sup>39</sup> (Srebrnik 2002, 210) yet in 2006 happily drew on the concept to resist the military coup against his government. Mahendra Choudry, the country's only Indo-Fijian Prime Minister, whose government was overthrown in 2000 sought recourse to democracy in defence of his office, yet accepted a position in the military government after the 2006 coup.

Sovereignty cannot be divided, but in a plural society it can be shared. Indeed, indigeneity challenges liberal democracy to mediate contested sovereignties. Guaranteed Maori representation in the New Zealand Parliament is illustrative, while even Fiji has at least attempted to share sovereignty. In Australia sovereignty is shared among the tiers of government but, as yet, not with the indigenous populations in any substantive fashion. Two simple ways in which Australia might intertwine indigeneity with democracy's broad potential is through guaranteeing indigenous representation at every level of government, or through the recognition the Commonwealth chooses to accord a national indigenous representative body. While both options could purposefully enhance indigenous self-determination the former is likely to have greater substantive impact.

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<sup>38</sup> B. Lal, 2002. "Making History, Becoming History: Reflections on the Fijian Coups and Constitutions", *The Contemporary Pacific*, 14 (2002), p, 166.

<sup>39</sup> H. Srebrnik, "Ethnicity, Religion, and the Issue of Aboriginality in a Small Island State. Why Does Fiji Flounder?" *The Round Table* (2002), p. 210.

There is presently no electoral incentive for mainstream Australian political parties to court indigenous votes. There are simply not enough of them to make an appreciable difference in most electoral districts. Indigenous voters, therefore, have a lesser opportunity to hold influence or control over political decisions.<sup>40</sup> They have recourse only to moral persuasion not electoral strength in pressuring political parties to treat seriously their concerns. Political parties are not immune to moral argument but they are more certainly attentive to electoral pragmatism, courting the votes of those who count in electoral terms over those who do not. Indigenous peoples require a guaranteed voice and vote in Parliament to enjoy the full rights of citizenship. It is a reasonable and fair expectation that they might sit in the executive and participate in national affairs at the highest level, remembering especially that policy failure which is the ‘most significant feature of the relationship’ between governments and indigenous Australians<sup>41</sup> is always a likely outcome of indigenous political exclusion.

Guaranteed representation overcomes the otherwise inevitable distance between the executive and the indigenous peoples for whom policy is made. Ivanitz, however, argues that:

demands for the formulation and implementation of policy relevant to the needs and circumstances of indigenous people are based on claims to special political status, group rights and cultural uniqueness, all of which tend to contradict core values of liberal democracy.<sup>42</sup>

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<sup>40</sup> M. Ivanitz “Democracy and Indigenous Self-determination” in A. Carter and G. Stokes (eds.), *Democratic Theory Today* (Malden Massachusetts, 2002).

<sup>41</sup> I. Cook, *Government and Democracy in Australia* (Melbourne, 2004), 239.

<sup>42</sup> M. Ivanitz “Democracy and Indigenous Self-determination” in A. Carter and G. Stokes (eds.), *Democratic Theory Today* (Malden Massachusetts, 2002), 130

On the other hand, there is, as Ivanitz notes a distinction between ‘formal’ political equality and ‘substantive’ political equality.<sup>43</sup> While formal equality may satisfy some liberal democrats, it is substantive political equality that better corresponds with the claims of indigeneity. Liberal democracy gives indigenous peoples the reasonable expectation that they will engage in government as participants not merely as interest groups, even though interest group status does remain simultaneously important. Interest groups facilitate the robust yet ordered contestation of ideas that are the outcome of different human identities. Indigenous interest groups are also important ‘because no democracy ever reaches the point at which justice is simply done, democracies need to recognize and foster enclaves of resistance’.<sup>44</sup> What Mouffe calls the ‘antagonistic dimension of the political’<sup>45</sup> is essential in allowing indigenous peoples to make their political claims. One of the ways in which substantive political equality can be realised is through guaranteed indigenous representatives in state legislatures. A special measure of this kind gives substantive effect to the group claim to participation in national decision-making. Active participation in the political life of the community fosters positive conception of citizenship and stable political order. Yet the Australian Commonwealth Parliament does not, at present include an indigenous member, making it difficult to speak of a genuine "House of Representatives". Objections to plurality are often motivated by undemocratic insecurities and prejudices which position cultural homogeneity as the social ideal from which political life ought to stem. But Mouffe’s argument that ‘a democratic society cannot treat those who put its basic institutions into question as legitimate

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<sup>43</sup> Ibid., 130

<sup>44</sup> J. Mansbridge, “Using Power/ Fighting Power: the Polity,” in S. Benhabib, ed., *Democracy and Difference. Contesting the Boundaries of the Political* (Princeton, 1996), p. 58.

<sup>45</sup> C. Mouffe, *On the Political* (London, 2005), p. 90.

adversaries'<sup>46</sup> exposes the limits of democracy for indigeneity; and offers some context to Rabuka's exception to democracy providing a fair and reasonable model of government for Fiji.

Indigeneity inevitably calls into question the legitimacy of the basic institutions of a liberal democratic society; the legislature and judicial system in particular. Yet in Australia and New Zealand there is an indigenous sense of realism preventing any attempts to destabilise these institutions and even in Fiji sufficient pragmatism guided the coups and putsch so that parliamentary reform rather than revolution was the political objective.

Liberal democracy, then, requires national reconciliation. Not to the point where the legitimacy of political difference is called into question as Mouffe fears,<sup>47</sup> but where reconciliation is concerned with recognising objective and demonstrable wrongs. For example, the removal of indigenous Australian children from their families, for which the Australian parliament has apologised and the confiscation of Maori land, for which the New Zealand Crown has done likewise. Recognising objective wrongs requires consensus, but when societies come to consider the nature and form of recompense there remains space for the plurality and contestation of ideas which Mouffe argues are essential to democratic politics.

### **Liberal Democratic Failure**

Australia's democratic stability is conducive to broad conceptions of liberty. Yet democracy is widely interpreted as unbridled majoritarian rule giving the minority indigenous population no moral claim to particular recognition. Exclusion remains the legacy of a colonial political order over which indigenous peoples had no influence or

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<sup>46</sup> Ibid., p. 20.

<sup>47</sup> Ibid.

connection. In 2009 arguments about the propriety and form of a national indigenous representative body have been couched in exclusive assumptions of state power and regulation. The government, not indigenous people, is leading policy debate on a replacement for the Aboriginal and Torres Strait Islander Commission (ATSIC) which was the primary national representative indigenous body for fourteen years until abolished by legislation in 2005.

ATSIC developed an important advocacy role and provided health services to indigenous communities. Its potential to contribute to indigenous self-determination was significant, but inevitably constrained by its statutory rather than community foundation. In gaining Non-Government Organisation accreditation at the United Nations ATSIC had provided an alternative to government representation of indigenous affairs and as its political voice increasingly diverged from prevailing government policy direction.

Sanders, among others, argued that ATSIC should not have been abolished until an alternative ‘representative arrangement’ was ‘negotiated’ with indigenous Australians.<sup>48</sup> This view supposed that governments, not indigenous communities, should determine how they are represented to government.

Governments constrain independent political expression when they develop then ‘negotiate’ the terms of some citizens’ political engagement. Yet democracy potentially empowers groups of citizens to pursue their common interests, balanced only by the right of other groups to do the same. An independent civil society is an essential accompaniment to elections and political parties in protecting against

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<sup>48</sup> W. Sanders, *ATSICs Achievements and Strengths: Implications for Institutional Reform* (Canberra, 2004), p. 1.

tyranny and in ensuring that the full plurality of political perspectives can be expressed. ATSICs abolition does therefore create an opening for indigenous Australians to make a definite statement of self-determination by strengthening their own representative organisations.

In 2008 the Australian Aboriginal and Torres Strait Islander Social Justice Commissioner, who is independent of the executive, initiated discussion on the establishment of a new national representative body. The Commissioner's discussion paper raises the possibility of the body not being a government entity but does not commit itself to that course of action, even though it notes the importance of such a body being able to work credibly with each tier of government – implying that independence from the Commonwealth would be desirable. The paper also makes the significant observation that although a government entity ought to have the advantage of 'privileged access to government', this was not the ATSIC experience. Privileged access, if it were to occur, could come at a very high cost for a body that requires independence to establish its own authority and to provide an unhindered indigenous public voice. A further perspective considered by the Commissioner is that an indigenous representative body might have a formal role in Senate Estimates committees because their 'ability to call the government and bureaucracy to account is something that many Indigenous peoples would like to emulate.'<sup>49</sup> Given the constraints of contemporary Australian politics this could provide a more inclusive and accountable democratic form. But on the other hand it masks one of the most fundamental failures of Australian democracy – that there is not a single indigenous

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<sup>49</sup> T. Calma, *Building a Sustainable National Indigenous Representative Body* (Sydney, 2008), p. 99.

Senator able to speak and vote as of right on an Estimates Committee. The former membership of indigenous senators, Neville Bonner (1971-1983) and Aden Ridgeway (1999-2005) does not mitigate against arguments for guaranteed indigenous parliamentary representation. Indeed, it strengthens the arguments by highlighting the institutional barriers to indigenous representation.

Liberal democracy can encourage conformity but it can also protect difference depending on how its fundamental purpose is understood and how its institutions and processes are ordered. The democratic ideal of a strong civil society creates space for indigenous political expression and a forum for the contestation of ideas. When civil society functions well across the entire polity a significant check on power is established. This means that a national representative indigenous body could be expected to enhance democracy. But, as the ATSIC experience so pointedly illustrates, it needs to stand apart from the state if substantive independence capable of contributing to checks on power is to be assured. The inevitable price of independence is, however, that it becomes impossible to accept state financial support for operational expenses. Accountability is therefore transferred from the state to the indigenous institutions which establish and finance the representative body.

During the 1990s the New Zealand Prime Minister, Jim Bolger, argued for the creation of a national representative Maori advisory body. The proposal did not succeed because Maori tribes saw the initiative as more concerned with meeting the needs of government than with advancing their own interests. An alternative and still functioning representative model was developed by the Tainui tribal confederation. The Tainui people elect members to a parliament, Te Kauhanganui, which is concerned with managing its own affairs and assets in its own way and for its own self-determining purposes. It is a model that allows indigenous people to set their own

public agenda and avoid the centralisation of power that inevitably accompanies state control over the nature of representation.

A further manifest failure of liberal democracy and civil society in recent Australian history was the Commonwealth government's emergency military intervention to counter widespread child sexual abuse in indigenous communities in the Northern Territory. The desperate dysfunction of these communities was a product of political exclusion, built on paternalism and secured by successive state policy choices which made welfare dependence the only real life style expectation for large numbers of people. Poverty, poor housing, health and education also seriously curtail the freedoms that democracy is intended to foster. The democratic principle of state rule by the peoples' consent has never applied substantively to indigenous Australia which has never had formal representation in any of the country's parliaments, nor been able to organise a collective independent political voice. On the other hand, liberal democratic justification for the Howard Government's intervention into indigenous communities could, perhaps, be found in Bentham's view that:

Tied to the advocacy of a 'minimal state', whose scope and power need to be strictly limited, there is a strong commitment to certain types of state intervention: for instance, intervention to regulate the behavior of the disobedient, and to reshape social relations and institutions if, in the event of the failure of *laissez faire*, the greatest happiness of the greatest number is not achieved.<sup>50</sup>

If individual autonomy is to be upheld government interference in people's lives ought to be minimal and truly aimed at enhancing self-determining capacity, in contrast with the historical intrusion which is indefensible in liberal terms. There is

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<sup>50</sup> D. Held, *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Cambridge, 1995), pp. 10-11.

consequently an active but tightly focused role for governments which is at odds with conventional neo-liberal ideas about limited government.

### **Conclusion**

For indigenous peoples in post-colonial societies democracy is indeed a ‘foreign flower’. Liberal democracy’s foreign status does not, of itself, invalidate this prevailing internationally accepted theoretical basis to ordered and representative government. Liberal democracy is not, as a matter of course, unsuited to recognising indigenous claims. Indeed for majority indigenous populations in jurisdictions such as Fiji it may even offer a path to reclaiming traditional authority.

There are substantive differences between liberal democracy and indigeneity but areas of philosophical congruence do emerge where political systems allow the equal rights proposed by liberal democracy to be expressed with recognition of indigenous peoples’ unique and historically grounded circumstances. Free societies are strengthened by the things they hold in common, but at the same time they need to find ways of accepting that indigenous peoples do not wish to be part of an imposed cultureless polity so often presented as political ideal. Accepting difference can strengthen social cohesion by giving indigenous peoples grounds for believing that their value systems have a place in the public realm.<sup>51</sup> Inclusive and participatory understandings of democracy can also contribute important foundations to indigenous self-determination and to the possibility of their belonging in their own terms to the nation state that has developed in the lands of their ancestors.

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<sup>51</sup> D. O’Sullivan, *Beyond Biculturalism: the Politics of an Indigenous Minority* (Wellington, 2007).