

**The Prospects for Customary Law in Transitional Justice:  
The Case of Fiji<sup>1</sup>**

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Transitional justice has typically relied on a handful of mechanisms, including trials, truth commissions, and reparations programmes, in seeking justice after conflict. In many societies, however, these mechanisms have less salience and value than do traditional practices of justice. Often, this occurs in large part because these transitional justice mechanisms have been imported and the community has simply failed to engage with them. Customary law, on the contrary, is community-based and well-known to the people who use it. And so, while the conventional transitional justice literature has relied on and recommended the use of mechanisms and approaches including trials, tribunals, and reparations schemes, this paper explores the use of an alternative mechanism: customary practices of justice and acknowledgement. The idea is that practices of customary law might reasonably be used in transitional societies, in place of other, “foreign” practices like truth commissions and trials in bringing about the same objectives sought by the mechanisms more often used. This paper considers traditional practices of justice in transitional and pre-transitional societies as a means of bringing about the “transition” sought by scholars and practitioners of transitional justice.

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The paper is not, however, without some serious shortcomings—which stem, in part, from the design of the study itself. First, the ethnic composition of Fiji is problematic for this study, because, aside from a brief consideration of the *panchayat* courts formerly used by Fijians of Indian descent, this paper focuses mainly on the customary practices used by Indigenous Fijians specifically. I am looking here at Indigenous Fijian customary law, although I will demonstrate that it does have somewhat broader applicability.

Second, it is the case that Fiji is still in a pre-transition period. And so it is difficult to tell whether it is too soon to begin looking for solutions to affect the illusive transition in Fiji. Fiji has been in a state of “suspended animation”<sup>3</sup> since the first of four coups in 1987, and this shows no signs of abating any time soon. The elections originally planned for 2009 have apparently been postponed until 2014.<sup>4</sup> Until there is an opportunity for change, in whatever format, the *status quo* seems as though it will prevail. And so seeking a “transitional” strategy might, in fact, be not only premature but foolish.

Still, there are important questions that must be considered: At what point in any given peacebuilding process do we need to intervene?<sup>5</sup> Should scholars and practitioners be looking ahead to assess particular strategies well ahead of time? Or should we wait until some future opportunity to begin to sort out what comes next in such communities. One of my interviewees, Joseph Camillo, Executive Director of the Ecumenical Centre for Research, Education and Advocacy (ECREA) told me that the kinds of questions I was asking were important, but he only

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<sup>3</sup> In medical terminology, *suspended animation* refers to the slowing of vital functions by external means without resulting in death.

<sup>4</sup> “Elections in Fiji not possible before 2014,” [article online] Fiji Broadcasting Corporation, 26 Feb. 2010; available from <http://www.radiofiji.com.fj/fullstory.php?id=26085>; accessed 13 Feb. 2011.

<sup>5</sup> I think here, for example, of Kingdon’s “policy window,” an opening which may occur only rarely and especially unpredictably. See John Kingdon, *Agendas, Alternatives, and Public Policies* (Boston: Little Brown, 1984), 171-198.

half-jokingly said that I was a few years too early and should come back once “things “ have settled down.<sup>6</sup>

And so this paper considers customary law in a context that is neither, strictly speaking, “transitional,” nor broadly representative. Certainly, these are not “ideal” conditions in which to test the kinds of ideas advanced in this paper. Yet it is nearly always the case that transitional societies themselves do not represent any kind of ideal type. While problematic in several ways, the paper makes a contribution, nonetheless, to our understanding of the challenges faced in failed states when working toward effecting any real transition.

### Methodology

As I have written elsewhere, I am particularly interested in that facet of any process of coming to terms with the past that facilitates the acknowledgement of events that have taken place.<sup>7</sup> Acknowledgement is a necessary but not sufficient condition in the process of rebuilding. That is, societies, and the individuals who make up those societies, must first engage in a process of acknowledgement before any of the other steps, as outlined briefly above, can take place. This means publicly admitting to and accepting a knowledge of the events which have taken place. In many communities, past crimes are simply never discussed. Rather, events and their consequences are left to bubble under the surface. I argue that unless these atrocities are both privately and publicly acknowledged by individuals within a society, the society cannot move forward on the continuum of social rebuilding.

As part of a larger, on-going study, I have been engaged since 2004 in an examination and analysis of the use of traditional practices of justice and acknowledgement in Uganda as a

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<sup>6</sup> Joseph Camilla, Executive Director, Ecumenical Centre for Research, Education and Advocacy (ECCREA), interview by author, 29 June 2010, Suva.

<sup>7</sup> Joanna R. Quinn, *The Politics of Acknowledgement* (Vancouver: UBC Press, 2010), 3-4.

possible mechanism of transitional justice. I am specifically interested in the role that these processes can and do play in a society's acknowledgement of past crimes and abuses. And how they are able to succeed where other "Western" approaches, like the truth commission, have failed.<sup>8</sup>

In June and July 2010, in the beginnings of a broader, comparative study, I conducted similar field research in Fiji Islands. My goal was to see whether customary practices of justice are used in Fiji, and where they are, to seek to understand their similarity to the kinds of practices I have been seeing in Uganda. I sought to answer three questions: first, to determine prevailing attitudes toward the use of these customary mechanisms in the social rebuilding process; second, to evaluate the feasibility of utilizing traditional mechanisms in the context of international law, national regulations and local custom; and, third, to understand how the use of these kinds of traditional mechanisms is affected by differences in conflicts.

In total, in Fiji, I conducted 26 in-depth interviews, and significant historical and archival research. My interviewees included academics, government officials including the Solicitor General and the Chief Justice of the Supreme Court, opposition politicians, members of the chiefly community, commonly called the House of Chiefs, members of the NGO community, religious leaders, and others. In all cases, I asked about the continued practice of customary justice, and about the legislation of such practices. The answers they provided have shaped the views expressed in this paper.

I should note here that in some cases, it is politically very dangerous for the people to whom I spoke to be named. And so, although I received permission to identify quotations from everyone whom I interviewed, I have chosen not to do so in some cases. Instead, the

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<sup>8</sup> See Joanna R. Quinn, "The Politics of Acknowledgement: Truth Commissions in Uganda and Haiti," (Ph.D. diss., McMaster University 2003).

interviewees have been variously identified by use of descriptors which are meant to explain their particular role in Fijian society, their political affiliation, or an experience they have had. In most cases, I have presented the comments that the interviewees made in the form of direct quotations, although their names have not been included. In many cases, with the express permission of the interviewee, I have actually attributed a direct quotation.

### History and Background

The Fiji Islands first came to European attention in 1643. Over the next century, they were further explored and documented by now-infamous explorers including Captain James Cook and Lieutenant William Bligh. By 1800, shipwrecked European sailors had begun to inhabit the islands, soon followed by Christian missionaries.<sup>9</sup> All of this caused significant upheaval within the Indigenous Fijian communities. Throughout the nineteenth century, there was a “great contest for power” between the traditional rulers of Fiji, effecting the creation of “elaborate confederations with written constitutions and all the rudiments of administrative apparatus, including ministers, assemblies, and bylaws.”<sup>10</sup> Owing to bad debt accumulated through

violence allegedly perpetrated on US citizens... [the US demanded from] the paramount chief of Fiji, (King) Cakobau... \$45,000 in compensation... Cakobau turned to the British for assistance and eventually and reluctantly ceded his country to the UK in return for the payment of outstanding debts and the protection of Fijian interests. And so, on the 10th of October 1874, with the signing of a treaty, ‘The Deed of Cession’, Fiji became a colony of Britain.<sup>11</sup>

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<sup>9</sup> For a comprehensive history of the Fiji Islands, see Brij V. Lal, *Broken Waves: A History of the Fiji Islands in the Twentieth Century* (Honolulu: University of Hawaii Press, 1992).

<sup>10</sup> Lal, *Broken Waves*, 9-10.

<sup>11</sup> John E. Davies, “Ethnic Competition and the Forging of the Nation State of Fiji,” *The Round Table*, 4. 378 (Jan. 2005): 50.

Five years later, the “British made Fiji more complex, socially... via the ‘importation’ of indentured labour from South Asia.”<sup>12</sup> These Indians soon made Fiji their permanent home, and eventually constituted roughly half of the country’s population. Even so, they lived very separately from the Indigenous Fijian population.

The system of governance put in place by the British sought to govern “without departing in any important particular from [the Indigenous Fijians’] own official customs and traditions.”<sup>13</sup> The British established a Native Affairs Board and a series of laws, called the Fiji Regulations, to legislate the lives of Indigenous Fijians, and to insulate them, “to preserve their traditional values, ways of living, and political institutions.”<sup>14</sup> “Fijian custom and tradition has always been the declared basis of these regulations.”<sup>15</sup> “Indigenous Fijians were governed in large part by an increasingly elaborate and codified system of ‘customary law,’ with its own courts, judges, and administrators. The immigrant, indentured laborers were ‘protected’ by an Agent-General of Immigration and his small staff.”<sup>16</sup> The European settlers were governed by a separate set of legislative ordinances.<sup>17</sup>

“The maintenance of boundaries between categories of people asserted to be fundamentally different was a continuing constitutive modality of colonial social practice” in Fiji.<sup>18</sup> This system of laws was based on misleading assumptions and erroneous ideas regarding

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<sup>12</sup> John D. Kelly, “Threats to Difference in Colonial Fiji,” *Cultural Anthropology* 10.1 (Feb. 1995): 65.

<sup>13</sup> “Dispatch from Sir Hercules Robinson, 16 Oct. 1874,” as cited in R. Knox-Mawer, “Native Courts and Customs in Fiji,” *International and Comparative Law Quarterly* 10 (July 1961): 642.

<sup>14</sup> Lal, *Broken Waves*, 13.

<sup>15</sup> Knox-Mawer, “Native Courts and Customs in Fiji,” 643.

<sup>16</sup> Kelly, “Threats to Difference in Colonial Fiji,” 65.

<sup>17</sup> See, for example, Colony of Fiji, *Ordinance VIII of 1875: An Ordinance to Provide for the Judicial Administration of Certain Districts of the Colony*, 5 Nov. 1875, which regulated the legal apparatus pertaining to Indigenous Fijians, as distinct from *Ordinance VII of 1875: An Ordinance to Provide for the Supreme Court*, which delineated the powers of the courts and their composition solely for the use of European settlers. See also ordinances including *Ordinance IX of 1875: An Ordinance to regulate the Storage of Gunpowder*, 12 Apr. 1876, which prohibited the handling or ownership of gunpowder by Indigenous Fijians, and gave that right solely to European settlers.

<sup>18</sup> Kelly, “Threats to Difference in Colonial Fiji,” 65.

the Fijian traditional structure. They were a “uniform, inflexible set of... laws... [that did] little more than bring Fijian practice into a degree of conformity with British values... [The colonial administration] worked actively to suppress and outlaw pre-colonial and pre-Christian indigenous cultural and religious practices it found troublesome or offensive.”<sup>19</sup> For example, the Native Administration implemented a “‘pass system’ under which Fijians could not leave their villages without express permission of the colonial District Officer.”<sup>20</sup> Likewise, land laws were formulated “to make further alienation of land impossible and to vest control of... Fijian land in Fijian hands.”<sup>21</sup> They also instituted a “Great Chiefly Council” popularly known as the Great Council of Chiefs to advise the Governor on forming native regulations.<sup>22</sup> All of this served to isolate Indigenous Fijians, protecting their traditions to the detriment of their community’s social development.<sup>23</sup>

Over the course of the next decades, social, political, and legal development in the Fiji Islands lurched forward through tumultuous times, challenging the foundations of colonial organization.<sup>24</sup> Reports from foreign scholars including Professor O.H.K. Spate<sup>25</sup> and Sir Alan Burns<sup>26</sup> were commissioned in the late 1950s regarding changes to be made in how Fiji was governed. Both reports, stemming from unhappiness and ethnic division, “coincided with moves afoot in Britain to give colonies a greater measure of self-government as a step toward full independence.”<sup>27</sup> Constitutional talks left the Indigenous Fijians and Europeans largely

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<sup>19</sup> Lal, *Broken Waves*, 14-15.

<sup>20</sup> Davies, “Ethnic Competition and the Forging of the Nation State of Fiji,” 54.

<sup>21</sup> Lal, *Broken Waves*, 14.

<sup>22</sup> Lal, *Broken Waves*, 14.

<sup>23</sup> Lal, *Broken Waves*, 16.

<sup>24</sup> Lal, *Broken Waves*, 60.

<sup>25</sup> Colony of Fiji, *The Fijian People: Economic Problems and Prospects*, Legislative Council Paper No.13 of 1959, a report by Professor O.H.K. Spate, (Suva, 1959).

<sup>26</sup> Colony of Fiji, *Report of the Commission of Enquiry into the Natural Resources and Population Trends of the Colony of Fiji, 1959*, Legislative Council Paper No. 1 of 1960, a report by Sir Alan Burns, (Suva, 1960).

<sup>27</sup> Lal, *Broken Waves*, 186.

satisfied, but the Fijians of Indian descent<sup>28</sup> were “bitterly disappointed.”<sup>29</sup> It was on the basis of this division that Fiji’s new Constitution was promulgated, and the 1874 Deed of Cession was formally terminated. Fiji became Independent on 9 October 1970.<sup>30</sup>

In modern times, the differences alluded to above have boiled over in a series of political coups: In the first coup, on 14 May 1987, Lt. Col. Rabuka “took over from the elected government in a bloodless coup and formed a civil interim government supported by the Great Council of Chiefs.”<sup>31</sup> In the second coup, only a few months later, on 25 September 1987, Rabuka again intervened, this time with military force. The constitution was revoked, and Fiji was declared a republic, whereupon the country was suspended from the Commonwealth.<sup>32</sup> A new Constitution was declared in 1990, and another in 1997, and upon an apology by Rabuka to Queen Elizabeth, Fiji was readmitted to the Commonwealth.<sup>33</sup>

The third coup began on 19 May 2000, when

a disgruntled Fijian businessman named George Speight led a gang of armed henchmen into parliament... Demanding the appointment of an all-Fijian government, they held [Fiji’s first Indian Prime Minister Mahendra] Chaudhry and several members of parliament hostage for the next 56 days. While negotiating with Speight, the military under Commodore Frank Bainimarama disbanded the constitution and appointed an interim government... Speight released his hostages after being promised amnesty, but the army arrested him two weeks later and charged him with treason.<sup>34</sup>

The 1997 Constitution was upheld in an appeals court judgement in 2001. Speight’s supporters, who later contested and won elections in that same year, promulgated a divisive *Reconciliation*,

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<sup>28</sup> “In Western-educated circles in Fiji, the vocabulary of cultural difference is preferred to vulgar references to race, and “Indo-Fijian” is preferred to “Indian” or even “Fiji Indian.” (Kelly, “Threats to Difference in Colonial Fiji,” 79.) I have opted to use “Fijians of Indian descent.” Thanks to Ashwin Raj, Lecturer, University of the South Pacific, interview by author, 30 June 2010, Suva for his clarification of this issue.

<sup>29</sup> Lal, *Broken Waves*, 195.

<sup>30</sup> Lal, *Broken Waves*, 214.

<sup>31</sup> Dean Starnes and Nana Luckham, *Fiji*, 8th ed. (Victoria: Lonely Planet Publications, 2009), 37.

<sup>32</sup> Starnes and Luckham, *Fiji*, 37. See also Lal, *Broken Waves*, 291-315.

<sup>33</sup> Starnes and Luckham, *Fiji*, 37-38.

<sup>34</sup> Bill Goodwin, *Frommer’s Fiji*, 1st ed. (Hoboken, NJ: Wiley Publishing, 2008), 24. See also Starnes and Luckham, *Fiji*, 38.

*Tolerance and Unity Bill*, which aimed to “provide for and regulate the processes of promoting effective reconciliation amongst the people of the Fiji Islands following the political and civil unrest and events of 2000.”<sup>35</sup> It further specified the creation of a truth commission,<sup>36</sup> to be called the Promotion of Reconciliation, Tolerance and Unity Council.<sup>37</sup> Opponents saw the amnesty provisions as unsustainable, and civic unrest ensued.

The largely peaceful fourth coup began on 5 December 2006, when parliament was dissolved on the order of Commodore Bainimarama, and Prime Minister Qarase, who had strongly supported the *Reconciliation, Tolerance and Unity Bill*, was put under house arrest.<sup>38</sup> “Several key groups did not approve of Bainimarama’s coup, including the Methodist Church and the Great Council of Chiefs. When Bainimarama called on the council, they refused to meet without Qarase... Bainimarama dissolved the council and has acted as interim prime minister since.”<sup>39</sup> A High Court case in October 2008 ruled that the coup was legal under the country’s constitution.<sup>40</sup> The constitution was abrogated 10 April 2009, and all people occupying appointments provided for under the Constitution were dismissed.

At the time of writing, Fiji Islands remains under the conditions brought about by the 2006 coup. There is no constitution in effect, and Fiji is instead governed by a series of decrees.<sup>41</sup> Parliament does not sit. The Great Council of Chiefs is not allowed to meet, either.<sup>42</sup>

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<sup>35</sup> Sec.1, Bill No. 10 of 2005, *Promotion of Reconciliation, Tolerance and Unity*, 2005.

<sup>36</sup> Steven Ratuva, “Fiji’s Truth and Reconciliation Commission: Another cut and paste job?” *Daily Post* 2002 FULL CITE NEEDED

<sup>37</sup> Hon. Laisenia Qarase, Prime Minister and Minister for Fijian Affairs, *Statement at second reading of the Reconciliation, Tolerance and Unity Bill*, 2 June 2005.

<sup>38</sup> Goodwin, *Frommer’s Fiji*, 25.

<sup>39</sup> Starnes and Luckham, *Fiji*, 39.

<sup>40</sup> Starnes and Luckham, *Fiji*, 39.

<sup>41</sup> Sovanatabua B.S. Colavanua, Legal Officer (Litigation) Fiji Human Rights Commission, interview by author, 16 June 2010, Suva.

<sup>42</sup> The Great Council of Chiefs apparently refused to capitulate to Bainimarama’s demands, and so he has put them into a position where they have no official power and are less threatening to his own hold on power. This demonstrates his recognition of the influence of the Great Council of Chiefs in Indigenous Fijian society.

All decisions are taken by Commodore Bainimarama, or a close circle of his advisors. Reports exist of worsening human rights conditions, particularly for anyone who opposes Bainimarama.<sup>43</sup>

### Customary Law

As I have written elsewhere, traditionally, cultures and societies around the world had highly complex, highly developed systems for dealing with conflict and conflict resolution—and for dealing with the social deficits brought about by conflict. In traditional times, these systems carried out a number of functions, including mediation, arbitration, adjudication, restitution, and punishment—the same retributive elements included in the kinds of systems familiar in “modern” justice. They often also included elements of restoration and reconciliation.<sup>44</sup> And these elements typically functioned in tandem.

In many parts of the world, these practices were shoved aside to make way for modern, Western ideas and practices.<sup>45</sup> Colonial rulers disparaged such traditional customs, and allowed only “natives” within the colonies to utilize them, setting up separate mechanisms for use by “non-natives,” effectively creating a dual system.<sup>46</sup> In Uganda, for example, traditional practices were officially prohibited in 1962, at the time of Independence, in favour of a harmonized court system modeled on the British system.<sup>47</sup> Yet the kingdoms and other traditional cultural institutions remain, and traditional practices have continued to be used in different parts of the

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<sup>43</sup> Unnamed opposition supporter, interview by author, 23 June 2010, Suva. See also U.S. Department of State, *Fiji: Country Report on Human Rights Practices, 2009*, 11 Mar. 2010, particularly “Section 1: Respect for the Integrity of the Person, Including Freedom From c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.”

<sup>44</sup> Joanna R. Quinn, “Tried and True: The Role of Informal Mechanisms in Transitional Justice,” a paper presented at the International Society of Political Psychology Annual Meeting, Toronto, 6 July 2005.

<sup>45</sup> See, for example, Lord Lugard, *The Dual Mandate in British Tropical Africa*, 5th ed. (London: Thomas Nelson, 1965), 536-569.

<sup>46</sup> Mahmood Mamdani, *Citizen and Subject* (Kampala: Fountain Publishers, 1996), 109-110.

<sup>47</sup> The British Colonial Office, *Report of the Uganda Relationship Committee*, 1961.

country.<sup>48</sup> In other areas, these practices are no longer used regularly.<sup>49</sup> In still other jurisdictions, their use was carefully reconsidered.

Although many authors focus solely on traditional methods of conflict resolution in Africa,<sup>50</sup> there is a growing literature on the use and/or revitalization of customary practices of justice throughout the world.<sup>51</sup> This is particularly true of the South Pacific, where scholars of legal anthropology, as well as politicians and government officials, are interested in and working through the implications of the inclusion of customary law within the “Western” legal system that has been in place since the 1960s and 1970s.<sup>52</sup> “When Pacific Island countries gained independence in the latter part of the 20th century some colonial laws were abolished, others were retained as interim measures pending their replacement by national laws. The place of custom and customary law was reassessed and in some cases strengthened as part of the assertion of independence and national identity.”<sup>53</sup> Both Vanuatu and Solomon Islands, for example, have constitutionally enshrined the role of chiefly authority<sup>54</sup> in their structures of governance. There is also, in both countries, “express provision for customs or customary law to be applied as part

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<sup>48</sup> Briggs, *Uganda*, 22.

<sup>49</sup> See Joanna R. Quinn, “Here, Not There? Theorizing about why traditional mechanisms work in some communities, not others,” Panel—Lost in Transition? Justice and Traditional Practises in Post-Conflict Societies Annual Conference of the International Studies Association, New York, NY: February 15, 2009.

<sup>50</sup> See, for example, William I. Zartman, ed., *Traditional Cures for Modern Conflicts: African Conflict “Medicine,”* (Boulder, CO.: Lynne Rienner, 2000) and Luc Huyse and Mark Salter, eds., *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences* (Stockholm: International Institute for Democracy and Electoral Assistance, 2008).

<sup>51</sup> See, for example, Norbert Rouland, *Legal Anthropology*, trans. Philippe G. Planel (Stanford, CA: Stanford University Press, 1994) and Susanne Schmeidl, “Successful Cooperation or Dangerous Liaison? Integrating traditional and modern justice mechanisms in Southeastern Afghanistan,” a paper presented at the Annual Convention of the International Studies Association, New York, NY, 15-18 February 2009.

<sup>52</sup> See Stephanie Lawson, *Tradition vs. Democracy in the South Pacific: Fiji, Tonga and Western Samoa* (Cambridge: Cambridge University Press, 1996); Guy Powles and Mere Pulea, eds., *Pacific Courts and Legal Systems* (Suva: University of the South Pacific, 1988); Michael A. Ntumu, *South Pacific Islands Legal Systems* (Honolulu: University of Hawaii, 1993); and Anita Jowitt and Tess Newton Cain, eds., *Passage of Change: Law, Society and Governance in the Pacific* (Canberra: Pandanus Books, 2003).

<sup>53</sup> Sue Farran, “Palm Tree Justice? The Role of Comparative Law in the South Pacific,” *International and Comparative Law Quarterly* 58 (Jan. 2009): 182.

<sup>54</sup> Guy Powles, “Law, Courts and Legal Services in Pacific Societies,” in *Pacific Courts and Legal Systems*, eds. Guy Powles and Mere Pulea (Suva, Fiji: University of the South Pacific, 1998).

of the law of the country by all courts.”<sup>55</sup> These customs are regularly applied in matters pertaining to land and related disputes. They are also applicable to all other matters.

### Customary Law in Fiji

In Fiji, these customs and traditions were enshrined in the Fiji Regulations (1876).<sup>56</sup> In 1967, the traditional Fijian court system and various related regulations were abolished.<sup>57</sup> “At least by 1970 and the enactment of the new constitution, the traditional courts went out of use. They have not been reinstated and Magistrates now visit the more distant villages on circuit to adjudicate on criminal and civil matters.”<sup>58</sup> “There is a join between the traditional system and the Western system, but not for serious cases like murder, rap, robbery with violence, and that kind of thing. There, we simply must apply legal principles, which are important in the community.”<sup>59</sup> And yet these practices were legally protected and even encouraged to a large extent until 1997.

Colloquially, there is strong evidence to indicate that these practices have continued to exist beyond their official abolition. “There is officially no such thing as customary law in Fiji, but it’s really a matter of definition. Most of our customs have been codified, and it is sometimes difficult to distinguish, now, what is customary law.”<sup>60</sup> As in many other parts of the world, different customary practices existed to resolve conflict and to reconcile the population, which are called, collectively, *i soro*.<sup>61</sup> The *matanigasau* is a ceremony which aims to restore peace and harmony to the heart of the extended family group, when one party goes to ask

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<sup>55</sup> Jennifer Corrin Care, Tess Newton and Don Paterson, *Introduction to South Pacific Law* (London: Cavendish Printing, 1999).

<sup>56</sup> Mere Momoivalu, “A separate system of justice,” *The Review* (Sep. 1994), 40.

<sup>57</sup> Ratu Filimone Ralogaivau, “A Primer on Fiji’s Great Council of Chiefs,” *Fiji Times*, 27 April 2006.

<sup>58</sup> Correspondence with Christopher T. Pryde, Solicitor General of Fiji, 8 Feb. 2011.

<sup>59</sup> Hon. Jus. Anthony Gates, Chief Justice of Fiji, interview by author, 29 June 2010, Suva.

<sup>60</sup> Alipate Qetaki, General Manager, Native Land Trust Board, interview by author, 21 June 2010, Suva.

<sup>61</sup> For an excellent description of many of these customs, see M. Toro, “Disputes in a Fijian Village Setting,” (M.A. Thesis, University of the South Pacific, 1973). See also Andrew Arno, “Ritual of Reconciliation and Village Conflict Management in Fiji,” *Oceania* 47.1 (1976): 49.

forgiveness. Other ceremonies of pardon also exist, such as the *bulu bulu*, in cases of injury,<sup>62</sup> to “bury the bad thing that has happened.”<sup>63</sup> Another, *veisorosorvi*, “brings both parties together to sit, discuss, and agree together, after which a *tabua* [whale’s tooth] is always presented to seal what has been agreed upon. Once the *tabua* is presented, that’s the end of it. Sometimes the *tabua* can be a curse, because you must follow what you’ve agreed to by accepting it.”<sup>64</sup> All of these are traditional forgiveness and reconciliation, and may be used instead of the Western court system or in conjunction with it.”<sup>65</sup> “Even until today, if there are some problems, people will use the village system, a committee set up to resolve their problems. In rural areas, everybody talks together in a traditional way, on mats, under a tree, and so on.”<sup>66</sup>

Within the community of Fijians of Indian descent, similar customary practices of law existed, and were used to govern—here, too, borne out of necessity, as the European laws extended only to the European community, and the Fijian Regulations extended only to the Indigenous Fijian community. It is, however, the case that these practices do not now exist. They were called *panchayats*, and were based on the *panchayats* in rural India, where “the jurisdiction of the *panchayat* is wide: everything having to do with the caste or its members... They handle[d] cases as serious as death by poisoning or causing severe injury, but most cases [were] less dramatic: arguments about marriage arrangements, insults, fighting with weapons, or infringement of someone’s hereditary territory predominate.”<sup>67</sup> Fijian *panchayats* were *ad hoc*<sup>68</sup>

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<sup>62</sup> Viviane Cretton, “Cakobau’s Sisters: Status, Gender and Poitics in Fiji,” Working Paper No. 11, Gender Relations Centre, RSPAS, The Australian National University/University of Lausanne, Switzerland, 2004, 2.

<sup>63</sup> Joe Salabogi, interview by author, 28 June 2010, Suva.

<sup>64</sup> Joe Salabogi, interview by author, 28 June 2010, Suva.

<sup>65</sup> Joe Salabogi, interview by author, 28 June 2010, Suva. See also Steven Ratuva, “re-inventing the cultural wheel: re-conceptualizing restorative justice and peace building in ethnically divided Fiji,” in *A Kind of Mending: Restorative Justice in the Pacific Islands*, ed. Sinclair Dinnen with Anita Jowitt and Tess Newton Cain (Canberra: Pandanus Books, 2003), 155-160.

<sup>66</sup> Naomi Matanitobua Raiki, former Chief Magistrate, interview by author, 28 June 2010, Nausori.

<sup>67</sup> Robert M. Hayden, “Turn-Taking, Overlap, and the Task at Hand: Ordering Speaking Turns in Legal Settings,” *American Ethnologist* 14.2 (May 1987): 256.

councils of “men of generally acknowledged reputation... with the power to demand any penalty [they thought] fit (an apology, a fine) or to dismiss the case. But council leaders [had] no power to enforce their decision. This is left to the weight of public opinion.”<sup>69</sup> “All the panchayats recorded were *ad hoc* bodies, called to hear a specific dispute, rather than permanent entities organized on a territorial or cultural basis.”<sup>70</sup> They heard evidence presented by both sides, conferred, and handed down their decisions.<sup>71</sup>

What is perhaps of greatest interests for present purposes is that the task faced by the panchayat is one of finding facts, in the sense of creating a definitive public account of what happened in the incident in question. This point needs stressing: the panchayat is held precisely because there is as yet no commonly accepted knowledge of an important event. While many members of the community may already have some knowledge of the incident, such knowledge is unauthorized and can not be used in public discourse... The purpose of the panchayat is to create what Brenneis calls a “public record” of the dispute: “a single and non-contradictory account of crucial events” which can be used to guide future behaviour... The outcome of a successful panchayat is that the disputants shake hands and resume some semblance of normal social relations.<sup>72</sup>

Anyone could bypass the Association and, therefore, the *panchayat*, by going to court.<sup>73</sup>

Even after Independence in 1970, all of these practices, both within the Indigenous Fijian community and within the community of Fijians of Indian descent, continued to be legally sanctioned.<sup>74</sup> As far back as 1984, reinvigorating the Fijian court system had the blessing of the Great Council of Chiefs. And in 1994, backed by those same chiefs, the Ministry of Fijian

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<sup>68</sup> Adrian C. Mayer, “Associations in Fiji Indian Rural Society,” *American Anthropologist* 58.1 (Feb. 1956): 104.

<sup>69</sup> Adrian C. Mayer, “Factions in Indian and Overseas Indian Societies, Part 4: Factions in Fiji Indian Rural Settlements,” *The British Journal of Sociology* 8.4 (Dec. 1957): 319.

<sup>70</sup> Mayer, “Associations in Fiji Indian Rural Society,” 104.

<sup>71</sup> Mayer, “Associations in Fiji Indian Rural Society,” 104.

<sup>72</sup> Hayden, “Turn-Taking, Overlap, and the Task at Hand,” 261.

<sup>73</sup> Mayer, “Factions in Indian and Overseas Indian Societies,” 319.

<sup>74</sup> See Isireli T. Fa, “Customary Land Rights over Native Land in Fiji: An analysis of the legal status of customary land rights in the Fijian courts,” (L.L.M. thesis, University of Auckland, 1989).

affairs came out strongly in favour of using the traditional court system during a Commission of Inquiry on the Courts.<sup>75</sup> Between 1990 and 2005, for example, the Government of Fiji

provided grants totalling \$3,364,488 as at 31/12/04 to the Fijian Affairs Board through the Ministry for the purpose of establishing a Fijian Court System... Although the Fijian Court System [was never] established, grants to Fijian Courts continued to be disbursed [and were instead] utilised in administering a Fijian Court Unit, which... [provided] legal services for domestic cases such as divorces and adoptions. Furthermore, [an] Acquittal Statement revealed that the funds were diverted for other purposes.<sup>76</sup>

Some of this money was funneled to a pilot project wherein six traditional leaders were initially appointed as Grade III Magistrates—although eventually at least one was appointed first to Grade II, and then to Grade I Magistrate—to hear cases using a customary approach.<sup>77</sup> Then-Chief Magistrate Naomi Matanitobua established the system, whose courts were known as “Problem-Solving Courts.” Their purpose was to try to address the high numbers of Indigenous Fijians then in prison, to try to affect reconciliation by using “all our skills—legal training *and* traditional justice. All courts and magistrates do this in rural areas. We didn’t see it as racist. We simply targeted those 25 years and younger, including other races, and looked into their traditional systems too. When we were looking at cases of Fiji Indians, the magistrates would sit in court with help from the elders from their community.”<sup>78</sup>

Likewise, current programmes within the prison system and elsewhere have been making use of the traditional structure. “*Sevusevu* is used as a sacred way of beginning a conversation, a grounding on which everything else must proceed.”<sup>79</sup> “Framing issues in traditional ways is useful in getting people to buy in. The NGO Coalition and Dialogue Fiji use this kind of

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<sup>75</sup> Momoivalu, “A separate system of justice,” 40-43.

<sup>76</sup> Auditor General, *Report of the Auditor General of the Republic of the Fiji Islands to Parliament—August 2005*, Section 12 Ministry of Fijian Affairs, Culture and Heritage (August 2005), 4-5.

<sup>77</sup> Aminiyasi Katonivualiku, former traditional Magistrate, interview by author, 25 June 2010, Suva.

<sup>78</sup> Naomi Matanitobua Raiki, former Chief Magistrate, interview by author, 28 June 2010, Nausori.

<sup>79</sup> Tui Clary, doctoral candidate, Otago University, interview by author, 24 June 2010, Suva.

approach.”<sup>80</sup> Even proper judges of the Courts in Fiji use the traditional setting to gain buy-in. “I would come into a courtroom to find a chair and table provided and everyone sitting on the floor. And so I would push the table aside and sit on the floor myself, consulting the elders as I went along.”<sup>81</sup> A similar story was echoed even by the Chief Justice of the Supreme Court.<sup>82</sup>

Today, customary law of any stripe is no longer formally recognized as a general source of law by the constitution.<sup>83</sup> The Constitution Amendment Act 1997 repealed the 1990 Constitution. The 1997 Amendment Act omits Section 100.3, which had appeared in the 1990 Constitution, and which read as follows: “Until such time as an Act of Parliament otherwise provides, Fijian customary law shall have effect as part of the laws of Fiji.” Yet Section 195.2.e of the subsequent 1998 Constitution does protect customary law to some extent: “All written laws in force in the State (other than the laws referred to in subsection (1)) continue in force as if enacted or made under or pursuant to this Constitution and all other law in the State continues in operation.” Likewise, Section 186.1 is explicit in upholding laws related to customary law: “The Parliament must make provision for the application of customary laws and for dispute resolution in accordance with traditional Fijian processes.”<sup>84</sup>

However, since the abrogation of the Constitution in 2009, all of this stands in question. “The government operates under a series of decrees. As part of that, noone is entitled to challenge the abrogation of the Constitution. Yet even if the Constitution is taken away, it does

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<sup>80</sup> Joseph Camillo, Executive Director, Ecumenical Centre for Research, Education and Advocacy, interview by author, 29 June 2010, Suva.

<sup>81</sup> Salote Kaimacuata, former Judge, interview by author, 25 June 2010, Suva.

<sup>82</sup> Hon. Jus. Anthony Gates, Chief Justice of Fiji, interview by author, 29 June 2010.

<sup>83</sup> Jennifer Corrin Care, “The Status of Customary Law in Fiji Islands After the Constitutional Amendment Act 1997,” *Journal of South Pacific Law* 4.1 (2000): 1.

<sup>84</sup> Corrin Care, “The Status of Customary Law in Fiji Islands,” 1.

not affect the people.”<sup>85</sup> Indeed, the Solicitor General of Fiji, Christopher Pryde, clearly indicated this: “The traditional Fijian courts are not now in place for civil or criminal affairs.”<sup>86</sup>

Yet the Western justice system itself turns to customary practices from time to time. “Customary law and penal law do not flow seamlessly. For example, the courts can’t handle traditional matters.”<sup>87</sup> This is an indication of the truly important role that customary law frequently plays in Indigenous Fijian society. One particularly interesting case involved the inheriting of the title of *Tui Cakau*, the Paramount Chief of Cakaudrove Province.<sup>88</sup> The title is seen as the third most influential customary title in Fiji, and was contested in 2005.<sup>89</sup> Leaving aside the rather complicated particulars of the case, what is important for the purposes of this discussion is that the case was first heard in a series of customary and traditionally-constituted courts: in the village courts, then in the *Tikina* (provincial) courts, then by the Native Land Trust Board, a constitutionally-appointed arbitration board that hears customary disputes, largely on questions of land ownership. Only then was the case of the *Tui Cakau* heard in the High Court. When it was found that “the other body failed to accord due process or fairness,”<sup>90</sup> the case was then heard by the Supreme Court, the final appellate court—which determined that it did not have jurisdiction over customary questions such as titlementship.<sup>91</sup> Ultimately, the Supreme Court referred the case to the Native Land Commission Court, the court of highest customary legitimacy, composed of three customary chiefs, and appointed by the Minister of Fijian Affairs.

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<sup>85</sup> Sovanatabua B.S. Colavanua, Legal Officer (Litigation) Fiji Human Rights Commission, interview by author, 16 June 2010, Suva.

<sup>86</sup> Christopher T. Pryde, Solicitor General of Fiji, interview by author, 24 June 2010, Suva.

<sup>87</sup> Unnamed opposition supporter, interview by author, 23 June 2010, Suva.

<sup>88</sup> See “Cakaudrove Province Home of the Tagimoucia,” [website]; available from [www.cakaudrove.org](http://www.cakaudrove.org); accessed 18 Feb. 2011.

<sup>89</sup> See Jon Fraenkel, “Power Sharing in Fiji and New Caledonia,” in *Globalisation and governance in the Pacific Islands*, S. Firth, ed., State, Society and Governance in Melanesia, Studies in State and Society in the Pacific, No. 1, Australia National University, 341.

<sup>90</sup> Hon. Jus. Anthony Gates, Chief Justice of Fiji, interview by author, 29 June 2010, Suva.

<sup>91</sup> Sovanatabua B.S. Colavanua, Legal Officer (Litigation) Fiji Human Rights Commission, interview by author, 16 June 2010, Suva.

Many of my Fijian interviewees referred to the case of the *Tui Cakau* when explaining to me the fluidity for Indigenous Fijians between customary and Western law.

### Current Conditions... and the Problems They Bring

There does appear to be some support, within the Indigenous Fijian community, for bringing back the comprehensive use of customary law. Throughout 2010, the reinstatement of customary law in rural villages through the “Village Bylaws” was being furiously debated, although Commodore Bainimarama has since ruled that such rules are not enforceable and are meant purely as guidelines for social behaviour.<sup>92</sup> “The government is not keen on bringing the courts back.”<sup>93</sup> “There has been a lot of talk about reviving the Fijian Courts, as part of the central magistracy. Because of changing demographics, the Fijian Affairs Board has tried to address these changes through the Village Bylaws, which will regulate life in the village, bring about respect for the elders, and respect for our traditions. When in town, people will be subject to municipal laws, but they will be bound by the village laws when in the village.”<sup>94</sup> “These are simply a remake of the Fijian Affairs Regulations that died out in the 1980s and some are trying to revive them.”<sup>95</sup>

One common sentiment I heard was this: “People are trying to return to their traditions. Maybe that’s an overstatement, but there’s an urge to get back to the basics. At issue now are not racial issues, but bread-and-butter issues like bus fare, school fees, and that kind of thing.”<sup>96</sup>

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<sup>92</sup> Selina Navuso, “Village by-laws not to be enforced by villages,” [article online] Fijian Custom and Culture, 9 Nov. 2010; available from <http://www.fijiancustomculture.blogspot.com/2010/11/village-by-laws-not-to-be-enforced-by.html>; accessed 13 Feb. 2011.

<sup>93</sup> Hon. Jus. Anthony Gates, Chief Justice of Fiji, interview by author, 29 June 2010.

<sup>94</sup> Ratu Meli Bainimarama, Minister of Fijian Affairs, Culture and Heritage, interview by author, 23 June 2010, Suva.

<sup>95</sup> Sovanatabua B.S. Colavanua, Legal Officer (Litigation) Fiji Human Rights Commission, interview by author, 16 June 2010, Suva.

<sup>96</sup> Alipate Qetaki, General Manager, Fiji Land Trust Board, interview by author, 21 June 2010, Suva.

Bainimarama, however, has also said that “all villages should see that the chiefly hierarchy is observed and transparency should prevail amongst the villages and the chiefs, by way of regular meeting and negotiations”—upholding the chiefly structure and, with it, the use of custom.<sup>97</sup>

It is also the case that “most Fijians who live in urban areas have completely lost touch with their culture. Now more than 50% of the Fijian population is living in the city. Those who were born in cities from 1970 onward are now almost 40 years of age, and they have lost their culture.”<sup>98</sup> This sentiment was voiced as early as 1994, when critics of the traditional courts claimed that its supporters “want[ed] to administer archaic punishment to a society that has changed.”<sup>99</sup> Indeed, “Fijians are spread out throughout the Fiji Islands but mainly concentrated in the Central Division Urban areas.”<sup>100</sup> As I have written elsewhere, some question the relevance of customary institutions in rapidly urbanizing, modernizing, and globalizing societies. They worry that, “the traditional values, cultural knowledge and social institutions of everyday life are threatened.”<sup>101</sup> And as people move farther away from their *gemeinschaft* communities, the social meanings of the ceremonies that are still practiced appear, in some cases, to be shifting.<sup>102</sup> It is the case that in modern *gesellschaft* societies, the resulting society is not homogenous, but, rather, heterogeneous. As such, the conduction of such cultural practices becomes more difficult. “When people leave their village, they leave some of their culture

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<sup>97</sup> Navuso, “Village by-laws not to be enforced by villages.”

<sup>98</sup> Ratu Filimone Ralogaivau, interview by author, 18 June 2010, Suva.

<sup>99</sup> Momoivalu, “A separate system of justice,” 40.

<sup>100</sup> Secretariat of the Pacific Community, *Fiji Islands Population Profile Based on the 1996 Census* (New Caledonia: Secretariat of the Pacific Community, 1999), 15.

<sup>101</sup> Sverker Finnström, *Living With Bad Surroundings: War and Existential Uncertainty in Acholiland in Northern Uganda* (Uppsala: Acta Universitatis Upsaliensis, Uppsala Studies in Cultural Anthropology no. 35, 2003), 201.

<sup>102</sup> Finnström, *Living With Bad Surroundings*, 298.

behind.”<sup>103</sup> And so homogeneity seems a likely factor in whether or not, and whose, “traditions” are used in a given community.<sup>104</sup>

However, in many instances, it was reported to me that “people do keep close ties [to their village]. For example, an adult male would be expected to contribute to government fund-raising, such as for village meeting halls, scholarship funds, and that kind of thing. There would be repercussions if he didn’t participate, and he would lose the support of his fellow villagers.”<sup>105</sup> “People living in the urban areas have not completely lost touch with their tradition and culture. We have asked the Ministry of Education to reinforce cultural education. We are now carrying out a cultural mapping programme, and will revive it.”<sup>106</sup>

There is a divide across age-groups, too, as to the support demonstrated for customary law. “Parents know about custom, but it’s a memory. The young people don’t know.”<sup>107</sup> “Custom and tradition is not understood as deeply by the young people. But the elders find comfort in understanding custom’s regimentedness and orderliness.”<sup>108</sup>

There is growing concern in the villages about the behaviour of young people, for example how women should dress. Some have never experienced life in the village, and so they don’t know. We have always tried to ask people to go back to their village, at least for a visit. There is still a lot of movement back to the villages, especially with improved roads of transport. And especially as we open up the rural areas, people prefer to stay there because the cost of living in the cities is quite high.<sup>109</sup>

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<sup>103</sup> Professor Paul Geraghty, University of the South Pacific, interview by author, 21 June 2010, Suva.

<sup>104</sup> See Quinn, “Here, Not There?” 18-20.

<sup>105</sup> Professor Paul Geraghty, University of the South Pacific, interview by author, 21 June 2010, Suva.

<sup>106</sup> Ratu Meli Bainimarama, Minister of Fijian Affairs, Culture and Heritage, interview by author, 23 June 2010, Suva.

<sup>107</sup> Alipate Qetaki, General Manager, Fiji Land Trust Board, interview by author, 21 June 2010, Suva.

<sup>108</sup> Professor Paul Geraghty, University of the South Pacific, interview by author, 21 June 2010, Suva.

<sup>109</sup> Ratu Meli Bainimarama, Minister of Fijian Affairs, Culture and Heritage, interview by author, 23 June 2010, Suva.

And in Fiji, as elsewhere, the role of Christianity has served to confound the issue—although “it is never really openly discussed.”<sup>110</sup> “The Roman Catholic church has a policy of inculturation,” Catholic Archbishop Petero Mataca explained to me. “But the first missionaries had no idea about inculturation. To them, all things indigenous were of the devil. And the Methodists still reject tradition.” He cited instances of interfaith services organized through the Fiji Council of Churches, where Methodist and Salvation Army pastors refused to take part because of the presence of customary practices.<sup>111</sup> “It’s complicated by the evangelicals, especially the New Methodists, who don’t allow *yaqona* [traditional brew used in customary ceremonies]. They have a lack of tolerance for culture. It’s splitting the villages. The first missionaries were very good at using existing symbols and not rejecting tradition. But not the charismatic evangelicals. These days, faith definitely polarizes.”<sup>112</sup>

It has been said that one of the biggest problems facing Fiji is that of reconciling “competing, indeed, incompatible interests—paramountcy for Fijians, parity for Indians, and privilege for Europeans—[which] is a central theme of the history of Fiji in the twentieth century.”<sup>113</sup> Yet within the Indigenous Fijian community, the people with whom I spoke indicated near-unanimous support for customary law, at least to some extent.

Indeed, these traditional cultural practices are imbued with an overwhelming amount of cultural significance—within the Indigenous Fijian community. For example, after the third coup, in which Speight and his men had held the Prime Minister and 30-odd Members of Parliament hostage for nearly two months, it was seen to be important to have a *matanigasau*:

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<sup>110</sup> Joseph Camillo, Executive Director, Ecumenical Centre for Research, Education and Advocacy, interview by author, 29 June 2010, Suva.

<sup>111</sup> Archbishop Petero Mataca, Roman Catholic Church, interview by author, 17 June 2010, Suva.

<sup>112</sup> Tui Clary, doctoral candidate, Otago University, interview by author, 24 June 2010, Suva.

<sup>113</sup> Lal, *Broken Waves*, 16.

At the end of the hostage crisis, Adi Litia Cakobau called for a meeting of all the chiefs of Fiji, the *Bose ni Turaga*. Adi Litia Cakobau was the deputy chairperson for the Great Council of Chiefs (GCC) at that time. At the end of the hostage crisis, the chiefs met in Suva on the 12th of July. A special guest chaired the *Bose ni Turaga*: Adi Samanunu Cakobau, who is Adi Litia's eldest sister. Being High Commissioner for Fiji in Malaysia, Adi Samanunu came especially from Kuala Lumpur to attend the meeting. At the end of the meeting people from Naitasiri—a province involved with supporting the coup and which also traditionally engaged in warfare for the Cakobau—presented her with a ceremony of apology, a *matanigasau*, on behalf of all the people behind George Speight, the visible leader of the coup. Offering her a *tabua*—that is, the tooth of a whale—they asked all the chiefs in Fiji to forgive the violence, troubles and the civil conflict engendered by the coup. The following day the remaining hostages were released.<sup>114</sup>

Outside of the Indigenous Fijian community, however, Europeans and Fijians of Indian descent also have at least a healthy respect for the Indigenous Fijian traditional practices. Although not as easy to find in colloquial parlance, there are examples of inter-cultural reconciliation rites being performed as well. For example, one such traditional ceremony of acknowledgement was reportedly held at the time of the Speight coup:

Speight did not release the hostages before conducting a final ritual, what ethnic Fijians call a *soro*, a ritual of apology. Isireli Vuibau, a Labour Party member [*sic*] of Parliament and fellow hostage, acted as *matanivanua*, 'herald' or 'talking chief' for deposed Prime Minister Chaudhry. Vuibau accepted the apology. The first bowl of *yaqona* was passed to Chaudhry and Chaudhry drank it, a culminating moment in a *soro*.<sup>115</sup>

It is as important to note, here, that Prime Minister Chaudhry, an outsider to the Indigenous Fijian community, and himself a Fijian of Indian descent, participated in the ceremony, as it is to note that the ceremony itself took place.<sup>116</sup>

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<sup>114</sup> Cretton, "Cakobau's Sisters," 1.

<sup>115</sup> John Dunham Kelly and Martha Kaplan, *Represented Communities: Fiji and World Decolonization* (Chicago, Ill.: University of Chicago Press, 2001), 143-144.

<sup>116</sup> Cretton proposes that the drinking of *yaqona* was "neither part of a *matanigasau*, nor an *i soro*... no *tabua* presentation having been made" and that some "have made use of traditional ceremonies for political ends." See Viviane Cretton, "Traditional Fijian Apology as a Political Strategy," *Oceania* 75 (Sep.-Dec. 2005): 405.

## Conclusions

Indigenous Fijian customary law and traditional practice are commonly carried out in Fiji, despite their somewhat ill-defined legal status. “These practices, far from being dislocated in a past that no longer exists, have always continued to be situated socially. They are called upon to address present concerns. Of course, like any culturally informed practice, with time they shift in meaning and appearance.”<sup>117</sup> Yet their meanings are still clear, and it is obvious that many—including Commodore Bainimarama—accord them great significance.

That being the case, it seems as though these customary practices might well be used in trying to put together a comprehensive set of mechanisms that could one day be harnessed in rebuilding the social fabric of Fijian society. For Indigenous Fijians strongly believe in and frequently utilize customary law and traditional practice. That there is already robust buy-in of the principles they embody, and compelling evidence to support their understanding, makes their use in post-conflict circumstances seem vital. “Mobilising aspects of local culture as a means of addressing conflict is an important dimension of... justice.”<sup>118</sup>

To be sure, the presence of nearly half of the population of Fiji that does not come from a traditional understanding of these mechanisms is concerning. Yet there is also strong evidence to support the interest in and acceptance of traditional Indigenous Fijian practices within the community of Fijians of Indian descent, and among Europeans—as far-reaching as the Chief Justice of the Supreme Court. The Fijians of Indian descent claim that their own historical use of the *panchayat* has in some ways primed them to understand implicitly what is at play.

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<sup>117</sup> Sverker Finnström, *Living With Bad Surroundings: War and Existential Uncertainty in Acholiland in Northern Uganda* (Uppsala: Acta Universitatis Upsaliensis, Uppsala Studies in Cultural Anthropology no. 35, 2003), 299.

<sup>118</sup> Ratuva, “re-inventing the cultural wheel,” 161.

And so putting in place an “acceptable cross-cultural synthesis of [the Indigenous Fijian] reconciliation model” seems a likely way to proceed.<sup>119</sup> Ratuva claims that “these same principles can be re-designed and used as a basis for conflict resolution at the national level.”<sup>120</sup> He argues that the traditional Indigenous Fijian model has a number of strengths, including its maleability, depending on the circumstances in which it is constituted; its traditional use in communal conflict resolution; and its utility in transforming relationships.<sup>121</sup>

The prospects for customary law in transitional justice, at least in the Fijian case, are promising. What remains to materialize is an appropriate opportunity, a proper “transition” or opening, for a customary experiment to be tried.

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<sup>119</sup> Frank Hoare, “Community Trauma Healing in Fiji,” (undated manuscript) author’s collection, 17-18. See also Frank Hoare, “Building Inclusive Community in a Divided Society: From separate ethnic inculturation to an intercultural dialogue of faith in the multi-ethnic context of the Catholic Church in Fiji,” (D.Min. diss., Catholic Theological Union at Chicago, 2008).

<sup>120</sup> Ratuva, “re-inventing the cultural wheel,” 160.

<sup>121</sup> Ratuva, “re-inventing the cultural wheel,” 160-161.