

# Public Participation and Grand Narratives of Constitutional Transitions: The Case of Fiji

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## A. Introduction

Theunis Roux's article about two opposing grand narratives of constitutional transition, the liberal-progressive narrative and the culturalist-decolonial narrative, is a thought-provoking read.<sup>1</sup> Though Roux makes an important contribution as he inspires us to bring the two narratives into conversation with each other, his essay can also be criticised as a dichotomous interpretation that does not account for an empirical reality that is much more complex. Whether or not decolonized countries have constitutions that "reflect the values of the Westernised political elites that adopted them"<sup>2</sup> is not the focus of this article, however. Rather, the focus here is to understand the *process* of making the constitution and particularly so when the population at large are invited to participate; what has come to be termed as "participatory constitution-making".<sup>3</sup> One might wonder how, then, does this article relate to Roux's ideas of the two different grand narratives, if it does not deal directly with constitutional content? I argue that the notion of participatory constitution-making forms part of a liberal-progressive narrative in the sense that the call for broad based participation is strongly advocated by primarily (western) international organizations. I have elsewhere discussed that the extent to which contemporary constitution-making processes have been participatory—in the sense of allowing participants to exert influence—widely varies between cases.<sup>4</sup> Roux's article, however, spurs additional thoughts on why certain cases have talked the talk of "participation" but not quite managed to walk the walk. In this piece, I will focus on a case in the Pacific region—namely Fiji—to elaborate this matter.

The rest of the article is organized in the following way. The next section discusses participatory constitution-making as a transnational norm, influenced by bottom-up approaches to peace-and state building. This is followed by a section that describes, in brief, the

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1 *Theunis Roux*, *Grand Narratives of Transition and the Quest for Democratic Constitutionalism in India and South Africa*, *World Comparative Law* 57 (2024).

2 *Ibid.*, p. 5.

3 See *Alexander Hudson*, *The Veil of Participation: Citizens and Political Parties in Constitution-Making Processes*, New York 2021; *Abrak Saati*, *Public Participation, Representative Elites and Technocrats in Constitution-Making Processes: Nigeria, Uganda, South Africa and Kenya*, in: Rosalind Dixon et al. (eds.), *Comparative Constitutional Law in Africa*, Cheltenham 2022.

4 *Abrak Saati*, *The Participation Myth: Outcomes of participatory constitution-building processes on democracy*, Umeå 2015; *Abrak Saati*, *Constitution-Building Bodies and the Sequencing of Public Participation: A comparison of seven empirical cases*, *Journal of Politics and Law* 10 (2017).

two participatory constitution-making processes that have taken place in Fiji (1993-1997, 2012-2013) to then ask whether participation was not fully realized due to a discrepancy between traditional ways of arriving at decisions as opposed to an open participatory approach. Thereafter, I provide a small glimpse into indigenous Fijian culture to substantiate this argument further to, lastly, offer some concluding thoughts.

## B. Participatory Constitution-Making as a Transnational Norm

Indeed, much has happened since James Tully stated that constitution-making is the single activity in “modern politics that has not been democratized” over the last three centuries.<sup>5</sup> Over the past 30 years, the common perception of constitution-making as an elite affair has been challenged.<sup>6</sup> Contemporary constitution-making processes—particularly when they take place in states that are transitioning from war to peace and in states transitioning from authoritarian rule—include a host of new actors and organized interests. The United Nations (UN)<sup>7</sup>, International IDEA<sup>8</sup>, United States Institute of Peace (USIP)<sup>9</sup> and Interpeace<sup>10</sup> have through numerous publications asserted that broad based public participation should be an inherent part of any constitution-making process that takes place during circumstances of serious social upheaval. I contend that there is ground to view this international call for public participation as part of a broader peacebuilding agenda inspired by what has come to be referred to as the “local turn” or as “bottom-up” approaches to peace-and state building. I.e., a notion that suggests that if people in a given territory are

5 James Tully, *Strange Multiplicity: Constitutionalism in an Age of Diversity*, Cambridge 1995, p. 28.

6 See Hudson, note 3 and Saati, note 3; see also Gabriel Negretto, *Replacing Constitutions in Democratic Regimes: Elite Cooperation and Citizen Participation*, in: Gabriel Negretto (ed.), *Redrafting Constitutions in Democratic Regimes: Theoretical and Comparative Perspectives*, Cambridge 2020.

7 UNDP, *Constitutions and Peace Processes: A Primer*, 2021, [https://peacemaker.un.org/sites/peacemaker.un.org/files/2021\\_ConstitutionsPeaceProcessesPrimer\\_EN.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/2021_ConstitutionsPeaceProcessesPrimer_EN.pdf) (last accessed on 27 March 2025).

8 Christine Bell / Rhys Ainsworth, *Constitution-building and disruption: Addressing Changing Conflict Patterns*, International IDEA, 8 September 2022, <https://www.idea.int/publications/catalogue/constitution-building-and-disruption-addressing-changing-conflict-patterns> (last accessed on 1 September 2025); Sumit Bisarya / Thibaut Noel, *Constitutional Negotiations: Dynamics, Deadlocks and Solutions* Constitution Brief, International IDEA, April 2021, <https://www.idea.int/sites/default/files/publications/constitutional-negotiations.pdf> (last accessed on 1 September 2025); Erin Houlihan / Sumit Bisarya, *Practical Considerations for Public Participation in Constitution-Building: What, When, How and Why?*, International IDEA Policy Paper 24, 9 July 2021, <https://www.idea.int/publications/catalogue/practical-considerations-public-participation-constitution-building> (last accessed on 1 September 2025).

9 Lauren Miller (ed.), *Framing the State in Times of Transition: Case Studies in Constitution Making*, Washington 2010.

10 Michele Brandt / Jill Cottrell / Yash Ghai / Anthony Regan, *Constitution making and Reform: Options for the Process*, Geneva 2011.

to feel a sense of ownership over decisions being made, and processes taking place, they cannot be overridden by outsiders but must rather be allowed to have a voice.<sup>11</sup> This, however, requires that one understands local perceptions of legitimate decision-making. It also requires that we reflect upon whether we are sure that local perceptions align with “our” notions of legitimate decision-making.

Numerous laudable goals are associated with broad-based participation in constitution-making, ranging from increased levels of democracy post-promulgation of the new constitution<sup>12</sup> to an increased sense of legitimacy vis-à-vis the constitution among the populace.<sup>13</sup> The extent to which these aspirations are born out in practice are still being investigated by the research community and the results have, thus far been, to say the very least, mixed.<sup>14</sup> Still, the norm of public participation in constitution-making processes is by now transnational;<sup>15</sup> we have seen it practised—more or less successfully—in countries all over the globe. Nevertheless, it is, undeniably, interesting that the push for public participation, i.e., “bottom-up” influence is coming from above. It raises a set of question. For one, what if this bottom-up, localized approach to broad based public participation—regardless of how well-intended it is—does not find resonance with local ways of arriving at decisions? Secondly, what if broad based public participation results in numerous constitutional submissions which do not (at all) align with a liberal progressive constitution? Which begs the question: what do the enforcers of this norm do in such a case?

### C. Participatory Constitution-Making in Fiji

During a time period of 30 years, Fiji has re-written its constitution not only once but twice. The first constitution-making process lasted 1993-1997, and the second 2012-2013. Both processes included public participation. In the larger context of Roux’s argument about the two grand narratives of constitutional transition—the liberal-progressive and the culturalist-decolonial—it is relevant to mention that animosities between the two main

- 11 See *Isabell Schierenbeck*, *Beyond the local turn divide: lessons learnt, relearnt and unlearnt*, *Third World Quarterly* 36 (2015); *Roger Mac Ginty / Oliver P. Richmond*, *The Local Turn in Peace Building: a critical agenda for peace*, *Third World Quarterly* 34 (2013); *Kristin Ljungkvist / Anna Jarstad*, *Revisiting the local turn in peacebuilding – through the emerging urban approach*, *Third World Quarterly* 42 (2021).
- 12 *Todd A. Eisenstadt / Carl, A. LeVan/ Tofigh Maboudi*, *When Talk Trumps Text: The Democratizing Effects of Deliberation during Constitution-Making, 1974-2011*, *American Political Science Review* 109 (2015).
- 13 *Ran Hirschl / Alexander Hudson*, *A Fair Process Matters: The Relationship between Public Participation and Constitutional Legitimacy*, *Law & Social Inquiry* 49 (2024).
- 14 *Eisenstadt et al.*, note 13; see also *Hirschl & Hudson*, note 13, *Saati*, note 4, *Hudson*, note 3 and *Negretto*, note 6.
- 15 See *Hudson*, note 3; see also *Abrak Saati*, *Participatory Constitution-Making as a Transnational Legal Norm: Why Does it “Stick” in Some Contexts and Not in Others?*, in: *Gregory Shaffer et al. (eds.), Constitution Making and Transnational Legal Order*, Cambridge 2019.

ethnic groups in Fiji is an inherited legacy from the British colonial power. Though the country became independent in 1970, the ethnic nature of politics persists to the present day, albeit efforts have been made to come to terms with structural inequalities.

I have in a previous contribution<sup>16</sup> analysed these two constitution-making processes in depth and will therefore, for reasons of space limitations, only describe them briefly here. Though these processes were different in many respects, during neither one of them did the participation of the public render any real influence over constitutional content. Thus, “participation” in these instances may be described as symbolic, at best. I have arrived at this conclusion by analysing different aspects of these constitution-making processes including who the initiators of the process were; how the forms of communication between constitution-making bodies and the general public were constructed; the extent to which constitution-making was preceded by constitutional education programs; the extent to which all social/ethnic/religious groups and political parties agreed to participate in the process, and the question of final authority over the constitutional draft (referendum, executive decision or other).

From a participatory perspective, both processes were, indeed, flawed. In the 1993-1997 process the Commission who was in charge of soliciting public input and writing the draft constitution was too small, and its resources far too limited for it to be able to involve the entire population in the process. The fact that constitutional education programs were not made available to the public made it even more difficult for the general population to adequately understand the issues on which they were asked to participate and voice their opinions about. Much of the deliberations concerning the content of the final draft were handled in secrecy by a parliamentary committee, and particularly by trade-offs and negotiations between political elites from opposing sides. In the 2012-2013 process, the participatory aspects were somewhat better addressed. The Commission in charge of gathering input and writing a draft produced handbooks concerning constitution-making for distribution, and it travelled throughout the country to meet people. Yet, the time frame for the exercise was, by many CSOs, deemed too short—a mere three months, and no constitutional education programs preceded the soliciting of input this time either. Research shows that many participants did not even understand the role of a constitution in a society, which of course made it challenging for them to provide informed input as to what the Constitution should contain.<sup>17</sup> Once finalized, the draft was sent to the President of the Republic who did not view it with benevolent eyes and therefore mandated the Prime-Minister to re-write it. How submissions from members of the public that were solicited in the

16 *Abrak Saati*, *Participatory Constitution-Building in Fiji: A Comparison of the 1993-1997 and the 2012-2013 Process*, *International Journal of Constitutional Law* 18 (2020).

17 *Romitesh Kant / Eroni Rakuita*, *Public Participation and Constitution Making in Fiji: A Critique of the 2012 Constitution-Making Process*, *State, Society and Governance in Melanesia*, Discussion Paper 2014/6 (2014).

earlier stage of the process were handled in this turn of events, is shrouded in the unknown. A safe assumption would be that they were not prioritized.<sup>18</sup>

I would contend that the analysis of both processes and the subsequent conclusion that they were not participatory in any real sense of the word is still valid. Even so, Roux's article about the two opposing grand narratives of constitutional transition and the above discussion about participatory constitution-making as an overarching transnational norm—in a sense, a part of the liberal-progressive narrative—raises additional ideas as to why participation in Fiji never materialized into something more genuine. Did public participation, as a practice, not align with traditional ways of arriving at decisions in Fiji?

#### D. A Small Glimpse Into Indigenous Culture

As mentioned earlier, the political landscape in Fiji continues to be ethnically polarized. Late Vice President of Fiji, Ratu Joni Madraiwiwi, has brought attention to how most Fijian leaders have encouraged indigenous Fijians to be united—i.e., they have not promoted a multicultural society as something to strive for.<sup>19</sup> Rather the message has been that the only way for indigenous Fijians to secure their rights and interests, is that their group maintain political power. He argued, albeit back in 2006, that “these perceptions continue to be held by a significant number of Fijians [...] they resonate more than any current constitutional safeguard”, and further stated that “these beliefs are continually reinforced by their chiefs, non-traditional leaders and the clergy and are endorsed in discourse among ordinary Fijians”.<sup>20</sup> Chiefs exercise a considerable amount of authority in the Fijian traditional system, and it is not inconceivable that this might have had an effect during the participatory constitution-making processes that took place in 1993-1997 and 2012-2013. There are, however, other traditional Fijian cultural traits that may have had a greater impact. Farrelly<sup>21</sup> describes the challenges of conducting focus group interviews in Fiji upon understanding the importance of *veiwe'ani* (to behave respectfully also in relationships with individuals one prefers to avoid), *madua* (to be reserved and to have manners), and *va'anomodi* (to be respectfully silent). If these characteristics are obstacles for conducting focus group interviews, it is quite likely that they impede the possibilities for public participation in constitution-making as well. The idea of participatory constitution-making is formed with the liberal democratic state in mind – a notion that takes for granted the possibility, and willingness, to form an opinion and convey it. But what happens when

18 Saati, note 16.

19 Ratu Joni Madraiwiwi, Keynote Address: Governance on Fiji: The interplay between indigenous tradition, culture and politics, in: Stewart Firth (eds.), *Globalisation and Governance in the Pacific Islands: State, Society and Governance in Melanesia*, Canberra 2006.

20 Ibid., p. 291.

21 Trisia Angela Farrelly, Indigenous and democratic decision-making: issues from community-based ecotourism in the Boumā National Heritage Park, Fiji, *Journal of Sustainable Tourism* 19 (2011), p. 825.

this does not resonate with traditional ways of deliberating matters of importance, and traditional ways of arriving at decisions? It implies that even if many of the shortcomings of the 1993-1997 and 2012-2013 processes had not been a fact; even if the Commissions who were in charge of conducting public hearings had been granted the necessary resources and sufficient time for travelling the country to meet people, and even if Fijians throughout the country had been offered constitutional education programs that had sensitised them to the issues that they were to voice their opinions about, and even if all other circumstances had been near to perfect—the processes might have failed to be as participatory as one might have hoped, simply due to certain cultural traits. It might very well have been the case that indigenous Fijians held views that contradicted those of their elders or their chiefs but refrained from communicating these to the constitutional commissions (both times around).

The matter of indigenous cultures can, and should, however be problematized and one may question the extent to which “traditional ways” have relevance in the globalized world of today. Even individuals who reside in the most remote areas, in some of the most secluded islands in the world, have Internet connection and can get in contact with people from other cultures, nations and traditions than their own. In addressing Roux’s ideas, Heinz Klug has brought attention to another dimension that is overlooked when dichotomising the liberal-progressive versus the culturalist-decolonial narrative, namely that neither the former nor the latter are uniform entities.<sup>22</sup> When attempting to understand the why/why not public participation in Fiji’s constitutional endeavours was successful, one might also need to take the rural/urban divide into consideration. The extent to which chiefs have overwhelming authority, might arguably be higher in the rural areas of the country compared to the more densely populated cities. The rural/urban divide must surely have been relevant already during the first constitution-making process in the mid-90’s but likely even more so in the later process in 2012-2013. If the public submissions that were gathered during these processes were accessible today, it would have been quite interesting to learn whether there was a notable difference as to the number of submissions gathered from rural versus urban areas, and whether the issues that were raised in these submissions were very different. For example, could we expect that submissions from rural areas would emphasise indigenous or customary law? If so, would we applaud a constitution with customary provisions that contradict some of fundamentals of what it implies to be a liberal democracy even if it was produced under a liberal progressive narrative that holds public participation in high regard? These are issues to ponder as participatory constitution-making processes are carried out in the future.

22 *Heinz Klug*, *Beyond a Bimodal Southern Democratic Constitutionalism*, IACL-AIDC Blog, 6 March 2025, <https://blog-iacl-aidc.org/2025-posts/2025/3/6/beyond-a-bimodal-southern-democratic-constitutionalism> (last accessed on 1 September 2025).

## E. Conclusions

At this stage, it is necessary to have a nuanced discussion. My understanding of the Fijian constitution-making processes and the following, very preliminary, argument that they were flawed from a participatory perspective in part due to a mismatch between the norm of participatory constitution-making and local ways of arriving at decisions, is relevant for Fiji. In other words, there might very well be other cases of past, current and future constitution-making processes, in contexts that are more familiar with open, deliberative and participatory approaches of decision-making. Perhaps the likelihood of genuine engagement is greater in such contexts where the overarching ambitions of participatory constitution-making align with already recognized ways of arriving at important decisions. Needless to say, superimposed public participation—regardless of it being in a post-colonial state, a post-conflict state or any other state—has slim chances of success. There is something very paradoxical in a call for “home-grown”, “localized”, “bottom-up” approaches to decision-making, etc., coming from above rather than below. With that said, however, it is difficult to refute the intrinsic value of public participation in something as important as making a constitution. Even though this idea is rooted in a liberal democratic tradition, firmly situated in Roux’s liberal-progressive narrative, it does not mean that the idea must be abandoned altogether for societies outside of the West. Rather it should imply that for it to be as successful as possible, the ways through which participatory programs are carried out need to be tailored to the context in which they are to be implemented, taking into account the urban/rural divide, matters of indigenous ways and traditions, level of familiarity with constitutionalism and many other aspects.



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