

**THE INTERNATIONAL STATUS OF FIJI
AND THE POLITICAL RIGHTS, LIABILITIES,
DUTIES AND PRIVILEGES OF BRITISH
SUBJECTS, AND OTHERS FOREIGNERS,
RESIDING IN THE FIJIAN ARCHIPELAGO**

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The International Status of Fiji and the Political Rights, Liabilities, Duties and Privileges of British Subjects, and others foreigners, residing in the Fijian Archipelago by Charles St. Julian

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POLITICAL RIGHTS, LIABILITIES, DUTIES,
AND PRIVILEGES

OF

BRITISH SUBJECTS, AND OTHER FOREIGNERS,
RESIDING IN THE FIJIAN ARCHIPELAGO.

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(LATE HAWAIIAN MINISTER AT FIJI)

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PREFACE.

THE Fijians have always been a Nation, but have not, until within the last seven months, sought for international recognition as such. The Fijian archipelago was before that time divided into several sovereign chiefdoms; one of the sovereign chiefs—the Vunivalu of Bau—having an admitted superiority, although not an established supremacy, over all the others.

The extensive settlement of white men in Fiji, and the rapid progress of the country in wealth and importance, demanded the establishment of more perfect governmental institutions and laws.

For the purpose of such establishment, the Vunivalu of Bau, in June last (1871), assumed the position and functions of Constitutional Sovereign of Fiji, and convened a National Assembly, to be holden at Levuka in the ensuing month of August, to prepare a Constitution.

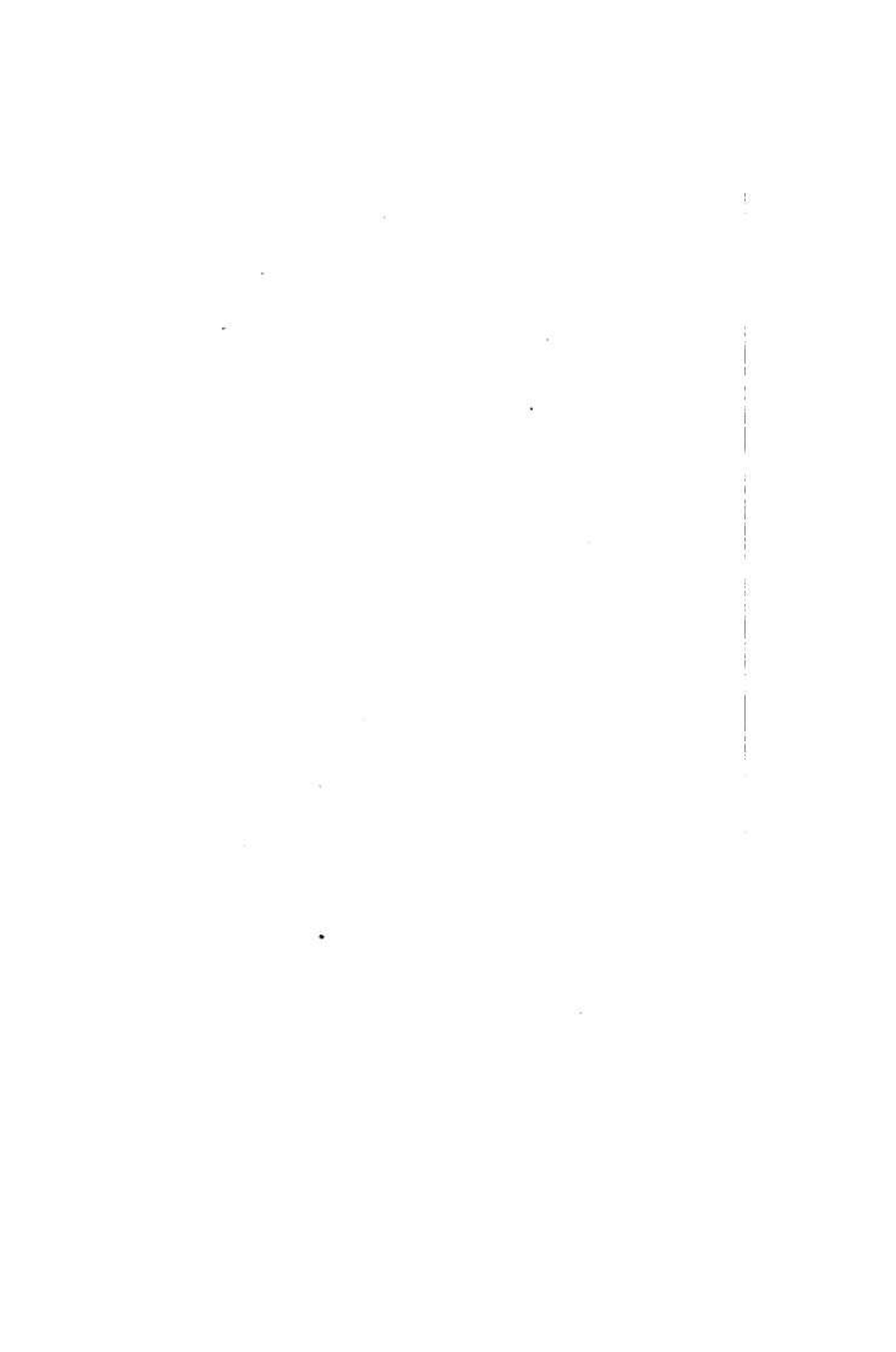
Such an assembly was holden accordingly. It consisted—(1) Of the principal native rulers and chiefs, representing and acting for—as by Fijian laws and usages they had the fullest right to do—their several peoples; the only native tribes not thus fully represented and acted for being certain mountaineers who are still heathen and savage. (2) Of delegates duly elected by and from the white settlers in the various districts, and fairly representing the entire body of such settlers.

By this National Assembly the action of the Vunivalu of Bau was fully indorsed. Fiji was declared a Constitutional Kingdom, and a Constitution modelled after that of the Hawaiian Islands, was prepared, adopted, and promulgated. One high chief, only, did not fully concur in all that was done. He admitted the supremacy of the King, but was not disposed to surrender his own powers of local sovereignty.

The National Legislature, consisting of a Council of High Chiefs and a Legislative Assembly, duly elected in the manner prescribed by the Constitution, has since been in session, and has passed a number of organic and fundamental laws. The Fijian sovereignty and government have, therefore, been more fully established by the national will than if accepted by a plébiscite.

There can be no doubt either of the ultimate full adhesion of the chief just mentioned, or of the enforcement of law and order, ere long, among the mountaineers; but the *right* of the Fijian National Government as now established, or as the same may (if found expedient) be modified, to international recognition is clearly not dependent upon either of these results.

Of the existence of a capacity to rule—and to rule well—the proceedings of the Fijian Government and Legislature have afforded sufficient proof. Sound policy, the interests of Christianity and civilization, and the exigencies of commerce require that such recognition should be accorded, and its accompanying responsibilities imposed upon the Fijian authorities without delay.



THE INTERNATIONAL STATUS OF FIJI, &c.

CHAPTER I.

Introduction.

I. A LARGE majority of the white settlers in Fiji are British subjects. There has been a great deal of discussion, and no small amount of misconception, as to the political rights, liabilities, duties, and privileges of these settlers. A want of sound knowledge on this subject has ever been productive of some actual disorder.

II. With a view to the dissemination of more correct views on the points in question, they were carefully and practically considered in two papers on the "Political Status of British Subjects at Fiji," which appeared in the issues of "The Sydney Morning Herald" of the 8th and 9th of November last (1871).

III. In these papers it became necessary to inquire incidentally into the International Status of Fiji itself. That is to say, to ascertain in what light the Fijian tribes, their Rulers, and their Domain, must, according to the principles of International Law, be regarded.

IV. It has been thought expedient that the reasonings and conclusions on these subjects should be reproduced in a more permanent form. Also that the inquiry should be so far extended as to define (in outline) the position of the Fijian Government as regards Foreign residents in general; and the political rights, liabilities, duties, and privileges of such residents as regards such Government. Hence the present work.

V. For the purposes above stated it will be necessary to inquire

1. Whether Fiji is a Sovereign State?

2. If so, what is the nature and extent of its jurisdiction (or the jurisdiction of its Ruler or Rulers, Legislature and Tribunals) as regards British subjects resident at Fiji; and other Foreigners so resident?

3. What is the nature and extent of the jurisdiction of the British Government and Courts of Justice, over British subjects resident at Fiji; and of the jurisdiction of the Governments and Tribunals of other nations over the subjects of such nations so resident?

4. What is the present state of British law, and of the laws and practice of other States whose subjects are resident at Fiji, as to allegiance and expatriation; and the effect of such laws and usages as regards the subjects, so resident, of Great Britain, and of such other states?

5. How far may the British Government, or the Government of any other nation be expected to interfere in Fijian affairs?

6. Can British subjects, or other resident foreigners, take any part in Fijian affairs, without prejudice to their natural allegiance and rights—and if so, what part?

VI. The answers to all these questions will be dependent upon well-defined principles of law—not of British law only, although, circumstanced as Fiji is, this law must be in no respect disregarded; but upon that universal code which is called International Law. The conclusions which have been arrived at, and which are about to be stated, are founded upon, and most fully supported by, various recognised authorities. The works principally referred to and relied upon for this purpose are Vattel's Law of Nations, (Chitty's Edition), Martens' (a) Laws of Nations, Phillimore's (b) Commentaries upon International Law, and Wheaton's (c) Elements of International Law (Lawrence's Edition); all of which are unquestionably of the highest authority. Many other works have also been consulted, and such special enactments and constitutional principles—whether of Great Britain or of any other nation—as bear upon the points under consideration have been carefully looked to. Where a principle is stated in general terms and without the citation of any specific authority in support of it, such principle is one on which all the publicists referred to fully agree, but as to which their conclusions are stated too elaborately to allow, here, of more than a declaration of the principle itself. When reference is made to particular works it is because the very words of the writers in question (with, in some instances, a little condensation) have, in such cases, been used to define the principle enunciated. In no case has any conclusion been stated as to which there has not been a general agreement of all the eminent Jurists who have written and edited the works referred to.

(a) M. de Vattel is perhaps, of all writers on International Law the one whose authority has been most cited and relied upon. G. F. Von Martens was Professor of Jurisprudence at Gottingen, afterwards Councillor of State of Westphalia, and Minister of Hanover at the Diet of the Germanic Confederation. He was the author of several works of this character; the one here cited from being a singularly clear and comprehensive exposition of International law.

(b) Sir Robert Phillimore, now Judge of the High Court of Admiralty and of the Ecclesiastical Courts of Great Britain. An International Jurist of great eminence.

(c) Henry Wheaton, LL.D., Minister of the United States at the Court of Prussia, &c., &c.

CHAPTER II.

Is Fiji a Sovereign State?

VII. Let us first see what it is that is necessary to constitute a Sovereign State. Any nation or people, whatever may be the form of its internal constitution, which governs itself independently of foreign control, is a sovereign State. The terms "sovereign" and "State" are used by publicists synonymously. Sovereignty is the supreme power by which any nation or people is governed. Its attributes are both internal and external. Internal sovereignty is that which is inherent in the people of any State, or vested in its ruler or rulers by its constitution or fundamental laws. External sovereignty consists in the admitted independence of one political society in respect of all other political societies. In other words, the recognition of the State as a member of "the great family of nations," by other States.

VIII. Sovereignty is acquired by a State either at the origin or organisation of the civil society of which it is composed, or when it is separated from a State of which it previously formed a part, and on which it was dependent. This principle applies as well to internal as to external sovereignty. But while the internal sovereignty is independent of its recognition by other States, and the existence of the State, *de facto*, is sufficient, in this respect, to establish its sovereignty *de jure*, a recognition of external sovereignty by other States is necessary to render such sovereignty perfect and complete (*d*).

(*d*) "Perfect and complete," that is to say, for all the purposes of international existence—a fully recognised member of "the great family of nations." The rights of internal sovereignty include (1) The right to a free choice, settlement and alteration of the internal Constitution and Government, without the intermeddling of any Foreign State. (2) The right to territorial inviolability, and the free use and enjoyment of property. (3) The right of self-preservation, and this by the defence which prevents, as well as by that which repels, attack. (4) The right to a free development of national resources by commerce. (5) The right of acquisition, whether original or derivative, both of territorial possessions and rights. (6) The right to absolute and uncontrolled jurisdiction over all persons and things *within* and, in certain exceptional cases, *without* the limits of the territory. (*Phillimore*, vol. 1, sec. cxlv.) These rights are all absolute, and quite independent of any recognition of the external sovereignty by other States, except in so far as, in the practical exercise of such rights, they may be effected or limited by the existence of similar rights in other States. Thus, as every nation can make what regulations it pleases in respect to its own commerce, such regulations may, indirectly, affect the commerce of other countries. Thus, also, the rights of acquisition must not be exercised to the absolute prejudice of other countries. And thus, likewise, the rights of internal jurisdiction are subject to the right of intervention by any foreign power whenever such intervention shall become *absolutely necessary* for the protection of its own subjects: (See Sec. xxxiv., *post.*) and, although a State can legislate for the punishment of crimes by its own subjects, where-soever committed, it can only obtain, by treaty or sufferance, the power of inflicting such punishment in other countries, or of securing the person of an offending subject residing beyond its territory. The rights of external sovereignty which *are* dependent upon the recognition of that sovereignty by other