

# HOW NOVEL IS THE SECULARISM OF FIJI'S 2013 CONSTITUTION?

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## INTRODUCTION

As debate intensified over Fiji's future as either a secular or Christian state during the 2012 Constitution Commission drafting-process, a more fundamental point of disagreement arose: had Fiji ever been a secular state? Prime Minister Bainimarama and his interim government, who had already declared that Fiji's status as a secular state was non-negotiable, were keen to stress secularism's relevance to their project of transforming Fiji into a *modern* nation-state.<sup>2</sup> Their use of 'modern' promised not only infrastructure development and liberal politics, but also a national renewal, cleaving a clean break from Fiji's colonial legacy of 'corrupt' and 'racist' politics and poor economic growth. The Christian-nationalist coups led by Colonel Sitiveni Rabuka in 1987 and by civilian George Speight in 2000, seeking to reassert political paramountcy for the indigenous Fijians, had shattered the narrative of inter-racial harmony that Fiji had previously projected to the world.<sup>3</sup> In Fiji, religious difference tracks and underscores ethnic difference.<sup>4</sup> Combining this with the participation in the coups by leaders within the Methodist Church, Fiji's largest religious institution, the government were of the suspicion that wherever Fijian Christianity sought political influence, the aim of securing indigenous supremacy lurked not far beneath. Casting off the dead hand of politicised religion was deemed a necessary step in forging a new Fijian identity, uniting Fiji's ethnic groups and winning back acceptance from the global body-politic. In particular, secularism

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<sup>2</sup> Josaia V. Bainimarama, 'Announcement on the Constitution Consultation Process' (Suva, 3 August 2012) <http://www.fiji.gov.fj/Media-Center/Speeches/PM-BAINIMARAMA---ANNOUNCEMENT-ON-THE-CONSTITUTIONAL-CONSULTATIONS-PROCESS.aspx> (Accessed 10 September 2017)

<sup>3</sup> Professor Brij Lal notes how *The Economist* called Fiji 'that rare beast, a colonial success story' in its July 1985 edition, and Pope John Paul II called Fiji 'a symbol of hope in a war weary world' on his visit to Fiji in November 1986. Brij Lal, *Power and Prejudice: The Making of the Fiji Crisis* (1988).

<sup>4</sup> Demographic data for religion against race was not calculated in Fiji's 2007 Census, though it was in 1996. In this data of the 449,482 reporting as Christian 390,380, (87%) were 'Fijians', now referred as the iTaukei, and 20,719 (5%) 'Indians', now 'Indo-Fijians. Of the 261,097 reporting as Hindu, 864 (less than 1%) were 'Fijians' and 259,775 (99%) were 'Indians'; and of the 54,323 reporting as Muslim, 324 (less than 1%) were Fijians, and 53,753 (99%) were 'Indians'. 'Census of Population', *Bureau of Statistics* (1996). For an introduction to the politics of this alignment, see Steven Ratuva, 'God's will in Paradise: The Politics of Ethnicity and Religion in Fiji' (2002) 59 *Development Bulletin* 19-23.

would facilitate a new sense of national belonging for Fiji's other major ethnic group, the Hindu and Muslim Indo-Fijians.

The idea that the secularism of the 2013 Constitution represented something new was also shared by the government's principal political opponents, the *Soqosoqo Duavata ni Lewenivanua* party (SDL), the ruling party ousted by Bainimarama's own military coup in 2006. However, the SDL wanted to revere Fiji's history, not rebuke it. The constitutional submission by the SDL argued that 'through the influence of the Christian martyrs and missionaries, and through the good order and institution building of British-colonialism, the Fijians made a willing submission to the Christian principle that the state is always under the sovereign authority of God'.<sup>5</sup> This history finds particular purchase in the 1874 Deed of Cession, where Fiji's chiefs ceded governance to Britain to 'secure the promotion of civilization and Christianity'.<sup>6</sup> Indeed, it is just as common for the iTaukei (indigenous Fijians) to discuss the Deed of Cession as a covenant with God as a treaty with a foreign power.<sup>7</sup> This chiefly condition of cession was argued by the SDL and its supporters as binding for an independent Fiji too. The SDL party further provided that Fiji's 1997 Constitution preamble effectively declared Fiji as a Christian state as well.<sup>8</sup>

The Preamble [of the 1997 Constitution] also expressed clearly and eloquently the background of this nation as a 'Christian State', although it did not use this particular term.<sup>9</sup>

The idea that a secular state would be an interruption to a national Christian order was repeated in many of the submissions calling for a Christian State, with secularism presented as a foreign ideology that risked the evisceration of indigenous culture, moral relativism and even divine retribution.<sup>10</sup>

In contradiction to the government and SDL presentations of secularism as something new,

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<sup>5</sup> SDL Party, Submission No PH/985 to Fiji Constitution Commission, *Fiji Constitutional Process*, 13 October 2012, Great Council of Chiefs Complex, Suva, Fiji.

<sup>6</sup> *The Deed of Cession of Fiji to Great Britain* (1874) <https://www.usp.ac.fj/index.php?id=13527> (Accessed 10 September 2017).

<sup>7</sup> See Jacqueline Ryle, 'Roots of Land and Church: The Christian State Debate in Fiji' (2005) 5:1. *International Journal for the Study of the Christian Church*; and Jacqueline Ryle, *My God, My Land* (2010).

<sup>8</sup> SDL Party, above n 5.

<sup>9</sup> *ibid.*

<sup>10</sup> Of the 7,091 individual submissions logged by the 2012 Constitution Commission, 846 declared in favour of Fiji being a Christian State. There is considerable variation in the aims, arguments and assumptions across these submissions, and many simply declared a preference for a Christian state with no rationale given.

others argued that secular constitutionalism had always been the norm, or at least since independence in 1970. Indeed, this view was the shared position of Fiji's constitution commissioners, led by the legal scholar Professor Yash Ghai.<sup>11</sup> They pointed out that nowhere in Fiji's previous foundational law – including the 1990 Constitution which greatly privileged the indigenous Christian population – was there ever an explicit acknowledgement that the Fijian state was beholden to any one religion, Christian or otherwise. They argued that Fiji's previous constitutions, the 1970, 1990 and 1997 drafts, all affirmed religious freedom and protection from religious discrimination, even if these principles were later trampled during the 1987 and 2000 coups. They provided that while there was no express separation clause in the 1970 or 1990 drafts, it was assumed as an unwritten principle, and indeed, the 1997 draft did explicitly affirm, if softly, a separation between religion and the state.

The failure of these various participants in the Christian/Secular state debate to agree a common departure point seemed to underline how irreconcilable the issue had become. If supposedly simple facts about the secularity of Fiji's past could not be agreed, what chance was there for finding a mutually satisfactory position on what secularism might mean for Fiji's future? What follows is an attempt to unravel this collage of counterfactuals and confusion. Do we find secularism in Fiji's past constitutions? If so, how does Fiji's historical constitutional secularism differ from the secularism that is now enshrined in the 2013 constitution? Moreover, why did any such changes in the constitutional relationship between religion and the state take place?

This paper argues that while secular ideals run throughout Fiji's post-independence constitutionalism, they were often loosely enforced and existed principally in the form of legal clauses concerning religious liberty. That is until the Bainimarama regime's far-reaching project to socially re-engineer Fiji away from the politics of race: an endeavour which found its apogee in the promulgation of the 2013 Constitution. Hereon, secularism in

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<sup>11</sup> During the public hearings, the commissioners would often query the submissions. In relation to Fiji's history of secularism, see submissions to Fiji Constitution Commission, *Fiji Constitutional Process*: Yash Ghai to Emasi Qovu, No TO/9, Nasinu Town Council Chambers, 4 August 2012. See Peni Moore to Mr Filimoni Tikoi, No TO/344, Tobuniqio Village Hall, Tailevu, 2 September 2012, and to Leveni Drodrolagi, No TO/362, Nadrau village, Nadarivatu, 6 September 2012. See Taufu Vakatale and Yash Ghai to Eseta Koroi, No TO/125, Nadi Civic Centre, Nadi, 20 August 2012. See Taufu Vakatale to Lote Ranadali, No TO/337, Namarai Village, 3 September 2012, and to Naelesoni Tikomaimaleya, No PH/838, Vadravadra, Gau, 11 October 2012. See Satendra Nandan to Adi Marica Dawai, No PH/127, Nadi Civic Centre, Nadi, 21 August 2012, and to Sitiveni Turaganibure, No PH/292, Tuva Primary School Hall, Sigatoka, 5 September 2012.

Fiji was taken to affirm an uncompromising separation of religion from the nation-state. This covered both the institutional structuring of the state *and* Fiji's constitutional symbolism. For example, the 2013 Constitution recognises neither Fiji's Christian heritage nor the existence of God in its preamble.<sup>12</sup> The separation principle shifted from a general (though not necessarily rigorous) habit of institutional governance, to a defining feature of Bainimarama's new vision for Fiji. For the iTaukei presently opposed to the government, its ideals and its methods, this secularism threatens something radically new. Not only has it undermined long-standing traditional structures of representation and influence into the state, it is perceived as complicit in a politics of top-down control, the regulation of public dissent, and a moral and spiritual hollowing out of government.

The following comparative analysis of Fiji's four post-independence constitutions is informed by data drawn from the 7,000+ public submissions received and assembled by the 2012 Fiji Constitution Commission. Interviews conducted by the author with religious leaders who were involved in the 2012-13 drafting process and in debates about public religion in Fiji more generally, have also supplemented this research.<sup>13</sup> The paper's analysis also proceeds with two underpinning assumptions in mind. The first is that the implementation of secular constitutional law in Fiji takes place within a social context of widespread and deep-rooted religious devotion, particularly amongst the Christian iTaukei.<sup>14</sup> The enduring influence of religious belief, practices and institutions dating back to the pre-colonial and colonial periods still resonates powerfully in Fijian public life today. The second is that the national impact of Fiji's constitutional secularism is subject to both the efficiency and enthusiasm with which the government of the day puts such law into effect. As such, conclusions regarding what the constitutions say on secularism can be provided concisely and with confidence. The impact of these laws upon the lived experiences of Fijians, however, enters into a field of enquiry that is more complex and contentious. Focus is directed

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<sup>12</sup> Indigenous leaders have decried the absence of God in the 2013 constitution, yet the Almighty is not entirely missing, being both at the very front and very back of the document. On the front cover, Fiji's coat of arms still bears the phrase '*Rerevaka na kalou ka doka na Tui*' ('Fear God and honour the chief'). 'God' is also mentioned in the Confirmation of Oaths at the back.

<sup>13</sup> These comprised twenty in-depth, semi-structured interviews with senior religious officials, theologians and religious social justice workers across Fiji's various religious groups. A further twelve interviews were undertaken with other high-profile public figures involved in the Constitution-drafting process and/or contemporary debates about public religion in Fiji.

<sup>14</sup> For an introduction to the pervasiveness of Christianity in Fijian social life, see Jacqueline Ryle (2010) above n 7.

predominantly at the former. We begin with an account of Fiji's secularism as articulated in the new 2013 Constitution.

## **THE SECULARISM OF THE 2013 CONSTITUTION**

On 21 December 2012, at the end of the 2012 Constitution Commission drafting-process, the commission handed over its draft to Fiji's President, Ratu Epeli Nailatikau. Unhappy with its contents, the government tried to suppress the draft and burnt the Commission's hard copies. The government abandoned its promise to publicly debate the draft within a Constituent Assembly, and set to writing its own constitution from behind closed doors. After several re-edits, and a show of public consultations, the Government promulgated a new constitution on 6 September 2013. The 2013 Constitution laid down the most assertively secular foundational law Fiji had ever known.

In a section positioned near the front of Fiji's 2013 Constitution, titled 'Secular State' (the first explicit description of the State as such in Fijian constitutionalism), the respective jurisdictions of the state and religion are identified, delimited and ranked. The constitution first declares 'Religious liberty, as recognised in the Bill of Rights, is a founding principle of the State',<sup>15</sup> giving affirmation to the integrity of an autonomous religious space. This space is then bordered by the provisions that 'Religious belief is personal' and 'Religion and the State are separate'. While the personal clause receives no further elaboration, the separation clause is expounded in terms of state neutrality, holding that the state and all public officers must treat 'all religions equally', and must not 'dictate', 'prefer or advance, by any means, any religion or religious denomination, religious belief or religious practice over another, or over any non-religious belief.' The section ends with a clause that precludes any religious belief serving as grounds for exemption from any state law.<sup>16</sup> That is, where religious law clashes with the laws of the state, the state always wins.

Omitting any public role for religion, Fiji's 2013 Constitution frames religion as a personal choice for the individual. Religious communities or denominations have retained 'the right to establish, maintain and manage places of education', including 'the right to provide religious instruction as part of any education that it provides', and continue to have a conditional

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<sup>15</sup> *Constitution of the Republic of Fiji 2013*, s 4.

<sup>16</sup> *ibid*

access to state funds.<sup>17</sup> The universal provision of public education would be too great a burden for the state to bear alone. Yet such institutional privileges persist under a *secular* rule of law, with the individual as the valorised subject for constitutional jurisprudence. For example, religious schools must secure (parental) consent for any pupil participation in religious observances or instruction if such practices fail to align with the pupil's personal religious beliefs.<sup>18</sup> Moreover, employment law regarding the non-discrimination of the individual on the basis of religion appears to take precedence over institutional religious autonomy. For example, a Methodist school funded by the government is currently instructed that it must accept a Hindu headmaster should one be nominated by the Ministry of Education.<sup>19</sup> With the secularism of the 2013 Constitution, the state recognises a citizen's religion as a basic right, though not necessarily, it seems, as a meritorious virtue. It is a right that also remains subject to a list of caveats. The 2013 Constitution includes limitations on freedom of religion, whenever 'necessary', in the name of 'public safety, public order, public morality... public health or to prevent a public nuisance.'<sup>20</sup> A final and much focused on secular quality of the 2013 draft is that it does not mention God, nor acknowledges any specific religions, or religion in general, in its preamble.

Four years on from the promulgation of the 2013 Constitution and Fiji's newly enshrined secularism, the courts have largely avoided any interpretation of these provisions. Yet the tenor of the 2013 Constitution, along with how it is articulated by the powerful Office of the Attorney-General, suggests a primary emphasis on an individual's freedom *from* religion. The wounds inflicted by two Christian-nationalist coups in 1987, and a third in 2000, are healing, but the scars are clearly visible in the secularism articulated by the Fijian government. Such a secularising approach will most likely entail jurisdictional concerns regarding the integrity of the state taking priority over the autonomy of religious spaces and institutions. The separation clause of the 2013 Constitution appears to pave the way for a strong, buffered state, resistant to infiltration by religious beliefs and religious institutional interests. Whilst the weakly worded Bill of Rights, subject to limits as and when 'necessary', as well as the preclusion of any religious exemption to the law, issues the state a relatively

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<sup>17</sup> *ibid*, s 22.

<sup>18</sup> *ibid*.

<sup>19</sup> See Aiyaz Sayed-Khaiyum, 'Response from Acting Minister for Education to the Methodist Church' *Fiji Sun* (Suva, Fiji) 19 August 2017 <http://fijisun.com.fj/2017/08/19/response-from-acting-minister-for-education-to-the-methodist-church/> (Accessed 11 September 2017). This remains fiercely contested, and many of the religious leaders I interviewed were confident this was an issue they would eventually win.

<sup>20</sup> *Constitution of the Republic of Fiji 2013* s 22.

strong hand to impose secular law on what for many Fijians would be religious issues. There is little disagreement that the 2013 Constitution is strongly secular, yet how much does it differ from the constitutions of old? Where are the differences that might justify a narrative of novelty, or the similarities that affirm a continuation of a secular *status quo*?

## **THE SECULAR WORDINGS OF FIJI'S CONSTITUTIONS**

An opening observation regarding Fijian secularism, as located in its constitutions, is that it has been typified by both constancy and change. Some secular principles and laws appear to have remained constant, or have undergone revisions that are fairly minor and subtle. Such is the case with regards to the naming of the state, religion relating to 'the person', religious organisations setting up and administering schools, the swearing of oaths, and the general protection for the freedom of religion. Whereas in other matters of Fiji's secular constitutionalism there has been significant change, such as the introduction and tightening of the separation clause, the guarantee of religious non-discrimination, the rise and fall of various institutions that specifically privilege the indigenous (Christian) community, and the wordings of the preambles. We begin by exploring points of secular constitutional consistency.

A first point of constancy is that in the 1970, 1990, 1997 and 2013 Constitutions, Fiji is named a 'sovereign, democratic state'.<sup>21</sup> The only slight change to this primary self-identification is the addition of 'Republic' from the 1990 draft onward. The addition of 'Republic' was a result of Rabuka's second coup in 1987, when Fiji was removed from the Commonwealth of Nations and the Queen of England ceased to be the Head of State. Fiji has never called itself a Christian state in its self-naming.

A second significant secular constant is with regards to the emphasis on religion as of 'the person'. In all three past constitutions, descriptions of the right of religious freedom are articulated as relating to the person, locating religion within a framework that emphasizes the individual. For example, the clause on religious freedom in the 1970 Constitution states:

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<sup>21</sup> See *Fiji Independence Order and the Constitution of Fiji 1970* s 1; *Constitution of the Sovereign Republic of Fiji 1990* s 1; *Fiji Islands Constitutional Amendment Act 1997*, s 1.

Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section, the said freedom includes freedom of thought and of religion...<sup>22</sup>

A similar use of the term ‘person’ in Fiji’s other constitutions pushes against a collective use of the term ‘religion’ which would be required for a Christian State. The 2013 Constitution copies this adoption of ‘person’ in its wording, but it also takes it one step further, adding the extra clause that ‘religious belief is personal’. The term ‘person’ is fairly standardised throughout Fiji’s constitutions and is used in and outside of the Bill of Rights. Legal rights and regulations are repeatedly attached to the individual. Yet the special articulation of religious belief as ‘personal’ in the 2013 draft invites fresh scrutiny to this individualism. From one perspective, ‘religion as personal’ taps into the Wesleyan tradition of the Methodist Church. John Wesley, the founder of Methodism, preached the centrality of a ‘personal relationship with God’.<sup>23</sup> The 2013 Constitution description of ‘religion as personal’ aligns with this theological precept. However, religious public figures such as the Catholic Archbishop Peter Loy Chong have warned of the potential slippage from ‘personal’ to ‘private’, and how this might be used to silence religious voices calling out injustice.<sup>24</sup> The fear is that the inclusion of ‘personal’ could be twisted to exclude a prophetic role for the churches.

A third point of constancy running through Fiji’s constitutionalism is the right of any religious institution to establish and administer centres for education, and provide religious instruction as part of that education. All four constitutions confer this right regardless of receipt of state funds, and all four constitutions provide that individual or parental consent must be provided should such religious instruction differ from the pupil’s own belief. The constitutions also agree that religious schools are obligated to conform to laws that set qualifications or standards to (non-religious) public education. Only the 1997 Constitution differs in the provision of these rights by additionally stating that an admissions policy of a religious school ‘may be administered on the basis of the need to maintain its special character’. Although not referring directly to rules of employment, in recognising a religious

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<sup>22</sup> *Fiji Independence Order and the Constitution of Fiji 1970* s 11.

<sup>23</sup> Interview with Rev. Akuila Yabaki, Fiji Methodist Church Minister (Suva, 5 September 2017).

<sup>24</sup> See Anonymous, ‘Archbishop Chong – Challenge the Constitution’ (2013) *Cath News* <https://cathnews.co.nz/2013/12/06/archbishop-chong-challenge-constitution/> (Accessed 10 September 2017).

school's specific 'character' it appears to support religious institutional autonomy in a way that Fiji's Ministry of Education, as discussed earlier, is reluctant to do.<sup>25</sup>

The final and most important constancy in Fiji's constitutional secularism is on freedom of religion in the Bill of Rights section. The area of greatest constancy, with exactly matching wordings in all four of Fiji's constitutions, is the confirmation that a person must not be compelled to take an oath contrary to their religious belief. In all the drafts, the Oaths for Public Office are non-denominational but theistic, concluding with the line 'So help me, God!' As Fiji's demographic is predominantly religious, albeit of different stripes, this law has yet to be invoked by any indignant atheists. Yet another wider and more impactful articulation of freedom of religion is shared amongst Fiji's four constitutions. In the 1970 and 1990 drafts, freedom of religion is sectioned under 'Protection of freedom of conscience' and uses the same wording:

Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section the said freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others, and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.<sup>26</sup>

This freedom is similarly limited in the 1970 and 1990 drafts 'in the interests of defence, public safety, public order, public morality and public health', and also by 'the right to observe and practice any religion without the unsolicited intervention of members of any other religion'. These principles are repeated in the latter two drafts, but with some minor adjustments. First, the 1997 and 2013 drafts add 'Religion' to their titles ('Religion and Belief' and 'Freedom of religion, conscience and belief, respectively), demonstrating the growing salience of 'religion' as a tractable term of political and legal discourse. They both adopt a shortened wording,

(1) Every person has the right to freedom of religion, conscience and belief.

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<sup>25</sup> Indeed in *Reddy v Permanent Secretary for Education* (2007) FHCA 24 <http://www.pacii.org/fj/cases/FJCA/2007/24.html> Fiji's Court of Appeal found that religion was a relevant factor in assessing the merit of head teachers for religious schools.

<sup>26</sup> *Fiji Independence Order and the Constitution of Fiji 1970* s 11; and *Constitution of the Sovereign Republic of Fiji 1990* s 12.

- (2) Every person has the right, either individually, or in community with others, in private or in public, to manifest and practice their religion or belief in worship, observance, practice or teaching.<sup>27</sup>

A further adjustment included by both drafts was the rejection of ‘defence’, but the addition of ‘public nuisance’ to the list of limitations. Given the alliance between the military and the Methodist church during the 1987 coups, the decision to omit ‘defence’ is understandable.<sup>28</sup> The new public nuisance limitation is solely attached to the right of freedom of religion, conscience and belief, and not to other civil freedoms such as free movement, speech or assembly. Could this then be related to noise complaints arising from the increasingly popular and rambunctious services of Fiji’s Pentecostal churches?<sup>29</sup> The clause regarding ‘unsolicited intervention’ was deemed superfluous by both later drafts, whilst the 2013 Constitution uniquely includes that ‘Every person has the right not to be compelled to act in any manner that is contrary to the person’s religion or belief.’ Given the supremacy of state law over religious law, this does not challenge the authority of legislation on religious issues, but seeks to prevent the coercion of religious individuals in other areas of Fijian society. For example, Fiji’s Seventh Day Adventist Church invoked this clause to stop the Fiji National University from forcing Adventist students to take exams on a Saturday.<sup>30</sup>

Argument supporting the constancy of secularism in the history of Fiji’s constitutions can also draw on what drafters chose to omit. For instance, there have never been any specific clauses that have explicitly sought to privilege Christians over adherents of other faiths. No parliamentary seats or public office positions have been allocated on the basis of religion.<sup>31</sup> Nor have any repugnancy clauses written to protect the values and laws of Christian scripture ever found their way into the drafts. Fiji’s constitutions have also consistently averred from

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<sup>27</sup> *Fiji Islands Constitutional Amendment Act 1997* s 35; and *Constitution of the Republic of Fiji 2013* s 22. Though the 1997 Constitution draft uses ‘his or her’ instead of ‘their’.

<sup>28</sup> See Winston Halapua, *Tradition, Lotu and Militarism in Fiji* (2003).

<sup>29</sup> For the rise of Pentecostal Churches, see Manfred Ernst, *Winds of Change: Rapidly Growing Religious Groups in the Pacific Islands* (1994) and for a case study on its socially divisive impact on village life, see Lynda Newland, ‘Turning the Spirits into Witchcraft: Pentecostalism in Fijian Villages’ (2004) 75:1. *Oceania* 1-18.

<sup>30</sup> Interview with Pastor Joe Talemaitoga, General-Secretary to Fiji’s Seventh Day Adventist Church (Suva, 4 October 2017).

<sup>31</sup> Attempts during the 1970 Constitution drafting by members of the Fiji Muslim League to have reserved seats for Muslims were rejected by drafters in London. Muslims were viewed as fairly represented within the Indo-Fijian ethnic group. The fact that the National Federation Party (NFP) leader – the main Indo-Fijian political party – at the London Conference was Siddiq Koya, himself a Muslim, would have strengthened this not wholly accurate point of view.

creating any institutionalised role for the Methodist Church, Christianity or religion in general, within the state.

The above secular tendencies through Fiji's history of constitutionalism, however, have not prevented a widespread indigenous belief that Fiji has been (and ought to be) a Christian state. Such claims have been made possible by the omission of significant secular clauses, and the express constitutional recognition of Christianity and God in Fiji's constitutional preambles. Such gaps or pronouncements that undermine the rigour of a Fijian secularism are scrupulously avoided in the 2013 draft.

The first and most significant secular distinction of the 2013 draft compared to Fiji's earlier constitutions regards the separation clause. As discussed earlier, the 2013 Constitution issues a thorough articulation of the separation clause, centring around the principle of state neutrality or non-preference, and the priority of state law over religious law. The separation clause in the 1997 draft receives no further elaboration than what appears to be its own contradiction: 'Although religion and the State are separate, the people of the Fiji Islands acknowledge that worship and reverence of God are the source of good government'.<sup>32</sup> The 1990 and 1970 drafts contain no separation clause at all. In times of heated communalistic politics along ethno-religious lines, the risk of religious discrimination and oppression is high. Without a separation clause, the constitution provides only a limited check against particular religious beliefs and institutional interests attaining priority within, and through, the state apparatus. The political dominance of the indigenous iTaukei through Fiji's independence history, most often personified in the premiership of Fiji's eastern chiefs, has seen the regular privileging of Christian beliefs, practices and institutions by the Fijian state. This has varied from the rather anodyne saying of Christian prayers in government meetings to the officiating of public ceremonies by Methodist ministers.<sup>33</sup> Yet following the political gains made by Indo-Fijians in the 1987 and 1999 elections, the subsequent ethno-nationalist backlash and take-over of the state has led to a significant privileging of Christianity. This included the patently unfair use of public monies to fund Christian events, such as financing the security

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<sup>32</sup> *Fiji Islands Constitutional Amendment Act 1997* s 5.

<sup>33</sup> Lynda Newland, 'From the Land to the Sea: Christian, Community and State in Fiji – and the 2014 Elections' in Steven Ratuva and Stephanie Lawson (eds), *The People Have Spoken: The 2014 Election in Fiji* (2016) 123.

for a visit by mass evangelist Benny Hinn in 2005,<sup>34</sup> to the truly intrusive national enforcement of Sabbatarian law from 1987 to 1995.<sup>35</sup>

A second significant absence of secularism in Fiji's constitutionalism regards the direct and indirect religious discrimination provided for in the 1990 Constitution. In the 1970 and 1997 Constitutions discrimination on the basis of religion is outright rejected. In the 1990 Constitution, however, in relation to the political aim of boosting the social and economic status of the iTaukei (one of the underlying rationales for the 1987 coups), a provision on affirmative action states:

Nothing contained in section 16 [Protection from discrimination] of the Constitution shall preclude the enactment of any law or any programme of activity that has as its object and purpose the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, sex, place of origin, political opinions, colour, religion or creed.<sup>36</sup>

The roll-out of the post-coup government's plan to reallocate public funds towards the iTaukei would not be tied down by laws of religious non-discrimination, or of whatever kind. Albeit, this direct voiding of religious non-discrimination law is overshadowed somewhat by the broad sweep of discriminatory laws found in the 1990 Constitution. These new laws favoured the iTaukei, their interests and their institutions over that of Fiji's other ethnic groups. As religious and ethnic differences align, this provided for a substantial bias in favour of Christian communities. Examples include reserving the position of Prime Minister for the iTaukei, reserving a disproportionate number of parliamentary seats to the iTaukei, and greatly increasing the political power of the Great Council of Chiefs, an iTaukei-only institution.<sup>37</sup> Given the almost non-existence of non-Christian iTaukei, and the limited number of Christian Indo-Fijians, these laws greatly empowered Christians over Hindus and Muslims. The ethnic discrimination involved in the 1990 constitution has been well-documented elsewhere, and brevity prevents a repetition here.<sup>38</sup> Yet it is important to

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<sup>34</sup> See Lynda Newland, 'Miracle Workers and Nationhood: Reinhard Bonnke and Benny Hinn in Fiji' (2005) 22:1 *Contemporary Pacific* 77.

<sup>35</sup> See Donald Heinz, 'The Sabbath in Fiji as Guerilla Theatre' (1993) 61:3 *Journal for American Academy of Religion*.

<sup>36</sup> *Constitution of the Sovereign Republic of Fiji 1990* s 18.

<sup>37</sup> Brij Lal, *Broken Waves: A History of the Fiji Islands in the 20<sup>th</sup> Century* (1992) 321-326

<sup>38</sup> Again, see Brij Lal *ibid*. Amongst others, see also Ralph Premdas and Jeff Steeves 'Fiji: Problems of Inequality and Discrimination in the New Constitutional Order' (1991) 318 *The Round Table* 155-172; Yash

recognise how far-reaching religious prejudice becomes when Fiji's constitutions fail to stand fast against discrimination based on ethnic distinctions. Attacks on non-Christian places of worship increase, and Christian symbols and myths are increasingly deployed within a heated political discourse of race and indigenous privilege.<sup>39</sup> However, it is also important not to treat religious discrimination in Fiji as merely epiphenomenal to the deeper issue of 'race', and to recognize the co-construction of Fijian Christianity and iTaukei ethnicity. As discussed later, Fijian Christianity, in particular Methodism, has been integral to the development of iTaukei-group identity. It would be careless to ignore their mutual embeddedness.<sup>40</sup> Given the entwining of religion and ethnicity in Fiji, it is arguable that it is only with the integration approach adopted by the 2013 Constitution, flattening ethnic difference into a singular national citizenry, that the Fijian state may claim to fully pursue a policy of religious neutrality. As institutions of ethnic difference have been abolished by the Bainimarama government – reserved parliamentary seats, communal voting, the Great Council of Chiefs – the scope for the uneven treatment of Fiji's different religious groups has receded too.

The third and final secular difference between the 2013 Constitution and the earlier drafts regards the preambles. Unlike any of Fiji's earlier constitutions, or indeed the constitutions of Fiji's Pacific Island neighbours, there is no mention of God or Christianity in the 2013 Constitution Preamble. The 2013 Constitution Preamble does recognise the 'culture, customs, traditions and language' of the 'indigenous people or the iTaukei', and mechanically repeats this recognition for 'the indigenous people or the Rotuman', 'the descendants of the indentured labourers from British India and the Pacific Islands', and 'the descendants of immigrants and settlers to Fiji'.<sup>41</sup> Yet even this half-recognition of Fiji's religions – if we squeeze religion into 'culture, customs, traditions' – was only offered belatedly, added to the government's draft following a public outcry. The contrast between the weak recognition of

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Ghai and Jill Cotteril, 'A Tale of three Constitutions: Ethnicity and Politics in Fiji' (2007) 5: 4. *International Journal of Constitutional Law* 650-653.

<sup>39</sup> For an account of post-87 attacks see Ved Nanda, 'Ethnic Conflict in Fiji and International Human Rights Law' (1992) 25: 3. *Cornell International Law Journal* 571; and of attacks and the suppression of civil rights more generally post-2000 and later, see Vijay Naidu, *Fiji: the challenges and opportunities of diversity* (2013) 28. There is a sparsity of research regarding the current level of attacks on temples and mosques. Typically, the police view such occurrences in terms of theft rather than sectarian violence. While lecturing ethics at the Fiji National University from early 2012 to the end 2015, I would consistently look out for such incidents in the press to discuss. It seemed cases were less frequent then, than during and after the ethno-nationalist coups.

<sup>40</sup> This is discussed in a more detail in the following section.

<sup>41</sup> *Constitution of the Republic of Fiji 2013 Preamble*.

religion in the 2013 Preamble, if we can even call it that, contrasts strikingly with the preambles of the 1970, 1990 and 1997 drafts.

In the 1970 draft the Preamble begins with a history:

Whereas on 10<sup>th</sup> October 1874 Cakobau, styled Tui Viti and Vunivalu, and other High Chiefs signified their loyalty to Her Most Gracious Majesty Queen Victoria and their dedication to God and to the rule of law by the solemn agreement known as the Deed of Cession.<sup>42</sup>

Later on the Preamble states, ‘And whereas all the peoples of Fiji have ever since acknowledged their allegiance to the Crown and their reverence for God’.<sup>43</sup> It concludes:

Now therefore, the people of Fiji do affirm their allegiance to Her Most Excellent Majesty Queen Elizabeth II, Her heirs and successors, their reverence for God and their unshakeable belief that all entitled to fundamental human rights and freedom based upon and secured by the rule of law and to that end desire that the following provisions shall take effect as the Constitution of Fiji.<sup>44</sup>

Here, the early chiefs’ belief in God is noted as an integral part of ceding Fiji to the British Crown. The Preamble also states that the Fijian people have always revered God, and concludes again with an affirmation of this reverence. With the 1990 Constitution emerging out of the Christian-nationalist coups of 1987, it is perhaps unsurprising to find the Preamble omitting the religiously-inclusive term ‘God’, and giving ‘Christianity’ prominence instead. Briefly listing Fiji’s constitutional history without the 1970 mention of ‘reverence for God’, the Preamble states that,

they [the people of Fiji] affirm and respect that Christianity has played and continues to play a prominent role in the lives of the indigenous Fijians and the enduring contribution it has had, but also accept... the rights of other religious groups to practice their own religion.<sup>45</sup>

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<sup>42</sup> *Fiji Independence Order and the Constitution of Fiji 1970* Preamble.

<sup>43</sup> *ibid*

<sup>44</sup> *ibid*

<sup>45</sup> *Constitution of the Sovereign Republic of Fiji 1990* Preamble.

The penultimate preambular passage then adds,

They [the people of Fiji] reiterate their recognition that people and institutions remain free only when and for so long as freedom is founded upon respect for the spiritual and moral values of each other and a mutual observance of the rule of law.<sup>46</sup>

The 1997 Constitution Preamble, which speaks more to religious ideals than both the 1970 and 1990 preambles, takes principles from both, and then adds further theistic touches. The Preamble starts ‘Seeking the blessings of God who has always watched over these islands’. It then recalls

the conversion of the indigenous inhabitants of these islands from heathenism to Christianity through the power of the name of Jesus Christ; the enduring influence of Christianity in these islands and its contribution, along with that of other faiths, to the spiritual life of Fiji.<sup>47</sup>

The Preamble later affirms ‘the rich variety of their [all communities] faiths, traditions, languages and cultures’ and then concludes with the grand affirmation ‘WITH GOD AS OUR WITNESS, GIVE OURSELVES THIS CONSTITUTION’.<sup>48</sup>

With the exception of the 1970 Constitution, which places ultimate authority in the Crown, all Fiji’s later constitutions, as Republics, place sovereignty with ‘the People’. In the 1990 Preamble, Christianity is acknowledged as meaningful to the iTaukei, both past and present, but it is not deemed the principal source of political authority. The 1997 Constitution Preamble ‘seeks the blessing of God’, and declares ‘God as a witness’, but again sovereignty resides with the people. The 1970, 1990 and 1997 preambles all declare for a meaningful and empowering relationship with God or Christianity, but this is not expressed as a bond between lord and subject. God’s approval is sought, or a debt to Christianity acknowledged, but these preambles are not avowing divine rule. As such, the difference between the 2013 Preamble and the earlier preambles is one of recognition, and not the Christian locus of state sovereignty. The earlier drafts’ preambles admit God’s presence, Fiji’s Christian socio-political archaeology and the historical and present virtues of religious faith. These are admissions that the 2013 Preamble resolutely refuses to make.

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<sup>46</sup> *ibid*

<sup>47</sup> *Fiji Islands Constitutional Amendment Act 1997* Preamble.

<sup>48</sup> *ibid*

## THE POLITICS OF FIJI'S NEW SECULARISM

Despite Fiji's preambular confessions of religious belief, the celebration of religion past and present, and the weaknesses and omissions in its secular wordings, it is fair to say Fiji's past constitutions have never declared Fiji a Christian State. Fiji's previous constitutions have located the sovereignty of the state in either the body of the Queen, or the People, but not the Christian God. Yet it is also clear that Fijian secularism has taken a far more assertive form under the 2013 Constitution and the rule of Prime Minister Bainimarama. It is an assertiveness that rests on strong politics as much as strong principles, and it is this political edge that sets the secularism of the 2013 Constitution apart.

The Bainimarama government never entered a submission to the 2012 Constitution Commission drafting-process, though their positioning of religion in politics in Fiji's constitutional history is clear from other public announcements. Following the Bainimarama government's abrogation of the 1997 Constitution in 2009, triggered by the Court of Appeal's ruling that the military coup in 2006 was unconstitutional,<sup>49</sup> Bainimarama gave a wide-ranging interview to Māori Television defending his actions against international condemnation. He argued:

Yes, we removed an elected government – for good reason. We wanted to bring about development in this country. We wanted to bring this country forward instead of keeping us in the old cannibalistic days...In Fiji, you don't come up with your own vote. Your vote is dictated by the chiefs, it is dictated by the Great Council of Chiefs, it is dictated by the provincial councils, and it is dictated by the [Methodist] Church. So it's not your vote. So don't tell me that it's democracy.<sup>50</sup>

Bainimarama argued that Fiji's constitutionalism had failed to unravel a hegemonic configuration of indigenous interests often articulated in opposition to the Indo-Fijian ethnic other, institutionalized as the 'three pillars': *matanitu*, *vanua*, *lotu*.<sup>51</sup> Whereas *matanitu* refers

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<sup>49</sup> *Qarase v Bainimarama* (2009) FJCA 67 <http://www.pacii.org/fj/cases/FJCA/2009/67.html>.

<sup>50</sup> David Robie, 'Bainimarama Won't be Bullied' (2009) *Pacific Islands Report* (Honolulu, Hawaii) 17 September 2009, <http://www.pireport.org/articles/2009/09/17/bainimarama-won%C2%80%C2%99t-be-%C2%80%C2%98bullied%C2%80%C2%99> (Accessed 11 September 2017).

<sup>51</sup> See Alan Tippett 'Anthropological Research and the Fijian People' (1955) 44: 174. *International Review of Mission*, 212-19; Paula Niukula, 'The Three Pillars' (1994) *Christian Writing Project*; Ryle (2005, 2010) and Jacqueline Ryle 'The Christian State and the Secular State: Discourses during the 2014 Fiji General Election

to chiefly governance, typically through the structures of the state, such as the Provincial Councils, the *vanua* refers to the land and the iTaukei who belong to it. The Great Council of Chiefs, which sits outside the normal working infrastructure of the state, presents itself as the voice of the *vanua*. The *lotu*, more generally meaning ‘religion’, in this instance specifically refers to Fiji’s Methodist Church. Seeking to explain the indigenous fears that drove the 1987 and 2000 coups, former Methodist Church President, Ilaitia Sevati Tuwere, pointed to the importance of this ‘holy trinity’, describing it as constitutive of ‘Fijian collective consciousness’ and the dominant governance structure for indigenous village life.<sup>52</sup> The ideology of the three pillars holds that the survival of the Fijian *volk* is reliant on the continuing national, political authority of the chiefs and chiefly institutions, a public, visible role for Christianity, and the secure indigenous ownership of land. It is an ethnically exclusive political philosophy, where the rights and freedoms of non-iTaukei are best conceived of as gifts provided by the iTaukei, in an analogous structure to that of host and guest.<sup>53</sup> When these indigenous institutional entitlements are perceived as under attack, it is seen as an existential threat to the whole iTaukei race. It is a threat that must be defended against at any cost, including constitutional sovereignty. Indeed, when Indo-Fijians and iTaukei commoners took political power away from the chiefs with the election victories of the Fiji Labour Party in 1987 and 1999, coups quickly followed.

When seizing power in his 2006 coup, Bainimarama’s offered rationale was the need to demolish this three pillars ideology. For the Bainimarama government, the institutions of the three pillars were not only corrupt, incompetent, racist, anti-development, anti-democratic and anti-rule of law, they were also inauthentic and hegemonic, having originated in the early colonial period to facilitate British and chiefly rule.<sup>54</sup> While the institutions of the three pillars ostensibly acted to safeguard the iTaukei people, the government insisted that, in their current form, they simply perpetuated their exploitation. Where the chiefs and the church have raised alarm regarding cultural genocide, the government viewed this as nothing more

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Campaign’ (2015) 35: 2. *Journal of Pacific Studies*; Matt Tomlinson, *In God’s Image: The Metaculture of Fijian Christianity* (2009).

<sup>52</sup> See Ilaitia Sevati Tuwere, *Vanua: Towards a Theology of Place* (2002).

<sup>53</sup> Susanna Trnka, *State of Suffering: Political Violence and Community Suffering in Fiji* (2008) 49-51.

<sup>54</sup> Speech by Josaia V. Bainimarama, ‘Remarks on the Great Council of Chiefs’ (13 March 2012) [http://www.fiji.gov.fj/Media-Center/Speeches/PM-BAINIMARAMA---REMARKS-ON-THE-GREAT-COUNCIL-OF-CHIEFS-\(GCC\).aspx](http://www.fiji.gov.fj/Media-Center/Speeches/PM-BAINIMARAMA---REMARKS-ON-THE-GREAT-COUNCIL-OF-CHIEFS-(GCC).aspx) (Accessed 11 September 2017). See also speech delivered in Parliament on 28 April 2016, Josaia V. Bainimarama, ‘PMs Statement on the Great Council of Chiefs’ *Fiji Sun* (Suva, Fiji) 29 April 2016 <http://fijisun.com.fj/2016/04/29/pms-statement-on-the-great-council-of-chiefs/> (Accessed 10 September 2017).

than a cabal of church ministers and a chiefly elite manipulating traditional and religious loyalties to further their own political careers.<sup>55</sup> Dragging national politics into inter-ethnic conflict disguised intra-ethnic inequality between chiefs and commoners, and sidelined rivalries between chiefly confederacies. This served to secure the iTaukei voter-base for high-ranking chiefly politicians, who could then run for office on the basis of their traditional authority, and avoid hard questions on economic policy and governance competence. For the Bainimarama government, the chiefs were abusing their traditional authority and should instead concentrate on community development in their respective *vanua*.<sup>56</sup> The church's engagement in nationalist politics has been tied to a desire to redress congregational losses to Fiji's newer churches, seeking to re-emphasise Methodism's special role as the *national* denomination for indigenous Fijians.<sup>57</sup> That the chiefs had been historically supported in their political ambitions by leaders within the Methodist Church is equally perceived as a perversion of religion's proper role. The government maintained religions should focus on the moral and spiritual development of its congregations, not on national politics.<sup>58</sup> As we see, however, the interweaving of Methodism and politics within the three pillars has a long history, and is not easily unpicked.

The first European missionaries to Fiji, Wesleyan Methodists, arrived in 1835. Yet it was not until the conversion of warlord and paramount chief Ratu Seru Cakobau in 1854 that Fijians notably turned towards the Cross. Cakobau had deemed Christianity too mawkish a religion to champion his imperial ambitions, until, that is, his conversion secured Tongan military support to subdue the rival chiefdoms of Rewa and Cakaudrove.<sup>59</sup> Conversion to Christianity, therefore, sits centrally within the founding myth of a united, Fijian nation.<sup>60</sup> Following Cakobau's conversion and assumption of suzerainty over the island group, vassal chiefs followed him into the Christian faith, bringing commoner villagers with them. That chiefs could facilitate mass conversions was quickly recognized by European missionaries. So too

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<sup>55</sup> For example, see Losalini Rasoqosoqo, 'Bainimarama: No Room for Dirty Politics' *Fiji Sun* (14 June 2011) <http://fijisun.com.fj/2011/06/14/bainimarama-no-room-for-dirty-politics/> (Accessed 9 September 2017).

<sup>56</sup> See Bainimarama speech to Parliament, above n 54.

<sup>57</sup> See Joseph Bush, 'Claiming a Christian State where none exists: Church and State in the Republic of Fiji' (1999) 12:1. *Pacific Australian Theological Studies* 55-68. On the other hand, it has also been suggested that intra-ethnic rivalries and competing loyalties within the Church itself was influential. See Jacqueline Ryle, (2010) above n 7.

<sup>58</sup> The Fijian Government, 'Find fresh approach to Church leadership – PM Urges' (24 April 2010) <http://www.fiji.gov.fj/Media-Center/Press-Releases/Find-fresh-approach-to-church-leadership---PM-urges.aspx> (Accessed 9 September 2017).

<sup>59</sup> Deryck Scarr, *Fiji: A Short History* (1984).

<sup>60</sup> Tippett (1955) above n 51.

was their dependence on chiefs for physical protection, permission to proselytize and land for sustenance. Thus the chiefly system became the principal evangelizing vehicle for Fijian conversion. Chiefs would be praised in church services for spreading the word of God. In reciprocation, the Methodist minister or *talatala* would likewise be socially honored, being amongst the first to drink his *bilo* of *yaqona* in village kava ceremonies. Methodism became the dominant Christian denomination in Fiji, and in each service, the chief would sit in a specially reserved seat at the front of the church.

With the inception of colonial rule in 1874, the structures of the three pillars were continuously drilled as indigenous ideals through the disciplinary techniques of the Methodist missionaries and the colonial native administration – an institution of indirect rule fielded by Fiji’s chiefs. For example, the normalisation of the authority of the chiefs and the *lotu* was supplemented with a disciplining of daily life, routinized around the Sabbath. Fiji’s Wesleyan Methodist missionaries were strict Sabbatarians.<sup>61</sup> The impact of this is seen in the Fijian naming of not just Sunday – *Siga Tabu* – meaning sacred or forbidden day, but also of Saturday and Friday too – *Vakarauwai* and *Vakaraubuka* – detailing the chores to be done on the days before Sunday: collecting water and firewood respectively. The laws of Sunday Observance enabled the chiefly monitoring of indigenous Fijian movement between villages, and the regulation of their daily activities. This disciplining of time created a new dimension for the exercise of church and chiefly power, which was harmonized in their matching administrative structures from village to national level.<sup>62</sup> The historical *lotu*, therefore, did not just offer the chiefs political support, it remapped the contours of political power to effect new forms of chiefly governmentality.<sup>63</sup> This alliance between church and chiefs was still a potent force for indigenous privilege right up to Bainimarama’s 2006 coup, with the Methodist church lending symbolic, institutional and human resources to the chiefs’ political ambitions.

The ‘three pillars’, therefore, presented Bainimarama with a Gordian Knot tethering Fiji to a tired politics of race. An assertive secularism provided the sword with which Bainimarama cut this knot, slicing the *lotu* away. This approach has been effective. Since the promulgation of the 2013 Constitution the Methodist Church has broadly removed itself from politics,

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<sup>61</sup> John Garrett, ‘Uncertain Sequel: The Social and Religious Scene in Fiji’ (1990) 2:1. *The Contemporary Pacific* 87-111.

<sup>62</sup> Winston Halapua (2003) above n 28.

<sup>63</sup> See Martha Kaplan, *Neither Cargo nor Cult: Ritual Politics and the Colonial Imagination in Fiji* (1995).

calling its new approach *Na Lako Yani Vou* (the New Exodus), which focuses instead on education, the environment and tackling domestic abuse.<sup>64</sup> The Government's approach to secularism is, however, markedly different to Fiji's previous constitutional framing of secularism. The secularism of Fiji's previous constitutions was built around the individual right to religious freedom, even if in practice, this was poorly protected. That the Constitutional Commission located a secular state in Fiji's past suggests this was the principal meaning of secularism for them too. That is, secularism's defining objective is to secure the right to religious liberty. Where previous drafters included in their preambles reverence of God, the history of Christian conversion, and the contribution of religion to nation-building, these were concessions to the iTaukei community wanting a greater recognition of Christianity. They stopped short, however, of declaring a Christian State to avoid violating the religious freedom of non-Christian groups. The government's secularism of the 2013 Constitution, however, is not solely framed by this maxim of international human rights law. Instead, it finds its driving rationale within a broader political offensive against the ideology of the three pillars, with its focus on tackling the colonially-entrenched privileging of iTaukei interests, beliefs and institutions over those of their Indo-Fijian compatriots.

It is within this context that the government's strong yet sometimes inconsistent enforcement of secularism makes sense. For example, a principled commitment to the separation of church and state was not evident in 2009. At this time, during Bainimarama's military rule, Fiji's police force actively pursued a policy of Christian evangelism. This included answering the phone with exclamations of 'Praise the Lord!' and dancing in uniforms at events run by the New Methodists, a pro-Bainimarama Christian group.<sup>65</sup> While at the same time, the government was rigorously enforcing its ban on the annual conferences of the Methodist Church, which were viewed as fora for chiefly interests and fermenting anti-government discontent. The government did not view the ban as a violation of Human Rights. The discretionary state support or state sanction of the two Methodist churches was deemed

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<sup>64</sup> Reverend Tevita Banivanua, 'Mapping *Na Lako Yani Vou*'. Address by the Methodist Church President at the opening of the 2015 Divisional Superintendents and Division Stewards' mini-conference at the Centenary Church (Suva, 10 March 2015) <http://methodistfiji.blogspot.com/2015/08/mapping-na-lako-yani-vou.html> (Accessed 11 September 2017).

<sup>65</sup> See Susanna Trnka, 'Re-Mythologising the State: Public Security, 'the Jesus Strategy' and the Fiji Police' (2011) 81 *Oceania* 72-87; Lynda Newland, 'New Methodism and Old: Churches, Police and State in Fiji, 2008-09' 101:6. *The Round Table* 537-555; Matt Tomlinson 'The Generation of the Now: Denominational Politics in Fijian Christianity' in Matt Tomlinson and Debra McDougall (eds), *Christian Politics in Oceania* (2013).

justified by the fact that one group was allied with a politicking chiefly elite seeking to capitalize on a ‘politics of race’, whereas the other was not.

This framing of the government’s secularism also explains the heavy criticism they levelled at the 2012 Constitution Commission when it found that the high chief, the *Vunivalu* of Bau and former Fijian vice-president, Ratu Jone Madraiwiwi, had been employed as a consultant on Fijian law.<sup>66</sup> Madraiwiwi was a former Fijian high-court judge and human rights advocate who promoted inter-ethnic tolerance, and had spoken publicly against a Christian State. As a high-chief, a legal expert and a political moderate, his appointment should have been uncontroversial. Madraiwiwi, however, had added his signature to a constitutional submission by the *Soqosoqo Vakaturaga Bau*, a group submission representing the male elders of the chieftom of Bau, to which Madraiwiwi was the second highest ranking member.<sup>67</sup> The submission argued for a Christian State. It is doubtful whether Madraiwiwi believed in the policies laid out in the document himself, or signed out of anything other than communal solidarity. It included policies that he had often spoken against, and indeed, the submission itself was not original, but a standardized copy of a template document that had been undersigned and resubmitted to the Commission by many other indigenous mens’ and womens’ groups across Fiji. Yet for the government the employment of Madraiwiwi was an unacceptable provocation, undermining the status of one of its non-negotiable provisions: that Fiji be a secular state. They decried the apparent bias of the commission to the press. The fear of a chief-led, Christian state agenda hijacking the drafting-process was sufficiently ingrained that the government was prepared to risk undermining the Commission in order to stop it. As a result, any subtlety of argument, or tempering of presentation, that Madraiwiwi could have provided to Fiji’s constitutional secularism was lost when he withdrew from the process.

In the official guide to the constitution-drafting process drawn up by the commissioners, it was emphasised that ‘a secular state is not hostile to religion’.<sup>68</sup> A similar point is made

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<sup>66</sup> Anonymous, ‘PM’s Attack is Unfair, says Fiji Commission Chair Prof Ghai’ *Pacific Island News Association* (Suva, Fiji) 5 November 2012 <http://www.pina.com.fj/?p=pacnews&m=read&o=2245903325096d7e5e1052d7ee593d> (Accessed 11 September 2017).

<sup>67</sup> *Soqosoqo Vakaturaga Bau*, Submission No CS/3560 to Fiji Constitution Commission, *Fiji Constitutional Process*, 4 October 2012, Bau, Fiji.

<sup>68</sup> The Constitution Commission, *Building the People’s Constitution: Your Responsibility. A Guide to Constitution Making for the People of Fiji* (2012) 20.

repeatedly when the military turned to promoting a secular state in their own submission.<sup>69</sup> Four months after the promulgation of the 2013 Constitution, Bainimarama stated that

Fijians are a religious people and our government must depend on the people of all faiths to be our moral compass – not to impose their religious practices through law but to ensure that government’s actions respect the guiding principles of all faiths.<sup>70</sup>

The government have consistently repeated that its secularism poses no risk to religion, and that it is a policy that is rooted in principles of fairness and the equal treatment of religions by the state. Indeed, an International Religious Freedom Report produced in 2015 by the US State Department gave religious liberty in Fiji a clean bill of health.<sup>71</sup> Fiji’s new secularism has in many quarters been broadly welcomed and when its principles are articulated by Bainimarama as above, it is widely endorsed by religious groups, particularly those of the Indo-Fijian community. Yet when religious voices become too critical of the government, this narrative can slip, and the use of secularism to police what is or is not eligible political discourse becomes a temptation hard to resist. A recent example is where Bainimarama castigated the Methodist Reverend Akuila Yabaka for bringing the church into politics when Yabaki criticised the management of the electricity sector at the 2017 Annual Methodist Conference.<sup>72</sup>

Following interviews with Fijian church ministers in August-October 2017, while no major flashpoints between religious institutions and a strong secular rule of law were presently identified, there was a trepidation that the government had yet to fully exercise the power in the 2013 secular provisions.<sup>73</sup> Moreover, without a strong religious influence on the state, it was queried, how can state leaders resist the lure of power for its own sake? Such foreboding cannot altogether be separated from the way ‘secular’ is translated as ‘*vakavuravura*’ in the

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<sup>69</sup> Republic of Fiji Military Forces, Submission No CS/4945 to Fiji Constitution Commission, *Fiji Constitutional Process*, 13 December 2012, Suva, Fiji. 49-51.

<sup>70</sup> Quote dated as January 2014. Located in Kevin J. Barr, *The Church and Politics* (2014) 13.

<sup>71</sup> United States Department of State, Bureau of Democracy, Human Rights and Labour, ‘Fiji 2015 International Religious Freedom Report’ (2015) <https://www.state.gov/documents/organization/256317.pdf> (Accessed 23 January 2018).

<sup>72</sup> Iva Danford, ‘PM tells Rev Yabaki not to use Methodist conference to raise political issues’ *Fiji Village* (Suva, Fiji) 23 August 2017, <http://fijivillage.com/news-feature/PM-tells-Rev-Yabaki-not-to-use-Methodist-conference-to-raise-political-issues-52kr9s> (Accessed 5 September 2017).

<sup>73</sup> This was not a universal response, with many interviewees expressed content with Fiji’s new secularism. It was a concern repeated enough times, however, as to warrant further investigation. When airing such points of view, respondents preferred to remain anonymous.

Fijian language version of the 2013 Constitution. Meaning ‘worldly’ or ‘of this earth’,<sup>74</sup> it reads as a preference for base materialism, rather than a prescription for the fair treatment of competing religious group interests. When this particular translation is cast within a Fijian Christian cosmology of the Fall, a ‘worldly state’ carries connotations of sin and amorality. It is a mistranslation that makes the category error between religion, religions and religious. A nation-state’s non-preference regarding ‘religions’ is a very different proposition to a disregard for any and all matters ‘religious’. With the further omission of any references to God, Christianity, or even religion in general in its Preamble, the worry is that 2013 Constitution has turned its back on all matters non-temporal. It is for this reason that public submissions with a strong attachment to an ethics of divine command equated a secular state with a ‘value-less’ state.<sup>75</sup> It is with this understanding that secularism was readily associated with individualism, consumer capitalism, social delinquency, sexual licentiousness and mineral resource exploitation.

The suspicion regarding the secularism of the 2013 Constitution is exacerbated when viewed as part of a broader strategy of the Bainimarama Government to centralise state power. With the promulgation of the 2013 Constitution, and a resounding victory for their Fiji First party in the 2014 General Elections, the Bainimarama government has dismantled, marginalized or assailed institutions that have held themselves out as intermediaries between the state and ethnic, religious or other special groups. Whereas the 1997 Constitution recognized the Great Council of Chiefs as authoritative in matters of indigenous iTaukei interests, the 2013 Constitution confirmed its 2009 abolition. Whereas the 2012 Fiji Constitution Commission draft envisaged a Citizens’ Assembly where civil society leaders, including chiefs and religious actors, could lobby the government, this was excluded from the 2013 final text. Other non-ethnic and non-religious special group representatives have also been marginalised. For instance, trade union officials are now banned from standing in elections.

The government appears to have adopted the position that giving legitimacy to non-state institutions holding themselves out as authorities on the interests of special groups will only deepen social division. Consequently, the 2013 Constitution has moved to establish national

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<sup>74</sup> Translation was kindly provided by Dr Paul Geraghty, School of Language, Arts and Media of the University of the South Pacific.

<sup>75</sup> The interchange between Commissioner Peni Moore and submittee Ms Laisa Bale Tuinamoala provides an excellent example of this suspicion of secularism as nihilism. See Laisa Bale Tuinamoala, Submission No TO/39 to Fiji Constitution Commission, *Fiji Constitutional Process*, 8 August 2012, Lami Catholic Hall, Lami, Fiji.

institutions that could be lobbied directly by ‘the people’. For example, the 2013 Constitution affirmed the establishment of new accountability mechanisms, such as the Fiji Independent Commission Against Corruption (FICAC), the Accountability and Transparency Commission, and the Human Rights Commission. In terms of accountability, institutions that served as external balances to the state have now been replaced by a system of internal checks. The extent to which these in-house watchdogs are willing to bite the government hand that feeds them, however, remains uncertain. For example, in 2017, FICAC charged the then Education Minister Mahendra Reddy with attempting to buy the vote of a school manager by promising a steady water supply for the school.<sup>76</sup> It later emerged in court, however, it was Mohammed Saneem, the Supervisor of Elections and nephew to Attorney-General Aiyaz Sayed-Khaiyum, who had lodged the original complaint to FICAC.<sup>77</sup> Fiji’s anti-government blogs have suggested Reddy was considering a switch to the opposing National Federation Party and Sayed-Khaiyum decided to shoot first. If this rumour is true, far from FICAC holding the government to account, it is facilitating the political power of those at the very top of government.<sup>78</sup>

Moreover, on issues of representation, citizens’ grievances are increasingly perceived as best resolved by going straight to the top, where Bainimarama and Sayed-Khaiyum sit with their hoard of ministerial portfolios.<sup>79</sup> With the Constitution creating a single national constituency, MPs are no longer responsible to a local area, and with the continuing drive to smash the three pillars, SODELPA Opposition MPs (the inheritors to the chiefly SDP Party) have struggled to push a single bill through a parliament dominated by government members. Even backbenchers have little political power as seats in the House belong to the political party and not the individual MP. If an MP falls out with their party hierarchy, they must

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<sup>76</sup> Arieta Vakasukawaqa, ‘Minister Reddy with Bribery’ *Fiji Sun* (Suva, Fiji) 5 July 2017 <http://fijisun.com.fj/2017/07/05/minister-reddy-charged-with-bribery/> (Accessed 22 January 2018)

<sup>77</sup> Jessica Savika Suva, ‘Saneem Lodged Complaint Against Reddy: Witness’ *Fiji Sun* (Suva, Fiji) 9 September 2017 <http://fijisun.com.fj/2017/09/09/saneem-lodged-complaint-against-reddy-witness/> (Accessed 22 January 2018).

<sup>78</sup> Anonymous, ‘Corruption Charges against Education Minister’ *Fiji Coupfourpointfive* (Suva, Fiji) 5 July 2017 <http://www.coupfourandahalf.com/2017/07/corruption-charges-against-education.html> (Accessed 22 January 2018). The politics of anti-corruption drives in Oceania is explored in Peter Lamour’s *Interpreting Corruption: Culture and Politics in the Pacific Islands* (2012).

<sup>79</sup> At the time of writing, Bainimarama is not only Prime Minister, but also Minister for iTaukei Affairs, for Sugar and for Foreign Affairs. Sayed-Khaiyum is the Attorney-General, but also Minister for the Economy, for Public Enterprises, for the Civil Service, for Communications, for Climate Change, for Elections, and Acting Minister for Education. At a \$4 minimum wage rally in Suva in October 2017, Felix Anthony, the General-Secretary of the Fiji Trade Union congress referred to the ‘Minister for everything’. The crowd knew he meant the Attorney-General.

resign their seat. Combined with the delayed restart of municipal elections,<sup>80</sup> government control over parliamentary committees,<sup>81</sup> and the timidity of the press following the sedition charges levelled at *The Fiji Times*,<sup>82</sup> the old intermediaries that represented particular concerns to government have struggled to get their messages heard. Capitalising on this representation gap, and his everyman approachability,<sup>83</sup> Bainimarama encourages the people to directly contact his office regarding their problems. As such, the delivery or remediation of state services is increasingly received as a special intervention by the Prime Minister. This has enabled Bainimarama to individually build up tremendous, political capital. One example of this personal style governance is the naming of the compensation fund responding to the devastation wrought by Cyclone Winston as the Prime Minister's Fund.<sup>84</sup> *The Fiji Sun*, a government-friendly newspaper, reports that this foregrounding of the Prime Minister has led some villages to refer to Bainimarama as 'a messiah'.<sup>85</sup> Another typical story, again in the *Fiji Sun*, recounts how Bainimarama sped up a Rural Service License application for two minivan drivers. The happy pair declared, 'That is why we came down from Nadi [to Suva]. We knew that he will be able to sort out any issue... he is the best Prime Minister, anyone can come up and speak to him knowing he will help.'

When secularism is perceived as emerging from and facilitating such a top-loading of government, the indigenous lament of a secular state is not merely about the loss of political paramountcy. It relates to what is seen as the clearing out of the public space. This includes

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<sup>80</sup> Nasik Swami, 'Fiji Opposition Leader questions delay in Local Government Elections' *Pacific Islands Report* (Honolulu, Hawaii) 21 March 2017, <http://www.pireport.org/articles/2017/03/21/fiji-opposition-leader-questions-delay-local-government-elections> (Accessed 12 September 2017).

<sup>81</sup> For instance, when National Federation Party Leader and opposition MP Biman Prasad was chair of the Parliamentary Accounts Committee he raised several difficult issues for the government regarding budget discrepancies. The government mobilised, standing orders changed, Prasad was pushed out, and he was replaced with the government whip Ashneel Sudhakar. See Staff Writers, 'Biman Prasad Voted out as Chair of Public Accounts Committee' *NewsWire*, (Suva, Fiji) 12 May 2016 <https://www.newswire.com.fj/national/parliament/biman-prasad-voted-out-as-chair-of-public-accounts-committee/> (Accessed 24 January 2016).

<sup>82</sup> Anonymous, 'Amnesty International calls for Fiji Times sedition charges to be dropped' *ABC News* (Sydney, Australia) 30 March 2017, <http://www.abc.net.au/news/2017-03-29/amnesty-calls-for-fiji-times-sedition-charges-to-be-dropped/8398600> (Accessed 11 September 2017).

<sup>83</sup> The fact that Bainimarama is not a chief avoids any ritual impediment to commoners approaching the Prime Minister directly. The same cannot be said regarding the chiefly Leader of the Opposition, Adi Ro Teimumu Kepa.

<sup>84</sup> Government of Fiji, 'Fiji Government Establishes Disaster Relief Funds' (Press Release, 22 February 2016) <http://www.fiji.gov.fj/Media-Center/Press-Releases/FIJIAN-GOVERNMENT-ESTABLISHES-DISASTER-RELIEF-FUND.aspx> (Accessed 14 September 2017).

<sup>85</sup> Nemani Delaibatiki, 'Villagers Hail PM a 'messiah'' *Fiji Sun* (Suva, Fiji) 25 February 2016 <http://fijisun.com.fj/2016/02/25/villagers-hail-pm-a-messiah/> (Accessed 13 September 2017).

not only Christian spiritual or moral values, but also the democratic ideals of consensus and deliberation, and diminishes political input from culturally authoritative voices. The clamp down on political expression supporting a three pillars ideology, either through prosecuting newspapers for sedition, or suspending MPs through parliamentary privilege, is justified by the government in terms of preventing Fiji from backsliding into a politics of race. Yet it also echoes cases of democratic decay, constitutional capture and the thinning of civil society taking place elsewhere in the world. The irony – and principle difference from emergent populisms elsewhere in the world – is that the Government’s pursuit of such forceful politics is undertaken with the expressed goal of securing the new Constitution, not undermining it. The newly proposed anti-defamation bill protecting the sanctity of parliament risks a similar error.<sup>86</sup> In the name of protecting its legal and political institutions, it embeds within Fiji’s system of governance a form of auto-immunity. An overbearing enforcement and protection of liberal values attack the very liberal values it seeks to champion. The secularism of the 2013 Constitution is presented by the government as both emancipatory and decolonizing. Yet with this reading of the Government’s politics, combined with the association of secularism with exploitative capitalism and problematic ‘modern values’, those opposed to the government claim it is hegemonic and neo-colonial.

## CONCLUSION

The historian Christine Weir, writing on the post-2013 turn of the Methodist church away from politics, argued that in addition to the pressure applied by the Bainimarama government, this wind of change was due to the internal triumph of ‘moderate’ church leaders over its ‘nationalist’ elements.<sup>87</sup> This focus on the multivocality of religious institutions is important. It highlights how government might prevent religious institutions moving into nationalist politics without having to resort to authoritarian measures that violate religious freedom. Indeed, such strong-arm tactics by the state more often offer succour to religious nationalists, whilst weakening the authority of religious moderates.<sup>88</sup> Where concessions can be made to majority religious groups without violating the religious freedom of other groups, it can demonstrate the value of cooperation with the secular state and strengthen the position of moderate voices. To an extent, the roll-out of the 2013 Constitution has adopted some of this

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<sup>86</sup> *Parliamentary Powers and Privileges Bill 2016* (Fiji) s 24.

<sup>87</sup> Christine Weir, ‘The 2014 Fiji Elections and the Methodist Church’ (2015) 104:2 *The Round Table* 165-175.

<sup>88</sup> The work of Alfred Stepan and his ‘twin tolerations’ is instructive here. Alfred Stepan, ‘Religion, Democracy, and the ‘Twin Tolerations’’ (2004) 11:4. *Journal of Democracy* 37-57.

conciliatory thinking, though through a general openness to theism as opposed to any special recognition for Christianity. In addition to the continuing right of religious institutions to run education centres, there are other areas where the separation of religion and state is momentarily misplaced. A theistically-inclusive Parliamentary prayer has been formalised into the daily opening of parliament. The introduction of school morning pledges includes the line 'I will believe in myself through faith in God'. And while sexual equality is affirmed in the 2013 Constitution, a later clause confirms that sexual equality does not mean marriage equality. An open-door for the introduction of same-sex marriage into Fiji being perceived as provocation too far for Fiji's religious communities.

To return to the framing question of this paper, while Fiji has never technically been a Christian State, the secularism of the 2013 Constitution does indeed present something new. This novelty, however, is more a matter of political context than legal innovation. The secularism of Fiji's previous constitutions was largely apolitical, focusing on the individual right to religious freedom. The Bainimarama government argued that this narrowness of application is precisely why it failed to protect this right. The 2013 Constitution, by contrast has turned secularism into a key component of its political governmentality. The secularism of the 2013 Constitution persists within a configuration of policies that directly attack the ideology and institutions of the three pillars. Fiji's new secularism is framed principally by that which it seeks to demolish, the politics of race. Fiji's previous constitutions declared freedom of religion, but then offered concessions, including Christianity within its constitutional symbolism. These are compromises the Bainimarama government refused to make. The 2013 Constitution has not aimed to coexist with Christian identity politics, but has pursued its wholesale replacement. The symbolism of the 2013 Constitution preamble is instead used for the reification of a new and modern nation-state that is meant to transcend religious markers of racial difference.

A re-emergence of Christian-nationalism in Fiji, for the moment, seems doubtful. Former leaders of the movement are now old or passed away, and the government's new national platform has garnered genuine and widespread support. Yet significant areas of remaining political uncertainty, such as the likely power-vacuum should Bainimarama unexpectedly leave national politics, mean the possibility cannot be ruled out. Whether the form of Fiji's secularism continues as it is in the 2013 Constitution will depend on the political will of

whoever assumes office to continue chasing the institutions of the three pillars to the margins of Fijian politics.