Private Constitution Review Submission
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1. Why does Fiji even need a Constitutional Commission? Well, leaving aside the charade that a new Constitution is actually Fiji's most pressing need at this time, we can admit that the current Constitution is not perfect, and could stand some upgrades. Since it is a living document, such an investigation and process ought not present too many problems. The underlying assumption here though, is that the future will be appreciably better than the present, as a result of making insightful changes. The converse is also true – simply making changes to the Constitution in and of itself is no guarantee that a "better Fiji" will result.

2. The problem with that expectation, though, is that there is a window-of-macro-economic-opportunity-cost open to Fiji, which is also rapidly closing (if not already closed) now from the ongoing economic damage of the 2006 coup. Essentially this means, that from a macro-economic standpoint at least, the chances of Fiji emerging financially & economically better off now as a result of any "new direction" from any Constitution review exercise, are becoming vanishingly small (see Wadan Narsey's "Grim Truth behind Growth Rates" article @ http://narseyonfiji.wordpress.com/2012/03/17/grim-truth-behind-growth-rates-the-fiji-times-13-september-2008/). Since most ideals that the Charter explicitly aspires to accomplish require sufficient financial wherewithal to accomplish them, this means that a "better" future for Fiji is actually an opportunity cost illusion if we continue to waste time using kid gloves on what should otherwise be a fairly straightforward exercise, with really just a handful of obvious and simple constitutional "problems" in need of equally obvious and simple (and non-treasonous) solutions.

3. Before we set ourselves about the task of recommending changes to our Constitution, it is worth appraising ourselves as to why Fiji would even need a Constitution in the first place. The best rationale, in my view, is the one behind the formulation of the American (US) Constitution. Having been populated by migrants who fled the abuse of government power by state and church in Europe, and then again having faced the arbitrary, unjust and unrestrained abuse of colonial power by King James of England, the US Founding Fathers were well acquainted with the potential for government power to be used for injustice, just as easily as for justice. So they came up with a Constitutional system of checks and balances around the use of government power, to guard against what they themselves had suffered under for so long - the abuse of political power by either the ruling elite, or the popular majority.

4. The US Founding Fathers were not only trying to avoid injustice and political/religious persecution, though. They were also trying to establish justice. As a nation of Reformation-era Christians, they clearly understood that justice and righteousness were the Biblical pre-requisites for the ultimate Christian goal of having God, and not man, as ruler (via the Rule of Law, eg. The Latin inscription over the main entrance of Langdell Law Hall, Harvard: NON SVB HOMINE SED SVB DEO ET LEGE, translation "Not under man but under God and Law" – invoked by VP Al Gore in his 2000 concession speech). Anyway, the US Founding Fathers drew many of their Constitutional ideas from the Bible in an attempt to seek not only the abiding blessings of heaven, but ALSO to likewise secure the abiding respect and compliance of the (majority Christian) populace of America. Many of the Biblical ideals they cherished in their day (the Rule of Law, Equality before the Law, Freedom of Conscience, the Dignity of Man, inalienable Rights of Man etc), are still cherished in the modern world today (though perhaps not understood in precisely the same

way). The point is that because the US Founding Fathers were able to demonstrate to their majority Christian constituency that the principles upon which they constructed their Constitution were indeed Biblical, these principles were therefore also SEEN as being transcendent (and therefore unchangeable and unchallengeable).

5. Since the US Constitution therefore "came from God", it thereby automatically secured the abiding obeisance and respect of most American Christians for succeeding generations. So you didn't see thereafter the phenomenon of rulers of succeeding generations trying to change their Constitution to suit themselves, or to suit the politics of their day, since most elected officials shared that same respect/obeisance for their Constitution's transcendence (In fact, the only subsequent amendments to the US Constitution, were made using the very SAME guiding principles and ideologies that the Founding Fathers used to draw it up).

6. Quote from George Washington's opening address to the inaugural US Congress in 1889, attesting his (and therefore his nation's) spiritually-founded worldview of the American political and Constitutional system: "*I dwell on this prospect with every satisfaction which an ardent love for my Country can inspire: since there is no truth more thoroughly established, than that there exists in the oeconomy (sic) and course of nature, an indissoluble union between virtue and happiness, between duty and advantage, between the genuine maxims of an honest and magnanimous policy, and the solid rewards of public prosperity and felicity: Since we ought to be no less persuaded that the propitious smiles of Heaven, can never be expected on a nation that disregards the eternal rules of order and right, which Heaven itself has ordained: And since the preservation of the sacred fire of liberty, and the destiny of the Republican model of Government, are justly considered as deeply, perhaps as finally staked, on the experiment entrusted to the hands of the American people."*

7. It is clear from the above quote that Washington and the inaugural US Congress believed very strongly that there was an "indissoluble union" between good conduct/good laws/good conscience according to Heaven's "eternal rules of order and right" on the one hand, and good outcomes, blessings and "smiles of Heaven" on the other. Not only that, but it is also clear that Washington and the Congress he addressed, also saw the US's Republican model of Government as the truest and purest empirical "test" of those ideals, anywhere in the world, or in its history.

8. Just over 150 years later, the United States of America had become the richest, most powerful, most technologically advanced nation the world had ever seen. Nations like Egypt, India & China had had thousands of years of civilized history before Western Europe even knew the continent of America even existed. Yet from a solid Constitutional, legal and ethical foundation (not that they were always perfect), the nation of America was able to trade-leverage off from and then "overtake" EVERY other nation on the face of the earth in a little over 150 years.

9. Nowadays that the US is no longer majority Christian (or is at best only nominally Christian without seriously understanding, living, following Christian principles in real life - somewhat like Fiji herself), the American peoples' respect for their (Biblically-derived) Constitution is nonetheless still there. That Constitutional respect is no longer primarily driven by popular respect for its Biblical foundations and Biblical principles, though. It is instead now under-pinned by the American peoples' empirical experience of having lived, prospered and benefited, under the proven and manifest wisdom of those same Constitutional principles, for over 200 years.

10. The US example and experience establishes at least three clear issues about which the Fiji Constitutional Commission needs to be cognizant. The 1st of these is that any Fiji Constitution should only address itself to transcendent principles and issues of governance, and must not give in to the temptation to raise non-transcendent political issues of the day into its purveyance, and into the realm of attempted "Constitutional micro-management". The purpose of the Constitution is to set out the framework within which the people and leaders of the day can pursue whatever goals and ideals they set themselves. It is largely therefore about ruling out the very worst excesses of abuse of power/office/democratic predominance (and the imperfect human tendency to fall repeatedly into these) in our national political pursuit of whatever our goals and ideals may happen to evolve into. The reason we need to do this is evident and well-documented human frailty. Since power can corrupt, we must put in place restrictions to prevent democratic power corrupting the majority into a habit of passing any law in their own favour, whenever they feel like it. That does not mean that the political minority can veto any law from being passed just because they don't like it, either. But it does mean minority rights should always be protected, and that the majority can NEVER abuse the political process to infringe minority rights in their own perceived (majority) political self-interest or preferences.

11. Fiji's 2nd takeaway issue from the American Constitutional experience, is that any Fiji Constitution must not only encapsulate transcendent governance principles, and checks & balances on the use of governmental power. It must also be SEEN and UNDERSTOOD by our own people (now and in future) to encapsulate these. This is where the Fiji regime's insistence on the inclusion of "non negotiable" principles, is unhelpful at best. In my own view, most of the regime's "non negotiables" ARE actually beneficial and transcendent principles. The problem is that they are not only NOT understood as such, they haven't even been explained in any way that could lead to any such understanding. This is, and will continue to be, a problem, until redressed into broad acceptance by the majority.

12. The 3rd takeaway issue from the American Constitutional experience, is that in the end, Fiji's Constitution "needs to deliver" in the real world. Of course we should not expect it to achieve what it simply cannot achieve. And we certainly should not expect it to achieve anything if we don't obey it or respect it first ourselves. But in the final analysis, unless the people of Fiji actually see and experience a "better Fiji" arising (however belatedly) out of this latest Constitutional review exercise, they will probably just abandon these current efforts and continue searching elsewhere and elsewhen – perhaps even supporting treason (yet again) in that same search. Therefore Fiji must resist the urge to elevate politically or rhetorically expedient issues of today or yesterday into Constitutional prominence, because the risk would be that these would dilute and distract from the effectiveness of the real and proven legal principles that should make it into the Constitution on their own merit.

13. Fiji is not a trailblazer in regard to our current Constitutional revision efforts. Many effective Constitutional principles and doctrines have already been tested and established in the historical experience of other nations (as with the US example we have considered above). If Fiji still continues to have political troubles after again adopting and re-implementing such well-established principles, then we can say our problem probably does not lay with our Constitution, it is more likely with we ourselves. So again, Fiji needs to resist the temptation to re-invent the wheel, and just stick largely to proven concepts and Constitutional orthodoxy. That doesn't mean to say that we *may* need to try "thinking outside the box" in a couple of respects. But by and large, the majority of our efforts in terms of Constitutional principles should start out from the proven and the orthodox. This is

because we need to deliver results, and Constitutional adventures can not only not guarantee that, they also can't replace the time and effort we'd waste on probable missteps, either.

14. This brings up the related issue of what we should and should not expect, from the law, and from our legal/constitutional tinkering. The law is good for what it is good for, but it should not be seen as a panacea. It is merely one (admittedly the main) element of social change, or social entrenchment. But there are other vehicles for social change and influence, too. These include social norms, family, community and spiritual values, peer groups, historical grudges & resentments, cultural legends, inspirational stories, role models, heroes, leadership, trends, fashion, dialogue, public and political debate, media editorial policy and social memes, etc. We should not fall for the (erroneous) temptation of thinking that we can "short-cut" the process of social change by passing quick and dirty laws to try and cover everything (which laws might never achieve what these other forms of social influence might be better suited to achieving in the first place, anyway).

15. Even within the realm of Law, it is not always the application of the law that effects desired change. A prime example is the modern governance model of an eco-system of independent statutory institutions (eg. Judiciary, Reserve Bank, Provident Fund, Free Press, Enforcement Agencies, Parliament etc.) Here it is the delicate interplay of the independent outcomes from each institution acting within its own TOR, which will deliver an optimum "equilibrium" national outcome over time. Any clumsy and direct use of government power and law to try and impose some arbitrary pre-determined outcome over the top of this, or to favour one institution over another, will simply upset that delicate balance, resulting in not only in unexpected sub-optimal outcomes elsewhere, but also instability in the whole eco-system itself. What is required here therefore is understanding of the application of law WITHIN the purview of whatever institution is concerned, and then understanding the systemic interdependences and effectualities between that institution and the others, within the overall context of the national governance "eco-system" amongst these independent statutory institutions.

16. It is important to raise this "eco-system" concept since it is not one that comes easily to the understanding of the militarily-trained mind. Soldiers understand the model/concept of full and unified obedience to centralized control. As a result of being trained and formed in that environment, they cannot readily comprehend how any benefit could come from independent institutional briefs as checks & balances on the exercise of any power. The idea of checks and balances is the PREVENTION of (expensive) mistakes. But to the narrow militarily-trained mind, such checks & balances are simply an impediment to command control of achieving overall mission objectives.

17. "Thought policing" is another area where the law is simply inadequate for any kind of intervention. This should not only never be attempted – it should not even ever be contemplated. That statement would normally be considered as basic commonsense in the modern civilized age. But Fiji's experience over the last 6 years or so suggests that it isn't. At least not in our case. For example, "thought policing" has been the Fiji's regime's preferred means for dealing with issues like securing their own rule, or pre-empting potential future political instability, for much of their time in government. But thought-policing not only turns the justice system into an injustice system, it punishes people who have not committed any crime! And that just on the suspicion that they might commit one. In fact, in Fiji thought-policing or instability-preemption has been used as a pretext to remove rights from whole groups, simply on the basis of allegations by the regime, of purported ill-intent by some.

18. I speak here particularly about the treatment of the Methodist Church in Fiji. The banning of public meetings by church groups simply on the pretext by the regime that someone might make a racist utterance, is as ridiculous as it is incredible. Firstly, if making racist statements is a crime, then punish the offenders themselves AFTER they have offended. But don't remove the right of assembly of all just because some may or may not offend. Secondly, when security agents overseas intervene for security concerns in security matters, they intervene in specific instances against specific suspects based on credible and actionable intelligence/surveillance about those suspects. How is it even possible, let alone credible, that the Fiji Regime could have collated serious and timely intelligence of possible "racist" intent by even one-tenth of the current Fiji Methodist church membership at any time? This kind of silliness is not only wrong, it also creates a sense of injustice and resentment. And if that kind of resentment festers for long enough, it can create all kinds of problems under the surface, and even outside the law. No leader can seriously expect to inspire anyone if he is associated with it. And no Fiji Constitution can contemplate a state of affairs where its system of justice instead becomes a tool for this kind of state injustice.

19. There are certain other basic legal principles that should not need spelling out in any civilized nation, either. But again, the conduct and apparent obliviousness of the Fiji Regime has demonstrated that we cannot rely on any such assumption. So here goes: 1. Human Dignity (The law must respect and establish the innate and inalienable principle of human dignity, in the form of human rights. These cannot be set aside for mere politics); 2. The Rule of Law (Fiji must be ruled by law, not by rules, decrees, or the whims of those in power); 3. Equality before the Law (The law must be "blind" to who is in front of it seeking justice. The government or the rich/famous/connected have no more right justice than the poor or the homeless. Although human rights would take primacy of place in any legal appraisal, equality before the law would suggest that apart from human rights concerns, the balance of justice should tend neither favour the state over individuals (as we tend to see in China, say). Nor should it tend to favour individuals too much over the state, (as we often see in India – since under-development is an injustice all of its own); 4. The Burden of Proof ("It is better that ten guilty persons escape, than even one innocent suffer" – Lord Blackstone. The legal system cannot be characterized by obsessive witch-hunts against the perceived political enemies of the ruling elite, like it appears now. Nor should it obsessively pursue suspects who have been made to look bad in "trials by the Media", or patsies being lined-up for "jail somebody" prosecutions because government is trying to escape public "heat" and backlash from outrageous crimes reported in the media); 5. Due Process (All parties seeking justice before the courts are entitled to the passage of the "due process" of the legal system. Punishments, or acquittals, cannot be levied UNTIL AFTER this any due process ie. Fiji cannot use malicious prosecutions, or harsh bail conditions under the prosecution process, to punish accused who it thinks are guilty of a crime BEFORE the courts have found them guilty); 6. Priority (more weighty and fundamental principles of law must take greater priority and precedence over less weighty and fundamental issues. Human rights, for instance, cannot be set aside for the political "hot button" issues of the day, or for the interests or initiatives of the Government of the Day – as we have witnessed in Fiji since 2006); 7. Proportionality (Punishments must fit the crimes they are levied against. Punishment should neither be too onerous, nor too light); 8. Specificity (There must be specific sanctions, or range of sanctions, for specific crimes, and punishments can ONLY be instituted against specifically-identified offenders who have been found guilty before a competent court); 9. Judicial Independence (The Fiji Judiciary should be clearly and patently seen to be independent. A contrived appearance of independence as a façade for behind-the-scenes machinations is not the same thing. I will deal with this point again in its

own clause, since it is such a critical issue); 10. Proactivity (Retroactive or retrospective legislation is not only conceptually unfair, it is also economically very destabilizing. Commercial appetite for investment will be seriously tempered if people fret about the possible passage of unspecified future legislation that might come back to bite them in a way that they are not aware of at the time of their investment)

20. A related area to "thought policing", are the Fiji regime's attempts at centralized language control. These, like any language control attempts, are clumsy, oafish and ultimately ineffective. They can only really be strictly enforced under totalitarian system and so have no place in any Fiji of the future. Even under totalitarian enforcement, language control still cannot sustainably engineer social change in respect of certain things that are important or sacred to the people themselves. Communal identity for instance, will never be changed by language control. Trying to do this will simply leave any legitimate government in the unenviable position of having to punish people who don't comply against their personal conscience and beliefs. This presents two options – both of them unworkable: 1. The injustice of too much punishment from a brutish law enforcing a perceived "trivial" or "arbitrary" initiative, or; 2. The irrelevance of too little punishment that holds no trepidation to the conscientious objector (and his audience/supporters). Neither possibility is sufficient to solve, let alone significantly influence, the "problem" they are addressed to.

21. The issue of judicial independence holds a particular significance for any Constitution Review process. Specifically, it is the judiciary that will uphold or interpret any Constitution in respect of any future issue of possible Government breach(es) or abuse(s). If such a judiciary is beholden, or seen to be beholden, to the Government of the Day in any respect, then the idea of any Constitutional checks and balances against its abuse of governing and popular democratic power, is effectively moot. This does not mean to say that we are proclaiming that the judiciary is fully dependent, or independent. But it does mean that if there is any suspicion of even some measure of accommodation, then there would be little point in reviewing and changing the Constitution in the first place, since those changes have been designed to achieve specific objectives that they are unlikely to achieve IF NOT UPHELD IN THE WAY THEY WERE INTENDED AND DESIGNED.

22. In this respect, Fiji may already have a case (or at least some questions) to answer and clear. The relevant questions/allegations can be found here: https://docs.google.com/viewer?a=v&q=cache:XN3j68-dZ-sJ:www.ibanet.org/Document/Default.aspx%3FDocumentUid%3DF9CF0D75-3761-41E3-AB4A-3EBD48F33485+law+charity+of+england+%26+wales+review+of+Fiji+judiciary&hl=en&pid=bl&srcid=ADGEEShQA5ggcv0tNIas6MIUoLdSsOdoj60s4QA01gs9s9nXXA0E_0GnJiuszXITfh3ksysh_bNkOQ_ixzsiOVBV7YQ56H1OS3oqsPG5UoIUmIXYfK5IAOOMLvGjMkHPDyAX7JA1Qb22&sig=AHIEtbQDn2zVnjutoeyLWcvET9XpEtZ0vA

And here: http://fijigirl.files.wordpress.com/2012/09/final-petition-of-william-r-marshall.pdf

Detailed and knowledgeable allegations like these cannot simply be dismissed out of hand. They are unique in Fiji's judicial history, and credible peace of mind for the people of Fiji in their respect can only be reliably resolved by an appropriately and independently appointed, empowered, resourced and qualified Commission of Enquiry. I don't think it is enough to simply assume full judicial independence and then enforce that assumption by the use of prosecutions against doubters (using the self-same judiciary). The plain fact of the matter here is that the executive and the legislature in Fiji today are essentially a single entity that has ALL

power to promulgate any decree it wants, or to sack any civil servant it wants to sack. That kind of power cannot just be "pooh-poohed" as no possible threat to any institutional independence. At the VERY least, the practice of non-renewal of judicial and magisterial employment contracts in Fiji without any explanation or reason whatsoever, must stop forthwith.

23. Non Negotiables. These are mostly OK, and many indeed represent the kind of transcendent principles that should not be breached in the normal Constitutional matter of course in any country. Some though are simply fair ideas rather than transcendent principles. So those should instead see enactment as normal legislation, rather than Constitutional provisions. Even so, these principles are still problematic in the sense that I have already pointed out earlier (of having not garnered any real public acceptance or even understanding, prior to adoption). But that is not the only difficulty here because we also have the additional problem of interpretation. As with anything, these principles can mean different things (or have different priorities) to different people. Is Fiji going to going to have coups in future again just because military officers who were not elected into government, disagree with those who <u>were</u> elected (or the Fiji Courts) on the meanings, or and priorities, of these principles? Or on the role of the military in "guaranteeing" them? From a practical standpoint then, everybody needs to be clear BEFOREHAND what the requirement of these "non negotiable" principles actually mean, before deciding whether or not to participate or acquiesce in the process where these have been proclaimed.

24. I will not be addressing most of these "Non Negotiables" here, as most are, by and large, non-controversial (notwithstanding my previous comments that forcing these on the Fiji populace cannot be expected to bring either acceptance, or stability). There is one "non negotiable" though, that to me as a Christian, could prove problematic in future. And that is the requirement for Fiji to be a "Secular State". What precisely is meant by this declaration? If it is to mean that the law-making process and governance of Fiji in future is not to favour any particular religion or religious group (including agnostics or atheists), then that would be perfectly OK. But if it is to mean that secular values and ideas are to take precedence over spiritual ones in the conduct of public life in Fiji, then that may be a problem.

25. The many calls for Fiji to be declared a "Christian" State during this process are as controversial as they are misunderstood – on both sides of the religious divide. Most of those "for" a Christian State appear to want this to either: A. Stop the "creep" of western liberal morality into the Fiji law-making scene, as its dominant governing principle (thereby creating a system of laws that, in some respects, don't make moral sense to majority ethnic Fijians); B. Function as a pretext for God to be able to bless the nation of Fiji (as the Americans had earlier seen their nation "blessed"), or else; C. Be some kind of legal "safety net" against the coming of what the Bible refers to the "end times" (prior to the return of Christ to earth, when Christians and Jews suffer both great apostasy and great persecution). Unfortunately, none of these purported "needs" are fulfilled to any satisfactory degree by the idea of a "Christian State".

26. From my enquiries with some of those advocating a "Christian" state, secular morality (particularly some of its counter-intuitive "bad is good" and subjective "anything is possible" aspects) seems to comprise their biggest objection. So Constitutional affirmation of Christian values via a "Christian state" is seen as the best way of stopping that legislative "rot". Unfortunately for them though, the body of Fiji law has <u>already</u> been "contaminated" by western liberal ideals, principles and, most significantly, <u>legal precedent</u> over the last 20 or so years of our legislative and judicial history. Furthermore, Fiji is affiliated to a number of UN agencies whose direction is likewise being driven by western liberal ideals. And we

are also signatories to a number of international treaties that have already been formulated out of western liberal ideology. So the "horse" has probably already bolted in respect of this rationale for calling for Fiji to be a "Christian state".

27. God does not prescribe any methodology in Scripture by which the legal and political entity of a modern nation state ought to have, or seek, a viable and ongoing relationship with Him (and receive the discipline, promises and blessings such a relationship would entail). That kind of relationship is clearly available in Scripture to individuals, and to tribal groups. But it is not available to the kind of entity we know today as the modern nation state WITHOUT ALL MEMBERS (OR LEADERS) amongst the people themselves, agreeing (the nation of Israel dedicated itself to God in Solomon's Temple, and became very blessed and powerful during Solomon's reign. But his son Rehoboam, essentially broke that covenant and it was all downhill from there until the Jews were eventually taken into captivity in Babylon). If most Fiji citizens eventually convert to Christianity and then ask for this themselves, that will be a different matter. But we cannot just make this kind of declaration over the top of others' objections, free will or diversity, and then expect it to mean something to God. So in summary, if all the people or leaders Fiji don't want or ask for this themselves in the first place, then calls for Fiji to be declared a "Christian State" are effectively insignificant in both temporally and spiritually. Religious bodies may be able to band together around certain common principles upon which they all agree, to arrest subjective "morality creep". But that is not the same thing as this.

28. Finally, the Bible tells Christians about the "end-times" not so we can avoid them, but rather so that we will not panic when they happen (since we already know they are coming, and what they entail). The relevant Biblical instructions about the end-times are to "stand firm", "pray" and "make up your minds beforehand not to worry how we are to defend yourselves". These then, do not include erecting pointless "levee laws" to try and circumvent end-times "troubles" (which cannot be stopped by anything anyway). The "strength" of Christians and Jews during those "end times" is to be our strength of unity, faith, prayer, obedience and living relationship with God's Holy Spirit – just as it has always supposed to be anyway! Only more so! So here again, there is no Biblical justification for Fiji to be declared a "Christian State", either.

29. So while there are no significant doctrinal, religious or theological grounds to believe that calls for Fiji to be declared a Christian state will bring any real benefits, the same cannot be said for its potential to do harm. For a start, such calls are a subtle rejection of those who follow other religions. One of the main reason for the significant, long-standing and disruptive Indian political resentment that we have in Fiji today, is the long-standing "rejection" (or 2nd-class citizenship) that they have felt victim of for so long in Fiji. This will just be more salt in that wound. Secondly, Constitutional guidelines are supposed to set out restrictions on the use of power by the majority. The declaration of a Christian state would be, by contrast, an encouragement (or a temptation) for the majority to restrict the religious rights of the minorities. This was exactly why the religious reformation refugees of Europe fled to America, and set up so many Constitutional protections AGAINST this kind of possibility. To do so would be setting ourselves up to fall into the same trap that the US Founding Fathers fought and strategized so hard to protect themselves against.

30. These issues are separate and distinct from the idea of whether or not any Government wishes to adopt Christian principles in the making of the nation's laws, or the running of the nation's affairs. Just as with *any* policy rationale, political leaders should be free to both adopt and abandon those principles as and when they saw politically fit. If such policies

delivered politically popular outcomes, then stick with them. If not, then vote for some other policy or party. So whilst Christian principles need not be enshrined in Fiji's Constitution, neither should they be ruled out by it as well. Just allow them to be an option, and let their results speak for themselves.

31. The best advertisement (or otherwise) for the purported benefits of Christianity is always going to Christian life witness and experience itself, anyway. If we Christians are living by our Christian life values and getting obvious blessings and results (like the Americans did), we will not have to worry about legally elevating our values and principles to any kind of special Constitutional status. People will be running after us themselves to find out "what's our secret"? This is why the American Founding Fathers and generations, though they were vast majority Reformation Christians themselves, nonetheless did not reserve any special place for Christianity in their Constitution. In their view, as long as they could live out their faith without persecution and harassment, their lives, words, blessings, joy and Christ-likeness would speak for themselves. So all they did was to put in checks and balances against the kind of state interference which some in Fiji are now contemplating (and which is happening today in America anyway, despite the fears and wishes of the Founding Fathers).

32. As things currently stand in Fiji then, Christians here would be far better off occupying ourselves in trying to pray, think and confer about the answer to the question of why Reformation Christians in Europe and America (or Jews throughout the ages) were so blessed, prosperous, faithful and righteous in so many areas of their lives, whilst we in Fiji are just as apparently not (according to most non Christians here, anyway). Why did Judeo-Christian values produce so much wealth, prosperity, industry, charity, morality, and knowledge in their respective historical instances, but has failed to replicate those in 21st century Fiji? What did their version of Christianity have then, that our version of it here in Fiji currently lacks?

33. Following is an excerpt from "The Integrated Life" by Ken Eldred, which show how Judeo-Christian values, and Christians actually living them out authentically, CAN impact the socio-economy: "*In 1993, the Nobel Prize in Economics was awarded to Dr. Douglass North for his work on institutional economics. His conclusions have very quietly revolutionized economic thinking. Dr. North proved a direct link between long-term successful economic development and certain institutions in society. What does "institution" mean in this context? It is the codification of values as broad agreements among a whole population-in other words, the accepted norms for regulating the society's commerce and other activities, such as politics. Dr. North proved that a society's formal rules of the political system (constitutions, laws, regulations) and informal rules of the moral-cultural system (morals, conventions, social norms) lay the foundation for its economic performance... Douglass North showed that the internalization of biblical values in a culture leads to more business success... [The] trust factor, when pervasive in a society, is one of the "institutions" of which Dr. North speaks-institutions that lead to a better economy. Other institutions include hope, honesty, respect, accountability, integrity, rule of law, and property rights - all biblical values that build spiritual capital. These moral-cultural values directly affect the level of success of a society, a point the Nobel Committee believed North proved conclusively."*

34. That said, the Fiji Constitutional Commission still needs to be pro-active in outlining upfront exactly what a secular state does, and DOES NOT, mean? The key idea in this concept is that of "the separation of church and state". This idea again comes from the US

Constitutional experience, although in this particular case, from its First Amendment. The clause in question is the so-called "Establishment Clause" that the US "Congress shall make no law respecting the establishment of a religion". The clear intent of this law would have been obvious from the viewpoint of the majority of Reformation Christians in America at the time. They were mostly religious refugees who had fled to the denominational "freedom" of America from the religious persecution in Europe at the hands of the "official" church, or the State-recognized church. State religion or State churches had always equated to the persecution of non-member Christians in their European experience (or ancestral history). So the founding generation Americans did not ever want to see any State religion or denomination established in their new home either, to possibly persecute them or their descendants or any other group again in their new home. So they passed a Constitutional Amendment to prevent any State religion or denomination ever being established in their new homeland. They most definitely did not intend this clause to be a restriction on the freedom to public practice of religious observance that it has now become in the US. And they certainly (by reference to Washington's inaugural Congressional speech) did not intend the Establishment Clause to blot out ANY spiritual discourse or conduct whatsoever, from public life in America. The very first act of the first elected US Congress, following Washington's speech, was to go over to the local church and pray for the future of their nation. For one whole hour! And all the Congressmen went and participated. This could hardly be interpreted as the act of people who had no intention or desire for their ancestors or successors to inherit the same privilege.

35. The problem with this Establishment Clause, is that it has come to be interpreted differently these days, to the way it was originally interpreted by the Amending Fathers and accepted by subsequent generations. The main basis of that re-interpretation is a letter written by one of the Founding Fathers, Thomas Jefferson, to the Danbury Baptists of his day. This letter referred to a "wall of separation" between Church and State in respect of the personal practice of religious beliefs. Again, the clear intent of Jefferson has somehow been lost in the present age. Jefferson's "wall of separation" clearly spells out that not only should Congress not "establish any state religion", but neither should it (or any law it passes) in any way interfere with the free exercise of personal religion. Somehow, that 2nd "no restrictions" part of Jefferson's commitment got TOTALLY lost in the interpretation of the modern meaning of Establishment Clause. Meanwhile, the 1st part of Jefferson's guarantee also got almost completely re-interpreted itself as some kind of hypersensitive "kryptonite" expel-all. So somehow "No law to establish any (state) religion" now means "No act, speech or expression of any kind in public by public officials that could be even remotely interpreted as religious in any respect"! Is there any rational person anywhere who believes that a public expression of faith by an individual in public office, amounts to anywhere near the same thing as "establishing a religion"?

36. These days in America, politicians can no longer "freely exercise their personal religious beliefs" in public, as politicians once used to be able to do when America was first founded. They cannot pray in public, they cannot display the 10 Commandments in public, and they cannot pass laws that would allow for "Intelligent Design" curricula to be taught in US schools. Judicial activist revisionism of a most inaccurate type is responsible this treacherous state of affairs.

37. To prevent similar illogical activist inversion happening again in Fiji, it is therefore necessary to spell out right now, in view of the REAL and original meaning of the "separation of church and state", what the idea and ideal of a non-negotiable "Secular State" actually therefore means:

35a. A "Secular State" does NOT and cannot mean any restriction against the free religious practice of prayer in school or in public (including parliamentarians or civil servants). This is clear from the American experience highlighted, above. Fiji would have to accept logical nonsense if we accepted the legal arguments that have led to this state of affairs there.
35b. A "Secular State" does NOT and cannot mean any restriction against the free religious practice of public or private evangelism or proselytizing (ditto above)
35c. A "Secular State" does NOT and cannot mean any legal impediment against teaching of creation science or "intelligent design" in school. The Theory of Evolution is just as much a religion as Buddhism or Animism. Even though its "scientific" credentials are more well-established and well-documented, at its core The Theory of Evolution is founded on the unproveable religious belief that "There is no God, who therefore could have played no role at all in the appearance, or adaptation, of life on earth!". Since this assumption therefore makes "Evolutionism" primarily a position of faith (just like other religious beliefs) why should it attract any preferential treatment by the Fiji state?
35d. A "Secular State" does NOT and cannot mean that religious-based schools cannot receive taxpayer funding. Religious taxpayers pay all the taxes they are supposed to pay just like everyone else. Who is government to tell them that their tax dollars cannot be spent on school curricula that they as parents personally approve for their own children anyway?
35e. A "Secular State" does NOT and cannot mean the use of secular laws to over-ride religious membership requirements or articles of faith issues WITHIN any religious group. For instance, if any particular church or mosque refuses to carry out a same-sex marriage ceremony on the grounds of religious impediments of faith and conscience, the State has no right to force them to carry out said marriage ceremony
35f. A "Secular State" does NOT and cannot mean the willy-nilly intervention of the state into any and all parental and parenting matters without good cause. Neither can it mean children taking parents to court at the drop of a hat over isolated incidents of questionable parental discipline

38. Problems for the Democratic Model (The World on Fire – Amy Chua; The Cancer Stage of Capitalism – John McMurtry; Fiji's divisive and confrontational race politics; the fact that special interest lobby groups typically have too much influence in the parliamentary legislative process in most democratic states)

39. The Chair of the Fiji Constitution Commission has gone on record effectively saying that no Constitution (no matter how "good") can ever be a 100% proof against future coups, or coup attempts. That is true of course, and with 4 or 5 coups in the past 25 years, the people of Fiji need to be realistic about this. By contrast, we also need to be aware of our current Constitutional context. When Jai Ram Reddy and Mahendra Chaudhry first saw the proposed draft of the 1997 Constitution – particularly the sections dealing with the military, and the appointment and powers of the Army Commander – they both reportedly exclaimed "It's a recipe for a coup!" So although our Consititution cannot guarantee against future coups, we *can* at least improve it by removing any existing clauses and arrangements in it that help encourage or facilitate further/future coups in Fiji.

40. To that end, new Constitutional guidelines need to re-assert civilian control over the military and its officer corps. Suggestions along these lines might include doing away with position of Commander in favour of three independent heads of say, the Army, the Navy and the Territorial Force. These leaders, plus Commissioner of Police could be appointed by Parliament on the recommendation of the Minister, with the Opposition Leader having veto rights over the final appointment shortlist. All senior officer appointments would likewise

require parliamentary approval on the advice of the Minister with some kind of veto available to the Opposition leader. Other measures should seek to follow the Defense White Paper of 2004 recommendations to convert the military into a mainly "territorial force", with troop numbers of the actual standing army decreased down to ~ 1700 in peacetime, with parliamentary approval needed for any temporary increases.

41. The Presidency of Fiji – This should be largely a titular position that represents the "State" of Fiji to her own people, and to the people of other nations. That means the incumbent needs to be a respected and dignified figure who has achieved outstandingly in his/her chosen field, so that our people, and other people, can respect him/her. The Presidency should also be a nationally unifying position, so the incumbent should NOT be controversial or divisive or carry any huge or controversial political baggage of any sort. This person should very particularly NOT have any coup- or treason- related questions or involvement hanging over their past. The Presidency should NOT have ANY powers that can be used to overturn the will of parliament, the normal independent functioning of constitutional institutions, or be misused by coup-makers to legitimize themselves. This absence of power needs to be spelled out in any amendments to Fiji's existing Constitution.

Thank you very much to the Commissioners and Staff of the Fiji Constitution Commission for your hard work, and for your consideration of this submission!

Yours truly,

John Leslie Samisoni