SECURING PEACE AND HUMAN RIGHTS IN FIJI: The relationship between law and religion

INTRODUCTION

Fiji is an independent nation comprised of many islands in the South Pacific. Prior to cession to the British it was inhabited by various indigenous tribes for over 3000 years. As a result of the actions of the British and others, it is now a markedly multicultural nation of many races, religions and cultures. This has added in many ways to the attraction of Fiji, a unique blend of national unity in diversity. But the level of unity that has been achieved has not been without its tensions and occasional violence. Most Fijians are very peaceable people, respectful of the rights of others, but sometimes that peace has been broken and human rights have been put under challenge. Constitutional government on the Westminster pattern and the rule of law have sometimes been under threat since independence.

Diversity of religion is a critical factor in ascertaining the nature of modern Fiji, given its multi-cultural and multi-religious composition. While little of the ancestral religious beliefs of its peoples appear to have survived, the three great religions, Christianity, Islam and Hinduism, are well represented and well known. Christianity in its various forms is the dominant religion of the indigenous Fijian people, and is still widely practised by them as well as by some other Fijians. Hinduism and Islam are practised by many of the Indian Fijian people. It is clear that these great religions have had a profound effect on the shaping of modern Fiji. The devoted adherents of each of them proclaim them as being declaratory of ultimate spiritual truth, but do not necessarily accept the others of them as also being declaratory in the same sense. There appears to be very limited acceptance in Fiji of the principles of the world-wide inter-faith movement, whereby spiritual truth may concurrently be seen to be represented by a variety of religious teachings and traditions. That lack of acceptance has the potential to operate negatively in the observance of basic human rights. On the other hand, in most instances there appears to be a reasonable level of inter-religious

tolerance in Fiji, a factor that perhaps reflects the generous nature of most of the people of Fiji, and is in turn reflected in the terms of the Fijian Constitution in expressly recognising the basic human right to religious freedom. Ethnic and religious diversity seems destined to remain a prominent and permanent feature of Fijian society, whatever the preferences may be of individual Fijians.

Less well known in Fiji is my own religion, the Baha'i Faith, and hence a few introductory words about it are warranted. It is a distinct religion in its own right, founded in the middle of the 19th Century in Persia, now Iran, and now represented in every country and territory in the world, including Fiji. As a result of the persecution of its founder, known as Baha'u'llah[1], He was exiled from Persia to various places in the Ottoman Empire, finishing up in what became the world centre of the Faith, which was then called Palestine but is now called Israel. Baha'u'llah passed away there, still a prisoner, in 1892. He taught that there was only one supreme transcendental God, however that God may be named or described, and that all the Great Religions, including Christianity, Islam and Hinduism, all came from that one God in their original form. In this regard, Baha'is accept the principle that the teachings of the various great religions are compatible with the revelation of ultimate spiritual truth, but not in a syncretic or eclectic sense. Rather, Baha'u'llah teaches that religious truth is progressively revealed through divinely chosen individuals and is relative, the differences between the great religions being explained by the fact that they obviously arose at different times and in different places in a manner suitable to the understanding of the different cultures directly concerned.. Baha'is advocate unity in diversity and support inter-religious tolerance and the basic human right to freedom in matters of religion, while at the same time proclaiming that the teachings of Baha'u'llah constitute the latest in the chain of divine revelations to mankind.

THE THESIS

It is argued in this talk that religion must have a direct and necessary role to play, both in the framing and content of the laws of any country and the institutional arrangements to support those laws, and also in forming the

[1] Literally, the "Glory of God". For Baha'is, He is the Manifestation of God for this Age, and is spiritually one with the founders of the other Great Religions.

personal attitudes of the people of any country, if peace and basic human rights are to be adequately secured. The talk seeks to identify the importance of religion to the effectiveness of the law and how it is possible to identify those aspects of the teachings of the great religions that are relevant in this respect. It asserts that the principle of greatest importance in this regard is that of the consciousness of what is called in the Baha'i Writings the "oneness of mankind", a concept discussed later in this talk and developed from the religious teachings of the past under names such as the "brotherhood of mankind".

Such an argument that places the teachings of the great religions in a direct relationship to the law and the achievement of a peaceful and just society immediately runs into opposition when the historical record of frequent inter-religious contention and conflict is examined, a record that cannot be denied. The response to such a view is to take an alternate view of the essential nature of religion, one that concentrates on the common origins of, and common spiritual fundamentals contained in, the original teachings of all the great religions, and which asserts the broad educative and reformative nature of religion in relation to this earthly life (whether or not also being seen as relevant to any future spiritual life). This is an approach which identifies and emphasises in those teachings certain common spiritual themes or principles such as the "golden rule", that one do unto others as you would have them do to yourself, etc., and which de-emphasises (for present purposes at least) the relative importance of theological dogma, religious rituals and social teachings suitable for a particular time and place. This alternate view does not necessarily require acceptance of the Baha'i concept of progressive revelation, although this concept does help to explain why changes do occur in these de-emphasised aspects of each successive religion. Once it is accepted that all the great religions have an important contribution to make to society in terms of establishing these common spiritual themes or principles, then it must follow from the nature of these themes or principles and the important place that religion still occupies in society, that those religions, properly interpreted and applied, can and do contribute to the well-being of that society and the rights of its members[2].

Among those spiritual themes or principles common to all the great religions is the ancient concept or vision of the "brotherhood of mankind", already

[2] This is not to deny that religion can have a negative and sometimes destructive effect on society when the differences between different branches of religion are over-emphasised at the expense of the commonalities between them.

mentioned. Baha'u'llah in His teachings has restated this in a manner appropriate to the needs of a rapidly integrating modern world or "global village", and summarised in the phrase "the oneness of mankind". . This is a concept or vision that is applied to society at all its levels, starting from within and between individuals, and extending out to within the family, in the village or town, in the nation-state and right up to the global level. It requires the active abandonment of all prejudices of race, ethnicity, religion, nationality, etc. It is a concept or vision that has already been embraced to a certain degree at least by many people of goodwill throughout Fiji and in the wider world, as evident in the strong emphasis on reconciliation and peace in this country. It is a concept or vision that finds its roots in the ancient teachings of Judaism, Christianity, Islam and Hinduism, at least as applicable within the membership of those religions themselves, and is now found in the basic teachings of the Baha'i Faith, applied to all humanity.

THE FIJIAN EXPERIENCE

But unfortunately the concrete and successful application of the concept or vision just spoken of seems, to a large extent, to have eluded Fijians as a nation in recent times. In this respect, the experience of Fiji is by no means unique in the world. Differences of race, ethnicity, religion and language within Fiji have been allowed to become the basis of disharmony and disunity and the usurpation of the rule of law. The human rights of some individuals and groups have been abused, resulting in injustices. Differing religious affiliations may, in part at least, have been used as a pretense for such actions, based on what I would regard as a mis-interpretation of the essential nature and role of religion. I do not have a comprehensive personal knowledge of such events in Fiji, but there has been some documentation of these breaches[3]. There remains a degree of inter-ethnic and inter-religious tension in this country, perhaps not as bad as in some other countries, but still no doubt of serious concern. The holding of the recent national election does not appear to have removed these tensions, even though some degree of normality has returned to the country[4].

[3] Eg, Commission on Human Rights, USA Department of State Human Rights Reports for 2000, <humanrights-usa.net/reports/fiji.html>

[4] This paper was written before the recent military takeover of Fiji.

In my humble opinion, the underlying fundamentals giving rise to these tensions in Fiji have yet to be adequately addressed in this country, even after taking into account all the various efforts in reconciling the different peoples of Fiji that have already occurred. My argument is that without properly addressing these underlying fundamentals, which in my view are morally and spiritually based, then even with an appropriate secular legal regime directed at keeping the peace with an enforceable code of human rights, there can be no effective and permanent peaceful solution to these tensions, either for Fiji as a nation or for that matter in the wider world. While I accept the view that there may be a direct and necessary connection between law and religion in this respect, each having a role that is complementary to the other, the emphasis in my view is heavily on the need to adopt appropriate moral and spiritual principles, which are in turn supported by law. The law cannot by itself inculcate appropriate standards of conduct in the citizenry.

Included in these underlying fundamentals should be the recognition that true religion is not compatible with aggression and violence and abuses of universal basic human rights, and that religion should promote tolerance, understanding and peace. Nor is true religion compatible with racial, ethnic or religious prejudice. For as long as this failure to properly address these fundamentals continues, the potential will remain for further disruptions, human rights breaches and violence. In my view, people who openly espouse the opposite view do so, not on the basis of the authentic spiritual teachings of their own religions, but as a matter of their own personal views.

SOLUTIONS

This leads directly to a consideration of possible solutions for ensuring the peace and security of Fiji and the observance of the fundamental human rights of Fijians. On this point, while nearly everyone will readily express a desire for peace if asked, there appears to be a wide divergence of views as to how to achieve it and whether it is even achievable in a multi-cultural, multi-religious setting.

Some may see the solution in the establishment of some form of indigenous Fijian hegemony, where the legal rights of those indigenous Fijians are enhanced and the legal rights of non-indigenous Fijians are strictly limited.

This might be achieved by further constitutional entrenchment of additional indigenous Fijian rights and privileges, and perhaps with more effective means of enforcing both their existing and new rights. This might even extend to making Fiji a Christian state, given that most indigenous Fijians as well as some other Fijians profess that Faith[5].

In this regard, it is clear that indigenous Fijians already enjoy a measure of constitutional advantage by entrenchment of certain of their rights in the Fijian Constitution, as pointed out recently by the Fijian Court of Appeal in the Prasad case[6] when upholding the continuing validity of the 1997 Constitution. We need not go into the detail of these constitutionally entrenched provisions at this time, but they will be summarised in a footnote to the printed edition of this talk[7]. This argument in favour of indigenous Fijians and the suggested extension of their majority legal rights is premised on the view that by firmly establishing indigenous legal superiority in Fijian law, harmony can be maintained in Fiji by majority rule at the expense of minority rights.

Others may be of the view that the present provisions of the Fijian Constitution are adequate to legally protect the special position of indigenous Fijians in this country. People of this view may consider that it would not be appropriate to constitutionally create Fiji as a Christian state, given the large number of adherents to the Islamic and Hindu Faiths as well as other Faiths. They may see the solution to inter-racial and religious tensions in the use of existing and possibly new political, legal and educational mechanisms and institutions to protect existing legal rights and to advance tolerance and reconciliation in this country. This is essentially a secular political approach, although it does not exclude the additional use of prayer and other spiritual aids.

Finally, there may be a few Fijians who favour the removal of all existing preferential provisions for indigenous Fijians in the Constitution and instead the full incorporation of the principle of equal rights for all Fijians in that

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[5] A number of suggestions to makeChristianity the state religion in Fiji have been made in recent times.

[6] The Republic of Fiji and anor. v Prasad, Court of Appeal, 1 March 2001.

[7] The provision of the 1997 Constitution protective of the rights of indigenous Fijians are summarised by J C Care, "Unfinished Constitutional Business, Human Rights in Fiji Islands", (2000) 28.5 Alt L J, 223 at 224. They comprise the "compact" provisions governing the interpretation of the Constitution in ss 6 (b), (d), (j), (k) as to land and other matters, and see also Chpt 5, the guarantee of Fijian seats in Parliament in s 51 and as to the Senate see s 64 (i), the entrenchment of customary law legislation in s 185 and the mandate to legislate for customary law and royalties in s 186.

Constitution. They may argue that this would fully accord with international human rights law and the principles of equality and of universality that it contains. In the present situation in Fiji, there seems little hope of this approach being adopted, and in any event it fails to take account of the extent to which preferential provisions are permitted under international human rights law[8].

Unfortunately there is as yet little promotion of a solution that is fundamentally spiritual in nature and which is based on the acceptance of the concept of the "oneness of mankind". Most Fijians who are involved in the debate still advocate solutions that are primarily secular and political.

INDIGENOUS PREFERENCE AND THE LAW

At this point it is appropriate to briefly discuss the legality of indigenous preferences in the law, and whether they are truly discriminatory in nature. In this regard, the inclusion of preferential provisions in the domestic law of any country in favour of any particular group in that country, including in an entrenched manner in the national constitution of that country, does not necessarily constitute a breach of international human rights law and the principles of universality and equality which are incorporated into that aspect of international law. For example, under the international Convention against Racial Discrimination[9], to which Fiji is a party[10], a certain level of legal preference for a particular race is capable of being compatible with the basic principle of racial equality and non-discrimination contained in that Convention, providing that preference comes within what is called a *"special measure"* in that Convention[11]. Such a measure must be designed to ameliorate the existing disadvantages of that particular race, and should cease once that disadvantage has been removed..

To draw on an Australian example, the High Court of Australia has held[12] that it is legitimate for a State law to legally require the issue of permits for non-Aboriginals to enter indigenous Aboriginal land in that State,

[8] See discussion below.
[9] International Convention on the Elimination of All Forms of Racial Discrimination of 1965.
[10] Convention acceded to by Fiji in 1973.
[11] Article 1.4 of the Convention.
[12] Gerhardy v Brown (1985) 159 C L R 70.

notwithstanding the provisions of the Racial Discrimination Act of the Commonwealth[13], implementing the Convention Against Racial Discrimination in Australian law. The Court relied on the "*special measures"* provision of the Convention, making it clear that this gave rise to a legal question.

Whether any preferential provision in favour of indigenous Fijians in the domestic law of Fiji is or would be a "*special measure*" is therefore a question that cannot be answered in the abstract, but requires a legal answer having regard to the precise wording of the provision under consideration and all other relevant circumstances. But "*special measures*" should not unnecessarily constrain the human rights of other citizens who do not benefit from such measures; for example, they should not restrict those citizens' right to practice their own religions.

As to the matter of possible further entrenchment of indigenous Fijian rights in the Constitution of this country, it is my understanding that as a result of the recent national election, there may now be a clear majority of indigenous Fijian members of Parliament, but not enough by themselves to alter the Fijian Constitution[14]. Any such amendment would apparently require the support of non-indigenous members, particularly those in the Labor Party. Thus any proposal to further entrench particular rights is likely to be incapable of implementation in the life of the present Parliament.

EXISTING PROTECTION OF HUMAN RIGHTS IN FIJI

Putting to one side for the moment the matter of special rights for indigenous Fijians, it is clear that Fijians generally already have a comprehensive set of guarantees of certain fundamental human rights in Fijian law, applicable equally to all Fijians.

In this regard, the Fijian Constitution (Amendment) Act of 1997 contains a lengthy Bill of Rights[15], in the form largely of first generation individual rights taken from the European Convention on Human Rights, which in turn

[13] Commonwealth Act number 52 of 1975, as amended.
[14] Constitution, Chpt 15.
[15] Constitution, Chpt 4.

were based on the Universal Declaration of Human Rights of 1948[16]. These constitutional rights apply to all Fijians, and are enforceable at domestic law through Fijian courts, including against government. The existence of this Bill of Rights in entrenched constitutional form may be compared with the Constitution of the Commonwealth of Australia, which does not contain similar comprehensive guarantees[17]. In fact no jurisdiction in Australia has a comparable Bill of Rights in any form.

The Fijian Bill of Rights is qualified by other provisions in the Fijian Constitution. Thus in a declared state of emergency, derogation from certain of these rights is permissible[18]. In addition, the existing provisions of the Constitution giving preference to indigenous Fijians, as already mentioned, will no doubt have priority. But subject thereto, the Bill of Rights has very wide legal application. It also provides that a Human Rights Commission is established for Fiji[19]. This provision was supplemented by the Human Rights Commission Act of 1999, conferring further functions on the Commission, including that of investigating allegations of human rights abuses and unfair discrimination. While in practice the Commission might not have effectively functioned for a while, it does provide a limited additional means whereby these rights may be upheld.

There was a purported suspension of the Fijian Constitution, including the Bill of Rights, by the Interim Military Government in May 2000[20], with the substitution of a Fundamental Rights and Freedoms Decree[21], designed to fill the void in human rights protection but with some variations. But in the light of the Prasad decision in the Court of Appeal[22], the Bill of Rights in the Constitution no doubt continued in force despite these particular actions of the Interim Military Government. This is notwithstanding the view that in other respects the actions of the Interim Military Government were otherwise valid under the doctrine of necessity, as found by the High Court in the Yabaki case recently[23].

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[16] Care, op cit, 224.
[17] It does contain some limited guarantees on specific subjects, see Deane J in Street v Queensland Bar Association (1989) 168 C L R 461 at 521.
[18] Constitution, s 187.
[19] Constitution, s 42.
[20] Interim Military Government Decree No. 1, purporting to be effective from 29 May 2000.
[21] Interim Military Government Decree No. 7 of 2000, purporting to commence on 29 May 2000.
[22] See above.
[23] Yabaki and ors v The President of the Republic of the Fiji Islands and anor, Scott J, 11 July 2001.

I read with interest the view of one commentator[24] that Fiji has an additional source of human rights protection in its domestic law arising from the application of various international human rights instruments by force of the Fijian Constitution. The view expressed was that such international instruments had a form of direct domestic application by force of section 43 (2) of that Constitution[25], allowing courts to apply these instruments in the interpretation of a person's rights. This is a view that appears to draw some support from a number of Fijian court decisions referred to by that commentator. Fiji is a party to a number of such international instruments (but not all of them), including the Convention Against Racial Discrimination[26], the Convention on the Elimination of Discrimination Against Women[27] and the Convention on the Rights of the Child[28]. But the constitutional provision relied on by this commentator does not seem to limit it to international instruments to which Fiji is already a party. And the provision itself reads as an aid to interpretation of the existing Bill of Rights rather than as a conferral of supplementary or expanded human rights. Nevertheless, the legal approach in Fiji on this matter may go further than the current approach in Australian law. But this is a matter that need not be explored further at this time.

Whatever the correct view of section 43 (2) of the Constitution, it is clear that Fiji has comprehensive guarantees of human rights in its domestic law, more expansive than those in Australian law. These Fijian provisions, together with other legal provisions designed to maintain internal peace and security, appear to provide a reasonable legal framework within which efforts may be made to construct a harmonious multicultural society in Fiji. But obviously the existence of this legal regime did not prevent the widespread breaches of human rights that occurred in Fiji in recent times.

INADEQUACY OF LEGAL GUARANTEES

[24] L Tamata, "Application of Human Rights Conventions in the Pacific Islands Courts", (2000) Vol 4 J S P L, Working Paper 4. See also C Wickliffe, "The Relationship Between the Constitution Amendment Act 1997 and the International Instruments on the Rights of Women and Children", (1998) 2 J S P L, Article 4.
[25] "(2) *In interpreting the provisions of this Chapter, the courts must promote the values that underlie a democratic society based on freedom and equality and must, if relevant, have regard to public international law applicable to the protection of the rights set out in this Chapter*."
[26] See above.
[27] Fiji acceded to this Convention in 1994.
[28] Fiji acceded to this Convention in 1997.

The fact that the existence of these comprehensive legal guarantees in Fiji did not prevent significant breaches of human rights is, in itself, strong evidence that such comprehensive, secular paper guarantees, even if in constitutional form, and even if supported by appropriate legal machinery such as courts, commissions and the like, do not necessarily provide adequate protection against widespread breaches of human rights and breaches of the peace. If the underlying circumstances and the prevailing religious ethic and philosophy of the society does not strongly support the maintenance of harmony and the fundamental human rights of all, there is always the prospect of such breaches in situations of aggravation or military action, no matter how good the legal regime may be. An attachment to the fundamental rights of all, irrespective of race, religion, ethnicity, language, etc., must go deeper than merely as expressed in secular legal form. In such an emotive area, the secular law in a democracy cannot effectively advance too far in front of prevailing societal sentiments. Otherwise it is only to be expected that legal enforcement methods, no matter how efficient, may prove to be inadequate.

But how does one cultivate a climate of respect and support for the fundamental rights of all people sufficient to provide a permanent solution? This is particularly difficult in countries which have not been independent for very long, which have no relevant tradition of fundamental rights[29] and which have inherited divisions in their society which were not of their own making[30]. Adequate protection of human rights is likely to be of concern in such a country, at least for that country's minorities. The last Century has seen many cases of the grossest abuse of human rights, mostly directed against powerless minorities within the country concerned, and often amounting to genocide and crimes against humanity.

Where the domestic legal situation fails to prevent such abuses, it has not usually been possible to fall back on international law and the international political regime to remedy the situation. Clearly the historical experience up until now has been that the international regime, even with its codes of international human rights law of universal application, has mostly been too weak to do much about such abuses [31].

[29] Fiji first acquired a code of human rights in 1970; see N K F O'Neill, "Human Rights in Pacific Island Constitutions", in P Sack (Ed), Pacific Constitutions, 307.
[30] In response to this, most countries are to some degree multicultural and have to deal responsibly with this fact.
[31] G Robertson Q C , Crimes Against Humanity, 1999.

THE RELEVANCE OF RELIGION TO SECURING PEACE AND HUMAN RIGHTS

Notwithstanding the failings of both national and international secular legal systems, already discussed, there continues to be a widespread reluctance to draw religion/morality and law closer together, or to even admit that there is a necessary relationship between the two. This is reflected in the ongoing debate as of the nature of that relationship, if any[32]. This debate has been going on since positivist schools of jurisprudential thought first began to assert themselves several hundred years ago, when law was first defined as being the commands of some sovereign ruler within his defined territory and with the power to enforce the laws in that territory. Before then, the concept of the integration of law and religion was largely taken for granted in most societies, including in many Christian based societies. The rise of the secular European "sovereign" state and parliamentary government, and later the spread of religious plurality within states, have given an extra dimension to this debate. It has lead, in the West at least, to the prevailing theory of the separation of law and religion[33].

The current thinking in the secular Western state has been described by Sadurski as incorporating two principles: the separation of the state and religion, and freedom of religion[34]. Recognised forms of morality and religion may still serve as a point of reference, amongst others, in secular law-making (to a greater or lesser extent), but these are no longer critical to the content or validity of the law so made.

Thus in the classic debate between Lord Devlin[35] and Professor Hart[36], in the context of the decriminalisation of homosexual practices, the question debated was whether it was appropriate for the criminal law to enforce identifiable standards of common morality. Professor Hart was prepared to admit that morality, presumably derived from Judaic and Christian sources, had influenced the development of the law in England, but as a positivist, he

[32] It is thought appropriate to associate morality and religion for present purposes, although some would argue that these are quite distinct.
[33] Sometimes expressed as separation of church and state.
[34] W Sadurski, Moral Pluralism and Legal Neutrality, 1990, 167.
[35] P Devlin, The Enforcement of Morals, 1965.
[36] H L A Hart, Law, Liberty, and Morality, 1962.

still made a clear distinction between law and morality, and as a result it was not appropriate in his view for the law to enforce morality.

It is to be noted that the secular approach, which views religion and law as occupying quite distinct fields of operation, differs from the orthodox Islamic approach, which in most cases views religion, morality and law as an integrated whole. Or to put it another way, this approach provides that religious teachings should incorporate the law applicable in society, with limited scope, if any, for secular law-making.

The secular approach to law and religion is reflected in most current national constitutions. While reference may be made in some constitutions to the deity[37], or even to particular religions[38], the constitution itself is usually seen as being part of secular national law. Sometimes the constitution may expressly draw clear lines of separation between religion and law[39], in other cases this may be implied. The frequent inclusion in constitutions of a Bill of Rights, including a provision guaranteeing religious freedom, has assisted in this separation by its expression or implication of religious neutrality on the part of government.

Those countries that have in recent times attempted some degree of integration between law and religion, including in their constitutions, have often taken on a more fundamentalist religious form[40]. This can lead to a distortion of the fundamentals of the motivating spiritual teachings, and result in the destabilisation of government, or worse a form of tyranny. This in turn can lead to skepticism and distrust of such experiments by other countries and a disavowal by many of any direct relationship between law and religion[41].

But does this mean that there is in fact no direct relationship between law and religion? In the last 25 years or so, a debate has intensified in the USA on this issue, with a minority arguing that law and religion should not, and in some cases cannot, be divorced. They argue that in an age of globalisation, the marginalisation of morality and religion is having a serious detrimental effect. The law, it is said, is increasingly loosing its internal fidelity, its

[37] Eg: Commonwealth of Australia Constitution Act 1900, First Preamble.
[38] Eg: Constitution (Amendment) Act 1997 of Fiji, Second Preamble.
[39] Eg: Constitution of the United States of America, First Amendment of the Bill of Rights.
[40] Eg: in Iran.
[41] R Danesh, "*Beyond Integration and Separation*", in The Baha'i World: 1999-2000, 2001, 225-226.

legitimacy and its adherence to basic values. Instead the law is being developed in the pursuit of secular, self-interested politics and legal hedonism[42].

In an age of increasing religious diversity in many countries, any argument in favour of some form of integration, even if divorced from any fundamentalist religious views of an exclusive nature, inevitably runs into difficulties. One only has to look at the divisive debate on abortion, for example. Such debates can only be avoided if it is possible to establish the existence of certain widely recognised or universal values of a moral or religious nature which are clearly common and fundamental to all religions. It is very difficult to develop any system of law in a diverse community by reference to such values unless there is such a broad consensus[43].

It is apparent that an increasing number of people are now searching for such common values, both within and outside formal religion. This has been particularly evident in response to the many gross abuses of human rights that have characterised, and which continue to characterise, the conduct of human relations in many parts of the world, and the continuing use of organised violence to try to solve human problems. In matters of religion, many are questioning the role of the established religions and are looking for new ways whereby religion can be more responsive and relevant. One evidence of this search for alternatives is the growth of the inter-faith movement, and another is the growing rejection of traditional religions in the search for new religious and philosophical experiences and values. Many religious people seek to influence the work of other organisations and interest groups to express their convictions and to try to affect the content of the law, thereby becoming enmeshed in secular politics.

Outside the area of religion there has been an increased level of interest in matters such as basic human rights, in good environmental practices, in social and economic justice as well as in ethics and good business and governmental practices, all matters of relevance to the great religions. There has been a burgeoning of non-government agencies across the globe concerned with a variety of issues with ethical content. In the emerging

[42] Ibid, 230-233.

[43] Sir Gerard Brennan, former Chief Justice of the High Court of Australia, warned that before morality can be employed by judges to inform legal principle, the particular moral imperative must be one for which there is a broad consensus for recognition and acceptance-"*Commercial Law and Morality*", (1989) 17 MULR, 101-102, cited by K Mason, Constancy and Change, 1990, Federation Press, 73.

global economy, there is renewed emphasis on developing good ongoing relations with other countries and peoples. The tendency towards increasing global interdependence and the impact of globalisation, with their positive and negative effects, has made this need to identify certain commonalities increasingly necessary.

It is clear that the present international legal system is hopelessly inadequate to deal with the many contemporary global problems and that that system needs much further development if it is to adequately deal with the many ongoing global processes. Threats to global order and security are emerging from many directions. It is submitted that the search for solutions based on the rule of law involves not only the pursuit of the collective political will of the nation states, but also the ascertainment of universally acceptable standards on which to base that legal system[44]. This applies in particular to the standards found in international human rights law, and how these are to interact with other branches of the law, as well as to the institutional arrangements necessary to give universal effect to them The relevance of religion, given its continuing importance in society, cannot be avoided in this search, although as said before there is a widespread reluctance to admit that this is the case, and religion is often seen as one of the threats rather than one of the solutions.

Fiji, it seems to me, has tended to follow the prevailing English approach of separating law and religion[45], even though many Fijians are deeply religious. This reflects Fiji's colonial inheritance, reinforced by the degree of religious diversity in this country. Religious values, particularly Christian religious values, may play an important part as one point of reference in the development of the law of Fiji, but there remains a basic separation between the two[46]. The Constitution of Fiji is seen as part of Fijian secular law, it having within it the express recognition as being the supreme law in Fiji[47], rather than some higher Divine source. Freedom of religion is constitutionally guaranteed[48].

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[44] H J Berman, Faith and Order: The Reconciliation of Law and Religion, 1993, Chapt 13, Report of the Commission on Global Governance, Our Global Neighbourhood, 1995, 47.

[45] While England has an established church, in fact law and law making is mostly regarded as a secular exercise, with the UK Parliament having "sovereign" power to make any law, whether consistent with the teachings of the established church or otherwise.

[46] Constitution, section 5, states-

"5. *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 andleadership."*

[47] Constitution, section 2.

[48] Constitution, section 35.

THE MORAL AND SPIRITUAL APPROACH

I believe that the best assurance of peace and harmony in any society lies in adherence to, and in the application of, appropriate moral and spiritual principles, and that these principles should be reflected in the law. But what is appropriate in this regard? In Fiji you are faced with the significant influence of three great world religions, Christianity, Islam and Hinduism, and the many apparent differences between. In my view, it is necessary for people of goodwill to put to one side any such differences, most of which concern matters of dogma and ritual, and without abandoning their religious affiliations to instead earnestly search for principles and values that are common to them all. Such a search will assuredly reveal many commonalities, such as the "golden rule", already identified, and the need to observe spiritual virtues such as godliness, love, compassion, peace, humility, spirituality, generosity, tolerance of racial and religious differences, etc.. A determined search for such commonalities, requiring the putting aside of traditional allegiances and beliefs sufficient to allow a constructive dialogue to take place between the followers of the different religions, can only be beneficial. It should be carried out in a spirit of tolerance and respect, in the knowledge that we are all members of the one human family, occupying in common the same small globe, and that we are all searching both for peace and a secure future on this one globe as well as for a better understanding of the ultimate truth.

Applied to present day "global village", this is a process that should be extended to the whole planet and to all humanity, and should lead to the recognition of our common humanity irrespective of race, ethnicity, religion, nationality, etc.. This is a fundamental religious principle upon which consensus is clearly possible, the recognition of which in itself carries the potential for global change.

In one sense. secular international law has already shown the way in this regard. International human rights law, extending certain minimum standards of treatment to all humanity regardless of race, ethnicity, religion, etc., has already been recognised as law by most countries and peoples. These standards reflect the belief in the existence of certain principles common to all people, to be exercised in a spirit of brotherhood. Given the relative lack of mutuality, cooperation and leadership exhibited by the various great religions up to the present time in such matters, it is not surprising in the present world scenario that secular law-makers have found

it necessary to step into the breach in this regard. But to the extent that these law-makers, representing their own governments, have relied on their own sense of right and wrong in developing these international standards, it is to be regretted that the religious thinkers and leaders of the world have largely abandoned the field to them. Civil definitions of human rights, devoid of the moral and spiritual base provided by the great religions, can offer no comprehensive and lasting solutions, and political excuses will continue to be used for their avoidance. They merely express the partisan views of their framers, capable of being set aside when the political situation is perceived to demand it. For there to be true and lasting harmony in today's increasingly multicultural, multireligious world, the global society must be supported by moral beings. No amount of force, and no deluge of secular laws, however well intended, can achieve this by themselves without this moral and spiritual base.

In my view, universal human rights standards can only be effective if they are perceived as being derived from the fundamentals underlying the teachings of the great religions, as part of a Divine endowment made for mankind's social and spiritual benefit. On this view, all humankind shares equally in this Divine endowment of rights bestowed upon them by the one supreme God, without discrimination as to race, ethnicity, religion or other such factors. Human rights are on this view Divine rights, to be enjoyed in moderation by all people, with a correlative moral and spiritual duty to respect the same rights in all others. They encompass rights extending to the individual, to the family, to work and prosperity, to education and health, to worship and the right to live in unity with others in a secure and just social order[49]. Ultimately they lead the way to the establishment of a permanent and peaceful new world order that can encompass all the best values and attributes taught by the great religions, the advent of such an order having been prophesised to occur down through the ages.

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Fortunately it is in my view possible to discern a close connection between these existing secular international human rights instruments, many of which Fiji is already a party to, and the view I have expressed that human rights are essentially moral and spiritual in nature. While some particular religious beliefs may be incompatible with the secular law of the land, increasingly people of different religious persuasions are able to identify a high level of commonality between aspects of their spiritual beliefs and the provisions of

[49] See A Baha'i Declaration of Human Obligations and Rights, presented to the United Nations Human Rights Commission in 1947 by the National Spiritual Assembly of the Baha'is of USA.

international human rights law[50]. Some academic commentators have also speculated on whether there is some such connection, although noting the difficulties of doing so in a multi-religious society with diverse traditions and beliefs[51]. The founding document on which all contemporary international human rights instruments are based, namely the Universal Declaration of Human Rights of 1948[52], in fact draws upon its natural law heritage that is rooted in the ethics and religion from the past. Article 1 of that Declaration evidences this when it states:

> "A*ll human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".*

It is therefore unfortunate that much of the contemporary human rights debate has occurred around the express or implied notion of universal human rights as being a purely secular exercise. Perhaps this is partly because one of the primary purposes of human rights in a multi-religious setting has been to prevent discrimination on the grounds of religion (among many other grounds). As noted, codes of human rights usually display impartiality between different religions[53]. Domestic courts have sometimes taken a similar view under the influence of the secular doctrine of separation of church and state[54]. More likely, it is because of the increasing secularisation of society over the 20th Century, particularly in the West. Many people follow new secular "Gods" such as those of materialism and western logic and legalism. The tendency, at least in the West, has been to marginalise the importance of morals and religion as a force for good, and in so far as universal values are sought, to do so by reference to other factors, often in ignorance of their true historical source.

This is to be seen against the background of the wide spread modern belief that the human being, using his or her human faculty of reason and with the

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[50] Eg, A E Mayer, "Universal Versus Islamic Human Rights: A Clash Of Cultures Or A Clash With A Construct",(1993) 15 Michigan J of Int Law, 307; W Huber, "*Human Rights and Biblical Legal Thought*", in J Witte Jr and J D van der Vyver (Eds), Religious Human Rights in Global Perspective, 1996, 47-63, and other essays therein..

[51] Eg,R Traer, Faith in Human Rights, 1991, cited in the article by the person giving this talk in Towards the Most Great Justice, footnote below, and see the relevant papers contained in Religion and Human Rights, in the same footnote.

[52] This founding Declaration of the United Nations, although not in the form of a binding international agreement, is often said to be declaratory of international customary law.

[53] Eg, The Universal Declaration of Human Rights, Articles 2 and 18.

[54] Eg, Re Carroll (1931)1 K B 317, Scrutton L J at 336, Neville Estates Ltd v Madden (1961) 3 All E R 769, Cross J at 781, Scandrett v Dowling (1992) 27 N S W L R 483.

right degree of self-motivation, can achieve anything he or she desires by himself or herself. There are seen to be no absolute prohibitions, no limitations. This amounts to an elevation of the individual over the one supreme God, or even a denial of God. But while each individual may have notable capacities and abilities of varying degrees, and while this has resulted in a remarkable degree of progress in the last century or so, collectively mankind has not yet been able to achieve real social harmony in its increasingly multicultural situation. The 20th Century has been replete with examples of dramatic failures in this regard, as already noted, and these failures are ongoing. Divorced from a belief in the one supreme God of all mankind and of all the great religions, and a belief in the oneness of mankind, there seems to be no end in sight to the violence and abuses that have racked this planet.

A NEW GLOBAL ETHIC?

Central to my argument has been the view that there is a clear need for a new global ethic[55], one that is based on an expanded global consciousness of the principle of the "oneness of mankind". This is a view which, amongst other things, finds any breaches of the fundamental human rights of any person or group offensive and intolerable, wherever they may occur on the planet[56]. This view looks beyond the limitations of the rather outdated idea of "national sovereignty"[57] and sees each member of the human race in this modern era as having inseparable links and inter-connections with all other human beings. It is clearly a movement towards global oneness and unity. It does not amount to a denial of a person's nationality, ethnicity, culture,

[55] The call for a new global ethic is not new. It was called for in the resolutions of the centenary meeting of the World Parliament of Religions, held in Chicago in 1992. See also H Kung, Global Responsibility, 1991, and by the same author, A Global Ethic: The Declaration of the Parliament of the World's Religions, 1993, W P George, "Looking for a Global Ethic? Try International Law", in M W Janis and C Evans (Eds.), Religion and International Law, 1999 at 483, the Report of the Commission on Global Governance, Our Global Neighbourhood, op cit, 46-67.. More recently the author of this talk wrote "Towards a Global Ethic: The Baha'i Faith and Human Rights", in C O Lerche, Towards the Most Great Justice, 1996.

[56] This concept of unity also has ancient religious roots. Thus Jesus Christ taught the eventual need for "one fold and one shepherd" in the New Testament, John 10, 16. See also Old Testament, Isaiah, Chapt 2. Muhammad taught the principle of brotherhood and the absense of prejudice based on language or colour- Qur'an, 30:21. Krishna taught the spiritual unity of all life and matter – Bhagavad Gita,Chapt 13.

[57] This concept of national sovereignty still exists in a formal manner in international law, including in the United Nations Charter, but it bears little practical resemblance to the realities of the modern situation between different states, particularly when considering the tenuous position of small island states in the global community- see the papers delivered at the Islands '88 Conference held at the University of Tasmania.

race or religion, but rather it is a principle that transcends the limitations and distinctions inherent in those forms of identification. It requires a higher loyalty to the planet and its people as a whole, based on the notion of "unity in diversity"[58]. It accepts that we all inhabit one small, fragile planet, and that we all have to co-operate and find new methods of living together and respecting each other free of prejudice in this interdependent world if we are to have a harmonious future. It requires not only a new inner consciousness in the manner described, but also the commitment to put this new global ethic into practice in our daily lives, based on the view that the things that unite us are far more important than the things that divide. Humanity is now inseparably and irrevocably connected in its quest for a common future[59].

A firm commitment to an equal standard of fundamental human rights for all people in accordance with this view, supported by appropriate international and national legal regimes, is a necessary and integral part of this new world view. The one cannot operate effectively without the other. Moral and spiritual principles, without a social and legal order in which to operate, cannot create a just and harmonious society[60]. And conversely, a social and legal order that is not based on appropriate moral and spiritual principles is likewise flawed and destined. to fail.

Thus while Fiji may have an appropriate secular legal order for this purpose, many of its people may still lack a widespread and active commitment to this new global ethic that I have spoken of, even if they are aware of it. It must be a commitment, extending beyond mere tolerance, that actively transcends the divisions of race, ethnicity, religion and language that exist in this country, to be replaced by a wholehearted acceptance of all Fijians as members of one great national family under the one God, and as equal members of the wider global family.

This new and dynamic commitment to unity is, in my view, a divine commandment for this age, made for the wellbeing of all countries and all humanity. The one supreme God of all of us, no matter what our race or religion, etc., may be, demands nothing less. In the firm acceptance of this view lies not only the future well being of Fiji, but of all mankind. I invite you to seriously investigate the need for this new world view, this new

[58] See discussion of this principle in Multicultural Harmony in Fiji, op cit.
[59] The Report of the World Commission on Environment and Development, Our Common Future, 1987.
[60] S Libo, "Morality, Law and Religion: A Comparison of Three Concepts of Justice", in Towards the Most Great Justice, op cit, 57, 68.

global ethic. It is in my view the most important issue Fijians and humanity as a whole now face in the 21st Century.

Graham Nicholson
2003