

## Freedom of Religion BYU Conference 2025

**Tēnā koutou, tēnā koutou, tēnā tatou, katoa**

Hello one and all.

It is an honour and a privilege to be here and to speak to you.

Te Piringa – Faculty of Law at the University of Waikato is honoured to be a co sponsor of this event.

I am certain that what we will be talking about over the next couple of days and seeing and hearing will be inspirational and enlightening.

I am very much looking forward to reacquainting myself with old friends and making new friends also.

I was thinking of the conference title, that of:

“Freedom to Do, to Be, and to Become: Enhancing Individuals’ Opportunities to Believe and Live as They Choose Within the Framework of the Law”

And thinking about what that might mean for us here in the Pacific?

And it’s been in the back of my mind for quite a while since being invited to talk here today.

And it came back to me when I was watching a documentary the other day with Joanna Lumley as the host.

And a number of you are now questioning what on earth Joanna Lumley has to do with anything.

And also a number of you are also asking “who the hell is Joanna Lumley, and absolutely what on earth has she got to do with this conference?”

Bear with me on this one – I swear it is relevant!

So Joanna Lumley is rather famous and she has been since the 60s.

You may know Joanna from the series Absolutely Fabulous as Patsy.

So anyway, she also does lots of documentaries and talks now and one of these documentaries took her to Iran.

And in particular she visited an ancient tomb.

The tomb of what was then a Persian king.

That king was Cyrus the Great, the first king of ancient Persia.

In 539 B.C., his armies conquered the city of Babylon.

But it was his next actions that marked a major advance for humans.

He freed the slaves, declared that all people had the right to choose their own religion, and established racial equality.

These and other decrees were recorded.

And this ancient record has now been recognized as the world's first charter of human rights.

So from that comes our freedom of religion.

And that got me thinking, we don't always think about freedom of religion as anything novel, as anything out of the ordinary.

It seems always to have been here.

And that means it can be spoken about almost casually, a throw away remark that we have freedom of religion.

But should we be so cavalier about such matters?

And now I don't think we should.

And that's because I would argue that there are some challenges to freedom of religion.

Now, I am not suggesting that freedom of religion is about to be removed either here in New Zealand or in the neighbouring Pacific Islands.

But what I am saying is that there are incursions in to religion, and the freedoms granted to us, on an everyday basis, and those incursions occur precisely because of our freedoms.

So in New Zealand, under our Bill of Rights 1990, we are granted freedom of expression and freedom of thought of conscience, along with our freedom of religion, amongst other freedoms.

In Samoa, for example, their Constitution grants its people freedom of religion, as well as freedom of speech, amongst other freedoms and rights.

However, what I am suggesting is that we need to be more cognisant of what those freedoms mean and what may undermine them, and in doing so, might then undermine the public support for religion particularly.

And religion is perhaps the most vulnerable of all the freedoms in so many ways.

It is an easy target.

It is the butt of many a joke, many a conspiracy, many a contentious view, and whilst it brings together communities, it also divides them.

I've quoted this before, but I think it's a useful way of demonstrating how easy it is to denigrate religion and bring the public along with you when you do so.

It demonstrates the conflict between freedom of expression and freedom of religion.

And the example I use is that of the Tweet by actor and comedian Ricky Gervais, a critic of religion and of the privileges bestowed upon religious charities.

And he memorably Tweeted:

Same sex marriage is not a privilege, [it's] equal rights. Privilege would be something like gay people not paying taxes, like churches don't.<sup>1</sup>

Mr Gervais is not alone in his views.

Cursory searches on X, as it is now, and Facebook, and TikTok to name but some social media platforms, reveals continued criticism. Indeed, the quotes of famous critics, including Stephen Fry, Richard Dawkins and Christopher Hitchens, continue to be viewed and shared by thousands of proponents.<sup>2</sup>

Social media is **really** not a friend of religion TBH, and that's because people are **VERY** bold with their criticisms of religion generally.

As Ricky Gervais' tweet demonstrates.

And closer to home in Tonga, there has been a clash of the freedoms granted under freedom of religion and basic compassion for a person's identity and lifestyle.

So as many as you will likely know, last year in Tonga, there was uproar from many with the appointment of Chief Justice Malcolm Bishop due to his sexual orientation.

He is openly gay.

His sexuality was said to be in direct conflict with sodomy laws in Tonga.

As a result of his appointment, a petition from a group of lawyers called upon the Tongan King to remove Bishop.

This in turn caused conflict because Tongan freedom of religion clashed with human rights proponents.

As a result, the Pacific Sexual and Gender Diversity Network Called for Unity and Respect Following this Petition Against Chief Justice Malcolm Bishop.

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<sup>1</sup> Twitter, Ricky Gervais (@rickygervais).

<sup>2</sup> For example, Samuel Osborne "Stephen Fry was asked what he would say to God if they met. His answer is being investigated by police" *The Independent* (7 May 2017) <https://www.independent.co.uk/news/world/europe/stephen-fry-blasphemy-god-ireland-confronted-by-met-a7722191.html>.

In fact, that Network expressed its deep concern regarding the petition.

This was because that petition not only undermined the values of equality and inclusivity, but also reinforced the stigma that LGBTQ+ individuals face in Pacific communities".

And I think what this reflects is the challenges facing those who wish to express their religious beliefs in a way that is appropriate for their community.

Yet at the same time, such beliefs threaten constructive dialogue about other freedoms and diversity.

So when we think of this conference and its ethos of “Freedom to Do, to Be, and to Become”, I ask whether we can truly do that in a mirage of ways that take in to consideration whether all the frameworks of law actually underpin freedom of religion.

So what I have to say may actually be rather negative but hopefully everyone else at this conference can take my negatives and create positives – so no pressure all other speakers!

And what I’m highlighting is what I see to be a deficit in the law that does NOT enhance people’s opportunities to believe and live within the framework of the law.

I think there are contradictions.

And do I have the answer for these types of scenarios, such as the appointment of Lord Chief Justice in Tonga?

Well, no, and not least because who wants to hear from a colonial white atheist on such matters!!

And I am all of those things, and yes it is probably rather surprising that I am standing here at a conference about freedom of religion when I am atheist.

What can I say, I am a conflicted person!

But actually what I can say, and I do say repeatedly to anyone who stands still long enough to hear me, is that freedom of religion should be respected and promoted.

And there are many reasons for this, including the fact that religion generally is GOOD for society, as I will touch on later.

And yes I know that sounds odd coming from an atheist, but I am a realist too.

And importantly, I recognise that whilst I do not hold all the answers, especially not in Tongan's situation, I do acknowledge that there are significant challenges when trying to reconcile everyone's freedom of religion with other constructs of law.

So let me talk about that.

And I'm choosing to talk about it from a charity law perspective – which may be an unusual approach to take.

And not least because you may question my judgement on this, as charity law and human rights law sit at opposite ends of the legal spectrum.

And that's because human rights protect against social injustice.

And charity law provides discretionary benefits to beneficiaries, albeit in a way that is governed by some stringent charity law principles.

However, it has been argued that religious groups are key to safeguarding and preserving the rights and characteristics of religious peoples, particularly those of minority or vulnerable groups.

And I would argue equally that charities can do the same, they do preserve and safeguard minority and vulnerable groups, amongst their many charitable endeavours.

And that's exactly what religious charities do with much of their outreach work.

And what I aim to show is that charity law ably demonstrates the conflict between the freedom to Enhancing Individuals' Opportunities to Believe and Live as They Choose Within the Framework of human rights law.

And that is BECAUSE in some circumstances, those freedoms of religion are contrary to social policy, and thus cannot be charitable!

And that is not because it is necessarily illegal for those religious groups to express their religion in a particular way.

No, rather it is because it is not charitable because that way of life, or that choice is not socially popular.

Let me give you an example and this really speaks to the disconnect between Enhancing Individuals' Opportunities to Believe and Live as They Choose Within the Framework of human rights law and the requirements of charity law.

So a few years ago, the Exodus Ministries tried to register as a charity.

The Charities Board of New Zealand at the time noted the use of conversion therapy as one of the purposes of Exodus.

Conversion therapy being a practice that seeks to change or suppress a person's sexual orientation, gender identity or gender expression.

The Board said that because of the social evidence of the harm caused from such a practice, it would fail the legal test of public benefit.

The legal test of public benefit must be satisfied for an entity to be registered as a charity.

And because Exodus failed this test, it could not be registered as a charity.

But you have to know crucially that at the time, conversion therapy was **not** illegal, although it was criticised socially.

And now it is an offence to carry out conversion because of the Conversion Practices Prohibition Legislation Act 2022.

So let's have a think about that, at the time of Exodus' registration application, conversion therapy was not illegal.

But what we then saw with Exodus was public pressure coming to bear on religion and impacting on a policy decision because a practice, which was permitted under their freedom of religion, was not socially popular.

And I think that was a bold approach by the Charities Board and one that absolutely reflected the real impact of public opinion.

And I also think that if the public can be so influential on those sorts of decisions, where else can they be so influential with regards to our freedoms relating to religion and belief?

And I do think this is a concern.

This is because we know already from the New Zealand Supreme Court in the case of Greenpeace in 2014, which was also fighting for its charitable status, that unpopularity of views should **not** be taken in to consideration when determining whether or not an entity is charitable.

But the Charities Commission did just that when rejecting Exodus as a charity.

Its religious practice was not popular, therefore it failed the public benefit test.

And you might say that this was a few years ago.

And perhaps decision making has changed since then.

The decision of the Board in 2021 for the group called The Self-Sovereignty Faith suggests otherwise, and an earlier decision in the Jedi Society of New Zealand.

And yes, I am talking about Jediism as you might imagine.

And both the Self-Sovereignty Faith and the Jedi Society had deliberately left their belief system more open to their followers so they can choose their own spiritual path.

But the Board in both those decisions said in essence that this did not meet the religious test and, amongst other matters, neither were charitable.

And I find these decisions difficult to reconcile in many ways.

And not least because faith and spirituality evolve, and many people are moving away from traditional religions.

And that's because they can't align with the values prescribed by some of those traditional religions.

Many look to religions and spirituality that provide alternative ways of regarding humanity and humans' place in the universe.

And I think there should be room for the encouragement of new ways of finding your faith.

And I think the approach of the Charities Board demonstrates a worrying trend because of the similarities between freedom of religion and religious charities, as we've said.

Both protect the vulnerable and the minorities and both enable communities to live as they would wish according to their beliefs.

And this is what is so beneficial about charities.

And that is that they have been referred to as supporting the machinery or harmony of civil society.

In other words, they are vital for ensuring betterment and smooth working of society.

And I think that particularly applies to religious charities.

Many of you will know how much religious charities do for their communities and my research has revealed vast amounts of work undertaken by religious charities that are hidden away from the public gaze.

Not for any nefarious reasons, but just that it turns out many religious people keep their good works to themselves.

I am heading up a research project to establish how much religious charities are worth to the New Zealand economy.

And I am collaborating with an amazing Professor at the University of Waikato who specialises in finances and accounting within the not for profit and charity sector.

So far, our research has demonstrated that religious charities in New Zealand contribute \$6.1 billion dollars to the economy annually.

That is a conservative estimate by the way.

And I thank the Wilberforce Foundation and the InterChurch Bureau for their generous funding to enable our research to continue, and there is much yet to be done.

And what I am highlighting with all of this is that religious charities are vital to our communities, and the work that they do may be said to be an expression of freedom of religion, and that should absolutely be protected.

And not least because can you imagine the Government stepping in to make up the shortfall of all those billions of dollars should religious charities lose their charitable status, or be subject to taxation?

Of course not.

No, instead communities would suffer terribly and on top of that, the public would see that the government does not support religion from a charitable perspective.

And that is because, being charitable demonstrates that an entity's purposes are "worthy enough to receive the support of the state",<sup>3</sup> signalling an endorsement by society.<sup>4</sup>

And when a religious charity loses, or does not obtain charitable status, this could be viewed as undermining freedom of religion.

And where then would the public gaze turn when it comes to religion?

It could be the thin end of the wedge.

And that is a worrying thought.

And this is a concerning trend because of the similarities between freedom of religion and religious charities, as we've said.

And both are vital for ensuring betterment and smooth working of society.

Now, of course I am not suggesting that a religion that does not obtain charitable status will no longer be a religion.

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<sup>3</sup> At 67.

<sup>4</sup> At 67, referring to Pauline Ridge "Religious Charitable Status and Public Benefit in Australia" (2011) Melbourne Law Review 35 at 1073.

Of course not, the followers of that faith still have freedom to believe and worship as they choose, for the most part.

But there are two issues with that.

Firstly, that religion will be subject to taxes where charities are not.

This eats in to income, and means that many good works cannot be undertaken because that money is now diverted to paying rates etc.

Secondly, the public is now aware that that religion appears not to supported by the state.

And this can be damaging to certain religions, especially those that are controversial, minority or vulnerable.

And this is because for those religions especially, their rise to public acceptance is normally very slow and difficult.”<sup>5</sup>

We in New Zealand have already seen a terrible terrorist attack aimed at the Islamic faith.

And that stemmed from misunderstandings and hate about Islam.

So as I draw this to a close, I ask you to think carefully about our “Freedom to Do, to Be, and to Become”

And whether frameworks of the law enhance individuals’ opportunities to Believe and Live as They Choose”.

I would suggest that they may not and that we need to find a way as society to ensure that we really are free to do, to be and become in a way that promotes the machinery or harmony of civil society.

And even this atheist can recognise the benefit of freedom of religion for all of society, because it’s value is paramount for a healthy society.

**END!**

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<sup>5</sup> At [39].

Many of you will know how much religious charities do for their communities and my research has revealed vast amounts of work undertaken by religious charities that are hidden away from the public gaze.

Not for any nefarious reasons but just that it turns out many religious people keep their good works to themselves.

I am heading a research project to establish how much religious charities are worth to the New Zealand economy.

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And I thank the Wilberforce Foundation and the InterChurch Bureau for their generous funding to enable our research to continue, and there is much yet to be done.

And what I am highlighting with this is that religious charities are vital to our communities and may be said to be an expression of freedom of religion, and that should absolutely be protected.

Can you imagine the Government stepping in to make up the shortfall of all those billions of dollars should religious charities lose their charitable status, or be subject to taxation?

Of course not.

Now, obviously, if your religion is rejected as being charitable, that doesn't mean to say that you religion will fail.

What it does do though is show that there is no public support for your religion and particularly no state support for your religion.

In other words, being charitable demonstrates that an entity's purposes are "worthy enough to receive the support of the state",<sup>6</sup> signalling an endorsement by society.<sup>7</sup>

So if a religion is rejected as being charitable, or loses its charitable status then this can be damaging for that religious community because of the apparent rejection of them by society.

And it undermines the ethos of freedom of religion.

Of course you are still free to embrace your religion but there may be social pressure now to ensure it is not in the public gaze.

And this is unfortunate because was addressed in the Australian High Court Scientology case that when Scientology fought to for its charitable status.

Now, Scientology has been referred to by one court as "immoral and socially obnoxious ... corrupt, sinister and dangerous."<sup>8</sup>

But the Court in the Scientology case was wary of utilising such damaging terms and preferred to treat all religions as equal.

Because if you criticise the beliefs of one religion, then all may be subject to such criticism.

And in particular, the Court warned of criticising newer or novel religions.

This is because, generally, "all religions commence as minority groups, often gathering around the teachings of one seemingly inspired individual. Their rise to public acceptance is normally very slow and difficult."<sup>9</sup>

And indeed, as had been argued previously in the United States' Supreme Court case of *Gillette v United States*,<sup>10</sup> that a test of public popularity might risk increasing a claimant's chances of legal success if their belief system echoed a more familiar or salient connection with a conventional religion.

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<sup>6</sup> At 67.

<sup>7</sup> At 67, referring to Pauline Ridge "Religious Charitable Status and Public Benefit in Australia" (2011) Melbourne Law Review 35 at 1073.

<sup>8</sup> At 9, citing *R B and G*, at 157.

<sup>9</sup> At [39].

<sup>10</sup> At [39], referring to *Gillette v United States* [1971] USSC 45 at 185.

So we have evidence that freedom of religion may in some way be given effect by religious charities.

But, and it's a big but, New Zealand may not follow that path.

Let me give an example.

So in 2010 Exodus Ministries tried to register as a charity.

The Charities Board of New Zealand at the time noted the use of conversion therapy as one of the purposes of Exodus.

Conversion therapy being a practice that seeks to change or suppress a person's sexual orientation, gender identity or gender expression.

The Board said that because of the social evidence of the harm caused from such a practice, it would rebut the presumption of public benefit.

In other words, Exodus could not be registered as a charity.

But you have to know crucially that at the time, conversion therapy was **not** illegal, although it was criticised socially.

But, now it is an offence to carry out conversion because of the Conversion Practices Prohibition Legislation Act 2022.

So let's have a think about that, at the time of Exodus' registration application, conversion therapy was not illegal.

But what we then saw with Exodus was public pressure coming to bear on religion and impacting on a policy decision because a practice, which was permitted under their freedom of religion was not socially popular.

That meant that Exodus was not registered as a charity.

And I think that was a bold approach by the Charities Board and one that reflected the real impact of public opinion.

And I think if the public can be so influential on those sorts of decisions, where else can they be so influential with regards to our freedoms relating to religion and belief?

And I do think this is a concern because we know already from the New Zealand Supreme Court in the case of Greenpeace in 2014, which was also fighting for its charitable status, that unpopularity of views should not be taken in to consideration when determining whether or not an entity is charitable.

But the Charities Commission did just that when rejecting Exodus as a charity.

Its religious practice was not popular therefore it failed the public benefit test.

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Not always the case, as in Centrepont but the tide began to turn in Exodus (find other rejections) and then Family First.

Not illegal but unpopular but Greenpeace tells us that unpopular purposes can still be charitable as does Centrepont

New religion – adopted characteristics from Gnostic Centre but without any precedent to do – canons of conduct etc

This is not presuming the public benefit this is adding a complex test and certainly is not applying benignant construction

“Harmony of civil society” but NZ charity law requires significant structure to a religion, but only if a new one, so discriminatory.

Contrary to what was set out in Scientology where said new religions were not popular and in fact Scientology principles of belief were adopted by NZ in Centrepont.

This is limiting what religions can do and evolution of them

Self Sovereign Faith – was a summary decision that did not even consider whether its activities advanced religion nor public benefit!

On the surface, freedom of religion and freedom to worship appear to be alive and well in New Zealand and other pacifica nations, as such freedoms are entrenched in constitutions and other laws.

For instance, in NZ we have the Bill of Rights and Human Rights Act, and Tonga has freedom of worship embedded in ...

But, and it is a big but, if one is to look a little closer, a little deeper, perhaps those freedoms are not so well supported by all as one might hope or expect.

And if the public can be so bold with their criticism of religious charities, which are vital to so many communities in the Pacific region, where will that bold criticism target next?

Will be it be the explicit freedom of religion that we have entrenched in our laws?

Perhaps not directly, but we already see how the public attack people's "Freedom to Do, to Be, and to Become

And this is where I take a bit of a detour and utilise charity law to make my point.

And you may question my judgement on this as charity law and human rights law sit at opposite ends of the legal spectrum. EXPLAIN WHY

But there is method in my madness and I think what I will demonstrate is that not all may be well for religion in contemporary times as it falls under the spotlight time and time again.

The effect of this is to undermine freedom of religion and whilst I am not suggesting that each pacifica nation will have to amend their constitution or associated laws to remove freedom of religion, what it does suggest is that the social licence of religion is being eroded.

And I think that is a cause for concern because freedom of religion can be used for good and for bad.

I'll utilise a couple of NZ examples of freedom of religion to highlight then I'll talk about the issues arising from an analogous point of view.

TALK ABOUT FREEDOM OF RELIGION CASES CONTENTIOUS ONES FROM MY BOOK

Let me explain.

## INTERNATIONAL

### **THE CONSTITUTION OF THE INDEPENDENT STATE OF SAMOA:**

**11. Freedom of religion - (1)** Every person has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in a community with others, and, in public or private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.

**(2)** Nothing in clause (1) shall affect the operation of any existing law or prevent the State from making any law in so far as that existing law or the law so made imposes reasonable restrictions on the exercise of the right conferred under the provisions of that clause in the interests of national security or of public order, health or morals, or for protecting the rights and freedom of others, including their rights and freedom to observe and practice their religion without the unsolicited interference of members of other religions.

**12. Rights concerning religious instruction - (1)** No person attending any educational institution shall be required to receive religious instruction or take part in any religious ceremony or attend religious worship, if that instruction, ceremony or worship relates to a religion other than his own.

**(2)** Every religious community or denomination shall have the right to establish and maintain educational institutions of its own choice and to provide therein religious instruction for pupils of that community or denomination.

**(3)** Nothing in clause (2) shall prevent the State from making any law requiring the inspection of educational institutions and the maintenance therein of standards in keeping with the general educational level in Samoa.

**“Christianising Samoa’s constitution and religious freedom in the Pacific**  
27 April 2017



**Bal Kama**



Samoa is in the process of [amending](#) its Constitution to declare itself as a Christian country. For Christians in Samoa, the *Constitution Amendment Bill No. 2* (2016), which [securely passed](#) the second reading in Parliament in February, could have both positive and negative consequences. According to the Explanatory Memorandum, the object of the amendment is ‘to insert in the Constitution that Samoa is a Christian nation to declare the dominance of Christianity in Samoa.’

This is an important development in an era of increasing [religious intolerance](#) and state-sponsored vilification. While the amendment may be favourable to the predominantly Christian churches in Samoa, there is greater need to understand the impetus for such development and its potential ramifications on other religions whose members are integral to Samoa’s social cohesion.

Samoa refers to Christianity in the preamble of its current [Constitution](#) by calling for Samoa’s government to conduct itself “within the limits prescribed by God’s commandments” and for its societal values to be “based on Christian principles...” Almost all Pacific island countries, except Fiji, have adopted some acknowledgment of God in their preamble.

This practice of ‘christening the constitution’ has been a common feature in many post-colonial constitutions throughout Christendom. Conservatives value it as buffer against the intrusion of modernity and secularism. But this act of Christianising is typically symbolic and restricted only to the preamble which, on its own, is generally [not an enforceable](#) part of a constitution.

But Samoa intends to go further. Prime Minister Tuilaepa Sailele Malielegua has [argued](#) that because the preamble is not part of the Constitution, the reference to Samoa as a Christian country “does not stand in Court” so it has to be “included in the body of the Constitution.” This implies that the declaration of Christianity should not only be symbolic but have direct constitutional impetus, which in turn may allow the parliament to impose restrictions on certain religions or religious practices that are not Christian.

According to [Attorney General](#) Lemalu Hermann Retzlaff, the amendment “will enshrine Christianity from within the body of the Constitution which effectively provides a legal definition of the State’s religion.” But this is problematic on two accounts. First, having an official ‘state religion’ could mean the exclusion or alienation of other religions. Second, it could amount to a form of theocracy. Ever since the Glorious Revolution of the 17<sup>th</sup> century, the separation of church and state has taken a firm foothold in almost all democracies. Samoa’s attempt may blur this distinction and affect the right to people’s freedom of religion and equal treatment.

The right to religious freedom and non-discrimination is a cornerstone of modern democracy. For instance, the Australian Constitution expressly provides for the [right to religious freedom](#) despite the country not having a Bill of Rights. In the United States, President Donald Trump has faced significant setbacks from the Federal courts, which have consistently ruled that his Executive Orders restricting the travel of people from certain Muslim countries [amounts to religion-based](#) discrimination and are therefore [unconstitutional](#).

Samoa’s Muslim community have raised similar [concerns](#) regarding the proposed amendment. They argued that it is an [attempt](#) to isolate the Islamic religion. Samoa’s council of Christian churches, however, appeared to welcome the amendment as a timely step towards [restricting](#) Islam and secularism in the country. A push for anti-Muslim policies is also quietly present in [Papua New Guinea](#) amidst the growing number of [Muslim converts](#) in the country.

The regional security and intelligence apparatuses might have their own assessment as to whether the Pacific island states are under any threat of extremism, but at this stage, this fear of an Islamic revolt appears to be influenced more by what is going around the world than

any actual extremism in Samoa or PNG. Both the public and the political leaders are predominantly influenced by desensitised media outlets that often fail to provide a balanced perspective on the issue.

In its defence, Samoa's current [Constitution](#) guarantees the right to religious freedom which includes the right "to manifest and propagate" a "religion or belief in worship, teaching, practice and observance" [s 11(1)]. The government has argued that this guarantee will not be affected by the amendment to declare Samoa's state religion as Christianity. But the guarantee is not absolute. The Constitution provides for instances where the government can impose restrictions on the exercise of this right and that includes on reasons of 'national security, morals, or for protecting the rights and freedom of others.' These are very broad conditions. In the words of the Constitution, "nothing shall prevent the State from making any law" to impose "reasonable restrictions on the exercise of the right..." [s 11(2)].

It is feared that having a constitutionally based declaration of Christianity as the state's religion will legitimise Christian morals and practices and that could provide the legal premises to restrict other practices whose values and beliefs may appear contrary. This concern was evident in the case of Tonga last year when the country [banned bakeries](#) from doing business on Sunday in honour of the Christian practice of worshipping on Sunday. In the Bible scripture [Matthew 28:19](#), the gospel commissions Christians "to go and make disciples of all nations" irrespective of their faith, religious background, tribe or kindred. The believers are called to declare their faith through the 'cross of Jesus,' not the constitution, and to live a life of love and good virtue. Christians in the Pacific islands may need to guard their faith against fear-driven campaigns that only legitimise and perpetuate religious vilification, Islamophobia and ultimately disunity.

As for Samoa's Parliament, it needs to charter a responsible and sensitive discourse to this issue as an example to other Pacific island states who may be tempted with similar reform. The key in countering religious extremism is in the unity of the faiths, not their division.  
*Bal Kama is a PhD Candidate at the ANU College*"

<https://freedomhouse.org/country/samoa/freedom-world/2023>:

"Freedom of religion is constitutionally guaranteed and mostly respected in practice. However, a 2017 constitutional amendment shifted references to Samoa being a Christian nation from the constitution's preamble to its body text, meaning it can potentially be used in legal action. There is strong societal pressure at the village level—including from village councils—to participate in the activities of the main local church.

In April and May 2020, the Samoan Law Society and the country's ombudsman expressed concerns that provisions in three government-backed bills—the Constitution Amendment Bill 2020, the Lands and Titles Court Bill 2020, and the Judicature Amendment Bill 2020—could limit religious freedom by removing the Land and Titles Court from the jurisdiction of the Supreme Court, meaning the latter could no longer review decisions on village customary matters that violated individual rights. The bills were subsequently passed in December 2020 and received the head of state's assent in January 2021. The current FAST government is opposed to those laws, but it does not have the two-thirds majority required to overturn them in the parliament."

[https://www.andrews.edu/library/car/cardigital/Periodicals/Record\\_SPD/2017/2017\\_05\\_06.pdf](https://www.andrews.edu/library/car/cardigital/Periodicals/Record_SPD/2017/2017_05_06.pdf):

"SAMOA IS IN THE PROCESS OF amending its Constitution to declare itself a Christian country.<sup>1</sup> For Christians in Samoa, this amendment, which securely passed the second reading in Parliament in February and will soon be ushered into the Constitution,<sup>2</sup> could have

both positive and negative consequences. According to the Explanatory Memorandum, the object of the amendment is “to insert in the Constitution that Samoa is a Christian nation to declare the dominance of Christianity in Samoa”.<sup>3</sup> This is an important development in an era of increasing religious intolerance and state-sponsored vilification against faith-based communities. While the constitutional amendment may be favourable to the Seventh-day Adventist Church in Samoa as a Christian denomination, there is a greater need to understand the impetus for such a development and its potential ramifications for other religions to which we are called to minister. Samoa refers to Christianity in the preamble of its Constitution, by calling for Samoa’s Government to conduct itself “within the limits prescribed by God’s commandments” and for its societal values to be “based on Christian principles . . .” Almost all Pacific Island countries, except Fiji, have adopted some acknowledgment of “God” and “Christianity” in the preamble of their constitution. This practice of “Christianising the constitution” has been a common feature in many post-colonial constitutions throughout “Christendom”. Some have viewed it as a buffer against the intrusion of modernity and secularism. But this act of Christianising is typically symbolic and restricted only to the preamble, which, on its own, is generally not an enforceable part of a constitution. But Samoa intends to go further. Prime Minister Tuilaepa Sailele Malielegaoi has argued that because the preamble is not part of the Constitution, the reference to Samoa as a Christian country “does not stand in court” so it has to be “included in the body of the Constitution”.<sup>4</sup> This implies that the declaration of Christianity should not only be symbolic but also have direct constitutional impetus, which in turn, may allow the parliament to impose restrictions on certain religions or religious practices that are not Christian. According to Samoa’s Attorney General Lemalu Hermann Retzlaff, the amendment “will enshrine Christianity from within the body of the Constitution which effectively provides a legal definition of the State’s religion”.<sup>5</sup> This may be problematic on two counts. First, having an official “state religion” could mean the exclusion or alienation of other religions. Second, it could amount to a form of theocracy. Ever since Britain’s Glorious Revolution in the 17th century, the separation of church and state has taken a firm foothold in almost all democracies. Samoa’s attempt may blur this distinction and affect the right to freedom of religion and equal treatment. The right to religious freedom and non-discrimination is a cornerstone of modern democracy. In Australia, it is expressly protected in the Constitution despite the country not having a Bill of Rights.<sup>6</sup> In the United States, President Donald Trump has faced significant setbacks from the Federal courts, which have consistently ruled that his executive orders restricting the travel of people from certain Muslim countries were unconstitutional. As recently as March, an American federal court judge held that the orders were “issued with a purpose to disfavour a particular religion, in spite of its stated, religiously neutral purpose”.<sup>7</sup> Samoa’s Muslim community has raised similar concerns regarding the proposed amendment. They argue that it is an attempt to isolate the Islamic religion. A similar push for anti-Muslim policies is quietly present in Papua New Guinea (PNG) amidst the growing number of Muslim converts in that country. But the fear of an Islamic revolt appears to be influenced more by what is going on around the world than by any actual Islamic extremism in Samoa or PNG. Both the public and the political leaders are predominantly influenced by media outlets that often fail to provide a balanced perspective on the issue. In its defence, Samoa’s current Constitution guarantees the right to religious freedom, including the right “to manifest and propagate” a “religion or belief in worship, teaching, practice and observance”.<sup>8</sup> The Government has argued that this guarantee will not be affected by the amendment to declare Samoa’s state religion as Christianity. But the guarantee is not absolute. There are instances where the Government can impose restrictions on the exercise of this right and that includes on reasons of “national security, morals, or for protecting the rights and

freedom of others". These are very broad conditions. In the words of the Constitution, "nothing shall prevent the State from making any law" to impose "reasonable restrictions on the exercise of the right . . ."9 It is feared that having a constitutionally-based declaration of Christianity as the State's religion will legitimise Christian morals and practices and that could provide the legal premises to restrict other religions whose values and beliefs may appear contrary. This concern was evident in Tonga last year when the country banned bakeries from doing business on Sunday in honour of the Christian practice.10 Some segments of the local Adventist Church advocated for the ban because Sunday is viewed in Tonga as the Sabbath due to changes in the international dateline. However, such a move was contrary to what the Adventist Church has advocated globally for more than 100 years: that is to indiscriminately defend religious liberty and faith-based persecutions—not only when it suits us. The current impasse in the United States with President Trump's executive orders against certain Islamic countries adds to the growing list of countries around the world taking drastic measures to counter Muslim extremism. The increasing support in Australia for One Nation, an ultra-nationalist party with a firm anti-Muslim policy, is a closer example. The fear in the Pacific may be well-founded on growing incidents of terrorism and extremism in other parts of the world. However, it is doubtful whether elements of extremism actually exist or are actively cultivated in the Pacific Islands. While it is not for me to judge the merits of government policy in the Pacific Islands and how they react to global trends, I hope that as Seventh-day Adventists we can be adequately informed of the underlying inconsistencies that underpin such contemporary debates. Our ill-informed actions may significantly undermine our gospel commission. In Matthew 28:19 we are called "to go and make disciples of all nations" irrespective of their faith, religious background, tribe or kindred. Christ reminded us that He "came to seek and save those who are lost" (Luke 19:10) and that mission was indiscriminate. Once a self-righteous Pharisee and religious enforcer, the apostle Paul, in Romans 12:9-21, urged us to a ministry based on love, tolerance and acceptance. We are called to declare our Christian faith and Adventism through the cross, not the constitution. We as Seventh-day Adventists must stand guard against fear-driven campaigns that only legitimise and perpetuate religious vilification, islamophobia and ultimately disunity. Instead, let us embrace the faith of Jesus and love our neighbours as we love ourselves. 1. Constitution Amendment Bill No. 2 (2016) (Samoa). 2. Concern over Samoan Bill, Saturday, February 04, 2017 (The Fiji Times) <http://www.fijitimes.com/story.aspx?id=387964>. 3. Explanatory Memorandum, Constitution Amendment Bill No. 2 (2016) (Samoa). 4. "Samoa's proposed Constitutional amendment threatens religious freedom," (CathNews New Zealand) February 10, 2017. 5. Lanuola Tupufia, "Govt. amends Constitution to reflect Christian State" (Samoa Observer) December 21, 2016. 6. Commonwealth of Australia Constitution Act (1901), s 116. 7. State of Hawaii v Donald J. Trump C.V.No. 17-00050 DKW (March 15, 2017). 8. Constitution of the Independent State of Samoa 1960, section 11. 9. Section 11 (2). 10. "Ban on Tonga Sunday bakeries opening now in place," (Radio New Zealand, 01 July 2016) <http://www.radionz.co.nz/international/pacific-news/307742/ban-ontonga-sunday-bakeries-opening-now-in-place>. Bal kama is a phd LAW candidate at the Australian National University, Canberra, with an interest in pacific affairs."

<https://cpb-ap-se2.wpmucdn.com/blogs.auckland.ac.nz/dist/2/334/files/2018/11/PLCC-10Dec-WEB-12ptrbp.pdf>:

“In June 2017, the HRPP-dominated government of Samoa declared Samoa to be a Christian state. In the Explanatory Memorandum that accompanied the Constitution Amendment Bill (No. 2) 2016, it stated, “the object of the Bill is to insert in the Constitution that Samoa is a Christian nation to declare the dominance of Christianity in Samoa.”<sup>37</sup> On elaborating on the necessity to amend the Constitution the Prime Minister Tuilaepa presented the following arguments: The reference in the preamble of the 1960 constitution which states “...Whereas the Leaders of Samoa have declared that Samoa should be an Independent State based on Christian principles and Samoan custom and tradition.....’ is ‘inadequate’”<sup>38</sup>. The inadequacy, he said, “lies in terms of how Samoa as a Christian state is not included in the body of the Constitution” and “instead, it is in the cover and preamble of the constitution”, therefore showing, that “it is not part of the constitution”<sup>39</sup>. And, if ‘Christian state’ is not in the constitution, “it does not stand in court”<sup>40</sup>. There are also security concerns with references to religious wars and religious extremism and the need for legal recourse should such situations arise in the future. Under the new constitutional amendment, the ‘phrase “Samoa is founded on God” will no longer be used. Instead, under the constitution, it will be “Samoa is a Christian nation founded of God the Father, the Son, and the Holy Spirit.”<sup>41</sup>”

“In June 2017, a clause was added to the constitution making Christianity the state religion”.

## **THE CONSTITUTION OF TONGA:**

### **Freedom of Worship**

5. All men are free to practise their religion and to worship God as they may deem fit in accordance with the dictates of their own worship consciences and to assemble for religious service in such places as they may appoint. But it shall not be lawful to use this freedom to commit evil and licentious acts or under the name of worship to do what is contrary to the law and peace of the land.

### **Sabbath Day to be kept holy**

6. The Sabbath Day shall be kept holy in Tonga and no person shall practise his trade or profession or conduct any commercial undertaking on the Sabbath Day except according to law; and any agreement made or witnessed on that day shall be null and void and of no legal effect. *(Substituted by Act 3 of 1971.)*”

<https://news-pacific.churchofjesuschrist.org/article/tongans-look-to-god-for-religious-freedom-and-happiness:>

“24 February 2024 - LIAHONA, Tongatapu, Tonga

*News Release*

## *Tongans Look to God for Religious Freedom and Happiness*

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*The Speaker of the Tongan Parliament said religious freedom has always been a part of Tonga's Constitution and will continue to be an important part of Tongan life, before an audience in Liahona, Tonga on Friday, 23 February.*

*The Honourable Lord of the Realm and the Speaker of the Tongan Legislative Assembly, Fatafehi Fakafanua, was the featured speaker at the Tongan Religious Freedom Dinner, sponsored by The Church of Jesus Christ of Latter-day Saints.*

*A new booklet outlining the individual religious rights of each Tongan citizen, produced by the Church in Tongan and English with input from several organisations, was presented in the country for the first time at this event.*





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*Speaker of the Tongan Legislative Assembly, Lord Fatafehi Fakafanua, addresses the Religious Dinner in Liahona, Tonga, 23 February 2024. 2024 by Intellectual Reserve, Inc. All rights reserved.*



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*Lord Fakafanua told the audience that 73 years before the United Nations released its Universal Declaration of Human Rights in 1948, Tonga’s Constitution was written under the reign of King Tupou I, and provided for basic human rights such as freedom of religion.*

*He said that two articles of Tonga’s supreme law, clauses five and six, specifically recognize the authority of God in providing for freedom of worship and the sacredness of the Sabbath Day.*

*He explained that these freedoms are not taken lightly in Tonga.*

*“We realize that we are under the protection of the Almighty and like all contracts it’s a two-way road,” Lord Fakafanua stated.*

*“We have to uphold that covenant, made between King Tupou I and God, as it was intended, which can often be difficult—especially in these times when there are so many things that can distract us from that.”*

*Lord Fakafanua travelled to Provo, Utah, USA in October 2023, to participate in the International Law and Religion Symposium, sponsored by the J. Reuben Clark Law School at Brigham Young University. While there he made a presentation on Tonga’s long-held beliefs on religious freedom.*

*“I was so pleased to be able to tell them that Tonga has been a leader in protecting these rights since 1875,” he said.*



*A new brochure, "Religious Freedom: A Guide To Your Rights," was released by the Church of Jesus Christ of Latter-day Saints in Tonga, 23 February 2024. 2024 by Intellectual Reserve, Inc. All rights reserved.*

*“I want to encourage everyone to read this new pamphlet on religious freedom being presented here tonight,” he said. “I’m hoping people will take the time to*

*read up on this, and we can find ways to get this out there on many other platforms.”*

*Elder Sione F. Tuione, Area Seventy in The Church of Jesus Christ of Latter-day Saints, reminded the audience that it was the religious freedom provided for by the US Constitution that made it possible in 1820 for a young 14-year-old boy, Joseph Smith, to ask God which church he should join. He said Tonga’s leaders, in a similar way, provided a framework of laws that make it possible for all its citizens to worship in whatever way they believe will bring them closer to God.*

*“I am so grateful to live in a country where I am free to go and invite others to come unto Christ,” Elder Tuione said. “I am grateful that we are allowed to make our own choices, and it is our responsibility to invite others to come and find this out for themselves.”*

*“I’m so grateful that our Tongan forefathers allowed us to be free in how we worship, in how we serve, and how we meet every Sunday,” he added. “Jesus Christ is the true source of all happiness and joy in this life, and everyone should have the opportunity to find this out in their own way.”*

*Melelua Langi, leader of the committee that organized the event, was encouraged by the remarks given and the discussion among all of the participants afterwards. “There was such a strong expression of gratitude among all those in attendance for the blessings of freedom to worship as we choose,” she said.*

*“We’re looking forward to making this new brochure available to our larger community, so everyone can be reminded of the important freedoms we enjoy in our country, and do everything we can to preserve them,” Langi said.*