

PACIFIC CURRENTS

The Quest for Constitutional Reform in Tonga

Although low standards of governance are now acknowledged as widespread in the Pacific, diagnosis and remediation almost entirely focus on process rather than structure. Consequently, reforms driven mainly by aid donors, and Australia and New Zealand in particular, have concentrated on two strategies: first, the pursuit of public sector efficiency by reducing the size and restricting the functions of government consonant with the worldwide trend towards smaller government; secondly, the education and training of civil servants in the belief that inefficiency is a one-dimensional function of inadequate knowledge. However, it is widely acknowledged that corruption, which is not a symptom of ignorance, is one of the most serious problems associated with governance. Moreover, academic discourse on Pacific politics has given considerable attention to the supposed disjunction between culture and modernity.¹ Apologists for Pacific Island styles have argued that what appears to outsiders to be corruption is merely the exercise of traditional choices and perquisites; similarly, insiders have responded to outsider criticisms by dismissing democracy as 'a foreign flower'.

The significant omission in the analysis of misgovernance is constitutional. The foundation documents for Pacific Island states were drafted almost entirely by liberal, Western lawyers, with consultation that ostensibly made adaptations to local culture and circumstances. Consequently, they are mostly variations on a theme, and the variations have at least as much to do with the constitutional traditions of the colonial powers as with the cultural conditions of Polynesian, Melanesian or Micronesian societies. It is perhaps not for entirely objective reasons that comment from the West and advice from aid partners seldom find fault with the constitutions but rather with the way people are misusing or ignoring them. In particular, the principle of representative democracy is sacrosanct, and its institutions apparently beyond criticism.

Perspective on Tonga

There is one exception to this portrayal: the case of Tonga. Tonga has similar difficulties to the other countries, all of them trying to manage a rapid process of modernisation with large sectors of their populations living lives that do not readily fit modern paradigms. Corruption is present, public sector inefficiency or incompetence is certainly a burden, and Australian and New Zealand aid donors have been generous in their prescriptions to remedy the latter. Whether corruption and inefficiency in Tonga is as serious as elsewhere in the Pacific is impossible to say with certainty in the absence of detailed empirical, comparative studies, but my personal impression is that these things are less a problem in Tonga, and that they are more plausibly defended by appeals to tradition

¹ Ron Crocombe et al. (eds), *Culture and Democracy in the South Pacific* (Suva 1992); Werner vom Busch et al. (eds), *New Politics in the South Pacific* (Suva 1994); Stephanie Lawson, *Tradition Versus Democracy in the South Pacific* (Cambridge 1996); Rory Ewins, *Changing their Minds: tradition and politics in contemporary Fiji and Tonga* (Christchurch 1998).

and culture, than may be the case elsewhere. Tonga has had no scandals comparable with the Cook Islands tax scam or money laundering like Nauru, the breakdown of executive authority that has occurred in Vanuatu and Solomon Islands, no political assassinations, nothing like the auditor-general scandal of Samoa of 1994, none of the electoral abuses that are common elsewhere, and no civil strife. Kleptocracy is much more a feature of other states. Nor is it a *rentier* state on the scale of the former US Trust territories or the French dependencies. Yet the dominant public perception of Tongan politics among foreign politicians, academics and the interested public is its allegedly archaic constitution. The popular press regularly describes Tonga as feudal or absolutist, and refers to its constitution disparagingly as 'nineteenth century' apparently unconscious of the chronologies of the New Zealand and the Australian state and federal constitutions.² If the diagnosis of misgovernment in Tonga is its constitutional inadequacy, there is a question to be asked and answered about the analyses of misgovernment of other states which find no fault with constitutions but only with process.

Criticisms of Tonga's constitution concentrate on a few selected details: the electoral provisions, the appointment of cabinet and the role of the king. However, foreign criticisms draw their inspiration from Tongan reformists whose initial concerns in the early 1980s were with matters of process: corruption and its close relation, self-interestedness. The failure of reformists in the late 1980s to prevail in their attempts to secure more openness and greater accountability in government encouraged them to believe that the problem was with the constitution. Rational means of applying pressure to the government including parliamentary motions and debate, journalistic publicity, public affairs broadcasts on the radio, petitions to the king and protest marches were all tried during the 1980s and early 1990s. Earlier, in the 1970s, press, pulpit and a public seminar had likewise attempted to influence government but without noticeable effect. The lack of success of these stratagems encouraged reformists to believe that, if the rules controlling government were changed, then the behaviour of government would improve in consequence. Constitutional revision was therefore in the air from about 1990.

This outlook reflected a possibly naïve expectation on the part of reformists that rules were self-potentialising, notwithstanding the fact that a cursory acquaintance with the politics of other Pacific Island states demonstrates otherwise. After over a century of constitutional rule, however, Tongans generally had a reverential regard for constitutionalism. This respect had perhaps been reinforced by numerous constitutional amendments which, while they testify to malleability, also demonstrate a conviction that rules and behaviour should be consistent. The amendments have been generally small adjustments to facilitate the changing role of government in modern times, but also imply the precedence of rules over will.

The History of Constitutional Reform

Constitutional reform has always been initiated by the executive, usually for its own purposes, and never in response to public demand or advice from outside government.³ For the first half of Tonga's constitutional history (1875 to about 1940) the most persistent difficulty faced by the Tupou regime was the opposition of members of the

² The point really is not the antiquity of the constitution, but in the language of colonial constitutional history Tonga's constitution provides only for 'representative government', not 'responsible government'. But as colonial constitutional history shows, representative government does not preclude responsible government. The difference can be bridged by the evolution of conventions.

³ Amendments between 1880 and 1974 are summarised in Sione Lātūkefu, *The Tongan Constitution. A brief history to celebrate its centenary* (Nuku'alofa 1975), 47, 57, 76-7, 80-3.

traditional aristocracy, including the nobility that had been created by the constitution in 1875. Constitutional amendments (like the adoption of a constitution originally⁴) throughout that period were generally undertaken, therefore, in order to strengthen the shaky dynasty against its most powerful opponents. This included a series of amendments in the 1880s, freeing the executive from some of the liberal provisions and restrictions on monarchical power; the most significant of these was the deletion of the procedure for constitutional amendment.⁵ Another important amendment of the time permitted the creation of additional noble titles. From the original 20, the number was increased to 30 to allay some of the aristocratic opposition to the new order.⁶ Lifting the restriction on the number of cabinet members was another early amendment that strengthened the position of the king. For the next 30 years, uncertainty and royal tentativeness prevailed until in 1914 the most significant of all amendments was carried. This provided for a reduction in the size of the Legislative Assembly: previously consisting of all 30 nobles, an equal number of 'people's representatives', the two governors for Ha'apai and Vava'u, and at least four cabinet members, the size of the legislature had risen to about 70. The representative principle was now applied to both nobles and commoners, but the principle of equality between the two 'estates' was retained. At the same time, the cabinet continued to be of indeterminate size at the king's discretion. Whether or not the real intention was to promote efficiency and economy in government, as was argued at the time,⁷ the political consequence was to strengthen the power of the king *vis-à-vis* the nobles. From that time, the power of the monarch has steadily increased as the nobles have become progressively subservient and dependent on royal patronage for their opportunities and status. Subsequent constitutional amendments were 'fine-tuning', not a response to demands concerning fundamental rights or the distribution of power.⁸

Consequently, whereas before 1914 pressure on the government came from the nobility, criticism from that quarter since about 1940 has been mute. The initiative in criticism has since swung to the Peoples' Representatives. Although there have frequently been strident, outspoken Peoples' Representatives, they have usually been lone voices. Since the 1970s, a faction of commoner politicians has become characteristic of Tongan politics and has taken on the role of critic and public conscience. Their increasing outspokenness in the 1980s, and especially in the 1990s was a major transition in Tongan political behaviour and perception.⁹ Their call for constitutional reform in the 1990s and 2000s was neither welcomed nor apparently understood by the government. However, a particular feature of the constitutional reform proposals has been their caution, conservatism and their Tongan provenance. No prominent voices have called

⁴ Laki Niu, 'The constitution and traditional political system in Tonga', in Yash Ghai (ed.), *Law, Government and Politics in the Pacific Island States* (Suva 1988), 307.

⁵ The original provision made amendment difficult and protracted; as a result of the amendment referred to the constitution has ever since been amended in the same way as any other item of legislation: passage through the House of Assembly followed by royal assent.

⁶ The number of noble titles rose eventually to 33, though the number of nobles is less owing to the king retaining one title (Tungi) and his youngest son holding three (Ata, Lavaka and Ulukalala).

⁷ Lātūkefu, *The Tongan Constitution*, 76–7.

⁸ Substantial proposals for constitutional modernisation were reportedly made in 1975 by a young cabinet member, but despite lengthy consideration, came to nothing. See Kenneth Bain, *The New Friendly Islanders. The Tonga of King Taufa'ahau Tupou IV* (London 1993), 152–3.

⁹ The change is reflected in the tone of successive Tongan commentaries. Contrast Emiliani 'Afeaki, 'Tonga, the last Pacific kingdom', in Ron Crocombe and Ahmed Ali (eds), *Politics in Polynesia* (Suva 1983), 56–78. Laki Niu, 'The constitution and traditional political system in Tonga', 305–10. 'I. Futa Helu, 'Democracy bug bites Tonga', in Crocombe et al., *Culture and Democracy in the South Pacific*, 139–52. 'Afeaki merely hinted that democracy did not exist, Niu drew attention to growing social and economic strains and, by the time Helu wrote, serious flaws had been exposed.

for the abolition of the monarchy, and calls for its reduction to figurehead status are muted. On the whole, the preference is for an enlarged legislature and a responsible executive. Beyond that, details vary between the proposals.¹⁰ Perhaps most significantly, the reformists have been rigorously constitutional in their attempts to secure change. Their methods have included public education, journalistic exposure, and judicial review.

Reformists' Strategies

The first proposals were aired in November 1992 at a Constitutional Convention convened by an *ad hoc* steering committee called the Pro-Democracy Movement. For nearly three years beforehand, the movement had attempted to stimulate public discussion through the periodical *Kele'a* and by sponsoring village kava-bowl discussions. It succeeded in tapping a vigorous stream of discontent, most of it connected with particular grievances, perceptions of corruption both in government and among the nobility, and disappointment at the king's apparent indifference or inability to correct abuses. Informed opinions of possible remedies or of constitutional alternatives were less evident. Towards the end of 1990, a suggestion arose for a national conference to discuss constitutional alternatives.¹¹ Foreign funding for a convention was sought from philanthropic organisations abroad,¹² and foreign as well as expatriate-Tongan participation was invited. The government badly fumbled its response to the convention: it did not accept invitations to participate, it initially agreed to give civil servants leave to attend, and then withdrew permission, all senior members of cabinet removed themselves from the capital, leaving the minister of police, the prime target of reformist criticism and the government's most effective spokesman, as acting prime minister. The government likewise reversed its position on foreign participation and foreign observation, and returning Tongans wanting to participate were harassed. Police attended the convention sessions to observe and take notes.¹³

The convention occupied four days (24–27 November 1992) with discussions running late into the night. Few of the papers were overtly political, although many recited the grievances that were becoming public knowledge. Rather than advocating particular constitutional provisions, most papers were pedagogical, describing aspects of the Tongan constitution, general principles of modern government and canvassing the range of constitutional arrangements exhibited by the world's major democracies. Discussions were protracted and spirited, sometimes about specific aspects of the present constitution, some about philosophical issues, and some about specific complaints of treatment by government. The common theme and the general purport was of course, democratisation, by which people mostly understood an elected prime minister and a fully elected parliament. Resolutions and even specific recommendations were avoided. The conspicuous and deliberate omission from the proceedings was any attempt to formalise a movement for political change: no manifesto, party or formal organisation was proposed, nor did these emerge. A constitutional,

¹⁰ Many of the statements in this and preceding paragraphs and in the discussion that follows are based on the author's personal observations during frequent visits to Tonga between 1987 and 2002, in which extensive conversations were held with principal figures on both sides of the political debate, and with other observers. Much of this data cannot be documented, but some of it has been incorporated into earlier publications on Tongan politics that have appeared at intervals in *Pacific Studies* and *The Journal of Pacific History*. These subjects are also discussed at length in the author's *Island Kingdom. Tonga ancient and modern* (2nd edn, Christchurch 2002).

¹¹ Sione Lātūkefu, 'The Pro-Democracy Movement in Tonga,' *Journal of Pacific History*, 28:3 (1993), 52–63.

¹² But apparently not obtained. Press Conference at the Constitutional Convention, 15 Nov. 1992.

¹³ Lātūkefu, 'The Pro-Democracy Movement', 56.

parliamentary democracy seemed to be the most radical formula discussed, but organisers recognised that people had great difficulty with the concept that one could be pro-democracy and also pro-monarchy.¹⁴

The reform movement suffered various vicissitudes during the 1990s. Generally, its advocates were successful in parliamentary elections, so much so that aspiring parliamentarians mostly represented themselves as 'pro-democracy'. However, the reformers had no more success in influencing government than they had had previously, and moreover, personal and periodical differences between them widened into serious divisions on the purpose and institutional objective of reform.

In the late 1990s, a renewed effort was made to render popular discontent coherent and purposeful. Popular-education activities were resumed, and attempts made to penetrate schools by sponsoring an annual essay competition. Between 1988 and 1998, six parliamentary motions proposed constitutional reform either in specific terms or in calling for a constitutional review committee, and all failed.¹⁵ A public seminar was held in January 1998 and the proceedings published.¹⁶ The seminar reviewed the achievements of the 1992 convention, and the public education programmes that followed it, and discussed a draft of a proposed new constitution written by the *ad hoc* Pro-Democracy Committee and which was widely circulated.¹⁷ Its core recommendations were the reduction of the powers of the king so that he should become a ceremonial head of state, the abolition of the privy council, and the creation of a wholly elected parliament, without distinction between nobles and commoners. Essentially the proposal was for a single-chamber two-party Westminster system, with the prime minister being the leader of the majority party. The speaker and ministers would be chosen by the prime minister, but whether the latter should be selected from elected representatives or from outside parliament was not clearly indicated. It proposed that the constitution provide for two parties, and two only, their positions as 'conservative' and 'democratic', respectively. The proposal seems to have been a work of compromises, but if the specific provisions were not framed in the highest standards of legal draughtsmanship, the general intent was clear that power should be in the hands of popularly elected representatives who should be responsible to the electors.¹⁸

Another major public convention was planned, and took place during 12–15 January 1999. This one lacked the effervescence of the 1992 convention: fewer people came from outside Tonga, and those were less distinguished; several of the prominent Tongans who had supported and participated in the 1992 convention had passed away in the interim; attendance at sessions numbered dozens rather than the hundreds that had come previously. The government showed that it had learnt a lesson and ignored the conference altogether, thus making it harder to generate publicity. This time however, there was a more focused attempt to present proposals for a new constitution. The convention extended over four days, with a mixture of formal papers and open discussion. Most of the papers concerned the broader context within which a constitution had to function. The intellectual and cultural context was the subject of formal papers on Christianity and democracy, and the implications of the Universal Declaration of Human Rights of 1948,

¹⁴ Convention Press Conference, 26 Nov. 1992.

¹⁵ Futa Helu, 'Some thoughts on a model constitution for Tonga' (paper presented at the Human Rights and Democracy Movement Convention on the Tonga Constitution held Nuku'alofa, 12–15 Jan. 1999), 5.

¹⁶ 'Ko e Seminā Fekau'aki mo e Konisitutone Fakaangaana ma'a Tonga; A seminar on a Proposed Draft Constitution. Ko e fokotu'u fakakaukau. Fa'u mo e fokotu'tu'u 'e he Komiti Temokalati', np, nd.

¹⁷ *Proposed Draft Constitution for Tonga*. Prepared by the Executive Committee of the Tonga Human Rights and Democracy Movement, Nuku'alofa, Tonga. No date.

¹⁸ Mahe'uli'uli Tupouniua, 'Proposed draft constitution and power structure' in *ibid.*, 21–5.

particularly the assertion that people have the right to choose their own government. Thus, two sources of legitimacy were claimed implicitly: one that could evoke a response from Tongan culture, and one purportedly universal. The conference then progressed to more mechanical issues: the role of a monarchy in a democratic state, and the constraints on democracy posed by Tongan society itself. Finally, papers considered the source of authority in society and the need for appropriate economic as well as cultural development to underpin the values of democratic government. Discussion between formal presentations ranged from matters of abstract principle to particular complaints that were attributed to the failure of the constitution to ensure fairness and justice.

There were two themes running through this discussion: first were the formal provisions of the present or alternative constitutions to locate power and transmit it; the second was the role of culture in either subverting the democratic features of the existing constitution or of posing an obstacle to the framing of a more democratic constitution. Although a draft alternative constitution was made available, there was very little focused, detailed discussion of its provisions. It was neither a ratification nor a re-drafting exercise. The proposed alternative was the existing constitution with some major amendments which served to show people what an alternative might look like, and to highlight what was considered most defective in the existing constitution. The conservative nature of this document was probably also intended to show people that the reformists were not dangerously radical and were entitled to support from the moderate or even conservative majority. Discussion on amendments concentrated on the role of the king, the place of royalty in Tongan society, and the composition of parliament. Other more technical matters received apparently very little attention. The conference concluded with a general discussion of a set of propositions from the Human Rights and Democracy Movement Committee.¹⁹ As amended by the conference, these were:

- The constitution should uphold universal human rights.
- All members of parliament should be popularly elected.
- There should be a separation of powers to prevent any office becoming too powerful.
- The judiciary should be independent.
- National wealth and privilege should be more equitably distributed, that economic reforms should accompany political reforms, and that small businesses should be encouraged.

The meeting then endorsed two resolutions. First, that the recommendations above be taken to government with a request for the establishment of a constitutional review commission which should report before the 21st century began, and to include representatives of all sectors of society: churches, women, business and NGOs. The second resolution was that an economic commission of inquiry be established.²⁰ There is no evidence that the government paid any attention at all to these proceedings or the resolutions.

¹⁹ The Pro-Democracy Committee, a fairly informal, *ad hoc* group hitherto, adopted a formal organisation in 1998, and the name Tongan Human Rights and Democracy Movement. The following year it appointed a paid director to coordinate and expand its work, Lopeti Senituli, a Tongan who was formerly director of the Pacific Concerns Resource Centre, a Suva-based NGO. The name was subsequently changed to The Human Rights and Democracy Movement of Tonga to accommodate government sensitivities that impeded the organisation's becoming incorporated.

²⁰ I am indebted to Mrs Helen Taliai for a running translation of the discussions throughout the conference.

The Political Genesis and Context of the Reform Movement

This therefore was the context of constitutional debate in Tonga during the 1990s: it arose only after attention had been drawn both in parliament and through extra-parliamentary means, to a number of abuses in Tongan governance. These abuses included nepotism and misuse of power, corruption at high levels involving misuse of public money including foreign aid grants, scandalously high levels of overtime payments to MPs and the lavish payment of overseas allowances that encouraged ministers to spend lengthy periods of time abroad, an absence of accounting in certain areas of public expenditure including the accounts of parliament itself, the alleged incompetence of ministers and general lack of accountability by ministers to parliament for their actions, the sale of passport scandals with its corollaries of extraordinary naturalisation of foreigners without having met residence requirements, and retrospective constitutional amendments to make the last actions possible. The complaints of the reformists throughout the 1980s had been less with matters of policy than with matters of process: it was the quality of governance, not the directions of development with which the critics took issue.²¹

The reformists' strategy evolved over a decade or so. It began with public discussion, of which 'Akilisi Pohiva's radio broadcasts in the late 1970s and early 1980s might be taken as an instance though with wider public dissemination than any other. The second step was litigation, in which Pohiva created Tongan legal history by suing the government, leading the way to two more employment-grievance trials, all of them lost by the government. The first approach was not likely to lead to significant change, and the second was effective only in specific cases. Tongan society occasionally threw up a People's Representative who was prepared to be outspoken in parliament and, from 1984, the current parliamentary thorn was Teisina Fuko, from Ha'apai. He was joined in the landmark election of 1987 by several other successful candidates whose outspokenness on official misconduct struck a chord with the electorate. These new members of parliament included Pohiva. This launched the intensive parliamentary campaign to bring about reform, in which still the need was envisaged as being to make parliamentarians and officials act according to the rules and with appropriate deference to common standards of public morality. The reformers achieved some successes through the moral force of exposure, but were increasingly exasperated at the unwillingness of parliament to concede the need for higher standards.

The passports and naturalisation issue brought a turning point. Hitherto, reformers could attribute misgovernance to the failings of individual ministers or officials, not with fundamental structures of the state. The passports-naturalisation issue, however, induced reformers to approach the king: petitions were sent, deputations and finally a mass march on the palace at which again, a petition was conveyed to the king. It could now no longer be argued that things were wrong because of purely ministerial misconduct. If people believed previously that the king only needed to be made aware of the situation in order to put a stop to the abuses, that belief was now tested empirically. Their importunities received no public response, no reforms were made, no cabinet reshuffle followed. The passport and naturalisation retrospective legislation received royal assent. Royal ignorance was now no longer a viable explanation. It could still be argued however, that although the king knew, he was powerless to constrain his ministers, or feared dismissing them for lack of suitable alternatives. Alternatively, he knew and did not care, or knew and approved. Whether the king bore responsibility or not, the glaring fact now was that the problem was constitutional. It hardly mattered

²¹ See n. 10 above. Also Lawson, *Tradition versus Democracy*, and Ewins, *Changing their Minds*. For contemporary documentation, *Matangi Tonga*.

whether the king was responsible or impotent: the constitution gave him certain powers and, whether through negligence or misuse, the result was the same, and so was the remedy: the constitution should be changed in such a way as would make rectitude in government not dependent on the whim or temperament of an individual who could not be removed from office or chastened. Hence the movement for constitutional change: the role rather than the person of the king had to be revised. Pohiva's address to the November 1998 convention made this explicit and, moreover, urged that the way for monarchists (among whom he included himself) to save the monarchy was to reduce its power as in the surviving European monarchies.

Parliamentary debate having failed, and addresses to the king having come to nothing, the reformists resorted to a low-key form of direct action as described above: village discussion groups, school essay competitions, and the showcase public seminars of 1992 and 1998. The constitutional debate has been one-sided. Government has declined to consider any of the suggestions put forward over the years. Why this is so cannot be said with certainty: it might be the self-interested conservatism of an anachronistic elite reluctant to hasten its own demise; it might be a matter of protocol, the reformists having gone about their task in ways that offended the aristocratic sense of propriety and respect; it might also be a matter of personalities, of individuals having taken such offence at the style of others that they refuse to listen to the message.

Specific Proposals

The first: April 2002

The reformists nevertheless persisted, and in 2002 circulated for general comment a proposal for a new structure of government, called a 'democratic monarchy'.²² The basic institutions proposed were the monarchy, two houses of parliament (nobles and people), cabinet and privy council. The nobles would be represented by nine representatives as before, elected by the nobles, and serving to review legislation passed by the House of Representatives. The House of Representatives would consist of 21 members elected by proportional representation from the present constituencies. Its role was described as 'the same as that of the existing Legislative Assembly'. Consideration of representation for overseas Tongans was recommended but without an explicit suggestion. The cabinet would remain unchanged in numbers and composition (10 ministers plus the two governors) appointed by the king but selected from members of the two houses of parliament. The prime minister would be chosen by the king, but should be someone capable of commanding the support of the majority of both houses. The term of all positions would be three years. Cabinet's role would remain unchanged. The Privy Council would remain as before in composition and role, but would be required to report periodically (three-monthly) to a joint sitting of parliament. Provision was made for parliament to override a royal veto and parliament could be closed or dissolved only with its consent. Regents were to be precluded from appointing ministers.

Perhaps the most notable characteristic of this proposal was its cautious conservatism. It had been careful to keep the number of parliamentarians and ministers the same as at present, and stressed that the new structure would be similar in cost to the existing structure. In essentials, the proposal merely separated nobles and people's representatives into separate houses, increased the number of people's representatives but required

²² Copies were sent to the Palace Office, the Prime Minister's Office, the offices of all cabinet ministers, and all nobles. All members of the Tonga Human Rights and Democracy Movement received a copy as well as other selected individuals in Tonga and abroad. The intention was to solicit feedback before producing a proposal to be submitted to the Legislative Assembly. THRD Media Release, 6 Sept. 2002.

ministers to be chosen from members of either house and, rather than reducing the powers of the king, merely gave them clearer definition, and made provision for overriding his wishes in limited hypothetical circumstances.

Considering the extensive discussions generated in the public seminars, this proposal was cautious practically to the point of defeatism. Nor did it offer any solution to the intractable problems that had characterised the politics of the previous two decades. For example, a joint session of parliament might override the king if he refused his assent three times to a bill. But if cultural constraints were already part of the problem, parliament would be unlikely to send the same bill forward three times. Such a confrontation or humiliation of the king almost certainly would not be acceptable to Tongans inside or outside parliament. The provision, ostensibly a way of checking the power of the king to obstruct liberal measures, would almost certainly have been impossible to apply. Similarly, the requirement that Privy Council report to a joint sitting is likewise a preference for impotence: merely advising the parliament what it had done would not introduce the principle of accountability which had figured so prominently in calls for reform since the late 1980s and indeed amounts to no change from the *status quo*.

Whether the proposal took the form that it did in order to dispel fears that the reformists wanted to do away with the monarchy, or whether it resulted from compromises between extreme positions, or whether it reflected lack of both imagination and political discernment is unknown. The responses from the public generally were that it was too moderate. Accordingly a more radical proposal was issued in September 2002, five months after the earlier one. The new proposal was prefaced by a statement drawing attention to the shortcomings of the existing structure of government: Tonga's poor human rights record, the king's authoritarianism and the lack of accountability in his government, and the inequalities enshrined in the constitution. By implication the revised proposal was intended to rectify these defects.

The second: September 2002

In the September proposal, the king would be head of state and no longer head of government. He would continue to appoint (though not choose) the prime minister and approve all legislation, but would no longer be involved in directing the affairs of government. The Privy Council would become an upper house of parliament, its nine members appointed by nomination of three members each by the king, prime minister and leader of the opposition. The term of office would be three years, concurrent with the House of Representatives' term. Its role would be to scrutinise and approve legislation sent to it by the lower house.

The House of Representatives would have 30 members comprising the following: six representatives of Tongans overseas (two elected by and from overseas Tongans in each of Australia, New Zealand and the United States); six nobles and six women's representatives all elected by universal suffrage. The remaining 12 seats would be distributed among the five existing political units of Tonga in proportion to their populations. All citizens, including nobles and royalty as well as commoners would be eligible for election.

The prime minister would be elected from and by the House of Representatives, and would select the other nine ministers from the same house. Cabinet would be accountable to the House of Representatives. The positions of governor of Ha'apai and Vava'u would be downgraded, and would no longer be members of either cabinet or Privy Council.

The proposal stresses the sovereignty of parliament: the House of Representatives would be the primary legislative authority, the Privy Council would review and endorse legislation before sending it to the king for royal assent. Legislation rejected by the king three times could be enacted in spite of his veto if supported by 75% of the members of

TABLE 1: Tongan Constitutional Proposals Tabulated

| | 1997 | 2002a | 2002b |
|---------------|--|--|--|
| King | Ceremonial head of state. | Retains legislative and executive functions. Weak provision for veto over-ride. | Ceremonial head of state. Appoints but does not choose PM. Signs all legislation. |
| Privy Council | Abolished. | Unchanged: ministers + governors + king. To report quarterly to a joint sitting. | Becomes upper house of parliament: three nominees each of king, PM and leader of opposition. To scrutinise and approve legislation. |
| Cabinet | Chosen by prime minister but whether from within or outside parliament unclear. | Chosen by the king from elected members of both houses. PM chosen by the king but must have support of both houses of parliament. | PM elected by, and 9 ministers chosen from, the House of Representatives. Responsible to House of Representatives. Governorships abolished. |
| Parliament | 30 members, all elected, no distinctions between nobles and commoners. Two-party, Westminster procedures. | Bicameral. House of nobles, 9 members, to review and approve legislation. (By implication not to initiate legislation.) House of representatives: 21 by proportional representation with present constituencies. Joint sitting to receive quarterly report from PC. Royal veto could be overridden by 2/3 majority in joint sitting. Closing and dissolution only with its own consent. | 30 members elected by universal suffrage (including royalty and nobles), and including 6 seats reserved for nobles 6 seats reserved for women 6 seats representing overseas Tongans. Joint sitting 75% majority to override royal veto. Closing and dissolution only by own consent. Westminster conventions. Party formation an assumption. |
| Comment | An imperfect editing of the present constitution with ambiguities, loose expression and contradictions not resolved. | In essentials, the proposal merely separated nobles and people's representatives into separate houses, increased the number of people's representatives but required ministers to be chosen from members of either house, and rather than reducing the powers of the king merely gave them clearer definition, and made provision for overriding his wishes in limited hypothetical circumstances. Cautious practically to the point of defeatism. | More conservative than it looks, likely to be captured by noble/royal politicians; veto-override provision probably unworkable. All the king's powers are confirmed except for those specifically altered, amounting to his losing the ability to choose his ministers and to actively shape policy and legislation. Significant other powers remain. The powers of cabinet remain unchanged, as are apparently the provisions relating to impeachment, and the provisions for constitutional amendment. |

both houses at a joint sitting. The king might dissolve either or both houses only with their consent, and he would no longer have the right to choose or dismiss ministers. The formation of political parties, and therefore the ready identification of a leader of the Opposition, was acknowledged as an assumption.

The formulae for power distribution and sharing are unequivocally in the mould of Westminster traditions, but the composition of the upper house and its mode of selection are probably drawn from Fijian constitutional precedent. The differences between this and the draft of only five months earlier are profound: the first sought to achieve reform while making minimal changes to the present constitution, but was badly flawed in that the changes could easily be reduced by convention to cosmetic significance. Tongan cultural factors probably account for this moderation, but they would also render the amendments nugatory. The political consequences of this change would have given no satisfaction to the reformists who would in effect have squandered their opportunity to bring about change and perhaps set back real political progress by many years. The moderation of the proposals was rather surprising considering the strength of criticisms that had been made of the Tongan government over the years.

The later draft clearly comes closer to accommodating the criticisms made by the dissident MPs during the 1980s and 1990s in its unequivocal removal of power from the monarch, but it may also be regarded as a conciliatory document in its reservation of designated parliamentary seats for nobles, while also permitting nobles and royalty to contest other seats. Tongan traditionalists would have little to fear from this proposal. Given continuing Tongan respect for nobility and royalty, parliamentary leadership would very likely remain an aristocratic perquisite for many years. There is no need to assume that the government — opposition polarity would break along the lines of nobility-conservatism and commoner-radicalism. Even among the present title-holders, one could anticipate, indeed expect, simultaneously a noble or royal prime minister and a noble or royal leader of the opposition. Moreover, supposing the lower house were to divide along a nobility-conservatism — commoner-radicalism fracture zone, one third of the members of the Privy Council would certainly represent the conservative interest, as would the representatives chosen by the king. In other words, there is an inherent conservative bias in the Privy Council, so that legislation unpalatable to the king, significant social reform or land reform would be unlikely to pass; nor is it easy to imagine such a Privy Council foisting on the king for a second and third time an item of legislation that he had already rejected. Still less would a 75% majority of a joint sitting be able to override him: the same scenario presupposes only three 'radicals' in the Privy Council thus requiring 26 or 27 members out of 30 or 90% of the House of Representatives to vote for the controversial measure. This is so unlikely as to be practically unthinkable except in cases of the most catastrophic national emergency.

A much more likely scenario would be a broadly conservative legislature with little ideological or policy distinction between opposition and government. The parties would, like party politics elsewhere in the Pacific, resemble faction politics with alignments following leadership, kinship and local considerations. Whether in this case, the Westminster principles of accountability would ensure more open and more honest government may perhaps be extrapolated from the experience of Tonga's neighbours. The critical variable would continue to be the quality and morality of leadership, but these are essentially the same issues that have agitated Tongan politics for the last quarter of a century.

The constitutional proposals are limited in their range as well as in their ideological orientation in that they deal with only one aspect of the present constitution. There are no suggested changes to Part I 'Declaration of Rights' or to Part III 'The Land'. Within Part II 'Form of Government', the section relating to the judiciary is untouched, and many of the other clauses relating to Part II, are unchanged. All the king's powers are confirmed except for those specifically altered, amounting to his losing the ability to

choose his ministers and to actively shape policy and legislation. He would continue, therefore, to command the armed forces, to retain his power to pardon, to make foreign treaties, to confer titles, and would remain in possession of royal property and continue to be exempt from being sued. The powers of cabinet would remain unchanged, as are apparently the provisions relating to impeachment, and the provisions for constitutional amendment.²³

Significance

The proposals are in the end an academic exercise. There is no realistic chance of the government taking any notice of them, let alone implementing them. The latest proposal was to have been sent to the Legislative Assembly as a recommendation, but there has been no announcement either from the government of Tonga or from the HRDMT itself of any response, let alone constructive dialogue. It is not likely that the movement expected any such dialogue after repeated experiences of government obduracy. The HRDMT proposal is not, therefore, a blueprint for social transformation or for political radicalism. It should be seen rather as an attempt at fine-tuning, while preserving the essentials of a structure that has been so long entrenched as to be regarded as part of Tongan tradition. It draws attention to the underlying reality that the issue in Tongan politics is and has been about personal grievances and public fairness, in which talk of democracy is really a means to an end; it does not seem to be about democracy as a principle. As such, most supporters of democracy would probably be satisfied merely to see justice done. They care about the outcomes, not about the process or structure. The achievement of the movement is that it has produced a document that restores its credibility among the population at large. It has shown that all the talking and meetings have led somewhere, and that the reformists have kept faith with their own pronouncements over the years. They have shown also that they are not motivated by malice or vengeance or recklessness, and that they adhere to the principle that dialogue rather than direct action is the way forward. That the other party is not yet prepared to join the dialogue is to its discredit, and the HDRMT has reasserted its claim to the moral high ground.

Not least is the fact that the proposed constitution is in the end an autochthonous document. Unlike the modern decolonising constitutions across the Pacific, this is not the product of foreign liberal lawyers attempting to create a constitutional utopia, but arises from the dissatisfaction of Tongans who have immediate and long experience of the abuses that they criticise. Their attempts at reform arise from the empirical test of institutions that are not working to deliver justice and fairness. The 1992 Convention had input from foreign academic lawyers,²⁴ but the discussions were overwhelmingly Tongan in origin, content and style. While many of the Tongan participants lived, worked and were educated overseas, this is perhaps further evidence of the extent of dissatisfaction with the Tongan *status quo*. The Pro-Democracy Movement, however, was always a movement of Tongan intellectuals in Tonga, and its activities were guided from within. The earlier draft proposals were the work mainly of members of the executive of the HRDMT, especially Rev. Simote Vea and Professor Futa Helu. The penultimate constitutional draft that was circulated in April 2002 was distributed widely in Tonga

²³ Consequently, the reforms could easily be undone by a simple act of parliament: a simple majority in the House of Representatives, a simple majority in the Privy Council followed by royal consent would probably not be difficult to engineer in a conservative backlash accompanying any disillusionment with how the reforms were working.

²⁴ Associate Professors Bill Hodge of the University of Auckland and Guy Powles of Monash University, neither of whom actually attended.

and to selected individuals abroad, and the final draft acknowledges the responses that helped shape the final form. These included five present or former Tongan members of parliament, two expatriate Tongans, four other Tongans, and only one foreigner.²⁵ In other words, the constitutional proposal may be understood as a Tongan solution for Tongan problems as understood by Tongans.

Tongan reformists place their faith in the power of written rules, believing that their political difficulties have to do with the rules that give the king certain powers and enable ministers to disregard the wishes of parliament. This is why popular and external criticism concentrates on the constitution as the crux of Tonga's problems in governance. The present constitution, however, is a fairly flexible document, and the problem is no more constitutional than it is conventional. There is nothing to stop the king adopting a convention that ministers should have the confidence of the house, or to prevent him from consulting the wishes of parliament in choosing prime minister and cabinet, or his allowing cabinet to govern without his regular presence at its meetings. One can only presume that he does not do these things because they are uncongenial to him, or because he has no confidence in the popularly elected members of parliament, or because he believes that, as the consecrated king, he has certain duties and responsibilities that he cannot delegate. The difference between Tonga and other Pacific states in this respect is that, whereas the king exercises prerogatives that are sanctioned by the constitution, the problems elsewhere arise from politicians and other public figures ignoring or circumventing their constitutions. The Tongan difficulty is simply that the king apparently does not exercise his constitutional powers to ensure probity and openness. Therefore, were Tongans to adopt a constitution more compatible with reformist aspirations, they might well find that their political problems do not disappear, but will change their explanation to the one that fits everywhere else: the breakdown of private morality in public life.

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Postscript

Since this essay was written two further developments have taken place. The Human Rights and Democracy Movement of Tonga has produced a further draft constitutional proposal reflecting further thoughts and feedback. In an unrelated move, the king announced in November 2004 that after the March 2005 election, two of the elected Nobles' Representatives, and two of the People's Representatives would be appointed to cabinet, thus enlarging it to 16 members. The new ministers would be required to resign their elected positions and would be replaced through by-elections. The reason for this step was explained by the Crown Prince as being to give government the benefit of the advice of people who held popular confidence, and although in the short term the size of cabinet would increase, attrition would later reduce the cabinet to its usual size. The step was indicated as a first one towards a cabinet made up wholly of elected members. The announcement received a mixed reception from advocates of reform, some of whom accepted it as a step in the right direction, and others regarding it as a Macchiavellian ploy. The appointments were duly made as promised in March 2005.

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²⁵ Those named were Dr Feleti Seveli, 'Uliti Uata, Teisina Fuko, 'Isileli Pulu, Samuela 'Akilisi Pohiva, Finau Tutone, Rev. Siupele Taliai, Lisiate Ikaafu, Latu Malolo, Fatafehi Tu'i'onetoa Fale, Kalafi Moala and the present writer.

ABSTRACT

Tonga's constitution was originally a liberal, 19th century document that economically combined popular representation and aristocratic direction in a unicameral vehicle instead of the conventional bicameral legislature. Subsequent amendments strengthened the executive, and the greatest of all, in 1914, significantly reduced representation of both nobles and people. The configuration of power sharing has not changed despite numerous minor constitutional amendments since. There was no significant pressure for fundamental constitutional changes until the 1990s. Whereas earlier reforms were initiated by the executive, the modern reform movement comes from the people's representatives and a small group of supporters drawn from the foreign-educated sector. This pressure has been ignored by the executive, and commands insignificant support from the nobles. The dissatisfaction with the system of representation and the distribution of power arose from the exposure of lavish provisions for overtime payments for members of parliament. Earlier dissatisfaction with government over land tenure had no such result. The impotence of people's representatives was revealed and grievances became focused on the principle of accountability. Failure to make progress on this issue drew attention to the concentration of power by custom as well as law, in the hands of the executive. Reformists began to consider institutional ways of making government accountable. Unfocused talk of democracy coalesced into a series of formal conferences in 1992, 1998 and 1999, all of them dismissed by government. Undeterred, the reform movement became better organised and, in 2002, produced two discussion documents outlining alternative constitutions in an attempt to frame a solution that co-opts modernity without abandoning Tongan tradition. The conservatism of these proposals suggests that in modern politics, culture will continue to prevail over institutional rationality.