
REGIME CHANGE AND REGIME MAINTENANCE
in Asia and the Pacific
Discussion Paper No. 4

**Tonga's Constitution
and the Changing State**

RODNEY C. HILLS

Department of Political and Social Change
Research School of Pacific Studies
The Australian National University
1991

**REGIME CHANGE AND REGIME MAINTENANCE
IN ASIA AND THE PACIFIC**

In recent years there have been some dramatic changes of political leadership in the Asia-Pacific region, and also some drama without leadership change. In a few countries the demise of well-entrenched political leaders appears imminent; in others regular processes of parliamentary government still prevail. These differing patterns of regime change and regime maintenance raise fundamental questions about the nature of political systems in the region. Specifically, how have some political leaders or leadership groups been able to stay in power for relatively long periods and why have they eventually been displaced? What are the factors associated with the stability or instability of political regimes? What happens when long-standing leaderships change?

The **Regime Change and Regime Maintenance in Asia and the Pacific Project** will address these and other questions from an Asia-Pacific regional perspective and at a broader theoretical level.

The project is under the joint direction of Dr R.J. May and Dr Harold Crouch.

For further information about the project write to:

The Secretary
Department of Political and Social Change
Research School of Pacific Studies
The Australian National University
GPO Box 4
Canberra ACT 2601
Australia

©Department of Political and Social Change, Research School of Pacific Studies,
The Australian National University, 1991.

Apart from any fair dealings for the purpose of study, criticism or review, as permitted under the Copyright Act, no part may be reproduced by any process without written permission. Enquiries may be made to the publisher.

ISSN 1037-1036

ISBN 0 7315 1252 9

Printed in Australia by ANU SOCPAC Printery

TONGA'S CONSTITUTION AND THE CHANGING STATE

Rodney C. Hills

Introduction

Tonga is the only South Pacific nation to have remained independent and stable since the mid-19th century, but signs of change are emerging. Criticism of government began after reform of the taxation system in 1986, when probing questions were asked about the way in which parliamentarians had paid themselves exorbitant overtime allowances. A leader of the active group of critics, 'Akilisi Pohiva, was elected to parliament in the 1987 general election and subsequently won damages from the government for wrongful arbitrary dismissal from his public service position. A further consequence was that in 1988, amid a public debate about national financial management, he presented the king with a petition requesting impeachment of the minister for Finance. Neither the king nor the government took any further action on the matter. In 1989 there was a walkout of people's representatives from the Legislative Assembly (the parliament). The local press reported that the walkout was widely supported by the people at large.

A general election in 1990 demonstrated strong popular support for a small group of reformers who wished to see both a more responsive and accountable government (Hills 1991). To add to the government's difficulties, the Tongan High Court has before it a case, brought by Pohiva, concerning the constitutionality of actions taken by the minister for Police over the sale of Tongan passports to foreigners. The matter had been raised in parliament but questioners could not obtain satisfactory answers from ministers. These incidents received cover both in the regional press and internationally. One result was unfounded rumour of a possible coup in early 1990 and, as the passport issue took new turns, there were street demonstrations in Nuku'alofa in March 1991.

As a result of these events, Tonga's government has been subject to increasing public pressure to demonstrate that ministers are accountable to parliament and that elected representatives can play a role in policy development. There is growing concern that the present system of government, dating from the 1875 constitution, cannot cope with the pace of social and political change.

Background

The Kingdom of Tonga consists of about 170 dispersed islands situated in the southwest Pacific between latitudes 15 and 23 S and longitudes 173 and 177 W, north of New Zealand, southeast of Fiji and southwest of Western Samoa. Tonga has an almost entirely Polynesian population of 95,000. The local lifestyle remains traditional although many Tongans now travel internationally and domestic incomes are rising. Large expatriate Tongan populations live in New Zealand, eastern Australia, Hawaii and the west coast of the USA. The Tongan economy is fragile, based on agriculture. Aid and remittances constitute about 65 per cent of GDP. The educational, social and economic circumstances of the people are all changing quickly.

In this intrinsically conservative society, a sometimes acrimonious parliamentary debate is being played out. In it Tonga's 1875 constitution is used to protect and justify conflicting positions by all participants. Reformers safeguard themselves with the constitutional provisions of freedom of speech, petition, and equality before the law as they debate possible reform. Conservatives point to the more traditional elements in the constitution as key advantages. In particular, they note that stability has been secured by centralization and enhancement of chiefly authority, and strengthened by the mutual support of church and state. They point to Tonga's continuing political independence as evidence of the value of the constitution and of their traditional postures.

Tonga's constitution is a written one and it introduced a constitutional monarchy in the British tradition. Unlike the American or French constitutions, Tonga's was introduced to a society with quite foreign social and political orders by an alliance of Tongan leaders and European missionaries. Although it was adopted willingly, Tonga has sometimes been uneasy with its Western democratic provisions. At the time it was written, the constitution involved compromises in order to maintain national unity and political balance between the old and new orders. Since then these compromises have been tested on several occasions, with the judiciary making important decisions about constitutionality. Although many structures in the Tongan government derive from British tradition, the use of the High Court as an arbiter on constitutional propriety is more in an American tradition.

The concern which requires examination, in view of the increasing rate of social and political change in Tonga, is whether the constitution is sufficiently flexible to respond to modern needs or whether it contains the seeds of its own demise. In the Tongan context, would change to the constitution mean a change of regime? Alternatively, can the present regime change without constitutional amendment?

Tonga's constitutional history

The evolution of a Tongan state and unified national government began with the military activity and political vision of King George Tupou I during the 1830s. The 1875 constitution codified and expanded upon a series of edicts which had established a body

of law. This was to become enforced across the nation by a process of conquest. Statements of emerging legal codes included the Vava'u Code of 1839, the Second Vava'u Code of 1850, and the Emancipation Edict of June 4, 1862. Each played an important formative role, and these are documented in detail in Latukefu (1975).

The codes and the 1875 constitution were responses to the challenges of the times. One need was to establish national unity, for the Tonga islands had been embroiled in civil war among aspiring local chiefs for 30 years. To do this, the government had to balance the demands of petty chiefs and reduce their insecurity. In addition, Tonga had to protect its international independence at a time of colonial expansion in the Pacific; Germany, Britain and France were all bent on establishing commercially based colonies (Meleisa 1987). Finally, the newly established monarchy had to establish its own legitimacy in the face of potential challenges from inside and outside Tonga.

The 1875 constitution, with its American, Polynesian, and European elements, effectively answered many of those needs. It was both liberal and conservative, democratic and hierarchical. It comfortably encompassed both key principles of Polynesian culture and modernity in a logical arrangement. It codified acceptable principles in a framework of Christian ethics.

The 1875 constitution

The 1875 constitution contains an unusual mixture of both general principles and useful sets of more detailed rules to live by. The latter aspect reflects the missionaries' simple and practical approach to life and their need to regulate life according to religious values. They were hard-working artisans in a foreign and often hostile environment and would have wanted to make basic laws principled and as simple to interpret as possible. The missionaries introduced a church tone throughout civil law, the constitution and the mechanics of the political process. Importantly the constitution formally links church and state. Each has been able to maintain an unassailable position strengthened by the support of the other.

In summary, Part 1 of the 1875 constitution is a 'Declaration of Rights'. It articulates general principles covering the role and conduct of the king, judiciary, government and citizens in general. Part 2 is titled 'Form of Government' which the constitution describes as a 'Constitutional Government'. It describes the rules of succession. The sections deal with the role and structure of the Privy Council and cabinet, and how ministers are to be appointed. It also covers the structure of the Legislative Assembly and the judiciary. Part 3 deals with 'The Lands' and declares that land may not be sold to foreigners, but may be leased. It lays down the principles of inheritance in respect of estates.

The constitution gives to the monarch the central role as the ultimate source of authority. The monarch was 'sacred' in Polynesian tradition but is also given many temporal powers. The monarch chairs the Privy Council, the highest executive body, and is the final authority able to sign acts of parliament into law. Appointment of cabinet

ministers, including a prime minister, is a royal prerogative. The constitution says nothing about seeking advice in this process nor does it specify that appointees be members of parliament beforehand. Importantly this makes ministers directly responsible to the monarch. The sanctity and purity of the royal line is preserved by giving the monarch right of annulment over royal marriages which threaten or weaken claims to the succession.

Clause 63 provides for the appointment of a specified number of hereditary noble titles by the monarch. Twenty nobles were appointed at the close of parliament in 1875 and thirteen have been appointed subsequently. Tonga has also a small number of titles with estates which are not noble. There is no limit to the number of noble titles which any one person may be granted. Estates are listed in Schedule 1 to the Land Act. The rank of a title is not decided by land area of the estate or personal wealth, but by traditional factors dominated by closeness to the royal line, reaffirmed whenever new titleholders are installed by ceremony in the royal kava circle. The Land Act established that each noble estate was to be divided among commoners to whom nobles were to grant a fixed area of land in perpetuity (Article 128).

The constitution states the principle of patrilineal inheritance to both title and estate (Article 125). The estates are not of uniform size and some are widely dispersed throughout the islands. The fact that among all national assets, land is treated as a separate section in the constitution, on a par with government, illustrates and emphasizes its importance.

The constitution established a parliament, named the 'Legislative Assembly'. Members of the parliament were to include ministers appointed by the king, nobles' representatives elected from among noble titleholders, and people's representatives elected from among the people. Thus representation was introduced on a wider franchise than was common in Europe at that time, since it did not depend upon property ownership. The parliamentary system followed the British style, giving representation to hereditary titleholders, but within a single house. Ministers were to enter the parliament as nobles and, as a result, people's representatives were denied the possibility of a majority.

The constitution established an independent judiciary and the principle of equality before the law (Article 4). However, the principle of an independent judiciary was not maintained throughout the legal system because the highest court of appeal for civil cases was to be the Privy Council, meeting in consultation with an appeal judge. Thus, at the highest level there was an uneasy compromise between an independent judiciary and royal prerogative. In addition, recognizing the traditional principles upon which the landholding and tenure system was based, a separate land court was established.

Two most interesting and forward-looking elements concern freedom of speech and right of petition to the monarch. Freedom of speech is enshrined in Article 7. However, freedom in a legal sense does not remove cultural constraints from Tongan citizens. These social limitations remain strong, even in the 1990s. Nonetheless, the protection offered by Article 7 has meant that since 1987 the Tongan press has not had its freedom

threatened as has happened at times in neighbouring Fiji. The right of petition (Article 8) is interesting because it allows access to the monarch without a supplicant having to go through either parliament or the traditional leadership. It provides a safety valve. However, given the cultural difficulty most Tongans would have in approaching the monarch physically, it is not a right which is often used.

The constitution had an unusual clause which restricted immigration of 'Asiatic labourers'. They could only enter Tonga under a labour contract. In the original document this was cast in the context of the unhappy Hawaiian experience with leprosy. It is acknowledged that Hawaiian sources were important in framing the constitution (Latukeyu 1975). This clause was deleted by amendment in 1977 but the constitution still forbids the sale of land to foreigners, although leasing is permitted. Citizenship remains a royal prerogative, and is not easily obtained.

The 1875 constitution did not 'establish' the Methodist Church in Tonga but it does entrench religiousness in the national way of life. In particular, Sunday ('the Sabbath') is set aside as sacred (Article 6). Subsequent regulation has forbidden practice of a trade or profession on Sundays, and organized sport is prohibited. Yet Article 5 provides for freedom of worship.

The overall structure of the constitution is interesting. The Declaration of Rights is pre-eminent, in the style of the 1852 Hawaiian constitution, reflecting the perceived need for modernity. The carefully detailed articles on 'Form of Government' are enlightening. They devolve responsibility for internal parliamentary procedure onto the Legislative Assembly, yet the detailed portfolio responsibilities of ministers are listed. The ways in which the constitution moves between generality and detail is unusual, no doubt reflecting aspects which could be drawn upon from other models while leaving vague those elements which were adaptations to Tongan styles.

Constitutional paradoxes and anachronisms

In 1875, in the Pacific island countries, Tonga's written constitution was remarkable. However, because the constitution contained Polynesian elements it presents paradoxes, and current problems in the parliament seem related to the constitution. Since 1986, Tonga's parliament has seen heated debate about the management of public finances and the accountability of senior ministers. Naturally this publicity has introduced questions about whether Tonga is able to change sufficiently quickly to meet these challenges. Is the constitutional arrangement inappropriate, or have new strains appeared in Tongan society, which will require other kinds of solutions? The following outstanding problems do seem rooted in the 1875 constitution.

Style of government

Although democratic in appearance, the constitution protects a hierarchical society with deeply entrenched obligation systems. While the parliamentary system permitted repre-

sentation, the constitution enhanced the absolute authority of the paramount chief by giving him the titular European style of royalty. The constitution stated (Article 47): 'The King is the Sovereign of all the Chiefs and all the people. The Kingdom is his'. The monarch was to hold absolute power over the appointment of ministers who remained responsible only to him. Many lesser chiefs, who were not granted titles which gave them seats in the Legislative Assembly in 1875, saw much greater centralization than they would have liked.

The method of ministerial appointment seems to be at variance with internationally accepted views on ministerial accountability to parliament. In recent years some ministers in Tonga have shown no inclination to be responsive to questions in the parliament and have been roundly criticized as a result. Accountability is not addressed directly in the constitution. It is impossible to know whether it was significant in the thoughts of those who drafted the constitution; it seems unlikely. Both the method of ministerial appointment and the traditional system of chiefly allegiance tend to militate against ministers seeing the parliament as a legitimate forum for debate. This problem was at the root of the 1989 walkout from the parliament of people's representatives who had been unable to get the minister for Finance to address questions about national financial management.

Some Tongan ministers seem unable to accept parliamentary debate in the Westminster sense. The 1875 constitution calls the parliament a 'Legislative Assembly', which suggests a group convening to approve laws rather than to discuss policy. In addition, Tongan cultural norms make it difficult for some ministers who are nobles to accept direct questioning. But the values of many educated Tongans are changing: they wish to know more about the process of government and want to examine the ways in which taxes are used. Of course, it is perfectly legitimate for ministers to answer questions in the parliament. Equally it is possible for the monarch to appoint ministers from diverse sources and to take advice in so doing. So it is arguable that the inhibitions caused by culture and self-interest are much greater than any constitutional difficulty.

Parliamentary government, if it is to be effective, depends upon freely flowing information but Tongans in general do not handle information freely. There are many social inhibitions to free speech, despite its guarantee in the constitution. As a result, the constitution alone cannot be blamed when either parliamentarians or the people seem ill-informed on important issues or unwilling to discuss them.

Parliamentary representation

The constitution lays the basis of parliamentary representation, with seats to be divided among representatives of the people, nobles and ministers. The Tongan arrangement borrows features from European, American and other forms of government. Tonga has a unicameral parliament in which there has been a convention that numbers of nobles' and of people's representatives are equal. Constitutional amendments passed in 1914 significantly reduced the size of the Legislative Assembly, largely for economic reasons. At that

time the assembly had 70 members for a population of only 22,000. The number of representatives was reduced to seven each for the nobles and people which was increased to nine each in 1982. However, the number of ministers is unlimited and ministers are appointed by royal prerogative. So the 1914 reductions effectively increased the power of the monarchy.

In traditional terms it is arguable that both groups of elected representatives speak for the population at large, but this becomes difficult to sustain as the interests of the groups diverge and growing numbers of educated people assert their independence of the traditional order. Changed attitudes became clear in the 1987–1989 parliament, and led to a debate about the balance of seats between nobles' and people's representatives. In constitutional terms there is no reason why the seat distribution cannot be amended, but there is an understandable vested interest in maintaining the *status quo* among the noble group (including ministers) which has the parliamentary majority.

Land ownership

The issues of land ownership, access, and population pressure are of growing significance. This is an area where the constitution is detailed and regulatory. It is almost impossible for a foreigner to find out whether the system of land ownership works efficiently and honestly. If the critical question is whether Tongan citizens have adequate land to live on, there is little evidence that this is a problem. Compared with other societies, the level of transient squatter settlement is negligible. Land for commercial development seems to be available, although at a price. The low productivity of agricultural land seems more of a problem but it is difficult to find evidence that access to land is a production constraint. People who want land to cultivate seem to be able to get it. There is some evidence that the difficulty in obtaining agricultural land for long-term lease inhibits agricultural investment, but in general it is unclear how important land shortage is for the future economic development of Tonga.

An important problem with the Tongan land tenure system specified in the 1875 constitution is that it is widely perceived by foreigners to be feudal. There is no open land market. The system may also be a source of corruption. For example, in a case brought to court by the minister for Lands in 1987, the judge directed the annulment of land transfers arranged by the noble Fakafanua while he had been acting minister for Lands. The noble required his traditional tenants to be moved for what appeared to be his own significant financial gain, because he wished to lease their land to government. The judgement noted:

There was of course a straight forward way in which this could have been approached. But this would not have given Hon. Fakafanua anything.... the mistake was induced by Hon. Fakafanua's own representations to the cabinet when he recommended action which was not authorised by law. He should not therefore be allowed to retain this money and any rent paid to Hon. Fakafanua under these two leases must be refunded by him (*Tuita and Solicitor-General v Veta and others; Tuita and Solicitor-General v Lolohea and others*, 1987).

If pressure on land grows significantly, and its value increases substantially, it is likely that landholders in general will see it as against their best interests to allocate statutory 8.25-acre allotments as specified under section 47 of the Land Act. The concentration of land wealth in the hands of so few families is unlikely to remain socially or politically acceptable in the longer term. Unfortunately, the constitution makes land a critical source of future income for nobles. As a consequence land ownership will be politically important, even if its economic value is uncertain.

In July 1990, the Court of Appeal Act of 1966 was amended, to introduce the Forum panel of appeal judges: previously all appeals had gone to the Privy Council which sat with the advice of an outside appeal judge. Interestingly, although there was lively debate in parliament, the 1990 amendments to the Court of Appeal Act, the constitution and the Land Act provided that appeals concerning noble titles and estates would continue to go to Privy Council. This was decided on the grounds that settlement of land issues required traditional knowledge. Although the heated debate in the Legislative Assembly included the claim that the decision was unconstitutional since it was at variance with clause 4 of the 1875 constitution ('There shall be but one law in Tonga, one for chiefs, and commoners...'), the parliamentary outcome was hardly surprising given the vested interest in the traditional system among the noble majority.

Hereditary titles

Among other concepts adopted from Europe, the introduction of hereditary titles and the establishment of a link between title and land now seem particularly anomalous. Before European contact, Tonga had chiefs with geographic spheres of influence but the succession pattern was always fluid. Chiefly success depended to a large degree on military conquest and a chiefly aspirant had to have a supportive constituency. The European element introduced by missionaries was patrilineal inheritance of specific estates. In this respect the constitution was feudal, the more so when the traditional obligation responsibilities between landholder and commoner tenant are acknowledged. The constitution took a facet of Polynesian society, made it more European, and institutionalized it.

The introduction of a restricted number of hereditary noble titles in 1875 made rigid what was previously a fluid chiefly system. Because of the trade-offs required to establish stability through the constitution, Tonga lost some of the flexibility which gave Polynesian society its strength. There is no doubt that the arrangement has served Tonga well, but questions now crop up regularly about its future. For example, with such a limited number of hereditary titles linked to land in perpetuity, there is no economic incentive for nobles to invest their accumulated wealth in economic production. Instead many may focus on land speculation.

Noble families can be maintained only by keeping family lines intact, otherwise family links to hereditary estates become meaningless. Yet families are finding it hard to arrange suitable marriages. Broader education and wider choice make it ever harder for noble families to maintain purity and claims to titles and land. Also, an expanded role for

government and the introduction of a judiciary have reduced the range of social responsibilities nobles once had. Indeed it is increasingly difficult for nobles to play a legitimate, significant and useful role in society. They now need other talents and skills, including real personal social interest and professional qualification. Some young nobles have these advantages and others are taking that need seriously and addressing it by getting tertiary qualifications overseas.

Religion and society

Pre-missionary Tongan society had a religiousness deeply ingrained in day-to-day activity. The missionaries introduced an extreme but simplistic Christian ethic, although not through a particular church, which in many ways only replaced the religious taboos which marked the earlier society. Tonga very quickly embraced the forms of the new religion; how deep the faith went is not important from a constitutional viewpoint.

The constitution provides for freedom of worship but also lays down that 'the Sabbath Day shall be sacred in Tonga for ever' (Article 6). While this is a widely known feature of the Tongan way of life, the political and economic effects of the law are relatively unknown. No shipping or aircraft movements are allowed on Sundays. Tourism is a potential area for economic growth but the economic disincentive of the Sabbath law on foreign investors is uninvestigated.

More of a problem in the longer term is the narrow view of Christian teaching associated with those who hold most strongly to the Sabbath law. In their efforts to preserve Sunday observance, church leaders may fail to see a greater tolerance emerging among the population at large. Bishop Finau of the Catholic Church has suggested publicly that the Tongan Sunday is intolerant. His point of view and its economic consequences tend to be given less credence because of other claims that he is politically subversive.

Constitutional ambience

Finally, it is important to note the general ambience of the constitution. It introduced to an isolated Pacific island country terms and definitions which were from Europe and America, some of which were already outdated. As a consequence, Tonga is in danger of becoming a country of primarily antiquarian interest. While many Tongans prize their history, they would not wish to become a living museum of anthropology. There is increasing danger that the constitutional juxtaposition of terms like freedom and nobility, representation and monarchy, will lead observers to misread Tonga. The international press appear to regard Tonga with increasing cynicism and less goodwill. The words in the constitution were tools to establish a stable political system. The danger is that Tonga may be trapped by them in its own history.

There are other ambiguities in the vocabulary of the constitution. Some Tongan words do not have English equivalents and give alternative shades of meaning in differing contexts. For example *tau'ataina* is used in various parts of the constitution to

mean 'freedom', 'liberty' and 'rights' and perhaps 'independence' in a political sense. But 'freedom' is also described by the Tongan *ata* and *ngofua* in other parts of the text. In English it is unclear whether these changes are significant: so the constitution in Tongan language may be a great deal less liberal than it seems in English. For example, although *tau'ataina* was used in the Emancipation Edict of 1862 to proclaim freedom from the arbitrary rule of chiefs, it has not encompassed release from customary obligation. As a result, there is an interesting possible debate about whether the 1875 constitution was cleverly written to encompass both European and Tongan meanings and attitudes or whether the writers were unaware of these differences.

The constitution has had to be interpreted through the courts when the text is unclear. Ambiguity has been a continuing problem and it has been necessary to keep the text up-to-date as the legal framework has changed. For example, the constitution was redrafted in 1929 in order to obtain consistency between the original text and Tonga's laws. Similarly, a revised version was promulgated in 1975 on the centenary of the original. The courts have decided important constitutional cases in 1911, 1926, 1955 and 1956. What is happening in contemporary Tonga only continues this tradition.

Current parliamentary issues and the constitution

The recent parliamentary debate in Tonga is summarized in the introduction. Do the roots of these problems lie in the constitution? To answer this we have to identify the issues at the core of these debates.

Accountability

It has been argued (Hills 1991) that the parliamentary confrontations between 1986 and 1990 were caused by irreconcilable differences between ministers and people's representatives over the perceptions each had concerning the need for financial accountability. Among the important events were: the taxation crisis of 1986; Pohiva's attempt to impeach the minister for Finance and his petition to the king in 1988; the passport debate in 1990 which involved both the minister for Finance and the minister for Police; and the parliamentary walkout in September 1990 which was followed by the exceptional result of the 1991 election. While each was a significant separate parliamentary event, all can be traced to a reluctance or inability among ministers to explain government policy to people's representatives in the parliament. Ministers assumed that their responsibility was to the monarch. In turn, this led to frustration and annoyance among people's representatives.

The constitution says nothing explicitly about accountability. It says that ministers are appointed by the king, that they shall hold office during the king's pleasure and that they shall sit in the Legislative Assembly as nobles. The fact that they are appointed by the king clearly imposes upon ministers a degree of accountability to him. That the

constitution gives ministers seats in parliament suggests an intention that they are expected to explain their actions. That their seats should grant them the status of nobility does not preclude them from explaining policy. However, if they assume chiefly Tongan social style in parliament, then they may disregard criticism. More importantly, criticism may not be forthcoming. The significant point is that the constitution does not say ministers are not accountable to the parliament but some individuals appear unwilling to accept this responsibility.

Parliamentary rules

The constitution gives parliament the responsibility for making its own rules. In 1989 Pohiva had been unable to get satisfactory answers to questions he had asked in parliament about the sales of Tongan passports to foreigners. As a result, he took the minister for Police to court (*Pohiva v 'Akau'ola and others*), in order to obtain a directive from the court that the minister report more comprehensively to parliament. An issue which had to be settled early was whether the court had jurisdiction. The ruling was that the court could only enquire on whether a minister has fulfilled his statutory duty and reported to parliament. If he had, the court could enquire no further. Similar cases in 1986 concerned the ways in which the parliament had passed a bill and the ways parliamentarians had awarded themselves allowances. In one case (*Sanft and Fuko v Kalaniavalu*) the judge held that the court could not investigate the internal proceedings of parliament; in the other (*Siale v Kalaniuvalu*) a similar judgement was overruled by the Privy Council. The situation is therefore somewhat confused but the general principle seems to be that the courts can examine the internal workings of the parliament to a very limited degree. This means that ministerial roles in parliament are left to each minister's personal interpretation.

The constitution states that a minister may be impeached by the Legislative Assembly or dismissed by the monarch. Events of 1989 and 1990 have shown that impeachment is very difficult to pursue with the seat structure in the Legislative Assembly balanced as it is at present. Equally, it seems unlikely that the king would want to intervene. The constitutional provision that the assembly set its own rules is therefore a major problem when representatives are divided about how the assembly should work.

Distribution of parliamentary seats

In 1989 the people's representatives tried to obtain a redistribution of seats in their own favour because it proved impossible to get enough votes to insist on ministerial accountability. They were unsuccessful either in getting nobles' seats redistributed to additional people's representatives or in simply winning a greater proportion of seats for themselves. The 1875 constitution allocated an equal number of seats to people's and nobles' representatives. The number of seats has been changed since then, but the proportions have

been balanced. In 1991, there are nine seats for each of the nobles' and people's representatives and twelve ministers. The constitution does not say that balance must be kept but change would require constitutional amendment.

In each of these cases, the rigidity of the parliamentary system lies in popular attitudes to both parliament and the constitution, rather than in the constitution itself. But there is a problem because reformists cannot have the parliamentary majority necessary to win a constitutional amendment unless attitudes change among nobles and ministers. This is unlikely in the short term and, as a result, popular opinion may begin to focus on changing the constitution and the parliamentary system. It will be easier to blame the system than its high-ranking participants face-to-face.

Attitudes to the constitution

Among the population at large, the constitution is embraced with almost biblical reverence. It is unseemly for the constitution to be criticized by commoners because it brings together so many of the key principles of the Tongan national personality illustrated in the Tongan Royal motto 'God and Tonga is my inheritance'. Its reputation is further enhanced because the constitution is so frequently cited as the instrument by which Tonga has maintained both its independence and cultural identity. However, in the privacy of the general election ballot in 1990, many commoners obviously voted for candidates who might be expected to question some aspects of the constitution.

Two groups who might be expected to assume contrasting attitudes to the constitution are the elected people's and nobles' representatives in the parliament. Interestingly both support the constitution.

People's representatives in parliament are relieved that the constitution guards their freedom of speech, far beyond the conventions of parliamentary privilege. In addition, the constitution protects Tonga's now flourishing press which gives considerable support to reformist representatives in parliament. In 1985, the only media outlets in Tonga were the government-owned *Tonga Chronicle* and Radio A3ZAM. Currently, Radio A3Z is supplemented by an FM English station and the printed media has a second weekly independent newspaper *Times of Tonga* as well as the intermittent *Kele'a* and the bi-monthly *Matangi Tonga* published by Vava'u Press. As a consequence the population is much better informed than it was five years ago. Members of parliament are very aware of the protection the constitution gives them and they use the publicity they can get in the expanding press. They recognize also the ways in which the constitution constrains their critics. The actions of 'Akilisi Pohiva in 1989, when he used his right of petition to the king and brought a parliamentary motion of impeachment against the minister for Finance, would have been unlikely without constitutional protection.

Interestingly, the conservative elements in Tongan society also see advantages in the constitution. Nobles who were granted titles in 1875 now have constitutional protection for their families' position. The constitution gives legitimacy to all chiefs and the royal

line because in pre-constitution times the pattern of rule and inheritance was more fluid. Latukeyu (1975) has pointed out that it is unlikely that the original intention of the constitution was to maintain traditional obligations to nobles, as well as granting them inherited titles. However, a variety of circumstances has resulted in the nobles now receiving both constitutional protection and traditional obligations. As a result, they should be very satisfied with the position which has evolved.

In a sense the constitution is a vague document. Much detail has been filled in by regulation and subsequent act of parliament. It is argued that legally the constitution is a very flexible document, allowing interpretation to keep pace with changing conditions. This view is held by Tonga's present chief justice (G. Martin, personal communication 1991). As a bottom line, the constitution has provisions for amendment, but this can only be done with the support of a majority in the Legislative Assembly.

Conclusions

Tongan society is naturally hierarchical; in many formal ways life is highly ordered for all its ranks. One consequence of this is that Tongan society is socially competitive; people will claim closeness to others with high rank in order to claim influence for themselves. Another consequence is that many chiefs remain imperious. Sometimes this is interpreted as a result of the hereditary noble structure introduced by the constitution, but there is no doubt that these characteristics were present long before the constitution was promulgated (Martin 1817). In addition, there is evidence that the constitution has exacerbated divisions within society because many chiefs have now accrued wealth from land.

Despite the disadvantages, the 1875 constitution has served Tonga well. It has preserved Tonga's national independence and provided internal stability. Few other countries in the 19th century experienced continuing independence such as Tonga has maintained over the last 150 years. While it is arguable that this was the result of remoteness from metropolitan powers, it is true of no other Pacific island country. Indeed Tonga's treaties of friendship with Germany, France and the USA demonstrate the zeal with which it was courted in the 1870s and 1880s. The constitution has also maintained important personal freedoms. Most Tongans would agree that they have greater advantage from the freedoms granted them through the constitution than they could ever win by attacking it.

Perhaps more important in domestic politics are the perceptions that have developed around the constitution. These include inflexible reverence for it among those who look to it for protection and the real parliamentary difficulties of amending it. In addition, it is perceived by foreigners to maintain a feudal structure: a perception which is enhanced by the way the Tongan language defines and preserves rank structures by using a specific vocabulary reserved for high-ranking people. Similarly, when the dismissive attitudes of some nobles in the parliament are observed, this is seen as a natural result of the hierarchical society, in turn derived from the constitution. Unfortunately these connec-

tions are not based on facts and critics miss the point that all current moves towards reform are protected by freedoms granted in the constitution.

Current calls for change are not directed at the king or the constitution. Most Tongans are too aware of the advantages bestowed by stability to want to be seen questioning these bastions of Tongan society. Also, there is a fine line between criticizing the monarchy itself and those areas for which it has direct responsibility. In Tonga it is not acceptable behaviour to criticize the royal family. The constitution creates some confusion between old Polynesian traditions and modernity by calling the king 'sacred' which makes it very difficult for Tongans to discuss the role of the monarchy in government.

The appropriate conclusion seems to be that the constitution is basically very flexible and Tonga's laws can evolve within it to meet changing times. It has served Tonga well and can continue to do so in the future. However, it has granted formal powers in perpetuity to a self-interested group which has the parliamentary majority. They are unlikely to be willing to compromise their advantage. A working compromise would require a majority of twelve ministers and nine nobles' representatives to see it in their best interests to share political power more fully. So the underlying problem lies with contemporary personalities and their perception of their responsibilities. The difficulties which will be faced in reaching satisfactory compromise, within a realistic time-scale, are illustrated by Tonga's inability to put land issues within the jurisdiction of the reformed Court of Appeal.

Similarly, the most recent constitutional amendment (18 February 1991) is very unfortunate. It was passed by a special session of parliament in order to legitimize the citizenship of foreigners who had previously bought Tongan passports. Three people's representatives walked out of the debate knowing that the amendment could not be stopped. The amendment was in effect an admission by the government that earlier passport sales had been unconstitutional and illegal. While the action will protect the ministers who were responsible and demonstrates the flexibility available in the constitution, it also shows how the parliament and the constitution can be cynically manipulated in the interest of those with the parliamentary majority. Not surprisingly the result was a rare public demonstration in the streets of Nuku'alofa in March.

Tonga's constitution has the capacity to provide a fair and flexible framework for society. Its continuing effectiveness will depend upon broad-minded perceptions and sensible reactions to amendment among those who gained most materially from the constitution. Their parliamentary performance since 1987 does not suggest they will meet the challenge constructively. Although Tonga's constitution poses difficulties, it is not the root cause of contemporary political problems: it provides a framework within which they can be resolved. But if problems remain and attitudes are unchanging, the constitution itself will become a target of political action.

References

- Hills R.C., 1991. 'The 1990 Election in Tonga', *The Contemporary Pacific* 3(2): 357–378.
- Latukeyu, S., 1975. *The Tongan Constitution: A Brief History to Celebrate its Centenary*. Nuku'alofa: Tonga Traditions Committee.
- Meleisa M., 1987. *The Making of Modern Samoa*. Suva: Institute of Pacific Studies, University of the South Pacific.
- Martin J., 1817 [Reprinted 1981]. *Tonga Islands: William Mariner's Account*. Neiafu: Vava'u Press. .

