

Accommodating monarchy and representative government: Tonga's political reform process

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Next year, 2010, is destined to be a landmark year in Tonga's history, in which we will witness the most significant changes to the country's political institutions since its iconic Constitution was promulgated 134 years ago. In July last year, the government put into effect a plan that would lock reform processes into a statutory timetable. The act establishing the Constitutional and Electoral Commission requires it to submit recommendations with draft legislation within 10 months of appointment—that is, by 5 November 2009—with the intention that, after consideration by the Legislative Assembly and passage of legislation, the assembly elections will be held in 2010 under the changed system. Concerns have been expressed, however, about the short time frame, and it might be too soon to tell whether 2010 will fulfil its destiny.

Tongan government

To set political reform in context, it is useful to identify certain characteristics of the remarkable amalgam of Tongan

chieftainship, Christianity and British concepts of government and law, which was brought about in the nineteenth century and became traditionally Tongan by the mid twentieth century (Powles 1990). The first, and defining, component was the authority of the monarch—initially, the farseeing King George Tupou I, who brought all of Tonga together under one ruler and turned rival chiefs into landed hereditary Nobles (numbering 30 today).

Second, the Constitution secured the line of royal succession and set out a governmental structure comprising the Monarch, an executive of the Monarch's appointees sitting in the Privy Council and Cabinet, a Privy Council comprising the Monarch, the Prime Minister and Ministers as supreme executive authority with ordinance-making powers, a Legislative Assembly in which equal numbers (currently nine) of Representatives of the Nobles and the People sit with Cabinet members (currently 12–14), and a three-tier judiciary. A relevant feature of the Constitution for reform purposes is the clear, direct, if nineteenth-century, language in which it

is written. Until very recently, however, advantage has not been taken of Tonga's relatively high literacy rate to stimulate public interest in the document itself, particularly in the Tongan language.

A third characteristic was the early citizen-state relationship that was established within a kinship-based society, where land was distributed to young males and individuals were taxed and required for jury duty, while at the same time, families owed traditional obligations to their Nobles and other chiefs and ultimately to the Royal Family.

Finally, the centralised form of government within its conventional three branches, peaceful succession of power and vigorous enforcement of laws all combined to present to the world powers of the time a picture of stability that persuaded them not to attempt to settle in or colonise Tonga.

Movement for change

As Campbell (2005:93) puts it: '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.' In 1992, a newly formed 'Pro-democracy Movement' held a groundbreaking convention on constitutional issues and specific proposals for changes to the Constitution were put forward in subsequent years, coming to a head in 2005 and 2006 with major strikes and public protests in which, although the triggers were often pay, mismanagement and economic issues, political reform was urged.

Campbell (2006:60) assessed the major strike in 2005 calling for the dismissal of the Prime Minister (the King's youngest son, Prince Lavaka):

The sustained defiance of the strikers, their solidarity and finally the effrontery of this last act are unprecedented in modern Tongan history and indicate extreme dissatisfaction with the regime and its recent performance. These events do not herald the collapse of the government, or even the threshold of constitutional change, but they do mark a shift in the relative strength and confidence of the contending parties.

In the March 2005 general election, candidates supporting the Human Rights and Democracy Movement won all but two of the nine People's Representatives seats. Pursuant to a commitment announced the previous year, the King appointed two Noble Representatives and two People's Representatives from the Assembly to Cabinet—the first such progression in Tonga's history. In March 2006, the King appointed one of those People's Representatives, Dr Feleti Sevele, Prime Minister—the first commoner to hold the office. Major Cabinet changes were made on Dr Sevele's advice the next June. During the year, the independent National Committee for Political Reform (NCPR) established by the Assembly travelled in Tonga and abroad consulting widely to obtain information on Tongans' priorities.

Dramatic events from September to November 2006 included the death of King Taufa'ahau Tupou IV on 11 September and the succession to the throne of Crown Prince Tupouto'a (as King Siaosi Tupou V), followed by an announcement from the palace on 26 September of the new King's support for political reform. In October, lengthy discussion in the Assembly of the NCPR's (2006) report stressed Tongan values and made certain limited recommendations for change, including a formula for the

composition of a reformed Assembly and a new committee to continue the reform work. This led to debate about specific Cabinet proposals that were not very different and included establishing a fresh tripartite committee of the House to take forward consideration of all ideas that were on the table. Certain People's Representatives, however, had attempted to incite public demand for cabinet to agree immediately to a third formula for the Assembly and engaged in group protests that resulted in unprecedented riots, devastating damage and looting in the capital, Nuku'alofa, on 16 November. The nation was shocked, emergency powers were invoked, charges were laid and the reform cause was set back (Powles 2007).

Conditions for reform

Certain factors provide the immediate backdrop to the current reform process. One is the unequivocal support for change offered by King Siaosi Tupou V as early as September 2006. The palace press release (Office of the Lord Chamberlain 2006) contained, among other things, the following declarations: His Majesty would dispose of 'all his commercial interests in Tonga... in conformity with the obligations and demands of his high office'; he is 'committed to the reform process adopted by Parliament for extensive public consultation to form a basis for change'; his recommendations to the late King 'for a more democratic approach' to appointments to cabinet had been accepted. 'Cabinet Ministers now come to office only on the advice of the Prime Minister, rather than through the exclusive power of the Monarch... There is now a binding precedent for monarchical authority to be exercised on Prime Ministerial advice.' Finally, King Siaosi 'regards the monarchy as an agent of change' while believing

'Tonga's Constitution is the keystone of the Kingdom's peace and stability. [It] does not have to be fundamentally changed for representative democratic government to be introduced speedily' (Office of the Lord Chamberlain 2006).

Another immediate consideration is a generally heightened interest in reform on the part of a gradually widening community in Tonga and overseas (where Tongans maintain close internet and phone contact), involving consideration of alternative reform possibilities and awareness of broader issues. Until very recently, it appeared that argument was confined mainly to three rather specific questions: 1) the size and composition of the Assembly (in terms of Representatives of Nobles and the People); 2) the method of its election; and 3) the authority of the King to make appointments. There appeared to be little discussion in the Assembly or among the public of the significance, for example, of reform that would require the people of Tonga to choose Representatives by ballot who would contest leadership in an Assembly that selected its own Prime Minister to appoint Ministers to govern the country.

The usual sensitivity surrounding discussion of matters concerning the King and Royal Family is further compounded by the difficulty of imagining how the country's stability might be ensured without the steadying authority of a Monarch's hand on the steering wheel. Indeed, perhaps it could be said that Tonga's sturdy independence has deprived it of the opportunity to experience decolonisation. That process has involved most other Pacific island societies in a gradual introduction to notions such as the power of the ballot box and the sovereignty of parliament subject to a supreme constitution—together with the consequent responsibilities resting on the shoulders of the electors and the members

Policy dialogue

of parliament to ensure that good leaders take office as ministers.

A persisting feature of the reform discourse, expressed frequently and widely, is a concern for the preservation of Tongan values. It seems clear that significant change in Tonga will be acceptable—in substance and process—only if proper regard is paid to the three pillars of society: its components of royalty, nobility and people, bound together by notions of respect, concern for kinship relations and attachment to land.

A statutory 'road map'

Although the tripartite committee (appointed in July 2007, comprising Representatives of Nobles, the People and Cabinet) met from time to time during the rest of the year and early 2008, and although time frames for achieving reform were discussed, it was clear that a more thoroughgoing examination of the issues, together with wider discussion directed at them, would be needed. The Government (which I use to refer to the King and Cabinet) still felt under great pressure to bring about desired changes as soon as possible—and thus to set targets. Indeed, during and after the April 2008 elections, Cabinet was saying that the next elections would be held in two rather than three years and held under the amended Constitution and laws. Princess Pilolevu, opening the Assembly as Princess Regent in May, emphasised that the 2008–10 sessions would be historic as 'the last to be held under the existing political system' ('Editor's comment', *Matangi Tonga*, 3 June 2008).

Once the Government had approved a 'commission model', and indications of funding support were obtained from NZAID and AusAID, the Constitutional and Electoral Commission Bill was passed by the House and assented to by the King in July

2008 (*Constitutional and Electoral Commission Act 2008*). It is necessary to examine the manner in which this unusually prescriptive Act provided for the Constitutional and Electoral Commission (CEC) and its role, which began on 5 January 2009.

The five members of the CEC are the chairman, Justice Gordon Ward (a former Chief Justice of Tonga), who was recommended by Cabinet, and members: 'Alipate T. Vaea, recommended by Nobles' Representatives; Dr Sitiveni Halapua, recommended by People's Representatives; and Dr 'Ana M. Taufe'ulungaki and Sione T. Fonua, both recommended by the Judicial Services Commission. The director of the secretariat is Tongan lawyer Rosamond Bing.

Perhaps in recognition of the earlier lack of focus in the reform debate, the Commission was required, in particular, 'to examine, enquire into and report upon' 14 matters specified and listed under the following headings:

The Executive

- The roles, functions, powers, duties of, and relationships between, the Monarch, the Privy Council, Prime Minister and Cabinet.
- The size and composition of the Cabinet.
- Delegation of certain authority by the King to the Prime Minister.
- The principle of collective responsibility of Cabinet.

The Legislature

- The composition and method of selection of members of the Legislative Assembly.
- The term of the Legislative Assembly.

Policy dialogue

Relationships between the Executive and the Legislature

- The roles of the King, the Prime Minister and Cabinet, including accountability measures.
- The King's function in the law-making process.
- The appointment of the Prime Minister from the Assembly.
- The appointment of Members of Parliament to Cabinet and the consequences.
- The term of office of Cabinet Ministers.
- Motions of 'no confidence'.

The Electorate

- The electoral system.
- Definition of constituencies and distribution of seats. (*Constitutional and Electoral Commission Act 2008*:Schedule 2)

Further directions called for the Commission's reports to include

- specific recommendations for or against reform in any particular area
- the principal reasons for and against change, and reasoned arguments for and against each recommendation
- an assessment of how an appropriate balance might be achieved for the Kingdom
- priorities for consideration and implementation of change, consistent with the general expectation that substantial changes will have been made by 2010 and that Legislative Assembly elections under the changed system will then be held
- if change is recommended, discussion of, and a recommendation as to, whether to effect change by adopting constitutional conventions or amending the Constitution or other laws. (*Constitutional and Electoral Commission Act 2008*:Section 7).

Other features of the Commission's instructions included the obligation to take into account earlier reports such as that of the NCPR, the views expressed by Tupou V (referred to above) and submissions by groups of no fewer than 200 people; to engage specialists to advise; to include draft legislation with its recommendations; and to remain in office for three months after submitting its final report—that is, until 5 February 2010.

Two reports—interim and final—were stipulated and, by fixing time frames for these (5 June for the interim, and 5 November for the final), the legislation seemed intent on achievement of the 2010 goal (*Constitutional and Electoral Commission Act 2008*:Schedule 3).

The call for written submissions by 23 February 2009 produced 27 and the Commission arranged public forums, with five meetings in Vava'u, four in Ha'apai, one on 'Eua and the Niuaus and six in Tongatapu. After considering, as it was required to do, whether to convene a constitutional convention by 5 August, the Commission concluded that it was neither necessary to assist the Commission in its decisions nor feasible with regard to time constraints (CEC 2009:6).

The Commission's groundbreaking 'Interim Report' of 5 June was distributed widely and revealed much of the Commission's thinking about the nature of its task as well as substantive issues. In an introductory section on its work, the Commission reported on the submissions and forums, which, it said, revealed confusion in the minds of many participants about its role and terms of reference. Also, Commissioners sensed

a widespread and clearly articulated feeling that central government has failed to reach many communities and individuals. It was apparent that

many ordinary Tongans have little interest in politics or the structure of government. This may arise partly from a lack of ability to affect change over many generations but comments in the outer districts suggest it also stems as much from the need to support themselves and their families and a perception that government, however formed, will simply continue to neglect their interests and devote most of its time, energy and resources to the central districts. (CEC 2009:5)

The Report began by expressing concern that '[t]he time frame allowed the Commission by the Act is surprisingly short for consultation, consideration and recommendation of such major and fundamental reforms to the structure of government of the country especially for a part time Commission' (CEC 2009:3). The Report had been drafted more as a discussion paper and, rather than make interim recommendations, '[t]he Commissioners are of the view that we will derive more information and assistance by seeking further submissions on this interim report and will accept any such submission from individuals or groups. The restricted time means that we must impose a closing date on receipt of any such submissions of 6 July 2009' (CEC 2009:7). The Report added:

By seeking further submissions we hope to gain a clearer view of public attitudes and aspirations. They will be taken into account as an indication of the likelihood the people will acknowledge the necessity for and, we earnestly hope, wisdom of the changes we recommend. It is indisputable that, in order to gain such acceptance, we must constantly bear in mind the role and strength of such unique Tongan values as *faka'apa'apa*, *feveitokai'aki*, *fefoaki'aki*, *fe'ofa'aki*, *lototo'o* and

mamahi'ime'a [respect, consensus, reciprocity and loyalty] and the possible effect any reform may have on them and on the almost unbroken stability and equilibrium Tonga has enjoyed under the present system of government prior to the difficult years of the present millennium. (CEC 2009:7)

The Commissioners drew attention to the period of confrontations and dreadful events, which they saw as having created 'an expectation of immediate change' that denied the people of Tonga and the Commission the time necessary for 'reflection and widespread evaluation' (CEC 2009:8).

Substantive matters

Although the Commission has been careful not to express conclusions, its approach to substantive issues is pragmatic. Where it is apparent how far current opinion, including the views of the King, has moved in the direction of change, the Commission has generally explained the rationale for the move and examined related problems. The following brief summary does not attempt to do justice to the Commission's thorough review and very readable presentation. (It is helpful to compare these contemplated changes with the longstanding governmental structure set out above.)

In its Interim Report, the Commission had in mind these suggestions, and desired further submissions on them.

- The King should remain Head of State and *Hau* (traditional leader).
- The Prime Minister should be chosen by the Assembly and should choose his own Ministers.
- The King may retain power to dissolve the Assembly and/or to withhold

Policy dialogue

his assent to new laws passed by the Assembly.

- Cabinet should be the highest level of executive government, and should be collectively responsible to the Assembly.
- The Privy Council should have no role in executive government and no power to pass ordinances.
- The Privy Council may continue as a purely advisory body to the King.
- Consideration should be given to abolishing the Privy Council or otherwise ensuring that it has no influence with the executive, legislature and judiciary.
- The appointment to Cabinet of a limited number of Ministers from outside the Assembly (unelected) raises several considerations that need to be weighed up, not the least being the principle of collective responsibility.
- Safeguards are needed to define or limit the occasions on which motions of 'no confidence' may be passed, and when the King may dissolve the Assembly.
- Whether nine Nobles are elected to the Assembly by Nobles alone or by the wider electorate remains a difficult issue.
- Final figures for the size of the Assembly—including provision for a substantial increase in the number of seats for People's Representatives—should take into account a limit on the size of Cabinet and the proposition that there always be sufficient representatives in the House to form an effective opposition.
- While there seems to be majority support for retaining the present 'first-past-the-post' electoral system, questions remain about whether to introduce single-member constituencies, and what steps to take to deal with substantial defects in the operation of the present system.

The Commission in fact received 70 further submissions, most of which were said to be detailed, thoughtful and useful. Also, the Interim Report has been the subject of debate in the Legislative Assembly.

Conclusion

The Commission ended its Interim Report with reminders that '[t]he change from a paternalistic system of appointed ministers under a benevolent monarch to an elected government answerable to the people who elected them is profound' and '[t]he average Tongan has had little opportunity to consider the real significance of the matters the Commission must consider and possibly recommend should be changed' (CEC 2009:32–3)

Finally, there will undoubtedly be further debate in the Assembly after presentation of the Final Report (to include draft legislation) which is due on 5 November 2009. It is also clear that plans to run an extensive public awareness program after the Final Report is published, with the aim of explaining and clarifying the Commission's recommendations, are vital if the full implications of the changes are to be fully understood by the people of Tonga.

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