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THE LEGACY OF THE 1875 TONGAN CONSTITUTION

By

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A thesis submitted in fulfilment of the requirement for the degree of
Masters of Arts

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School of Social Sciences

Faculty of Arts, Law and Education

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March, 2015

DECLARATION

Statement by Author

I, Seniloli Kimbu Viliami 'Inoke, declare that this thesis is my own work and that, to the best of my knowledge, it contains no material previously published, or substantially overlapping with material submitted for the award of any other degree at any institution, except where due acknowledgment is made in the text.

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Statement by Supervisor

The research in this thesis was performed under my supervision and to my knowledge is the sole work of Mr. Seniloli Kimbu Viliami 'Inoke.

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Name.....

Designation

DEDICATION

To my loving parents, *Kimbu* and *Katalina* and my beautiful sisters, ‘*Ofa Nakita, Sivani, Seiloni* and *Malieta* for there never ending prayers, love and support.

Acknowledgement

Firstly, I would like to express my sincere gratitude to my main Supervisor, Dr Alan Quanchi and his Assistant, Dr Morgan Tuimaleali'ifano for giving me the opportunity to carry out this wonderful research on the history of Tonga's 1875 Constitution. They have assisted me throughout and gave me much confidence. This research would not be completed without their tireless efforts in spite of their busy schedules. I would like to specially thank my main Supervisor, Dr Alan Quanchi for availing his time throughout the duration of the course to read the whole manuscript, made suggestions and comments and most importantly for his editorial help. I am most grateful and very much indebted and I cannot imagine completing the thesis without his guidance.

Secondly I would also like to specially acknowledge my parents, Katalina and Kimbu for always calling in from Tonga since day 1 to check on the progress of the work and not to mention their countless financial support and endless prayers. I would also like to thank my sisters, 'Ofa Nakita, Seiloni and Malieta and my little niece and nephew, Cathlina Kwevira and Austin Koula for their endless prayers, support and their encouraging words. I would also like to acknowledge my other sister Sivani whom was with me in Fiji in times when I needed comradeship. Our never ending conversations and the coffee breaks were worth it. Like the Spanish Proverb, "an ounce of blood is worth more than a pound of friendship". I also like to thank friends who had helped and supported me in many ways which enabled me to complete this thesis by research within the limited time frame. Thank you all so much and will be forever grateful for such love and support.

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these two Noblemen; their contributions to the research meant so much for me. May they both rest in His eternal love.

Many people have assisted me in this research about the history and the legacy of the Tongan 1875 Tongan Constitution and I wish to thank them all. For those whose time, energy and wisdom I have exploited, I hope I have not disappointed or failed them. If anything good comes out of this thesis, it is because of their untiring advice and encouragements. All the mistakes and blunders rest with me. I gratefully acknowledge all the support that made this work possible.

Malo ‘Aupito

Seniloli K. V. ‘Inoke

Fiji 2014

Abstract

This is a study of the history of the Constitution and change in Tonga over the years from its promulgation in 1875 until the Constitutional reform in 2010 and the recent years. This research will intend to look at the rationale of the 1875 Constitution and affiliated issues in Tonga at the time relating to the formation of the Constitution. It will then outline the minor changes that were made to the 1875 Tongan Constitution over the years. This study will also explore the call for Constitutional change in Tonga and the move for a more democratic system of government erupted in the 1970's and the 1980's. The study will discuss the activities and the undertakings of the Pro-Democracy Movement in the 1990's in their push for Constitutional and political reform in Tonga. The study will also analyse the reports submitted by the National Committee for Political Reform (NCPR) and the Constitutional and Electoral Reform Commission (CEC) that was formed by Parliament to conduct a national widespread consultation regarding the proposed new changes to certain provisions of the 1875 Constitution. The study will also cover the agreed changes that were made to the Constitution in 2010 as well as the political situation of Tonga's Government after the 2010 reforms. This study will include the responses of the ordinary people whether they were actually contented with the new changes made in 2010. Lastly, this study will discuss further amendments to the Constitution proposed by the ordinary citizens. I truly believe that this area of study is very essential to look at for it is the oldest standing Constitution in the Pacific and it is very unique as it has in its clauses some civil and human rights in which most Constitutions in the Pacific have not yet encompassed. It is important to conduct a thorough study in this area for it has an important value not only in the political arena of Tonga but also in the lives of the Tongan citizens.

Abbreviations

PDM - Pro-Democracy Movement

NCPR - National Committee for Political Reform

PCPR - People's Committee for Political Reform

CEC - Constitutional and Electoral Commission

HRH - His Royal Highness/ Her Royal Highness

PSAIC - Public Service Association Interim Committee

CNS - Cabinet Negotiation Sub-Committee

JADP - Judicial Appointment and Discipline Panel

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Chapter 1

Background and Methodology

<i>‘E ‘Otua Mafimafi</i>	<i>Oh God Almighty,</i>
<i>Ko ho mau ‘Eiki koé</i>	<i>You are indeed our God,</i>
<i>Ko koe falala’anga mo e ‘ofa ki</i> <i>Tonga</i>	<i>Whom we shall trust and sure loves</i> <i>Tonga dearly,</i>
<i>‘Afio hifo ‘emau lotu</i>	<i>Hear our prayers given to you,</i>
<i>‘A ia ‘oku mau fai ní</i>	<i>Grant our earnest supplication</i>
<i>‘O ke tali homau loto</i>	<i>Guard and save Tupou our King.</i>
<i>‘O malu’i ‘a Tupou.¹</i>	

Tonga’s National Anthem

¹ Tonga National Anthem, *National Anthem of Tonga Act*, 1988 Revised Edition.

This is a study of the history of the Constitution and change in Tonga over the years from its promulgation in 1875 until the Constitutional reform in 2010 and the recent years. This study is based on a compilation of the history of Tonga's Constitution that has been written by many historians, writers and scholars dating back to the 19th century but bringing to the light the later amendments and changes proposed by ordinary citizens. The history of the Constitution of Tonga needs to be examined thoroughly for it determined the development of Tonga's political, economic and social status over the years. The long history of the Constitution reveals the aspirations of the Tongans over the last century on how would they be governed in accordance to the rule of law. This study argues that the main cause of political unrest in Tonga towards the end of the 20th century and the first decade of the 21st century was dissatisfaction with the articles of the 1875 Constitution.

Tonga alone in the South Pacific during the colonization of the Pacific was fully developed politically in a western style. Tonga had completed its political evolution and had a single nation ruled by a single monarchy, His Majesty King George Tupou I (Tu'i Kanokupolu Dynasty). His Majesty King George Tupou I then established a body of fundamental principles according to which a state is acknowledged to be governed. This elevated the Monarchy into nationhood status recognized by the world powers such as Great Britain, France and Germany, thus, nearly saving Tonga from their imperial quest for territories in the Pacific. The proclamation of the Tongan Constitution in 1875 was an outstanding achievement by King George Tupou I in granting its citizens the ultimate gift of freedom. The 1875 promulgated Constitution provided the declaration of rights, a sound system of government and an equitable land tenure system.

With the help of a Wesleyan missionary, Rev. Shirley Waldemar Baker (later became King Tupou I's Prime Minister), the Constitution was drafted and promulgated on the 4th of November 1875 upon the consensus of the high ranking chiefs. This was more or less based on biblical teachings, culminations of existing Codes in Tonga (Vava'u Code and the Emancipation Act), laws of the government of New South Wales and the Constitution of the Kingdom of Hawaii (promulgated in 1852). The 1875 Constitution was merely a response to the internal and external challenges at the time. It became the intermediary between the King and suppressed

warring chiefs and became the guardian of Tonga against the European imperialists that scrambled for territories around the Pacific. It also created the long standing links between the most important institutions in Tonga, the state and the church. Each has been able to maintain an unassailable position strengthened by the support of the other.

The 1875 Constitution still lives on in every Tongans heart as it has been commemorated as a public holiday observed on the 4th of November every year though it was promulgated a century ago. This was to commemorate and bring into mind His Majesty King George Tupou I's dedication and determination to establish a fundamental law for Tonga that would ensure long-standing peace and prosperity in Tonga, *ke tokalingolingo e melinó 'i Tonga 'o ta'engata*. This had brought Tonga forward to be in line with well-established nations of the world and ahead of other Pacific Islands in terms of its political organization.

The first part of the 1875 Constitution comprised all the declarations of the rights of individuals. The majority of these rights were of basic civil, legal and human rights. The second section of the Constitution dealt with the form of Government which was to be set up in Tonga; a Constitutional Monarchy. This section of the Constitution laid down the foundation of the parliamentary, administrative and the legal system. The second part of the Constitution also instituted three branches of government; the King and the Executive (Privy Council and the Cabinet), Legislative Assembly and the Judiciary. The last part of the 1875 Constitution focussed on the management, distribution and the ownership of land resources in Tonga.

The 4th of November 1875 was perceived as the liberation day of the common people from the alleged enslavement by their own aristocracy. The Constitution survived many tests of time and has been praised by many historians, academics and writers such as Attorney General Neil Adsett², Nicholas. K. F. O'Neill³, Dr Sione

² Matangi Tonga Online. 2013. 'Tonga Constitution needs correction to secure Press Freedom', 6 May, viewed 18 September 2013, <http://matangitonga.to/2013/05/06/tonga-constitution-needs-correction-secure-press-freedom>

³ O'Neill, N.K.F. 1982. 'Human Rights in Pacific Island Constitutions', in Peter Sack (eds.), Pacific Constitutions, pp. 307.

Latukeyu⁴, Dr Rodney Harris and Hon. Clive Edwards⁵, for incorporating human rights principles and other provisions such as the retrospective law, rules of succession and lands entitlement that many Constitutions later included in recent years. The Constitution was a long document of 132 articles, and over the years, minor amendments were made to some of the articles of the 1875 Constitutions and some were repealed bringing the total number of clauses from 132 down to 115.

Towards the end of the 20th century and in the early decades of the 21st century, the ordinary citizens formed various movements, protestations and conventions telling the government that it just about time that Tonga should undergo Constitutional and political reform. The initial calls for change in Tonga were directed at bringing about greater accountability rather than a demand for a complete alteration of the system of government. Many of those reformists believed that those entrenched in the Executive government, pursuant to relevant articles of the Constitution were not accountable for their actions and had created government policies for their own benefit at the expense of the constitutional rights of ordinary citizens. The reformers asserted that Tonga cannot advance if it was still governed by the laws of the 19th century. Gradually over the years, the reformists wanted Tonga to amend the 1875 Constitution in order to adopt a new democratic regime and weaken the monarchical system.⁶

The Tongan returning scholars at the time were concerned that the system of government, dating from the 1875 Constitution, could not cope with the pace of the social and political change. As a result, they started to question the efficiency, ability, capacity and integrity of the government and showed apprehension over the increasingly out-dated nature of the 1875 Constitution. The areas of their concerns were the constitutional provisions for the allocation, exercise and retention of power. With such ardent interest, these discontented individuals created groups for political dialogue and initiated the call for Constitutional and political reform. These western educated returned students formed a group known as the Pro-Democracy Movement (PDM) in 1992, then organized Conventions and held discussion sessions with the general public and managed to gather interested individuals to force amendments to

⁴ Latukeyu, S. 1982. 'Constitutional Making in the Pacific Islands in the Nineteenth-Century', in Peter Sack (eds.), Pacific Constitutions, pp. 35.

⁵ Edwards, W. C. Personal Interview, 19 November, 2013.

⁶ Koloamatangi, M. 2009. 'Tonga', in Stephen Levine (ed.), Pacific Ways, pp. 230.

be made to the 1875 Constitution. After nearly 4 decades of lobbying, protesting, boycotting, striking and rioting, the proposed Constitutional and political reform was finally approved and implemented by Government in 2009-2010.

This study will firstly set out to explain the rationale and the affiliated issues in Tonga at the time that led to the promulgation of the Constitution in 1875. It will then outline how the 1875 Constitution of Tonga had survived over the past decades despite the numerous vulnerabilities. The study will then thoroughly discuss the minor changes that were made to the 1875 Tongan Constitution over the years from mid-19th century until the 21st century as some of its clauses were repealed and some were amended over the years to be more meaningful and applicable to modern day Tonga. The study will also cover the initial call for reform that was started in Tonga in the late 1970's aiming to bring about greater accountability in government.

Furthermore, the study will look at the activities of the Pro-Democracy Movement (PDM) in Tonga in the 1980's and the 1990's and the influence of the returning scholar in the push for Constitutional and political reform in Tonga. It will analyse and cover the reports submitted by the National Committee for Political Reform (NCPR) and the Constitutional and Electoral Reform Commission (CEC) that were formed by Parliament to conduct a national consultation regarding the aspiration of the ordinary people towards the proposed new changes to certain provisions of the 1875 Constitution. The study will also cover the agreed changes that were made to the Constitution in 2010 as well as the political situation of Tonga's Government after the 2010 reforms. This study will include the responses of the ordinary people whether they were actually contented with the new changes made in 2010. Lastly, this study will discuss further amendments to the Constitution proposed by the ordinary citizens.

I truly believe that this area of study is of great interest to Tongans since it was the foundation of the Kingdom of Tonga for more than a hundred of years. The 1875 Constitution enabled Tonga to escape the devastating effects of colonialism and to maintain its political stability. The 1875 Constitution has a good reputation not only because it is the oldest standing Constitution in the Pacific but because of its strong cultural and social roots. Tonga is the only remaining Kingdom in the Pacific and amongst the few in the world that are still in place. For that profound sense of

identity and uniqueness to be maintained, Tongans need to respect and to embrace the principles set out in its original and reformed Constitution.

Tonga's ancient history like any other Pacific country was not written but was passed down from generation to generation orally. With the promulgation of Tonga's Constitution in 1875, a new era was dawned in Tonga. The essential part of its history was now written. Apart from Eurocentric accounts and the history of Tonga written by European explorers and novelists, simply one can say that Tonga's written Constitution was actually the first tract of Tonga's ancient history to be written based on the accounts, aspirations and interests of the Tongans (even though it was drafted by a Wesleyan missionary). To know more about the history of Tonga's politics, government, society and its stratification; one needs to thoroughly study the 1875 Constitution for it reflected the concerns and interests of the ruler and the governed at the time.

This study has applied both qualitative and quantitative methodologies. I have conducted a literature review and a comparative study of past literary works, books, published articles, edited chapters, monographs, abstracts, Journals, Magazines, Newspaper articles, Conference Papers and reports. I have analysed the works of academics, government officials, scholars, writers and historians about the Constitution of Tonga available in the Pacific Collection in the Library of the University of the South Pacific in the Laucala Campus as well as the Tonga Campus. I also managed to review government parliamentary debates, Acts, Court Cases, the Monarch's opening and closing speeches in Parliament and parliamentary decisions available at the libraries of the Ministry of Justice and the Legislative Assembly in Tonga. I also have browsed through online materials available on scholarly and official websites.

I also managed to visit the National Archive of Fiji which contained documents about the 1875 Constitution since Tonga and Fiji were once under one HBM Consul when Tonga was declared a British Protectorate in 1900. I visited the Tonga's National Archive in Tonga which provided priceless information such as antique government papers, a copy of the original 1875 Constitution, cabinet decisions, legislations, bills, law reports, government gazettes and newspapers as well as official speeches and private letters and diaries. I also visited the archive of

the national radio of Tonga, A3Z which provided audio records of interviews, speeches, songs, dances and documentaries about the Constitution. I also visited the archive of the Ministry of Information and Communication, Tonga, which it provided a handful of information ranging from old publications of *The Chronicles of Tonga* to Cabinet Decisions. Lastly, I was also able to visit the archive of the *Kele'a Newspaper* and obtained copies of old editions.

While conducting fieldwork in Tonga, I had the privilege to interview one member of the Royal family, His Serene Highness late Prince Tu'ipelehake (who have recently passed away in June, 2014). I was also fortunate to interview three of the Nobles, the late Lord Fusitu'a (who also passed away in April 2014) and his wife Lady 'Eseta Fusitu'a, Lord Vaea (current Minister for the Ministry of Internal Affairs) and Lord Sevele 'o Vailahi (former Prime Minister). I also managed to interview some of the Cabinet Ministers and members of Parliament despite their busy schedules, namely the Deputy Prime Minister and Minister for Infrastructure, Hon. Samiu Kuita Vaipulu, Minister for Justice, Hon. William Clive Edwards, Minister for Education and Training, Dr. the Hon. 'Ana Maui Taufe'ulungaki, Minister for Public Enterprise, Hon. Fe'ao Vakata, and the new Minister for Finance and National Planning, Dr. the Hon. 'Aisake Eke, Samuela 'Akilisi Pohiva (Tongatapu Number 1 People's Representative) and Sione Taione (Tongatapu Number 7 People's Representative).

I also managed to interview some of the former and current Senior Government officials such as Law Lord Tevita Tupou, Senior Counsel Mr. Laki Niu, Miss Susana Faletau (CEO for Ministry of Justice), Mrs. Temaleti Manakovimomoho Pahulu (Deputy CEO for Ministry of Justice), Dr Masaso Paunga (Former Cabinet Minister) and Rev. Dr Uiliami Fukofuka (former Director of the Ministry of Education). I also had the opportunity to interview and seek the opinions of some of the church leaders regarding the Constitution, namely Bishop Fr. Soane Patita Paini Mafi (leader of the Roman Catholic Church) and Rev. 'Ahio (President of the Free Wesleyan Church). I also had the chance to interview some of the former and current members of the Tonga Human Rights and Democracy Movement (THRDM), Rev. Simote Ve'a, Fr. Seluini 'Akau'ola, Vili Vete, Finau Tutone and 'Akanete Ta'ai Lauti. Lastly, I managed to interview and obtained feedback from

some members of the public about the area of study from all walks of life ranging from students, returning scholars, housewives, farmers, journalists, civil servants, former parliamentary candidates, businessmen, elderly people and youths.

This thesis is presented in 7 chapters; the first chapter outlines the background of the study and the methodologies used for gathering of relevant information, chapter 2 provides a literature review of the past works on the Constitution of Tonga and chapter 3 will outline the rationale of the 1875 Constitution of Tonga. In chapter 4, it will discuss the minor changes made to the 1875 Constitutions over the years and the initial call for Constitutional and political reform. Chapter 5 will be discussing Tonga's route towards 2010 Constitutional and Political reform and chapter 6 will discuss and analyse the reports of the Constitutional and Electoral Commission, the Constitutional and political changes of 2010 and the new proposed amendments. Lastly in chapter 7, it provides a summary and analysis of the history of the 1875 Constitution of Tonga.

Chapter 2

Literature Review

Kofuto'onga: Ta'anga ma'a e 'Ikale, Kolomotu'a

Tapu mo e taloni 'o e mo'onia

He 'aho 'o Sisi-mata-e-la'ā

Si'i ta'ahine Hina Lei Tonga

Ko 'ete 'elito'i maka koloa

Fetapatapaki 'a hono maama

'Asi huelo 'i he 'ekueta

'Iloa 'I mamani 'a 'e ta sila

'Otua mo Tonga ko e tofi'a.⁷

Bundle of Fine Mats: Composition for the 'Ikale, Kolomotu'a

*My respect to the throne of the
mo'onia*

This day of Sisi-mata-e-la'ā

*Dear maiden, the fair Hina Lei
Tonga*

Essence of my precious stones

The light of it glitters

Shown in the rays in the equator

Our seal is known by the world

God and Tonga our inheritance.

One of the verses of a *lakalaka* dance that was performed by Kolomotu'a villagers for the celebration of the centenary of the *Tau'ataina* (Emancipation of the people in 1862) on the 4th of December 1962 and was performed again on the 4th of November 1975 for the centenary celebration of the 1875 Constitution.

⁷ Wood-Ellem, E. 2004. Songs and Poems of Queen Salote, pp. 293.

Since Tonga's 1875 Constitution is the oldest standing Constitution in the region and of its paramount importance as the founding document of the Kingdom of Tonga. Many historians, academics, writers, educators, journalists and scholars both Tongans and foreigners were very much interested to conduct research on the 1875 Tongan Constitution and its developments over the years and have also undertaken comparative studies with other Pacific Constitutions. Eventually these scholars published several books, articles, journals and have contributed chapters to edited books about the Constitution of Tonga and its history. This could be seen in the literary works of Guy Powles, Reverend Dr. Sione Latukefu, Ian Campbell, Futa Helu, 'Epeli Hau'ofa, Deryck Scarr, Dr. 'Ana Maui Taufe'ulungaki, Malakai Koloamatangi, Rodney Hills, Noel Rutherford, Pesi Fonua, Lopeti Senituli, Kalafi Moala, 'Akilisi Pohiva, Kerry James and others. These works have provided in-depth knowledge about the history of the evolution of the Constitution from the eras before it was promulgated, until recent years.

Deryck Scarr, a Pacific historian and writer, wrote *Fragments of Empire: A history of the Western Pacific High Commission*, which discussed the influences of the Western Pacific High Commission in Pacific island governments, politics and social affairs in the late 19th century and the early 20th century. One of its chapters, "The High Commissioner in Polynesian Politics: Tonga, 1876-1914" contributed background to my study since it was based on the influences exerted by the High Commissioner of the Western Pacific in Tonga from 1876, a year after the Constitution was promulgated. This chapter provided background information to the challenges and vulnerabilities that Tonga faced especially in their struggle to maintain their sovereignty through preserving the 1875 Constitution including the era when Tonga was placed as a Protectorate of Great Britain in 1900.⁸

Noel Rutherford in 1971 published *Shirley Baker and the King of Tonga*, which depicted the great influence and involvement of Rev. Shirley Baker, a Wesleyan missionary, in Tonga's political and governmental affairs. In one of the chapters, "The Champion of an independent state", even though not much reference were made to the Constitution, Rutherford thoroughly discussed the role played by Rev. Shirley Baker in Tonga as he was not only confined to religious matters but also

⁸ Scarr, D. 1967. *Fragments of Empire: A History of the Western Pacific High Commission*, pp. 82-114.

involved and contributed much to Tonga's governmental affairs. Rutherford discussed the activities and challenges which induced great fear in King George Tupou I and which prompted him to seek the advice and the assistance of Reverend Shirley Baker in drafting a Constitution for Tonga. In this chapter, Rutherford also highlighted Reverend Shirley Baker's experience in drafting the 1875 Constitution by culminating the existed law codes with the laws of New South Wales and the 1854 Constitution of Hawaii.⁹

Reverend Dr. Sione Latukefu, a well-known Tongan historian wrote several works on the history of Tonga as well as its 1875 Constitution. In 1975, Latukefu was asked to write a book about the 1875 Constitution to mark its centenary celebration. Latukefu then wrote the book, *The Tongan Constitution: A brief history to celebrate its Centenary*. This provided a good insight on the developments of the 1875 Constitution from the eras before it was promulgated to its centennial years in 1975. I personally believed that it was appropriate and more accurate to rely on Latukefu's assessments of the Constitution and to use them in the thesis rather than re-assessing the clauses of the Constitution again. However, Latukefu provided detailed information about the power struggles and the civil wars that happened in Tonga prior the general unification in 1845 under the leadership of King George Tupou I. Latukefu also described the development of the Constitution and its place in the history of Tonga. He thoroughly explained King George Tupou I's aspiration and motives behind the promulgation of the Constitution in 1875 and the influential roles played by the missionaries. Latukefu then clearly explained the articles of the 1875 Constitution and its relevance in the 20th century.¹⁰

In, *The Church and the State: the Wesleyan Methodist missionaries and political development, 1822-1875*, Latukefu discussed the evolution of the 1875 Constitution with specific reference to the law Codes that later culminated in the Constitution, and stressing the very influential role played by Charles St-Julian in convincing Tupou I to promulgate a Constitution so that Tonga's sovereignty would be maintained. Latukefu also highlighted the vital role played by the missionaries especially Rev. Shirley Baker in drafting of the 1875 Constitution. This established the long standing relationship between the church and the state in Tonga. Latukefu also depicted the

⁹ Rutherford, N. 1971. *Shirley Baker and the Kingdom of Tonga*, pp. 48-61.

¹⁰ Latukefu, S. 1975. *The Tongan Constitution: A brief history to celebrate its Centenary*, pp. 1-89

gradual process by which King George Tupou I had attempted to bring to Tonga the type of legal and constitutional machinery which enabled Tonga to gain recognition from the civilized nations and maintaining her own independent and stable government.¹¹

Latukefu also contributed a chapter, “Constitution making in the Pacific Islands in the nineteenth century” to *Pacific Constitution*, edited by Peter Sack in 1982. This chapter provided a comparison of how Pacific Constitutions came into being, their constitutional arrangements and developments, and reasons why some Pacific Constitutions collapsed over the years. Latukefu highlighted the survival of the Tongan Constitution from 19th century until present time.¹² In 1993, Latukefu also wrote “The pro-democracy movement in Tonga” in the *Journal of Pacific History* about the political movement in Tonga and the proposed constitutional changes. In this article, Latukefu described the background to the establishment of the pro-democracy movement in Tonga in 1991. He also mentioned some of the unjust actions of the government and the involvement of some of the church leaders in the PDM. Latukefu also claimed that most people wanted a more democratic monarchical government with the people electing Parliament and the Monarch appointing Ministers from amongst them.¹³

Guy Powles, a Senior Research Fellow at Monash University, also had published many works about Tonga and its legal affairs. In Peter Sack’s edited book called the *Pacific Constitution*, Powles contributed a chapter, “Traditional Institutions in Pacific Constitutional systems: Better late than never”, which provided a comparison of Pacific Constitutions including Tonga’s 1875 Constitution in terms of the traditional institutions, stratification and privileges.¹⁴ Powles also wrote, “The early accommodation of traditional and English law in Tonga” in *Tongan Culture and History* edited by Phyllis Herda and the others. He described the introduction of the British concepts of law to Tonga and how it was accompanied with controversy

¹¹ Latukefu, S. 1974. The Church and the State: the Wesleyan Methodist missionaries and political development, 1822-1875, pp. 156-217.

¹² Latukefu, S. 1982. ‘Constitution-making in the Pacific Islands in the 19th Century’, in Peter Sack (eds.), Pacific Constitutions, pp. 21-36.

¹³ Latukefu, S. 1993. ‘The Pro-democracy movement in Tonga’, Journal of the Pacific History, vol.28, pp. 52-63.

¹⁴ Powles, G. 1982. ‘Traditional Institutions in Pacific Constitutional systems: Better late than never’, in Peter Sack (eds.), Pacific Constitutions, pp. 345-359.

and conflict. Powles claimed that the establishment of the body of laws in Tonga enabled her to lead Pacific Island societies in establishing stable central government. This work has contributed to my study because it examined the promulgation of the Constitution and how it was enforced during the period of 1875 to 1930, the constitutional and statutory amendments from 1875 to 1903 and the implementation of laws by the central government till 1930.¹⁵

In the Law Reform Agencies Conference in Vanuatu in 2008, Powles, together with 'Alisi Taumoepeau, presented a paper, "Constitutional Change in Tonga". This paper presented a short summary of Tonga's Constitutional system prior to the recent introduction of changes, some insights into the relevant history and the features which distinguished Tonga's experiences. They described the move for political reform in Tonga around the 1990's and provided an account of the reform process that Tonga underwent in recent years.¹⁶ Powles' monograph, *Political and Constitutional Reform Opens the Door: The Kingdom of Tonga's Path to Democracy*, discussed the reports and the accomplishments of the Constitutional and Electoral Commission and provided a general review of the main Constitutional Reform in 2009-2010, the first general election held under the new laws in November 2010 and a consolidated version of the Constitution of Tonga revealing the major amendments that were implemented in 2010.¹⁷

Emeliana Afeaki contributed a chapter called "Tonga: the last Pacific Kingdom" in 1983 to a book edited by Ron Crocombe and others called *Politics in Polynesia*. Afeaki provided a brief history of power struggles in Tonga prior the unification in 1845, the introduction of new set of law codes, the Constitution and the administration of the government under King George Tupou I. Afeaki also provided a short summary of the structure, functions and the powers vested in each tiers of the government of Tonga pursuant to the 1875 Constitution. She also discussed affairs of Tonga in relation to what had been provided in the Constitution. Lastly, Afeaki presented the issues that Tonga faced in 1980's that needed serious attention such as population increase, distribution of land, key position in government, migration,

¹⁵ Powles, G. 1990. 'The early accommodation of traditional and English law in Tonga' in Phyllis Herda, Jennifer Terrell and Neil Gunson (eds.), *Tongan Culture and History*, pp. 145-169.

¹⁶ Taumoepeau, 'A and Powles, G 2008, *Constitutional Change in Tonga*, paper presented at the Australasian Law Reform Agencies Conference, 10-12 September, Vanuatu.

¹⁷ Powles, G. 2013. *Political and Constitutional Reform Opens the Door: The Kingdom of Tonga's Path to Democracy*, pp. 1-122.

economy, leadership and media. This thesis takes this list and analyses them in the context of later changes to the Constitution.¹⁸

Tonga's Constitution and the Changing State, by Rodney Hills had contributed to my study of the Constitution as it initially provided a brief summary of how the Constitution came about in 1875 and a brief description of its clauses. Hills also provided some of the paradoxes and the anachronism of the Constitution especially in the style of government, parliamentary representation, land ownership, hereditary titles, religion and society and Constitutional ambience. Hills noted some of the parliamentary issues and debates seen in 1980's and early 1990's in relation to articles of the Constitution such as the powers and the accountability of government, parliamentary rules and the distribution of parliamentary seats. Lastly, Hills also highlighted popular attitudes of ordinary people towards the Constitution in the 1980's and the 1990's.¹⁹

Yash Ghai in 1988 edited, *Law, Government and Politics in the Pacific Island States*, which contained "The Constitution and traditional Political System in Tonga" written by Laki Niu, a well-known lawyer and Senior Counsel in Tonga. This chapter provided a comparative study of Tonga's political system prior the promulgation of the Constitution in 1875 and the years after. Niu provided a short history of Tonga's traditional political system starting from 950AD and how it has evolved over the centuries resulting in King George Tupou I gaining autonomous power over Tonga in 1845. Niu also explained factors and the driving force behind the promulgation of the 1875 Constitution. Lastly, Niu briefly explained Tonga's political system set out in the 1875 Constitution.²⁰

In the Convention on the Constitution and Democracy in Tonga held in Nuku'alofa in 1992, many papers were either presented or submitted by eminent scholars based on their experiences and observation. Reverend Siupeli Talia'i presented his paper, "The Constitution of Tonga from a Christian perspective", which was an analysis of the articles of the Constitution from Christian point of view. Guy Powles submitted a paper, "The Tongan Constitution: Some realities".

¹⁸ Afeaki, E. 1983. 'Tonga: the Last Pacific Kingdom', in Ron Crocombe and Ahmed Ali (eds.), *Politics in Polynesia*, pp. 55-78.

¹⁹ Hills, R. 1991. *Tonga's Constitution and the Changing State*, pp. 1-17.

²⁰ Niu, L. 1988. 'The Constitutional and Traditional Political System in Tonga', in Yash Ghai (ed.), *Law, Politics and Government in the Pacific Islands*, pp. 304-309.

This was a critical analysis of the Tongan Constitution and an explanation of the realities of its meanings. Powle's main areas of concern were the statement of the principle and fundamental rights, the role of Monarch, Executive, Parliament, Judiciary and the amendments to the Constitution.²¹

Bill Hodge submitted, "The Westminster System: Its relevance to Tonga on the 21st Century" and Uiliami Fukofuka presented, "Separation of Powers: The American Experience". Dr. 'Ana Taufeu'ulungaki a Tongan academic and politician also presented a paper for the Convention, "Women, Politics and Democracy", which argued that women's rights have been overlooked in the Constitution of Tonga and thus needed to be given recognition. 'Epeli Hau'ofa, a respected writer and an anthropologist presented his paper titled the 'Social context of the Pro-democracy movement in Tonga'. Other reports were written in Tongan by Fr. Seluini 'Akau'ola, Rev. Dr. Sione 'Amanaki Havea, Dr. 'Okusitino Mahina, Sione Na'a Fiefia, Laki Niu, Rev. Dr. Kalapoli Paongo and Bishop Patelesio Finau.²²

Professor Futa Helu, a well-known Tongan scholar and the founder of 'Atenisi University in Tonga had written many articles regarding Tonga's Constitution and political affairs. In the edited collections, *Culture and Democracy in the South Pacific* edited by Ron Crocombe and others published in 1992, Professor Helu contributed "Democracy bug bites Tonga". He explained the needs of the Tongan society at the time and the ripple in government created by the returning Tongan scholars from University training abroad. In this chapter, Professor Helu discussed the activities of the pro-democracy movement and examined the clauses of the 1875 Constitution which the PDM sought to change. Professor Helu also added the agendas and issues raised during the Conference on the Tongan Constitution that was held in Tonga in 1992.²³

In 1994, the journal, *The Contemporary Pacific* published an article, "Thy Kingdom Come: the Democratization of Aristocratic Tonga", written by 'Epeli Hau'ofa, an anthropologist and a writer. Hau'ofa provided a critical analysis of some of the paradoxes in the articles of the Constitution, along with a comparative study of

²¹ Pro-Democracy Movement, 1992, *Reports on the Convention on Tongan Constitution and Democracy*, Convention on Tongan Constitution and Democracy, 24-27 November, Tonga, pp. 1-103.

²² Ibid, pp. 1-103.

²³ Helu, 'I. F. 1992. 'Democracy bud bites Tonga', in Ron Crocombe and Aiono. F. Le Tagaloa (eds.), *Culture and Democracy in the South Pacific*, pp. 139-152.

Tonga's affairs with other countries and a detailed summary of the undertakings of the PDM supporters in their push for Constitutional and political change in the 1990's.²⁴ Kerry James published annual reports on, "The Kingdom of Tonga" in *The Contemporary Pacific* in 1993, 1994, 1995 and 1996, which painstakingly discussed the activities, campaigns and the accomplishments of the PDM. She highlighted the challenges and failures of the PDM as reflected in the results of the general election in 1990 and 1993 as well as the contestable issues in Parliament at the time.²⁵

Kerry James also wrote, "Tonga's Pro-democracy movement" in *Pacific Affairs* in 1994. In this article, Kerry James noted how several government Ministers have been criticized by the public for alleged financial irregularities. She also mentioned the constitutional provision for limited democracy with the underrepresentation of commoners in government. James discussed social and economic developments and their impact on the political scene as well as the criticism from Nobles and Royal Family against the popular push for Constitutional and political reform.²⁶

In the Convention on the Tongan Constitution and Democracy in Tonga in 1999, there were numerous works were presented on the Constitution of Tonga and the concept of Democracy by scholars and academics such as Sir Paul Reeves, Ian Campbell, Futa Helu, Feleti Sevele, Reverend Siupeli Taliai, Mohenoa Puloka, 'Okusitino Mahina, Fr. Ray, Fr. Seluini 'Akau'ola, Lopeti Senituli, 'Akilisi Pohiva, Finau Tutone, William Harris, Paul Karalaus, Masiu Moala, 'Uliti Uata, 'Eakalafi Moala, Fononga Tu'ipeatau and Leonaitasi Hoponoa. These papers proposed different models of Constitutions for Tonga and analyzed the articles of the Constitution and its faults, gaps and paradoxes. Some reports discussed proposed changes to be made to the Constitution that would make Tonga a democratic state. Some papers and reports provided comparative studies with other countries in the region and abroad. Some presented their papers on possible drawbacks of the

²⁴ Hau'ofa, 'E. 1994. 'Thy Kingdom come: the democratization of aristocratic Tonga', *The Contemporary Pacific*, vol. 6, no. 1, pp. 414-418.

²⁵ James, K. 1993. 'Kingdom of Tonga', *The Contemporary Pacific*, vol. 5, no. 1, pp. 163-166.

James, K. 1994. 'Kingdom of Tonga', *The Contemporary Pacific*, vol. 6, no. 1, pp. 192-195.

James, K. 1995. 'Kingdom of Tonga', *The Contemporary Pacific*, vol. 7, no. 1, pp. 164-167.

James, K. 1996. 'Kingdom of Tonga', *The Contemporary Pacific*, vol. 8, no. 1, pp. 202-206.

²⁶ James, K. 1994, 'Tonga's pro-democracy movement', *Pacific Affairs*, vol. 67, no.2, pp. 242-263.

proposed amendments to the Constitution and changes to the system of government on Tonga's economy, politics and social affairs.²⁷

Ian Campbell, wrote, "The Democracy Movement and the 1999 Tongan Election" in *The Journal of the Pacific History* in 1999. This article portrayed the sharp reversal to the fortunes of the move for Constitutional and democratic reform. In his article, Campbell briefly discussed the move for reform in the 1980's and how it was strengthened when 'Akilisi Pohiva became a member of Parliament in 1987. Campbell discussed the concerns at the time about the mode of government, lack of accountability, corruption and incompetence. He also discussed the results of the 1999 general election which reflected the muted, even stalled changes in the move towards reform. Campbell claimed that despite the result of the 1999 election, the move for Constitutional and political reform was still prevalent in Tonga.²⁸

Two years later in his book *Island Kingdom: Tonga Ancient and Modern*, Campbell discussed the political evolution in Tonga, the adoption of Christianity, the promulgation of the 1875 Constitution and the avoidance of colonial subjugations.²⁹ He later wrote the "Quest for Constitutional Reform in Tonga", which was published in the *Journal of the Pacific History* in 2005 in which he discussed the progress of discussions about the Constitutional reform in Tonga. He noted the Constitutional conventions organized by the PDM supporters and how these proposals had largely been cautious and conservative, seeking an enlarged legislature and a responsible executive. Campbell reiterated some allegations of misuse of power, corruption and nepotism which fuelled the move for Constitutional and political reform. Lastly, Campbell discussed the dramatic change in Tonga when King Tupou IV announced the appointment of two elected Nobles and People's Representatives to Cabinet.³⁰

Some chapters of the book, *Island Kingdom Strikes Back: The story of an Independent Island Newspaper- Taimi 'o Tonga* by Kalafi Moala, the publisher and the managing director of the *Taimi 'o Tonga Newspaper*, discussed policies and

²⁷ Tonga Human Rights and Democracy Movement, 1999. *Reports on the Convention on the Tongan Constitution and Democracy: A search for a democratic model suitable for Tonga for the year 2000*, Convention on the Tongan Constitution and Democracy: A search for a democratic model suitable for Tonga for the year 2000, 12-15 January, Tonga, pp. 1-103.

²⁸ Campbell, I. 1999, 'The democracy movement and the 1999 Tongan election', *The Journal of the Pacific History*, vol. 34, no. 3, pp. 265-272.

²⁹ Campbell. 2001. *Island Kingdom: Tonga Ancient and Modern*, pp. 1-283.

³⁰ Campbell, I. 2005. 'The quest for Constitutional reform in Tonga', *The Journal of the Pacific History*, vol. 40, no. 1, pp. 91-104.

decisions implemented by government at the expense of the constitutional rights of its citizens. Amongst these issues were the government's decisions to amend the articles of the Constitution that provided for the naturalization process of foreigners which allowed Chinese nationals to become Tongan citizens without fulfilling the requirements set out in the Constitution. Moala also noted the decision to amend the article on media freedom to ban some of the media outlets from operating in Tonga as they were considered anti-government. Moala also provided a good background for the study of the Constitution as he highlighted some of the most controversial articles of the Constitution.³¹

Heather Leslie, an Adjunct Professor in the Department of Anthropology, University of Alberta, wrote an article, "Tonga", about the move for reform in Tonga, published in *The Contemporary Pacific* in 2007. In this article, Leslie provided a detailed account of the social, economic and political changes in Tonga between 2005 and 2007 and the lobby for Constitutional and political reform. Leslie also covered the events that occurred in Tonga at the time such as the numerous protest marches, public servant strike, appointing of the first elected commoner Member of Parliament as the Prime Minister, the establishment of the National Committee for Political Reform and the 2006 political riots.³²

In the "Pacific Island Reports" section of the Pacific Islands Development Program of the East West Center, Lopeti Senituli submitted a report, "Tongan Government Did Best to Facilitate Reform". This report was submitted primarily in response to the confidential report submitted by Dr. 'Ana Taufē'ulungaki about the Coup in Tonga to the University of the South Pacific. In Senituli's report, he accentuated that the government of Tonga did its best to facilitate reform in a peaceful form but this was futile because people were not willing to work cooperatively with government to achieve an agreeable solution.³³ In response to this report submitted by Lopeti Senituli, 'Akilisi Pohiva submitted a response, "Tongan Government Refused to Listen to People", arguing that the main cause of the coup of November 16 of 2006 was the unwillingness of government to listen to the needs of

³¹ Moala, K. 2002. Island Kingdom Strikes Back: The story of an Independent Island Newspaper-Taimi 'o Tonga, pp. 71-297.

³² Leslie, H. E. Y. 2007. 'Tonga', The Contemporary Pacific, vol. 19, no. 1, pp. 262-275.

³³ Senituli, L. 2007. 'Tonga did best to facilitate reform', Pacific Island Development Program/ East-West Center, 23 January, viewed 23 November 2013, <http://archives.pireport.org/archive/2007/January/01-23-comm2.htm>

the population. These reports provided a thorough knowledge of the events and decisions made by the government towards Constitutional and political reform and the responses of the ordinary people that resulted in the riots that occurred in Tonga in November 2006.³⁴

The editor of the *Matangi Tonga* online magazine, Pesi Fonua, provided very reliable and detailed, unbiased information of government affairs, decisions and events that happened since 1990's. Fonua scrupulously discussed the undertakings of the pro-democracy movements, the push for Constitutional and political reform and the implementation of reforms in 2009-2010. Fonua continues to provide feedbacks on the situations of the government. In 2007, *The Diplomat Journal* published an article, "March towards Democracy" by Ben Bohane. This article provided a short summary of Tonga's political affairs during and after the political coup in 2006, the continuous move for Constitutional and political reform and agreements for the implementation of such reform.³⁵

In the edited collection, *Pacific Ways: Government and Politics in the Pacific Islands*, edited by Stephen Levine, one chapter, "Tonga", discussed Tonga's political affairs and its situations in recent years. This chapter was written by Malakai Koloamatangi, a Research Fellow and Lecturer at the University of Canterbury. This chapter was very useful in my study as it discussed some of the articles of the Constitution that were highly debated and contested in Parliament. Koloamatangi also raised in his chapter some issues and tensions within Tongan society. He concluded with a brief summary of the undertakings of the pro-democracy movement starting from its formal establishment in 1992 until the implementation of the final report of the Constitutional and the Electoral Commission in 2009.³⁶

The surveys, insights and summaries of these scholars and historians have enabled this thesis to present events, happenings and decisions in relation to Tonga's Constitution over the 19th, 20th and early decade of the 21st centuries. The existing literatures brought into the light some of the aspects and features of the 1875

³⁴ Pohiva, 'A. 2007. 'Tongan Government Refused to Listen to People', *Pacific Island Development Program/ East-West Center*, 23 January, viewed 23 November 2013, <http://archives.pireport.org/archive/2007/January/01-23-comm1.htm>

³⁵ Bohane. B. 2007. 'March towards Democracy', *The Diplomat*, vol. 6, no. 4, pp. 14-16.

³⁶ Koloamatangi, M. 2009. 'Tonga', in Stephen Levine (eds.), *Pacific Ways: Government and Politics in the Pacific Islands*, pp. 226-232.

Constitutions as well as some of the unidentified aspirations of the time. It also verified some of the absurdities in the development of the Constitution in terms of the amendments and changes over the years. The next chapter of this study depicts the background and the motives behind the promulgation of the 1875 Constitution, and reveals the instances, events and trends overlooked in the existing literatures.

Chapter 3

The Rationale of the 1875 Constitution

<i>‘Oku ai ha ki’i fonua</i>	<i>There’s this small island,</i>
<i>‘Oku tu’u ‘i ‘oseni,</i>	<i>Situated on the vast ocean,</i>
<i>Na’e ‘ikai ke ma’u ‘Otua,</i>	<i>It didn’t worship any living God,</i>
<i>Na’e masiva he lelei</i>	<i>Nor did it have any riches,</i>
<i>Haleluia!</i>	<i>Halleluiah!</i>
<i>Kuo monu’ia ‘eni</i>	<i>It has now been blessed.</i>
<i>He ne tu’u ai ‘a e lotu,</i>	<i>Christianity has made its way there,</i>
<i>Omi ‘a e kau faifekau,</i>	<i>Missionaries have come ashore,</i>
<i>’O fanongo ‘e he motu,</i>	<i>The people have listened,</i>
<i>Ki he me’a ‘a e Tohitapu,</i>	<i>To biblical teachings,</i>
<i>‘O tafoki</i>	<i>And all were converted,</i>
<i>‘A e hou’eiki mo e Hau’.³⁷</i>	<i>Including the royalties and the King.</i>

A hymn of the Free Wesleyan Church of Tonga that was composed for the acceptance of Christianity in Tonga.

³⁷ Missionaries. 1997. Hymn Book of the Free Wesleyan Church of Tonga, pp. 391.

Tonga experienced an intensive period of political turmoil in the 18th and the 19th century due to the never-ending conspiracies, feuds, treacherous decisions and mischievous actions of those rulers of the traditional authority structure, the *Ha'a Tu'i* (King lines), the *Kau Hou'eiki* (High ranking chiefs) and the *Ha'a me'avale* (Commoners). This ongoing chaos brought in its wake the need for a complete alteration of the status quo. The route to this new political structure went through a lot of bloodshed with destruction which of course it is the common fate of any country that undergo the turmoil of creating a new political system. This occurred in the Glorious Revolution in England in 1688 and the French Revolution in France between 1789 and 1799.³⁸ Ongoing clashes in Tonga occurred between dynasties and high chiefs of warring towns. Amongst the deadliest combats in Tonga were the battles fought in *Velata*, *Pea* and in *Ngele'ia*. Eventually, Tonga was governed under an absolute power of one person who took Tonga ahead to a new brilliant level that most of her neighboring islands in the Pacific followed a couple of decades later.

According to oral tradition and history, Tonga was governed under the rule of three separate dynasties, all of whom were descended from one common ancestor. Tonga's first dynasty, the *Tu'i Tonga* dynasty was founded in about 950 AD with 'Aho'eitu as the first King.³⁹ The dynasty was unchallenged by the chiefs because of the common notion that the *Tu'i Tonga* dynasty was sacred because it had been anointed with an absolute power from Supernatural Gods. Over the years, the administration of the *Tu'i Tonga* dynasty changed as the incumbent of the *Tu'i Tonga* at the time designated his secular power to his brother, *Mo'ungamotu'a*, by establishing another dynasty called the *Tu'i Ha'atakalaua* in the 15th century. In the 17th century, the holder of the *Tu'i Ha'atakalaua* decided to bequeath the same power given by the *Tu'i Tonga* to his son *Ngata*. The *Tu'i Kanokupolu* dynasty was then created with *Ngata* as the first *Tu'i Kanokupolu*.⁴⁰ At this stage in time, Tonga was politically fragmented as the *Tu'i Tonga* and the *Tu'i Ha'atakalaua* remained in

³⁸ Heywood, A. 2007. *Politics*, pg. 224.

³⁹ Princess Siu'ilikutapu 2013, 'Adapting traditional governance to contemporary political and policy challenges', transcript, Ministry of Information and Communications Website, 5 May, London, viewed 27 December 2013, <http://www.mc.gov.to/news-today/press-releases/4380-hrh-princess-siulikutapu-adapting-traditional-governance-to-contemporary-political-and-policy-challenges>

force in the eastern side of Tongatapu and *Tu'i Kanokupolu* on the west while the other island groups had their own various powerful chiefs.⁴¹

Gradually over the years, civil wars broke out between the high ranking chiefs mainly those chiefs of the *Ha'a Havea* (Havea Clan) whom emerged as the most powerful group of chiefs in Tongatapu, *Tupouto'a* of the Ha'apai group and *Finau 'Ulukalala* of the Vava'u group. In the end, the three dynasties formed alliances. Amongst the many issues for these disagreements and differences was the acceptance of Christianity after 1800 by some of the chiefs and of course the quest for ultimate power. As a result of these wars, the *Tu'i Kanokupolu* dynasty became the pre-eminent title of power after the last incumbent of the *Tu'i Ha'atakalaua* dynasty, *Mulikiha'amea*, was killed in a battle in 1799 as was the heir to the *Tu'i Tonga* dynasty, *Laufilitonga*, in 1826.⁴²

At the peak of this political transition, *Taufa'ahau* won his battles and unified the whole of Tonga under his control and introduced the modern state. *Taufa'ahau*, also known as *Maeakafa Nginingini Ofolanga*, the son of *Tupouto'a* and the grandson of *Tuku'aho*, became the *Tu'i Ha'apai* when his father *Tupouto'a* died in 1842 and later on became the *Tu'i Vava'u* when *'Ulukalala Tuapasi* (son of *Finau 'Ulukalala*) named him his successor upon his deathbed, after he provided assistance in putting out the rebellions in Vava'u.⁴³

The advancement of the Wesleyan missionaries in Tonga had highly influenced *Taufa'ahau* to become a visionary leader though at first he was hesitant about their motives. The early attempts to convert Tonga to Christianity were made in 1797 when some missionaries from the London Missionaries Society landed in Tonga but this was fruitless because the Tongans were unwilling to replace their traditional Gods and beliefs with Christian faith and partly due to the fact that three missionaries were killed simultaneously. This did not dampen the London Missionary Society's evangelism spirit as later attempts were made in 1822 and 1826.⁴⁴ Finally in 1831, *Taufa'ahau* accepted Christianity, was baptized and adopted

⁴⁰ Latukefu, S. 1975. *The Tongan Constitution: A brief history to celebrate its Centenary*, pp. 1-2.

⁴¹ Wood-Ellem, E. 1999. *Queen Salote of Tonga: The story of an era 1900-1965*, pp. 18.

⁴² Latukefu, S. 1975. *The Tongan Constitution: A brief history to celebrate its Centenary*, pp. 18.

⁴³ Ibid, pp. 15.

⁴⁴ Ibid, pp. 16-18.

the name King George or *Siaosi* in Tongan.⁴⁵ Upon acceptance, he then expected everyone living under his control to do so by discouraging heathenism practice in villages and communities.

With his hereditary rights to the title *Tu'i Kanokupolu* (through his father), the full support of the missionaries, good leadership prowess and political complexities he was able to fulfill his new vision for a better Tonga. King George Tupou I fought and defeated *Laufilitonga*, the last from the *Tu'i Tonga* line in 1826. In 1833 he became the supreme ruler of Vava'u. At this particular time, the island groups of Ha'apai and Vava'u came under King George Tupou I and Christianity spread rapidly. The *Ha'a Havea* whom based in Tongatapu viewed the pervasive influence of Christian faith in the outer islands and in parts of Tongatapu as a political accomplishment of King George and did their best to subdue Christian faith as well as King George's alliances in Tongatapu mainly with the *Tu'i Kanokupolu*, *Siosaia Aleamotu'a*. However, several clashes broke out between *Aleamotu'a* and the *Ha'a Havea* and in these battles King George Tupou I stepped in and supported *Aleamotu'a*. For such war efforts and leadership qualities, *Aleamotu'a* named King George as his successor instead of his son Henry *Ma'afu*, before he died in 1845. At this time, all the politically fragmented islands and villages of Tongatapu came under the central power of King George Tupou I. The *Ha'a Havea* remained angry about King George being the supreme ruler of Tonga and with the support of the French Roman Catholic priests that were present in Tonga, they retaliated in 1852 but were crushed by King George Tupou I's warriors.

Taufa'ahau's acceptance of Christianity played an important role in the success of his quest for a unified nation. Under his power as the new supreme ruler of Tonga, he enforced the acceptance of Wesleyan Methodism all throughout his new established Kingdom. Western civilization then slowly crept into Tonga's shorelines in forms of the unified laws and system of government. However one should acknowledge that prior to these innovations, Tongan societies had already developed an organized political system (dynasties) common to those found in other Western civilized societies. The achievement of this very advanced governance status in

⁴⁵ Latukefu, S. 1975. The Tongan Constitution: A brief history to celebrate its Centenary, pp. 19.

human political evolution at this very early stage in Tonga, was a status not yet achieved by many nations until about the nineteenth century.

King George Taufa'ahau Tupou I became more familiar with the doctrines of Christianity and Western Civilization, presented to him and his people by the Wesleyan missionaries. He understood that almost all customary laws were incompatible with those principles of Christianity. Simultaneously, he realized the value of written laws and with the assistance of the missionaries, he drafted a Code of Law for Ha'apai which was later formalized and introduced as the Vava'u Code in 1839. When he became the *Tu'i Kanokupolu* in 1845, the Vava'u Code was extended to the whole of Tonga until the new Code of 1850 was introduced. These Codes were all based on biblical teachings, parables and standards especially those of the Ten Commandments. This can be clearly seen in the preamble of the Vava'u Code of 1839 that says:-

“It is of the God of heaven and earth that I have been appointed to speak to you, he is the King of Kings and Lord of Lords, he doeth whatsoever he pleaseth, he liftheh up one and putteth down another, he is righteous in all his works, we are all the work of his hands, and the sheep of his pasture, and his will towards us is that we should be happy...”⁴⁶

The most important feature of this Code was the limitation of the striking power of the chiefs based on the perception that all men are equal in the sight of God. However, Tongans found it hard to comply at first with these new Codes as they were totally incompatible with their customary practices and rituals such as bigamy, tattooing, dances and black magic. Over the years Tongans managed to conform to what were deemed by the Codes to be lawful. The Code of 1850 basically confirmed King George Tupou I's temporal power as the *Hau* or the King of the whole of Tonga.

“The King being the root of all government in the land, it is for him to appoint those who shall govern in this land. Whatever the King may wish done in his land, it is with him to command the assemblage of his Chiefs, to consult with him thereon. Whatever is written in these laws, no Chief is at liberty to act in

⁴⁶ Latukefu, S. 1975. The Tongan Constitution: A brief history to celebrate it's Centenary, pp. 20.

*opposition, but to obey them together with his people. The King is the Chief Judge and anything the Judges may not be able to decide on, shall be referred to the King, and whatever his decision may be, it shall be final. Whatever the King deems proper, shall be done by the people for the King”.*⁴⁷

Though Christian faith was consolidated throughout Tonga at the time, quite a few were still in resilience and continued with heathenism practice. This sadly often led to their execution. Nevertheless, King George was well aware of the inadequacies of the 1850 Code of Law especially on how his government was structured. So he was determined to change that and as a result, a new Code of law was introduced in 1862, widely known as the Emancipation Act.⁴⁸ Many people held this Act with high regard considering it the foundation stone of the Kingdom of Tonga as people were actually freed from the cruel serfdom.

*“All laws formerly printed in the code of laws of Tonga relating to serfdom are repealed, and the following is the law of Tonga instituted by the King and Chiefs in Tonga in the Parliament House on the fourth day of June, in the year of our Lord one thousand eight hundred and sixty two. All chiefs and people are to all intents and purposes set at liberty from serfdom and all vassalage from the institution of this law, shall not be lawful for any chief or person to seize or take by force, or beg authoritatively, in Tonga fashion anything from any one. Everyone has the entire control over everything that is his...”*⁴⁹

The *Ha’a Havea* were still in strong opposition against *Taufa’ahau*, as King of Tonga and found it difficult to conform to all these Codes. They believed that they had the right to remain independent from King George Tupou I and his new laws. This led to the last civil war in Tonga in 1852 in which the *Ha’a Havea* were defeated and the final unification under the supreme authority of King George Tupou I was successfully completed.⁵⁰ With this internal problem being solved, King George Tupou I was not yet at peace since Tonga’s political unity was still at stake due to the increasing European imperialist activities in the Pacific. King George Tupou I unwaveringly wanted to sustain Tonga’s independence. He achieved this

⁴⁷ Fusitu’a, ‘E and Rutherford, N. 1977. ‘George Tupou II and the British Protectorate’, in Noel Rutherford (ed.), *Friendly Islands: A history of Tonga*, pp. 226.

⁴⁸ Neill, J. S. 1955. *Ten Years in Tonga*, pp. 99.

⁴⁹ Latukefu, S. 1975. *The Tongan Constitution: A brief history to celebrate it’s Centenary*, pp. 33-34.

⁵⁰ Neill, J. S. 1955. *Ten Years in Tonga*, pp. 92.

through maintaining formal state recognition of its independence by foreign powers, ensuring good and efficient government and improving the Kingdom's legal system.

When the last civil war ended in 1852, King George decided to visit Australia in 1853 to see and experience how people in civilized countries live and manage their everyday affairs.⁵¹ He did not expect to see homeless people wandering around without having a proper place to live. King George Tupou I believed he would make sure that such a situation would never happen in his Kingdom. Other than that, King George Tupou I was quite impressed with the leasehold system of land tenure and made up his mind that land in Tonga should be distributed among his people along similar lines. After his short visit, it became evident to the King that the existing Tongan Codes did not go far enough and he was determined that nothing short of full written Constitution was needed.⁵²

Upon his return, King George often received letters from Charles St-Julian (the law reporter for Sydney Morning Herald) suggesting ways in which King George Tupou I should re-structure and operate his Government. Amongst the many reforms suggested by St-Julian was for King George Tupou I to establish a Constitutional Government. He later sent over a copy of the Constitution adopted by Hawaii in 1852 for Tonga to follow.⁵³ However, while considering these suggestions as an important political tool, King George Tupou I believed that this was not the right time for any changes to be made since Tonga had just ended its last civil war and he feared any new changes would cause more trouble and insecurity especially among the powerful and high ranking chiefs. St-Julian was disillusioned and published an article in the Sydney Morning Herald.⁵⁴ St-Julian argued that King George Tupou I's Government was inefficient, disorganized and was reluctant to make improvements especially in its legal system because the King did not want to release the lower orders from their duties to their chiefs. St-Julian did not appreciate that King George Tupou I required some time for Tonga to be on its own two feet again before changes could be made.

⁵¹ Latukefu, S. 1975. The Tongan Constitution: A brief history to celebrate it's Centenary, pp. 30.

⁵² Latukefu, S. 1974. Church and State in Tonga: the Wesleyan Methodist missionaries and political development, 1822-1875, pp. 162.

⁵³ Ibid, pp. 163.

⁵⁴ Ibid, pp. 164.

Affairs of government became increasingly complicated as local European settlers in Tonga openly defied the laws, questioned the validity of the government and suggested that Tonga should be included to the British Empire.⁵⁵ King George also saw the growth of European expansionism and rivalries in the Pacific seen in the increasing influence of the US and the German governments in the affairs of Samoa, the French government in Tahiti and the annexation of Fiji to Britain in October 1874. These experiences especially the latter created in the King his worst fear that Tonga would be lost, unless there was a firmer and fuller guarantee of Tonga's independence.

To ensure this, King George took into account one of the reform policies suggested by St-Julian. This was for Tonga to employ a European adviser in Government particularly for drawing up a Constitution for Tonga.⁵⁶ King George had adopted a European lad, David Jobson Moss (*Tupou Ha'apai*), as his son and made him his private secretary thinking Moss would be the one to trust in drafting up Tonga's Constitution. However, Moss was an enthusiastic and hardworking person but he lacked the abilities, competencies and common sense to carry out the duties. Moss's wife was infected with leprosy, and with no qualm he was dismissed from office by King George Tupou I.⁵⁷

This was now a job destined for Rev. Shirley Waldemar Baker, one of the Wesleyan missionaries to Tonga. Rev. Shirley Waldemar Baker was in Tonga for the second time as the Chairman of the Wesleyan Mission and was forewarned not to mingle in Tonga's political affairs.⁵⁸ Baker did not get along well with the rest of the mission in Tonga which made him turn to King George Tupou I for support. In 1872, Baker not only became King George Tupou I's physician but also his financial, political and spiritual adviser. King George trusted Baker and informed him of his burning desire to establish a Constitution for his Kingdom as soon as possible. King George Tupou I told Baker that he required his assistance in compiling a Constitution that was suitable for Tonga.

⁵⁵ Rutherford, N. 1971. *Shirley Baker and the Kingdom of Tonga*, pp. 49.

⁵⁶ Latukefu, S. 1974. Church and State in Tonga: the Wesleyan Methodist missionaries and political development, 1822-1875, pp. 192.

⁵⁷ Rutherford, N. 1971. *Shirley Baker and the Kingdom of Tonga*, pp. 50.

⁵⁸ Latukefu, S. 1974. Church and State in Tonga: the Wesleyan Methodist missionaries and political development, 1822-1875, pp. 200.

In 1872, Baker visited Australia for a Methodist Conference and had the chance to consult with the Premier of New South Wales, Sir Henry Parkes, regarding Tonga's Constitutional making process. Parkes generously provided Baker a copy of all the Laws of the Government of New South Wales since its establishment as well as a copy of the 1852 Constitution of Hawaii. Baker managed to incorporate them together with all the law Codes of Tonga. Baker then presented a copy of the newly drafted Constitution to a firm of lawyers in Auckland for rephrasing in 1874.⁵⁹ By 1875, the newly drafted Constitution was all set and was presented to King George Tupou I, who believed that the Constitution was suitable for his Kingdom and the best possible solution for all internal problems and of course the external threats.

For public awareness, Baker used the monthly issues of the Government's newspaper *Ko e Boobooi* to inform the people of the nature of the newly drafted Constitution.⁶⁰ He claimed that the newly drafted Constitution was simply the culmination as well as the refinement of all the earlier law Codes in Tonga. A Parliament session was called on the 16th of September 1875 and was attended mostly by all high ranking chiefs, *Kau Hou'eiki*. In this session, the newly drafted Constitution was presented for serious discussion. While addressing the attendees of the Parliament session, King George made a very historic speech about the Constitution and its importance for Tonga:-

“You are called upon to meet and deliberate on the new work to be done by the Government, to pass the Constitution, and to govern the land and to have the law of this country in accordance with it. The form of our Government in the days past was that my rule was absolute and that my wish was law and that I chose who would belong to Parliament and that I could please myself to create chiefs and alter titles. But that, it appears to me, was a sign of darkness and now new era has come to Tonga –an era of light- it is my wish to grant a Constitution and to carry on my duties in accordance with it and those that come after me shall do the same and the Constitution shall be as a firm rock in Tonga forever”.⁶¹

⁵⁹ Rutherford, N. 1971. *Shirley Baker and the Kingdom of Tonga*, pp. 55.

⁶⁰ Latukefu, S. 1975. *The Tongan Constitution: A brief history to celebrate it's Centenary*, pp. 41.

⁶¹ Latukefu, S. 1982. 'Constitutional-Making in the Pacific islands in the Nineteenth Century' in Peter Sack (ed.), *Pacific Constitution*, pp. 29.

On the 4th of November 1875, before the Parliament session was closed the newly drafted Constitution was passed and became law with minor amendments. The full text of the Constitution was then published in Tongan and in English for the public in the monthly newspaper *Ko e Boobooi*.⁶² King George Tupou I again made another promising and touching speech during the closing ceremony of Parliament stressing the important role played by the Constitution in the administration of government as well as the protection of Tonga's sovereignty from possible threats of annexation and for the Tongans to be proud of this great achievement:-

“...and now, here is the Constitution of Tonga, written on parchment, to be kept in the Parliament of Tonga, a document to commemorate and to testify to the work that we are doing today. This day I have added my name to it and so it becomes Law of Tonga. May you and your descendants, you the people of Tonga be blessed now and forever while you follow the Constitution. May the day never dawn for Tonga when someone, or anyone, will alter the basic principles of the Constitution. Let it become the foundation stone of our country for ever...May each of you inscribe in your hearts...Tonga for the Tongans”.⁶³

This new promulgated Constitution marked a major step in Tonga's progress towards becoming a modern civilized state and was recognized as such by the great powers.

The promulgation of the 1875 Constitution was perceived as a major reform in Tonga, socially in terms of individual rights, economically with the distribution of land and politically in the new form of government. Tongans became proud of this achievement and regarded it as a Holy writ, directing their lives in accordance with it. Nonetheless, this new Constitution also faced criticism especially from those European settlers who remained critical of Rev. Shirley Waldemar Baker's role in government.⁶⁴ The foreigners especially the traders in Tonga showed discontentment because they saw in the articles of the 1875 Constitution (moral laws) that King

⁶² Powles, G. 1987. 'The early Accommodation of Traditional and English Law in Tonga', in Phyllis Herda, Jennifer Terrell and Neil Gunson (eds.), Tongan Culture and History: Papers from the 1st Tongan History Conference, pp. 156.

⁶³ Latukefu, S. 1975. The Tongan Constitution: A brief history to celebrate it's Centenary, pp. 42.

⁶⁴ Rutherford, N. 1971. Shirley Baker and the Kingdom of Tonga, pp. 58.

George Tupou I favoured the churches, Wesleyan and the Catholic.⁶⁵ This led to the speculation about annexation and the subjugation of the Kingdom by one of the colonial powers at the time, Great Britain, United States and Germany.

The basis of this Constitution remains astonishing because Tonga was the only country that the constitutional liberty of its citizens was granted by the King at freewill. In other countries, constitutional liberty was only being granted by their rulers due to popular demand preceded usually by the turmoil of a revolution. The main aims of promulgating of the 1875 Tongan Constitution were to maintain Tonga's independence by gaining recognition from great powers as well as ensuring its internal stability and integrity. Gradually, these aims were achieved as Tonga remained a sovereign state although it became a British Protectorate later in 1900 under the rule of King George Tupou II (King George Tupou I's great grandson).⁶⁶ Peace and stability was persisted throughout in Tonga.

While Tonga was placed under British Protectorate, New Zealand wanted Great Britain to annex Tonga to New Zealand to make up for the loss of Samoa to Germany and US in 1899. The officers of the British High Commission for the Western Pacific in Suva refused such imperialist ambitions by arguing that if there was to be an annexation of Tonga, it should have been to Great Britain. The officers argued that the Tongans would not tolerate any annexation to New Zealand and the fact that Britain wanted Tonga to maintain her internal self-government as long as the country was governed according to her Constitution promulgated in 1875.⁶⁷ During the reign of His Majesty King Tupou II, the 1875 Constitution was overshadowed to a large extent by the 1900 Treaty with Great Britain and its Supplement of 1905. Despite this effect, the 1875 Constitution remained a significant guideline for the ordinary citizens particularly with regard to the administration of the affairs of government.

The 1875 Constitution has hundred and thirty two articles categorized into three main parts. The first section comprised all the declarations of rights with most

⁶⁵ Niu, L. 1988. 'The Constitutional and Traditional Political System in Tonga', in Yash Ghai (ed.), Law, Government and Politics in the Pacific Island States, pp. 306.

⁶⁶ Fusitu'a, 'E and Rutherford, N. 1977. 'George Tupou II and the British Protectorate', in Noel Rutherford (ed.), Friendly Islands: A history of Tonga, pp. 173.

⁶⁷ Latukefu, S. 1982. 'Constitution-making in the Pacific Islands in the Nineteenth-Century', in Peter Sack (ed.), Pacific Constitutions, pp. 36.

of these rights closely related to those outlined in the Hawaiian Constitution of 1852.⁶⁸ The majority of these rights ascribed by the Constitution were basic civil and human rights as seen in the very first few articles. These stated that the people of Tonga are to be free forever as well as for those who may later reside in Tonga regardless of their ethnicity, sex or religious belief and other differences. It acknowledged the freedom to possess and to acquire property. It prohibited slavery in Tonga forever with the exception of those individuals breaching the law. It formally stated that all men are equal before the law whether a Tongan or European, noblemen or commoners. It also granted its citizens the freedom of speech and the freedom of press to freely express what one thinks about an issue, mindful that this right will not nullify the law of libel and those laws protecting the King and the Royal family.⁶⁹

While enjoying these civil and human rights, citizens were also presented with legal rights for their own legal protection before the law. Hence, it was provided that no one shall be judged or imprisoned unless he or she is to be judged in accordance to law and while doing so, he or she is entitled to the writ of Habeas Corpus. In addition, everyone was given the right not to be judged again for any offence upon which he was acquitted or imprisoned unless the allegations were backed with new evidence. It was also provided that it was not lawful for anyone to appear in court without being presented with a written indictment and it was unlawful for anyone to be judged for any other offence other than what is being written on the indictment. It was also specified that no one will be forced to witness against themselves or their property until it is in accordance with the law.⁷⁰

These legal rights also respected the privacy of individuals and it was deemed unlawful for anyone to forcibly enter another person's house unless it has been commanded by a Judge to do so in accordance to law. It also declared that it was unlawful for any Judge or jury member to preside over a case that concerns a relative of his fearing the miscarriage of justice.⁷¹ The Constitution also specified that it was lawful for any of the parties in a case to appeal to the Privy Council (final Court of

⁶⁸ Latukefu, S. 1975. The Tongan Constitution: A brief history to celebrate it's Centenary, pp. 41.

⁶⁹ Latukefu, S. 1974. Church and state in Tonga: the Wesleyan Methodist missionaries and political development, 1822-1875, pp. 206.

⁷⁰ Tungi, U. 1877. Constitution of Tonga, pp. 2-8.

⁷¹ Ibid.

Appeal) for a final decision. Yet, it was also mentioned that any case that was being heard by the three Supreme Court Judges, their decision would become the final decision. Lastly, it was declared that enacting any retrospective laws were to be considered unlawful in Tonga.

The 1875 Constitution also provided certain political rights as it guaranteed the right of the Tongan citizens to expect the Government to protect their life, liberty and properties. In joining the King and his noblemen in discussing the affairs of government and passing of laws in the Legislative Assembly, the ordinary adult males of the age of twenty one, without having committed crimes such as treason, murder or perjury, were franchised to vote twenty representatives (People's Representative) to the Legislative Assembly.⁷² Citizens were also presented with the right to petition to the King or the Legislative Assembly of matters on their concerns.

The influence of the missionaries was also evident in the articles that emphasised Christian values, seen in the declaration of the Sabbath day as a sacred day in Tonga, prohibiting any work, games or trade to be carried out on this day forever and if there will be any agreement or trade made on this day will be declared null. The freedom of worship was also guaranteed, allowing the Tongans to freely choose whatever church group they deemed fit in accordance with their conscience. However, evil oriented and promiscuous practices that were not in accordance with church practise were deemed unlawful.⁷³

The second section of the Constitution dealt with the form of Government which was to be set up in Tonga. This section like the first also closely followed the articles in the Hawaiian Constitution of 1852 that blueprinted the system of government.⁷⁴ The system of government dictated by the Constitution for Tonga was a Constitutional Government which was to set up under the leadership of His Majesty King George Tupou I, his heirs and successors.⁷⁵ This confirmed that King George Tupou I and his successors were the rightful heirs to the crown and throne of the Kingdom of Tonga. As such, lines of succession were stated in which King

⁷² Tungi, U. 1877. Constitution of Tonga, pp. 2-8.

⁷³ Ibid, pp. 2.

⁷⁴ Latukefu, S. 1975. The Tongan Constitution: A brief history to celebrate it's Centenary, pp. 45.

⁷⁵ Powles, G. 1987. 'The early Accommodation of Traditional and English Law in Tonga', in in Phyllis Herda, Jennifer Terrell and Neil Gunson (eds.), Tongan Culture and History: Papers from the 1st Tongan History Conference, pp. 147.

George Tupou I was to be succeeded by his son David Unga and for his son to be succeeded by his grandson Wellington Ngu and for Wellington Ngu to be succeeded by the heirs of his body.⁷⁶ Even so, it was provided that if there is no male child, it shall be succeeded by the senior female child and the heirs of her body until the female line is ended. However, it was also declared that if none of those heirs enlisted would produce any lawful descendants to succeed to the throne, the crown shall be reverted to Henry Ma'afu and his heirs begotten to him by marriage. Hence, it was declared that it shall be unlawful for any member of the Royal family but specifically the person likely to succeed to the throne to marry any person without the consent of the King. If doing so, such marriage will be declared null and it will be lawful for the King to forfeit the violator's right to the throne and so as his or her heirs. The violator will then be considered dead and the next person after him or her will be the new heir next in line to the throne and to be succeeded by their heirs.⁷⁷

Though it was a monarchical system, the Constitution professed that the supreme powers of the Government of Tonga were to be rested with the Executive, Legislative Assembly and the Judiciary. Each of these three arms of government has its own obligations set out in latter articles of the Constitution.⁷⁸

The first arm of government was the Executive which was composed of the King, Privy Council and the Cabinet. According to the Constitution, the King has prerogative powers in running of the day to day affairs of government but some of these powers were subjected to the advice and the approval of the Privy Council and the Cabinet.⁷⁹ The Privy Council was to consist of the Cabinet Ministers, Chief Justice and the Governors for the Ha'apai and Vava'u groups, Niuatoputapu as well as Niuafu'ou whom were appointed by the King. The Privy Council was to advise the King on his duties and governmental affairs as well as acting as the final court of appeal. The Governors were not eligible to be members of the Legislative Assembly. The Cabinet was to be composed of the Premier, Treasurer, Minister of Lands and

⁷⁶ Powles, G. 1987. 'The early Accommodation of Traditional and English Law in Tonga', in in Phyllis Herda, Jennifer Terrell and Neil Gunson (eds.), Tongan Culture and History: Papers from the 1st Tongan History Conference, pp. 147.

⁷⁷ Tungi, U. 1877. Constitution of Tonga, pp. 9-10.

⁷⁸ Powles, G. 1987. 'The early Accommodation of Traditional and English Law in Tonga', in in Phyllis Herda, Jennifer Terrell and Neil Gunson (eds.), Tongan Culture and History: Papers from the 1st Tongan History Conference, pp. 153.

⁷⁹ Latukefu, S. 1974. Church and state in Tonga: the Wesleyan Methodist missionaries and political development, 1822-1875, pp. 207.

the Minister of Police, all of whom were classified as Ministers to be appointed by the King from either the Representatives of the Nobles or those of the People or anyone fit for purpose from outside the Legislative Assembly. The detailed duties of each Cabinet member were set out in clause number fifty five (55) of the 1875 Constitution.⁸⁰

The second arm of government was the Legislative Assembly, which consisted of the Cabinet Ministers, who joined twenty Representatives of the Nobles as well as those twenty Representatives of the People. The Representatives of the Nobles to the Legislative Assembly were high ranking chiefs appointed by the King for life to the Legislative Assembly and so to their heirs. Such appointments were seen in King George Tupou I's speech in the closing of the Legislative Assembly on the fourth of November 1875 published on the *Boobooi* few weeks later.

⁸⁰ Tungi, U. 1877. Constitution of Tonga, pp. 13-15.

***“These are the high ranking chiefs appointed as the Noble’s representatives to the
Legislative Assembly and so as their successors in accordance with the
Constitution...”⁸¹***

<i>Representing Tongatabu were:</i> <ol style="list-style-type: none"> 1. Tungi 2. Nuku 3. Ma’afu 4. Lavaka 5. Veehala 6. Ata 7. Vaea 8. Tuivakano 9. Fakafanua 	<i>Representing Haabai were:</i> <ol style="list-style-type: none"> 1. Tuibelehake 2. Niukabu 3. Malubo 4. Havea 5. Tuihaangana
<i>Representing Vava’u were:</i> <ol style="list-style-type: none"> 1. Kalaniuvalu 2. Tuboutoutai 3. Luani 4. Tuiafitu 	<i>Representing Niuafo’ou was:</i> <ol style="list-style-type: none"> 1. Fotofili
	<i>Representing Niua Tobutabu was:</i> <ol style="list-style-type: none"> 1. Maatu

⁸¹ King George Tupou I 1875-1877, King George Tupou I’s speech from the throne on the occasion of the closing of the of the Legislative Assembly session on the 4th of November, transcript, *Ko e Boobooi*, Government Printer, Nuku’alofa.

The twenty representatives of the people to the Legislative Assembly as aforementioned were to be elected by ordinary adult males of the age of twenty one and above. There were nine representatives for Tongatapu, five for Ha'apai, four for Vava'u and each for Niuatoputapu and Niuafo'ou whom were to be in the Legislative Assembly for a term of five years.⁸² The Legislative Assembly played an important role for it was the only arm of government joining the King in making the laws of the country. The laws were formed when Acts were introduced and discussed in the Legislative Assembly before it would then be voted and agreed upon after having been read out three times. This law making process was adapted from the Legislative system of the colonial government of New South Wales at the time.

Tonga's Legislative Assembly members did not have complete control over the amendment process of the Constitution because not all members could vote upon matters relating to the royal family, noble titles and land. However, apart from those highlighted issues, any other amendments made to the Constitution would be called and discussed in the Legislative Assembly and if all agree to make such amendments then it would then be passed on to the King for his consent and if so, such amendments will automatically become part of the Constitution. However this type of constitutional amendment process was very difficult since it requires any proposed amendments to be passed by the Legislative Assembly three times before passing it to the King for his consent. Failure to do so meant that such proposed amendments would be disregarded.

The third arm of government was the Judiciary. Judicial powers were vested in the Supreme Courts, Circuit Courts and the Police Courts, the limitation of their respective jurisdictions were set out in the Constitution.⁸³ The Supreme Court consisted of the Chief Justice and another two associated Justices whom were appointed by the King with the consent of the Cabinet. If any of the Judges were proven to be guilty of mal-administration or misconduct, it will then be lawful for the Legislative Assembly to impeach any of the Judges.⁸⁴ The Chief Judge had considerable responsibilities and one of his main duties was to report to the King on

⁸² Latukefu, S. 1975. The Tongan Constitution: A brief history to celebrate it's Centenary, pp. 47.

⁸³ Ibid.

⁸⁴ Tungi, U. 1877. Constitution of Tonga, pp. 22-25.

a yearly basis regarding the administration of justice or any new changes needed to be made to the laws.

The last section of the 1875 Constitution focussed on the management, distribution and the ownership of lands in Tonga.⁸⁵ The land in Tonga was considered sacred after the event at Pouono in Vava'u with which King George Tupou I dedicated the land of Tonga to be governed by the living God, *Ko e 'Otua mo Tonga ko hoku Tofi'a* (God and Tonga are my Inheritances). So it was inherently declared in this part of the Constitution that it shall be forever unlawful for the King, the nobles or any other person in Tonga to alienate any portion of the land to anyone other than by leasing it. The lands were divided into two classifications; one was town lands where individuals were allocated to dwell and the other was the tax or bush allotment for agricultural and commercial use. The bush lands were divided into *tofi'a* (estate) vested either in the King or in individual Nobles.⁸⁶ While these massive areas of *tofi'a* were under the authority of the Nobles, the leasing of land to European settlers were subject to the approval of the Cabinet to prevent the Nobles from driving off the locals to make space for the European settlers. With the distribution of the lands as estates to Nobles, the 1875 Constitution also provided that it was lawful for the King to appoint chiefs to hold Noble titles which shall be hereditary together with their land from father to son. The majority were permanent members of the Legislative Assembly.⁸⁷

The Constitution also set out the rule of inheritance. It was declared that only those children born in marriage were entitled to inherit properties, hereditary titles and estates. The rule of succession also specifically stated that the rightful heir to titles or an estate would be the senior male child of the incumbent and the heirs of his body and if he has no heir, he would then succeeded by his younger brother and his heirs and so on until the entire male line is ended. Similar procedures apply in cases where there is no male heir, the senior female child would become the successor and so as the heir of her body or to her sisters and their heirs if she has no heir until all the female line is ended. However, if the incumbent of a title or an estate has no heir, he will then be succeeded by his younger brothers and their heirs and until all male

⁸⁵ Tungi, U. 1877. Constitution of Tonga, pp. 48.

⁸⁶ Latukefu, S. 1974. Church and state in Tonga: the Wesleyan Methodist missionaries and political development, 1822-1875, pp. 214.

⁸⁷ Ibid, pp. 208.

line is ended and if he has no brother he will then be succeeded by his sisters and their heirs.⁸⁸ Nevertheless, in cases in which the incumbent has no heir of his body nor a brother or a sister, such title and estate will revert back to the Government.

Conclusion

It is indeed difficult to comprehend the 1875 Constitution of Tonga without being aware of its rationale and history. It is important to acknowledge King George Tupou I's efforts and dedications in promulgating the 1875 Constitution to achieve his vision of modernizing Tonga to be in line with the well-established nations of the world. It is also essential to acknowledge the important roles played by the missionaries and the foreigners in drafting of the 1875 Constitution for Tonga. Without this conjunction, the course of political development in Tonga might have had a different outcome. Tonga would have suffered the same fate as other islands of the Pacific such as Hawaii and Tahiti at the time.

The articles of the 1875 Constitution are of paramount importance as they reflected the aspirations and the immense needs of King George Tupou I and the missionaries to cater for Tonga's internal and external threats as well as promoting and protecting the welfare of the many generations of Tongan men, women and children right up to present day. King George Tupou I's main aims behind the promulgation of the 1875 Constitution were achieved as Tonga was able to maintain its sovereignty by gaining recognition from great powers. Political stability persisted throughout Tonga with the establishment of the strong-based form of Government, a robust land tenure system and the elevation of some of the warring high ranking chiefs that posed threats to peace and stability to nobility status.

The articles of the 1875 Constitution confirmed what has been the political system of Tonga ever since and it maintained the Tongan tradition and social stratification. Apart from well administering the government and protecting Tonga's sovereignty from possible threats of annexation, the 1875 Constitution was seen as an agent that established and helped Tonga to maintain its good relationship with foreign countries over the years. After the promulgation of Tonga's Constitution in 1875, Tonga was then recognized by other established independent nations,

⁸⁸ Tungi, U. 1877. Constitution of Tonga, pp. 29.

especially the major powers of the world at the time namely, Great Britain, the United States and Germany. With these well-built relationships, Tonga was respected and welcomed by these world powers to establish mutual benefitted trade alliances and to sign cooperation and friendship treaties. Through the established Constitution of 1875, Tonga was made known to foreign countries.

Despite the many criticisms that were leveled against the 1875 Constitution (that it was perceived to be too advanced for Tonga), the ordinary people upheld the principles set out in the Constitution perceiving it as a sacred document which undoubtedly reflected their optimistic responses to the new imposed Constitution. Gradually over the years, ordinary people tended to share the sentiments expressed by King George Tupou I that the Constitution was the key to political stability, economic prosperity and independent sovereignty. This stimulated a feeling of security never felt before amongst the ordinary people.

Some of the articles of the Constitutions depicted the influence of the missionaries in Tonga and its affairs. Significantly, it is essential to note the robustness of the 1875 Constitution as it endured the exposed threats that existed at the time such as the continuous criticism from those European settlers who remained critical of Rev. Shirley Baker's role in government, unwillingness of some of the Nobles to comply with some provisions of the Constitution and the fact that Tonga's sovereignty was under threat when she became a Protectorate of Great Britain later in 1900 under the rule of King George Tupou II.

Tonga was able to lead Pacific Island societies in establishing stable central government. The 1875 Constitution set Tonga on a course quite different from that of its neighbours. Tonga remained the only independent nation in the Pacific towards the end of the 19th century which was largely due to the Constitution in place. The 1875 Constitution established the fundamental freedom of all Tongans, limited the power of the Chiefs, made land inalienable and defined a Constitutional Monarchy of an appropriately Tongan style. Despite its limitations, the 1875 Constitution has served Tonga's interest well over the years since its promulgation.

In the decades after 1875, many Tongans lived life easier than it was before since a robust Constitution was in place, enforced by a better-structured government body. This marked a gradual progress in Tonga's legal and Constitutional machinery

as every citizen became aware of their individual rights, trusting in a strong government in place and appreciating the land tenure system. Changes were only seen because some of the new striking features of the Constitution departed from the traditional precedents. These new features included the adoption of a Constitutional monarchy as Tonga's new system of government, introducing of newer and firmer laws of succession, elevation of chiefs to nobility status, representation of ordinary people to Legislative Assembly and initiating a land tenure system which would lead to the distribution of lands into town and bush allotments. However, over the years some of the articles of the 1875 Constitution were altered and some were repealed to reflect what its best for the Kingdom of Tonga. The following chapter will outline the minor changes made to the Constitution over the years.

Chapter 4

Minor Changes and the Call for Constitutional and Political Reform

Pasifiki pe'i mou tisimisi,

Tuku pē ki he to'a malekini,

*Ke ne fakasi'isi'i e taimi kau ki he
sivi,*

Poto na'e hā he kilukilua,

Ne paasi A he ta'u 'e ua,

*Tolu ta'u pē kuo ne ikuna e lao 'o
natula,*

He'ikai ngata si'eku viki',

Me'a atu ki si'ono faka'osi,

'Ilo 'i he 'Ātolopolosī,

Oukeisifoti 'i he 'Univēsiti.⁸⁹

*For the Pacific islanders to be all
dismissed,*

Let alone the mightiest of them all,

To lessen the duration of the course,

*Intelligence appeared on the
wonders,*

He passed with A's in just two years,

*He achieved the Law of Nature in
just three years,*

I would praise him endlessly,

Went back to complete his degree,

In the field of Anthropology,

In the University of Oxford.

Afuha'amango, A song composed when Crown Prince Tupouto'a Tungi graduated with his BA LLB degree in 1942. The first Tongan University Graduate.

⁸⁹ Afuha'amango 1988, *Tā koe Sola Ki Selusalema*, A3Z Radio Tonga, Fasi Mo e Afi.

The translation from Tongan into the English version made some of the articles of the 1875 Constitution meaningless and unclear requiring better phraseology to make the meaning comprehensible. The drafters of the 19th century Constitution had neither legal background nor academic qualification. However, this did not hinder Tonga from achieving King George Tupou I's main aims behind the promulgation of the 1875 Constitution. This was evident when Tonga maintained its independence all throughout the years to 1900, gaining recognition from great powers as seen in its various friendship and cooperation treaties signed with great powers including France in 1855, Germany in 1876, Great Britain in 1879 which later renewed in 1900 and with the United States of America in 1888.⁹⁰ Peace and stability persisted throughout until Tonga underwent a minor internal conflict when other contenders claimed to be the rightful successors when King George Tupou I died in 1893. He was succeeded by his great-grandson King George Tupou II (both his parents were King George Tupou I's grand-children).⁹¹

The 1875 Constitution has already prepared for a day in which members of the Legislative Assembly would propose new amendments to be made to articles of the Constitution. This was evident in the article number eighty two (82) of the 1875 Constitution, stating that all articles of the Constitution can be amended by the Legislative Assembly except those articles relating to the laws of liberty (declaration of rights), laws regarding the foreigners, rules of succession to the throne and the laws of inheritance relating to noble titles and estates.⁹² Amending the Constitution at this time was a cumbersome process as it not only required the proposed amendments to be passed three times by the Legislative Assembly but it also had to wait for the consent of the Monarch to be made in the next session of the Legislative Assembly two years later.⁹³

The first amendments made to the 1875 Constitution were made in 1880, five years after its promulgation. These amendments were not ratified until December 1882. Most of these amendments provided the King and in some cases the Cabinet

⁹⁰ Neill, J. S. 1955. Ten Years in Tonga, pg. 95-96.

⁹¹ Fusitu'a 'E and N. Rutherford. 1977. 'George Tupou II and the British Protectorate', in Noel Rutherford (eds.), Friendly Islands: A history of Tonga, pp. 173.

⁹² Tungi, U. 1877. Constitution of Tonga, pp. 21.

⁹³ Powles, G. 1987. 'The early Accommodation of Traditional and English Law in Tonga', in Phyllis Herda, Jennifer Terrell and Neil Gunson (eds.), Tongan Culture and History: Papers from the 1st Tongan History Conference, pp. 157.

with greater flexibility. This was seen when article number forty nine (49) for the determination of currency to be legal tender in Tonga was amended to provide the King with the sole power to alter the legal tender without the approval of the Legislative Assembly. Article number fifty eight (58) for the appointments and responsibilities of Governors was amended so that Governors could sit in the Legislative Assembly so as in the Privy Council. The article number eighty two (82) for the Constitutional amendments was amended with the inclusion of a new amendment procedure whereby the new proposed amendments were required to be passed three times by the Legislative Assembly, unanimously agreed by the Privy Council and the Cabinet and must be assented and signed by the King before it would become part of the law.⁹⁴

Furthermore, the article number eighty five (85) for the legality of laws to be in force in Tonga was amended to provide the Chief Justice with the power to prevent any laws from being put into force until the next meeting of the Legislative Assembly if such laws are found to be contrary to the spirit of the Constitution. The legal position of female noble heirs under article number hundred and seventeen (117) for the rules of inheritance to noble titles was clarified whereby it was provided that female heirs could not inherit noble titles if there was a male kin next in line. It was also provided that if the female heir will later produce a male issue, this male issue would inherit the noble title on the death of the former inheritor. Article number sixty three (63) was amended to provide the King with the power to determine the number of representatives of both nobles and the people to the Legislative Assembly. With such amendment, King George Tupou I then appointed ten more nobles to the Legislative Assembly and ordered that nobles should receive an honorarium from the government.⁹⁵ The public then elected ten more representatives to equal the number of the noble's representatives to the Legislative Assembly.

The Legislative Assembly in 1880 as well decided that some of the articles of the 1875 Constitution concerning the Land were no longer appropriate. In doing so, some of the articles were repealed including articles number hundred and ten (110) to

⁹⁴ Powles, G. 1987. 'The early Accommodation of Traditional and English Law in Tonga', in Phyllis Herda, Jennifer Terrell and Neil Gunson (eds.), Tongan Culture and History: Papers from the 1st Tongan History Conference, pp. 157.

⁹⁵ Ibid.

thirteen (113), which stated that all town sites were to be owned by government and the authorities and conditions for leasing of land. The article number fifty five (55) for town planning, number hundred and eighteen (118) regarding the restriction on the size of leases to be granted to European settlers in Tonga and few others were also amended. After repealing some of these articles, the numbers of the articles of the 1875 Constitution came down from the total of 132 to 121.⁹⁶

Further amendments were made in 1882 and most of these amendments were improvements in wording and style.⁹⁷ However, the amendments made in 1882 further extended the King's prerogative powers. This was seen when article number fifty four (54) of the 1875 Constitution was amended allowing the King to appoint additional persons whom he deemed fit to be members of the Privy Council. Article number forty one (41) was amended to provide that it shall be lawful for Tonga to remain without a Legislative Assembly for more than 3 years instead of 2. The prohibition levied on the discussion of any law in the Legislative Assembly that was disapproved by the Monarch set out in article number seventy one (71) was further extended not to be discussed until the following meeting of the Assembly.

Moreover, the texts "To the King belongs all the land, soil, inheritances and premises" was added on to article number hundred and nine (109) of the 1875 Constitution deeming that it would be unlawful for anyone in Tonga to sell any portion of the land.⁹⁸ These few words openly declared that all lands belong to the Crown and it is for the King to determine inheritances. The article number sixty seven (67) for the election of people's representatives was amended to omit the requirement for nomination of candidates for the Assembly. Other changes were also made to article number hundred and nineteen (119) whereby it provided that every tax-payer should have both town and tax allotments protected by the Government. The article number thirty three (33) that provided the form of government for Tonga was amended to omit the following texts "These three divisions (Executive [King, Privy Council and Cabinet], Legislative Assembly and Judiciary) shall always be distinct, and it shall not be lawful for any Judges to be members of the Legislative

⁹⁶ Powles, G. 1987. 'The early Accommodation of Traditional and English Law in Tonga', in Phyllis Herda, Jennifer Terrell and Neil Gunson (eds.), Tongan Culture and History: Papers from the 1st Tongan History Conference, pp. 157.

⁹⁷ Ibid, pp. 158.

⁹⁸ Tungi, U. 1877. Constitution of Tonga, pp. 157-158.

Assembly”.⁹⁹ This enabled the Chief Justice to continue on being a member of the Privy Council and thus a member of the Assembly.

It was assumed that if the Nobles and the King agreed to any amendments to be implemented then any clause of the Constitution can be amended despite the restrictions set out in article number eighty two (82). As a result, amendments were able to be made to articles of the Constitution relating to foreigners in Tonga in 1885. The article number twenty seven (27) of the 1875 Constitution was amended requiring foreigners to pay taxes as soon as they would arrive in Tonga instead of six months later. The foreigners in Tonga were deprived of the right to a jury comprising of half foreigners stated in article number thirty one (31). Article number thirty two (32) requiring laws in Tonga to be printed in English and in Tongan was abolished.¹⁰⁰

In 1888, amendments of great significance were made. The King’s obligation to consult the Assembly before suspending the right to a writ of Habeas Corpus provided in article number nine (9) was abolished. The privileges of nobles to decide “all laws in connection with the King, Royal family and nobles” were re-enforced by removing the requirement mentioned in article number seventy (70) that the whole House should vote on the matter before it was to be voted on by the nobles. The matter now rested solely to be discussed by the nobles and their decision would be final if voted and passed three times. In the Royal succession to the throne of the Kingdom of Tonga stated in article thirty five (35), the name Henry Ma’afu was substituted with Tungī.¹⁰¹ This was to prevent the kinds of competition and rivalry for succession seen in the turmoil of the past years since Henry Ma’afu had been resided and gained great military and political influence in Fiji. Lastly, the constitutional right of a taxpayer to have tax and town allotments mentioned in article number hundred and nineteen (119) previously amended in 1882 was again

⁹⁹ Powles, G. 1987. ‘The early Accommodation of Traditional and English Law in Tonga’, in Phyllis Herda, Jennifer Terrell and Neil Gunson (eds.), Tongan Culture and History: Papers from the 1st Tongan History Conference, pp. 158-159.

¹⁰⁰ Ibid, pp. 159.

¹⁰¹ Ibid, pp. 158.

amended to constitute only a conditional right.¹⁰² This meant that if a taxpayer already had a tax allotment, then he should be entitled only to a town allotment.

Gradually over the years, the majority of the Legislative Assembly members believed that some of the articles of the 1875 Constitution were quite ambiguous since some were found to be grammatically incorrect. The reigning monarch at the time, His Majesty King George Tupou II agreed for such articles to be amended after being convinced by some members of the Legislative Assembly that the 1875 Constitution had been amended and would continue to be amended in the future for the advantage of Tonga. For example, certain articles that needed some adjustments were amended by Act 35 of 1912. Such amendments can be seen in article number twenty (20) of the 1875 Constitution regarding the retrospective laws:

20. It shall not be lawful to enact any retrospective laws.¹⁰³

This was amended to provide a definition as to why retrospective law has been prohibited in Tonga. This was consistent with the English common law, following the Chief Justice's decision in 1911 in the celebrated Tonga Ma'a Tonga Kautaha case.¹⁰⁴

20. It shall not be lawful to enact any retrospective laws in so far as they may crucial or take away or affect privileges existing at the time of the passing of such law.¹⁰⁵

There were also some pressing issues that the government was facing which definitely needed some of the articles to be amended in order for these issues to be addressed. One of the major concerns of the time was the increasing number of Europeans settled in Tonga. The Government was cautious fearing a possible European domination in Tonga. Tonga was a safe haven for most Europeans settlers since it took only two years of permanent settlement in Tonga to become naturalized as Tongan subjects. The naturalized European settlers would then enjoy the same privileges enjoyed by the native born subjects of Tonga except the rights to inherit

¹⁰² Powles, G. 1987. 'The early Accommodation of Traditional and English Law in Tonga', in Phyllis Herda, Jennifer Terrell and Neil Gunson (eds.), Tongan Culture and History: Papers from the 1st Tongan History Conference, pp. 159.

¹⁰³ Tungi, U. 1877. Constitution of Tonga, pp.5.

¹⁰⁴ Latukefu, S. 1975. The Tongan Constitution: A brief History to celebrate its Centenary, pp. 76

¹⁰⁵ Wylie, C. 1967. The Law of Tonga Revised Edition, pp. 19.

hereditary tax allotments in accordance to article number twenty nine (29) of the 1875 Constitution. The Legislative Assembly agreed that article number thirty two (32) would be amended by Act 35 of 1912 requiring European settlers to reside in Tonga for a period of five years before they would be naturalized as Tongan subjects. Article number three (3) was amended to exclude any Asiatic labourers from admission unless they came under a government contract and the specific reference to the Chinese found in the 1875 version was deleted. The article number eighty seven (87) was amended to allow the Chief Justice to exercise the full jurisdiction of the Supreme Court.¹⁰⁶

When these amendments were made in 1912, the members of the Legislative Assembly believed that there were still many more amendments to be made in order to make the 1875 Constitution dynamic and not to be in contradiction with some government policies and regulations.¹⁰⁷ There were impressive amendments made in 1914, focussing on the articles relating to the composition and regulations of the Legislative Assembly. This was for the Legislative Assembly to meet at least once in every year, the privileges of the twenty nobles elected to be lifetime hereditary members of the Legislative Assembly were removed requiring the noble's representatives to be elected from the pool of the nobles. A general election was to be held every three years, the number of both the Representatives of the Nobles and of the People were decreased to seven and the quorum of Legislative Assembly members needed to be present in order to discuss and pass laws were increased from one third of the members to one half.¹⁰⁸

Several other amendments were later made in the following years including the changes that were made to article number sixty three (63) whereby it was rewritten to provide a Legislative Assembly of three categories: Councillors and Ministers who by virtue of office shall be members of the Assembly and holds seat as nobles; seven nobles elected by Nobles as Nobles' Representatives and seven Representatives of the People elected by qualified electors. The article number eighty six (86) of the 1875 Constitution regarding the Courts in Tonga was amended by Law number 27 of 1916 to provide for the establishment of a Land Court subject to

¹⁰⁶ Latukefu, S. 1975. The Tongan Constitution: A brief History to celebrate its Centenary, pp. 76.

¹⁰⁷ Ibid, pp. 76-77.

¹⁰⁸ Wylie, C. 1967. The Law of Tonga Revised Edition, pp. 26-29.

appeal to the Privy Council. This article was later amended by Act 13 of 1966 providing that the judicial power in Tonga shall be vested in the Court of Appeal (the highest court), Supreme Court, Land and the Magistrates Court.¹⁰⁹

The Court of Appeal was the highest court in the land and could only hear cases brought up on appeal if parties in a case are dissatisfied with the decisions of the Supreme Court. The second highest court was the Supreme Court, having jurisdiction in all cases in law and equity arising under the Constitution and any other law. The Supreme Court presided over cases against the government and serious cases that had been appealed from the decisions of the Magistrate court. The Land Court was a special court established mainly to preside over cases regarding land, noble titles and estates. The Judge for this court was to be appointed by the King in accordance with the Constitution. The lowest court in Tonga was the Magistrate Court presiding over matters not covered by the above courts and dealing with minor criminal and civil cases.

Over the years, as part of the process of amending the Constitution, some of its articles were removed for they reflected the now out-dated concerns of 19th century government structure, formation and policies. Amongst the articles that were repealed were the articles regarding the conditions for which an ordinary person would be eligible to vote, the Constitutional liability of Europeans to pay taxes was abolished though they could still be taxed by statute, rules of impeachment for members of the Legislative Assembly as well as the Chief Justice, administration of the Circuit Courts, conditions and regulations on which land was to be leased, declaration that the Monarch owns the Kingdom, appointment of chiefs to nobility rank (hereditary titles and estates) and the appointment of some of these noble title holders by the King to be hereditary members of the Legislative Assembly.¹¹⁰ Consequently, the numbers of the articles of the 1875 Constitution were decreased and reconfigured down from 121 to a new total of 115 and since then it has been constantly revised and consolidated over the years.

Massive disparities arose between Nobles and people residing in estates regarding the regulations of land lease and so as family members querying whether

¹⁰⁹ Wylie, C. 1967. The Law of Tonga Revised Edition, pp.31.

¹¹⁰ Ibid, pp. 19-37.

the widow or the senior male heir shall be lawful to inherit the allotments of the deceased husband (father). The Legislative Assembly decided that the article in concern, article number hundred and thirteen (113) of the revised edition of the 1875 Constitution regarding the rights of everyone to tax allotments should be amended. This article was amended by Act 19 of 1927 declaring that all Tongan male subjects of the age of sixteen may be granted with both town and tax allotments and such allotments will be hereditary.¹¹¹ This would only be done according to law with consent of the Noble in charge of the estate where the land is located or the Minister of Lands if the land in question is owned by the Crown. It was also clarified that a widow shall have the right as the next of kin to inherit her deceased husband's tax and town allotments and upon her death; both allotments would then revert to the senior male heir. Having amended the Constitution to establish the constitutional rights of taxpayers to distribution of land, Act 19 of 1927, entitled the Land Act went on to provide the procedures intended to make Tonga's land system progressive and the land productive. At the same time, the interests of the Royal family and the Nobles are protected. The Act is the only major part of Tonga's law which has not been amended as a consequence of the political reforms.

Changes over the years also brought into existence new policies, conditions and purposes into government. Signs of progress were seen in government especially in its law making process. Tonga in the 1940's had a member of the Royal family with good legal background, His Royal Highness Crown Prince Tupouto'a (later to become King Taufa'ahau Tupou IV) whom was the first degree holder in Tonga and the very first in the Pacific to graduate with a BA LLB degree in 1942.¹¹² With his advice, it was easier for the members of the Legislative Assembly to prioritize what regulation, policies or strategies that Tonga really needed in order to determine what further changes needed to be made to the articles of the 1875 Constitution.¹¹³

The composition and responsibilities of the Privy Council and the Cabinet stated in articles number fifty (50) and fifty one (51) were amended by Act 25 of 1942. In this, the Chief Justice was no longer a member of the Privy Council and the

¹¹¹ Wylie, C. 1967. The Law of Tonga Revised Edition, pp. 37.

¹¹² Wood-Ellem, E. 1999. Queen Salote of Tonga: The story of an era 1900-1965, pp. 222.

¹¹³ HSH Prince Tu'ipelehake. Personal Interview, 19 December, 2013.

Privy Council was finally ceased to serve as the court of appeal of Tonga.¹¹⁴ This Act also amended the composition of the Cabinet whereby the Treasurer would no longer be a member and stated that it shall be lawful for the King to appoint any other Minister whom he may be pleased to appoint. The duties of each Cabinet member that were set out in the same article were also omitted.

The article number sixty four (64) of the Constitution was amended by Act 15 of 1951 allowing women for the first time to vote in the general election and to be a member of the Legislative Assembly through candidacy.¹¹⁵ Women were actually voted for the first time in 1960 and Her Royal Highness Princess Mele Siu'ilikutapu Kalaniuvalu Fotofili was the Legislative Assembly's first female representative in 1975 and was followed by only a few in later years. The composition of the Legislative Assembly again underwent further few changes when article number sixty (60) of the Constitution was amended by Act 17 of 1962 whereby the numbers of both the Representatives of the Nobles and of the People were increased from seven to nine.¹¹⁶

The growing number of lawsuits and the seriousness of issues arising from vagueness of the rules of inheritance set out in article number hundred and eleven (111) of the Constitution have immensely concerned the Legislative Assembly. This was seen in the cases of *Fulivai* title in 1924, *Vilisoni Namoa v. Vaha'I* in 1926, *L. Moeaki v. Fakafanua* in 1927¹¹⁷ and several others like *Motu'apuaka* title in 1949.¹¹⁸ The Representatives of the Nobles to the Legislative Assembly decided that it was time to make some changes to this article to solve the discrepancies once and for all. The Act 15 of 1953 was passed and added on to article number hundred and eleven (111) providing that in situations where the titleholder had no legitimate heir of his own but an adopted child, the adopted heir would inherit the title as well as the estate but upon his death, the said title and estate would then revert to the direct blood descendant of the original holder (the adoptive father).¹¹⁹

¹¹⁴ Wylie, C. 1967. The Law of Tonga Revised Edition, pp. 25.

¹¹⁵ Ibid, pp. 27.

¹¹⁶ Adsett, N. J. 1988. Act of Constitution of Tonga Revised Edition, pp. 20.

¹¹⁷ Hunter, D. B. 1963. Tonga Law Report Volume II Land Court Cases 1923-1962 and Privy Council Decisions 1924-1961, pp. 22-29.

¹¹⁸ Latukefu, S. 1975. The Tongan Constitution: A brief History to celebrate its Centenary, pp. 80.

¹¹⁹ Wylie, C. 1967. The Law of Tonga Revised Edition, pp. 36.

The Assembly introduced the concept of a Court of Appeal in 1966 by passing the Act 13 that would amend the section of the Constitution on the Judiciary (clauses 84-103). However the Act was not brought into force until 1990 when further amendments were made by Acts number 12 and 23. Examples of important clauses are 91(2) which provided that no appeal shall be finally determined by less than three members of the Court of Appeal unless it may be allowed to do so by any Act of the Legislative Assembly or by rules in respect of limited classes of appeals and 91 (1) which stated that a party in any proceedings in the Land Court (except matters relating to the determination of hereditary estates and titles) who would be aggrieved with the judgment delivered by the Judge may appeal to the Court of Appeal against such decision.¹²⁰

Over the years, members of the Legislative Assembly especially the Nobles believed that some of the articles regarding the ownership, regulations and management of land needed some adjustments to uphold and to safeguard the land alienation policy in Tonga. The article number hundred and eight (108) of the Constitution for the leasing of church lands was amended in 1973 by Act 13 providing that it shall not be lawful for any religious body to use the lands that they currently leasing for other than religious purposes or to sub-let it to any person without the prior consent of the Cabinet. The new amendment also provided that it shall be lawful for such land to revert to the person whom the land was leased from or his successor in title as the case may be if any satisfactory evidence would be provided before a law Court confirming that any such land has been sub-let without the Cabinet's consent.¹²¹

Subsequently, the article number hundred and five (105) for the terms of leases was amended by Act 11 of 1974. This was for all land leases to be granted only with the consent of His Majesty in Council.¹²² In 1976, article number hundred and four (104) for the regulation of lands vested in Crown was amended by Act 3 of 1976, stating that it shall be lawful for any land to be put up in mortgages in accordance with the Land Act.¹²³ Lastly, article number hundred and six (106) for the

¹²⁰ Powles, G. 2013. Political and Constitutional Reform Opens the Door: The Kingdom of Tonga's Path to Democracy, pp. 115.

¹²¹ Wylie, C. 1967. The Law of Tonga Revised Edition, pp. 35.

¹²² Adsett, N. J. 1988. Act of Constitution of Tonga Revised Edition, pp. 30.

¹²³ Ibid.

form of deed was amended by Act 17 of 1981 so that the forms of deed transfer and permit shall be sanctioned by His Majesty in Privy Council from time to time.¹²⁴

In 1969, the news came shockingly to Tonga but especially to the Tongan Royal family when His Majesty King Taufa'ahau Tupou IV's niece, the then number eighth in line to the Tongan throne, Princess Mele Siu'ilikutapu Tuku'aho (eldest daughter of HRH Prince Fatafehi Tu'ipelehake and HRH Princess Melenaita Tupoumohefo Tu'ipelehake) married a Tongan commoner Siosia Tu'iono Liava'a without the consent of the King. She had violated article thirty three (33) of the Constitution, whereby it was declared that it shall not be lawful for any member of the Royal family who is likely to succeed to the throne to marry any person without the consent of the King and such marriage will be declared null and it shall be lawful for the King to cancel the right of the offender and his or her heirs from succeeding the throne of Tonga.¹²⁵ His Majesty King Taufa'ahau Tupou IV ordered HRH Princess Siu'ilikutapu to return to Nuku'alofa and had her marriage annulled.¹²⁶ HRH Princess Siu'ilikutapu was not stripped of her title, she was then ordered to marry Noble Kalaniuvalu-Fotofili.

Consequently, this article in question, article number thirty three (33) was amended with the insertion of Act 3 of 1971 as its sub-clause number two (33(2)) affirming that the expression "any member of the Royal family who is likely to succeed to the throne" mentioned in sub-clause one of the same article refers to all persons born in lawful marriage and related by descent lineally or collaterally with the King but not more than twenty times removed from the King.¹²⁷ Nevertheless, some members of the Royal family refused to accept arranged marriage and instead married for love. This was seen in 1980 when His Royal Highness late Prince Fatafehi Alaivahamama'o Tuku'aho, His Majesty King Taufa'ahau Tupou IV and Queen Halaevalu Mata'aho's second eldest son, the then second in line to the throne of Tonga married a commoner, late Heimataura Anderson Kaho, daughter of famous Tongan composer and singer Tu'imala Kaho. His Majesty King Taufa'ahau Tupou IV then removed him and his heirs out from the lines of succession and had his

¹²⁴ Adsett, N. J. 1988. Act of Constitution of Tonga Revised Edition, pp. 31.

¹²⁵ Wylie, C. 1967. The Law of Tonga Revised Edition, pp. 22.

¹²⁶ Royal Proclamation no. 12 of 1969 and Act 4 of 1970.

¹²⁷ Adsett, N. J. 1988. Act of Constitution of Tonga Revised Edition, pp. 30

Prince title removed.¹²⁸ He was then known as noble Ma'atu, a noble title bequeathed to him by his father in 1979 prior to the incident. However, it was not long before his wife passed away after an illness; he then married Alaileula Jungblut of Samoa, grand-daughter of Malietoa Susuga Tanumafili II, the Head of State of Samoa. Noble Ma'atu died in 2004, his eldest son Hon. Sitiveni 'Alaivahamama'o Polu Le'uligana Tanusia Ma'a Tonga Tuku'aho was given the title His Serene Highness Prince Tungi in 2008 by his uncle late King George Tupou V.¹²⁹

His Royal Highness late Prince Viliami Tupoulahi Mailefihi Tuku'aho, His Majesty King Taufa'ahau Tupou IV's nephew (youngest son of HRH Prince Fatafehi Tu'ipelehake and HRH Princess Melenaita Tupoumohefo) married his first wife, a commoner Mele Vikatolia Faletau in 1983 without the consent of the King. His Majesty King Tupou IV revoked his rights to the succession line as well as his title. To the dismay of the Royal family his next two marriages were also to particularly common women as well, the former beauty queen (Miss Tonga and Miss South Pacific of 1996) Ma'ata Mo'ungaloa in 1996 and then 'Ene'io Tatafu, whom he had recently divorced in 2010. He was later married to Fifita Holeva Tu'iha'angana, a member of one of the noble families in Tonga. However in 2006, when his older brother, HRH Prince Tu'ipelehake ('Uluvalu Takeivulai Ngu Tuku'aho) passed away in a tragic accident with his wife without having children, Mailefihi was the last remaining heir, so he was then bequeathed to the hereditary title of the Tu'ipelehake by his Majesty King Taufa'ahau Tupou IV. His Prince title was restored back in 2008 by his first cousin the late King George Tupou V and he was known as His Serene Highness Prince Tu'ipelehake.¹³⁰ His Serene Highness Prince Tu'ipelehake died in 2014 with his son Hon. Sione Ngū Tuku'aho as his successor.

Tonga is a Christian country seen in all facets of life due to the long standing and continuous influences of the missionaries since mid-19th century. This was consolidated in articles number five (5) and six (6) of the Constitution providing that all men are to be free to perform their worship and to worship God as they may deem

¹²⁸ Royal Proclamation no. 165 of 1980 and Act 7 of 1980

¹²⁹ Tongan Monarchy Home Page 2008, "Royal Appointments - Act of Serjeanty", Nuku'alofa, 19 July, viewed 21 December 2013.

<http://palaceoffice.gov.to/index.php?option=com_content&view=article&id=235&Itemid=56>

¹³⁰ Tongan Monarchy 2008, *Royal Appointments - Act of Serjeanty*, viewed 02 January 2014, http://palaceoffice.gov.to/index.php?option=com_content&view=article&id=235&Itemid=56

fit in accordance with the dictates of their own worship and the declaration of the Sabbath day as a sacred day forever in Tonga.¹³¹ The article number six (6) of the Constitution and the related laws were considered unworkable and impossible to enforce by Chief Justice Roberts in a prosecution in Tonga against the bakers who were convicted for baking on Sundays. Consequently, article number six (6) was amended by Act 3 of 1971 to provide a statute to particularize what may or may not be done on the Sabbath day in Tonga and the word “forever” was omitted from the original text.¹³² With the tropical cyclone Isaac that devastated Tonga in 1982, bakeries were allowed to operate on Sundays to provide food (breads, buns and cakes) for those that was badly affected. From 1982 until now, bakeries have been operating on Sundays just like any other day of the week.¹³³

When Tonga gained its full independence in 1970, it was proven that Tonga can survive on its own, manage its own foreign affairs and defence. So gradually over the years, even though Tonga was a member of the Commonwealth, Tonga decided to loosen up its ties with Britain especially those British common laws that were still in force in the courts in Tonga. The article number twenty nine (29) of the Constitution regarding the naturalization and the trial of foreigners was amended by Act 28 of 1978 whereby part of the article that stated that British law to be in force in certain cases was omitted.¹³⁴

However, the members of Parliament assumed that a few of the articles of the 1875 Constitution were found to be ambiguous and highly contradictory with some of the up to date Legislations passed by Parliament. The members of the Legislative Assembly agreed to repeal some of these ambiguous articles. The articles number twenty five (25) and twenty six (26) that dictated that every male Tongan who has arrived at the age of sixteen should pay tax and the conditions upon which any person may be exempted from paying tax were repealed by Act 28 of 1978.¹³⁵ The article number ninety three (93) for the legal opinions provided by Judges on important or difficult matters as per requested by the King, the Cabinet or the

¹³¹ Tungi, U. 1877. Constitution of Tonga, pp. 2.

¹³² Latukefu, S. 1975. The Tongan Constitution: A brief History to celebrate its Centenary, pp. 82.

¹³³ Taione, S. Personal Interview, 18 December, 2013.

Mafi, P. Personal Interview, 20 November, 2013.

¹³⁴ Adsett, N. J. 1988. Act of Constitution of Tonga Revised Edition, pp. 13.

¹³⁵ Ibid.

Legislative Assembly and the article number ninety eight (98) for the regulation of the summoning of jurors were repealed with Act 23 of 1990.¹³⁶

The article number ninety nine (99) of the Constitution for trials by jury was amended with Act 25 of 1984. This amendment increased the fine imposed on persons committed for trial before the Supreme Court on a charge of having committed any criminal offence from fifty pounds to five hundred pa'anga.¹³⁷ This article was again amended by Act 9 of 2006 whereby it increased the scope of the right to a jury by removing the limitation that the offence must be punishable by more than two years in prison. The Act 9 of 2006 also provided that the law of trial by jury shall never be repealed.¹³⁸

Nevertheless, an amendment to the Nationality Act 1915 was passed in 1984 in Parliament granting the Government with the right to issue Tongan citizenship and passports to foreign nationals but specifically the Chinese with or without fulfilling the requirements of the naturalization process set out in the Constitution.¹³⁹ This was one of the schemes designed by government to make income for Tonga by helping Hong Kong and Mainland Chinese seeking travel options as the 1997 deadline drew near for Britain to hand back Hong Kong to the People's Republic of China.¹⁴⁰ This scheme was considered illegal and unconstitutional by many ordinary citizens since the Nationality Amendment Act of 1984 violated article number twenty nine (29) of the Constitution requiring at least five years of residency before foreign nationals will be naturalised as Tongans.¹⁴¹

After bitter debates in the Legislative Assembly regarding the illegal selling of Tongan citizenship, the then number three People's Representative of Tongatapu, 'Akilisi Pohiva sued the Government for illegally granting and issuing Tongan citizenship and passports to Chinese nationals without fulfilling the necessary conditions required by the Constitution. A special Parliament session was called in

¹³⁶ Adsett, N. J. 1988. Act of Constitution of Tonga Revised Edition, pp. 28-29.

¹³⁷ Ibid, pp. 29.

¹³⁸ Powles, G. 2013. Political and Constitutional Reform Opens the Door: The Kingdom of Tonga's Path to Democracy, pp. 116.

¹³⁹ Moala, K. 2002. Island Kingdom Strikes Back: The Story of an Independent Island Newspaper – Taimi 'o Tonga, pp. 80.

¹⁴⁰ Ibid, pp. 78.

¹⁴¹ Wylie, C. 1967. The Law of Tonga Revised Edition, pp. 20.

1991 in which the matter was decided when the government Ministers and supporting members passed Act 1 of 1991 to amend the article in question, providing that it shall be lawful for the King as well as the Legislative Assembly to enact laws declaring any persons whether or not they have resided in Tonga more than five years to become naturalised subjects of Tonga.¹⁴² This passport scam rocked the confidence of many in Tonga's Constitution.

The members of the Legislative Assembly passed Act 23 of 1990 to amend some of the articles of the Constitution. The article number thirteen (13) for the court charges not to be altered was amended with the addition of another sub clause (13(d)). The new sub-clause provided that any Act may provide that a person charged with an offence may be convicted of another offence arising out of the same circumstances.¹⁴³ The article number twenty eight (28) that set out the qualification of the jurors was amended to exempt the Ministers of the Crown, Governors, Head of Government Departments and Ministries, members of the police and the armed forces of Tonga, officers of both the Supreme and the Magistrate Courts and persons of unsound mind or persons incapable of serving by reason of blindness, deafness or other physical infirmity.¹⁴⁴ The article number thirty five (35) for an idiot not to succeed to the Crown of Tonga was amended to also add that no person who has been found guilty of an offence punishable by imprisonment for more than two years shall succeed to the Crown of Tonga.¹⁴⁵ The Act 23 of 1990 also substituted article number eighty two (82) that provided the Chief Justice with the power to suspend laws with a new article. This new substituted article provided that the Constitution is the supreme law of the Kingdom of Tonga and if there shall be any inconsistency with other law, such law would be considered void.¹⁴⁶

For many years, Tonga has been praised by many democratic countries for they have protected and respected in their Constitution the rights of individuals especially the freedom of the press and speech. The article number seven (7) of the Constitution guarantees free speech and media freedom of everyone in Tonga but

¹⁴² Moala, K. 2002. Island Kingdom Strikes Back: The Story of an Independent Island Newspaper – Taimi 'o Tonga, pp. 82.

¹⁴³ Powles, G. 2013. Political and Constitutional Reform Opens the Door: The Kingdom of Tonga's Path to Democracy, pp. 91.

¹⁴⁴ Ibid, pp. 94.

¹⁴⁵ Ibid, pp. 97.

¹⁴⁶ Ibid, pp. 110.

this guarantee has often been misunderstood and misinterpreted by the media industry, the government and politicians. With the vibrant push for Constitutional and political reform in Tonga in the 1980's, media outlets began to freely publish articles written by concerned citizens, disclose confidential information to the public and allegedly claimed that government was corrupted. Some of these articles being published claimed that the King and some members of the Royal family were responsible for some of the corrupt practices in government. The Legislative Assembly agreed to amend this article with Act 23 of 1990. The amended article provided that the individual's right to speak, write and print their opinions would not overweigh the law of defamation, official secret and the laws for the protection of the King and the Royal family.¹⁴⁷

To add on, the article number seventy (70) of the Constitution for the contempt of the Legislative Assembly was substituted by Act 18 of 1999. This new substituted article provided the charges for the offences against the Legislative Assembly. It stated that any person who shall act disrespectfully in the presence of the Legislative Assembly, threaten any member of the Legislative Assembly or interfere in the discharge of his duty, defame or interfere with the Legislative Assembly in the performance of its functions or recue a person whose arrest has been ordered by the Legislative Assembly shall be imprisoned for a period not exceeding thirty days or shall be suspended from the Assembly for a period of thirty days in addition to other penalty if such person is a member of the Legislative Assembly.¹⁴⁸ The new substituted article also provided that the resolution of the Legislative Assembly that ordered the imprisonment of offender in accordance with the article may also provide for the discharge of the offender from imprisonment. It also stated that the penalty of imprisonment imposed shall not be affected by the prorogation, dissolution or expiration of the Legislative Assembly. Notwithstanding the power to imprisonment, the Assembly may impose a fine not exceeding \$5,000 but shall not be lawful to both imprison and fine a person for an offence under this article. Lastly the substituted article provided that only the Legislative Assembly shall give

¹⁴⁷ Powles, G. 2013. Political and Constitutional Reform Opens the Door: The Kingdom of Tonga's Path to Democracy, pp. 89.

¹⁴⁸ Ibid, pp. 107.

directions and authorise to issue the warrants convenient for carrying this clause into effect.¹⁴⁹

The Act 11 of 1999 was inserted to article number hundred and one (111) of the Constitution that set out the law of succession. This new inserted amendment provided that it was decreed that the estate and the title Niukapu (Noble Niukapu forms part of the 'Ulutolu line) shall revert at the death of the then present holder to a descendant by blood of the Niukapu line since the then present holder of the Niukapu title was not a descendant by blood of the original Niukapu before 1875.¹⁵⁰ A new article number 103A defining relief for breaching the Constitution was inserted in the Constitution by Act 17 of 2003. It provided that the remedy for breaching of any provisions of the Constitution shall be declaratory relief and shall not affect any award of damages under any other law.¹⁵¹

The same Act of 2003, was designed to amend article number seven (7) of the Constitution simply to curb media freedom. It proposed to insert sub-clauses that would provide eight grounds on which freedom of speech could be restricted and to regulate the operation of Medias.¹⁵² Previously the government had attempted to pass these laws by using order in Council and Ordinance procedures under the King's name in the Privy Council but each time the Supreme Court ruled the attempts unconstitutional. After great debate and protest, the government passed the 2003 Amendment Act through the Assembly. Sub-clauses 2 and 3 were added to article number seven (7). Sub-clause 2 provided that in addition to the exceptions in sub-clause one, it shall be lawful to enact laws that are considered necessary in the public interest, national security, public order, morality, cultural traditions of the Kingdom and the privileges of the Legislative Assembly and to provide for contempt of court and the commission of any offence. Sub-clause 3 provided that it shall be lawful to enact laws to regulate the operation of any media in Tonga.¹⁵³

¹⁴⁹ Powles, G. 2013. Political and Constitutional Reform Opens the Door: The Kingdom of Tonga's Path to Democracy, pp. 107.

¹⁵⁰ Ibid, pp. 119.

¹⁵¹ Ibid, pp. 117.

¹⁵² Senituli, L. 2007. 'Unfinished Business: Democratic Transition in Tonga' in Anne Brown (ed.), Security and Development in the Pacific Islands, pp. 273.

¹⁵³ Powles, G. 2013. Political and Constitutional Reform Opens the Door: The Kingdom of Tonga's Path to Democracy, pp. 107.

With the amendment in place, stringent press control laws were passed requiring all publishers to have publishing licences before they can be authorized to publish newspaper articles. However, two of the media companies that were highly affected by this new law were the *Kele'a* (owned by 'Akilisi Pohiva) and the *Taimi 'o Tonga* (owned by Kalafi Moala). The applications of these two publishers were turned down for they were considered to be anti- government.¹⁵⁴ At the meantime, the Privy Council decided to ban the *Taimi 'o Tonga* from being distributed in Tonga believing it to be foreign owned since it was produced in New Zealand. The struggle over this decision was one of the major political struggles in Tonga. The *Taimi 'o Tonga* then sued the government arguing that such action was a contravention of clause number seven (7) of the Constitution. The decision made by the Privy Council to ban the distribution of the *Taimi 'o Tonga* was rescinded in 2004.¹⁵⁵ Meanwhile the Court of Appeal had been considering government appeals from the earlier Supreme Court decision and confirmed that banning the distribution of the *Taimi 'o Tonga Newspaper* by the Privy Council was unconstitutional. Reasons given included that the Ordinance to ban the *Taimi 'o Tonga Newspaper* did not enforce any personal prerogative of the King. The Privy Council decision was held to be ultra vires and was therefore declared void.¹⁵⁶

Apart from these minor changes made to the Constitution over the years, there were groups of individuals suggesting substantial political reform, preferring a new democratic regime over the monarchical system in existence in Tonga.¹⁵⁷ The initial calls for change in Tonga were directed at bringing about greater accountability rather than a demand for a complete alteration of the system of government. The move for reform was initiated from the ranks of those who actually hold the strength of the nation whom the country depends for its social, economic and political advancement. This was put forward and had been discussed in Parliament countless times during the reign of her Majesty Queen Sālote Tupou III and these proposals have resulted in several lawsuits as these motions were regarded

¹⁵⁴ Pareti, S. 2004. 'Civil Disobedience Plan in Advance Stage', *Island Business*, vol. 30, no. 3, pp. 16.

¹⁵⁵ Koloamatangi, M. 2009. 'Tonga', in Stephen Levine (ed.), *Pacific Ways: Government and Politics in the Pacific*, pp. 229.

¹⁵⁶ Senituli, L. 2004, 'Taimi 'o Tonga and the future of the rule of Law in Tonga', *Matangi Tonga Online*, 23 June, viewed 18 Dec 2013, <http://matangitonga.to/2004/06/23/taimi-o-tonga-and-the-future-rule-law-tonga>

¹⁵⁷ Koloamatangi, M. 2009. 'Tonga', in Stephen Levine (ed.), *Pacific Ways*, pp. 230.

by many as anti-royal and anti-government. This call for change was raised up by Sioape Kaho (younger brother of Tu'ivakanō whom was the Premier at the time) when he was in Parliament as the Minister of Police and was also the leader of a political party, the Reactionary Party, demanding change and often criticizing the system of government, the appointments and decisions made by the Monarch.¹⁵⁸ This was considered a contempt of Parliament by other members of the Legislative Assembly especially the Noble's Representatives because at the time not a single person could point fingers at the affairs of the government, or question the decisions of the Monarch.

However, People's Representatives in the 1950's and 1960's had the courage to continue what Sioape Kaho had initiated. He retired at an old age but while he was in Parliament, he demanded certain changes to be made to the running of the day to day affairs of the government. These ambitious People's Representatives included Loloma Mataele and Semisi Koloamatangi whom stood unsuccessfully for the Democratic Party (established in 1953) in the 1954 general elections but won seats in later parliamentary sessions. Amongst these radical representatives was People's Representative of Vava'u, Samisoni Puli'uvea Afuha'amango (better known by his middle name Puli'uvea).¹⁵⁹ He was the most influential yet aloof representative out of all the People's Representative at the time. Puli'uvea proposed in his respective terms in Parliament that there were parts of the Constitution that needs to be reviewed. The articles that concerned Puli'uvea were those that dealt with the prerogative rights of Monarch especially the royal appointments. This issue arose when Queen Sālote appointed some of her close unqualified relations to high government positions. Yet, Puli'uvea also raised concerns with the articles relating to Freedom of Religion in relation to issues regarding the separation of the Free Wesleyan Church from the Free Church of Tonga.¹⁶⁰

This action by Puli'uvea was perceived by other members of Parliament as disrespectful to the 1875 Constitution and disloyal to the Monarchy who granted it. Puli'uvea gained a lot of support from the public for he expressed what many ordinary Tongans were thinking. This confrontation resulted in his imprisonment

¹⁵⁸ Wood-Ellem, E. 1999. Queen Salote of Tonga: The story of an era 1900-1965, pp. 235.

¹⁵⁹ Fusitu'a, 'E. Personal interview, 18 November, 2013.

¹⁶⁰ Ibid.

partly for sending out a petition against the status quo to representatives of European countries in the Pacific and several law suits by the Crown forcing him to pay fines. “Queen Sālote blamed her old adversary, Sioape Kaho for preparing the bullets fired by Puli’uvea”.¹⁶¹ Puli’uvea retired in 1959 after a long career in Parliament and for most people the Puli’uvea of today is Samuela ‘Akilisi Pohiva who has the same aloof nature and dedication in the push towards changes in government, though they had different platforms.

The new technological advancement of telecommunication, scientific developments and new political regimes that emerged in the late 1970’s and early 1980’s was widely accepted by many countries as they wanted to improve the living conditions of their citizens. The effects and influence of globalization made it’s way across the Pacific and finally into the shores of the Kingdom of Tonga marked by the gradual socio-economic and political progress in the early 1960’s, 1970’s and 1980’s. According to Kegley and Raymond, “Globalization can be defined as a set of processes that are widening, deepening and accelerating the interconnectedness among societies”.¹⁶² Globalization is an ideology that is difficult to explain or express in a simple way. It has become a major controversial issue in the global stage since it drew attention to a profound set of economic, cultural, technological and political shift that intensified in the 1980’s.

In the Pacific region, the effects of globalization were clearly seen in the political arena in their push towards independence from colonial powers. Between 1962 and 1970 four Pacific Island states including Tonga gained their full independence from colonial powers while a few have become associated states whereby they are still struggling to gain independence sadly up until today. These moves towards political liberation in the Pacific were invigorated by international organisations, such as the United Nation’s Declaration on the Granting of Independence to Colonial Countries and Peoples (Resolution 1514 of 1960).¹⁶³ This criticised the maintenance of Colonial control in their colonies and encouraged the indigenous push for independence.

¹⁶¹ Wood-Ellem, E. 1999. Queen Salote of Tonga: The story of an era 1900-1965, pp. 236.

¹⁶² Kegley, C. and Raymond, G. 2007. The Global Future: A brief Introduction to World Politics, pp. 272.

¹⁶³ Campbell, I. 2011. World Apart, pp. 297

With the pressure from these organizations and the outside world, the Pacific region tended to integrate more and work cooperatively resulting in various successes. The establishment of the University of the South Pacific in 1968 was amongst those successes providing quality tertiary education which shaped and influenced the Pacific perspective on pressing issues like world economy, transnational organisations and world politics. Many more Pacific Island states gained independence from colonial powers like Papua New Guinea in 1975, Solomon Islands and Tuvalu in 1978, Kiribati in 1979 and Vanuatu in 1980. However, Cook Islands and Niue became Associated States of New Zealand in 1965 and 1974 while three former US territories in the Micronesian Islands chose to become enhanced self-government.¹⁶⁴ Some Pacific island states retained the Constitution given to them by departing colonial powers which reveals a different combination of local and colonial input enshrining their customary laws and multiculturalism values.

With extraordinary exceptions, most of these newly established Constitutions of the Pacific Island countries enshrined democratic ideals and reflected the aspiration of the modern day Pacific. Tonga on the other hand, having been lightly affected by colonial rule as a Protectorate, retained its Constitution from 1875 with only minor amendments over the years. This has made Tonga a relatively stable, peaceful and a conservative society despite a comparatively undemocratic system of government. Eventually, the citizens over the years started to believe that the existed undemocratic system was no longer applicable and needed to undergo considerable review.

In Tonga specifically, the effects of globalization were embraced and were considered a step forward towards development. This was seen in the advancement of the level of education nationwide, improvement in health facilities, international migration and the push for a more democratic government. The founder of modern Tonga, King Taufa'ahau Tupou I, had longed for and envisioned a day like this to happen, a day when his people will be knowledgeable and become experts of various fields. In his visions for the future of Tonga in 1875, King Taufa'ahau Tupou I believed that the only means for development was through education. He alleged that the main destroyer of his beloved people was illiteracy or the lack of knowledge, "Ko

¹⁶⁴ Campbell, I. 2011. World Apart, pp. 306-308.

e 'auha'anga hoku kakai ko e masiva 'ilo'.¹⁶⁵ He also mentioned that while his people will enjoy these new developments he also hoped that the breaking of this new dawn in Tonga, his people would not alter any provision of the given Constitution whatsoever and let it remain the cornerstone of Tonga forever, “...*lolotonga 'oku mou tauhi 'a e Kōnisiūtōné ni, bea ofa e ikai ma'a e 'aho 'i Tonga, e ue'i e ha taha, be ha ni'ihī e ngaahi tefito'i lao 'o e Kōnisiūtōné ni kae hoko ia ko e makatu'u 'a ho tau fonuá ni 'o lauikuonga...*”.¹⁶⁶

The 1960's, 1970's and 1980's saw the pace of change in Tonga increasing and change became inevitable in all aspects of government. The breaking of the new dawn in Tonga was clearly seen in terms of the quality of education whereby every Tongan child had the chance to discover and develop his or her abilities and aptitudes. Prior to the 1950's, it was only the Nobles and their children that had the opportunity for education especially overseas education since they were the ones expected to lead because of their high birth rights in the society.¹⁶⁷ One of the influences in the making of a Tongan is education. The schools played a vital role in the transformation of Tonga into a modern society. In early 1960's a few of the Tongan students managed to sit and pass University Entrance Examinations and continued on to tertiary education in overseas Universities and Institutions.¹⁶⁸ But by the 1970's there were handful of University graduates in all different fields of studies. They became the agents for change and Constitutional Reform.

Upon Crown Prince Tupouto'a's (later to become King Taufa'ahau Tupou IV) return from University training, he introduced policies of modernization. He had been profoundly affected by his experience of western values and ideas and was anxious to get on with the business of modernizing Tonga as rapidly as possible.¹⁶⁹ Crown Prince Tupouto'a established the Teacher's Training College in 1944 to train future teachers of Tonga. To accelerate the westernization initiatives in Tonga, Crown Prince Tupouto'a decided that Tonga should be a bilingual country and

¹⁶⁵ King George Tupou I 1875-1877, King George Tupou I's speech from the throne on the occasion of the closing of the of the Legislative Assembly session on the 4th of November 4, transcript, *Ko e Boobooi*, Government Printer, Nuku'alofa.

¹⁶⁶ Ibid.

¹⁶⁷ Afeaki, E. 1983. 'Tonga: The last Pacific Kingdom', in Ahmed Ali and Ron Crocombe (eds.), *Politics in Polynesia*, pp. 72.

¹⁶⁸ Wood Ellem, E. 1999. *Queen Salote of Tonga: The story of an Era 1900-1965*, pp. 225.

¹⁶⁹ Ibid, pp. 223.

brought in European teachers to teach in the Matriculation School (which was later called the Tonga High School) established in 1947 for both European and local Tongan children.¹⁷⁰ In this Matriculation School, they were prepared for the New Zealand University Entrance Examination and gradually over the years many of the Tongan students were awarded with scholarships to study abroad. Tonga in the 1960's and 1970's was different from what it had been before as it saw a lot of improvements especially in the standard of education and the increased number of University graduates.

In Tonga, education was considered one of the important pillars of life next to that of religion, "*Ko e lotú mo e akó ko e ongo mata'ikoloa ia 'a e Tonga*". The eagerness for knowledge and education remains today and had earned Tongans a reputation among their fellow Pacific Islanders. Education was treasured and perceived by many to open doors. Education has allowed many commoners to fill in key administrative and clerical posts in government and to carry out professional and technical work. One can argue that Tongan citizens are Tonga's main natural resources. This can be seen when majority of well-educated Tongan citizens migrated overseas over the years for better paid jobs and opportunities who in return their remittances have contributed heavily to Tonga's economy.¹⁷¹ Around late 1970's and early 1980's, a rapidly increasing number of ordinary Tongans acquired a greater awareness of the world. They also became aware of their individual potential to instigate Constitutional change for improvements in government.¹⁷² However, there was a certain inevitability that the forces created by His Majesty King Taufa'ahau Tupou IV during his reign in promoting education and economic growth would result in the discontentment of the citizens with some of the articles of the Constitution and the political system, believing it to be out-dated.

Concurrently, many of the Tongan returning scholars started to question the efficiency, ability, capacity and integrity of the government and showed apprehension over the increasingly out-dated nature of the 1875 Constitution. The areas of their concerns were the Constitutional provisions for the allocation, exercise

¹⁷⁰ Wood Ellem, E. 1999. Queen Salote of Tonga: The story of an Era 1900-1965, pp. 224.

¹⁷¹ Afeaki, E. 1983. 'Tonga: The last Pacific Kingdom', in Ali. A and Crocombe. R (eds) Politics in Polynesia, pp. 74.

¹⁷² Hau'ofa. 'E. 1994. 'Thy Kingdom Come: The Democratization of Aristocratic Tonga'. The Contemporary Pacific, vol.6, no. 1, pp. 422.

and retention of power. Similar to His Majesty King Taufa'ahau Tupou IV, the returning Tongan scholars were highly influenced and affected by their experience of western values and ideas of places where they conducted their studies especially those who graduated from Universities and Institutions in Australia, New Zealand, United Kingdom, United States of America and Fiji.¹⁷³

The Tongan returning scholars raised questions about the undemocratic nature of the existed socio-economic and political system and suggested the restructuring of the institutional arrangements of the government.¹⁷⁴ They wanted Tonga to adopt a western-style democracy whereby political powers ascribed by law to a few individuals were to be determined by the whole populace. They believed that these changes were much needed to bring about more democratic governance in Tonga. Others doubted government because of continuous allegation of corruption.¹⁷⁵ This was agitated by the continuous misuse of funds, abuse of administrative powers mostly by the Ministers and Cabinet members, since they were only responsible directly to the Monarch rather to the Parliament or the people. The emerging elite group of educated individuals wanted change, a political reform that required significant reforms to be made to the 1875 Constitution.

The returning scholars also criticised the Monarch's powers given under the 1875 Constitution believing they were quite exclusive in a way that it gave the Monarch autocratic and arbitrary sway in all government affairs regardless of what the Parliament had discussed or had been approved. The disaffected Tongans pointed back to the 1875 Constitution, the main platform that preserves the indivisibility of the Monarch and the principle of the unity of power. However, the returning scholars believed that the commoners, or generally speaking those who are being governed, had no political rights in determining their political future.¹⁷⁶ The decisions over the whole population were being determined by the King and the Executive. They petitioned politely if the Monarch would ever relinquish some of his prerogative powers but no clear response was given. These prerogative rights include the powers to appoint and to dismiss the Premier, Ministers of the Crown and the two

¹⁷³ Helu, 'I. F. 1992. 'Democracy Bug Bites Tonga', in Ron Crocombe and Aiono. F. Le Tagaloa (eds.), *Culture and Democracy in the South Pacific*, pp. 141.

¹⁷⁴ Hau'ofa, 'E. 1994. "Thy Kingdom Come: The Democratization of Aristocratic Tonga" in *The Contemporary Pacific: A journal of Island Affairs*, vol. 6, pp. 415.

¹⁷⁵ Pohiva, 'A. Personal Interview. 12 November, 2013.

¹⁷⁶ Lauti, 'A. Personal Interview. 25 November, 2013.

Governors; unlimited veto power; powers to summon or dissolve Parliament at any time; power to suspend Habeas Corpus; proclamation of martial law; granting estates; commander of the armed forces; appointing nobles; making treaties and of course the sole ownership of Tonga's land.¹⁷⁷

By 1970's, 1980's and early 1990's, the majority of the Tongans were landless especially those in the main island Tongatapu due to increasing population growth, internal movement of people from outer islands to Tongatapu, limited amount of land to distribute and largely due to the fact that Nobles were under no legal obligation to give land to those people moving in to Tongatapu.¹⁷⁸ Securing a town or bush allotment was indeed a hassle due to the restriction imposed by the land tenure system whereby land was inalienable and was not for sale and the primogenital rule of inheritances stated in the Constitution in which younger sons and all women have no inheritance rights to their father's lands.¹⁷⁹ This created concerns in the educated elite since ordinary man cannot buy land and senior male heirs to hereditary land usually do not share out lands because he himself has his own children to worry about.

The educated elite wanted to amend the law so that land can be distributed equally to everyone without trying to please the Nobles who still had authority over vast areas of unoccupied lands, and who at sometimes demanded a large amount of money for access to a piece of land. They also wanted to amend the land laws to make it fair and just so that all children born out of marriage should entitle to their father's land not just the senior male heir. In 1975, the Tonga Council of Churches organised a seminar on land and migration which aired many contentious issues. Nobles were blamed for not releasing more land from their estates and their increasing demand for gifts and services from their tenants as land became more difficult to acquire.¹⁸⁰ Other issues regarding land were also raised seen in family disputes over the ownership of land due the ambiguity and the out-dated nature of the land laws. It was reported that many a times, the male land holders evicted his

¹⁷⁷ Koloamatangi, M. 2009. 'Tonga', in Stephen Levine (ed.), Pacific Ways: Government and Politics in the Pacific Islands, pp. 229-230.

¹⁷⁸ Afeaki, E. 1983. 'Tonga: The last Pacific Kingdom', in Ahmed Ali and Ron Crocombe (eds.), Politics in Polynesia, pp. 71-72.

¹⁷⁹ Vea, S. Personal Interview, 10 December, 2013.

¹⁸⁰ James, K. 1995. 'Right and Privilege in Tongan Land Tenure', in Gerard Ward and Elizabeth Kingdon (eds.), Land, Custom and Practice in the South Pacific, pp. 188.

married sisters from their father's land and widows were pressured by their late husband's relatives to release land before their life interest expires. A Royal Commission was established in 1983 in response to increasing public pressure for land tenure system reform. The findings of the Commission have not been made public and the basic issue of fair re-distribution of land has never addressed officially up until today.*

The returning scholars believed that representation to Parliament ascribed by the Constitution was inequitable because both the representatives of the nobles and of the people have equal number of reserved seats in Parliament even though they had vast differences in the number of individuals that they get to represent in Parliament. They argued that it should not be equal since the nine Noble's Representatives only represented the rest of the thirty other Nobles (some holding more than one title) while the People's Representatives represented ninety nine percent (100,000 people) of the total population of Tonga. The remaining seats of the Legislative Assembly were reserved for the Cabinet Ministers and the two Governors of Vava'u and Ha'apai Island groups, all appointed by the King based on his own discretion and patronage. The Nobles and Ministers usually united, so basically the Noble's Representatives held the balance of power. The Noble's Representatives have always voted with no qualms together with government Ministers against People's Representatives, outnumbering them on every occasion. Nobles have an obvious reason to vote with the Ministers of government against the People's Representative because both Ministers and Nobles were appointed on the Monarch's pleasure and discretion depending on their loyalty.

The desire and the push for a more accountable and transparent government in the late 1970's and early 1980's was not a new issue to Tonga. It was highly inspired and influenced by returning educated elites. All members of this new emerging class were people who had part or all of their education at institutions in an overseas country. The two most influential luminaries in this whole ferment were Dr. Langi Kavaliku who at the time was the Minister for Education, who was the incumbent of that position for three decades.¹⁸¹ Dr. Kavaliku was the first Tongan

¹⁸¹ Taufe'ulungaki, 'A. Personal Interview, 13 November, 2013

*This Commission has been superseded by the Royal and Commission of 2008

student to graduate from Harvard University in 1961 with his Bachelor degree in Political science. He also held a Masters of Arts degree from Cambridge University in 1963 and a Ph.D. degree in Education from Victoria University in 1966.¹⁸² The other, was Professor 'Ilaisa Futa Helu, the founder of 'Atenisi Institute in Tonga. He was a graduate student of the University of Sydney of which he studied philosophy, physics and literature. These two prominent scholars had the same objective about the reform in Tonga but had different means of going about achieving it.¹⁸³

Dr Langi Kavaliku's involvement in this push for change was not because he was discontented with any provision of the Constitution nor the prerogative powers of the Monarch. Simply from his experiences in countries he had travelled to, and the effects of globalization, he envisioned that the Tongan government should prepare for a new political reform since change was inevitable. He argued that Tonga can easily adapt to these changes without encountering chaos and general breakdown of the government.¹⁸⁴ Starting from 1975, he submitted several submissions to the Cabinet but his submissions were turned down twelfth times.¹⁸⁵ When this tactic was fruitless, Kavaliku then wrote letters directly to the Monarch informing His Majesty King Taufa'ahau Tupou IV about his reform plan. His Majesty did not take any considerable actions. As Kavaliku told it:

***“As long ago as 1975 I put up specific proposals to his Majesty for Constitutional change, designed to give people a greater voice in the course of their affairs. It was debated in Cabinet in 12 separate meetings, deferred time after time and eventually dropped... It aimed to change to a fully elected system over a period of time not less than nine and not more than fifteen years in a three faced development program...”*¹⁸⁶**

Professor Futa Helu on the other hand, saw the push for change from a scholarly point of view. Helu was a former student of the great Libertarian Philosopher, John Anderson, at the University of Sydney. He returned to Tonga with a passionate interest in the Greek philosophers and the Socratic spirit of criticism which questioned opinions, traditions and social norms. Helu then established the

¹⁸² Taufe'ulungaki, 'A. Personal Interview, 13 November, 2013.

¹⁸³ Kavaliku, F. Personal Interview, 16 November, 2013.

¹⁸⁴ Ibid

¹⁸⁵ Taufe'ulungaki, 'A. Personal Interview, 13 November, 2013.

¹⁸⁶ Bain, K. 1992. The New Friendly Islands: A voice from within, pp. 152.

‘Atenisi (Athens) Institute in the 1960’s dedicating it to the spirit of freewill and open inquiry.¹⁸⁷ He believed that good scholars do often criticize things happening around oneself politically, economically and socially. Hence, he criticised the existed political regime in Tonga believing it to be very undemocratic and supported the push for Constitutional and political change in Tonga favouring a new democratic regime.¹⁸⁸ Professor Futa Helu believed that democracy was the perfect system of government for Tonga since it is a form of government in which people rule themselves directly and continuously without the intervention of public officials, monarch and politicians.¹⁸⁹

The enthusiasm for Constitutional and political reform became vibrant amongst the young generations in Tonga with the establishment of ‘Atenisi (Athens) Institute in the 1960’s. The young Tongan students who enrolled in the Institute were exposed to Socratic values and philosophies and were highly influenced by the ancient Greek philosophical traditions of dialogue, interpretation and analysis. The majority of the Tongan students then started to look at the status quo and criticise it from a scholarly perspective. The graduates of ‘Atenisi Institute contributed significantly to the democratization process that was gathering momentum in Tonga at the time.¹⁹⁰

Subsequently, these initiatives were fully supported by prominent church leaders of the two most powerful churches in Tonga, namely the Free Wesleyan Church of Tonga and the Roman Catholic Church. Their political involvement was criticized by many other church leaders who felt that the churches should not be involved in any political affairs but focus only on spiritual matters. The involvement of the churches was significant as it highlighted the rift in the relationship between the church and the state because from the earliest days of modern Tonga, there has always been a firm alliance between church and the state.¹⁹¹ The church leaders were Rev. Dr Sione ‘Amanaki Havea, a University graduate from the United States who at

¹⁸⁷ Latukefu, S. 1993. ‘The Pro-democracy Movement in Tonga’, Journal of the Pacific History, vol. 28, no. 3, pp. 54.

¹⁸⁸ Helu, S. Personal Interview, 27 November, 2013.

¹⁸⁹ Heywood, A. 2007. Politics, pp. 72.

¹⁹⁰ Hau’ofa, ‘E. 1994. ‘Thy Kingdom Come: The Democratization of Aristocratic Tonga’, The Contemporary Pacific, vol. 6, no. 1, pp. 423.

¹⁹¹ Helu, ‘I. F. 1992. ‘Democracy Bug Bites Tonga’ in Ron Crocombe and Aiono. F. Le Tagaloa (eds) Culture and Democracy in the South Pacific, pp. 145.

the time was the President of the Free Wesleyan Church of Tonga (the first Tongan President since 1920's), Rev. Siupeli Taliai who was the first Tongan school Principal of Tupou College and was also a University graduate from Australia and Fr. Patelesio Finau, the Bishop of the Roman Catholic Church for the Diocese of Tonga and Niue who had studied in New Zealand and the Philippines. The prestige of their overseas education and their position as church leaders in Tonga enabled them to speak out and question the injustices that inhibit progress in people's lives.¹⁹²

These church leaders' ideas and values were influenced by their biblical backgrounds, valuing fair distribution of power and wealth aiming at narrowing social inequalities.¹⁹³ They often raised concerns over religious convictions, social injustices; exploitation of the poor, uneducated and marginalized individuals and problems of corruption in government. Therefore, they stood their ground and strongly believed that those governed should know how they are being governed, who their decision makers are and what are their policies and practices. Church involvement in politics was instigated by an incident that occurred in Tonga between 1885-1890, whereby Tongans who refused to join King George Tupou I's newly established church, called the Free Church of Tonga *Siasi Tonga Tau'ataina*, were openly persecuted and some, including King George Tupou I's daughter, were sent into exile on the island of Koro in Fiji.¹⁹⁴ Some church leaders had ancestors amongst those non-conformists that were ostracised by the King during this religious struggle. This conflict stimulated church leaders to question the validity of the freedom of religion in Tonga stated in the 1875 Constitution. These leaders were quite vigorous in their support of the move for political reform and to later years, the Constitutional reform.¹⁹⁵

The reform proposals had started to instil new ways of thinking and broaden the mind-sets of the people that the status quo of Tonga needs alteration to reflect the good government seen in other democratic countries. This was highlighted in a

¹⁹² Latukefu, S. 1993. 'The Pro-democracy Movement in Tonga', Journal of the Pacific History, vol. 28, no. 3, pp. 53.

'Akau'ola, S. Personal Interview, 4 December, 2013.

Mafi, P. Personal Interview, 20 November, 2013.

¹⁹³ 'Akau'ola, S. Personal Interview, 4 December, 2013.

¹⁹⁴ Senituli, L. 2007. 'Unfinished Business: Democratic Transition in Tonga', in Anne Brown (ed.), Security and Development in the Pacific Islands, pp. 282.

¹⁹⁵ Taufē'ulungaki, 'A. Personal Interview, 13 November, 2013.

speech made by Lata Malu in a school speech contest in 1973 which she won. She was later condemned by a few members of Parliament, accusing her of nurturing revolutionary doctrines. Miss Malu was a student of Tonga High School at the time and in her speech, she stated that ‘Democracy’ is a political regime in which individuals govern themselves and where everyone is equal in accordance to law. Comparing it to Tonga, she mentioned that Tonga’s current political system at the time was definitely not democratic seen clearly in the ratio of the members of the Legislative Assembly, one Representative of the Nobles represents five (5) other Nobles while one Representative of the People represents thirteen thousand one hundred (13,100) people. She argued strongly that Tonga should do something about this inequality by giving every individual a chance to determine how they are being governed. Miss Malu also mentioned that a burning desire for a democratic government would one day result in turmoil and political unrest if the government would do nothing about it. She also added that such turmoil have been seen in the revolution in Russia in 1917 for socialist reform and in China for communist reform prior to 1949.¹⁹⁶

Despite the eagerness and relentless calls for reform from the educated elites, there was still no likelihood of Tonga becoming a liberal society through natural evolution since His Majesty King Taufa’ahau Tupou IV, the ruler of Tonga at the time was determined about the economic reform of Tonga and was adamant in his opposition to Constitutional and political reform. In his speech at the closing of the seventy fourth session of the Legislative Assembly in 1974, His Majesty King Taufa’ahau Tupou IV stressed the importance of sustaining the government structure set out in the articles of the 1875 Constitution for Tonga’s political future in response to the call for reform at the time.

“I firmly believe that the people of this country should be proud of the age of the Constitution, as it seems that the Constitution was made with the objective of ensuring that the King, the Chiefs and the people work together harmoniously in developing the country. Unlike other Constitution where only a few or certain party holds the power, this Constitution was set up to associate at all times the Honourable Ministers who assist the King in dealing with official matters together

¹⁹⁶ Soakai, L. 1973. ‘Lea na’e Ikuna’, Chronicles of Tonga, August 9, pp. 2.

*with the Honourable Nobles and the representatives of the people a kind of administration when adopted in overseas Nations which is generally known as a 'National Government'. The objective then is to create a Government in which all classes of Society is represented"*¹⁹⁷

However, taking into account the issues raised up by the ordinary citizens especially the educated elites, His Majesty King Taufa'ahau Tupou IV in his speech at the opening of Parliament in 1975, few months away from the centenary celebration of the Constitution, praised the 1875 Constitution for its role in the development of the country and indicated the need for further amendments particularly with regard to the number of representatives in the Legislative Assembly and land matters.¹⁹⁸ Regrettably, not much Constitutional changes were made to the highlighted issues.

Tonga had just gained its full independence in 1970 from Great Britain and was now on its own. A new Ministry of Foreign Affairs and Defence was established to handle Tonga's affairs and relations with foreign countries as well as Tonga's national security with Crown Prince Tupouto'a (later becoming King George Tupou V) as the new Minister.¹⁹⁹ In the midst of the political transition, from being a Protectorate of Great Britain to complete state independence, His Majesty King Taufa'ahau Tupou IV in his speech in the closing of the Legislative Assembly of 1975, believed that it would be wise for Tonga to allow changes to be made to the system of government but that Tonga still need time to adjust to the new arrangements. He argued that a frequent political change one after another would make Tonga vulnerable to political disruption and economic breakdown.

In an interview by His Majesty King Taufa'ahau Tupou IV with the *Matangi Tonga* Magazine in 1990, the King stated that the history of Tonga tells us that the governing of the country was carried out by the King himself. He stated that when parliament was installed, government was initially carried out by the King in partnership with the Nobles and then the People's Representatives were brought in to

¹⁹⁷ King Taufa'ahau Tupou IV 1975, His Majesty King Taufa'ahau Tupou IV's Speech from the throne on the occasion of the closing of the seventy-fourth session of the Legislative Assembly, transcript, *Tonga Government Gazette*, pp. 12, Government Printer, Nuku'alofa.

¹⁹⁸ Latukefu, S. 1975. *The Tongan Constitution: A brief History to celebrate its Centenary*, pp. 84.

¹⁹⁹ Moala, K. 2002. *Island Kingdom Strikes Back: The Story of an Independent Island Newspaper – Taimi 'o Tonga*, pp. 71.

be in partnership with the King and the Nobles. The aim of the government in Tonga was to work together without any opposition. King Taufa'ahau Tupou IV asserted that the kind of government that the Constitution imposed was for diversity of views to be presented, followed by a consensus or government by consensus. It was different from a two party Westminster system of government of opposition. The King also claimed that Tonga's Constitution unlike most Constitutions in the region and abroad had all the safeguards of a typical democracy seen in part one of the Constitution which stated the freedom of speech, freedom of religion, freedom of assembly and several other individual rights. He declared that no one else has a history like Tonga.²⁰⁰

This did not satisfy the demands of Tongans who insisted that Tonga should be on its way to becoming a democratic state. The slowness in such transformation and the growing corruption and financial discrepancies happening in government was paralleled by the appointments of unqualified people to high governmental posts, unfair distribution of national wealth and the continued overruling by Ministers of the Crown. These disparities resulted in large numbers of well-educated Tongans migrating overseas for greater and fairer working opportunities (a brain drain). Many of these migrants then became residents of democratic countries of the United States, New Zealand and Australia. Many went over to other Pacific Islands as they found well-paid jobs in regional agencies and Non-governmental organizations.²⁰¹ Though these individuals moved overseas, they still managed to exert significant influences in the politics of Tonga through the publication of their point of views about the politics and government affairs of Tonga, using weekly newspapers in Tonga and abroad.

The criticism made by the educated elites played an important role in the rise of the pro-democracy movements in late 1970's and early 1980's. Surprisingly, Samuela 'Akilisi Pohiva and few other Tongan students from the University of the South Pacific had in their possession a copy of the Dr. Langi Kavaliku's confidential reform proposal and insisted in pursuing these political reforms. Pohiva appeared to have come under the influence of his lecturers in the Sociology Department of the

²⁰⁰ Moala, K. 2002. Island Kingdom Strikes Back: The Story of an Independent Island Newspaper – Taimi 'o Tonga, pp. 155.

²⁰¹ Hau'ofa, 'E. 1994. 'Thy Kingdom Come: The Democratization of Aristocratic Tonga', The Contemporary Pacific, vol. 6, no. 1, pp. 423.

University of the South Pacific who were mainly Marxists.²⁰² Marxism was a theoretical system devised by Karl Marx, characterized by a belief in historical materialism, dialectical change and the use of class analysis. It offered a popular alternative to the liberal rationalism that has dominated western culture and intellectual inquiry in the modern period. It also has been seen as the major enemy of western capitalism.²⁰³

Upon his return, Pohiva became a lecturer in the Teacher's Training College. He introduced an educational radio programme which questioned the bureaucracy and highlighted the absence of appropriate checks and balances in government and statutory body as well as the ambiguity of the doctrine of the separation of power.²⁰⁴ The Cabinet at the time was furious about this educational radio programme and ordered its termination. While still teaching at the Teacher's Training College, Pohiva introduced courses in political science and sociology with the belief that students should know how the government's operated. Pohiva believed that it was important to teach students, who would become future teachers about democratic principles and values so that they could teach the future generations of Tonga not to remain subservient at all times but to be critical of their customs and traditions. 'Akilisi Pohiva believed that Democracy was the only system that would bring about accountability in Tonga and believed that this sought reform would be implemented only through substantial constitutional reform.²⁰⁵ For imposing such a course and for his enthusiasm in advocating Constitutional and political reform, he was dismissed from the Public Service in 1985. This decision was overturned when Pohiva sued the government for unfair dismissal.

Despite pressures from a few supporters inside government and from the wider public, the King and the Nobles were unwilling to reform. Their resistance against democracy and Constitutional reform was based on self-interest because they would not relinquish their main sources of livelihood and power willingly. The call for reform was vocal, visible and divisive during the reign of His Majesty King

²⁰² Taufe'ulungaki, 'A. Personal Interview, 13 November, 2013.

²⁰³ Heywood, A. 2007. *Politics*, pp. 57.

²⁰⁴ Latukefu, S. 1993. 'The Pro-democracy Movement in Tonga', *Journal of the Pacific History*, vol. 28, no. 3, pp. 55.

²⁰⁵ Pohiva, 'A. Personal Interview, 12 November, 2013.

Taufa'ahau Tupou IV and up to his death in 2006. He resisted these calls and only a few Constitutional changes were made.

Conclusion

In conclusion, it is important to acknowledge the minor amendments made to the 1875 Constitution over the years as it depicted the developments and the effects of globalization in Tonga over the years and the changes in government policies and regulations. With all the minor amendments that have been made to the Constitution throughout the years, it still remained essentially the one granted by King George Tupou I on the 4th of November 1875. It is also important to note how these minor changes have simply prepared Tonga for the substantial changes that were to be made to the Constitution in the later years. With the minor amendments in place, people were confident enough in their push for Constitutional and political reform since constant changes have been made to the Constitution over the years.

The granting of Tonga's full independence in 1970 was coincidence with the returning of most prominent Tongan students from University trainings and studies abroad. Their experiences in overseas countries and new political ideas gained provided them a good platform to initiate changes in government. With the independence being granted by Great Britain, some of the ordinary people especially the educated ones considered this as an opportunity for Tonga to implement changes specifically its system of government to adopt a more democratic approach seen in other Pacific Islands government at the time like Western Samoa in 1962. The returning University trained Tongan students asserted that while Tonga was in the political transition phase in 1970, from being a Protectorate to full independent state, why not changing it to democratic state. However, powers to implement such proposed changes were within the hands of the Monarch who refused to consider such reform.

Education played an important part in the initial call for reform in the early 1970's. It generated the move towards a more democratic system of government with greater accountability of executive action to the wider public. It created concerns about the miscarriages of justice, the abuse of power and corruption. It can be argued

that not much change would have occurred if this educated class had not gone overseas for further education.

The role played by the new educated class or intellectual elite in Tonga in the development of a much more critical outlook on politics and the need for Constitutional reform was significant. Education imbued a profound belief in the value of criticism which assisted in bringing about a very different approach to the long-standing political roles of the Monarch and the nobility. The new knowledge and skills were eagerly acquired by the ordinary citizens, leaving the members and supporters of the aristocracy to hold on to kinds of knowledge that were becoming increasingly irrelevant for the conduct of everyday affairs in the socio-economic environment. The criticism made by the educated elites played an important role in the rise of the Pro-Democracy Movement in the 1970's which brought about a different approach to the political prerogatives of the Monarch and the Nobility.

Tongans continued to revere the Constitution with which gave them individual rights to land. However, the rapid population growth in Tonga surpassed the point at which it would have been possible for every Tongan man to have his statutory right to land. This became a problem and the landless Tongans with the support of the educated class requested the government to re-consider the land tenure system for equitable distribution of land.

The ordinary people in Tonga at the time were living in a bipolar society as they took side either with the educated elites in initiating the move for reform or with the conservatives who adamantly advocated that the system of government in place should be maintained. This was basically a political and philosophical tuck of war between the old and the young generation. The bipolar sphere was evident in government, schools, societies, families, churches, social gatherings and later on the general election. It is vital to acknowledge the important role played by the ordinary citizens in Tonga's affairs. The ordinary citizens who wanted reform at the time constituted a force and a power that questioned the validity of some to the articles of the Constitution and the traditional political system. This division grew more when leaders of the two most prominent churches in Tonga, the Free Wesleyan Church and the Roman Catholic Church were amongst the forerunners of the reform movement. Towards the end of the 20th century and the turn of the 21st century, the young

generations supported by the returning Tongan scholars continued to question the role of the Monarchy and the system of government.

The following chapter will discuss the establishment and the undertakings of the Pro-Democracy Movement as well as the winding routes towards the 2010 Constitutional and Political Reform.

Chapter 5

The route towards 2010 Constitutional and Political Reform

<i>“Tau’ataina ne foaki ‘e he Tu’i ‘i Mala’e Kula, Tongá ‘oku totonu ke faka- mahu’inga’i si’i ‘ofa, Si’i ‘aho ‘o e, ‘aho ‘o e tukuange, fiefia mo e mavava ki he Tu’i Tonga, tue tue tuee”²⁰⁶</i>	<i>“Freedom being granted by the King at the Mala’e Kula, Tonga you should appreciate this kind-heartedness, That was the day, the day of freedom, King of Tonga to be praised and applauded, Hip hip hooray”</i>
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A song sung by school children while marching around Nuku’alofa to mark the Closing of each Parliamentary session every year.

²⁰⁶ Composer Unknown, *Tau’ataina*, Personal Source, Tofoa.

The drive for political reform in the late 1980's and the early 1990's was predictable, manifested in the vibrant support not only by those living in Tonga but also those living abroad. The internal criticism has condemned the lack of accountability, the absence of popular participation in decision-making and the scope of corruptions and incompetence at high levels. The push for political reform prompted the push for Constitutional review. These two are interrelated for there was no way to implement the proposed reform in government unless there were substantial amendments made to the Constitution. These two interconnected concepts overlap each other; therefore, Political reform meant Constitutional reform. The push for reform both constitutionally and politically was enhanced when 'Akilisi Pohiva (strong advocate of political reform) became a member of the Legislative Assembly in the general election of 1987.²⁰⁷ As a member of the Legislative Assembly, Pohiva exposed the public to issues at the time especially the irregularities of the Ministers and Representatives of the Nobles. One of the pressing issues of the time was the alleged illegal selling of the Tongan citizenship and passports to foreigners especially the Chinese nationals. People at this time were surprised and interested to hear about the faults of their so called beloved country.²⁰⁸

The desire to achieve an accountable and democratic system of government for Tonga through Constitutional review managed to gather enough interested individuals to create a group known as the Pro-Democracy Movement (PDM) in 1992. This group was started in a disorganized manner as an association of university graduates but later included civil servants, businessmen, academics, educators, town officers, parliamentarians, clergymen, unskilled labourers, farmers and others from all walks of life who believed that Tonga surely needed a new democratic system of governance.²⁰⁹ Their proposed changes required the alteration of certain clauses of the 1875 Constitution. The thrust towards a new democratic system of government was, therefore, by no means a grass roots or populist movement but from the emergent middle classes. Pohiva and the PDM asserted that their push for democracy did not mean that they were anti-Monarch or they were revolutionists. They wanted substantial changes in government and therefore believed that democracy was the

²⁰⁷ Moala, K. 2002. Island Kingdom Strikes Back: The Story of an Independent Island Newspaper – Taimi 'o Tonga, pp. 72.

²⁰⁸ Ibid, pp. 74

²⁰⁹ Helu, 'I. F. 1992. 'Democracy Bug Bites Tonga', in Ron Crocombe and Aiono. F. Le Tagaloa (eds.), Culture and Democracy in the South Pacific, pp. 145.

only system of government that could bring about changes, accountability and transparency.²¹⁰ However, the persistent push for Constitutional and political reform from the PDM scared the government, who believed that this push for reform would bring about the political turmoil and crisis seen in neighbouring country of Fiji with coups of 1987.²¹¹

The main objective of the PDM was to establish a western style democracy in Tonga that would provide wider social justice, equitable distribution of power and resources and career opportunities. They believed that government of Tonga under the 1875 Constitution was more of an authoritarian state in a sense that the Monarch had an absolute power in governmental affairs, the Monarch in Privy Council had the highest authority in the Executive Government, there was no government opposition, nor any political parties.²¹² In the proposed political transition, it was suggested that the Monarch should share his prerogative powers as the Head of Government with the ordinary citizen especially in the running of the day to day affairs of the Government. Since ordinary people were still proud of their cultural and political traditions of ranking and hierarchy, it was proposed that the King should maintain his ceremonial position as the Head of State while relinquishing his powers in government affairs.²¹³ Central to these changes was the need to amend the 1875 Constitution.

However, His Majesty King Taufa'ahau Tupou IV rejected the idea portrayed by the reformists that government was authoritarian because he argued that citizens have an input in government through their elected representatives. On the other hand, reformers believed that the presence and the unity of the People's Representatives were meaningless because the government remained heavily weighted in favour of the Nobles and the appointed Ministers combined. His Majesty King Tupou IV, in a congratulatory manner, stated that the electorates had been well represented by their elected candidates in bringing up issues that needed the attention of government for the welfare of the people. His Majesty King Taufa'ahau Tupou IV then questioned the PDM and the push for Constitutional reform and claimed that the system in place

²¹⁰ James, K. 1993. 'The Kingdom of Tonga', The Contemporary Pacific, vol. 5, no. 1, pp. 163.

²¹¹ James, K. 1994. 'Tonga's Pro-democracy Movement', Pacific Affairs, vol. 67, no. 2, pp. 245.

²¹² Ibid.

²¹³ Ibid, pp. 243.

had democratic principles such as the right to petition, a freely contested election and an enfranchised population of voters.²¹⁴

The PDM members argued that people should be empowered and given the chance to have a greater say in government. They set out to educate the ordinary citizens regarding their constitutional rights and about the corruption that allegedly existed in government.²¹⁵ The first undertaking of the PDM was the funding of a monthly radio program known as the *Matalafo Laukai* by 'Akilisi Pohiva from 1981 until it was forcibly shut down in 1984.²¹⁶ This radio program raised and discussed for the first time the alternative socio-economic and political issues on *A3Z Radio Tonga*, the national radio of Tonga. The Reformers used this radio program as a platform to freely analyse and critically discuss government decisions and policies so that it could reach out to those citizens living in the outer islands of Tonga. The existence of this radio program was indeed a nightmare for government, therefore, they made sure to terminate its existence in the first given opportunity.²¹⁷

In one of the *Matalafo Laukai*'s radio programs in 1984, the panellists Reverend Dr 'Amanaki Havea, Prof. Futa Helu, Havea Katoa and 'Akilisi Pohiva (strong supporters of the pro-democracy movement) discussed the issue of what constitutes a fair distribution of national wealth. This was perceived by the Cabinet of the time as an offensive and belligerent attack on the government.²¹⁸ On the 2nd of January, 1985, Pohiva received a Cabinet notice stating that the *Matalafo Laukai* Radio Program would be shut down soon.²¹⁹ As a result, the radio program was banned, leaving the public with a question whether freedom of speech and press specified in clause number eight (8) of the Constitution has been repealed or not?

The forcible shutting down of the radio program coincided with a Cabinet Decision to dismiss 'Akilisi Pohiva from the civil service on the 2nd of February, 1985 due to his ardent involvement in the push for Constitutional and political

²¹⁴ James, K. 1994. 'Tonga's Pro-democracy Movement', *Pacific Affairs*, vol. 67, no. 2, pp. 256.

²¹⁵ Ibid, pp. 244.

²¹⁶ Helu, 'I. F. 1992. 'Democracy Bug Bites Tonga', in Ron Crocombe and Aiono F. Le Tagalao (eds.), *Culture and Democracy in the South Pacific*, pp. 146.

²¹⁷ 'A long walk to Political Reform' 2010, *Kele'a*, 27 October, p. 11.

²¹⁸ Helu, 'I. F. 1992. 'Democracy Bug Bites Tonga', in Ron Crocombe and Aiono. F. Le Tagalao (eds.), *Culture and Democracy in the South Pacific*, pp. 146.

²¹⁹ 'A long walk to Political Reform' 2010, *Kele'a*, 27 October, p. 11.

reform.²²⁰ Still frustrated with what he perceived to be endless corrupt practices in government, 'Akilisi Pohiva and Uili Fukofuka, a colleague from the University of the South Pacific started to publish a monthly political news-sheet known as the *Kele'a* (conch shell) in 1986²²¹ aiming to inform the public of alleged detailed unjust actions of government, misuses of public funds by parliamentarians and all other corrupt practices. This was more like a little watchdog of government affairs but was perceived by government as a professional way of defaming the leaders of government. The issues published on the *Kele'a* played an important role in determining the electorate's vote in the general election of 1987.

In 1987, 'Akilisi Pohiva and other supporters of the PDM stood as candidates in the general election and Pohiva was successfully elected as Tongatapu's number three People's Representative to the Legislative Assembly. In later parliamentary sessions many of Pohiva's colleagues in the PDM were elected, namely Uili Fukofuka and 'Uhila Liava'a from Tongatapu, Teisina Fuko and 'Ulitu Uata from the Ha'apai groups and Havea Katoa from Vava'u amongst others.²²² This was perceived as a political triumph for Pohiva as this provided him and the pro-democratic movement a good platform to question governmental issues in relation to fairness, rule of law and honesty in government as well as strengthening the push for Constitutional reform. The Constitutional Reform and Political Reform at this point seemed interchangeable, although described primarily as a political movement not a move to amend the 1875 Constitution.

These new People's Representatives were better educated and more prepared than their predecessors to challenge and to confront government Ministers and Representatives of the Nobles on issues such as the inequitable civil service salaries, misdirection of aid funds, wrongful sacking of civil servants, irregularities in the conduct of election, sales tax, remuneration received by parliamentarians, inequities in the system of land distribution and many more. The People's Representatives created the pro-democracy and constitutional reform lobby in the Legislative

²²⁰ 'A long walk to Political Reform' 2010, *Kele'a*, 27 October, p. 11.

²²¹ James, K. 1994. 'Tonga's Pro-democracy Movement', *Pacific Affairs*, vol. 67, no. 2, pp. 250.

²²² Helu, 'I. F. 1992. 'Democracy Bug Bites Tonga', in Ron Crocombe and Aiono. F. Le Tagaloa (eds.), *Culture and Democracy in the South Pacific*, pp. 145.

Assembly and were often referred to by the rest of the Legislative Assembly members as the political oppositions.²²³

In many cases, Pohiva and his fellow Pro-democratic movement People's Representatives lacked the numbers in the Legislative Assembly to influence changes.²²⁴ At times, Pohiva had the entire People's Representative on his side, but combined, they only represented one third of the Assembly. Such a situation reinforced the need for Constitutional reform specifically the article for the composition of Legislative Assembly to provide more seats to People's Representative in order for their voices to carry weight in Parliament.

With Constitutional amendments being heavily discussed in Parliament, the People's Opinion column in the *Times of Tonga* in October 1989 stated the responses of randomly picked five ordinary Tongan citizens to the issue- "*What do you think of the proposal in Parliament to reduce the Nobles representatives from 9 to 3 and increase the people's representatives from 9 to 15?*" Four out of the five interviewees commented that they fully supported the proposal and argued that it was about time for such changes to be made. They believed that this would enable People's Representatives to have stronger voice and such approach would definitely achieve fairness and equality in Parliament.²²⁵

Around the 1980's and 1990's, many Tongan have migrated abroad but their thoughts and hearts still lingered in Tonga. At this time in Tonga, many ordinary people were well informed of the on-going issues of government especially the push for Constitutional and political reform. Tongans that had migrated overseas were not left out from issues and events that happened in Tonga. Many forms of Tongan media disseminated information to the scattered population and were keeping them informed. Most of the Tongan communities overseas had access to locally produced publications, such as the *Ko e Kalonikali Tonga* (The Tongan Chronicles), *Kele'a*,

²²³ James, K. 1994. 'Tonga's Pro-democracy Movement', *Pacific Affair*, vol.67, no. 2, pp. 254.
James, K. 1994. 'The Kingdom of Tonga', *The Contemporary Pacific*, vol. 7, no. 1, pp. 164-167.
James, K. 1995. 'The Kingdom of Tonga', *The Contemporary Pacific*, vol. 6, no. 1, pp. 192-167.
James, K. 1995. 'The Kingdom of Tonga', *The Contemporary Pacific*, vol. 8, no. 1, pp. 202-206.
James, K. 1993. 'The Kingdom of Tonga', *The Contemporary Pacific*, vol. 5, no. 1, pp. 163-166.
Campbell, I. 1999. 'The Democracy Movement and the 1999 Tongan Elections', *The Journal of Pacific History*, vol. 34, no. 3, pp. 264-272.

²²⁴ Sharma, D. 1990. 'Two of the same mind', *Islands Business*, vol. 16, no. 12, pp. 20.

²²⁵ *The Times of Tonga*. 'People's Opinion'. Oct 5, 1989.

and the *Taimi 'o Tonga* (Times of Tonga) and the English-language magazine *Matangi Tonga*. Some managed to access news and events from Tonga, in overseas based newsletters and newspapers such as the *Tongan Herald*, produced in Sydney and the *Tonga Abroad*, published at the Brigham Young University, or on numerous Public radio programs in Brisbane, Sydney and Melbourne in 1990's.²²⁶ These new publications have provided critical analysis of current events and a forum for public opinion through letter columns.

The advancement of the internet as the newest form of communication at the time, circulated information faster and more efficiently in just a press of a button, overseas Tongans were able to create websites which featured detailed and often critical articles on Tongan affairs especially the parallel vibrant push for Constitutional and political reform. They also created sites such as the *Planet Tonga*, *Kalianet* and the *Tonga Youth Forum* which provided daily news, discussion forum and chat rooms for public integration and participation.²²⁷ Many Tongans in Tonga embraced this new technology and contributed to discussions and forums. This literally brought all Tongans over the world together to discuss prominent issues such as the new proposed constitutional amendments, political reform and land tenure system.

Media influenced the ideas and viewpoints of Tongans and created interest in both radical and conservative groups. This bipolar world can be seen in the different viewpoints, opinions and reasons expressed in the letters of ordinary citizens both in Tonga and abroad to editors of newspapers. For example, letters written by Sefo Afeaki, a Tongan citizen residing in New Zealand, used phrases such as “In an Island of Fear”, “A Revolt”, “Driven to Drink”, “An Iron King” and many others, published in the New Zealand Truth Newspaper.²²⁸ In his letters, he publicly criticized the system of government in Tonga, the ultimate authority of the King, the failure to follow the Constitution and the limited representation of people to Parliament. One of his letters suggested that Tonga should undergo Constitutional reform to adopt a

²²⁶ Lee, H. 2003. *Tongans Overseas: Between Two Shores*, pp. 79.

²²⁷ Ibid, pp. 79-80.

²²⁸ Tu'uhetoka, S 1973, 'Letter to the Editor: Democratic Tonga', *Tonga Chronicle*, 23 August, pp. 2.

new system of government that would empower ordinary people and create people-oriented policies.²²⁹

Siu Tu'uhetoka, on behalf of the Women's *Langafonua* Association wrote a letter to the editor of the *Tonga Chronicle* in response to a speech about Democracy in Tonga by a high school student (Lata Soakai) published by the *Ko e Kalonikali Tonga* (Tonga Chronicles) in their previous publications. In her letter, Tu'uhetoka argued that high school students should not be taught to speak critically against their country's Constitutional laws. She believed that this practise would nurture revolutionary doctrines, disguised in the name of Education. Tu'uhetoka also criticised the push for reform in Tonga stating that those individuals showing disaffection against the King of Tonga or against the Parliament or Government of Tonga have committed sedition.²³⁰

With the support and the anticipation of many Tongans residing overseas and in Tonga, the PDM proceeded with their objective of increasing public participation politically. In doing so, the elected members of the pro-democratic movement to the Assembly and its increasing band of supporters held discussion sessions known in Tongan as the "*Fofola e fala ka e alea e Kāinga*" to engage all members of the society in discussing political issues. In these sessions in villages all around Tongatapu and some of the outer islands, they discussed the concept of democracy in comparison to the existing regime.²³¹ They stressed the paramount importance of the Constitution to the cause of the PDM and that the preferred changes would only be implemented if the Legislative Assembly and the Executive Government would approve to amend the Constitution.

Mr. Fakatava, an ordinary citizen from Kolofo'ou, wrote a letter to the editor of *The Times of Tonga*, published on the December 1989 issue expressing his opinion about the proposed reform. In his letter, he asserted that there were signs in Tonga that indicated that the existed political structure was unable to keep up with social and economic changes. Mr. Fakatava stressed that Tonga should accept the

²²⁹ Tu'uhetoka, S 1973, 'Letter to the Editor: Democratic Tonga', *Tonga Chronicle*, 23 August, pp. 2.

²³⁰ Ibid.

²³¹ Helu, 'I. F. 1992. 'Democracy Bug Bites Tonga', in Ron Crocombe and Aiono. F. Tagaloa (eds.), *Culture and Democracy in the South Pacific*, pp. 147.

proposed Constitutional and political change since it was inevitable and these spheres of change were interconnected with each other.²³²

The discussion sessions held by the PDM supporters were effective in a way that it reached out and instilled new ways of thinking to those who were not conscious of political issues especially those in the grass root level of the society and among the less educated. Such an initiative became popular and was a much quicker political tool in informing the citizens of government actions. However, the centralisation of these discussion sessions in the main island Tongatapu became very problematic as citizens living in other islands did not have any idea of the concept of democracy and the inherent need for Constitutional review. The outer islands were unwilling to support Pohiva and the PDM. This was seen in the result of the 1993 general election in Ha'apai and Vava'u which reflected the apparent unimportance of the democracy issue.²³³

However, the effectiveness of these discussion sessions were evident when 'Akilisi Pohiva and other Pro-democracy movements organised a number of petitions in relation to unfair and unconstitutional policies of government, such as the selling of the Tongan passports. Thousands of protesters took to the streets of Nuku'alofa and delivered their petition to the King but no clear response was given. Pohiva sued the Tongan government for this unconstitutional action²³⁴ arguing that citizenship has been granted and passports were being issued to foreigners who had not meet the requirements stated in clause number twenty nine (29) of the Constitution.²³⁵ These irregularities strengthened the push for Constitutional reform since ordinary people no longer wanted the Nobles and Ministers entrenched in Parliament to continue abusing the privileges.

These alarming political issues prompted the PDM group to be formally established in 1992 with Fr. Seluini 'Akau'ola (a Catholic priest) as the

²³² Fakatava, S 1989, 'Letter to the Editor: Other Changes', The Times of Tonga, 7 December, pp. 4.

²³³ Campbell, I. C. 1999. 'The Democracy Movement and the 1999 Tongan Elections', The Journal of the Pacific History, vol. 34, no. 3, pp. 271.

²³⁴ Moala, K 2002. Island Kingdom Strikes Back: The story of an Independent Island Newspaper-Taimi 'o Tonga, pp. 77.

²³⁵ Wylie, C. 1967. The Law of Tonga Revised Edition, pp. 20.

chairperson.²³⁶ The influence of this group changed the political landscape by bringing into the open the concerns of many commoners about the government's accountability. Concurrently, the PDM committee organised a Convention to be held in Nuku'alofa based on the "Constitution" and "Democracy" in Tonga.²³⁷ The aim of this Convention in 1992 was to study the 1875 Constitution more closely in the light of the rapidly changing world order and the situation of Tonga in particular, anticipating future problems and to see how the Constitution could be altered to prepare Tonga for future demands, developments and changes.

Representatives from government, local and overseas scholars, politicians, historians and the wider public were invited to take part in the Convention. There were reports and commentaries presented during the convention prepared by Rev. Dr 'Amanaki Havea, Rev. Siupeli Taliai, Sione Na'a Fiefia, Dr 'Okusitino Māhina, Dr Guy Powles, Laki Niu, Rev Dr Kalapoli Pāongo, Bishop Patelesio Finau, Dr 'Ana Taupe'ulungaki, Uiliami Fukofuka, Dr Bill Hodge, Professor Futa Helu and 'Epeli Hau'ofa.²³⁸ These interpretations and proposals had a tremendous impact as these scholars and churchmen scrupulously analysed and interpreted the Constitution and the government structure from different perspectives and backgrounds.²³⁹

For the supporters of the PDM, this convention was a success since experienced political thinkers shared their thoughts and ideas in political affairs with reference to Tonga's case. The formation and content of the 1875 Constitution was praised as a stabilising factor in Tonga but most importantly for incorporating human rights principles. There were several proposed amendments in order for Tonga to be a lively democratic state. Those attending the Convention believed that Tonga surely needed something more adequate than what has been offered in the clauses of the 1875 Constitution.

At the Convention, it was debated whether the 1875 Constitution was designed to preserve former traditional inequality, entrenched power and position. This was referred to the prerogative powers of the Monarch stated in the 1875 Constitution. Most believed this to be feudal with autonomous power over

²³⁶ Latukefu, S. 1993. 'The Pro-Democracy Movement in Tonga', *Journal of Pacific History*, vol. 28, no. 3, pp. 52.

²³⁷ 'Akau'ola, S. Personal Interview, 17 November, 2013.

²³⁸ James, K. 1996. 'The Kingdom of Tonga', *The Contemporary Pacific*, vol. 8, no. 1, pp. 192-193.

²³⁹ James, K. 1994. 'Tonga's Pro-democracy Movement', *Pacific Affairs*, vol. 67, no. 2, pp. 255.

government concentrated in the hand of the Monarch and appointees. It was then suggested in the Convention that the current system of government, “Constitutional Monarchy”, should adopt the British Westminster Parliamentary System.²⁴⁰ This meant for Tonga to have its political powers fairly and responsibly distributed. Like the British Westminster System, Tonga should have political parties vying in the general election and the party that wins the majority of seats chooses the Prime Minister. The elected Prime Minister would then select his Ministers from other members that were elected. All members, including the Prime Minister, would be held responsible to Parliament and the public rather than to the Monarch. The Monarch would have no power to remove either the elected Prime Minister or the appointed Ministers from office. The Monarch would remain as the Head of State while the Prime Minister would be the Head of Government. The Monarch would not be allowed to meddle in government affairs or Parliament except regarding consenting bills and documents of government upon the instruction of the Prime Minister and his Ministers.²⁴¹

The Convention again raised the issue that had been raised multiple times in Parliament, that political representation to Parliament was inequitable in a sense that Representatives of the People tend to represent the vast number of individuals while on the other hand, the Nobles’ Representatives represent only a few.²⁴² It was proposed in the Convention to abolish the reserve seats ascribed for the Nobles to increase the number of seats given for the People’s Representative in accordance to the population of the electorate.²⁴³

These debates were held with many remembering the unsuccessful result of the Royal Land Commission established in 1983 to review and recommend changes to articles of the Constitution regarding land which concerned many ordinary citizens.²⁴⁴ Many attendees of the Convention raised the idea that Tonga should establish another Commission to make changes to clauses of the 1875 Constitution relating to the management of land*. They wanted land to be equally divided

²⁴⁰ Talia, S 1992, ‘The Constitution of Tonga from a Christian Perspective’, paper presented at the *Convention on Constitution and Democracy*, 24-27 November, Tonga.

²⁴¹ Ibid.

²⁴² ‘Akau’ola, S. Personal Interview, 17 November, 2013.

²⁴³ Ibid.

²⁴⁴ James, K. 1994. ‘Tonga’s Pro-democracy Movement’, *Pacific Affairs*, vol.67, no. 2, pp. 250.

amongst individuals rather than having to appeal to the landed aristocrat for a piece of land. It also suggested that rules of inheritance specified in clause number hundred and eleven (111) of the 1875 Constitution should be amended so that other siblings should also get a portion from their father's properties and land, rather than the heir being dominant.²⁴⁵

One of the papers presented reiterated how the land tenure system in Tonga tended to overlook the rights of women to inherit properties.²⁴⁶ This created concerns because land laws did not yet acknowledge the changes in the society whereby women contribute and play important roles in government, economic affairs, church and the societal matters. Though women were allowed to have land through leasing, the existing legislation failed to protect the women's interest in this important resource. Hence, it was proposed in the Convention that clauses of the Constitution concerning land should be amended to allow women to have equal rights with men in the procession of land according to the rules of inheritance.²⁴⁷

The 1992 Convention was subjected to appalling and vocal opposition from the government on the grounds that the 1992 Convention was definitely stirring up revolutionary actions in Tonga. This was apparent in several death threats from the Minister of Police at the time, 'Akau'ola, to organizers of the convention²⁴⁸, the government boycotting the convention, banning of overseas scholars (guest speakers) as well as Tongans who have changed their citizenship being unable to attend the Convention.²⁴⁹ The Government also banned the Convention from being broadcasted on the radio. In the end, the government without qualm refused to consider the proposals and suggestions raised at the 1992 Convention. These government actions towards the 1992 Convention strengthened the popular push for democratic reform in Tonga.

In 1993, many citizens were concerned with the extensive involvement of HRH Crown Prince Tupouto'a (later to become King Tupou V) and HRH Princess

*A Royal Land Commission was later established by King George Tupou V to review the administration and the distribution of land.

²⁴⁵ Wylie, C. 1967. *The Law of Tonga Revised Edition*, pp. 36.

²⁴⁶ Taufe'ulungaki, 'A 1992, 'Women, Politics and Democracy in Tonga', paper presented at the *Convention on Constitution and Democracy*, 24-27 November, Tonga.

²⁴⁷ Ibid.

²⁴⁸ James, K. 1994. 'Tonga's Pro-democracy Movement', *Pacific Affairs*, vol.67, no. 2, pp. 255.

²⁴⁹ James, K. 1996. 'The Kingdom of Tonga', *The Contemporary Pacific*, vol. 8, no. 1, pp. 193.

Pilolevu in large business ventures in Tonga. This was not because people were envious of them running businesses and commercial deals in Tonga but because their involvement might cause social unrest and brings about public disorder.²⁵⁰ The Crown Prince at the time was the shareholder and Director in many companies including the Sea Star fishing company, Tonic Company in US, Ramanlal Hotel, MBF Bank, Royal Beer Brewery, the Shoreline Company (electricity supply) and Tonfon Telephone Company.²⁵¹

Princess Pilolevu on the other hand, owned shares in the satellite company of the *Tongasat*, an agent to the Tongan Government for the registration of orbital satellite slots belonging to the Kingdom. She was also the exclusive owner of Tonga's duty free services, the *Leiola* Duty Free, and other businesses.²⁵² The geo-stationary satellite slots were supposed to provide Tonga with massive income equivalent to Iraq's oil, but the nation received very little income. In the 1990's, this was now seen as a conflict of interest on the part of the Crown Prince and the Princess as their involvement in business was for their own benefit at the expense of the constitutional rights of ordinary citizens. 'Akilisi Pohiva put through a motion to stop the Crown Prince from being involving in businesses but all the Ministers and Noble's Representatives voted against the motion in Parliament.²⁵³ This precaution was seen later in the turn of the 21st century.

By 1994, the members of the PDM that were elected in as People's representatives to Parliament formed a political party known as the 'Tonga Democratic Party'.²⁵⁴ This was intended to provide a strong and united political platform for the reform movement and to guarantee that the People's Representative would vote in a bloc so that they would have greater voice and influence in Parliament. This frustrated some of the supporters of the PDM resulting in a bitterly division among the Pro-democratic People's Representatives. The disaffected PDM

²⁵⁰ Pohiva, 'A 2007, 'Tongan Government Refused to Listen to People', Pacific Island Development Program/ East-West Center, viewed 23 November 2013, <http://archives.pireport.org/archive/2007/January/01-23-comm1.htm>

²⁵¹ Moala, K. 2002. Island Kingdom Strikes Back: The story of an Independent Island Newspaper-Taimi 'o Tonga, pp. 274-275.

²⁵² Ibid.

²⁵³ Pohiva, 'A 2007, 'Tongan Government Refused to Listen to People', Pacific Island Development Program/ East-West Center, viewed 23 November 2013, <http://archives.pireport.org/archive/2007/January/01-23-comm1.htm>

²⁵⁴ James, K. 1996. 'The Kingdom of Tonga', The Contemporary Pacific, vol. 8, no. 1, pp. 203.

supporters asserted that Tonga was not yet ready for an independent political party.²⁵⁵ However, the Speaker of Parliament at the time, Noble Fusitu'a, also showed his discontentment. He argued that forming this political party would not survive in Tonga because decisions in Parliament have always been achieved through consensus.²⁵⁶

The People's Representatives' unity became increasingly frayed in the 1990's due to personal and business interests, chiefly patronage and church affiliated issues. The fracture of the Pro-Democratic People's Representatives started when the newly formed political party was changed from 'Tonga Democratic Party' to 'People's Party'. This was openly criticised by many of the Pro-democracy supporters since the most important word, 'democracy' had been omitted. These serious differences created a demarcation of the People's Representatives. 'Ulitu Uata, the People's Representative of Ha'apai and the President of the new established political party commented that the Party's push for Constitutional and democratic political reform was stagnant because of the dissatisfaction among members since personalities continue to dominate the political scene.²⁵⁷ These differences within the Party concerned Vice-President, 'Akilisi Pohiva (Tongatapu's No. 1 People's Representative), who was alleged to be focussing more in his litigious career than the interests of the Party. The Pro-democracy People's Representatives individually were at separate pathways, but their aim as a group to reform the government through Constitutional reform had never wavered.

Regardless of having so much consultation with the wider public in villages, the PDM faced drawbacks as some Tongans were convinced more by powerful social and political elites who strongly supported the existing status quo as the best system for Tonga.²⁵⁸ They believed that democracy would bring about chaos in Tonga. Some citizens believed there had been no tradition in Tonga of ordinary people directing criticism towards their leaders. The PDM members believed this was due to the notion of 'Democracy' being poorly understood by the citizens.

²⁵⁵ James, K. 1996. 'The Kingdom of Tonga', *The Contemporary Pacific*, vol. 8, no. 1, pp. 202.

²⁵⁶ Sharma, D. 1990. 'The voice of the nobles', *Island Business*, vol. 16, no. 12, pp. 16.

²⁵⁷ James, K. 1993. 'The Kingdom of Tonga', *The Contemporary Pacific*, vol. 5, no. 1, pp. 163.

²⁵⁸ Latukefu, S. 1993. 'The Pro-democracy Movement in Tonga', *Journal of the Pacific History*, vol. 28, no. 3, pp. 54.

The majority of the people that supported the prevalence of the existing status quo were those living in the islands of Vava'u, 'Eua and two Niuas. They remained loyal and obliged to the Nobles. They refused to support the push for Constitutional reform and activities of the PDM. The members and the supporters of the PDM were convinced that moving forward in the course of reforming the system of government can be made by educating the electorates more about democracy and the changes needed to be made to the Constitution.

One of Pohiva's unsuccessful motions in Parliament put many citizens' trust in the PDM to the test. This unsuccessful motion was to remove land entitlements of those Tongans who had migrated and found themselves new homes overseas, so that those domiciled in Tonga would have greater access to land. This was strongly opposed by all members of the Legislative Assembly on the fact that it was unconstitutional.²⁵⁹ Some of the citizens who were affected by Pohiva's motion in Parliament drew back from supporting the PDM.

The reform movement also faced setbacks from the continuous reluctance of government to work together with the PDM to achieve a common goal. Those in government often questioned the reason behind the push for reform since Tonga had been a stable, peaceful and a successful country over the years. Yet, there were a few, including the Premier at the time, Noble Baron Vaea, were convinced that change was inevitable.²⁶⁰ Over the years, the Government wanted submissions from the PDM members of the kind of system that they would substitute for the existing system provided in the Constitution. However, the differences of opinions on the part of the People's Representatives hindered their effort in reaching an agreeable new system of government.

The members of the PDM continued to conduct weekly *talanoa* session in villages and reaching out to the outer islands to make them fully understand the concept of democracy, the changes needed to be made to the Constitution in order to adopt a democratic system of government and the benefits that democracy can bring forth. Pohiva tirelessly promoted the push for Constitutional and political reform with the publication of confidential information regarding government finances and

²⁵⁹ James, K. 1994. 'Tonga's Pro-democracy Movement', Pacific Affair, vol.67, no. 2, pp. 250.

²⁶⁰ Latukefu, S. 1993. 'The Pro-democracy Movement in Tonga', Journal of the Pacific History, vol. 28, no. 3, pp. 62.

dishonest commercial deals in the *Kele'a* Newspaper, but many Tongans felt that the reformers had spent too much time criticizing the government leaders rather than designing new form of government.

By 1998, the PDM changed its name to 'Tonga Human Rights and Democracy Movement as a result of a decision by its members to expand its areas of concern to transcend the notion of human rights. This was to make it attractive for financial support by international development and human rights agencies.²⁶¹ In negotiation with Government in 2005, the members of Tonga Human Rights and Democracy Movement agreed to again change its name, to 'Friendly Islands Human Rights and Democracy Movements'. This was to incorporate this organization under the Incorporated Societies Act.²⁶²

The members of the new Friendly Islands Tonga Human Rights and Democracy Movement accentuated that Human Rights were necessary for each and every one in the society because by knowing their Human Rights everyone would know and respect rules, regulations, responsibilities and duties. The concept of Human Rights is concerned with values, attitudes and behaviour and produces empowerment for social justice but towards the end of the 20th century and in the first decade of the 21st century, reform in Tonga had become a complex interplay of ideas, visions and values all related in one way or another. Changing the 1875 Constitution became the common objective of these campaigns.

The PDM drafted an amended Constitution for Tonga in 1997.²⁶³ This proposed draft Constitution was based on the views and opinions presented and discussed in the 1992 Convention on the Constitution and Democracy as well as the empirical data collected from various sources over the years since 1992. In the 1997 proposed draft Constitution, clauses relating to land were amended to eliminate the status of nobility in the society. The role of the King was reduced to being a ceremonial figure and his duties and rights were transferred to the Premier. The

²⁶¹ Friendly Islands Human Rights and Democracy Movement, 'About the Friendly Islands Human Rights and Democracy Movements Inc', viewed 18 December 2013, <http://www.peaceportal.org/web/friendly-islands-human-rights-democracy-movement-inc>

²⁶² Senituli, L 2007, 'Tonga did best to facilitate reform', Pacific Island Development Program/ East-West Center, viewed 23 November 2013, <http://archives.pireport.org/archive/2007/January/01-23-comm2.htm>

²⁶³ Campbell, I. 1999. 'The Democracy Movement and the 1999 Tongan Election', The Journal of Pacific History, vol. 34, no. 3, pp. 267.

members of the Legislative Assembly were to be fully elected and Tonga would have two political parties from which candidates to Parliament were to be elected. There were other changes stimulated by these amendments.²⁶⁴ A seminar was conducted in 1998 by the Human Rights and Democracy Movement to discuss the proposed draft Constitution. It was agreed in this seminar that copies of the proposed draft Constitution should be distributed to all Ministers of the Crown, Nobles and the wider public, to attract written amendments for a new Convention to be held in 1999.

The 1999 Convention on the ‘Tonga Constitution and Human Democracy’ was organised by the Tonga Human Rights and Democracy Movement with the intention of enabling the general public to respond to the views and opinions that have been collated in the proposed draft Constitution. The theme of this convention was “A search for a democratic model suitable for Tonga for the year 2000”.²⁶⁵ This Convention was a success compared to that of 1992, attended by ordinary people from all walks of life. The government was more lenient with this Convention than the previous one by allowing foreigners to participate and releasing interested civil servants to participate in the Convention.

This Convention was indeed impressive as scholars and members of the public contributed to discussions regarding the proposed draft Constitution, the notions of democracy and human rights in relation to Tonga, possible drawbacks and advantages, experiences of democratic countries and the future outlook of Tonga’s political affairs. At the end of the Convention, it was suggested that a national referendum should be conducted on the issue, “That people should elect all members of the Legislative Assembly...”²⁶⁶ As a result, the People’s Representatives submitted motions to the Legislative Assembly requesting the government to set up a Constitutional Review Committee to conduct a referendum to review the Constitution. These motions were turned down by the Legislative Assembly and were deferred to be decided in the next Parliamentary session in 2000. These motions

²⁶⁴ Campbell, I. 1999. ‘The Democracy Movement and the 1999 Tongan Election’, The Journal of Pacific History, vol. 34, no. 3, pp. 267.

²⁶⁵ Tonga Human Rights and Democracy Movement, 1999. *Reports on the Convention on the Tongan Constitution and Democracy: A search for a democratic model suitable for Tonga for the year 2000*, Convention on the Tongan Constitution and Democracy: A search for a democratic model suitable for Tonga for the year 2000, 12-15 January, Tonga.

²⁶⁶ Ibid.

were not finally considered and approved by Legislative Assembly until 6 years later in 2005. Due to the unresponsiveness of the government, public dissent spiralled as many now believed that a coup d'état would occur in Tonga in the near future.

In the year 2000, the PDM had expected Tonga to finally review its Constitution and therefore undergo political reform but sadly it was not the case. Pohiva (the now veteran leader of the pro-democracy movement) and his team were still on their mission of reforming Tonga to have a more accountable government; a government run by the people with decisions made in the interest of the people. With the dawn of the new millennium, some of the ordinary people believed that the preservation of Tongan culture and tradition, *'taufatungamotu'a' mo e 'tala-tukufakaholo'* was worthwhile and some argued that Constitutional and political reform was of paramount importance, stressing that Tonga should consider that the world is moving and everything changes. In general, people expressed their support for a monarchy like Britain's, a ceremonial figure, far removed from day to day governance. However, with the government being unwilling to implement the pro-democracy movement's reform plans and with hot-headed pressures from ordinary citizens demanding Constitutional and political reform, it was feared that Tonga would be heading down the road to political instability, civil disobedience and the disruption seen in many countries when governments failed to respond to the concerns of the people.

In the later years of King Taufa'ahau Tupou IV's reign, after so many years of struggling for reform, he granted ordinary citizens a role in the election of the Government's Ministers. His Majesty King Taufa'ahau Tupou IV was finally convinced that commoners actually have an important role to play in the democratic governance of the Kingdom of Tonga. The appointment to Cabinet of elected members of the Assembly in 2005 marked the early stages of Constitutional and political reform in Tonga. The then, Prime Minister, HRH Prince 'Ulukalala Lavaka Ata (later to become King Tupou VI) publicly announced that His Majesty King Tupou IV had agreed to appoint four additional Ministers from the elected members of the Legislative Assembly; two appointed from amongst the People's

Representative and two from the Nobles' Representatives.²⁶⁷ The Prime Minister asserted that widening of the Cabinet Ministers would reflect the democratic principles of Tonga's Constitution.

With the resignation of HRH Prince 'Ulukalala Lavaka Ata from the role of Prime Minister, Dr Feleti Vaka'uta Sevele was then appointed as the new Prime Minister of Tonga in March 2006.²⁶⁸ Dr Sevele had been elected by universal suffrage to Parliament as Tongatapu's Number Three People's Representative. This appointment was historical because Dr Sevele was the first commoner to be appointed as Prime Minister. People at this time had high hopes that reform would occur anytime soon since, Dr Feleti Sevele was an ardent supporter and one of the forerunners of the push for Constitutional and political reform.

Prior to these new changes, the People's Representatives presented a petition to the Legislative Assembly requesting the government to conduct a national referendum on the same issue as had been submitted in 1999, "whether the people should vote for all the thirty (30) members of the Legislative Assembly". This was voted out by the Legislative Assembly without proper discussion which resulted in the walking out of the People's Representatives en masse from the Legislative Assembly. His Royal Highness, the late Prince Tu'ipelehake (Prince 'Uluvalu) responded by proposing the establishment of a National Committee to review the country's Constitution but there was no clear response from government. Late Prince Tu'ipelehake again in 2005 stubbornly continued pressuring the Legislative Assembly to establish a constitutional review committee.²⁶⁹

This parliamentary debate coincided with the public servant's strike in 2005 demanding a 60, 70 and 80 percentages increase of their salaries. The public servants strike lasted for a month. It ended a few days before a Memorandum of Understanding was signed between the Public Servant Association Interim Committee (PSAIC) and the Cabinet Negotiation Sub-Committee (CNS). In this

²⁶⁷ Senituli, L 2007, 'Tonga did best to facilitate reform', Pacific Island Development Program/ East-West Center, viewed 23 November 2013, <http://archives.pireport.org/archive/2007/January/01-23-comm2.htm>

²⁶⁸ Leslie, H. 2007. 'Tonga', The Contemporary Pacific, vol. 19, no. 1, pp. 273.

²⁶⁹ Senituli, L 2007, 'Tonga did best to facilitate reform', Pacific Island Development Program/ East-West Center, viewed 23 November 2013, <http://archives.pireport.org/archive/2007/January/01-23-comm2.htm>

negotiation, it was agreed that the CNS would consider a proposal submitted by the PSAIC to the Cabinet that a Royal Commission be established to review the Constitution to allow a more democratic government to be implemented and for the Royal Commission to report back to government.²⁷⁰ Unfortunately, the Cabinet did not agree to establish a commission, which could have saved Tonga from disruptions worse than the civil servants strike. The Legislative Assembly, regardless of opposition from the then Speaker of the House, Noble Veikune, implemented the Parliamentary motion initiated by HRH late Prince Tu'ipelehake in 2004. A National Committee for Political Reform (NCPR) was established immediately in 2005 endorsed by the then HRH Crown Prince Tupouto'a (later become to King George Tupou V) while he was the Prince Regent with HRH late Prince Tu'ipelehake as the Chairperson.²⁷¹ The Chairperson was given free range by the Legislative Assembly to nominate members from outside the Assembly to the Constitutional Review Committee.

Conclusion

The supporters of the push for reform had gathered together and formed a group known as the "Pro-democracy Movement" in 1992 to have a united voice and strong position in trying to convince government to change the existing status quo. They sought to inform the masses about the system of Democracy and the need for greater accountability by officials for their actions. The integral part of that drive was the call for Constitutional reform. It was clear that the drive for Constitutional reform has gained support from the educated, including few church leaders and a prosperous middle class who have become unhappy with the undemocratic nature of the Tongan Constitution and the system of government. It was generally believed by the members of the Pro-democracy movement that Tonga cannot have successful Political Reform without Constitutional Reform not can Tonga have the latter without sufficient support for the former, these concepts were surely interdependent and indispensable.

²⁷⁰ Senituli, L 2007, 'Tonga did best to facilitate reform', Pacific Island Development Program/ East-West Center, viewed 23 November 2013, <http://archives.pireport.org/archive/2007/January/01-23-comm2.htm>.

²⁷¹ Ibid.

The members of this new formed group organised the Constitutional convention in 1992 intended to examine the Constitution of Tonga in the light of the changing world and to suggest possible amendments. This effort was fruitless as it was subjected to strong opposition from Government. The shock waves of Constitutional reform that some people predicted would follow the rumblings of the newly formed group, pro-democracy movement, remained little more than ripples. The proposed amendments to the Constitution at the end of the 1992 Convention were rejected by Government and portrayed as treacherous activities, disloyalty to the Crown and betrayal of Tonga's interests.

The shocking news of Bishop Finau's sudden death in 1993 was widely lamented as a great loss to the Pro-democracy movement as he was one of the few church leaders that embraced the wind of change. He was a strong advocate of political reform and was amongst the propellers behind the push for Constitutional reform. For his involvement in the move for reform, he was considered a Marxist by His Majesty King Taufa'ahau Tupou IV, and an agent of the Pope by the then Crown Prince Tupouto'a (HM late King George Tupou V).²⁷² However, Bishop Finau's involvement in politics and along with another church leader, late Rev. Dr 'Amanaki Havea, was based on morality and human rights and the dignity of people as individuals.²⁷³ Bishop Finau's untimely passing triggered many others in the ferment to continue on where he had left off.

The Pro-democracy movement members determinedly drafted an amended Constitution for Tonga in 1997 but it was a moderate reform as they wanted to retain the tiers of government and avoiding flagrant abuse of ordinary people's rights. The convention in 1999 intended to review this proposed draft Constitution of 1997 and sensibly and politely requested government to conduct a national referendum to see whether citizens preferred to choose the whole member of Parliament or not. The Legislative Assembly's reluctance and slowness in responding to this moderate request propelled Tonga on to a more chaotic path.

²⁷² Bain, K 1993, 'Obituary: Bishop Patelesio Finau', The Independent, 31 December, viewed 18 December 2013, <http://www.independent.co.uk/news/people/obituary-bishop-patelesio-finau-1470113.html>

²⁷³ Ibid.

The publications of non-government news sheet and magazines established in Tonga and abroad at the time played an important role in these events and increased public awareness of the issues. Access to radio, television or the internet meant there was an advanced state of media dissemination and communication which had helped to clear ordinary people's doubts and confusions about the push for Constitutional and political reform. The overseas migration of so many Tongans has also broadened outlooks, awareness and sophistication towards government policies and the move for Constitutional and political reform in Tonga at the time.

It is important to note the contribution and significant role played by the media in the long walk for Constitutional and political reform. The political ferment would not have made much impact in Tonga without the media being activated. Tonga was labelled by many Pacific Island journalists as the champion of press freedom in the region, because some of the stories published in the newspapers and magazines would never see the light of day in some other Pacific Island countries.²⁷⁴ The activities of the free and independent press in Tonga have been instrumental in disseminating information and enlarging the debate on the concept of democracy and providing feedback from people on the proposed changes to the Constitution.

Considering the traditional polity and Tonga's changing society, accumulated knowledge and political sophistication of the 1990's, the 1875 Constitution was a radical document and was in need of a major revision. However, there was a sizable proportion of the population who remained unclear about the concept of democracy and believed that the status quo was the best system for Tonga and were confused whether or not to support the move for reform.²⁷⁵ The reformists believed that it would take considerable time to persuade ordinary people about the reforms that they were initiating.

After so many years of pushing for reform, His Majesty King Taufa'ahau Tupou IV agreed in 2005 that up to four Government Ministers could be appointed from the elected members of the Assembly. This marked the first actual formal stage of both Constitutional and political reform in Tonga. His Royal Highness Prince Tu'ipelehake, though a member of Tonga's Royal family was convinced that change

²⁷⁴ James, K. 1994. 'Tonga's Pro-democracy Movement', *Pacific Affair*, vol.67, no. 2, pp. 251.

²⁷⁵ Latukefu, S. 1993. 'The Pro-democracy Movement in Tonga', *Journal of the Pacific History*, vol. 28, no. 3, pp. 61.

was inevitable. He asserted that it was time for Tonga to consider reforming its political system and undergo a constitutional review. The National Committee for Political Reform (NCPR) was a major public, government approved and popular event, because finally Tonga's political reform depended now on the recommendations of its citizens domiciled in Tonga and those living abroad. The Constitutional and political reform of 2010, were now inevitable, although Tonga still had several years of dialogue, disruption and acrimony to pass through. This period is the subject of the next chapter.

Chapter 6

Constitutional and Electoral Commission

Tā e houá,	The hour has come,
Hake ‘a e lotú,	Christianity have been accepted,
‘I he fonua ‘o Tupou,	In Tupou’s nation,
Fa’u ‘a e Lao ke poupou,	Laws have been made to support,
Pea mo malu’i e totonú	And to protect the truth,
‘Oka me’a mai e Tu’i Fakamaau	If the Lord Chief Justice enters,
Lahi’,	The plaintiff will then be called,
Pea ui leva e Talatalaaki,	To read out it’s statement of claim.
Lau atu leva ‘ene Tohi Fekau.	Laws have been made exceptionally,
Mālie hono fa’u ‘o e Lao,	There is no bias,
‘Ikai ke filifilimanako,	Equality for all,
Ke tatau ‘a e Hai mo e Ma’ulalo,	It puts an end to tyranny,
Ta’ofi ‘a e fakaaaoa,	It safeguards individual liberty,
Hota malu ‘oku kei tu’u kakato,	So it is better for us to abide by the
Ta ‘oku tonu ke ta tauhi ‘a e lao.²⁷⁶	law.

One of the songs composed by Sir. Sofele Kakala to be sung by ‘Apifo’ou College students to increase awareness about Judiciary and the rule of law in Tonga.

²⁷⁶ Kakala, S. 1989, *Ko e Fakamaau ‘anga*, A3Z Radio Tonga, Fasi Mo e Afi.

The stubborn push from People's Representatives and from HRH Prince Tu'ipelehake over the years for government to establish a body to conduct a widespread consultation to review the Constitution was finally implemented by Legislative Assembly. Even though this move for political reform was shocking to the Monarch and the Royal family, it was an opportunity for the citizens to contemplate redress. By December 2005, the then Prince Regent HRH Crown Prince Tupouto'a (later to become King Tupou V) publicly endorsed the establishment of the Kingdom of Tonga's National Committee for Political Reform (NCPR) with HRH Prince Tu'ipelehake as the Chairperson.²⁷⁷ This demonstrated the King's good faith and his willingness to seek out the opinions of his subjects by establishing the National Committee for Political Reform (NCPR). HRH Prince Tu'ipelehake believed that this exercise was unique because the recommendations for the proposed changes to be made to the Constitution would be all from the people of Tonga and not just the views of a certain group of people.²⁷⁸

The Prince Tu'ipelehake as the Chairman of the NCPR was given permission by Legislative Assembly to choose the non-Legislative Assembly members of the Committee. With the power vested in him, HRH Prince Tu'ipelehake nominated great academics such as Dr Sitiveni Halapua, Dr 'Ana Maui Taufeu'ulungaki and Sione Tu'itavake Fonua to help him in carrying out the widespread public consultation. However, the other members of the NCPR were members of parliament, namely Fineasi Funaki, Samiu Vaipulu, Clive Edwards, Noble Tangipa and the Minister for Foreign Affairs Hon. Tu'a Taumoepeau Tupou.²⁷⁹ The NCPR was expected to submit the report of its findings together with appropriate recommendations to his Majesty the King in Privy Council in 2006 prior having it discussed in the Legislative Assembly.

²⁷⁷ Senituli, L 2007, 'Tonga did best to facilitate reform', Pacific Island Development Program/ East-West Center, viewed 23 November 2013, <http://archives.pireport.org/archive/2007/January/01-23-comm2.htm>

²⁷⁸ Pacific Islands Report 2006, Dual Reform Effort Confuses Tongans, viewed 18 December 2013, <http://pidp.org/archive/2006/February/02-01-12.htm>

²⁷⁹ 'Political reform committee continues its mission' 2006, Matangi Tonga Online, 10 May, viewed 28 December 2013, <http://matangitonga.to/2006/05/10/political-reform-committee-continues-its-mission>

The NCPR did not decide which government and legal system would be best for Tonga, but it played a critical role in shaping public deliberation that influenced the proposed political, economic and the legal system. The Committee was to receive and consider submissions, hold consultations and facilitate *talanoa* sessions relating to Constitutional and political reforms and to recommend legislations and changes with an objective to strengthen national unity and to promote the social and economic advancement of the people of Tonga. In that accord, the Committee held meetings with the ordinary people not only in Tonga but also those Tongans that had migrated overseas to New Zealand, Australia and the United States. The meetings held by the NCPR were a success as people freely submitted their recommendations and their preferred changes to the articles of the Constitution and the overall political structure of Tonga.

The Committee also underwent problems in the course of conducting the public consultation, since only a handful of the ordinary people had any real understanding of the 1875 Constitution and its contents. The NCPR faced some criticism from the people but specifically the Chairperson, HRH Prince Tu'ipelehake, condemning him of being anti-monarch, and motivated and driven by creed for power.²⁸⁰ These factors did not hinder the NCPR's effort in conducting seminars, organizing and running meetings both in Tonga and abroad. They were confident that the task would be completed as planned.

Apart from the effort of the Kingdom of Tonga's National Committee for Political Reform in conducting the widespread public consultation, there was also another Committee that also held meetings and *talanoa* sessions along similar lines. This was the People's Committee for Political Reform (PCPR) that was chaired by People's Representative, 'Akilisi Pohiva. The existence of two separate Committees confused most people but according to HRH Prince Tu'ipelehake, the difference between his Committee and the People's Committee was that the latter one promoted a model of government for the people to accept, while his Committee was trying to collate the aspirations of the people for social and economic advancement of Tonga.²⁸¹ The necessity for change in the government had created its own agenda

²⁸⁰ Taufe'ulungaki, 'A. Personal Interview, 13 November, 2013.

²⁸¹ Pacific Islands Report 2006, 'Dual Reform Effort Confuses Tongans', viewed 18 December 2013, <http://pidp.org/archive/2006/February/02-01-12.htm>

and while these two reform Committees approached the need for changes differently, the public had to decide whether the existing system was worthy of preservation? Or retain the best quality of the existing system while infusing it with new values and principles that were said to be effective, practical, new, innovative and forward-looking?

Political Reform at this stage was inevitable as was stated by HRH Princess Pilolevu Tuita, the only daughter of King Taufa'ahau Tupou IV, in her speech as the Princess Regent when opening the Legislative Assembly session for 2006. HRH Princess Pilolevu asserted that amidst this political transition, careful management of change in Tonga was very much needed:

“Political reforms in Tonga are inevitable but reforms must be managed properly to avoid disastrous consequences. These reforms must be undertaken at a pace, direction and extent which we Tongans, as a united and forward looking nation, can manage properly in the overall long term interest of our beloved nation...Change is a fact of life and thus political changes are inevitable and must be discussed thoroughly by both the public and the government...”²⁸²

Tragically, on the 6th of July 2006, a few months before the submission date, HRH Prince Tu'ipelehake and his wife, HRH Princess Kaimana Tuku'aho passed away in a fatal car accident while they were in the United States conducting meetings of the NCPR.²⁸³ This had a huge impact on the work of the National Committee for Political Reform. However, despite the untimely passing of HRH Prince Tu'ipelehake, the work of the NCPR carried on and was completed with Dr. Sitiveni Halapua as the new chairperson. The report was then presented to His Majesty King Taufa'ahau Tupou IV just before he passed away in September 2006.²⁸⁴ His Majesty King Taufa'ahau Tupou IV's eldest son and heir to the throne, HRH late Crown Prince Tupouto'a succeeded his father as the new King of Tonga. Soon after he was proclaimed Monarch in September 2006, the Office of the Lord Chamberlain announced that His late Majesty King George Tupou V would dispose all his

²⁸² Constitutional and Electoral Commission 2009, Final Report, pp. 8-9.

²⁸³ Leslie, H. E.Y. 2007. 'Tonga', Contemporary Pacific, vol. 19, no. 1, pp. 274.

²⁸⁴ 'Political Reform Report Presented to King' 2006, Scoop Independent News, 01 September, viewed 2 January 2014, <http://www.scoop.co.nz/stories/PO0609/S00022/political-reform-report-presented-to-king.htm>

commercial interests²⁸⁵; this marked the beginning of his dedication for Constitutional and political reform.

When the NCPR'S report was presented to the Legislative Assembly, Dr. Sitiveni Halapua, the new Chairperson of the NCPR, emphasised that the aspiration of the Tongan people for the reform was the most important part of the report.²⁸⁶ He reported that majority of the people wanted the traditional social structure of the King and Royal family, nobles and people untouched but certain changes to be made to the structure of government and how government is administered. According to Dr. 'Ana Taufē'ulungaki, a member of the NCPR, there was not a single Tongan in the entire meetings and consultation sessions either in Tonga or abroad who wanted the complete removal of the monarchical system in place. Nearly all Tongans wanted to maintain the three ties of the social stratification.²⁸⁷

The main change recommended in the NCPR's report on the structure of government and how government is administered was for government to reduce the powers of the Monarch to that of a ceremonial figure to enable greater participation of the people in making decisions and policies of government. This was for the Monarch's long held prerogative power to select his Representatives and Cabinet Ministers to the Legislative Assembly to be abrogated. It was also proposed for government to amend the relevant clauses of the 1875 Constitution in order for a fully elected Parliament for the people by the people to be established.²⁸⁸ This was for all members of the Legislative Assembly to be elected by universal suffrage. After electing all members of the Assembly, the King then may appoint a Prime Minister from the elected members. The new Prime Minister shall remain in his post indefinitely. The elected Prime Minister will then appoint his Cabinet Ministers from

²⁸⁵ Ministry of Information 2012, 'His Majesty King George Tupou V: A Monarch for a Time of Change', viewed 18 December 2014, <http://www.mic.gov.to/news-today/press-releases/3544-his-majesty-king-george-tupou-v-a-monarch-for-a-time-of-change>

²⁸⁶ Fonua, P 2006, 'Fully elected parliament for the people, by the people, Tonga's NCPR proposes', Matangi Tonga Online, 5 October, viewed 28 December 2013, <http://matangitonga.to/2006/10/05/fully-elected-parliament-people-people-tongas-ncpr-proposes>

²⁸⁷ Taufē'ulungaki, 'A. Personal Interview, 13 November, 2013.

²⁸⁸ Fonua, P 2006, 'Fully elected parliament for the people, by the people, Tonga's NCPR proposes', Matangi Tonga Online, 5 October, viewed 28 December 2013, <http://matangitonga.to/2006/10/05/fully-elected-parliament-people-people-tongas-ncpr-proposes>

the other remaining elected members of the Legislative Assembly.²⁸⁹ It was also proposed that the number of People's Representatives to Legislative Assembly be increased from 9 to 17 while the number of Noble's Representatives remained the same. Eventually, the Legislative Assembly agreed and voted to adopt the NCPR's report and recommendations in principle.²⁹⁰

These recommendations were an attempt to strike a balance between those who wanted a change to the system and those who wanted to preserve the system. This was an attempt to implement the notion not of a majority will or minority will, but of a Tongan concept of balanced will, *napangapanga mālie* or *potupotu tatau*. This concept of balanced will was considered an essential requirement for the reform program to be successfully carried out because it would ensure peaceful transition or *melino* in Tonga and this was described by many as a priceless commodity.

After the presentation of the NCPR's report, the government then published its own "Roadmap" for political reform. This was basically the response of the Cabinet Ministers towards the new Constitutional and political reform presented by the NCPR.²⁹¹ These responses rejected some of the NCPR's recommendations especially on the disenfranchisement of the Monarch and the disparities in numbers of Representatives in the Legislative Assembly and other recommendations such as the proposed electoral system. The main essence of the government's Roadmap for Constitutional and political reform was for the Monarch to retain his or her prerogative in appointing one third of a Cabinet of 14 members, elected from within the 14 People's Representatives (their preferred number of seats for people's representatives) and the 9 Noble's Representatives or any non-elected member of the Assembly. With these slight differences in the reports, Government then proposed a Tripartite Committee to be consisted of at least three Noble's Representatives, 3

²⁸⁹ Fonua, P 2006, 'Tonga steps forward with new road map for political reform', *Matangi Tonga Online*, 16 October, viewed 28 December 2013, <http://matangitonga.to/2006/10/16/tonga-steps-forward-new-road-map-political-reform>

²⁹⁰ Senituli, L 2007, 'Tonga did best to facilitate reform', *Pacific Island Development Program/ East-West Center*, viewed 23 November 2013, <http://archives.pireport.org/archive/2007/January/01-23-comm2.htm>

²⁹¹ Taumoepeau, 'A and Powles, G 2008, *Constitutional Change in Tonga*, paper presented at the Australasian Law Reform Agencies Conference, 10-12 September, Vanuatu.

People's Representatives and 3 Ministers of the Crown.²⁹² This Tripartite Committee was to continue on with the *talanoa* sessions to achieve the best agreeable alternative for the proposed restructuring of the Legislative Assembly and the Constitutional reform and to report back to the Assembly at the beginning of the 2007 Legislative Assembly sessions with the hope to implement political reform after the general elections of 2008.

Apart from the aforementioned reports, the PCPR also submitted a report for the proposed Constitutional and political reform. The PCPR's report was very confusing since it did not really reach a single agreeable platform.²⁹³ After proposing the number of seats for the People's Representatives to be increased from 9 to 21 and for the Noble's Representative's ascribed seats to remain the same, they later proposed to decrease the People's Representatives' seats to 17 and the Nobles' to 6.²⁹⁴ These changes created a dispute between the PCPR and the people. To gain back the people's support, the People's Representatives reverted back to the number proposed at the initial stage, hence, 9 seats for Nobles and 21 for People's Representatives.

The government responded that the Legislative Assembly has already adopted the NCPR's report in principle, so all proposed recommendations for Constitutional reform would be deferred until the proposed Tripartite Committee shall make its final recommendation based on general consensus. Prime Minister Sevele, in a press conference, stated that the King have supported the recommendations made by the Government's Roadmap for political reform. Concurrently, it was reported that during the FORUM meeting that was held in Suva, both the Prime Ministers of New Zealand and Australia also supported the Government's Roadmap for reform.²⁹⁵ However, Lopeti Senituli, the political adviser for the Premier's office informed 'Akilisi Pohiva in their informal meeting of the

²⁹² Senituli, L 2007, 'Tonga did best to facilitate reform', Pacific Island Development Program/ East-West Center, viewed 23 November 2013, <http://archives.pireport.org/archive/2007/January/01-23-comm2.htm>

²⁹³ Taufe'ulungaki, 'A. Personal Interview, 13 November, 2013.

²⁹⁴ Senituli, L 2007, 'Tonga did best to facilitate reform', Pacific Island Development Program/ East-West Center, viewed 23 November 2013, <http://archives.pireport.org/archive/2007/January/01-23-comm2.htm>

²⁹⁵ Pohiva, 'A. 2007. 'Tongan Government Refused to Listen to People', Pacific Island Development Program/ East-West Center, 23 January, viewed 23 November 2013, <http://archives.pireport.org/archive/2007/January/01-23-comm1.htm>

Government's intention of extending the time frame from the 2008 election to 2011.²⁹⁶ With all these indecisions and reversals, most believed that the implementation of the NCPR's recommendation was uncertain, putting all hope for peaceful transition under threat.

In the morning hours of the 16th of November, 2006, as the public was being informed of these circumstances by the People's Representatives, hundreds of people who had lost confidence in the Government gathered in *Pangai Si'i* (a public field facing the Legislative Assembly) and waited to pressure the Legislative Assembly to implement the PCPR's recommendations on the proposed Constitutional and political reform after being convinced that the NCPR's report was not considered by government. Many members of Parliament felt threatened by this occupation and convinced the Speaker of the Legislative Assembly, Lord Tu'ilakepa not to convene the Assembly unless the people that gathered in *Pangai Si'i* would return to their homes. This angered the crowd that occupied *Pangai Si'i* and resulted in an outbreak of civil disobedience around capital Nuku'alofa in the early morning hours of the renowned black Thursday of Tonga. The disaffected individuals screamed and shouted outside the compound of the Prime Minister's Office calling in to the Prime Minister and the government to consider people's recommendations and with no timely and clear response, the disaffected individuals threatened government officials and ended up stoning the Prime Minister's Office.

Some of the People's Representatives then presented the Prime Minister with an ultimatum requiring immediate acceptance of their recommendations; reminding them that people in *Pangai Si'i* could not be controlled if no relevant decision would be made.²⁹⁷ Prime Minister Fred Sevele attempted to soothe civil disorder later that day by agreeing to present the PCPR's recommendations for endorsement by the Privy Council and the Legislative Assembly.²⁹⁸ Unfortunately, the Prime Minister's decision came in too late. The riot in Tonga was already half way through

²⁹⁶ Pohiva, 'A. 2007. 'Tongan Government Refused to Listen to People', Pacific Island Development Program/ East-West Center, 23 January, viewed 23 November 2013, <http://archives.pireport.org/archive/2007/January/01-23-comm1.htm>

²⁹⁷ Taumoepeau, 'A and Powles, G 2008, *Constitutional Change in Tonga*, paper presented at the Australasian Law Reform Agencies Conference, 10-12 September, Vanuatu.

²⁹⁸ Senituli, L 2007, 'Tonga did best to facilitate reform', Pacific Island Development Program/ East-West Center, viewed 23 November 2013, <http://archives.pireport.org/archive/2007/January/01-23-comm2.htm>

Nuku'alofa's central business district. In the rioting, 143 businesses (33 were Chinese owned) were looted, destroyed and some were torched.²⁹⁹

The year 2006 for Tonga, was the year of wonders with surprising and tragic events both politically and psychologically. This was seen in the on-going unsteadiness of Tonga's politics with widespread public discontentment against the government structure and the growing push for reform. Astonishingly, Tonga had experienced a very historical event with the appointment of the first commoner (a position usually observed only for nobles), Dr. Fred Sevele as the new Prime Minister of Tonga after the resignation of then HRH Prince 'Ulukalala Lavaka Ata (now King Tupou VI) and the appointment of the first ever female to Cabinet, 'Alisi Taumoepeau as the new Minister of Justice.³⁰⁰ Tonga was then shocked and saddened with the news of the untimely passing of Prince Tu'ipelehake and his wife Princess Kaimana (dubbed as the People's Prince and Princess). Tonga underwent another mourning period as people mourned the passing of King Taufa'ahau Tupou IV, the ruler of Tonga for numbers of decade. Towards the end of 2006, the Kingdom of Tonga made headlines and front page in international news, magazines and media outlet with its first ever riot as the disaffected citizens trashed, looted and burnt down many businesses and buildings in the central business district of Nuku'alofa. Though this trauma set back the cause of reform by nearly a year, many people believed that this was the dawn of the new era in Tonga.³⁰¹

In 2007, the Tripartite Committee that was proposed by government to consider proposals and recommendations for the political reform was established and presented two reports in 2007 but it was clear that this Committee was not the best method to make decisions in the course of Constitutional and political reform as it was unable to finalize its deliberations.³⁰² The new Monarch; His Majesty late King George Tupou V delayed his official coronation until 2008 to enable the Government to put together the framework for Constitutional and political reform. By July 2008, a few days before late King George Tupou V's coronation, he publicly expressed his support for Constitutional and political reform and emphasised that it should be done

²⁹⁹ Bohane, B. 2007, 'Tonga: March towards Democracy', *The Diplomat*, vol. 6, no. 4, pp. 14-16.

³⁰⁰ Leslie, H. E.Y. 2007. 'Tonga', *Contemporary Pacific*, vol. 19, no. 1, pp. 274.

³⁰¹ 'Inoke, S. Personal Interview, 20 December, 2013.

³⁰² Taumoepeau, 'A and Powles, G 2008, *Constitutional Change in Tonga*, paper presented at the Australasian Law Reform Agencies Conference, 10-12 September, Vanuatu.

at a more deliberate pace. He agreed to make amendments to the Constitution to enable the relinquishment of most of his Executive powers, in the day-to-day governmental affairs and to be guided by the elected Prime Minister. This was basically to meet the democratic aspirations of many of his people.

This was a remarkable and historical event for all Tongans, as the King freely relinquished some of his powers without coercion³⁰³ (though most argued that the Monarch's decision was influenced by the riot in 2006). Political reform historically had been accomplished by a revolution after people have risen up against the aristocrats and Monarchs have been beheaded or exiled to eliminate despotism, fraud, injustice, corruption, prejudice and oppression. Revolutions have led to the reform of government, the incorporation of fundamental principles, accountability, transparency and protection of the rights of the citizens. His late Majesty King George Tupou the V would be remembered by all Tongans for he allowed the implementation of proposed democratic reforms after more than thirty of years of the vigorous push for reform.

Since Tonga did not have the appropriate measures to review its Constitution such as the Law Reform Commission that most countries have, the Cabinet approved the proposal to establish an independent Commission, composing of 5 appointed non-Legislative Assembly members to collate the works accomplished by the NCPR, Tripartite Committee and other related proposals and recommendations, carry out further research on political and constitutional reform, consider newer submissions from the King and the Executive, Legislative Assembly and the general public. The Commission was also expected to conduct more public consultation and to submit final report to Privy Council and Legislative Assembly with drafted legislations.³⁰⁴ When this Constitutional and Electoral Commission Act was passed by the Legislative Assembly, the Constitutional and Electoral Commission was established in 2008 with its members to be solely appointed by the Privy Council. In doing so, the Commission was chaired by then, Honourable Justice Gordon Ward with Hon. Tu'ivanuavou Vaea (current Lord Vaea), Dr. 'Ana Taufe'ulungaki, Dr. Sitiveni

³⁰³ HSH Prince Tu'ipelehake. Personal Interview, 19 December, 2013.

³⁰⁴ Taumoepeau, 'A and Powles, G 2008, *Constitutional Change in Tonga*, paper presented at the Australasian Law Reform Agencies Conference, 10-12 September, Vanuatu.

Halapua and Sione Tu'itavake Fonua as the other members.³⁰⁵ Three of these members namely Dr. 'Ana Taufe'ulungaki, Dr. Sitiveni Halapua and Sione Tu'itavake Fonua were former members of the National Committee for Political Reform (NCPR). The chairman and the members of the Commission were regarded as people of high calibre and integrity.

The main focus point of their work was finding the best possible changes to address the contentious issues raised by the public which had been discussed in Parliament over the years such as the roles, powers and the relationship between the Monarch, Privy Council, Cabinet and the Legislative Assembly. The Commission also considered the various recommendations for the size and composition of the Cabinet and Legislative Assembly and how would the Prime Minister be appointed. In the light of these proposed changes, the Commission also seek the best possible electoral system that would be in line with the proposed democratic reforms.³⁰⁶

However, the Commission also faced drawbacks in the course of their research and public consultations since not many people had real understanding or knowledge about the content of the 1875 Constitution though it was generally believed by the Tongans that the 1875 Constitution was a vital part of modern Tonga. This was due to the fact that many ordinary Tongans had little interest in politics and government affairs due to their perception that people had been and will always be voiceless in any initiative to change the system of government. Individuals living in far-flung districts believed that making changes in the system of government would not make any difference because government would continue to neglect their interests and focus more on the interests of those individuals residing in the central districts.³⁰⁷

After carrying out these tasks, the Constitutional and Electoral Commission submitted their final report to His late Majesty King Tupou V and the Legislative Assembly on the 5th of November 2009. The crunch of the report was the 82

³⁰⁵ Powles, G. 2013. Political and Constitutional Reform Opens door: The Kingdom of Tonga's Path to Democracy, pp. 9.

³⁰⁶ Taumoepeau, 'A and Powles, G 2008, *Constitutional Change in Tonga*, paper presented at the Australasian Law Reform Agencies Conference, 10-12 September, Vanuatu.

³⁰⁷ Powles, G. 2013. Political and Constitutional Reform Opens door: The Kingdom of Tonga's Path to Democracy, pp. 10.

recommendations relating to the three main tiers of government, namely, the Monarch [the Privy Council and the Cabinet], the Legislature and the Judiciary. The recommendations were submitted together with eight drafted legislations to amend the Constitution and other various Acts and a Bill to introduce a new Electoral Commission Act. Amongst the many recommendations about the Monarch and the system of Government was for Tonga to adopt a Constitutional Monarchy under His Majesty, his heirs and successors. It was recommended that the King and Privy Council shall no longer be part of the Executive and the Cabinet should be the Executive Government, answerable to the Legislative Assembly.³⁰⁸

It was also recommended that the prerogative power of the Monarch to appoint the Prime Minister and the Cabinet Ministers upon his or her discretion shall be removed and instead it was proposed that the Prime Minister shall be appointed by the Monarch after being selected by the elected members of the Legislative Assembly. The final report also recommended that it shall be lawful for the Monarch to pardon any criminal only after consultation with the Chief Justice and on that note; it shall not be lawful for the Monarch to mitigate any sentence imposed by a court of law for breach of any criminal law. However, apart from these proposed changes, the final report also recommended that the Monarch shall retain its powers to withhold his assent to laws and to invoke the dissolution of the Legislative Assembly.³⁰⁹

For the Privy Council, it was proposed in the final report that it shall no longer have the power to pass Ordinances or other legislations nor to exercise judicial functions. It was recommended that it shall remain solely as an advisory body to the Monarch and shall not include elected members of the Legislative Assembly. The final report also recommended that Monarch shall continue to retain the power to appoint the Privy Councillors and to call upon them at his pleasure. It was also proposed in the final report that the Prime Minister shall report each week in person to the Monarch regarding the affairs of the Government and the country.³¹⁰

For the composition of the Cabinet, it was recommended that the Prime Minister shall be elected by the elected members of the Legislative Assembly and for the Cabinet Ministers to be appointed by the Monarch upon the advice of the Prime

³⁰⁸ Constitutional and Electoral Commission 2009, Final Report, pp. 111.

³⁰⁹ Ibid.

³¹⁰ Ibid, pp. 112.

Minister. The final report also proposed that while being a member of the Cabinet, people's or noble's representatives shall continue to be the Representatives of the districts or constituencies by which they have been elected from. Moreover, the report also recommended that the composition of the Cabinet shall be limited to a maximum number of ten (10) Ministers in addition to the Prime Minister. It was also recommended that the collective responsibility of the Cabinet to the Legislative Assembly shall be included in the Constitution and there shall be power to move a motion of no confidence in the Prime Minister.³¹¹

For the Legislature, it was proposed that it shall be composed of seventeen (17) people's representatives and nine (9) noble's representatives elected to the Assembly in a term of three years prior to the Prime Minister choosing his Ministers. It was recommended that the Monarch shall retain the power to appoint one of the noble's representatives as Speaker of the House. The final report also recommended that it shall be lawful for members of the Legislative Assembly to impeach any of its members.³¹²

For the appointment of the Judges of the Court of Appeal and the Supreme Court, it was recommended in the final report of the Constitutional and Electoral Commission that the Monarch shall appoint these Judges upon the advice of the Judicial Service Commission.³¹³ The incumbent of the Attorney General post was also recommended in the final report to be appointed by the Monarch upon the advice of the Judicial Services Commission.³¹⁴

It was also recommended in the final report that Tonga should adopt a single transferable voting system and to establish an independent Electoral Commission to handle elections in Tonga.³¹⁵ With that new proposed voting system, it was also recommended that there shall be nine (9) People's Representatives for Tongatapu, three (3) for Vava'u, three (3) for Ha'apai, one (1) for 'Eua and one (1) for Niuafo'ou and Niuatoputapu. On the other hand, it was recommended that the number of the Noble's Representatives in Parliament, hence, nine (9) shall remain the same and no other person shall be added to the present number of the Nobles

³¹¹ Constitutional and Electoral Commission 2009, Final Report, pp. 112-115.

³¹² Ibid, pp. 115-117.

³¹³ Ibid, pp. 111.

³¹⁴ Ibid, pp. 114.

³¹⁵ Ibid, pp. 118.

eligible for election. Moreover, the final report also proposed that electoral districts shall also remain the same as Tongatapu, Vava'u, Ha'apai, 'Eua and Niuafo'ou/ Niuatoputapu and that the Tongans domiciling overseas shall continue to be entitled to register and to vote if they would be present in Tonga in the election time. The boundaries of electoral division and the requirements for registration for election were also recommended to remain the same. The final report lastly recommended that no preamble shall be added to the Constitution of Tonga.³¹⁶

When the final report and the drafted legislations were submitted to the Privy Council and the Legislative Assembly, most of the recommendations were accepted with no qualms. However, the Prime Minister, Dr. Sevele and the Cabinet, after consultation with the King, persuaded the Legislative Assembly not to accept some of the recommendations and to change the effects of others. The Legislative Assembly then introduced and passed into law in the first nine months of 2010 the key legislations which amended the 1875 Constitution specifically the provisions relating to the Monarch, Executive Government, Legislative Assembly, Judiciary and also the electoral system.³¹⁷

Though there were concerns and issues raised by ordinary people regarding the land tenure system specified under the 1875 Constitution, there was no recommendation in the final report regarding the land tenure system because the statute setting up the Commission deliberately omitted land from its tasks. This was due to the fact that His Majesty late King Tupou V in 2008 had established the Royal Land Commission to review the administration and distribution of land in Tonga, particularly after the failure of the 1983 Commission (see pages 68 and 89 above). This was considered a step forward for the Constitutional and political reform. The Royal Land Commission submitted their report in 2012, proposing the examination of the respective powers of the Monarch, Noble estate holders, Cabinet and the Minister of Lands in relation to people's problems and concerns regarding the land system.³¹⁸ To date, no official action has been done.

³¹⁶ Constitutional and Electoral Commission 2009, Final Report, pp. 118-119.

³¹⁷ Powles, G. 2013. Political and Constitutional Reform Opens door: The Kingdom of Tonga's Path to Democracy, pp. 3.

³¹⁸ Ibid, pp. 4.

The amendments made to the 1875 Constitution in 2010 were focussed more on the provisions set out in the second part (Form of Government) of the Constitution. There were only a few minor amendments made to the first part (Declaration of Rights) and of course, no amendments were made to the last part (Land). With the amendments passed in 2010, article number thirty (30) was renumbered and amended to provide that the form of government for Tonga would be a Constitutional Monarchy under His Majesty King Tupou V and his successors.³¹⁹ Article number thirty one (31) was also renumbered and was amended to provide the three new bodies of Government of the Kingdom of Tonga, namely, the Cabinet, Legislative Assembly and the Judiciary.³²⁰ A new article number thirty one A (31A) was inserted providing a provision for the Attorney General. The article stated that the Attorney General shall be a person who is qualified to be a Judge of the Supreme Court and shall be subject to contractual arrangements. The inserted article also provided that the Attorney General shall be the principal legal advisor to Cabinet and Government, in charge of all criminal proceedings on behalf of the Crown and perform other duties required under law. Under these new arrangements, the Attorney General shall have complete discretion to carry out his responsibilities independently without pressure from any person or authority. The article also stated that the King in Privy Council shall determine the conditions of appointment and termination of the Attorney General.³²¹

Article number thirty seven (37) concerning the prerogative of the King to pardon convicts was amended to remove the power of the King to mitigate or remit any sentence or part of any sentence imposed by any court for breach of law.³²² The powers of the Privy Council set out in article number fifty (50) of the Constitution was amended to provide the King with the power to appoint a Privy Council to advise him and shall be composed of people whom the King shall see fit to call to his Council. The article was also amended so that Order in Council can regulate its own procedures.³²³ Consecutively, two new articles were inserted, articles number fifty A (50A) and fifty B (50B). Article number fifty A (50A) was a detailed provision about

³¹⁹ Powles, G. 2013. Political and Constitutional Reform Opens door: The Kingdom of Tonga's Path to Democracy, pp. 95.

³²⁰ Ibid.

³²¹ Ibid.

³²² Ibid, pp. 98.

³²³ Ibid, pp. 100.

the Prime Minister. This new article sets out the conditions for the Prime Minister's appointment and termination.³²⁴ The other new inserted article number fifty B (50B) provided the provision for the Vote of no confidence. It stated that the Legislative Assembly has the right to pass a motion of vote of no confidence in the Prime Minister and to recommend another member to be appointed by the Monarch as the new Prime Minister. The article also sets out the procedures in order for the motion of vote of no confidence to be passed.³²⁵

Additionally, article number fifty one (51) of the Constitution for the functions, constitution and powers of Cabinet was amended to provide that the executive authority of the Kingdom shall be vested in the Cabinet, with which shall be responsible to the Legislative Assembly for the executive functions of the Government. This executive authority excludes all the powers vested in the King or the King in Council. The amended article also provided that the Cabinet shall be consisted of the Prime Minister and other Ministers whom shall be nominated by the Prime Minister and to be appointed by the Monarch. The Prime Minister shall have the power to assign and re-assign Ministries amongst the Cabinet members. The article also provided the conditions for the termination of the Cabinet members and stated that the Prime Minister shall have the power to nominate not more than 4 non-elected persons as Cabinet members. These non-elected Cabinet members shall sit and vote in the Legislative Assembly and shall have all the rights, duties and responsibilities of an elected Member of Parliament unless otherwise provided in any Act. It was also provided that these non-elected Cabinet members shall not be allowed to vote in any motion for vote of no confidence in the Prime Minister.³²⁶

Article number fifty four (54) of the Constitution for the appointment of the Governors was amended so that Governors of Vava'u and Ha'apai will be appointed by the King on the advice of the Prime Minister.³²⁷ The composition of the Legislative Assembly sets out in article number fifty nine (59) was amended to provide that the Legislative Assembly shall be consisted of the Representatives of both the Nobles and the People and the members of the Cabinet. The amended article

³²⁴ Powles, G. 2013. Political and Constitutional Reform Opens door: The Kingdom of Tonga's Path to Democracy, pp. 100.

³²⁵ Ibid, pp. 101.

³²⁶ Ibid, pp. 101-102.

³²⁷ Ibid, pp. 103.

also stated that Cabinet Ministers who had been elected as Representatives shall remain as members of the Legislative Assembly and representatives of their respective electoral constituency.³²⁸ Article number sixty (60) of the Constitution for the representative members of the Legislative Assembly was amended to increase the number of the People's Representative from nine (9) to seventeen (17) while the number of the Noble's Representative remains the same. With such changes, the amended article provided that the Legislative Assembly shall establish an independent Commission to determine the boundaries of the electoral constituencies for the election of the People's Representative. It was also provided that the constituency boundaries for the 2010 general election shall be based on the recommendations of the Royal Constituency Boundaries Commission as approved by the Legislative Assembly.³²⁹

Article number sixty one (61) of the Constitution for the appointment of the Speaker of Parliament was amended whereby the Monarch within five days after the appointment of the Prime Minister shall appoint one of the elected Representatives of the Nobles upon the recommendation of the Legislative Assembly to be the new Speaker of Parliament. The article also stated the conditions with which the appointment of the Speaker of Parliament can be revoked. However, the article provided that it shall be lawful for the Prime Minister upon the approval of at least half of the members of the Legislative Assembly to recommend to the Monarch that the Speaker be removed from office. The Monarch shall then appoint a new Speaker within seven days after the dismissal of the former Speaker upon the recommendation of the Legislative Assembly.³³⁰

Interestingly, article number sixty four (64) of the Constitution for the qualification of the electors was amended to allow qualified Tongan persons resided outside of Tonga to vote in general election if persons had been registered as electors and present in Tonga for the election.³³¹ Similar amendment was made to article number sixty five (65) for the qualification of the representatives. The amendment provided that any person resided outside of Tonga who is qualified to be an elector

³²⁸ Powles, G. 2013. Political and Constitutional Reform Opens door: The Kingdom of Tonga's Path to Democracy, pp. 104.

³²⁹ Ibid.

³³⁰ Ibid.

³³¹ Ibid, pp. 105.

shall be eligible to be one of the candidates for Legislative Assembly only if that person is present in Tonga for a period of three months within the six months prior to the election.³³²

The requirements for the general election set out in article number seventy seven (77) of the Constitution was amended to provide that elections shall be held for all Representatives of the Nobles and the People every four years and if not dissolved earlier, the Legislative Assembly shall remain dissolved until four years has lapsed from the date of the last general election. The article also stated that if the Legislative Assembly had been dissolved, the King, after consultation with the Speaker of the House shall fix a date for the next general election.³³³ Nevertheless, article number seventy nine (79) for the amendments made to Constitution was amended so that the proposed amendments that had been raised and passed three times by the Legislative Assembly be submitted to the King and if the King and the Cabinet would be unanimously in favour of the proposed amendment, then it shall be lawful for the King to assent and once the King signed for this amendment, it will then become law.³³⁴ The article number eighty three (83) for the oaths of Councillors and Representatives was amended so that all Cabinet Ministers, Nobles and People's Representatives shall sign their names to the oath and read it in the presence of the Legislative Assembly.³³⁵

The article number eighty four (84) for the Courts in Tonga was amended to provide that the Judiciary of Tonga shall be comprised of the Lord President and the Judges of the Court of Appeal, Lord Chief Justice and the Judges of the Supreme Court, Lord President and the Judges of the Land Court and the Chief Magistrate and Magistrates.³³⁶ The subsequent articles number eighty five (85) and eighty six (86) for the Court of Appeal and the Supreme Court were also amended to be in line with the amendments set out in article number eighty four. This amendment provided that the Court of Appeal shall be consisted of the Lord President and other Judges and the Supreme Court to be consisted of the Lord Chief Justice whom shall be the professional Head of the Judiciary as well as other Judges. The amendment also

³³² Powles, G. 2013. Political and Constitutional Reform Opens door: The Kingdom of Tonga's Path to Democracy, pp. 104.

³³³ Ibid, pp. 109.

³³⁴ Ibid, pp. 110.

³³⁵ Ibid.

³³⁶ Ibid, pp.112.

provided that the King in Privy Council, after receiving advice from the Judicial Appointment and Discipline Panel shall determine the terms of appointment and termination of the Lord President and the Judges of the Court of Appeal as well as the Lord Chief Justice and the Judges of the Supreme Court.³³⁷ Article number eighty eight (88) for the appointment of an Acting Judge was amended so that it shall be lawful for the King in Privy Council, after receiving advice from the Judicial Appointment and Discipline Panel during the absence of any judge to appoint an acting Judge to continue on with the judicial functions.³³⁸

In addition to the amendments aforementioned, four more new articles were inserted. Article number eighty three A (83A) for the Rule of Law and Judicial Independence was inserted to provide that the existing underlying Constitutional principles of the rule of law and Judicial Independence in Tonga shall be maintained.³³⁹ Article number eighty three B (83B) was inserted to provide a provision for the Lord Chancellor. This new inserted article stated that the King in Privy Council shall appoint a Lord Chancellor upon the advice of the Judicial Appointments and Discipline Panel. Yet again, The King in Privy Council shall determine the term of appointment for the Lord Chancellor upon the advice of the Judicial Appointments and the Discipline Panel and has the ultimate power to dismiss him. The appointed Lord Chancellor shall be a person who is qualified to be a Judge of the Supreme Court. The Lord Chancellor will be responsible for the administration of the Courts, all matters related to the Judiciary and its independence, maintenance of the rule of law and related matters specified in the Constitution. The article also provided that the Lord Chancellor shall have complete discretion to carry out its duties and exercise its powers independently, unless otherwise provided by law. The article also provided that the Lord Chancellor may make regulation for the Judges, office of the Attorney General and the office of the Lord Chancellor itself with the prior consent of the King in Privy Council.³⁴⁰

The new article number eighty three C (83C) was added to set out the provision for the Judicial Appointments and the Discipline Panel (JADP). The article

³³⁷ Powles, G. 2013. Political and Constitutional Reform Opens door: The Kingdom of Tonga's Path to Democracy, pp. 113.

³³⁸ Ibid, pp. 114.

³³⁹ Ibid, pp. 111.

³⁴⁰ Ibid, pp. 111-112.

provided that a Judicial Appointment and Discipline Panel will be established as a Committee of the Privy Council that shall advise the King on matters such as the appointment of qualified persons to Judiciary like the Lord Chancellor, disciplining and dismissing of the members of the Judiciary, remuneration and terms of services, code of Judicial Conduct and the appointment of assessors to the Panel of Land Court Assessors.* The article stated that the Judicial Appointments and Discipline Panel shall be comprised of the Lord Chancellor, whom shall be the Chairman, the Lord Chief Justice, Attorney General and the Law Lords (appointed by the King).³⁴¹

The last new inserted article, article number eighty six A (86A) for Land Court was inserted to administer the operation of the land court in dealing with cases relating to land and hereditary titles. The new article stated that the Land Court shall be consisted of a Lord President and other Judges whom will be assisted by assessors, appointed from time to time by the King with the consent of the Privy Council, after receiving advice from the Judicial Appointment and Discipline Panel. Similar to the Court of Appeal and the Supreme Court, the King in Privy Council, after receiving advice from the Judicial Appointment and Discipline Panel shall determine the terms of appointment and termination of the Lord President and the Judges of the Land Court.³⁴²

The final component of the Constitutional amendments of 2010 was the insertion of the procedures for the appointment of the Prime Minister in the Schedule. This provided that within 10 days from the return of the writs of election after the general election, the Interim Speaker (a person not a candidate at the general election appointed by the King to hold office until a Speaker will be officially appointed) shall invite all elected Representatives of both the People and the Nobles to submit their nomination for Prime Minister Designate, seconded by other two Representatives within fourteen days from the return of the writs of election. Within

*This clause number 83C which set out the provision for the establishment of the JADP was recommended by the Constitutional Commission to be abolished and suggested a return to the former Judicial Services Commission. The Monarch is now considering whether to assent to the Acts passed by the Legislative Assembly that would abolish this specific clause and all these provisions for appointment of Judges and the Attorney General and for the Judicial Services Commission to be re-instated. However, the Constitutional Commission's recommendations were not responsible for what seemed to have been the poor advises provided by the Law Lords to the Monarch.

³⁴¹ Powles, G. 2013. Political and Constitutional Reform Opens door: The Kingdom of Tonga's Path to Democracy, pp. 112.

³⁴² Ibid, pp. 113-114.

three days after the last date of receiving nominations, the interim Speaker shall convene a meeting for all elected members of Parliament to elect who they shall recommend for appointment as Prime Minister Designate. Every Representative shall have the right to speak on his behalf or that of another during the meeting and shall vote thereon by secret ballot and if one nominated candidate receives more than half of the votes as a result, the Interim Speaker shall report to the King for the appointment of the elected nominated candidate as Prime Minister Designate.³⁴³

However, the Schedule also provided that if no nominated candidate has been elected as Prime Minister Designate in the meeting convened by the Interim Speaker, the Interim Speaker again shall convene another meeting two days after and in that meeting, the nominated candidate(s) with the least vote shall be eliminated and the members of Parliament shall proceed on to vote by secret ballot. If one nominated candidate receives more than half of the votes, the Interim Speaker shall report to the King for the appointment of the elected nomination as Prime Minister Designate. Yet, if there was no nominated candidate has been elected as Prime Minister Designate, the Schedule provided that the procedure shall be likewise repeated. If the members of Parliament will continuously fail to recommend a Prime Minister Designate, the King may extend the nomination period and may authorise the Interim Speaker to vary such procedures to enable a recommendation to be made.³⁴⁴

With these Constitutional amendments, it was evident that the structure of Tonga's new system of government has taken a peculiarly Tongan approach to democracy. This can be seen in the balance of the authority and influence of the Monarch with the powers and status of other tiers of government in the transferral of executive powers from the King in Privy Council to Government. A Constitutional Monarchy in place, a Parliament with a majority elected by universal suffrage, a Prime Minister elected by a majority in Parliament, a Cabinet nominated by the Prime Minister whom would be chosen from the elected members of Parliament and an impartial and independent Judiciary protected from political influence. In the light of these reforms, not many changes were made to the traditional composition of Government, since Tonga still has a King, a Cabinet, a Legislature composing of

³⁴³ Powles, G. 2013. Political and Constitutional Reform Opens door: The Kingdom of Tonga's Path to Democracy, pp. 121.

³⁴⁴ Ibid, pp.121-122.

Representatives of both Nobles and the People and an independent Judiciary and with the fact that the Monarch still remains the Head of State or the *Hau 'o Tonga* (traditional leader of all Tongans). Despite these Constitutional and political reforms in place, the Tongan sense of identity, traditions and culture have still been left unharmed, *Neongo e ngaahi liliu, 'oku kei Tonga pē 'a Tonga*.

With these amendments in place, it is important to note that though most of the prerogative powers of the monarch in government affairs were relinquished, the Monarch still has important powers in place specified in the various clauses of the Constitution. These includes the power to command any taxpayer to join the militia for the purpose of instructions or for parade on public occasions and to call out all those capable of bearing arms in time of war and to make orders and regulations for their control and provisioning specified under clause number twenty two (22) and has the power to proclaim martial law over any part or the whole of the country as stated in clause number forty six (46). The Monarch is still approving applications to become naturalised Tongan subjects stated in clause number twenty nine (29). The Monarch is still consenting the marriage of the person who is likely to succeed to the throne of the Kingdom of Tonga appeared on clause number thirty three (33). The Monarch still remains the Commander in Chief of the armed forces of Tonga stated in clause thirty six (36) and still has the power to convoke and dissolve the Legislative Assembly at any time and may command new elections to be held stated in clauses number thirty eight (38) and seventy seven (77).³⁴⁵

As stated in clause number thirty nine (39), the Monarch still has the power to make treaties with other states and to appoint diplomatic representatives. The Monarch also has the power to confer titles of honour and honourable distinctions specified under clause number forty four (44). Most importantly, the Monarch still has the power to withhold his sanction from any law passed by the Legislative Assembly submitted for approval or the veto power stated in clause number sixty eight (68). Yet, the Monarch still has the power to assent to Acts that have been passed by the Legislative Assembly before they become law stated in clause number forty one (41) and seventy nine (79). Lastly, the Monarch still has the power to

³⁴⁵ Powles, G. 2013. Political and Constitutional Reform Opens door: The Kingdom of Tonga's Path to Democracy, pp.56.

appoint whomsoever he thinks fit to the Council to advise him stated in clause number fifty (50).³⁴⁶

Tonga's first democratic election was held on the 25th of November 2010. The Friendly Islands Democratic Party led by 'Akilisi Pohiva, won 12 seats out of the 17 popularly elected, 3 seats were won by Representatives that aligned with government and the remaining 2 seats were won by Representatives who openly declared themselves independent. In the 2010 general election, Tongatapu's People's Representatives to Legislative Assembly were 'Akilisi Pohiva, Semisi Sika, Dr. Sitiveni Halapua, 'Isileli Pulu, 'Aisake Eke, Siosifa Tu'utafaiva, Sangster Saulala, Sione Taione, Kaveinga Fa'anunu (passed away during his term in office and was replaced by Falisi Tupou) and Semisi Tapueluelu. The Ha'apai group were represented by 'Uliti Uata and Mo'ale Finau, Sunia Fili for 'Eua, Fe'ao Vakata for Niufo'ou and Niuatoputapu and Dr. Viliami Uasike Latu, Samiu Kuita Vaipulu and Lisiate Aloveita 'Akolo for Vava'u.³⁴⁷ For the Noble's Representatives, Lord Tu'ivakano, Lord Ma'afu and Lord Vaea were elected to represent Tongatapu. Lord Tu'iha'ateiho and Lord Fakafanua were elected for the Ha'apai group, Lord Tu'ilakepa and Lord Tu'i'afitu for Vava'u group while Lord Lasike for 'Eua and Lord Fusitu'a for Niufo'ou and Niuatoputapu.³⁴⁸

The Assembly members initiated negotiations with a view to form a new government. On 21st December, 2010, Lord Tu'ivakano, a Noble Representative from Tongatapu, was elected as Prime Minister, defeating 'Akilisi Pohiva by 14 votes to 12.³⁴⁹ Lord Tu'ivakano was then appointed by His late Majesty King George Tupou V as the Prime Minister and then formed a government of twelve Ministers (two non-elected members). While Lord Tu'ivakano was elected as the Prime Minister, he was also the Minister for Foreign Affairs and Defence as well as the Minister for Information and Communication. Lord Tu'ivakano then appointed Samiu Kuita Vaipulu as the Deputy Prime Minister, the Minister of Justice as well as the Minister for Transport and Works, Lord Ma'afu as the Minister of Lands, Survey

³⁴⁶ Powles, G. 2013. Political and Constitutional Reform Opens door: The Kingdom of Tonga's Path to Democracy, pp.56.

³⁴⁷ Pohiva, 'A. 2010. 'Uluaki Faito'o 'a e Kafo', Kele'a, 01 December, pp. 5.

³⁴⁸ Pohiva, 'A. Personal Interview, 12 November, 2013.

³⁴⁹ Commonwealth Secretariat, 2010, 'Tonga: Political Reform', viewed 18 December 2013, <http://thecommonwealth.org/our-member-countries/tonga/constitution-politics#sthash.rkWYpX9F.dpuf>

and Natural Resources, Lord Vaea as the Minister of Agriculture, Food, Forestry and Fisheries and ‘Akilisi Pohiva as the Minister of Health (he resigned from Ministerial post three weeks later). Sunia Fili was elected as the Minister of Finance, Dr Viliami Uasike Latu as the Minister of Police, Prisons and Fire Services, ‘Isileli Pulu as the Minister of Labour Commerce and Industries, Lisiate ‘Aloveita ‘Akolo as the Minister of Tourism and Fe’ao Vakata as the Minister for Training, Employment, Youth and Sport. Lord Tu’ivakano then appointed two non-elected members of Parliament, William Clive Edwards as the Minister for Revenue Services and the Public Enterprise and Dr ‘Ana Maui Taufē’ulungaki as the Minister for Education, Women Affairs and Culture.³⁵⁰

In King George Tupou V’s speech in the opening session of the newly structured Legislative Assembly in 2011, His late Majesty claimed that political reforms were one of the highest priorities of Tonga and had been peacefully achieved. He affirmed that this reform would champion the cause of justice equally on behalf of the powerful as well as the humble:

“There is wide spread rejoicing in the Realm at the completion of the first stage of our new democratic reforms which we may credit to the legacy of the previous government and Parliament who, without a single voice of dissent, enacted these historic reforms. The essence of these reforms is that the power to propose and to enact future reforms is firmly vested in the parliament so that we might make small adjustments often as opposed to sudden changes of great magnitude after long periods of inactivity”³⁵¹

With differences of opinions on the part of some of the Cabinet members during the first 2 years of the new elected government, some of the Cabinet members were reshuffled by the Prime Minister. Yet, some members of the Cabinet resigned due to the interests of the Friendly Island Democratic Party and unexpectedly one of the Cabinet members was forced to resign by the Prime Minister in early 2014. The on-going disparities between People’s Representative and government were resulted in the People’s Representatives’ attempts to table a motion for a vote of no

³⁵⁰ Latu, J 2010, ‘New Cabinet lineup: 1 woman, 2 Demo Party members, 2 nobles’, Taimi Media Network, 30 December, viewed 30 December 2013, <http://www.taimionline.com/articles/1042>

³⁵¹ Ministry of Information. 2011, ‘Address from the throne at the State Opening of Parliament’, viewed 28 December 2013, <http://www.mic.gov.to/legislative-assembly?start=30>

confidence in the Prime Minister in June 2012. This motion was intended, if successful, to change the Government formation, hence, a new elected Prime Minister and Cabinet members. The People's Representatives claimed that majority of the people wanted this motion to be passed because they really needed to be in control of the Cabinet, so that they can elect the Prime Minister from the People's Representatives.³⁵² The People's Representatives led by 'Akilisi Pohiva, strictly followed the procedures set out in the article number 50B of the Constitution for the Votes of No Confidence. Concurrently, the Legislative Assembly was caught up in series of other urgent businesses and issues and the motion was adjourned several times until it was voted in October and the motion was defeated by a 13 to 11 votes.³⁵³ With the defeat of this motion in 2012, another such motion may not be moved within the next 12 months or within the 6 months prior to the next election date in 2014.³⁵⁴

In 2012, the Tongan Parliament could not decide which version of the Tongan Constitution has precedence, the Tongan version or the English version? This ambiguity concerned article number eight (8) of the Constitution which provided for the Freedom of petition. The problem that Parliament was trying to resolve is the confusion in the interpretation between the English and the Tongan version of the article number eight. The English version provided that people are allowed to petition the King or the Legislative Assembly only to pass or repeal enactments. However the Tongan version provided that people are allowed to petition the King or the Legislative Assembly on any issues of their concern. This has raised some interesting points such as: which version of the Tongan Constitution is binding when clauses differ in interpretation? Which was the original version, the Tongan or the English? And what difference would it make if the Tongan version would be amended to match the English version? The Legislative Assembly voted for the Bill to be passed on to the Legislative Assembly's Standing Committee on Legislation to settle the issue. At the meantime, Tonga's Attorney General, Mr. Neil

³⁵² Powles, G. 2013. Political and Constitutional Reform Opens the Door: The Kingdom of Tonga's Path to Democracy, pp. 73-75.

³⁵³ Ibid.

³⁵⁴ Ibid, pp. 101.

Adsett confirmed that any disagreements in the interpretation of the law, the English version would take precedence.³⁵⁵

However, the Constitutional changes and political reform of 2010 was indeed a historical event in Tonga's history as the King, Government and the Legislative Assembly finally agreed to amend the Constitution substantially after 135 years from its promulgation. The Constitutional and Political changes of 2010 had been praised by many Tongans since it implemented the majority of the changes that 'Akilisi Pohiva and the members and supporters of the PDM had campaigned for over a period of more than 30 years.³⁵⁶ The main crucial parts of this 2010 Constitutional and political reform were the changes in the system of government, narrowing of some of the prerogative powers of the Monarch especially in governmental affairs, the devolution of the executive power from the Monarch to the elected Representatives of the Nobles and the People and the broadening of the People's voice in Parliament with the increasing of their ascribed seats from 9 to 17.

Nonetheless, people responded differently to the 2010 Constitutional Reform according to their own beliefs and experiences in the first few years of the new government system in place. First of all, majority of my interviewees were actually contented with the Constitutional amendments in 2010 and believed that these changes were more than enough for Tonga. Since Tonga is still in the trial and error phase, majority of the interviewees argued that Tonga surely needs time before any new amendments would be implemented.³⁵⁷ On the other hand, some of my interviewees claimed that even though Constitution has been amended to change the system of government, not many changes have been seen yet in government

³⁵⁵ Fonua, P 2012, 'House debate becomes lost in translation', Matangi Tonga Online, 5 September, viewed 28 November 2013, <http://matangitonga.to/2012/09/05/house-debate-becomes-lost-translation>

³⁵⁶ Pohiva, A. Personal Interview, 12 November, 2013

³⁵⁷ Mafi, P. Personal Interview, 20 November, 2013.

Pahulu, M. Personal Interview, 13 December, 2013.

Vakata, F. Personal Interview, 26 November, 2013

'Inoke, S. Personal Interview, 20 December, 2013.

Fusitu'a, 'E. Personal Interview, 18 November, 2013.

Vaipulu, S. Personal Interview, 15 November, 2013.

Lord Fusitu'a, Personal Interview, 18 November, 2013.

Lord Vaea, Personal Interview, 22 November, 2013.

Lord Tupou. Personal Interview, 20 December, 2013.

Mafi, A. Personal Interview, 09 December, 2013.

Paunga, M. Personal Interview, 5 December, 2013.

Lemoto, M. Personal Interview, 25 December, 2013.

HSH Tu'ipelehake, Personal Interview, 19 December, 2013.

performances. They also claimed that the Constitutional amendments that were implemented in 2010 were only 75% of the changes that they wanted; therefore they believed that the Constitutional reform process in Tonga was still incomplete.³⁵⁸

Interestingly, some of my interviewees found some flaws and faults in some of the new or amended articles of the Constitution and suggested serious adjustments. They also found some other issues in some of the articles and also suggested further amendments to be made to the Constitution.³⁵⁹

Firstly, a few of my interviewees suggested that article number fifty B (50B) for the vote of no confidence should be amended again to include certain conditions to which a motion of vote of no confidence in the Prime Minister can actually be moved by members of parliament. It was also suggested that it should include in article 50B that a motion for a vote of no confidence be only passed if two third majorities of the members of Parliament agreed rather than simple majority to ensure government stability considering the fact that Parliament has only 26 members and any slight differences with members crossing the floor will change the government instantly. In that accord, it was also suggested that members of parliament should be increased to facilitate the majority number needed for a motion of no confidence to be passed.³⁶⁰ One of my interviewees suggested that article for the vote of no confidence should be repealed since similar measurement has been provided in

³⁵⁸ Finau, F. Personal Interview, 29 November, 2013.
Takeifanga, H. Personal Interview, 28 November, 2013.
Fukofuka, U. Personal Interview, 17 December, 2013.
Pohiva, 'A. Personal Interview, 12 November, 2013.
Niu, L. Personal Interview, 03 December, 2013.
Tutone, F. Personal Interview, 17 December 2013.
³⁵⁹ Pohiva, 'A. Personal Interview, 12 November, 2013.
Sauaki, L. Personal Interview, 2 December, 2013.
Fusitu'a, 'E. Personal Interview, 18 November, 2013.
Edwards, W. C. Personal Interview, 19 Nov, 2013.
Takeifanga, H. Personal Interview, 28 November, 2013.
Tohi. K. Personal Interview, 4 December, 2013.
³⁶⁰ Edwards, W. C. Personal Interview, 19 Nov, 2013.
Mafi, A. Personal Interview, 09 December, 2013.
Lord Sevele, Personal interview, 12 December, 2013.
Faletau, S. Personal Interview, 09 December, 2013.
Vaipulu, S. Personal Interview, 15 November, 2013.

article number seventy five (75) of the Constitution for the impeachment of the members of Parliament.³⁶¹

Many of my interviewees expressed their concerns about the new electoral system and claimed that it deprived them of their voting rights and the right to choose the best possible representatives in Parliament. They believed that the new adopted first past the post electoral system had provided the people with limited scope of choice as they were only required to vote one candidate from the limited pools of candidates in each respective constituency. With the limited list of candidates ascribed to respective constituencies, some people refrained from voting or simply voted randomly because their best choice was not in the list of candidates in their constituency. As a result, majority of the people in most constituencies were left unrepresented in Parliament.³⁶² This can be seen in the result of the general election of November 2010 which appeared in the *Kele'a Newspaper* publications in December 2010. This table contains only the election results of the first top three candidates of each respective constituency. The highlighted figures in the table below clearly showed the majority of the people in each constituency that were left unrepresented in Parliament as a result of the new implemented voting system.

Constituencies	Candidates	Votes	Constituencies	Candidates	Votes
Tongatapu 1	‘Akilisi Pohiva	1657	Tongatapu 9	Kaveinga Fa’anunu	908
	Taniela Palu	567		Seventeen Toumo’ua	414
	Polutele Tu’ihalamaka	270		Viliani Fukofuka	262
Tongatapu 2	Semisi K. L. Sika	849	Tongatapu 10	Semisi P. ‘I. Tapueluelu	792
	Viliani T. Tangi	641		Pohiva Tu’i’onetoa	613

³⁶¹ Vaipulu, S. Personal Interview, 15 November, 2013.

³⁶² Paunga, M. Personal Interview, 5 December, 2013.

Taufe’ulungaki, ‘A. Personal Interview. 13 November, 2013.

Funaki, S. Personal Interview, 21 November, 2013.

	‘Alisi N. Taumoepeau	306		Faka’osilea Kaufusi	608
Tongatapu 3	Sitiveni Halapua	1047	‘Eua 11	Sunia Fili	772
	William C. Edwards	681		Sengili Moala	667
	Penisimani Vea	257		Tevita Lavemaau	637
Tongatapu 4	‘Isileli Pulu	1274	Ha’apai 12	Mo’ale Finau	370
	Etika Koka	302		Vili Hingano	306
	Etuate Sakalia	215		Paula Vi	280
Tongatapu 5	‘Aisake V. Eke	679	Ha’apai 13	‘Uliti Uata	1090
	Maliu M. Takai	616		Teisina Fuko	253
	Siale N. Fihaki	302		Kamipeli Tofa	204
Tongatapu 6	Siosifa T. Tu’utafaiva	735	Vava’u 14	Lisiate ‘Akolo	665
	Siosaia Moehau	731		‘Etuate Lavulavu	540
	Posesi F. Bloomfield	389		Piveni Piukala	502
Tongatapu 7	Sione S. Saulala	847	Vava’u 15	Samui Vaipulu	618
	Massasso Paunga	621		Salesi Paea	362
	Sione V. Fa’otusia	429		Keuli Lavaki	305
Tongatapu 8	Sione H. Taione	901	Vava’u 16	Viliami Latu	881
	Lui ‘Aho	770		Tevita Palefau	347
	Fataimoemanu L. Vaihu	474		Kaafi Tukufuka	298
			Niua 17	Fe’ao Vakata	383

				Feingatau 'Iloa	228
				Petelo 'Ahomana	208

Source: Kele'a Newspaper, 01 December, 2010, pp. 5

A few of my interviewees suggested that Tonga should adopt a single transferrable voting system instead of the out-dated first past the post voting system whereby the electors can choose all the candidates that he or she preferred to be in Parliament. This would guarantee that everyone would be represented in Parliament.³⁶³

A few of the interviewees also identified issues with the boundaries of electoral constituencies set out by the Electoral Commission pursuant to article number sixty (60) of the Constitution for the election of the People's Representatives. They asserted that the given electoral boundaries have divided up villages and families into two or more constituencies, "*oku ne vaetu'ua e ngaahi kolo e ni'ihiki kae'uma'a e nofo 'a e kaininga*". Dividing up villages and families had indeed lessened the votes for some of the candidates and limited the choices of the voters. Votes of villages with small population would likely to be dominated by the votes of villages with dense population. This had affected the voters as the elected candidates overlooked the needs and wants of minority villagers that were divided up from their villages to form parts of constituencies. The concerned interviewees suggested that the existing electoral boundaries should be removed and to re-divide another electoral boundaries in accordance to the population ratio.³⁶⁴

Concerns were also raised with the new legal structure provided in the new inserted articles of the Constitution for the establishment of the independent offices of the Lord Chancellor (article 83B) and the Attorney General (article 31A). A few of my interviewees believed that appointing of the incumbents for these two offices

³⁶³ Taufe'ulungaki, 'A. Personal Interview, 13 November, 2013.

'Inoke, S. Personal Interview, 20 December, 2013.

Paunga, M. Personal Interview, 05 December, 2013.

Lauti, 'A. Personal Interview, 22 November, 2013.

Lord Vaea, Personal Interview, 28 November, 2013.

³⁶⁴ Taufe'ulungaki, 'A. Personal Interview, 13 November, 2013.

Lord Vaea, Personal Interview, 28 November, 2013.

Pulotu, 'O. Personal Interview, 11 December, 2013.

Paunga, M. Personal Interview, 05 December, 2013.

by an independent body (Judicial Appointments and Discipline Panel) would not make them legally accountable to the Executive Government since none of the said incumbents would be members of Parliament.³⁶⁵ The interviewees believed that the arrangement for the Lord Chancellor and the Attorney General's office and the Judicial Appointments and Discipline Panel (JADP) were not even publicly accountable. The origins of this new structure were unknown to many since there were no documents that depicted how and why the structure was created. The interviewees affirmed that the proposal for the establishment of these two independent offices were not submitted to be reviewed by the Constitutional and Electoral Commission in order to determine whether this new structure was compatible with the rest of the political changes that were made to the Constitution.³⁶⁶ It was believed that the establishment of these independent offices was a new and untried legal structure that does not have its roots in any Commonwealth country.

The appointment of the Attorney General by an external body (JADP) excluding the Government concerned some of my interviewees. Normally, Governments requires legal advisors and in democratic governments, the Executive Government has the right to select their own legal advisors, a person that the Executive Government has faith and trust in delivering legal services to them as a client. However, in the new legal structure, the Executive Government has no power to select its own legal advisor since it was provided in the Constitution to be appointed by an independent body with procedures that were not open to public accountability. This had put the public trust and faith in Government's legal advisors at stake. With these issues in hand, it was proposed by a few of my interviewees that the administration of the courts under Lord Chancellor's office be removed and to be administered by the Ministry of Justice and for the appointment of the Attorney

³⁶⁵ Edwards, W. C. Personal Interview, 19 Nov, 2013.

Faletau, S. Personal Interview, 09 December, 2013.

Pahulu, M. Personal Interview, 13 December, 2013.

Mafi, A. Personal Interview, 09 December, 2013.

³⁶⁶ Edwards, W. C. Personal Interview, 19 Nov, 2013.

Faletau, S. Personal Interview, 09 December, 2013.

Pahulu, M. Personal Interview, 13 December, 2013.

Mafi, A. Personal Interview, 09 December, 2013.

General by the JADP be removed and returned to the normal democratic appointment by the King upon the advice of the Prime Minister.³⁶⁷

The results of the general election of 2010 was criticised by many ordinary Tongans and so as some of the international media as some of the elected members of Parliament were considered unskilled and incompetent. This was due to the fact that voters did not realize the importance of selecting a quality representative that can represent them well in Parliament rather than selecting who they knew best and popularity. Majority of the voters were highly influenced by their family loyalties, patronage and church ties. Many of the interviewees argued that article number sixty five (65) of the Constitution that provided the qualification and eligibility of candidates running as People's Representatives in general election should be amended to include certain academic qualification or working experiences as a benchmark in order to have competent and experienced People's Representatives with good leadership skills in Parliament.³⁶⁸ This would ensure that good people with vivid understanding of various issues in social, economic and political affairs would be elected to positions of responsibility and be the best possible Representatives of the People in Government.

Many of my interviewees suggested that procedures of electing the Prime Minister set out in the schedule of the Constitution be amended so that the Prime Minister would be elected from amongst the members of Parliament by universal suffrage. The interviewees also suggested that article number fifty nine (59) of the Constitution for the composition of Parliament should be amended to remove the Representatives of the Nobles so that all 26 seats in Parliament should be elected by

³⁶⁷ Edward. W. C. Personal Interview, 19 November, 2013.

Faletau, S. Personal Interview, 09 December, 2013

Pahulu, M. Personal Interview, 13 December, 2013

Lauti, 'A. Personal Interview, 22 December, 2013

Mafi, A. Personal Interview, 09 December, 2013

³⁶⁸ Takeifanga, H. Personal Interview, 28 November, 2013

Tovo, 'I. Personal Interview, 27 November, 2013.

Taufe'ulungaki, A. Personal Interview, 13 November, 2013.

Lauti, 'A. Personal Interview, 22 November, 2013.

HSH Tu'ipelehake, Personal Interview, 19 December, 2013.

Pulotu, 'O. Personal Interview, 11 December, 2013.

'Inoke, S. Personal Interview, 20 December, 2013.

Fusitu'a, 'E. Personal Interview, 18 November, 2013.

Lord Fusitu'a. Personal Interview, 18 November, 2013.

Vakata, F. Personal Interview, 26 November, 2013.

the ordinary citizens.³⁶⁹ A few of the interviewees suggested that if a noble wants to enter Parliament he would need to run as a People's Representative in the general election.³⁷⁰ Though these proposals had been raised and were voted out in Parliament, it still concerned many people especially the supporters of the Friendly Island Democratic Party. They believed that the minority are still ruling the majority even though seats for People's Representatives were increased from 9 to 17.³⁷¹ 'Akilisi Pohiva believed that the power of representation would not be balanced since the number of seats for Nobles Representatives in Parliament still remained the same.³⁷² The electing of the Prime Minister by universal suffrage would ensure that the elected Prime Minister would be responsible to the public rather than the few elected members of Parliament.³⁷³

Some of my interviewees showed discontentment towards the amendments made to article number six (6) of the Constitution that provided for the Sabbath Day to keep holy in Tonga. These interviewees proposed that this article should be amended again so that the statute that was passed by the Legislative in 1971 to particularize what may or may not be done on the Sabbath day be repealed. The interviewees believed that Sabbath day should be kept holy in Tonga forever in accordance to biblical teachings, hence, all bakeries and other business ventures allowed to trade on Sunday should be banned.³⁷⁴

³⁶⁹ 'Inoke, S. Personal Interview, 20 December, 2013.

Eke, 'A. Personal Interview, 19 December, 2013.

Pulotu, 'O. Personal Interview, 11 December, 2013.

Helu, S. Personal Interview, 27 November, 2013.

'Inoke, M. Personal Interview, 07 December, 2013.

Niu, L. Personal Interview, 03 December, 2013.

Pohiva, 'A. Personal Interview, 12 November, 2013.

Sauaki, L. Personal Interview, 02 December, 2013.

Funaki, S. Personal Interview, 21 November, 2013.

Tutone, F. Personal Interview, 17 December 2013.

³⁷⁰ Pohiva, 'A. Personal Interview, 12 November, 2013.

Funaki, S. Personal Interview, 21 November, 2013.

Niu, L. Personal Interview, 03 December, 2013.

Tutone, F. Personal Interview, 17 December 2013.

³⁷¹ Pohiva, 'A. Personal Interview, 12 November, 2013.

Niu, L. Personal Interview, 03 December, 2013.

³⁷² Moala, K 2014. 'Akilisi Pohiva: Tonga's Champion for Democracy, *Pacific Scoop*, 4 March, viewed 28 Apr, 2014, <http://pacific.scoop.co.nz/2014/03/tonga-a-reformist-old-warriors-political-agenda/>

³⁷³ 'Inoke, M. Personal Interview, 07 December, 2013.

³⁷⁴ Taione, S. Personal Interview, 18 December, 2013.

Leka, T. Personal Interview, 02 December, 2013.

In the 2010 general election, it was argued that irrespective of formal recognition, there were political parties existed in Tonga, the Democratic Party of the Friendly Islands (DPFI) and that of government. Yet, many of the ordinary citizens were confused who to choose in the 2010 general election since both parties did not have policy manifestos.³⁷⁵ Two of the interviewees proposed that Constitution should be amended to provide an article for the establishment of formal political parties. They believed that neither the NCPR nor CEC recommended in their reports for the Constitutional review that there be a formal political parties established in Tonga. The interviewees argued that Tonga should have political parties because it played very important roles in politics such as providing quality government leaders, developing policies and programmes, setting up collective goals and strengthening government unity and cooperation, as seen clearly in many democratic governments.³⁷⁶

It was suggested by one of the interviewees to amend article number seventy nine (79) of the Constitution which provided for the amendments to be made to the Constitution. The interviewee believed that proposed amendments that have been passed by the Legislative Assembly three times should be passed on to the King to assent and sign in order to become law instead of passing through the Cabinet. The interviewee argued that the Legislative Assembly's effort in discussing and passing of any proposed amendments would be futile if a member of the Cabinet disagrees. The interviewee also argued that the passed proposed amendments from the Legislative Assembly should not be discussed by the Cabinet members again because they were also members of the Legislative Assembly who initially discussed and passed such proposed amendments.³⁷⁷

Funaki, S. Personal Interview, 21 November, 2013.

Finau, F. Personal Interview, 29 November, 2013.

Tapueluelu, S. Personal Interview, 18 December, 2013.

Mafi, P. Personal Interview, 20 November, 2013.

'Akau'ola, S. Personal Interview, 4 December, 2013.

Vea, S. Personal Interview, 10 December, 2013.

³⁷⁵ Tekiteki, S 2012. 'Political Reform: Tonga's Consensus approach to lawmaking', Commonwealth Parliamentary Association, viewed 18 December 2013,

http://www.cpahq.org/cpahq/Mem/Publications/The_Parliamentarian/The_Parliamentarian_Issue_1_2_012/Tekiteki-Political_Reform_in_Tonga.aspx

³⁷⁶ Fukofuka, U. Personal Interview, 17 December, 2013.

HSN Tu'ipelehake, Personal Interview, 19 December, 2013.

³⁷⁷ Taione, S. Personal Interview, 18 December, 2013.

Women also expressed their concerns that the amended Constitution still does not provide women with the same equal rights with men. Majority of the female interviewees argued that even though women are respected in the society, they were not given equal rights with men, economically in terms of properties and land rights and politically as women were not equally represented with men in Parliament (the only female member of Parliament after the 2010 general election is the Minister of Education, Dr. 'Ana Maui Taufē'ulungaki, who was not elected in from universal suffrage but was appointed by the Prime Minister). Majority of my female interviewees proposed that relevant articles of the Constitution regarding land rights should be amended to allow women to have equal rights with men in inheriting lands and properties of their fathers and to amend the article for the composition of the Legislative Assembly to provide special seats or quota for women.³⁷⁸

One of the interviewees proposed that a new article should be added to the Constitution to provide for the establishment of an Anti-Corruption Commission or an Ombudsman in Tonga. This would provide a safe and comfortable environment to discuss complaints, concerns or problems occurring both in public and private sector. It also ensures that no corrupt practices in government and those in key position in government would be held responsible for their decisions. The Anti-Corruption Commission will ensure that policies and procedures being followed are consistent and impartial. This proposed Commission shall review and investigate public concerns about government decisions and actions. The interviewee also claimed that this proposed Commission would provide all parties, either individuals or government with an opportunity to be heard, fairly treated together with respect and courtesy.³⁷⁹ However, it is important to note that in fact Tonga has had laws for anti-corruption and ombudsman but it were not operating fully and the Government in 2012 decided to introduce the Good Governance Commission Bill 2012, Commissioner for Public Relations (Amendment) Bill 2012 and the Anti-Corruption Commission (Amendment) Bill 2012 with the intention to secure the principles of

³⁷⁸ Taufē'ulungaki, 'A. Personal Interview, 13 November, 2013.

HSB Tu'ipelehake, Personal Interview, 19 December, 2013.

'Inoke, S. Personal Interview, 20 December, 2013.

Tapueluelu, S. Personal Interview, 18 December, 2013.

'Inoke, M. Personal Interview, 7 December, 2013.

Tohi, K. Personal Interview, 04 December, 2013.

Kavaliku, F. Personal Interview, 16, November, 2013.

³⁷⁹ Taione, S. Personal Interview, 18 December, 2013.

transparency, accountability and public trust throughout government. These Bills were drafted and were introduced to the Legislative Assembly with which its Standing Committee on Legislation began a program of public consultation, travelling around the three main island groups to discuss these Bills. Unfortunately, these Bills have not been passed yet.³⁸⁰

While discussing further amendments to be made to the composition of the Legislative Assembly, one of the interviewees suggested that terms in office of the members of Parliament should be limited to two consecutive terms only. The interviewee believed that this would provide everyone with a fair chance of getting into Parliament with new ideas, policies and initiatives.³⁸¹

Conclusion

The principal reforms that Tonga needed were the transferral of all executive power from King in Privy Council to Government and a Parliament with the majority elected by universal suffrage. Still as a Crown Prince, His late Majesty King George Tupou V stated publicly that his most important priority as a Monarch would be to ensure that Tonga would be seen as a good citizen of the global stage.³⁸² This approach reflected his conviction that the Monarchy is an instrument of change, not an obstacle to it. The public was aware that he quietly championed a more open system of government. Late King George Tupou V had felt for a long time that Tonga's political system was not evolving quickly enough and that it should keep pace with its growing economy. His late Majesty King Tupou V supported the proposed reform process based on extensive public consultations. The National Committee for Political Reform was established to carry out the national public consultations, a matter to be determined by all Tongans.

As has been recounted earlier, the fatal car accident of His Royal Highness Prince Tu'ipelehake and his wife, Her Royal Highness Princess Kaimana was a great loss to the rest of the reformers. The push for reform was now at a critical stage but saving the day, an intellectual man of the same calibre as Prince Tu'ipelehake, Dr. Sitiveni Halapua was there to lead on the journey for reform in Tonga. Tonga again

³⁸⁰ Powles, G. 2013. Political and Constitutional Reform Opens door: The Kingdom of Tonga's Path to Democracy, pp. 76.

³⁸¹ Lauti, 'A. Personal Interview, 25 November, 2013.

³⁸² Bain, K. 1993. The New Friendly Islanders, pp. 99.

in September of the same year, mourned for the passing of His Majesty King Taufa'ahau Tupou IV in New Zealand. A Monarch who brought to Tonga technological, social and economic developments but merely resisted implementing changes proposed by the ordinary citizens to the status quo. Interestingly, it is important to note that only towards the end of his reign, few of the initiatives for political change were implemented.

The route for Constitutional and Political reforms was now inevitable but the time for implementation was the major concern of many ordinary citizens and became one of the hot-headed issues of discussion at the time. The government believed that Tonga still needs time to implement such reform but the ordinary people on the other hand believed that it was about time that Tonga should undergo reform. The peaceful political transition was now a monumental challenge. The government's decision to delay the implementation of democratic reforms presented by the NCPR and reluctance to accept the PCPR's recommendations triggered disturbances and turbulences on the part of the ordinary citizens. Hundreds of the Pro-Democracy protesters rampaged through Nuku'alofa, attacking the Prime Minister's office, trashed and torched buildings and overturned cars. The violence broke out after hundreds of Tongans rallied in the centre of Tonga's capital demanding a vote to implement the proposed democratic reforms to the country's semi-feudal political system. The riots left eight persons dead and Nuku'alofa's business district in flames. The Constitutional and Political reform was then confirmed to be implemented in later years.

The news came shockingly when King George Tupou V graciously granted much of the near absolute power that his predecessors have been held for generation in running of the day to day affairs of government to the Legislative Assembly and agreed to be guided by the Prime Minister. This was a very touching and yet historical event as the King voluntarily relinquished some of his prerogative powers to meet the democratic aspiration of his people. However, as has been recounted earlier, Monarch still retains some prerogative powers in government affairs. Tonga underwent another mourning period with the untimely passing of His late Majesty King George Tupou V in 2012. His late Majesty King George Tupou V will be remembered for championing the 2010 Constitutional and Political Reform.

The majority of the drafted legislations and the amendments recommended by the Constitutional and Electoral Commission to the Constitution were passed into law by the Legislative Assembly during the first nine months of 2010 and this was followed by Tonga's first general election under the new system of government in November the same year. Lord Tu'ivakano was elected and was appointed as the new Prime Minister of Tonga. To a great extent, Tonga under this new reform has a governmental framework broadly similar to that of the United Kingdom. A Constitutional Monarchy as the new system of government, the Monarch is the Head of State and the Prime Minister is the Head of Government. Executive power is exercised by Government on behalf of and by the consent of the Monarch. The most significant shift in Tonga's system of authority has been the devolution of most of the executive powers from the Monarch to the elected Representatives of the Nobles and the People. Perhaps a crucial difference is that Tonga has a written Constitution that is supreme law.

Tonga's new government was put to the test with the unsuccessful motions for vote of no confidence in 2012. The majority of my interviewees believed that Tonga needs more time to allow its first term of democracy to flourish. Tonga's political affair has reflected the uniqueness of its political history in the Pacific context and has demonstrated the capacity of individuals to make tremendous contribution to the shaping of that history. Based on the feedback of my interviewees, the majority of the ordinary citizens were contented with the Constitutional reform of 2010. Though the demarcation line of powers and authorities under the new system were blurry and with not much changes and differences were seen yet in the performances of the new government in place, majority of my interviewees stated that they have much confidence in the government in place and anticipated better improvements in the next general elections in November, 2014. Some of the interviewees proposed further amendments for the betterment of the Constitution and Tonga's political affairs generally.

The next chapter will outline the summary and the analysis of the long history of Tonga's 1875 Constitution.

Chapter 7

Analysis and Summary

<i>‘Eiki, ‘ai ke fuoloa,</i>	<i>Lord, elongate his rule,</i>
<i>‘Ange mo ha ngaahi ta’u,</i>	<i>Provide him with many years,</i>
<i>Taufetuku ha koloa,</i>	<i>With great abundance of wealth,</i>
<i>Tauhi, tauhi homau Hau,</i>	<i>Protect, protect our King,</i>
<i>‘E Sihova, ‘e Sihova,</i>	<i>Jehovah, O Jehovah</i>
<i>Me’a mai ‘emau punou,</i>	<i>Hear our prayers given to you,</i>
<i>Ke ke tali ‘emau lotu,</i>	<i>Grant our earnest supplication</i>
<i>‘O malu’i ‘a Tupou.³⁸³</i>	<i>Guard and save Tupou our King</i>

A hymn of the Free Wesleyan Church of
Tonga for the Monarch and the Royal
Family of Tonga.

³⁸³ Missionaries 1997, Hymn Book of the Free
Wesleyan Church of Tonga, pp. 390.

The 1875 Constitution is a document which has a special place in the heart of the Tongans. It is one of the world's oldest surviving written Constitutions, making every Tongan proud and it is the fundamental basis of Tongan law and the foundation upon which the government of Tonga was built. This was one of the marvellous achievements of King George Tupou I for Tonga and the anniversary of its passage is celebrated annually as Tonga's Constitution Day on the 4th of November every year. Tonga's enthusiasm to embrace new civilization had enabled King George Tupou I to promulgate a European style Constitution in 1875. The feebleness of the existing law codes to put an end to the never-ending conspiracies in Tonga and the sad experiences of neighbouring countries under colonial powers influenced King George Tupou I to believe that nothing short of a full written Constitution was needed for Tonga. This promulgated Constitution safeguarded Tonga's sovereignty and interest against the foreign imperialist powers who were scrambling for territories in the Pacific towards the end of the 19th century and early 20th century and secured peace and harmony in Tonga by suppressing the warring chiefs who wanted vengeance in their defeat in the previous civil wars. The 1875 Constitution confirmed that Tonga has already completed its political evolution, as a self-dependent state well administered under the rule of King George Tupou I. The 1875 Constitution was praised and perceived by many Tongans as the stabilising factor of Tonga in the 19th century.

Despite the on-going resistance from the European settlers to abide by the laws provided in the articles of the Constitution and the fact that Tonga was declared a Protectorate of Great Britain in 1900, the 1875 Constitution was still respected, sustained and held with high regard as Tongans perceived it as a Holy Writ, directing and measuring up their lives in accordance with its provisions. Over the years, some of the articles of the 1875 Constitution were found to be ambiguous, repetitious and non-binding. So the Legislative Assembly amended, substituted and to some extent repealed some of the articles of the 1875 Constitution as they thought it was for the best interest of Tonga. As a result, the total number of the articles of the 1875 Constitution came down from the total of 132 to 115. In spite of these vulnerabilities and minor changes, the 1875 Constitution still held an esteemed, even revered place in Tongan life.

In the 1980's and the 1990's, a new era began when many ordinary people were highly influenced by ideas and experiences by an expanding High School Education opportunities and the returning Tongan scholars, the new elite group, who believed that most of the articles of the Constitution were concerned with the specific needs of Tonga in the mid-19th century and such needs had changed over the years as Tonga has progressively become modernized. The new elite group, not from the Royal Family or Nobles also claimed that the 1875 Constitution was radical in its time, declaring everyone being equal in the eyes of the law, however, by the 1980's some of its articles were believed to be undemocratic and were in need of substantial revision.

The new young, educated elite group also questioned the efficiency of the existing structure of government and were very much concerned with the articles of the 1875 Constitution for the allocation, exercise and the retention of powers and the land tenure system. They argued that under the 1875 Constitution, the ultimate power over Government was centralized in the hands of the Monarch and its appointees and the ordinary people generally has no say in Government decisions and policies. This instigated a parallel call for political reform in Tonga. People wanted to share the powers of the Monarch and its appointees in running of the day to day affairs of the government in order for it to be more accountable and transparent. It was generally believed, that the Constitution must undergo considerable review in-order for political reform to be facilitated. These two interrelated concepts – Political reform and Constitutional reform- began to overlap in government, media outlets and at social gatherings.

The ordinary citizens were now slowly being exposed to these critical ideas about Tonga's Constitution, power holders and the mode of government. The possibility of Constitutional reform relied on their support because the citizens were the base of Tonga's stability and the country depended on their support for social, economic and political advancement. However, Tonga's society was largely conservative and traditional. The ripples created by the educated elites were firstly rejected and criticised by many, considering it anti-government and anti-Royal. Gradually over the years, a demarcation line was drawn between Tongan societies in Tonga and abroad, and this division was evident in government and in churches as ordinary citizens were influenced by the infusions of the educated elites and external

commentary through the new social media. A verbal war began between the traditionalists and the reformists.

Surprisingly, the first moves in the 1970's for Constitutional reform was fully supported by prominent church leaders of the two most powerful churches in Tonga, namely the Free Wesleyan Church of Tonga and the Roman Catholic Church. The involvement of the churches was significant as it highlighted the rift in the relationship between the church and the state because from the earliest days of modern Tonga, there has always been a firm alliance between church and the state.

With enthusiasm to reform government, concerned individuals gathered and officially formed the Pro-Democracy Movement. Though some of the activities and undertakings of the Pro-Democracy Movement in their push for reform were fruitful, government was neither convinced nor willing to consider Constitutional changes for another decade. In the 1990's and the first decade of the new millennium, the push for Constitutional Reform was more influential than it was in the 1980's because of the role played by media. Ordinary citizens all around the islands in Tonga, and those overseas, now had better access to radio, television, internet, blogging and all forms of social media. Information about Constitutional reform in Tonga and opinion written from outside Tonga were easily transmitted in the press of a button. Only some elderly Tongans were isolated or unaware of the call for Constitutional change.

Problems that were raised in Parliament in the 1990's were related to powers and privileges provided in the articles of the 1875 Constitution. Tonga's Parliament has been through a period of heated debate about the management of public finances and the accountability of Ministers. These publicities have introduced questions about whether Tonga would be able to change sufficiently and quickly to meet these challenges. The outstanding problems over the years regarding the alleged misuse of power and office, nepotism and irregularities of government were mostly believed by the ordinary citizens to be rooted in the articles of the 1875 Constitution. The tide of public opinion in Tonga at the time was now turning in favour of the Pro-Democracy Movement. By 2004, His Royal Highness Prince Tu'ipelehake believed that "...it was time to begin preliminary discussions on ways to improve and reconcile the

system of government and laws (amendments to the Constitution required) so that they serve and protect the needs and rights of Tongan society in the 21st century”.³⁸⁴

With the substantial political issues being widely known and the intensifying hot-headed debates in government in the early years of the new millennium, the numerous protest marches, public servant strike, the public torching of the Tongan flag by a Tongan national in New Zealand together with the continuous stubborn thrust for Constitutional and political reform from Pro-Democracy Movement supporters and the ordinary people, the government was finally convinced that commoners had a meaningful and fundamental role to play in the democratic governance of the Kingdom of Tonga. In 2005, His Majesty King Taufa’ahau Tupou IV appointed People’s Representatives as members of the Cabinet. This marked the first leg of Constitutional change in Tonga after years of lobbying and petitioning.

With the unfortunate and the ill-fated event of July 2006 which has often been recounted earlier, HRH Prince Tu’ipelehake was replaced by Dr. Sitiveni Halapua as the Chairperson of the NCPR, an intellectual person with high calibre, *Ku tō e to’a kae tu’u e to’a*. HRH Prince Tu’ipelehake’s involvement and ardent interest in the push for Constitutional reform shocked many ordinary people because he was a member of the Tongan Royal Family. HRH Prince Tu’ipelehake stated in an interview with the *Island Business Magazine* in 2004, “that being a member of the Tongan Royal Family would not deprive him of his constitutional and human rights to express his beliefs”.³⁸⁵ HRH Prince Tu’ipelehake and his wife, HRH Princess Kaimana were dubbed as the “People’s Prince and Princess”.

The riots in down town Nuku’alofa in 2006 were an outburst of antagonism as people were getting impatient with government in delaying the implementation of the recommendations of the NCPR. After the 2006 riot, the move for combined Constitutional and political reform was indeed inevitable. When the reports and recommendations of the Parliamentary Committees were disagreeable with the government’s proposals, the Constitutional and Electoral Commission was established to hold consultations and discussions to achieve the best possible

³⁸⁴ *Island Business*, 2004. ‘Royal Rebel Calls for Reform’, vol. 30, no. 3, pp. 20.

³⁸⁵ *Ibid*, pp. 20-21.

Constitutional changes for Tonga. His late Majesty, King George Tupou V made an significant contribution to the ferment by voluntarily surrendering of his powers to meet the democratic aspirations of many of his people with announcement as early as 2006 and the on-going co-operation. His late Majesty King George Tupou V surrendered his role in day to day governmental affairs and agreed to be guided by the Prime Minister on his remaining duties. This was a complete reversal of the 1875 Constitution. His late Majesty King Tupou V passed away in 2012 but he would be remembered by his people for voluntarily relinquishing most of his prerogative powers to facilitate reform.

After nearly four decades of lobbying and pushing for Constitutional reform in Tonga, the Constitution was substantially amended in 2010 with the implementation of most of the Constitutional and Electoral Commission's proposed amendments. The first general election under the new system of government was held later that year. The most significant Constitutional changes of 2010 were the devolution of executive power from the Monarch to the elected Representatives of the People and the Nobles and the changes in the composition of the Legislative Assembly whereby the People's Representatives' seats were increased from 9 to 17.

When conducting interviews for this research, many of my interviewees were content with the Constitutional reform of 2010. They believed that these changes were adequate and Tonga surely needs time before any more amendments would be implemented. They argued that more amendments would depreciate the spirit of the Constitution and somehow it would become meaningless and ambiguous. Though the majority of my interviewees believed that there should be no more amendments to the Constitution in the near future, a few interviewees believed that only 75% of their preferred amendments were implemented in the 2010 Constitutional reform and therefore they proposed further amendments and changes to the Constitution to make the Constitutional reform 100% complete.

Tongans and non-Tongans tireless push for Constitutional Reform in Tonga initiated a ferment unlike other situations happening around in the region and abroad where reformists and revolutionists have risen up against those in position of authority resulting in violence and bloodshed. The Tongan reformists were more

polite and respectful in initiating reform. This ‘polite radicalism’ paved the road for the non-violent Constitutional transition in Tonga in 2009-2010.

The move for constitutional reform in Tonga, perhaps paradoxically, was the consequence of the actual terms of the 1875 Constitution. This study also suggests that one of the main causes of political unrest in Tonga towards the end of the 20th century and the first decade of the 21st century was the passage of time. What had been suitable in 1875 was now seen as irrelevant and out-dated some 120 years later. Tonga had changed and the Constitution needed to reflect these changes. Without the Constitutional reforms in 2009-2010, Tonga might have been experiencing more dreadful political situations than the Nuku’alofa 2006 riots as seen in many cases in the region and abroad.

Tongan society in the early 21st century has a vibrant and democratic culture, whose characteristics includes an educated and an increasingly informed population that exercises individual freedom of expression, worship and association; a predominance of private and individual ownership of property with a free market economy. Tonga has an increasingly open society that allows social mobility based on individual achievement, a grassroots leadership that is no longer fettered by ancient class and hereditary constraints and an open social structure economically independent of traditional system of patronage. Powles accurately notes that, “Tonga’s journey thus far has reflected the uniqueness of its political history in the Pacific context and it demonstrated the capacity of individuals to make definitive contribution to the shaping of that history”.³⁸⁶

The history of the background, developments and changes made in 2009-2010 to the 1875 Constitution reveals the importance of democracy and the people’s desire to be part of government. One of the nobles, who wanted to remain anonymous, claimed in a newspaper article, “...if there were no gaps, flaws and paradoxes in the Constitution, there would be no need for a reform in Tonga, *Kapau na’e ngāue lelei pē ‘a e Konisitūtoné he ‘ikai ha fiema’u liliu ‘i Tonga.*³⁸⁷ Based on the arguments and the events that took place in the Kingdom since the 1990s, I

³⁸⁶ Powles, G. 2013. Political and Constitutional Reform Opens the Door: The Kingdom of Tonga’s Path to Democracy, pp. 1.

³⁸⁷ ‘Kapau na’e ngāue lelei pē ‘ae Konisitutoné he ‘ikai ha fiema’u liliu’ 2010, Kele’a, February 3, p. 8.

certainly believe that the main cause of political unrest in Tonga towards the end of the 20th century and the first decade of the 21st century was dissatisfaction with the articles of the 1875 Constitution.

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Interviews

Name	Date	Occupation/ Social Status
‘Aisake Eke	19/12/2013	Minister of Finance and National Planning
‘Aisea Latu	24/01/2014	Senior Revenue Officer – Ministry of Revenue and Customs
‘Akanete Ta’ai Lauti	25/11/2013	Deputy Secretary- Ministry of Justice
‘Akilisi Pohiva	12/12/2013	Member of Parliament- People’s Representative Tongatapu 1
‘Ana Taufe’ulungaki	13/11/2013	Minister of Education and Training
‘Ilifeleti Tovo	27/11/2013	Teacher- Tonga High School
‘Opeti Pulotu	11/12/2013	Senior Education Officer – Ministry of Education
Adi T. Mafi	09/12/2013	Legal Officer – Ministry of Justice
Fe’ao Vakata	26/11/2013	Minister of Public Enterprises/ Member of Parliament Niua 17
Feleti Sevele	12/12/2013	Businessman, former Prime Minister
Filisi Finau	29/11/2013	Housewife
Finau Tutone	17/12/2013	Manager- Friendly Island’s Teacher’s Association
Fuiva Kavaliku	16/11/2013	Advisor at Tonga Women Crisis Center
Hepeti Takeifanga	28/11/2013	Senior Education Officer- Ministry of Education
HSH Tu’ipelehake	19/12/2013	Member of Tonga’s Royal Family
Katalina Tohi	04/12/2013	Manager 89.5 FM
Lady ‘Eseta Fusitu’a	18/11/2013	Chairlady – Tonga broadcasting Commission, former Government Minister
Laki Niu	03/13/2013	Senior Counsel
Lord Fusitu’a	18/11/2013	Noble, former Speaker of Parliament
Lord Vaea	22/11/2013	Minister of Internal Affairs/ Noble
Louhangale Sauaki	02/12/2013	Senior Accounts Officer – Ministry of Health
Maikolo Fonua	17/01/2014	Student – University of the South Pacific
Malieta ‘Inoke	07/12/2013	Financial Analyst – Reserve Bank of Tonga
Manakovi Pahulu	13/12/2013	Deputy Secretary – Ministry of Justice
Masaso Paunga	05/12/2013	Deputy Director USP Tonga Campus, Former Government

		Minister
Mauiana Lemoto	25/11/2013	Senior Lecturer – Tonga High School
Paini Mafi	20/11/2013	Bishop of Roman Catholic Church
Rev. ‘Ahio	06/12/2013	President – Free Wesleyan Church of Tonga
Samiu Vaipulu	15/11/2013	Minister of Infrastructure and Deputy Prime Minister
Seiloni ‘Inoke	20/12/2013	Fisheries Officer – Ministry of Agriculture, Food, Forestry and Fisheries
Seiloni Funaki	21/11/2013	Housewife
Seini ‘Unufe	23/03/2013	Housewife
Seluini ‘Akau’ola	04/12/2013	Priest – Roman Catholic Church
Simote Ve’a	10/12/2013	Church minister – Free Wesleyan Church of Tonga
Sione Taione	18/12/2013	Member of Parliament – People’s Representative Tongatapu 7
Siosi’ana Tapueluelu	18/12/2013	Senior Education Officer – Ministry of Education, former School Principal – Tonga High School
Sisi’uno Helu	27/11/2013	Director- ‘Atenisi Institute
Susana Faletau	09/12/2013	Chief Executive Officer – Ministry of Justice
Tevita Havea	06/12/2013	Senior Secretary – Free Wesleyan Church of Tonga
Tevita Leka	02/12/2013	Farmer
Tevita Tupou	20/12/2013	Senior Counsel, former Minister of Justice and Attorney General
Uili Fukofuka	17/12/2013	Director of Faith Seminary, former Member of Parliament and Chief Executive Officer – Ministry of Education
Vili Vete	16/12/2013	General Manager – Public Service Association
William C. Edwards	19/11/2013	Minister of Justice