

Reconciling liberal democracy and custom and tradition in Samoa's electoral system

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Introduction

The arrival of Europeans in Samoa in the late eighteenth and early nineteenth centuries introduced institutions and practices of liberal democracy, which were gradually incorporated into Samoa's existing customs and traditions. When Samoa became the first Pacific Island country to gain political independence on 1 January 1962, her constitution legalised the coexistence of the two systems and provided the country's electoral system. Forty years later, Samoa continues to experience problems with its electoral system arising from the difficulties of trying to reconcile liberal democracy with Samoan customs, traditions, institutions, practices and value systems. Despite several attempts to improve the situation, problems were still experienced in the last general elections on 2 March 2001. The persistence of these problems prompted the government to set up a Commission of Inquiry whose main term of reference was to examine Samoa's principal *Electoral Act 1963* and all its amendments to date. This paper focuses on those recommendations that underscore the difficulties in reconciling the two systems.

Under the constitution, the country is divided into 41 electoral constituencies. Four of these have been allocated two parliamentary seats each because of their larger populations. Two seats have been allocated for Samoan citizens with part-Samoan origins who are registered under the Individual Voters' Roll (IVR). However, before registering they had to revoke all their rights to customary lands and Samoan *matai* (chiefly) titles. Whilst those enrolled in the IVR could vote in parliamentary elections and contest parliamentary seats as candidates, only *matai* could vote in elections and stand as parliamentary candidates in the electoral constituencies.

The introduction of universal suffrage in the 1991 general elections has given those aged 21 years and over the right to vote in elections while still restricting to *matai* the right to stand as candidates. A constitutional amendment in 1993 increased the number of seats in the electoral constituencies from 45 to 47 by adding an extra seat each to two other constituencies with bigger populations, thereby increasing the number of seats in parliament from 47 to 49. The political party system was introduced in 1979 following the establishment of the Human Rights Protection Party (HRPP) in that year.

The *Electoral Act 1963* regulates the electoral system, including the qualifications of electors. Generally, the Act allows electors to register in any constituency provided they are related by blood to a person who resides permanently in that constituency or if the elector is rendering service to a village or church within the constituency, among other criteria.

The 2001 Commission of Inquiry

The seven-member commission included six men and one woman, all resident in Samoa. The Cabinet-approved chairman was a Western-trained lawyer, a former attorney general of Samoa well versed in the custom and tradition of the country and who holds one of his district's highest ranking titles. The commission included the President of the Methodist Church in Samoa, a prominent businessman, and an academic (the author). Most members were Western educated and are former high-ranking officials, government ministers and/or members of parliament. Only three had not contested seats in the 2001 general election. One member holds an important *tulafale*¹ title and another a number of *matai* titles.

The Commission of Inquiry recommendations

These are discussed under each of the commission's terms of reference (TOR) that directly relate to liberal democracy, and custom and tradition.

TOR 1: *To consider appropriate provisions to stop the practice of electors changing constituencies so that electors are registered to vote in the constituency in which they reside. If place of residence of an elector is to be accorded priority, then set out special regulations for matai.*

This TOR addresses the issues associated with reconciling the Samoan concept of extended family, the liberal democracy ideas of electoral constituency, and the right of individual citizens to influence through the ballot box issues pertaining to the constituency in which they reside. Members of a Samoan extended family are not confined to a particular village or territory, but may spread to several villages outside the family's village of origin. Family membership is determined both through genealogical connections and through services to the family (*tautua*). Service in terms of contributions to village and church activities is called *monotaga*.

Accordingly, the *Electoral Act 1963* defines service in relation to a village to mean 'service to a Church in that village, or to the Village Council, or to any community project or work related activity in that village' (Section 16(2)(e)). The extended family concept is further complicated by the fact that Samoans can trace and actively maintain their genealogical connections to all families of their ancestors, so a Samoan can belong to several villages and several constituencies. Section 16(2)(a–b) of the Act tries to accommodate that element of a Samoan family, and in doing so

leaves the criteria of family connections and service so broad that they could easily be manipulated for political reasons. The broad nature of the family concept explains why many Samoans hold several *matai* titles from different villages at the same time. Every *matai* title has a village and family of origin.

The *Electoral Act 1963* stipulates that a *matai* must vote in the constituency, which includes the village of origin of his/her title (Section 16(2)(a)). A *matai* who holds more than one title must choose the constituency where he/she should vote (*ibid.*). The points stressed here are first, that the *matai* must have only one vote and second, that he/she must vote at the constituency within which is the village of his/her title's origin. With regards to non-titleholders, the Act allows people to register in any village where one could trace family connection either through blood, marriage or service (*tautua*). The pressure to win parliamentary seats has tempted not only the candidates but electors to bend the rules.

Although there were instances of *matai* not giving the offices of the Registrar of Electors and the Chief Returning Officer the correct information concerning the *matai* titles they held in order to register as untitled voters in constituencies of their choice, it was the non-titleholders whom the commission identified as the main category of voters who switched constituencies in the last general elections. The sheer number of transferred voters had become a topic of public complaint in the period leading up to the general elections. As the Commission Report has pointed out:

One of the biggest complaints about the 2001 elections was the unfairness caused by wholesale transfers of electors between constituencies, together with apparent ease with which these movements were carried out. It was alleged frequently that as a result of such transfers, the voice of the true residents and *matai* of villages were superseded by dint of the force of numbers from foreigners. Adding insult to injury, such 'foreigners' were in the majority, untitled persons (2001:20).

The reference to foreigners being mainly untitled persons is significant in the context of custom and tradition. Collectively, *matai* who comprise the village council have the sole authority to govern village affairs. Therefore, it was a serious insult to have foreigners determine the constituency's choice of Member of Parliament. Worse still, it was the untitled people who comprised the bulk of the foreign population. In Samoan custom and tradition, the untitled people get their instructions from the *matai* of their respective families, not the reverse. The reference to foreigners implied that although the transferred voters may be villagers according to the criteria stated in the Act, the fact that they do not reside permanently in the village and do not visit regularly, meant that they should rightly be classified as foreigners. In short, the foreigners reside permanently elsewhere and had no genuine interests in the issues affect resident voters. Conversely, a *matai* whose title originates in a constituency other than that where the holder is permanently resident should be given the option of registering his/her name in the constituency of current residency. Hence the view of the commission 'that those *matais* who were residing permanently in another constituency should be given the option of registering in the constituency of his residence

as opposed to the constituency of his title' (Commission Report 2001:23). Against this background the commission recommends:

- (a) That in the case of *matai* electors, section 2 (a) of the Act is followed by a new provision allowing registration of *matais* of other constituencies who are permanently resident in the constituency.
- (b) That in the case of non-*matais*, the criteria for registration are:
 - (i) continuous residence of not less than two years leading up to the next general elections in the constituency; or
 - (ii) if not a resident, that he or she is the father, mother, brother, sister or child of a *matai* in the constituency, or of a non-*matai* resident in that constituency;
 - (iii) transfers between constituencies by eligible non-*matais* may take place once only between two general elections, subject to any special exemptions as may be prescribed by the Samoan Electoral Commission, a new body that will be recommended in this Report;
 - (iv) children adopted in the *faasamoa* (traditional Samoan way) will not qualify to be registered; and
 - (v) reference to the concept of *tautua* or service in the Act be abolished.
- (c) Sections 16(2)(b) to 16(f) and 16(6) to 16(7) should be consequentially repealed (Commission Report 2001:25–26).

The recommendation relating to genealogical connections has reduced eligibility to register for parliamentary elections from three generations (*Electoral Act 1963*, Section 16(2)(b)) to two generations. Service (*tautua* or *monotaga*) becomes irrelevant.

TOR 5: [*t*]o consider appropriate means of dealing with persons who vote twice or more times during an election. Should not such persons be ruled ineligible and be subjected to a heavy penalty which includes imprisonment?

This TOR implies the same issues associated with the Samoan extended family structure already discussed. There is a potential for voters to vote twice or more given the criteria for registration provided under the *Electoral Act 1963*. Both the candidates and the voters are under various pressures during the period of registration. The former would be tempted to attract all voters with connections to his/her constituency to register there with the intention that those voters will support him/her come election time. Potential voters, on the other hand, would go around promising their votes to candidates in other constituencies or the same constituency in exchange for favours. Either way, the resulting situation is that of voters either transferring to other constituencies or voting twice (or thrice), firstly in their 'traditional constituency' and secondly in their 'new constituency'. Sometimes the votes are cast for different candidates at different booths in the same constituency. Whilst more accurate records at the offices of the

Chief Returning Officer and the Registrar of Voters could prevent the problem, the commission has nevertheless recommended:

That heavy penalties be imposed for such offenders, including imprisonment for up to two years. In addition, the offence be regarded as a criminal offence, with the conviction permanently recorded against the offender's name (Commission Report 2001:34).

TOR 6: *[t]o consider appropriate amendments to ensure that electors voting in constituencies with two (2) Parliamentary seats do vote for two candidates. Should not a vote registering a vote for only one candidate be considered an informal vote?*

Samoa's electoral constituencies are subdivisions of the country's 11 traditional districts. Traditional landmarks and/or genealogical factors dictated the manner in which the 11 districts were subdivided, not population size. The result is that in most districts, electoral constituencies vary in population size. In order to maintain a relatively equal ratio of voters to parliamentary candidates, the electoral constituencies with larger population sizes were allocated an extra seat. Currently, there are six such constituencies, excluding the two seats for the Individual Voters. Furthermore, electoral constituencies were divided when only the *matai* had the right to vote. The disparity in population sizes of constituencies has worsened following the introduction of universal suffrage.

Trying to come up with a solution to the problem, the commission explains:

Dealing with the second half of this Term of Reference, the commission was of the view that to compel an individual to use his two votes was objectionable, on a least two grounds. The first being that by not exercising his second vote (or indeed by not voting at all) the individual has expressed his opinion: that he supports only one (or no) candidate at all. In other words, refraining from voting is an individual's fundamental right to represent his non-support of the competing candidates.

Secondly, the recently introduced law is that while registration for voting is compulsory, voting is not. It would be entirely contradictory, therefore, if one is penalized for not exercising his second vote, when the law does not compel voting.

Notwithstanding the above comments, the Commission resolved to introduce a new measure that addresses the issue of a two-vote elector. The issue raised by the Term of Reference relates to the widespread practice of 'block-voting', whereby individuals, most likely at the behest (whether or not accompanied by some reward) of the candidate, would use only one of his two votes. This action would obviously increase the numbers of one candidate at the expense of the others (Commission Report 2001:35).

The Commission's recommendation on this term of reference is '[t]hat the present two-seat constituencies be subdivided' (Commission Report 2001:38). The Commission considered that the advantages of these subdivisions included:

- The elimination of the practice of 'block voting';
- The desirability of a uniform 'one person one vote' electoral process;

- Improving the distribution of seats per votes in the larger populated constituencies;
- Giving relief, politically and economically, to candidates who have historically been required to attend to the needs (including campaigning requirements) of the larger constituencies. The subdivision would reduce such obligations by at least 50 per cent; and
- Encourage MPs to concentrate more on the welfare of a reduced constituency, including his own village, which would traditionally, and in reality, be much more connected with its neighbouring villages under the new subdivision than with the villages farther afield in the original undivided constituency (Commission Report 2001:37–38).

TOR 7: *[t]o consider appropriate amendments which consolidate the political party system by ensuring that members remain affiliated to the political party they stood as members of and upon resignation from such party, they are deemed to have vacated the seats and for a by-election to be called. For independent candidates, appropriate provisions safeguarding their rights should also be set out. By doing this, it will ensure a stable country and its politics.*

Although several factors may contribute to the personality-oriented nature of political parties, there are elements of Samoa's political culture that help enhance it. As already explained, every title in Samoa's *matai* system fits into its overarching hierarchy of titles. There are branches and sub-branches of titles within the hierarchy. Genealogy and other elements of customs and traditions such as the relationship between and among *ali'i* and *tulafale* titles almost dictate which branch a particular *matai* should be associated with. These elements of the local political culture make it almost immoral and unethical for a *matai* to be affiliated with a political grouping outside this 'indigenous' grouping.

Samoa members of the Working Committee who prepared the draft constitution for the 1960 constitutional convention spoke against the concept of a political party system. They believed that political parties would wreck Samoan society. In the deliberations of the constitutional convention, there was no mention at all of political parties (So'o 1996).

For a long time after the establishment of the national political forum Faipule in 1873, it was by and large the high ranking *ali'i* (high chief) and *tulafale* titleholders who were elected by their respective villages and districts. It was a logical extension of their political and leadership roles in the existing indigenous political structure. In the modern parliamentary system, the highest-ranking *matai* in their respective villages and constituencies are still the ideal candidates. They not only command the respect of their people but are also the embodiment of village pride and prestige. Their election to parliament was due to personal qualities and rank in the *matai* hierarchy and not to membership of a particular parliamentary group. It took 17 years after independence before the first political party, the HRPP, was established.

Closely associated with this cultural mindset is the keen competition for political positions. A high ranking *matai* who holds a ministerial post brings great honour to his/her village and constituency. It is also a great reward for the efforts of the candidate. To uphold the dignity and prestige of the post, its holder has to be generous to the village and constituency through material and monetary contributions to local activities and projects. In recent years, these contributions have become particularly visible during electoral campaigns. Successful candidates then join parliamentary groupings that give them the best chance of appointment to a ministerial post. This process enhances the personality-orientated nature of Samoan politics to the detriment of a viable party system, which would promote the common good over the local and personal. Party-switching has therefore been a common feature of Samoa's party system since the establishment of the first post-independence political party in 1979. The commission's view is that:

the party system, for better or for worse, is here to stay. Samoa cannot return to the unicameral non-party politics that existed at Independence 40 years ago, as inviting as nostalgia may beckon. As is a theme in this Report, the sooner the people accept that the Westminster parliamentary system is alien to the *faasamoa*, and that we should not try and assimilate the *faasamoa* to this system, the sooner we shall achieve a transparent and smoother running electoral process. By separating the two as much as practicable, the electoral process will function better, and the *faasamoa* will retain its integrity (Commission Report 2001:40).

Against this background, the commission recommends that:

- A candidate must remain affiliated to his party;
- If he defects to another party, then a by-election should be called;
- If he runs as an individual, or if he leaves the party to become an independent member, he cannot join another party in coalition; nor should he be allowed to hold a ministerial post in the ruling party for the duration of his parliamentary term; and
- Political parties, in order to be recognised, must comply with the current law and should be formed by election time, if they are to be accorded legal recognition (Commission Report 2001:43).

TOR 9: *[t]o consider appropriate amendments to ensure that our culture and traditions regarding those not rendering tautua in the villages, those without monotaga, those not involved in village affairs and those banished from villages are taken into account.*

Under this TOR, the report gives a thorough and comprehensive discussion of the legal and *faasamoa* issues at the heart of the tension between liberal democracy and customs and traditions. Since it provides an in-depth discussion of the commission's guiding philosophy for its recommendations, the report is extensively quoted below.

This Term of Reference raises one of the most fundamental and vexed issues of the Commission's task. On the one hand it is a *sine qua non* that Samoa is founded upon God and upon

its customs and traditions. On the other hand, we have inherited a parliamentary system which is based on foreign concepts and values, resting upon individualised goals as against the communalistic traditions of the Samoan people. The problem concerns not just the concepts of *tautua* and *monotaga* but the whole fabric of Samoan customs and traditions.

A remarkable result has been the history of election petitions, which has seen a steady rise over the years, the predominant grounds being those of bribery and corruption. In the history of election petitions, conflicts have arisen as to what constitutes bribery or corrupt practices as opposed to traditional concepts and chiefly obligations. The Courts have been put in an invidious position in their obligation to decide the applicable law in the realisation that the ramifications for the fabric of Samoan traditional society will be far reaching . . .

[The] 'decision of *Italia Taamale v Attorney General* must be considered the authoritative decision on the validity of the power of banishment by *alii* and *faipule*², in spite of the fundamental guarantee provided by Articles 13(1)(d) of the Constitution to all citizens of Samoa to move freely throughout Western Samoa and to reside in any part thereof. This decision should be compared to the Court's injunctive relief granted in the 2001 elections against the village of Falealupo's *alii* and *faipule*, allowing the banished applicant to re-enter the village to conduct his campaign, and to eventually succeed as member for that constituency.

The Falealupo case has raised squarely the conflict between the rights of the *alii* and *faipule* in the exercise of their traditional control over their village, as opposed to the individual's right to run for parliament. In this case, the individual's rights won . . .

[P]erhaps the most striking instance from the *faasamoa* aspect in the 2001 elections was the banishment of the Tama-a-Aiga, Tuimaleali'ifano V. Eti, by Falelatai's Aiga Tauaana³ who preferred the then incumbent Misa Telefoni to represent the constituency. Witnesses' views on the issue of *faasamoa* versus fundamental rights was clearly split into two camps: the older people and *matai* adamant that the *faasamoa* overrides the individual's rights, whereas nearly all of the younger witnesses including the younger *matai* and overseas educated people advocated the supremacy of the individual's rights. This conflict demonstrates the individualistic as against the communalistic approaches . . .

Rather than introducing laws to attempt to safeguard the *faasamoa* custom of banishment, [the Commission believes] it would be preferable to encourage the *alii* and *faipule* to review their own practices and to act with fairness and honesty in respect of the *faasamoa*. Too often have we seen the deterioration of some aspects of the *faasamoa*, for which blame has been automatically attributed to Western influence, when the real fault lies with the practitioners of the *faasamoa* — the *matais* themselves . . .

One major feature of Samoan customs and traditions has been its resilience and its ability to adapt to changing circumstances and environment. Any custom worth preserving will have the ability to survive . . . By allowing the *faasamoa* to evolve at its own pace and with the least interference from statutory legislation and formal regulation, it will have a better chance of surviving into posterity. (Commission Report 2001:46–55).

TOR 14: *to extend its enquiries to other important aspects which may assist in the accomplishment of its tasks.*

Under this TOR, the commission tries to deal with another problematic area in Samoa's electoral system the — practice of 'o'o' or 'momoli'. These are different terms for the gifts that candidates present to their respective constituencies. Although the presentation of gifts in this manner is one aspect of customs and traditions, the fact that they are presented in the electoral period indicates they are intended to influence voters. To minimise if not avoid opportunities for any breach of electoral provisions relating to treating and bribery, the commission recommends:

That the presentation of the 'o'o' or 'momoli' by candidates shall be permitted only after the official election results are declared and that such presentations shall not be made after the expiry of twelve months from the date of the declaration of the official election results (Commission Report 2001:71).

Conclusion

The Report of the Commission of Inquiry was submitted to Cabinet on 11 October 2001 and has been tabled in parliament, but parliament has yet to deliberate on it. It is not clear, however, whether it was discussed in Cabinet prior to being tabled. The commission's recommendations are only a first step towards solving the problems in Samoa's electoral system, which had arisen out of the original belief in the merits of marrying aspects of liberal

democracy and Samoan customs and traditions. The guiding philosophy behind the commission's recommendations is that by separating liberal democracy and customs and traditions as much as practicable, the electoral process will function better and the *faasamoa* will retain its integrity (Commission Report 2001:40). The next and most important step is to turn the commission's recommendations into legislation. Whether all the recommendations will be incorporated into the *Electoral Act* in the spirit in which the recommendations were made depends entirely on the government and parliament. If implemented in the *Electoral Act*, time will tell whether or not the effort of the Commission of Inquiry was worthwhile.

Notes

1. *Tulafale* is one of the two categories of *matai* (chiefly titles). A holder of this category of titles normally speaks on behalf of the other category of *matai* titleholder, the *ali'i* — the sacred chiefs.
2. This phrase refers collectively to village *matai* (chiefs).
3. A branch of one of Samoa's 'royal families'.

References

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- So'o, A 1996, 'O le fuata ma lona lou: Indigenous institutions and democracy in Western Samoa', PhD thesis, The Australian National University, Canberra.