

# LAND, THE STATE AND IDENTITY: A TONGAN PERSPECTIVE

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## INTRODUCTION

In accordance with legend and Tongan history, the first known King, 'Aho'eitu, was born around 950 A.D. He was the first *Tu'i Tonga*, who was regarded as being of divine sanctity and power, for he was originated from *Tangaloa* in the sky. The *Tu'i Tonga* lineage has ruled Tonga for most of periods until the 19<sup>th</sup> century when the modern ruler of Tonga, George Tupou I, came to power. He decided to merge the *Tu'i Tonga* with two other royal lineages, *Tu'i Ha'atakalaua* and *Tu'i Kanokupolu*, to form the *Tu'i Kanokupolu* dynasty, as it is better known today.<sup>1</sup> The same King introduced a Constitution for his people. However, the transition from a tribal society to a constitutional government was a difficult period for most Tongans towards the end of the 19<sup>th</sup> century. But, at the end of the day, most Tongans today are proud of having a written Constitution for over a century, in comparison with other island states such as Fiji, Samoa, Papua New Guinea and others who only had theirs in recent times.

According to Tonga's most eminent historian, the late Dr Sione Latukefu, Tonga was politically stable leading up to the beginning of the 18<sup>th</sup> century.<sup>2</sup> Latukefu further observed that this stable political state of affairs

was due to the reciprocal relations and balance of interests existing between the various classes of Tongan society. At the top of the social pyramid were the *ha'a tu'i* ('kings'). Immediately below this stratum was that of the *hou'eiki* (chiefs), then the *kau mu'a* (sons of the union between a chief and a *matapule*), the *ha'a matapule* (chiefs' attendants), and *kau tu'a* (commoners) in that descending order. At the bottom of the scale were the *kau popula* (slaves).<sup>3</sup>

This system of political control was also applied to control over land which was in essence feudal in every respect. In that context, 'the protection and jurisdiction offered by the chiefs ensured for the commoners security for both their lives and their property. It created and maintained peace and order, which ultimately resulted in prosperity and contentment'.<sup>4</sup>

The first contact made by a European with Tonga was in 1643, when Abel Tasman called at Tongatapu. Tasman was very impressed with the industry of the Tongans. In his log book he stated that 'we saw with these people no weapons, so that all was peace and friendly'.<sup>5</sup> He further recorded that the land was cultivated everywhere and there were no villages as each man lived in his own garden, the allotments being separated by reeds. The next contact was made by Captain James Cook during his second voyage to the Pacific in 1773. Like Tasman, Cook observed that the 'the people went about unarmed and seemed very peaceful'.<sup>6</sup> Cook

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<sup>1</sup> S Latukefu, *Church and State in Tonga* (1974) 4.

<sup>2</sup> Ibid 9.

<sup>3</sup> Ibid 10.

<sup>4</sup> Ibid.

<sup>5</sup> A Sharp, *The Voyage of Abel Janszoon Tasman* (1968) 56.

<sup>6</sup> A H Wood, *A History and Geography of Tonga* (1945) 19.

also recorded that Tongatapu was extensively cultivated with ‘the houses being surrounded by perfumed flowers and set in the middle of food-gardens the planting being systemic and in rows. ... Good roads, arched over with trees, went in all directions. There were no villages’.<sup>7</sup> It would appear that Tonga was peaceful, idyllic and politically stable in the eyes of two well-known navigators and explorers of both the 17<sup>th</sup> and 18<sup>th</sup> centuries; their respective records corroborated each other’s views of Tongan society that existed at their respective time periods.

This paper will be divided into five main parts in an endeavour to examine the following areas:

- (a) The land and the issues relating to it;
- (b) The role of the State in keeping law and order and the maintenance of an outdated land tenure system;
- (c) Keeping an identity by a Tongan in a changing world;
- (d) A brief study of how a group of Tongan lawyers stopped the late King George Tupou V from selling the royal residence in Epsom, Auckland, known as ‘Atalanga; and,
- (e) A conclusion.

## THE LAND ISSUES

It is appropriate to summarise in a tabular sketch the territorial basis of native Tongans’ political and customary structure in regards to the land tenure system at the time the Constitution was mooted.<sup>8</sup>

| <b>Geographical Division</b>        | <b>Administrative Head or Occupant</b> | <b>Category of Tenure</b>  | <b>Basis of Tenure</b>                               |
|-------------------------------------|--|----------------------------|--|
| (a) <i>Fonua</i> (total land mass)  | <i>Tu’i</i> (King)                     | Allodium                   | Conquest   |
| (b) <i>Tofi’a</i> (estates)         | <i>Hou’eiki</i> (Nobles)               | Royal grant of occupancy   | Military claims on King and annual tributes          |
| (c) <i>Ngoue’anga</i> (plantations) | <i>Matapule</i> (Chiefs)               | Chiefly grant of occupancy | Administrative duties to King and nobles             |
| (d) <i>’Api</i> (allotment)         | <i>Tu’a</i> (Commoners)                | Tenant at will             | <i>Polopolo</i> (First fruits and other) feudal dues |

Following the enactment of the Constitution, layers (b) and (c) merged into one, although not all the *matapules* were granted a *tofi’a*. The other important change was in layer (d), where the commoners were guaranteed full emancipation from feudal dues and confirmed the permanency of tenure through registration.

The importance of land, or *’api*, to a Tongan cannot be overemphasised. Land gives to a Tongan his identity in the society where he is borne to that piece of land. He will grow up and die in the same land, and then the same land will be passed on to his children and so on. The

<sup>7</sup> Ibid 18.

<sup>8</sup> R R Nayacakalou, ‘Land Tenure and Social Organisation in Tonga’ (1959) 68 *Journal of the Polynesian Society* 93, 98.

eldest son in a family by marriage has an automatic right to inherit the family town allotment (1 rod 24 perches) and a bush allotment (around 5 1/4 acres) once that person attains the age of 16 years. The rest of the brothers from the same family, if any, will have to ask (or *tala*) their village noble to allocate them pieces of land for their own use.

The *Tonga Constitution Act 1875* prohibits the sale of land although an owner may lease his land for a fair rent. There is no restriction on the lessee from sub-leasing the same piece of land. King Tupou I was made aware by Baker and others of the Aboriginal people and the poor living in parks and by the roadside in Sydney, New South Wales. The late King vowed that his people would not suffer the same fate, so when the Constitution was drafted provisions were made to prevent the sale of land; such land could only be inherited by the heir or the eldest son through marriage. This land tenure system is unique among the other Pacific neighbours, such as Fiji and Samoa, where the land is owned by the members of the family in common (eg *Mataqali* in Fiji, *aiga* in Samoa and *hapu* for Maori people in New Zealand).

The concept of land tenure refers to a system of land ownership that regulates the relationship of the people with the land and, more particularly, the power to dispose and the right to the use of that land. Customs and traditions have played important roles in the relationship between the natives of these islands to the land of their ancestors. Professor Ron Crocombe has this to say to that extent:

Land was highly valued in pre-contact societies, but it had no exchange value in a monetary sense. It was not saleable, and only in some area and to a limited extent was it used to produce goods for trade or exchange. The value of land was the source of almost all subsistence requirements, and as one source of status and prestige. It was also a basis for psychological security, for it gave people an identification, a place to belong. The exercise of land rights was, in a sense, the hallmark of citizenship.<sup>9</sup>

In comparison to the greater respect and affection shown by a Maori for to his ancestral land, Raymond Firth illustrates and amplifies the attitudes to his land in the following striking metaphor and proverbs:

The lands whereon his forefathers lived, fought, and were buried were ever to him an object of deepest feelings. 'Noku te whenua, o oku tupuna' – 'mine is the land, the land of my ancestors' was his cry' ... . Proverbs about land shows the fundamental place which it occupied in the Maori scheme of things. 'Man perishes, but the land remains' ... might be taken as one branch of the native philosophy. A similar proverb is 'He kura tangata, e kore e rokohanga; he kura whenua, ka rokohanga', which compares treasure in man with that in land ... . 'People die, are slain, migrate, disappear; not so the land, which forever remains'.<sup>10</sup>

In 2008, the late King George Tupou V consented to the setting-up of a Royal Land Commission to investigate and to report on possible changes to the present land tenure system. The Final Report has been tabled in Parliament in recent months. Unfortunately, the terms of reference were restricted to issues or matters concerning land law and practices but 'without changing the basic land tenure of our Kingdom'.<sup>11</sup> The nobles will still be the owners of the estates given to them to distribute to the ordinary people. Unless there is another

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<sup>9</sup> Ron Crocombe, 'Overview' in Ron Crocombe (ed), *Land Tenure in the Pacific* (1971) 4.

<sup>10</sup> R Firth, *Economics of the New Zealand Maori* (1973) 368.

<sup>11</sup> Royal Land Commission, *Final Report* (2012) 20.

political upheaval similar in intensity to the violent pro-democracy riots in late 2006, the present land tenure system will continue to hold. A timely paper written by Kersti Harter Kennedy has argued cogently that ‘instability will continue until Tonga reforms its land laws and policies or makes extensive political reforms ultimately resulting in land tenure changes’,<sup>12</sup>

## THE ROLE OF THE STATE

The State has a huge role to play in every aspect of life in the Kingdom of Tonga. It is common knowledge that the State is the biggest employer of most Tongans in the workforce and has been so for over many decades. Most of the brightest school leavers are recruited to the public service unless they were successful in competing for scholarships to study at the University of the South Pacific in Fiji or the universities in either New Zealand or Australia. New Zealand and Australia have funded most of these scholarships under their respective foreign aid schemes or programmes. At least 65 per cent of school leavers do not get jobs other than working in the family land for subsistence living.

The notion of sovereignty and an independent state was important to Tonga in the 19<sup>th</sup> century. There were rumours going around at the time that such superpowers as France, Germany, England and the United States were interested in acquiring territories in the South Pacific. The arrival of Christianity (London Missionary Society) brought with it a number of learned friends who taught the leaders of these islands the merit of remaining an independent state. The Kingdom of Tonga is reputed to be one of the oldest monarchies in the world. Aided by that history, Tonga was saved from being annexed to be part of a British colony when Shirley Baker assisted King George Tupou I to draft and then pass the *Tonga Constitution Act 1875*, setting up a government with defined areas where the powers would reside in the legislative assembly, judiciary and the executive.<sup>13</sup>

The Lockean matrix for a constitutional form of government (ie legislature, executive and judiciary), embodied in a written constitution such as that shown in Tonga’s *Constitution Act 1875*, was set out to promote individualism and private enterprise. This may not be conducive to every society where kinship is more dominant. The sudden elevation of Tongans from a tribal society to that of a state was an immediate shock to a number of chiefs who stood to miss out from being named in a list of nobles with defined estates in land spread throughout the kingdom under the Constitution and the *Land Act*.

There are a number of capable people who can run the government in Tonga. Those who are heads of the government ministries are at least with completed doctorates as minimum qualifications from recognised universities in New Zealand, Australia, the United States and Britain. The composition of Parliament before the election in 2010 was: 9 members of the people’s representatives elected by the commoners, 9 members elected by the nobles and 12 ministers and members of the Cabinet appointed by the King. The King in Council (ie Privy Council) is also a member of the executive that runs Tonga. Since the riots and demonstrations by the pro-democracy movement, the Constitution was changed in 2010 to herald in a new era, where 17 members were elected by the general populace and 9 members still elected by the nobles. These changes were preceded by the recommendations of a

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<sup>12</sup> K H Kennedy, ‘Why Land Tenure Reform is the Key to Political Stability in Tonga’ (2012) 21 *Pacific Rim Law & Policy Journal* 327, 329, 330.

<sup>13</sup> Latukefu, above n 1, 208; Roger Conrad, ‘The Legal System of Tonga’ (1979) *New Zealand Law Journal* 314, 314, 315.

Constitutional and Electoral Commission. The King surrendered most of his executive powers except, among other things, the appointment of commissioners and judges to both the Supreme Court and the Court of Appeal. The members themselves select the candidate for Prime Minister and the King will make the appointment. Then the Prime Minister appoints members of the Cabinet from the elected representatives. The Prime Minister has also a constitutional power to appoint the maximum of four members of the Cabinet from outside Parliament based on the skills required to those portfolios. The present government has two Ministers appointed by the Prime Minister from outside Parliament; namely, the Minister of Justice and the Minister of Education.

It is interesting to note that Tonga's Constitutional and Electoral Commission reported that commoners who made submissions to the Commission were more concerned about land tenure than the changes to political representation.<sup>14</sup>

### **THE TRUE IDENTITY OF A TONGAN**

The influence of Christianity in the passing of the Constitution in 1875 was huge. King Tupou I was converted to Christianity early in his rule and with the blessing of the Methodist missionaries he managed to unite Tonga into a kingdom in 1845. He introduced a simple law code in 1839 known as the Vava'u Code to promote the rule of law. The same code was revised in 1850 and again in 1862 and culminated in the passing of the Constitution of 1875. Obviously, there has been a marriage of convenience developed between church and State. The State has now taken over the responsibility of protecting the commoners from their local chiefs. The true identity of a Tongan is that he should be involved in the governing of Tonga and also worked the land.

A Tongan must promote and be identified with the principles that governed the social relationships between social classes: *faka'apa'apa* (respect), *fatongia* (obligation) and *mateaki* (loyalty). The component parts are glued together by the acceptance of Christianity with its emphasis on *'ofa* (love). King George Tupou I chose a national motto in 1873 which reads thus: *Ko e 'Otua mo Tonga ko hoku Tofi'a*, which literally translates as 'God and Tonga are my Inheritance'.<sup>15</sup> Being Tongan is part of his heritage and it is a gift of his identity. There are many Chinese business people who came to Tonga in the 1970s and the 1980s through a scheme organised by the government in selling Tongan passports for cash. These Chinese migrants have learned the Tongan language and continued to participate in the daily commerce of their new country. Perhaps it may take a few generations before those Chinese people will identify themselves as Tongans.

One of the identifications of a Tongan is the wearing of a fine mat around the waist, both male and female, with the traditional *vala* and at the same time attending the local church service. It is also part of the tradition and cultural heritage of being Tongan.

### **PREVENTING THE SALE OF THE ROYAL RESIDENCE KNOWN AS 'ATALANGA IN EPSOM, AUCKLAND: A CASE STUDY**

A group of Tongan lawyers got together towards the end of 2010 to discuss ways of preventing the late King George Tupou V from selling the royal residence at Epsom,

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<sup>14</sup> Kennedy, above n 12, 344.

<sup>15</sup> A S Samate, 'Re-Imagining the Claim that God and Tonga are my Inheritance' in E Wood-Ellem, *Tonga and the Tongans: Heritage and Identity* (2007) 48.

Auckland, known as ‘Atalanga. Some members of the Tongan community living in Auckland were staunch supporters of stopping the sale of this property as well.

‘Atalanga was bought by the Government of Tonga in October of 1952 principally to house Tongan students who came to Auckland for university studies. Queen Salote used the place as her regular home away from the heat in Tonga during the summer months.

The advisers to the late King were of the view that ‘Atalanga was bought by the late Queen Salote with her own money. However, a thorough search of the Special Collections section within the General Library at the University of Auckland showed—from a special file kept on the purchase of ‘Atalanga by the British Consul who resided in Tonga and advised the Tongan government from the late 1890s, as Tonga was a British protectorate—all the compelling evidence of the origin of the money for the purchase. The records from the consulate in Tonga were handed over to the University of Auckland following its closure in early 2006.

It was a condition of the *Treaty of 1901* between Tonga and Britain that the British Consul would advise the government of Tonga on financial matters and even required his approval for unusual spending by the government. ‘Atalanga was bought by the government of Tonga for 15 000 pounds (NZ currency) and this unusual spending required the approval of the Consul.

The other important finding from the same collection was the will of one Jules Joseph Verhaege, who died in Onehunga in 1953. Verhaege left all his estate to the government of Tonga on condition that the money would be used to construct a 48-room hostel for Tongan boys and girls who came to New Zealand for further studies. His total estate was valued at 50 000 pounds (NZ currency).

Part of the money from the estate of the late Mr Verhaege was used to purchase an adjoining property to ‘Atalanga. It housed mostly Tongan male students up to the 1970s. However that property was later sold and the money from that disposal used to purchase further land, which was added to the original landholding at ‘Atalanga. A new hostel for Tongan boys was built on that added land. Some of the money was also used to repair an existing house located within ‘Atalanga as a hostel for girls.

The proposed sale of ‘Atalanga was advertised by the Auckland real estate firm Bayleys. The asking price was in the \$9 to \$10 million range. It was advertised as the private property of the late King George Tupou V.

The group of Tongan lawyers decided to place a caveat against the title to ‘Atalanga. It was decided that the person selected to be the caveator must have worked for the government of Tonga and have paid taxes there. The successful candidate was Mr Viliami Taufa. He is a scientist and has worked in both Tonga and New Zealand.

The legal adviser for the late King in Auckland, Mr Fisher of Fisher Lamberg, lodged an application with Land Information New Zealand to lapse Mr Taufa’s caveat. Mr Taufa retained a capable barrister, Paddy Finnegan, to oppose the application.

The hearing for the application to lapse the caveat was set down to be heard at the High Court at Auckland on 30 June 2011. Three days before the hearing the King’s legal advisers withdrew the challenge. The caveat remains.

There was an agreement between the two sides that the caveat will still be withdrawn if a court challenge in the Supreme Court in Tonga fails as to the right of the King to dispose of inherited assets including 'Atalanga under the second limb to Clause 48 of the Constitution of 1875. King George V died in April 2012 and the case has not been heard.

The new King Tupou VI prefers to retain 'Atalanga as a royal residence. His Majesty now has regular audiences with members of the Tongan community living in Auckland on his regular visits.

'Atalanga remains safe for the time being.

## CONCLUSION

The arrival of the cash economy has allowed more industrious Tongans to become more independent and to send their children for better education at universities overseas. On their return, these young people have contributed to the economy of Tonga enormously. The downside to this improvement in the standard of living of the common people is that traditional respect and tributes usually paid to the local chiefs and nobles are regularly overlooked or deliberately ignored. Even so, the respect and tributes that are accorded to the chiefs, nobles and the King are still practised in big public gatherings such as weddings, funerals, public holidays and at church functions.

The lack of positive moves to reform the land tenure system may prove one day to be fatal in keeping the good relations between the various classes in the Tongan society. The recent research conducted by Kersti Harter Kennedy in Tonga concluded that the key to political stability in Tonga is an immediate reform of its land tenure system where the chiefs and nobles are still clinging to the estates when the Constitution and the *Land Act* have provided that they should be distributed and allocated to the common people of Tonga.<sup>16</sup> The present state of land holdings does not encourage improvement in the use of land more efficiently. Furthermore, there was an opportunity for the Royal Land Commission formed with the consent of the late King George Tupou V to recommend drastic reform to the present land tenure. Unfortunately, the terms of reference for the Commission restricted its inquiry to all matters concerning land law and practices but 'without changing the basic land tenure of our Kingdom'.<sup>17</sup>

The state and the churches have played big part in Tonga's long-term economic and political stability. The recent reform to a democratic form of government through election of the majority of the members (17 seats out of a total of 26 seats) of Parliament is a step in the right direction. The remaining nine seats which are still elected by nobles will probably be discontinued in the near future. This was an answer by the late King to the riots conducted by members of the pro-democracy movement in the main streets of Nuku'alofa and the burning down of shops and other business buildings in 2006. A Royal Electoral Commission and a Royal Land Commission were also constituted to address the same pressing issues. The state still plays a big part in keeping peace and order in the kingdom. Perhaps, it is timely for the King to discontinue his direct involvement in the executive branch of government through the Privy Council. This will enable the Prime Minister and the elected members of the Cabinet to manage and govern Tonga more effectively and be more accountable to the people who have elected them to Parliament in the first place.

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<sup>16</sup> Kennedy, above n 13, *passim*.

<sup>17</sup> Firth, above n 10, 20.

Whether a Tongan can continue to be proud of his identity as a Tongan under the traditional value system, time will tell. The country is becoming more secular and the influence of the churches will decline. There will be more Tongans born outside Tonga and the influences they may bring to Tonga from a different culture will have more bearing on their resentment of the prevailing culture and traditional values.

The case study on the proposed sale of 'Atalanga by the late King George Tupou V has shown how times have changed. The group of Tongan lawyers who proposed the lodgement of the caveat have ignored tradition and cultural values and have acted in favour of what their professional code of ethics as lawyers has forced them to do. There was no need to turn a blind eye when the evidence was clear and compelling of where the money for the purchase of 'Atalanga came from. The money was not from the late Queen Salote's own purse or Tupou IV or even the late King George Tupou V, but from the investment monies of the government of Tonga.

The future of Tonga will hang in the balance unless the issues discussed above are addressed by those in leadership immediately.