

DR C. GUY POWLES AND THE LEGACY OF HIS GIFTS TO SAMOA

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Dr Charles Guy Powles was both an ardent student and a teacher of customary and comparative law in the Pacific. He was a customary law enthusiast, you might say. I met Guy much later in his career. In fact, I met him after he had retired. But like many others, retirement meant being able to spend more time focusing in on the finer details of those things that captivated and intrigued him. Among them was a lifelong commitment to, and fascination with, the customary laws and institutions of the Pacific, especially of Samoa, Tonga and Papua New Guinea. As a student of Pacific indigenous jurisprudence, I will always be grateful to Guy for his writings and personal advocacy in this area, especially for his scholarship on Samoan customary law.

Guy's contribution to the study of Samoan customary law and to its application in modern Samoan government systems, especially to the Land and Titles Court, will have salience for some time to come. In fact, as Samoa continues to develop and refine the details of her jurisprudence, and in particular her stance on custom in law, his work will continue to be one of its main guiding lights. A key element in Guy's scholarship was the express recognition he gave to the inextricable link between language and law. In relation to Samoa he wrote: "to Samoa and its chiefly system of *faamatai*, the three elements considered to be a Samoan's core identity and inheritance are the matai title, the land appurtenant to the title and the Samoan language. ... Language frames and gives meaning to law. Terms mark or label understood sets of laws, defining subject areas (for example, *suli* and *pule...*)".¹ While his scholarship may not have always been understood, it was certainly always respected.

I had the privilege to first speak with Guy during the writing of the proceedings of the New Zealand Yearbook of Jurisprudence, volumes 13 & 14, in 2011. When I first met him in person he was passing through Wellington and popped into our *Va'aomanū Pasifika* Unit, Victoria University of Wellington, where I was then based. An hour or so later after much lively conversation about Samoan custom and the idea of a Pacific jurisprudence, he left. But not without kindly agreeing to give a guest lecture on custom and law in Tonga to my Pacific

¹ Powles, Guy. 2010/2011. "Overview". *New Zealand Yearbook of Jurisprudence*, 13 & 14, p.240.

jurisprudence class. My class of 2012 (pictured below) were the lucky recipients of his kindness and were doubly blessed by two guest lectures on the same day – one by Guy as promised, and the other by Maori indigenous intellectual property rights advocate and scholar, Aroha Te Pareake Mead.



Figure 1: Dr Guy Powles is standing in back row third in from the left; Aroha Te Pareake Mead is also standing in back row third in from the right. Picture taken at Va'aomanū Pasifika Unit, VUW, by its administrator.

Guy, it often seemed to me during our conversations, was somewhat sceptical about custom being able to operate beyond or outside the sanction of the State. While he was not dismissive of legal pluralism, he was a pragmatist. I sensed that he believed that in moments of real conflict the state as a symbol and vehicle of economic and elitist power would in the end assert its full sovereignty in order to protect itself. Of course, if he did think this he certainly did not articulate it out loud to me. He was too refined a scholar and gentleman for that. He has stated, however, that while “it is the hallmark of customary law that it does not rely on the State for its effectiveness²...just how real and effective constitutional provisions [affirming customary laws] are will depend on political will to enact legislation and on the treatment they receive in the courts...”³.

² Ibid, p.240.
³ Ibid, p.244.

I recall a conversation we once had. Although it took all of a few seconds, it has stuck with me. I recall rather boldly asserting that Samoa's democratic system could exist using a *soālaupule* (Samoan pule-oriented ⁴consensus) style political system that has no need for opposition party politics. My comment included Samoa's adversarial style court based legal system, especially in terms of how it seems to be playing out in the Land and Titles Court. Guy responded by merely raising his eyebrow, pausing, looking thoughtful and then with a quick playful twist to his mouth, he, without saying a word, moved our conversation right along. For me there was much that was said in all those 'I'm not saying a thing; I can't believe she went there' gestures. I often ponder on that moment. The unspoken message I took away was: ... even if I agree with you or if I don't, it's too complicated to respond to right now and I think it is best to just see what unfolds in time. There is lots of wisdom in that. I was very much looking forward to taking up further conversations with Guy on this during the Pasifika Law and Culture conference held in Wellington in July earlier this year. But unfortunately, he had taken ill and could not attend. I was also keen to share conversation on a piece I was writing on the recent codification of the Samoan customary practice of *monotaga* (chiefly service) in Samoa's Electoral Amendment Act.⁵ I am certain he would have had an opinion and would have offered it in the sensitive and considered way in which he always did.

Guy's connection to Samoa began from 15 years of age when he joined his parents and brother to live in Samoa during his father's tenure as New Zealand's first High Commissioner to Samoa. His close relationship with his father meant that his father's well-recorded and oft-cited appreciation of the importance of Samoan customs and traditions to the Samoan people on the one hand, and professional ethics on the other, would have a long-lasting influence over him. This is most evident in Guy's life-long pursuit of an independent scholarly understanding of Samoan customary law⁶ and in his active involvement in the training of those lawyers and

⁴ Pule refers to authority, in this case authority of chiefs or matai.

⁵ See Suaalii-Sauni, T. 2017 (forthcoming). "Legal pluralism and politics in Samoa: the faamatai, monotaga and the Samoa Electoral Act 1963", In *Small States in a Legal World* (Petra Butler and Caroline Morris, Eds). Springer Publishing: Berlin.

⁶ See Powles, C.G. 1973. *The Status of Customary Law in Western Samoa*. LLM Thesis. Victoria University of Wellington; Powles, C.G. 1979. *The Persistence of Chiefly Power in Western Polynesia*. PhD Thesis. Australian National University, Canberra; Powles, C.G. 1993. "Western Samoa", In *South Pacific Islands Legal Systems*, M.A. Ntunoy (Ed.). University of Hawaii Press: Honolulu, Hawaii; Powles, G. 2003. "Customary law systems and the Pacific Island state: the search for workable relationships", *The New Pacific Review (Australian National University)*, 2: 1, p.263.

public servants who would one day apply that training in their service to Samoa.⁷ This is his legacy and gift to Samoa and for that we will always be in his debt.

I salute a comrade and teacher, a most genuine and enthusiastic interlocutor of custom and law, whose spirit I know lives on in all those he loved and mentored.

*I bid thee farewell
Not forever mind thee
But only for the moment
when I cannot see
but for myself the cluttered sea
of hope and dreams
of a time when the days of old
find new breath
in thee⁸*

Farewell, Dr Charles Guy Powles, *ia manuia lau malaga*.

⁷ See Powles, C.G. et al. 1975. Report on Matai Titles, Customary Land and The Land and Titles Court to the Government of Western Samoa. Ministry of Justice: Apia, Western Samoa. (Report given to the Minister of Justice by the Committee, Dr C. Guy Powles was central part of that committee). Dr Powles was actively involved in editing or contributing to the Lawyers' Practice Manual Victoria (Australia), and to the Law Institute Journal (Australia). Many of Samoa's legal practitioners today are former students of Dr Powles.

⁸ © Tamasailau Suaalii-Sauni, 12 November 2016. Poem is titled "To Guy".