

REGIME CHANGE AND REGIME MAINTENANCE
IN ASIA AND THE PACIFIC

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**Ethnicity and Interests at the 1990
Federated States of Micronesia
Constitutional Convension**

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In recent years there have been some dramatic changes of political leadership in the Asia–Pacific region, and also some dramas without leadership change. In a few countries the demise of well-entrenched political leaders appears imminent; in others regular processes of parliamentary government still prevail. These differing patterns of regime change and regime maintenance raise fundamental questions about the nature of political systems in the region. Specifically, how have some political leaders or leadership groups been able to stay in power for relatively long periods and why have they eventually been displaced? What are the factors associated with the stability or instability of political regimes? What happens when longstanding leaderships change?

The Regime Change and Regime Maintenance in Asia and the Pacific Project will address these and other questions from an Asia–Pacific regional perspective and at a broader theoretical level.

The project is under the joint direction of Dr R.J. May and Dr Harold Crouch.

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ETHNICITY AND INTERESTS AT THE 1990 FEDERATED STATES OF MICRONESIA CONSTITUTIONAL CONVENTION

Glenn Petersen*

Political relations within the Federated States of Micronesia (FSM) are strained not only by the FSM's ambiguous (and tenuous) relationship with the United States but by the heterogeneity of the peoples who make up its population. In July 1990 the FSM undertook a Constitutional Convention (ConCon) intended to confront and perhaps resolve some of the stresses Micronesians saw accumulating.¹ At the 1975 Micronesian Constitutional Convention, which drafted the FSM's original constitution, the dynamics had in large measure turned on the question of political status: the Convention was charged with drafting a constitution for an entity whose future political status remained entirely indeterminate. Relations among the various regions within this polity would in turn be contingent upon the outcome of negotiations that were still far from complete. The problems the 1990 ConCon faced were, on the other hand, rooted in matters more specifically concerned with internal relations, both between the several states and their national government and among the states themselves. These internal affairs were of course contingent upon still evolving relations with the United States.

* This account of the 1990 FSM Constitutional Convention is based almost entirely on my own verbatim notes, and notes taken by my assistant, Eve Pinsker. I was graciously permitted to attend all committee meetings and plenary sessions. An official *Journal* has never appeared and I have thus been precluded from comparing my transcriptions of the plenary meetings with the revised transcripts of the ConCon stenographers. All the quotations I use, unless otherwise specified, are from my own notes.

During the course of my research the delegates and staff of the Constitutional Convention were without exception cordial and cooperative. If at times I could not obtain information I sought, I was not alone; all who participated patiently endured

[cont'd next p.]

When the 1990 ConCon began its proceedings, the delegates seemed prepared to implement sweeping changes in the very nature of the FSM's political structure. But by the time the people had finally voted in the 1991 referendum called to ratify the few changes the ConCon actually achieved, the FSM's national government was left virtually untouched. What had begun as a concerted attempt to reshape the Micronesian regime concluded as no more than an exercise in regime maintenance. Given that a majority of Micronesians appeared to agree that their government was in desperate need of significant, if not radical, changes, the question of why so little was ultimately accomplished is a pertinent one. The answer lies in the character of relations among the states; despite agreeing upon what was wrong with the national government, the state delegations could not agree upon which changes would bring about the needed reforms. This lack of agreement sprang from competing notions of what the modified government should look like. Though Micronesians are largely unhappy with what they have, they are not at all sure what they would like to replace it with. This discord is rooted, most immediately, in ethnic differences among (as well as within) the FSM's four states.

the multiple confusions and recurring power outages that are a fundamental part of life in modern Micronesia. In particular I wish to thank the following individuals for their assistance: ConCon president, Resio Moses; standing committee chairs, Sabino Asor, Leo Falcam, Bethwel Henry, Camillo Noket, Robert Ruecho' and Martin Yinug; ConCon administrator, Ihlen Joseph; Asterio Takesy, head of the Pre-Convention Committee; ConCon staff attorneys, Cyprian Manmaw, Brian Tamanaha, John Brackett, Gary Yamaguchi, and Mike Powell; ConCon secretary, Shintaro Ezra; and Pohnpei Delegation legal counsel, Thomas Tete. I also benefitted greatly from various sorts of help and advice from Joan King of *JK Report*; Professor Norman Meller; and FSM chief justice, Edward King. Eve Pinsker rendered me invaluable research assistance. The people of Awak and *peliansapw* Otoi provided my family and me with affectionate hospitality, as they have unfailingly done for years. My wife, Victoria Garcia Petersen, and daughter, Grace, put up with my nearly continual absence as I worked to complete several research projects simultaneously, and shared with me their many thoughtful insights. The Faculty Research Award Program of the City University of New York (PSC-CUNY) provided the funding that made this project possible.

On the occasion of his retirement from teaching, I wish to dedicate this paper to my friend and colleague, Professor Eugene Ogan, who has taught me so much about doing social science responsive to the realities of Pacific island lives.

Ethnic relations within the FSM

The Federated States of Micronesia comprises four states, Yap, Chuuk (formerly Truk), Pohnpei (formerly Ponape), and Kosrae (formerly Kusaie), all part of what are known to cartographers as the Caroline Islands. With the exception of Kosrae, each of these states includes both a volcanic main island (in Chuuk's case, a cluster of volcanic islands within Chuuk Lagoon) and a number of scattered coral atolls. According to the 1990 census, the FSM's total population is 106,231. The populations of the individual states are as follows: Chuuk 54,796; Pohnpei 33,263; Yap 10,782; Kosrae 7,390.

In certain significant ways, the FSM more closely resembles the Melanesian nation-states than it does most of Micronesia. Belau (Palau), the Marshalls, and Kiribati are self-consciously homogeneous in their ethnic composition; each is defined as much by the shared culture of its people as it is by its geography.² The FSM, on the other hand, is something of a residual category, including as it does all the islands remaining in the old Pacific Island Trusteeship after the US had negotiated separate agreements with the groups where it sought military basing arrangements.³ It is, as a consequence, very much a multi-ethnic country.

Distinct languages are spoken on each of the larger islands (Kosrae, Pohnpei, Chuuk, and Yap), in the area known as the Woleai (the atolls between Chuuk and Yap), and on Nukuoru and Kapingmarangi (two Polynesian outliers south of Pohnpei); there are those who would argue that some of the other atoll-dwellers speak distinct languages as well. Moreover, those who in the world political arena refer to themselves as 'Micronesians' would be the first to acknowledge that 'Micronesia', however defined, is a colonial construct; within the islands they are inclined to speak of themselves as members of specific communities rather than as citizens of FSM states or the FSM as a whole (if indeed they define themselves at all).

Political tensions, cleavages, and alliances within the FSM are largely rooted in sectional, rather than class, oppositions. Having passed from autonomy through four different colonial regimes and back again to limited autonomy in less than a century, the FSM has experienced too many compelling changes in economic and social policies for any *group* to have established itself as an upper, ruling, or dominant class. And though most of these societies continue to organize themselves around chiefs and chiefly lineages, in addition to the electoral and bureaucratic systems introduced since World War II, the

small size of the political units, the highly fluid nature of local social status, and the varying, frequently contradictory, impacts of the sequential colonial regimes have all promoted a marked degree of social mobility. With the possible exception of Yap, traditional social stratification was hardly of a degree that might be usefully termed 'class', and recent emphases on public education and government employment have worked to keep any group from entrenching itself in positions of power.

Sectional differences within the FSM are, in turn, primarily ethnic. This is not to deny diversity grounded in local ecology and geography, political and economic histories, and other material factors. But the Caroline Islands have been settled for at least two thousand years (Yap may have been settled for considerably longer) and although there has been a good deal of interaction among the island peoples, the societies and cultures of each have developed essentially *in situ* for two millennia.⁴ During this epoch the dynamics of ecological adaptation, history, and social relations have produced distinct cultures on most of the islands. The islanders are consciousness of these cultural differences, and in their interactions with one another employ and understand them in ways that are, in comparative terms, usefully termed 'ethnic'.

More salient, however, is the self-consciously limiting character of political groups in the region; these polities tend not to be expansionist. People in these islands are inclined to think of themselves in terms of their respective political communities. At the heart of what it means to be Pohnpeian, for instance, is a sense that political centralization is morally wrong. Paramount chiefdoms have largely — though by no means entirely — been ritual in nature and have seldom include more than two or three thousand people. Local chiefdoms — which serve as sites of most political mobilization — rarely include more than two hundred people. As a Pohnpeian chief once remarked to me, 'One man cannot rule a thousand' (Petersen 1982). Lingenfelter (1975:99-159) has made similar arguments concerning decentralization in traditional Yapese polities, and Chuuk Lagoon has long been known for the political fragmentation of its island communities. In their interactions with each other, then, the people of the FSM tend to focus on the differences that separate them. The greater the distances that separate peoples, in an island world where most interactions came only as products of very deliberate sailing voyages, the greater the ethnic differences between them.

These ethnic differences, moreover, translate themselves immediately into political differences. While the people of Yap island, for example, jealously defend their communal liberties as they jockey for position among themselves, they nonetheless recognize that they share certain values concerning the nature of such maneuvering for position. This in turn means they can reasonably assume that those with whom they compete locally are no more inclined than they are themselves to pursue power beyond socially acceptable limits.⁵ They view the peoples of other islands and regions with considerably less equanimity, however, since they can only marginally be expected to share common values.

Out of this context grows a general insistence, within the FSM, on the sovereignty of the FSM states. By and large the FSM's peoples are loathe to allow 'Micronesians' to rule them. 'Micronesia' is a colonial construct and 'Micronesians' are in many ways as alien as any of their former colonial rulers, serving as constant reminders that the colonial era is not entirely past. At the core of the tensions that beset the FSM, then, are these ethnic fears of centralization. Unity within the FSM remains a tenuous matter, and the best testament to this is the use of the phrase 'Unity' as a talisman; it appears everywhere. Unity is invoked precisely because so many people are frankly dubious about it.

When the delegates to the 1990 Constitutional Convention gathered, they spoke in English, the Micronesian *lingua franca*. In doing so, they were forced to recognize that they were dealing with a government that was neither Kosraen nor Chuukese, Pohnpeian nor Yapese, that is, that was not their own. Those with whom they did speak in their own languages were their fellow delegation members. Thus the very structure of the ConCon enhanced the delegates' awareness of the differences among them. They found themselves in opposition not only to their national government — that is, the entity called 'Micronesia' — but to the other delegations as well. In coming together, these men found themselves readily agreeing upon their opposition to the national government. But they were able to accomplish very little in the way of changing the government they so disliked because the very process of working together to transform it required of them awareness of the ways in which they differed from those with whom they were working. In the end, the ConCon was reduced to near impotence: though everyone agreed that major changes in the FSM's government were needed, no one could agree on what the changes should be.

The impasse grew out of fears that were in fact partly structural (that is, grounded in differences in population sizes and related issues) but were phrased in terms of ethnicity. While the Yapese and Pohnpeian delegations steadfastly sought to protect their own autonomy and to enhance their rights to place their own customs above the powers of the central government, both the Kosraens and the Chuukese saw themselves threatened at least as much by the others as by the central government.

Secession and sovereignty as issues

Most delegates seemed to agree with a colleague who commented, as 104 proposed amendments gradually accumulated, 'We're not amending the Constitution; we're writing a new one'. In the end, the ConCon approved twenty-four amendments, the majority of them quite minor, and in the referendum that followed the voters approved only four of these. It certainly appears that little came of the effort. It would be easy to conclude from this that whatever tensions do exist in the FSM are minor and of little historical consequence. One has only to look at Eastern Europe and the Soviet Union at the end of the 1980s, however, to realize that appearances do not necessarily provide an accurate guide to looming political cleavages. I cannot assert that the FSM is on the brink of a collapse such as that seen in the old Soviet bloc, but I do believe that the 1990 ConCon's inability to effect any major changes will exacerbate longstanding problems within the FSM and that the country is certainly edging closer to a breaking point.

For this reason I want to draw particular attention to Pohnpei's proposal for constitutionally sanctioned secession. The Pohnpeians have made no secret of their interest in the possibility of seceding from the federation. Although the ConCon quickly rejected their proposal, the possibility that Pohnpei might secede, when placed in its historical context, sheds considerable light on the question of state sovereignty, one of the issues most visibly animating the ConCon. Most of the proposals that came before the ConCon had similar sorts of historical antecedents — that is, they derived from political questions raised by the Enlightenment, the framing of the American constitution, and American influence on the 1975 Micronesian Constitutional Convention (Petersen 1990) — and a brief exploration of this single case might serve as an example of how larger history impinged on the 1990 ConCon.

Pohnpei's delegation accomplished virtually none of the many projects it introduced to the ConCon, and the prospect of secession continues to waft about the island like the clouds local mythology says once obscured it from the view of outsiders. If and when Pohnpeians move to leave the federation in the pursuit of genuine independence, Chuuk's leaders are likely to pursue a closer relationship with the US. Without the buffering influence of Pohnpei, Kosraens' fears of Chuukese domination will prompt them to turn away from the federation, too. The Yapese, left to their own devices, will probably opt to follow the Pohnpeian lead and seek their own independence. The origins of this potential cleavage can be traced to historical processes that patched the Micronesian trusteeship together in the first place, and to the ambiguities of the first Constitutional Convention, which sought to assign to the new national government enough power to negotiate Micronesia's political status with the US. As a consequence, it created a government powerful enough to eventually alienate the states that constitute it. At the 1990 ConCon, Micronesians had an opportunity to relieve some of the accumulating strains. The fact that they did not is perhaps a sign that the strains had already grown too strong.

Though the proposed amendment permitting secession played a seemingly marginal role in the ConCon's deliberations (if one were able to study an official *Journal* the only reference to secession one would encounter would be the introduction of Delegate Proposal 88 which contains this amendment), it is instructive to consider its import for questions of Micronesian unity and sectionalism.⁶ Given the FSM's historical ties to the US and its constitution, and the entire question of the FSM's sovereignty, this issue is particularly troublesome to the people of Pohnpei. When the secession proposal was briefly taken up in committee, the FSM's acting secretary of External Affairs (who was a ConCon delegate) opposed it on the grounds that it would make the FSM appear unstable and therefore drive away potential investors. Moreover, he continued, the US government would be inclined to view such a measure as a threat to the FSM's security agreements with the US under the Compact of Free Association, and if it were enacted he would immediately be called in by the US for consultations and instructions. At this point one of the ConCon's most influential delegates, former FSM president Tosiwo Nakayama asked, 'Why do we need this in the Constitution?'. A Pohnpeian delegate replied, 'Our people asked for it'. Nakayama responded, 'In other words, there are people here in Pohnpei who would like to secede?'. Came the reply, 'All of them'.

The possibility of secession had been quickly dispatched at the 1975 Micronesian Constitutional Convention. The original convention met in Saipan at a time when the Marianas had just voted in favour of a separate Commonwealth agreement with the US, the Marshalls were partially boycotting the ConCon in their quest for separate status negotiations, and the Belauans were seriously threatening to begin their own talks with the US. The Committee on General Provisions submitted a committee proposal (No. 27) explicitly prohibiting secession. Though the final draft of the 1975 constitution contains no such clause, the committee report remains in the permanent record, where it stresses that in sending delegates to the ConCon and ratifying the constitution a state 'has made a firm commitment to join' the FSM. It argued that the constitution should 'not allow a later reassessment of this commitment which may be motivated by a change in the economic or political conditions within a State'. The report went on to insist that the new federation's ability to engage in international relations would be harmed if states had the option to secede (Standing Committee Report No. 40).

This emphatic opposition to secession is perhaps best understood in the light of American history, which guided both the delegates and their American advisors and counsellors. From the earliest days of the republic, sectionalism had played an important role in American politics. Much of the opposition to the relatively strong central government outlined in the constitution was phrased in terms we would now call ethnic (Storing 1985), and certain key arguments in the *Federalist Papers* were grounded in Madison's belief that sectionalism was a threat that must be overcome. Less than ten years after ratification the Kentucky and Virginia Resolutions (the former drafted by Thomas Jefferson) of 1798-99 argued that the individual states had been sovereign before the constitution was ratified, that they retained this sovereignty under the constitution, and that they therefore possessed the right to 'nullify' federal acts they deemed unconstitutional. Later, when a group of New England states opposed the War of 1812 and seriously considered seceding from the Union, then in 1832, when South Carolina nullified an unfavourable tariff structure and threatened to secede, and again in an 1850 slavery dispute, the earlier Kentucky and Virginia Resolutions on nullification were used in support of the claim that sovereignty was still vested in the states. It was not until the Union prevailed in a great civil war that

the questions of state sovereignty and secession were ultimately decided in favour of irreversible union. Members of the original Micronesian Constitutional Convention, guided by the outcome of this history, had thus opposed any possibility of secession.

But the 1990 FSM ConCon can only be understood in terms of struggles over the question of state sovereignty; there were claims made that the states existed prior to the federal government. This linked the legal status of the FSM states to the existence of the people inhabiting them — an inherently ethnic argument.⁷ Therefore, some said, any questions about relations among the states could only be resolved on the basis of full equality among them. An advisor to the Kosraen delegation, alluding to the fact that Chuuk state includes more than half of the FSM population, remarked privately that ‘When the Chuukese say something should be done ‘democratically’, they mean that Chuuk should have the power’. This comment both echoes John Calhoun’s claim — made in the course of the nullification controversy — that true democracy is not the rule of an absolute or numerical majority, and his proposal that decisions be made by ‘concurrent’ majority, with the people of each state having a veto over federal legislation.

The opening battle of the 1990 ConCon was fought over the question of whether each state would have the right to veto proposed constitutional amendments via a requirement for ‘consensus’, that is, the agreement of all four state delegations. Kosrae insisted upon this rule and in doing so argued from a position explicitly grounded in the logic of state sovereignty. An extension of this logic might have led it to support Pohnpei’s quest for a secession amendment. But, as we shall see, the overwhelming fear of American interference was enough to terminate discussion of any proposal that might involve the US in FSM affairs through the security treaties annexed to the Compact (see below). And, ironically, it was recognition of precisely this residual American power in Micronesia that motivated the Pohnpeians’ continued call for true independence and their right to secede from the federation. While each of the FSM states was experiencing its own individual frustrations, they were all — without entirely recognizing the commonality of their experience — chafing at the continuing obstacles confronting them as a consequence of their ambiguous political status.

Historical background

Micronesian constitutionalism cannot be studied without reference to the extreme ambivalence — not to mention confusion — the US has demonstrated in its administration of the Pacific Islands Trust Territory (as well as its other dependencies). The US seriously considered annexing the islands in the years after, and at the outset of negotiations with the Micronesians in the late 1960s the US sought to impose a political relationship that was, according to informed accounts, no more than a copy of Guam's Organic Act with 'Guam' blotted out and 'Micronesia' inscribed. Though the US invested vast sums of money trying to persuade Micronesians to accept a relationship that would perpetuate American suzerainty in fact if not in name, it was not as successful as some have imagined. In the sixty years preceding the end of the Pacific War, Micronesians experienced transitions from precolonial autonomy through the rise and fall of three other colonial regimes (Spain, Germany, Japan). Differing local outlooks provoked reasonable scepticism, and for every argument put forward in favour of close, permanent ties with the US, there were equal and opposite arguments insisting on political distance from it.

As the US began to comprehend that it was making no headway in its attempts to fully dominate the region, it gradually modified its strategy and began exploiting geographical, cultural, and historical differences that had previously been impeding its progress. Acknowledging a certain degree of pre-existing antipathy among the island groups and attempting subtly to augment it, the US worked to counteract more visible movements toward unity among them.

The most articulate seat of resistance to American rule in the area was the first pan-Micronesian legislative body, the Congress of Micronesia (COM). Almost immediately after it began meeting in 1965, the COM undertook negotiations aimed at ending US trusteeship in the islands. In the course of ten years' hard work preceding the 1975 Micronesian Constitutional Convention, its representatives had convinced their opposite numbers in the US administration that the great majority of Micronesians did not want to be — or to become — Americans. They had not, however, made much progress in deciding upon just what status they were willing to settle for. One of the reasons for holding the convention was the hope that in coming together to consider the character of

future self-government, Micronesia's leaders would also sort out what that government's relationship to the US might be. The convention did in fact serve as a catalyst: preparations for it set into irreversible motion a series of separatist movements within the Trust Territory. While their historical trajectories are distinct, the separate political status negotiations of Belau, the Northern Marianas, and the Marshalls all gathered momentum or culminated in the months preceding the Constitutional Convention.

The 1975 Constitutional Convention

By 12 July 1975, when the original convention first convened, the only thing even remotely certain about the Trust Territory's future status was that it would not remain a single political entity. The US had fostered a plebiscite on a 'Covenant' in what was then the Marianas District of the Trust Territory. In a vote held on 17 June, less than a month before the convention got underway, 70 per cent of the voters approved a new arrangement intended simultaneously to cleave the Marianas off from the rest of the Trust Territory and to integrate them permanently into the US as a Commonwealth (a somewhat unspecific status patterned on that of Puerto Rico's relationship with the US). Because the convention met on Saipan, the principal island of the Marianas, the delegates had to work in surroundings dominated by the remains of a very visible campaign that had opposed precisely the union they were charged with crafting (Meller 1985:74-82).

The Marianas plebiscite, and particularly its timing, were widely viewed as part of a deliberate ploy to weaken the Micronesians' solidarity. During this same period the US had also attempted to initiate discussions concerning American control over local lands with the Trust Territory's individual districts. Moreover, the US was engaged in wiretapping some of Micronesia's political status representatives and the State Department was hoping to exert covert influence on the Constitutional Convention's outcome (Petersen 1986). This array of American intrusions further antagonized a great many Micronesians. Their sentiments were manifest when they went to the polls a few days before the Constitutional Convention opened, to vote in a 'Referendum on Future Political Status' (in reality, an opinion poll). Though the confusing ballot format precluded any clear outcome, in the districts that eventually became the FSM (Pohnpei [which at that time included what is now Kosrae State], Chuuk, and

Yap) the total number of votes in favour of the 'Independence' option substantially surpassed those for the alternative future political status options: 'Statehood', 'Commonwealth', 'Free Association' (which had not yet been fully defined), and continued 'Trust Territory' status (Petersen 1975).⁸

In recent years the meaning of this vote has been misunderstood and misrepresented. It is worth reconsidering. The ballots listed each status option followed by boxes inscribed 'yes' and 'no'. Voters were able to express their support for or opposition to each option. In Pohnpei, however, where I was able to see the completed ballots, most voters simply voted 'yes' for the status they preferred and ignored the remainder of the ballot. Many voters in other regions did the same. For this reason, I have long maintained, it is inappropriate and misleading to read significance into the 'no' tally. The only meaningful results are the 'yes' votes: independence received in excess of one third more votes than did free association. Despite this apparently clear mandate for 'independence', a number of FSM leaders and expatriate advisers have long claimed that because 'independence' received more 'no' votes than 'free association', the latter status was the one the people charged them with pursuing. In doing so, they misrepresent the message sent by the voters in 1975 (Petersen 1975, 1979, 1985). On the other hand, voters in the Marshalls and Belau districts overwhelmingly rejected 'independence' and instead voted for continued 'trust territory' status by a substantial margin. The Belauan and Marshallese votes mirrored widespread sentiments in those two districts — lying at the outer edges of the Trust Territory — against any further union with the rest of Micronesia. Though Belauan and Marshallese delegates participated in the Constitutional Convention, it was clear from the outset that their hearts were not in it, and Norman Meller (1985) has described the irony of a situation in which the Belauans played a leading role in shaping the convention's agenda even as they were inexorably pulling away from what was to become the Federated States of Micronesia.

The first Micronesian constitution was written under conditions that are best described as tenuous. In the face of actions on the part of the US that were reasonably perceived by the Micronesians as hostile to an effective Micronesian autonomy, and the realization that the Marianas, the Marshalls, and Belau were about to pursue separate accords with the US, the constitution finally agreed upon was drafted with at least as much concern for gainsaying US political interference in the region as with clear-sighted visions of how best to fashion a system of self-government for the peoples of Micronesia.

The dual task — to deal simultaneously with external pressures and internal relations — generated two conflicting strategies. One was to design a strong central government with relatively weak states, the second to create strong states with a relatively weak central government. The purpose of the former was to ensure that the new Micronesian government would be potent enough to defend national interests. The alternative was meant to prevent the national government from being strong enough to serve as an effective proxy for American interference in local affairs. These two apparently contradictory programmes were intended, then, to achieve essentially the same goal: to limit continued US dominance over Micronesia's affairs. The outcome was, finally, a compromise; no clear-cut decision was made about the inherent strengths and weaknesses of the future Micronesian government (Meller 1985). But there was general agreement that the new government would be responsible for ending the trusteeship. That is, whatever type of government evolved, its task was to ensure that negotiations with the US remained on course, pursuing a high degree of autonomy and self-government.⁹

The new republic and free association

To an extent, the delegates succeeded in achieving this basic goal. The national government of what in 1979 became the Federated States of Micronesia (following a 1978 constitutional referendum) doggedly negotiated a Compact of Free Association with the US, and the Compact was approved by three of the four FSM States in 1983 (Pohnpeians opposed the Compact, steadfastly calling for independence, but have for the present also been willing to comply with the majority's decision). Congressional approval in the US took considerably longer, but was eventually secured. In 1986 the US declared an end to the Micronesian Trusteeship (with the exception of Belau, which has yet to approve a compact with the US), and in 1990 the United Nations Security Council voted to confirm this transition.¹⁰

This free association agreement is more than a little vague. Despite its being purposely negotiated as an alternative to independence, some Micronesian leaders (particularly the Pohnpeians) now claim that the FSM is indeed an independent nation-state, and the United Nations admitted the FSM (along with the Republic of the Marshall Islands and the Baltic states) as a member in 1991. And while the FSM's constitution claims that nothing may compromise its

authority within the FSM, the Compact of Free Association carries with it annexes which grant the US rights to interfere in internal Micronesian matters if 'security' is at stake. Moreover, the US Congress ratified the Compact with the stipulation that the US has the right to declare literally anything a 'security' matter, thereby assuring the US right to interfere legally with any internal Micronesian issues it chooses to make its concern. During the course of the 1990 ConCon, several of these matters surfaced as major, unresolved issues of contention, particularly for the Pohnpeian delegation, which continued to pursue its people's quest for genuine independence.

Official self-government in the FSM began in 1979. Bureaucratic functions were gradually transferred from Trust Territory headquarters on Saipan to newly established offices and agencies in the national capital on Pohnpei (and to the new Belauan and Marshallese governments in Koror and Majuro). At the time of the 1990 ConCon, then, the FSM had been self-governing for eleven years, even though its political status had still not been entirely resolved. Indeed, the political status of the FSM (and the Marshalls) remains ambiguous, despite UN approval of the free association relationship and the end of trusteeship. While scholars generally hold that these polities are not genuinely independent and that their sovereignties are compromised by the Compact (Firth 1989; Smith 1991:94-100), some politically and legally interested parties are inclined to view them as entirely sovereign and/or effectively independent (Michal 1992; Stovall 1991). FSM leaders, as we shall see, express divided and sometimes ambivalent opinions about the exact nature of their country's political status.

The original FSM constitution requires that the voters be asked, every ten years, if a constitutional convention should be called. In the general elections of March 1989 the ConCon item appeared on the ballot, and a majority of the voters in Yap, Chuuk, and Pohnpei indicated that they would indeed like to have one convened. After Congress scheduled the ConCon, drafted its rules, and allocated funds for it, each state elected delegates in proportion to its congressional representation, plus two 'traditional leaders' or 'chiefs'.

The ambiguous nature of both the FSM's relationship with the US and its international status added to the discontent delegates brought with them to the ConCon. As a consequence of a host of financial, security, and related arrangements, many Micronesians believe that the US retains undue influence over their national government. This applies not only to the American government,

but also to the Merrill Lynch investment firm, which managed a bond issue that enabled the FSM to use the Compact of Free Association's fifteen-year payment guarantees to gain more convenient access to funds. Merrill Lynch, some argue, has exercised unwarranted (or at least unexpected) influence over FSM financial decision-making, despite the broker's claims to the contrary. General discontent with the power of the FSM Congress, and the way that Congress exercises it, was bolstered by a sense that the central government served at least as much to channel American authority as to challenge it. In seeking to curb congressional powers, a substantial number of delegates (and the people who elected them) were hoping not merely to shift authority from the central government to the states, but to minimize the degree of authority the US wields over their islands. When one of the highest-ranking FSM government bureaucrats serving as a ConCon delegate asserted that the states no longer needed 'two drivers', he was speaking not only of power sharing between the state and national levels, but also about the contest between the FSM and the US.

The fundamental questions facing the delegates, then, had not only to do with their country's internal political life, but with its external relations. Each decision had to be analyzed as a possible reorganization of links among the states, between the states and the national government, between the FSM and the US, between the states and the US, between the national government and foreign powers, and between the states and foreign powers. The manifold ramifications of each and every potential change made accord that much more difficult for the delegates to achieve. Although there was remarkable agreement about the need for changes in relationships between the states and the central government, there was little agreement on the sorts of changes that should be effected in relations among the states themselves.

Despite a shared sense that the national government too often served to channel American influence, the very vagueness of the FSM's relationship with the US also made delegates hesitate to weaken what was still their main bulwark against the US. Any change in the national government might potentially curtail its ability to withstand American interference. In the absence of clear-cut agreement on how to shape internal changes, few delegates were actually willing to risk weakening the national government's ability to deal with the US. Nor were they eager to tamper with the central government's role in securing foreign aid from sources other than the US. The delegates had to decide both

how much power to allow to the national government and how much to transfer to the several states.

The latter question lies at the core of this essay. Though the delegates largely agreed that they were charged with shifting power from the centre to the states, and shared doubts about how much power to strip from the centre, they were entirely at odds about what sort of, and how much, power to give the states.

States, delegations and interests

States and delegations

Delegates representing the four FSM states came to the ConCon with decidedly differing styles and points of view. The delegations from the two smallest states, Kosrae (with four delegates) and Yap (with five), were marked by a relatively high degree of internal cohesion. The two larger delegations, Chuuk (with thirteen members) and Pohnpei (with nine), only occasionally achieved unanimity in their deliberations and voting. Kosrae had a clear-cut mandate and the Chuuk delegates seemed fairly certain about where their state's interests lay, but the charges borne by the Yapese and Pohnpeian delegations were either unspecific, as in Yap's case, or somewhat contradictory, as in Pohnpei's.

Kosrae's position was straightforward. The state's leaders had opposed the convention, and when it was convened, they attempted to diminish its effectiveness by arguing strenuously for adoption of rules requiring agreement — 'consensus' — of all four state delegations before approving any amendment to the constitution. As representatives of the smallest and most homogeneous FSM state, Kosrae's delegation took the position that any reorganization or redivision of power or funding was likely to threaten the principle of state sovereignty — that is, each state's share be equal to that of each of the others. Kosrae's Yosiwo George, one of two state governors serving as delegates to the ConCon (the other was Resio Moses of Pohnpei), was a particularly determined and articulate spokesman for this position.

Chuuk's delegation represented a diametrically opposed tendency within the federation. The population of Chuuk State, according to new census figures first made available during a ConCon hearing (and then only unofficially), is greater than that of the other three states combined. The people of Chuuk Lagoon

have long been split into eastern and western factions (the latter has consistently pursued status as a separate FSM state), and outlying atolls in the west, north, and southeast have significant differences from, as well as longstanding ties with, the Lagoon population. Large size and diversity of interest promote multiple, contradictory tensions. The Chuuk delegation had a difficult time maintaining internal cohesion, given the large number of regional factions within their state.

In general, Chuuk's position was that equitable divisions of power and funding could only be achieved by allocating them on the basis of population. But some of Chuuk's delegates recognized the intimidating effect this had, and worked to defuse it. This was particularly the case in the matter of presidential selection, in which several Chuukese delegates deliberately steered clear of proposals providing for election of the FSM president by a simple popular vote.

Yap mixes a relatively small population size with marked diversity of interest: there are the people of Yap island proper on the one hand and on the other the peoples of the outlying atolls (collectively known as the Woleai), who speak variants of a language closely related to Chuukese but who have long been dominated socially by the Yapese. Located in a position that is as close to Belau, Guam, and the Northern Marianas as it is to the rest of the FSM, Yap appears less affected by tensions that concern the others and perhaps for this reason seems more committed to the union. Its delegation came with a series of proposed changes but did not insist upon seeing them adopted. The Yapese are well known in Micronesia for their willingness to cooperate with, rather than confront, the other states.

Pohnpei's delegation was possibly the most fractious. Like Chuuk and Yap, Pohnpei State includes different populations of people, some indigenous to the main island and others to the outlying atolls, as well as a sizable population of peoples long resident on the big island who trace their ancestries and affinities to the atolls. The first bloc is largely fed up with the FSM, while the other two see it as the prime guarantee of their livelihoods. The Pohnpei State delegation was split by these competing concerns and manifested little in the way of cohesion. Nonetheless, having the FSM capital located on Pohnpei makes the national government's actions especially visible, and dislike for the government is perhaps greatest in Pohnpei State. The state's relatively large population size made it a candidate for favouring decisions and disbursements based on simple

population numbers, while its longstanding interest in seeing an independent Micronesia, in opposition to those who had chosen free association, inclined it toward support for the state sovereignty position. Though Pohnpei's secession amendment played only a minor role during the ConCon itself, it may well have a highly significant, long-term impact on the FSM's survival.

Interests

In order to understand the degree to which the individual states' interests drove the ConCon, it is worth looking for a moment at who submitted proposals. Fifty-four of the proposals (52 per cent) came from state delegations (or from a large enough portion of a delegation to warrant listing on the ConCon's official 'Status Table' as having been submitted by the delegation). Pohnpei's delegation submitted 26 — nearly half — of these; Yap sponsored 18, Chuuk 7, and Kosrae 3. Together, Pohnpei and Yap were responsible for over 80 per cent of the proposals submitted by delegations, a useful index of the two states' discontent with the *status quo*.

The numbers of delegate proposals that the committees sent on to the plenary provide another telling index. The Yapese delegation submitted 18 delegate proposals; 10 of those were reported out to the plenary as committee proposals; 8 of these appeared on the constitutional referendum ballot. Only 9 of the Pohnpei delegation's 26 proposals were reported out as committee proposals; 1 became a convention proposal (a status I shall explain below); and 4 made it onto the referendum ballot. It is worth noting that 6 of Pohnpei's proposals dealt with technical changes in constitutional language; 4 of those became committee proposals; 2 appeared on the referendum ballot. When these figures are taken into account, the number of Pohnpei's successful substantive proposals is significantly different: 20 delegate proposals; 6 committee and convention proposals; 2 ballot items. Chuuk's delegation sponsored 7 delegate proposals; 4 became committee proposals; 3 appeared on the referendum ballot. Of Kosrae's 3 delegate proposals, 2 became committee proposals; 1 appeared on the ballot.

These figures suggest that Yap's delegation was considerably more in tune with the FSM's general sentiments than were the other three. One of the Yapese commented that his delegation had come intending to preserve the *status quo*, but had soon realized that some changes, particularly in the method of presiden-

tial selection, were called for. While maintaining a public posture of equanimity, then, the Yapese seem to have grasped precisely which changes the federation was prepared to accept.

In proposing few changes, the Chuuk and Kosrae delegations displayed their mutual fears. Both preferred to enhance their respective states' situations under the *status quo*, rather than effect major changes in the constitution. The Kosrae proposals dealt with shifting authority and money to the individual states. Chuuk's proposals were intended to ensure that money was distributed on a population basis, in acknowledgment of its population's overwhelming size, and to defuse some of the political impact of its size by providing a weighted system for popular presidential elections. The relative success of the few proposals they offered reflects the moderation with which they approached the process.

Chuukese delegates, either individually or in small groups, submitted 26 proposals, far more than any other state's delegates. Nine of those advanced to committee proposals and 5 were included on the referendum ballot. The sheer size of Chuuk's delegation in part accounts for its lack of cohesion, but longstanding tensions between the eastern and western regions of Chuuk Lagoon, as well as differences among the various outlying atoll groups and the Lagoon undoubtedly played a role as well.

The proposals submitted by Pohnpei's delegation, on the other hand, manifested most of the state's discontents with the *status quo*. Its more radical approach met with considerably less success than those of the other states. Given the rather significant differences among the various localities within the state, it is notable that only a few members of Pohnpei's delegation offered individual proposals. Senator Leo Falcam submitted 11 proposals on his own, 4 of which advanced to committee proposals and 3 of which appeared on the referendum ballot. State Senator Yasuo Phillip, together with State Senator Reed Nena of Kosrae, initiated 11 proposals, only one of which appeared as a committee proposal and on the ballot.¹¹ Pohnpei's proposals — like Kosrae's and Yap's — were generally signed by all members of the delegation, though Governor Resio Moses did sign the secession proposal upside down as a sign that he protested doing so.

In the present context, however, two themes emerge as keys to understanding the convention's dynamics. First, there were the basically structural tensions

between Kosrae and Chuuk: the roughly 7,000 Kosraen people are apprehensive about the political power of the 55,000 Chuukese. These tensions were largely focused on the issue of political control. On the one hand, Kosraens insisted on state sovereignty — that is, they wanted the right to make virtually all political, economic, and social decisions on their own. On the other, the Chuukese, constituting over half the FSM population, wanted to ensure that the national government was responsive to their absolute majority. General agreement among all the delegates that the FSM national government — and more specifically, the Congress — had to be weakened and decentralized was intersected by a sense that Chuuk's overwhelming popular vote and its numerical strength in (some would say domination of) Congress permitted it to benefit from the *status quo*.

Even as everyone spoke on behalf of decentralization, Chuuk's delegation was ambivalent, if not equivocal, about any change in the current state of affairs. Simultaneously, the other states were confronting the converse of this issue. By weakening the centre, some of them feared, they would merely unshackle the full power of Chuuk's absolute majority; even a strong coalition of the other three states could not muster enough votes to challenge Chuuk's numbers. In spite of openly expressed agreement on the need for change, then, the delegates were not at all sure that implementing the called-for changes would in fact serve them well.

Secondly, there was the matter of enhancing local — that is, state — authority in a number of contested areas. Such included, but were by no means limited to, the primacy of local custom, local regulation of access to land, and immigration among the FSM states.¹² Such items were of considerably more concern for the Yap and Pohnpei delegations, and only marginally engaged the other two states. The Yapese introduced a number of measures intended to protect and preserve local customs, but they eventually decided that any attempt to legislate in areas of custom and tradition would in the long run be more likely to harm than sustain them. Pohnpei, on the other hand, vigorously pursued its quest for control over immigration, judicial prerogatives, and land law, and a number of its delegates were alienated by the ConCon's refusal to take seriously Pohnpei's desire for amendments that would permit secession and grant states a say in nuclear weapons questions.

Each of the four state delegations brought with it a markedly different perspective on the nation's future. The ConCon's business was for the most part conducted by four separate states working on their own individual agendas; only occasionally were problems approached in terms of how they affected the FSM as a whole. The 24 amendments finally approved by the ConCon made it through the complex process largely because they represented no significant threat to any individual state. Although 'unity' was a watchword throughout the ConCon's duration, it was more of a shibboleth than an apt characterization of what was either aspired to or could be observed in action.

Doubt, fear, mistrust, suspicion

Kosrae's Governor Yosiwo George, one of the ConCon's more influential figures, summed up his state's concerns — and probably those of most, if not all, of the others — at the outset. On the fourth day, as the delegates were about to vote on the key change in the ConCon's rule on consensus (see below), Governor George delivered a short speech, in which he noted Kosrae's 'disappointment and unhappiness', and observed that the ConCon's atmosphere was plagued by 'elements of doubt, elements of fear, elements of mistrust, and elements of suspicion'. Then, responding to widespread rumours that the Kosraen delegation would withdraw from the ConCon if the consensus rule were changed, he said he was 'saddened' to hear of 'fears that one delegation may block the efforts and actions of other delegations'. Referring to a comment he had made on the previous day, concerning the Kosrae delegation's mandate for 'sovereign recognition of the states', he explained Kosrae's hope that the ConCon's work would 'strengthen the unity of this nation'. Kosrae's hope for unity, then, was couched in its insistence on state sovereignty and a context of fear and distrust, that is, in barely disguised disunity.

At about the same time, a Pohnpeian leader, speaking off the record, explained his people's inclination to leave the FSM, expressed at a series of public hearings convened by the state's ConCon delegation: 'We heard it from everyone. They gave us many different reasons — and some were perhaps silly — but they all reached the same conclusion'. The main reason for this outlook,

he explained, was land and the fear of permitting non-Pohnpeians access to it, given the very limited amount left on the island for the Pohnpeians themselves. The delegation found itself confronting 'a dilemma', he said. While they saw the desirability of promoting unity because of the need for stability, they also felt responsible to the people who sent them to the ConCon. A resolution to this dilemma, he suggested, might lie in the battle over consensus versus a three-quarters vote.

The others say unity is necessary. Pohnpei says that if there is no unity after ten years of nationhood, then it will never come. If we can work something out, fine; but if there is no agreement, then the die is cast. We are different peoples, speaking different languages, with different cultures.

Pohnpei's desire for separation, like Kosrae's insistence on state sovereignty, was charged with a sense that unity was already a lost cause.

The ConCon's delegates ultimately did approve nearly a quarter of the proposed amendments, suggesting that there was in fact some agreement, if hardly true unity. In the 1991 constitutional ratifying referendum, however, only four of the proposed amendments were ratified by the FSM's voters. Though Yap and Pohnpei seemed eager to respond to the FSM's problems, Kosrae and Chuuk apparently feared that any change in the *status quo* could only harm them. The efforts of the 31 delegates to the 1991 ConCon ended as they began, then, in a degree of mutual suspicion and fear that reduced unity to a slogan.

The FSM's difficulties with national unity, though not so pressing as, say, Papua New Guinea's problems in Bougainville, spring from the same roots: sectional differences exacerbated by ethnic consciousness. Geographical and historical differences have created disparities over which Micronesians contest, but the character, intensity, and likely outcomes of these contests are being hammered out in the forge of ethnicity. No simple calculus of cost and benefit is likely to tell us much about the future of these multi-ethnic nation-states in an era of resurgent nationalism.

The convention gets underway

The ConCon was first called to order on 16 July 1990, in the FSM capital's Congressional Chamber, in the Palikir region of Pohnpei's Sokehs municipal-

ity. Congress had legislated a 30-day convention, with the possibility of a 15-day extension. From the outset, the delegates assumed that they would require all 45 days to complete their work, but the ConCon's leadership opted not to schedule the extension until the 30 days were nearly up in order to ensure that everyone worked as efficiently as possible. As it turned out, on the final night the convention stopped the clock at midnight and continued labouring into the early hours of the 46th day in order to complete their task.

Consensus

Following the opening ceremonies, the ConCon immediately set about modifying its rules. In the enabling legislation that established the ConCon, the FSM Congress had mandated that changes to the constitution could only be made by 'consensus' — that is, with the concurrence of all four state delegations. Pohnpei's delegation introduced an amendment to the convention's rules making a three-quarters majority (i.e. three of the four states) all that would be necessary for final approval of proposed amendments. In doing so, it initiated a process that mirrored in microcosm most of the issues animating the ConCon.

According to the *amicus* brief filed by the FSM Congress, the original enabling legislation called for only three-quarters majority approval.¹³ After particularly intense lobbying by Kosrae's leaders, however, the legislation was modified to require consensus.¹⁴ Kosrae's concern with issues of population size and the preservation of state 'sovereignty' were evident well before the ConCon got underway.

Given that the number of delegates each state would send to the ConCon was to be based on its population size, Kosrae's leaders maintained that the smaller states had already been relegated to speaking with a 'diminished voice' and that unanimity therefore provided them with the only guarantee that their sovereignty — that is, their right not to be required to do anything they had not acquiesced to — would not be threatened. One of Chuuk's senators, on the other hand, explained that it was difficult for the larger states to accept equal representation with the small states; he wanted to preserve the initial three-quarters majority stipulation.

The final committee report on the three-quarters majority versus consensus question emphasized that its recommendation in favour of consensus was in keeping with both the principle of state sovereignty and the 'Micronesian Way'

of decision-making. The amended bill, requiring consensus, passed by a three-to-one vote, over Chuuk's opposition. When the ConCon's leaders later challenged this requirement in court, they did not lose sight of the irony that a claim on behalf of consensus as 'the Micronesian Way' was based on a vote that had carried by only a three-quarters majority.

While Kosrae and Chuuk had staked out the lines of their essential disagreements before plans for the ConCon had even been laid, Pohnpei's position continued to evolve as its ConCon delegation travelled through the state holding public hearings to determine which issues the Pohnpeians wanted addressed. The delegation's interests (which were by no means shared by all its members) seem to have lain in using the rules-change test as a stalking horse for other issues. It appears that the Pohnpeian delegation hoped to establish itself as the ConCon's moving force and viewed the change from unanimity to a three-quarters majority as a means toward implementing its programme. In doing so, it was following a course earlier charted by Belau, which had had such a great impact on the drafting of the original Micronesian Constitution, despite the fact that it was already engaged in a process that would ultimately see it refuse to enter into the Micronesian federation.

As the ConCon considered asking the FSM Supreme Court to decide whether the ConCon or the Congress had the ultimate authority over the ConCon's rules, Pohnpeian delegate Leo Falcam, who steadfastly opposed sending the matter to a court which at that time included only American judges, argued, 'Perhaps this decision foreshadows the failure of unity. Why else would we choose a non-Micronesian to resolve the dispute?'

Pohnpei was hardly alone in raising the spectre of disunity and secession. During initial congressional discussions concerning the consensus/three-quarters majority issue, Kosraean and Pohnpeian senators raised the possibility of a state deserting either the ConCon or the Federation if it did not agree with the decision (FSM Congress 1989:2). The *amicus* brief filed by the FSM Congress referred repeatedly to the possibility that an unacceptable outcome might result in a state 'walking out' of the ConCon or even an outright act of secession (*ibid.*:11, *et passim*). When one Micronesian Supreme Court administrator first learned that the ConCon had indeed voted to change the rule and was about to ask the Court to render a decision on its right to do so, he exclaimed that Kosrae and Yap would leave the ConCon if consensus were overturned. And when a

state flag was knocked over by an errant breeze during the ConCon's opening ceremonies, one observer in the gallery commented jovially, 'That's a good sign: "We have taken a walk!"'

The possibilities of withdrawal, disunity, and secession that underlay nearly every aspect of the ConCon particularly informed the initial rules debate. Governor George, head of Kosrae's delegation, argued repeatedly against the proposed change in the rules. He first described the FSM as 'a loose federation' with authority lodged in the states, not in the central government, and this, he explained, meant that consensus on the part of all four states was necessary to institute any changes. Later, he added that Kosrae's delegation had come to

the ConCon with 'a mandate for sovereign recognition of the states'. Any change in the consensus rule would defy that mandate.

On the ConCon's third day, when the issue came finally to a vote, Governor George suggested that some states seemed eager to paralyze the ConCon. Despite Kosrae's general opposition to the ConCon itself and its very specific opposition to the abrogation of the consensus requirement, he said, his delegation was willing to accept the rule change 'because we believe in working together. We will support this resolution only because we want to go along'. As an example of Kosrae's historic willingness to cooperate, he cited a clause in the original constitution specifying that all externally-provided funds must be divided into five equal parts (one part each for the states and the central government). This has never been implemented, he went on. Divisions of these moneys have not been equally apportioned, but, believing in consensus, Kosrae has accepted the injustice. Even as it was bending to the will of the majority, then, Kosrae was determined to explain why it was not in its best interests to do so.

Following the vote on the rules change, which passed, according to the clerk's count of hands, by a 20-8 margin, the question of whether the ConCon had the authority to change its own rules was sent on to the FSM Supreme Court.¹⁵ Two key issues were raised in the course of these proceedings; both reflected underlying concerns that animated every aspect of the ConCon. One was the degree of power that had been gradually accruing to the FSM Congress and to the national government in general. The other was the role Micronesian 'custom' and/or 'tradition' should play in guiding the activities of a Micronesian

government. Each of these had to do with the fundamental issue of the states' autonomy and their basic rights to govern themselves as they — and not the national government saw fit.

Before the Supreme Court

The court battle itself was complicated by several factors. The FSM Attorney General's Office, which was respondent to the ConCon's request for a ruling, had itself argued in favour of a three-quarters majority when the original legislation was under discussion; a number of the ConCon's legal advisers were attorneys on the FSM Congress's legislative staff; the FSM Supreme Court's chief justice, Edward King, had opposed a ConCon at the time people were voting on whether to convene one; it was difficult to find a high-ranking Micronesian justice from one of the state supreme courts who had not already taken a political position on the issue; and some ConCon delegates were outspoken in their opposition to having American judges make such a crucial decision.¹⁶ At one point, while the ConCon was discussing how it might proceed with its arguments in court, one delegate went so far as to ask that the chamber be cleared of all members of the Congressional legal staff, to lessen the possibility of exposing the strategies they were exploring.

Senator Falcam was especially outspoken in his opposition to having the American chief justice preside over a case that might have much to do with the shape of Micronesia's future. Because the ConCon might well take steps that would limit the Supreme Court's power, he argued, it would be in the Court's interest to hinder the ConCon. The Court's self-interest lay in preserving its own power, he concluded, appealing to the shared sentiment that each branch of the central government would be inclined to oppose every attempt on the delegates' part to change the nature of Micronesian government.

At the hearing, the ConCon's attorneys opened their arguments by referring to a briefing paper prepared by Norman Meller for the 1975 Micronesian Constitutional Convention.¹⁷ This document pointed out to the delegates that, among other things, providing for subsequent constitutional conventions would assure a good means of getting around the possibility that Congress would prove unwilling to change itself. In developing this argument, the ConCon's counsel put forward what he called a 'structural argument':

The convention is one of three alternative methods prescribed in the Constitution for amendments: convention, initiative, and Congress. If

Congress is allowed to restrict the other two methods, to the extent that they are thereby rendered impracticable or incapable of use, in effect there will be only one method — the congressional method (*Constitutional Convention 1990 v. President of the FSM*:8).

Only constitutional revisions made by conventions could assure independence from Congress, he continued, and though Congress certainly has the right to set some limits on conventions, it does not — as it seems to claim in its *amicus* brief — have the right to operate without limits.

The FSM attorney general responded that the right to provide for constitutional conventions had been given to Congress and that Congress retained this right until the constitution itself revoked it. He then went on to argue that the real issue at stake was Congress's responsibility for safeguarding Micronesian tradition, as specified in article V of the constitution: 'The traditions of the people of Micronesia may be protected by statute. If challenged as violative of Article IV [the 'Declaration of Rights'], protection of Micronesian tradition shall be considered a compelling social purpose warranting such governmental action'. Congressional insistence on the unanimity requirement was, he explained, in keeping with the 'Micronesian Way', which is consensus. He argued that the question at issue was in fact the right of the Micronesian peoples to protect their traditions versus their right to change their constitution, and that because protecting tradition is to be considered a compelling social purpose, it should prevail. The problem, he concluded, is a political matter and therefore nonjusticiable; the Court should not be deciding this case.

In stating its own case, as a friend of the court, Congress argued that in keeping with the Micronesian way of consensus, no state should be forced to accept something it does not approve. Moreover, it continued, the apparent opposition between small states demanding state sovereignty and large states concerned with population equity had already been resolved through the ConCon's voting procedures. On the first reading, where decisions were made by the vote of individual delegates, the larger states were able to set the agenda. Through the vote on second reading, where decisions were to be made by consensus of the four state delegations, the smaller states were assured of control over the ConCon's final outcome.

The Court decided the case in favour of the ConCon, ruling that it did indeed have the right to establish its own procedures. In the time-consuming process of changing the rules and then fighting to implement the change, the delegates

confronted the ConCon's key themes. Kosrae was given an opportunity to insist on the primacy of state sovereignty. Congress reiterated its insistence on its own primacy in all FSM affairs. Arguments drawing on custom and tradition proved to be popular, ubiquitous, vague, and inconclusive. The Pohnpei delegation's notion that it might spark a confrontation that could give it a leading role in charting the ConCon's direction came finally to naught: it was neither able to take on a leading role (in fact no delegation did) nor to position itself to dramatically withdraw in protest. In the end, the court case did serve to help fashion a sense of cohesion among the delegates even as it demonstrated to them the very substantial differences among their various positions.

As with the ConCon itself, the key to understanding the rules change issue lies in the notion of 'unity'. The four state delegations were united in their unhappiness with Congress and the national government, but their disagreements kept them charting a common course. The court case was significant not for its outcome — no item was able to pass on first reading without the support of all four delegations — but because, first, it so clearly portrayed the strained relations between the ConCon and Congress, and, secondly, because it demonstrated Kosrae's force of purpose; despite its small size, Kosrae was a force to be reckoned with.

Having determined that constitutional amendments could be approved with a three-quarters majority, the delegates then started to work.

The Proposals 1 - overview

At the outset, the process of developing delegate proposals was, to say the least, clumsy. The ConCon's legal staff had assumed that each state delegation was developing its own drafts for submission. It also assumed that each delegation had canvassed its constituents, caucused, and formulated a preliminary list of the amendments it wished to pursue. Though several delegations had spent considerable time in public hearings and had even drawn up lists of 'some of the issues raised and discussed' (as the Pohnpei delegation's informal list phrased it) at these meetings, only Yap seemed to have thoroughly considered the amendments it intended to propose.¹⁸ The earliest proposals were introduced and signed by entire delegations. In time, however, a considerable number of proposals was introduced and signed by only a few (in some

cases, only a single) delegates. On several occasions, individual delegates from different states jointly offered a proposal, but for the most part the introduction of proposals was seen as the responsibility of states, not individuals. The very organization of the ConCon's work, then, amply reflected its political nature: the delegates viewed the constitutional process as a matter for the states — not the 'Micronesian people' — to conduct.¹⁹

As the number of proposed amendments gradually swelled, the ConCon's *de facto* executive body, the Special Conference Committee, set a deadline for the submission of proposals, in the hope of ensuring that adequate time remained for dealing with them. By the time this arbitrary date arrived, 99 proposals had been drafted and submitted. Eventually, five more were added, bringing the total to 104. A number of these submissions proposed alternative means for effecting changes in the same constitutional articles; the issue of presidential selection, for example, drew 13 proposals. (Table 1 on page 30 provides a summary categorization of the delegate proposals submitted to the 1990 ConCon.)

Of 104 proposed amendments, 77 (74 per cent) were intended either primarily or largely to shift power and/or money from the national government to the states. When the 11 technical amendments concerned with the language of transition from Trust territory status and the initial establishment of the FSM are excluded, leaving 93 substantive amendments, the percentage rises to 83 percent. By a margin of better than four-to-one, then, the work of the ConCon consisted of finding ways to provide the four FSM states with greater control over their national government.²⁰

I first consider some of the major topics — issues that were widely discussed — that failed to gain adequate support, and then turn my analysis to proposals largely or significantly concerned with issues reasonably described as ethnic in origin or character.

Presidential selection

Presidential selection presented the Micronesians with a glaring problem. The FSM employs a hybrid system to choose its chief executive. Though the FSM Congress has only a single house, each state delegation includes both senators elected from population-apportioned districts for two-year terms and a single at-large senator elected for a four-year term. From among these four at-large, four-year senators, Congress itself selects a president and vice president (who

Table 1: Summary of delegate proposals, 1990 FSM Constitutional Convention

11	Technical language changes resulting from the transition from the Trusteeship to the FSM
13 ^a	Selection of the President and Vice-President, including specific requirements for rotation among the states and popular elections
8 ^a	Congress, including increases in number of seats, establishing a bicameral congress, and term length
5 ^a	FSM Supreme Court, including term limits and requirements for use of local precedents
6 ^a	Specific controls over Congressional spending
4 ^a	Tighter bureaucratic controls, including Public Auditor, Public Service Commission, and independent prosecutor
4	Requiring FSM citizenship for the Presidential Cabinet, Supreme Court, land-ownership, etc.
4	Constitutional Convention changes
33 ^a	Other limits on central government, including restatements of revenue-sharing, definitions of concurrent powers, and explicit allocation of residual powers to the states
3 ^a	Other revenue-sharing proposals
3	Civil rights and legal procedures
10 ^b	Miscellaneous other proposals, including secession provisions, nuclear-free provisions, and provisions for establishing a Chamber of Chiefs

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Notes: ^a Proposed amendments entirely or significantly concerned with limiting national government power and/or revenues or enhancing state government power and/or revenues.

^b Five of these proposed amendments were entirely or significantly concerned with limiting national government power and/or revenues or enhancing state government power and/or revenues.

are then replaced in by-elections). There has been a general understanding in the FSM that the presidency should rotate among the states, but this is not a matter of law. There had also been a sense that after Chuuk's Toshiwo Nakayama served the first two terms, Pohnpei's four-year senator would be chosen as the FSM's second president. For reasons too complex to detail here, this did not come to pass; Yap's John Haglelegam was chosen, to Pohnpei's considerable dissatisfaction and widespread assumption that Chuuk's Congressional delegation had engineered the switch.²¹ Though the so-called 'gentleman's agreement' concerning *rotation* had not been expressly broken, it had been made clear that the large Chuukese congressional delegation possessed enough power to control the office, and the question of selecting future presidents became something of a burning national question. There was general agreement that some form of guaranteed rotation among the states was critical to the survival of the federation, but disagreements about other aspects of the selection process (manifested in the 13 different proposals concerning it) kept the delegates from finding common ground.

As with so many other issues, the problem of revising the presidential selection process foundered on the fundamental opposition between population size and state sovereignty. Some felt that power over the process was best removed from Congress by giving it to the people through a simple popular vote. Several Chuukese delegates, however, saw their own state's size and consequent power as possibly the greatest threat to the FSM's continued union, and they sought to limit this imbalance and its potential for disruption by proposing a complex formula. This provided for a popular election employing a proportional weighting of votes, which would give each state an equal say in determining the outcome. The complex formula they devised, as well-meaning as it was, received almost no attention.

Ultimately, attempts to resolve the presidential issue foundered on a lack of trust. The degree of suspicion among the states was perhaps as great as their shared distrust of the national government. The delegates were confounded by what I have already described as one of the ConCon's inherent dilemmas: it was feared that any attempt to weaken the central government as a means of enhancing the power of the states was likely to result in an equally problematic situation in which the differential sizes and strengths of the states allowed one or two states to dominate the federation, at the expense of the others. Such a

solution would have merely replicated — rather than remedied — the problem the delegates had set out to resolve. The Chuukese delegates' repeated references to population equality and Kosrae's preoccupation with state sovereignty made everyone conscious not only of the opposition between them but of the improbability of achieving a resolution agreeable to both.

External relations

Although this essay is primarily concerned with ethnic — that is, internal — tensions within the FSM, these tensions are exacerbated by the federation's relations with the US. In order to comprehend the emphasis on state sovereignty, it is necessary to look briefly at the question of national sovereignty, as it was raised during the course of the ConCon. Many of the proposals dealt with local ambivalence regarding the FSM's external relations, especially with the US. Micronesians dislike an overly centralized government at least partly because of the way the central government is (or can be) used by the US to further its own policies. These difficulties are shared by many post-colonial governments, and are elements of modern nationalist equations in general.

Both Yap and Pohnpei introduced proposals intended to further restrict the right of foreign powers (i.e., the US) to bring hazardous materials and weapons into the FSM. The original constitution prohibits testing, storage, use, or disposal of 'radioactive, toxic chemical, or other harmful substances' within the FSM 'without the express approval of the national government' (Article XIII, Section 2). Like many of the others Pohnpei introduced, this proposal (Del. Prop. 6) was intended to transfer a degree of decision-making authority to the states by requiring that express approval of the relevant state also be granted. Yap's proposal (Del. Prop. 31) simply deleted the qualifying clause 'without express approval of the national government', leaving the remainder of the original article to specify categorically that these materials not be introduced into the FSM.

This issue provoked one of the ConCon's more sensitive discussions. The Compact of Free Association, which the FSM constitution specifies is subordinate to itself, grants the US authority to determine how best to provide for the FSM's security and thereby perpetuates effective American control over the islands.²² In the course of several meetings of the General Provisions Committee, the FSM Department of External Affairs found itself explaining that any act the US might construe as a movement in the direction of an alignment with

the Nuclear-Free Pacific movement would immediately elicit an American demand for discussions, at which the FSM would be informed that it was in violation of the Compact and therefore in danger of losing the funding it secures (i.e., the source of most of the FSM's income).

In dealing with this issue, the committee was forced to confront one of the ConCon's generally unspoken subtexts: the complex web of control the US retains over Micronesia. The Compact provides the US with a formal right to interfere in Micronesian affairs in the name of security. But beyond this right to intrude, the US has the capacity to cut off the Compact funding, citing noncompliance, and thereby bring the entire country to a halt. Through a process arranged and managed by the Merrill Lynch investment firm, the FSM has issued bonds that provide them with funds now in exchange for guarantees underwritten by later Compact payments. Some Micronesian leaders argue that Merrill Lynch uses its fiduciary role to dictate policy to the national government. One member of the committee explicitly cited this arrangement, reminding the other delegates that when he had worked on the bond issue a question of how secure the payments would be under the Compact had been raised. The rating of the bonds, he explained, had been affected by the fact that the funds can be cut off if the terms of the Compact are breached.

A number of committee members accepted this state of affairs with apparent equanimity and the chairman quickly tabled the two antinuclear proposals permanently. This action troubled Pohnpei's representatives on the committee; they asked to have at least one of the proposals reported back to the plenary, even if it did not carry a favourable recommendation. The chairman responded, 'We're aware of the reasons we're tabling this in committee. We don't want to broadcast them'.

Much of the Micronesians' dislike for big government — one of the fears that drove the ConCon — derives from the national government's ability (if not responsibility) to implement US policy. This episode provided delegates with a perfect example of how US policies get implemented by default. The committee chairman demonstrated precisely the abuse of authority the Pohnpeians had come prepared to do away with.

In a similar vein, another unsuccessful proposal provoked more debate. It was one of a number of proposals intended to make 'technical' modifications (called 'housekeeping' amendments by some) in the language of the original constitution, which had been drafted before it was clear which districts of the old

trust territory would become part of the FSM and before negotiations had established the nature of its new relationship with the US. One of these amendments (Del. Prop. 84) proposed to delete most of Article XVI of the constitution, entitled 'Effective Date'. The final sentence of this article stipulates that

If a provision of this Constitution is held to be in fundamental conflict with the United Nations Charter or the Trusteeship Agreement between the United States of America and the United Nations, the provision does not become effective until the date of termination of the Trusteeship Agreement.

As it happened, when the 1990 ConCon convened, twelve years after the original constitution's ratification, the Trusteeship Agreement had yet to be terminated. The proposed amendment was meant to convince foreign governments that the Trusteeship Agreement was no longer in effect.²³ Senator Falcam wanted to demonstrate that

we are a sovereign nation, with the exception of powers that we voluntarily assign to other nations to take care of. If we don't do this, it may call into question our sovereignty. It may affect powers of the national government and states with respect to the US. It is a step declaring that the Trusteeship Agreement is terminated and that the FSM is a sovereign and independent nation.

The proposal led to a lengthy debate — both philosophical and practical in character — about the nature of the FSM's sovereignty and the status of the Trusteeship Agreement. Two arguments were particularly striking. One had to do with the ontological problem of sovereignty: does it lie entirely within the purview of the people who claim it, or does it is also contingent upon the recognition of others? The second was an eloquent plea concerning the historical impact of the constitution's language.²⁴ 'It is necessary', insisted one delegate, 'for our descendants to know how this came about. It was by an orderly transition, not war. The US supported the birth of our constitutional government here'.

In the first of these two debates, the General Provisions Committee simply overlooked the problematic question of sovereignty, treating external constraints on FSM policies as perhaps inconvenient but essentially untroubling

facts; if the FSM cannot undertake certain actions because of its relationship to the US, it is an issue to be downplayed or ignored. In the second, it was rather vociferously argued that as a fully sovereign, 'independent' nation-state, the only external constraints were those 'voluntarily assigned', and that any international misunderstanding of the FSM's independent status should be clarified. The marked contrast between the tenor and content of these two sets of discussions is evidence of both the ambiguous nature of the FSM's free association relationship with the US and the delegates' ambivalent feelings about this ambiguity. For some it appears to have been convenient and unproblematic, for others it was profoundly disturbing.

Another proposal that never made it out of committee is also relevant here. Pohnpei's delegation had submitted an amendment (Del. Prop. 88) allowing for secession from the FSM. A delegate from Kosrae, which had hinted that it might leave the union if the consensus requirement for successful proposals were not upheld, suggested that the main purpose of secession was as a threat; this perspective was echoed by a number of other committee members, one of whom described it as 'a club over the head'.²⁵ Governor George observed that he would not want a municipality seceding from his state. He worried, moreover, about the image of the FSM such an amendment might project externally, hampering FSM leaders' negotiations for foreign assistance. Having polled the committee members for their opinions, the Chairman of the General Provisions Committee proceeded to call for a vote, even though seven affirmative votes were needed in order to approve the proposal and only seven of twelve committee members were present. When the vote split three to three (the chairman abstaining), the issue was dropped.

This may appear at face value to have been an inconsequential event in the course of a constitutional convention, but it is likely to have continuing repercussions over the next few years. One of the Pohnpeian delegates seemed particularly troubled by the summary treatment this proposal received. It had been taken up for final consideration immediately after the chairman had tabled the proposals dealing with nuclear weapons, and the juxtaposition of the treatment given the two proposals provoked an unusually visible response by the standards of comity that characterize most Micronesian political intercourse. This delegate quietly rose and left the small room in which the committee was meeting. The chairman asked the only other Pohnpeian delegate present if the

man was upset. 'I think he felt it should have been brought to the floor. It came out of our Leadership Conference' (i.e., out of the public hearings). The man's abrupt departure must be explained in terms of *kanegamah*, a trait highly prized by Pohnpeians, which keeps adults from displaying their feelings in public (Petersen 1993). He could display his pique only by leaving. Pohnpei's delegation had come to the ConCon with a series of issues that had been raised in meetings throughout the state. The matter of secession headed the list of amendments the Pohnpeian people wanted their delegates to pursue, and reflected their longstanding unhappiness with both the operations of the national government and its relationship with the US. Pohnpei's proposal, giving states veto power over the introduction of nuclear weapons into their territory, was tabled without even a vote and then its proposal on secession was voted down with only a bare majority of the committee's members present; together these actions signalled that Pohnpei's proposals were not being taken seriously. The delegate's walkout can perhaps be understood as symbolic of Pohnpei's attitude toward the federation, while the committee chairman's behaviour might be taken as emblematic of precisely that which the Pohnpeians had come to dislike about it. In time, the treatment given these key proposals will add to general Pohnpeian discontent with both the national government and its partners in the federation. The episode provides a good example of the fundamental problem Pohnpei sees itself facing within the Micronesian federation: Pohnpei is not being governed by Pohnpeians.

The Proposals II - the states

While much of the ConCon turned on issues of the states' powers in relation to the central government, underlying ethnic tensions were manifest in relations between states; particularly the right of each state to govern itself according to its own customs, traditions, and precedents. The Pohnpeians pushed this theme farther than the others, introducing proposals that would guarantee to the states rights over access to land, work, and even entry into the state. Among these were the right to exclude not only foreigners, but also other Micronesians — including citizens or residents of the other FSM states. We are now ready for a closer look at some of the proposals that met with failure at the committee level.

Yap — protecting and preserving custom

The Yapese delegation introduced a series of proposals concerned with issues of custom and tradition: allowing states to introduce capital punishment (Del. Prop. 14); to define for themselves cruel and unusual punishment (Del. Prop. 32); to reassert traditional claims to fishing grounds (Del. Prop. 16); and to extend certain protections to customs and traditions not protected by statute (Del. Props. 15, 97). The capital punishment and cruel and unusual punishment items met with strong resistance at public hearings, where the FSM attorney general's staff, a representative of the Micronesian Legal Services Corporation, and other speakers argued that such penalties are obsolete and outdated. One of Yap's delegates explained that these proposals had been generated at public meetings, at which many Yapese made it clear that they wanted to reintroduce more stringent social controls.

A question of interstate relations was raised when the Yapese submitted a proposal concerning submerged reefs. This amendment had initially been prompted by some of Yap's unsatisfactory dealings with the national government, but it quickly became apparent that the issue touched upon unresolved tensions among several of the states. Taking up the question of the FSM national government's control over Micronesian waters, the original delegate proposal (16) specified that in addition to the 12-mile limit on state control over surrounding waters, 'traditional ownership of submerged reefs shall be recognized, and traditional claims on resources between islands or areas traditionally claimed by island groups shall be recognized'. In submitting this proposal, the Yapese delegation was asserting local ownership of these resources over and against that of the national government. Their language foreshadowed a later debate over the division of fishing royalties: 'Those reefs didn't just fall down from the sky. They were there before 1975, so someone must have rights over them'.

The normal opposition of the FSM's bureaucrats was of course brought to bear during the public hearing. Territorial waters had to be national in character, maintained the attorney general's office, because under the Law of the Sea, 'only a nation can define and defend them, not a part of a nation'. The Micronesian Maritime Authority acknowledged that it did not know whose the submerged reefs were, but explained that its efforts to negotiate fishing treaties would be compromised. 'How do you determine twelve miles from a submerged reef when you're at sea?' Governor George offered a clear-cut solution, arguing

that there should be no more national waters. The four states should divide the FSM's waters among themselves — 'It would be in line with state sovereignty', he explained.

As the committee members talked among themselves, however, they began to recognize another, deeper, problem. Many of the relevant areas have not been mapped, though they do have local names. In the complex of atolls and reefs stretching between Yap island and Chuuk Lagoon there are numerous disputed claims over traditional ownership. It became clear that the dispute lay as much among the states as between them and the national government. As it was drafted, the proposal called for recognition of claims on the resources not only of submerged reefs but of 'areas traditionally claimed by island groups'. One delegate present during this discussion, not a member of the General Provisions Committee but a highly influential member of the ConCon, observed that Chuuk traditionally claims the Woleai (an area which in broadest usage includes nearly all the atolls within the current boundaries of Yap state)²⁶: 'If this goes in the Constitution, then Chuuk could claim a much larger territory', he said, specifying, perhaps ironically, that his remarks were off the record. This comment came as the hearing adjourned and it was difficult to judge its immediate impact, but the committee did not take the issue up again in public until it met to vote on the proposal 'with the deletion of language extending the application of the proposed amendment to areas of the sea other than submerged reefs' (General Provisions Committee Minutes 20 August 1990). Obviously, a nerve had been struck. The Committee Proposal 22, carefully pared down, did not draw any discussion when it went before the the plenary for first reading. It did, however, receive four negative votes, all of them from Chuukese, and barely passed 25-4. Once more, it would appear, some of Chuuk's delegates had their doubts about assigning resources to states rather than to the national treasury.

The fate of the two proposals intended to provide greater legal protection to custom and tradition is more complex. As it was initially submitted, Delegate Proposal 15 simply inserted a few words into the constitution's Article X, Section 9(b), so that it read, 'A civil right *or customary right* may be impaired only to the extent actually required for the preservation of peace, health, or safety' (the emphasis marks the added wording). Delegate Proposal 97 was meant to amend Article V, Section 2, which states that Micronesian traditions 'may be protected by statute' and makes protection of Micronesian traditions 'a compelling social purpose' in cases where it is claimed that traditions violate

civil rights. The proposed amendment stipulated that ‘those traditions not protected by statute shall be entitled to the same treatment, provided that the tradition subject to challenge is found to exist by the Court hearing the challenge’. The consensus of the Committee on Civil Liberties and Tradition in the second case and of the ConCon in the first was that the more Micronesian customs and traditions were written into the law, the greater were the threats to them. The proposal grew out of concerns that had developed in the aftermath of a cholera outbreak in the Chuuk Lagoon area, during which the FSM national government had taken steps to impose a quarantine by preventing the movement of foodstuffs out of the area. In discussions at the committee level, it became clear that at least some Chuukese saw this as a threat to the viability of traditional first fruits obligations. At the ConCon’s pre-convention meeting, where some of the major concerns facing the ConCon were first raised, there had been some discussion of the FSM’s need for greater authority to impede customary rights during such emergencies. It was in response to such threats that these amendments were offered.

The committee was divided over whether the new language would actually serve the opposite purpose, that is, enhance the president’s powers. It was in order to allay these doubts that the amendments were completely rewritten as Committee Proposal 3. Rather than inserting ‘customary right’ after ‘civil right’, however, the revised draft added a new sentence to Article X, Section 9(b): ‘Notwithstanding the provisions of this section, a customary right shall not be suspended, restricted, infringed upon, or impaired by the President during a declared state of emergency’. In this form it combined elements of both delegate proposals.

In their report the committee took great pains to explain what it meant by ‘customs and traditions’, following their own lengthy discussions of the topic. They grappled with the fundamental problem facing any attempt to encompass Micronesian customs, that is, the fact that Micronesia is itself an artificial construct:

Your Committee notes that the people of the Federated States of Micronesia have different customs and traditions unique to their respective localities. Customs and traditions cannot be defined with precision. However, the citizens of the Federated States of Micronesia know what their customs and traditions are in their respective localities. The protected customs and traditions may include but need not be

limited to the following: (1) what is known as “faccin” in the State of Kosrae; (2) what is known as “tiahk” in the State of Pohnpei; (3) what is known as “ooreni” in the State of Chuuk; and (4) what is known as “yalen” or “kafal fuluy” in the State of Yap (Standing Comm.Rept. 10).

Thereport goes on to acknowledge, for example, that ‘it will be difficult for non-Pohnpeians to understand what the “tiahk” in Pohnpei is’, citing each of the states in turn, and then adding that ‘On the other hand, it is simple for a Pohnpeian to understand what the ‘tiahk’ in Pohnpei is’. Moreover, the committee ‘also recognizes that there are other customs and traditions that are not mentioned here; for example, the customs for the outer islands of the State of Pohnpei such as Kapingamarangi’.²⁷

The committee had to work slowly through conflicting notions about the meanings of ‘custom’ and ‘tradition’. One Micronesian legal adviser insisted that the 1975 Constitutional Convention had distinguished between the two categories — he argued that while custom changes, tradition remains invariant — and that is why only ‘tradition’ appears in the original constitution. Others denied this, arguing that the two terms are and have been used interchangeably.²⁸ Ultimately the Yapese themselves, in the course of the committee’s deliberations, decided that because traditions and customs change and because people disagree about them, they are best left outside the law, which in the contemporary FSM tends to be largely defined by American notions of precedent and invariance. In concluding the committee’s discussion, one of Pohnpei’s delegates, Justice Johnny of the State Supreme Court, argued that in the absence of procedures and examples too specific to be spelled out in the constitution, the end result of any change would merely be more of the same: decisions on matters of custom and tradition would be left to the discretion of the courts — that is, the American judges on the FSM Supreme Court.

The major sticking point was the question of whether any formal, constitutional statement about custom would in fact threaten custom by both enshrining — and thereby freezing — it and forcing it into a context in which its character might have to be adjudicated: this would merely enhance the courts growing influence over questions of custom and thereby bring about precisely the opposite of what the committee intended, namely, protecting local practices from the oversight of the national government. Underlying this more obvious point, was a general sentiment that the states are in fact significantly different

and that the national government is neither able nor inclined to protect the differences among them; the only certain protection for local ethnic differences, delegates seemed to agree, lay in keeping responsibility for them out of the hands of the central government.

Though a majority of the committee members finally approved the revised text and agreed to send it on to the ConCon itself, two delegates were profoundly disturbed by the proposal's implications and filed minority reports challenging the committee report's conclusions. Judge Johnny explored at length what he thought were the shortcomings in the proposed amendment. He argued that customs are inherently local, that there are no national customs, and that customs must therefore not be placed in a position where either the FSM president or courts might have an opportunity to tamper with them.

By requiring that the President never infringe, restrict, suspend or impair any customary right during times of national emergencies, the proposal requires that these rights be formally identified and set down. This very process could erode those rights. For what may have previously been understood as customary rights, secure in the context of the daily lives of our people, may be transformed through being reduced to understandable explanations. The very setting down of these various rights may alter them, or cause them to be misunderstood (Standing Comm. Rept. 10).

Judge Johnny foresaw that local ethnic differences — customs and traditions — would be threatened by attempts to place them within the purview of the national government. In other words, his opposition to the committee report represented an even greater commitment to the protection of local prerogatives than that spelled out in the revised proposal, which had, after all, been thoroughly modified in order to guarantee exactly the same protections.

When the proposal went before the ConCon's plenary it received only 15 of the necessary 24 votes, with the opposing votes coming from Chuuk and Pohnpei. Defeat of a proposal extending constitutional protections to local customs might appear at first glance as a threat to customary rights, but it was in fact an affirmation of one of the more significant themes running through the entire fabric of the ConCon: the fear that anything formalizing the role of custom and/or tradition would eventually come to threaten it. The delegates largely agreed that local prerogatives had to be defended against the encroachments of

the national government, but they recognized a more general problem as well: to define a thing is to gain power over it.

The continuing strength of Micronesian traditions is grounded in the fact that they remain traditions — they have not been transmuted into laws. This is, of course, part of a problem shared by most of the other multi-ethnic Pacific island nation-states and by most nation-states in general. The demands of the state itself — for formal, written, institutionalized laws — serve to destroy local initiative and independence. In attempts to provide equal protection for all, everyone is deprived of the protections of their own communal lifeways. This point, articulated by Johann Gottfried von Herder in the eighteenth century, remains as relevant today as it did two centuries ago.

Kosrae — protecting religion

Certainly the most interesting of Kosrae's proposals was its attempt to rewrite the constitution's freedom of religion clause. Ironically, it provides us with one of the best examples of how central ethnic concerns were to the ConCon. The Kosraen delegates repeatedly argued that Kosrae no longer has Micronesian customs or traditions, particularly in framing their opposition to the proposed Chamber of Chiefs (see below). But when it came time to press for an amendment of singular importance to them, they fully understood that the most compelling argument one can make in modern Micronesia is to make claims in the name of custom. All of the ConCon's emphasis on decentralization, local autonomy, and sovereignty came from a deeply felt sense of ethnic differences and the need to preserve them. Thus the Kosraens took the position throughout the Civil Liberties and Tradition Committee's deliberations that theirs is a distinct society with a distinctly different way of life, that their way of life was clearly being threatened because of the Micronesian constitution's religious freedom clause, and that this distinct way of life could only be protected and preserved by a change in the constitution. Though many of Kosrae's positions at the ConCon might be dismissed as simple manifestations of political and economic interest, in their attempt to gain the right to decide religious questions on their own island they were pursuing a course that did not particularly concern relations with other islands or with the national government. They truly sought to protect their culture and in doing so they help us see how the other states pursued similar courses.

The FSM constitution's freedom of religion article (IV, Sect. 2) reads, 'No law may be passed restricting an establishment of religion or restricting the free exercise of religion'. Kosrae's proposal inserted 'by the national government of the Federated States of Micronesia' after the phrase 'No law may be passed'. This would have allowed the states to place limits on religious freedom.

At the public hearings on the proposal, it predictably provoked the wrath of nearly all the FSM's expatriate legal advisers even as it evoked considerable support among the delegates themselves. The attorney general's representative cited religious activities he thought were reasonably restricted, such as bigamy and human sacrifice, and the kinds of inappropriate restrictions that might result from the establishment of religion, such as forcing people to go to church or prohibiting marriage outside one's religion. He also argued that the 'world community' has been taking a closer look at incidences of 'religious repression'. The Micronesian Legal Services Corporation representative called the proposal 'a great step backwards for the FSM'. She argued that it violated the 'most basic human right', telling people what to believe, and then suggested that the Micronesian islands themselves might have been first populated by people fleeing religious persecution.

One of the Kosraen representatives explained that they had indeed expected strong reactions to their proposal. But, he continued, it would be necessary to live for a long time in Kosrae — that is, to become thoroughly acquainted with the culture — in order to understand their position. Another Kosraen observed that he had been hearing a great deal of talk about custom and tradition, and the need to preserve them, but because Kosrae is 'a small island' it tended to be ignored.

When the committee met to decide the disposition of the proposed amendment, all four Kosraen delegates were present, and each discussed the problem in explicitly cultural terms. It was perhaps the most concerted lobbying effort of the ConCon. Governor George, one of the ConCon's most articulate and forceful speakers, began:

Religion on Kosrae has become custom and tradition. It is not to be understood as the Western concept of religion. When the missionaries came to Kosrae they did a very good job — they completely replaced the old traditional ways.

Another added that the 'last King of Kosrae' became a pastor and in 1948 'declared an end to traditions'.

Continuing with this deeply cultural analysis, one of the Kosraens explained that in Kosrae,

you're born into a society that's already made a decision about its religion. Individuals don't make their own decisions. I realize this is completely foreign to Westerners, but we don't think our children should make religious decisions — they've already been made.

Kosrae recognizes freedom of religion in the US Constitution. If not for that, our religion would not have come to Kosrae. But if we look at this in the context of custom and tradition, our attempt is not to impair belief but to respect custom and tradition.

Another of the Kosraens went on,

The states are asking to transfer power to the states. Everyone wants more power to the states. Kosrae is the smallest. We talk about custom and tradition here. Well, religion is our custom and tradition. In all fairness, Kosrae has experienced all these problems because we're so small that whatever is introduced into the island affects everyone.

Repeatedly, the Kosraens stressed that they were not out to 'dictate' anyone's beliefs. Rather, they insisted, they wanted only to check certain actions that were disrupting the island's 'peace and harmony'. Their quarrel was with the sects that had been recently seeking to establish themselves on Kosrae, particularly Seventh Day Adventists and Baha'is. 'Any new religion coming in creates problems. They break up our families, causing social problems. Often Kosraens who join these new religions are almost excommunicated; they are no longer part of our community; they are outcasts from the community'. The Kosraens went on to cite specific incidents of wood-chopping and loud radio-playing during church services and the general problem of working on Sundays as examples of the kinds of behaviour they wanted to prohibit, actions currently protected by the constitution's freedom of religion clause. Some of the new religions, they claimed, even discourage people from voting.

A lengthy discussion ensued, exploring epistemological distinctions between actions and beliefs, and possible ways of discriminating among them, with an eye to controlling the former but not the latter. In the absence of the expatriate advisers who opposed limits on religion, the Micronesian delegates themselves spoke sympathetically of the problem.²⁹ Nearly all of them cited examples of similar problems deriving from recent missionary activities on their own islands. Their empathy translated into enough committee support to get the proposal approved and sent on to the ConCon, where, after brief discussion, it was returned to committee and then dropped. The Kosraens had not expected to see their proposal go on the final referendum ballot. But in arguing convincingly enough to have it sent on to the ConCon as a committee proposal they certainly succeeded in discharging their obligation to the people who had sent them to the convention.

It is worth analyzing the Kosraen delegates' success in committee, where a simple majority was enough to report out a proposal favourably. Though they could not duplicate this at the plenary, where three or four votes against a proposal were usually enough to defeat it, their initial accomplishment is evidence of the deep concern nearly all the delegates had for issues of custom and tradition. Throughout the ConCon, the Kosraens had been stressing the issue of states rights. They did so in this case as well, referring several times to their state's small size and its consequent need for particular protection. During the lengthy debates over establishment of a national Chamber of Chiefs, the Kosraens had repeatedly taken a nearly opposite tack, stressing that their society has no 'traditional leaders', and they vigorously opposed the measure for precisely this reason. They discussed in detail the reasons why their own leaders would not be comfortable — indeed, would be at an disadvantage — dealing with the other states in such a chamber. In that context, they claimed that they no longer had a particular custom or culture to protect; they were in fact claiming that their cultural differences from the others provided a legitimate reason for opposing a proposal supported by most other delegates.

Given the Kosraens' commitment to consensus they felt they had to provide a reason for their opposition to a measure the others were willing to support. But when it became clear that custom provided the surest means of persuading the others to go along with restrictions on religious freedoms, the Kosraens had no

doubts about the primacy of their customs and the propriety of protecting them through appeals to culture.³⁰

Chuuk — protecting population

The first proposal Chuuk submitted was perhaps the most predictable. It called for the distribution of foreign financial assistance to the states 'based upon their population on a fair and equitable basis' (Del. Prop. 23). This language was considered overly vague and was amended in a second proposal (Del. Prop. 66), submitted by the Pohnpei delegation. The Pohnpeians' proposal, after setting the national government's share at 20 per cent, specified that 'the state governments shall share the remaining 80 per cent on the basis of population'. Article XII, Section 2 of the current constitution specifies that 'each state shall receive a share equal to the share of the national government and to the share of every other state'. As Governor George of Kosrae observed at the outset of the ConCon, this principle has not been put into practice, and, he continued, it is a sign of Kosrae's goodwill toward its 'sister states' that it has not protested the departure from the constitutional mandate. These two proposals struck, of course, directly at the heart of the rift between Kosrae, self-consciously the smallest state, and Chuuk, which was for the most part trying to play down the fact that it comprises more than half of the FSM's people. The issue was among the most problematic the ConCon had to face, given that nearly all the FSM's operating funds come from foreign (primarily American) sources.

Despite (or, more likely, because of) its considerable significance, the Chuuk proposal received little public attention beyond that of the Pohnpei delegation's intervention. The Pohnpeians' revised version was similarly ignored. The head of the FSM's Resources and Development Department, responding to the posted agenda of a public hearing at which he was testifying, took the issue up briefly, arguing in general that the proposed change would harm the smaller states and more specifically that the policy would serve to promote overpopulation. Anything that encourages population increase, he suggested, is 'not in the best interests of the nation'. Several delegates referred tangentially to the issue in other contexts, including a hearing on the proposal prohibiting abortion and one on the rights of states to impose travel restrictions upon the people of other states — in both cases the proposal was raised in

relation to population control issues — but the matter was otherwise publicly ignored.

Chuuk State, with a 1990 population of 55,000, has slightly more than 51 per cent of FSM population; Pohnpei State, with 33,263 people, has nearly a third of the FSM's population. Together, these two states comprise 83 per cent of the nation's people. Kosrae, on the other hand, has a population of 7,390, only 7 per cent of the total. Based on the revised formula put forward by the Chuuk and Pohnpei delegations, Chuuk would receive more than 7 dollars for every dollar that came to Kosrae. It was Kosrae's apprehensions about a proposal of precisely this sort that had provoked its spirited resistance to the change in the ConCon's consensus rule.

The plan for a new distribution of foreign aid funds marks one of the few points on which the Chuukese and Pohnpeian delegations agreed. Between the two, however, they had only 22 of the ConCon's 31 delegates, that is, 71 per cent of the votes, and not the 83 per cent that a popular vote would have given them. They fell two votes short of the 24 votes needed to pass proposals on first reading. None of Yap's or Kosrae's delegates were likely to vote for the proposal on first reading, nor would either of these delegations have given it the third vote necessary for passage on second reading. There was simply no chance for the proposal to succeed and any discussion of it would have served only to antagonize Kosrae and Yap. Despite its significance, then, it was a dead issue.

A second key proposal the Chuukese delegation introduced was its attempt to institute a popular election for the FSM presidency and vice-presidency (Del. Prop. 44). The proposal called for a simple majority vote of all the FSM's qualified voters. As explained earlier, Micronesians in general are dissatisfied with the present electoral system, in which the FSM Congress elects the president from among the four at-large senators. Although there had been an understanding that the position would be rotated among the four states, and that after Tosiwo Nakayama, the first FSM president, had finished his two terms the position would go to Pohnpei, Chuukese domination of Congress had resulted in Pohnpei's being passed over in 1987; the Yapese senator, widely considered rather young for the job, was selected for the position.³¹ The widespread discontent had resulted in the submission of thirteen proposals modifying the electoral system. The fact that the Chuuk delegation as a whole submitted a proposal, then, was not remarkable. Its proposal for a popular vote, to be

determined by a simple majority, however, was dismissed out of hand by the rest of the ConCon.

As had happened when Chuuk proposed dividing foreign aid money on a per capita basis, most of the other delegations saw it pursuing a course not merely in its own interests but running squarely against theirs. Though Pohnpei stood to gain by supporting the former proposal, even it could not afford to support the latter: with more than half of the nation's entire population residing in Chuuk State, this proposal would have enabled the Chuukese to select one of their own as FSM president in every election. And even though the sheer size of Chuuk State's population results in repeated fissioning and factionalization within the state, Chuukese politicians have proven themselves skilful coalition-builders who have been able to overcome their differences effectively enough to control the Congress.

Pohnpei — protecting land

Three of the key proposals Pohnpei unsuccessfully brought forward either paralleled or duplicated proposals introduced by other delegations. Its attempt to require state approval for the storage or transit of nuclear and other toxic materials (Del. Prop. 6) was subsumed by Yap's more sweeping attempt to prohibit entirely the entry of these materials into the FSM (Del. Prop. 31) as discussed above. It proposed changes (Del. Prop. 17) intended to redefine the governmental powers held concurrently by the states and the federal government (shifting away from the congressional powers over import and income taxes and major crimes); these were overshadowed by Yap's much more comprehensive proposal (Del. Prop. 58) for an entirely new constitutional article expressly detailing the powers reserved to the states. And its proposal (Del. Prop. 66) for distribution of foreign aid on a per capita basis was essentially the same as Chuuk's (Del. Prop. 23).

Three other defeated proposals also lay close to the heart of Pohnpei's goals at the ConCon: the right of states to secede from the FSM (Del. Prop. 66), an item examined above; state control over migration within the FSM, i.e., the right to prohibit the immigration of other FSM citizens (Del. Prop. 20); and assigning to state courts exclusive jurisdiction over land issues (Del. Prop. 18).

The latter two issues were part of a nexus of concerns that posed real dilemmas for the delegates. Pohnpei is the largest island in the FSM and seat of

the national capital. It has historically been a site that attracts immigrants, some belligerent, others less so. Much of its mythology is concerned with the doings of outsiders drawn to its shores (Petersen 1990). Following the Sokehs Rebellion of 1910 the Germans began a program of resettling outer-islanders (from the nearby atolls and from the Mortlocks group in what is now Chuuk State) on the lands of the exiled rebels. During the Japanese era, thousands of Japanese subjects were settled on the island, outnumbering the native Pohnpeians and nearly displacing them. The US administration actively promoted homesteading on Pohnpei by the outer-islanders. Currently the FSM capital, with its large numbers of legislators, bureaucrats, technicians, and functionaries from other parts of Micronesia, along with a number of expatriate Americans, Filipinos, Japanese, and sojourners from other parts of the former Trust Territory, is spawning yet another wave of immigration. Pohnpeians are troubled by the trend and it was this that prompted them to propose amendments that would allow states to deny land to other FSM citizens, to deny the FSM Supreme Court jurisdiction over land cases, to control the immigration (and generally restrict any entry) of their fellow FSM citizens, and to require state concurrence in the naturalization of non-Micronesians and the entry of those holding work permits approved by other states.³²

Though these issues were of paramount importance to a large number of Pohnpeians, they were perceived as profoundly threatening by others at the ConCon, particularly the delegates from Chuuk, who were aware of Pohnpeian misgivings about the growing Chuukese population in general, the numbers of Chuukese working for the national government on Pohnpei, and the influence of the Chuukese congressional delegation.³³ The Civil Liberties and Tradition Committee's discussion of the proposal to accord states the right to place restrictions on travel and immigration (Del. Prop. 20) turned on the wording 'reasonable restriction'. The proposal immediately provoked troubled reactions from the other delegations and some of the legal advisers. While one Pohnpeian delegate explained that the proposal was a response to the shared experience of problems caused by people unfamiliar with a society's customs, and the need to rectify this, several Chuukese saw it as having the potential to violate the basic principle of equal protection before the law. One of them went so far as to suggest that if such a programme were pushed far enough it might produce different social classes and institutionalize forms of discrimination.

Several legal advisers raised the question of whether such an amendment would enable Pohnpeians to restrict the entry onto Pohnpei island not only of Chuukese but also the people of the adjacent coral atolls. They made repeated reference to the possibility that Pohnpeians would prevent fellow FSM citizens from gaining access to the national capital, thereby threatening their freedom to assemble. One went so far as to ask if the proposed amendment would allow states to keep their own citizens from leaving, and another asked if it could be used to evict people 'who already live here' (on Pohnpei). In response, one of the Pohnpeians cited the current constitution's clause making the protection of tradition a matter of 'compelling social purpose', but to little avail.

The proposal was discussed almost entirely in terms of what the Pohnpeians might do — not in terms of theoretical abstractions — and it was clear that many feared the proposal, even those who sympathized with the Pohnpeians' general desire to wrest control of their island away from the national government, and so its context was gracefully shifted. Delegates and staff agreed that states already possessed the right to control immigration and travel for emergency purposes, as was done during cholera outbreaks on Chuuk, for example. This then enabled the committee to conclude that because the states can do these things now, there was no need for an amendment. Given the overall tenor of the debate, it appears that most of the delegates and their staff did not believe that the states could restrict travel and immigration, but the nature of discussions in committee meetings generally precluded confrontation — the Pohnpeians saw that they were not going to win a vote and they did not call for one.³⁴

In raising the issue of Pohnpei's ability to keep outer-islanders from within the state itself off the main island, the committee touched tangentially upon one of the more fundamental problems facing the Pohnpei delegation. Several of its members, though long-time residents of Pohnpei proper, are of outer-island origins. Outer-islanders on Pohnpei are in general wary of Pohnpeian attitudes toward them, fearing that without the leavening heterogeneity of the FSM as a whole, ethnic Pohnpeians might pursue underlying 'Pohnpei for Pohnpeians' sentiments to the point of discriminating against the atoll peoples. Despite this significant difference in outlook within their delegation, the Pohnpeian delegates pursued a course largely charted by the wishes of the ethnic Pohnpeians: they sought resolutely to seize control from the FSM government and place it in Pohnpeian hands.

The Pohnpeians' Delegate Proposal No. 7 stated that the right of an FSM citizen 'to acquire and own land within any state of the FSM shall be as described in the respective state's constitution'. This was to be added to the clause of the 1975 Constitution prohibiting non-citizens from acquiring title to land. The original constitution says nothing about state control over land, as indeed it says very little about states' rights to exercise authority in general. In the context of the amendments Pohnpei was proposing, this proposal, too, was seen as something a threat. In testifying on behalf of it, Edwel Santos, chief justice of Pohnpei State's Supreme Court, acknowledged that some might perceive it as a threat to basic civil rights. But, he asked, 'Are we to apply a declaration of rights based on a foreign way of living? Then we are not building a way that reflects the Micronesian way of living or Micronesian traditions'. Santos underscored the fact that this was a proposal the Pohnpei people had come together and agreed upon, and asked the committee to approve it on the Pohnpeians' behalf. 'I pray that God will enlighten you to see that this is a proposal Pohnpei wants. Whether you accept this or not is up to you'. In an aside, the committee chairman, a Chuukese, said that if Pohnpei were to institute such restrictions, so would Chuuk. Santos responded, 'It's up to the will of the majority of Chuukese whether this will pass. Chuuk's Legislature could pass legislation to compensate'.

This exchange demonstrates that Pohnpei brought some of its proposals forward in explicitly localized terms; this item was not being advanced as something for the good of all Micronesians. As the Kosraens did when they argued for their establishment of religion clause, the Pohnpeians acknowledged that the right of states to control access to land was something they desired on their own behalf. In doing so, however, they also evidenced a highly typical aspect of Pohnpeian respect for individual autonomy. Santos's comment that 'Whether you accept this or not is up to you', is characteristic of Pohnpeian interpersonal relations: Pohnpeians tend to avoid telling others what they should or should not do.

As happened in other cases, and as Chief Justice Santos had predicted, some Civil Liberties and Tradition Committee members raised the question of basic rights. 'Aren't we taking away the right to give away land?', asked a Chuukese. Indeed, all of the Chuuk delegates on the committee were troubled by the possibility that marriages between Pohnpeians and Chuukese could not be

accompanied by gifts of land, a customary exchange fundamental to Chuukese culture. Yapese, on the other hand, seemed to rest secure in the knowledge that their state's constitution explicitly prohibits acquisition of land in any but the traditional manner — through inheritance. One of the Kosraean delegates observed that non-Micronesians get around Kosrae's attempts to keep them from acquiring land by marrying Kosraens, having children, and then making purchases in their names. The issue of control over land was very much on everyone's minds, but only Pohnpei seemed to think it an issue of paramount importance. Despite their attempts to convince the others that Micronesians would be free to acquire 'life estate' — that is, they could obtain land for their own use, but could not purchase it in 'fee simple' and thus pass it on to their descendants — Pohnpei's delegates did not prevail.

The importance Pohnpei gave to the issue is manifest in the efforts it undertook to have the proposal approved by the ConCon. In the final two days, when the delegates were working feverishly to decide upon nearly every measure, Pohnpei's land proposal was voted on four times — that is, after it was initially defeated on first reading it was recalled three more times. On each occasion it received only 20 or 21 votes, falling short of the 24 votes necessary for passage. Opposition to the measure came from Chuukese and Kosraean delegates, some of whom shifted their votes on successive rounds. Despite attempts to have the matter clarified by the legal staff and much discussion among delegates during the brief recesses that accompanied each new attempt, the Pohnpeians were unable to garner the votes they needed. Judah Johnny, head of the Pohnpei delegation, spoke of outer-islanders who have come to Pohnpei: some have adopted Pohnpeian ways, others have not. Pohnpeians are not so much concerned about where people come from as they are about the willingness of outsiders to take on Pohnpeian ways, he said, explaining that this measure grew out of Pohnpeians' 'insecurities' about those who do not acculturate.

As in most of the Pacific, and perhaps in most agriculturally-oriented societies, land on Pohnpei is not merely a source of livelihood. It serves as an enormously powerful, universally salient symbol of life and society. But on Pohnpei, unlike Chuuk and Yap, where there are traditional patterns of incorporating outer-islanders into social relations, or Kosrae, which for geographical reasons has no outer-islands communities within its state, people face continued immigration without traditionally sanctioned means of reconciling it to the

extant culture. The nexus of travel, immigration, secession, and land issues lay, as I have stressed, at the core of Pohnpei's interests at the ConCon, and these interests were clearly manifested in the repeated attempts to pass the measure. Along with the secession issue, its failure underlined the basis of Pohnpei's discontent with the FSM's constitutional processes.

Pohnpei's insistence on controlling its own land was tenacious. Although it had been unable to persuade the ConCon to approve its proposed amendment regarding the right of states (via their constitutions) to limit the access rights of Micronesians from other states, it ultimately managed to wrest most land issues away from the national government and courts. Just barely, however.

Pohnpei's delegation introduced two proposals intended to shift cases concerning land away from the FSM Supreme Court and have them instead adjudicated entirely in the state courts. The first of these dealt with diversity cases (Del. Prop. 5); this declared that cases involving parties from different political entities, whether FSM states or nations, would be the province of state courts rather than the FSM Supreme Court. The second explicitly excluded national courts from cases in which 'an interest in land is at issue' (Del. Prop. 18). Because the two were introduced by the same delegation and meant to address the same general problems, they were soon merged together in committee, and this conjunction nearly resulted in defeat for both of them. In the end, the bid to exclude the national court from land cases was approved by the ConCon only after it had been accorded a special status: it became the ConCon's one and only 'Convention Proposal' when it was at the last moment called by the plenary out of committee, where it had been tabled, and then favourably voted upon.

In fact, in an initial series of hearings and meetings, the proposals met with only minor opposition, most of it coming from the Supreme Court's chief justice, whose arguments in his decision in *Bank of Guam v. Semes* (3 FSM Interm. 370, 380–84) were cited by the Pohnpeians as evidence of the pressing need for the change they were proposing. Judge King had noted in this case that the *Journal* of the 1975 Constitutional Convention contained much explicit evidence that the delegates had intended for all land cases to be dealt with by the respective states. He cited, for instance, the report's conclusion that

The consensus of your Joint Committee on Functions and Structure is that where ownership or interest in land is concerned, this is purely a

district [i.e., an FSM state] matter and it is under the jurisdiction of that district. The national level of our future government will not have jurisdiction over land matters (*ibid.*).

The framers' views notwithstanding, Judge King held that because the article on jurisdiction (Art. XI Sect. 6(b)) does not explicitly exclude the national court from hearing cases in which land is at issue, the court is therefore charged with adjudicating them.

Pohnpei introduced the two items as alternative means of wresting control of local matters from the national government. There were, however, just enough reservations about the likelihood that a Micronesian from one state would receive a fair hearing in another—that is, for state jurisdiction in diversity cases—to dampen enthusiasm for the state courts' prerogatives in land matters. With the two issues combined in a single committee proposal, the proceedings bogged down. The head of Pohnpei's delegation, Judge Johnny, was the proposal's prime mover; he was intimately familiar with the issues and repeatedly cited a body of case law in which the FSM court was consistently adjudicating local land matters. He insisted that land was of far too much value to the people of Pohnpei to allow the national court—that is, non-Pohnpeians—to deal with it.

As the committee members worked on this complex issue, some recognized that its complexity derived largely from the fact that two distinct issues had been merged together. The Pohnpeian point of view, however, seemed to be that the only way to assure state control over land cases was to make doubly sure by drafting a two-pronged amendment, with one line providing general protections (diversity) and the other aimed at more specific issues. Several delegates observed that the problem was partly rooted in misunderstandings on the part of the FSM Court's American judges, who thought that differences between FSM states were of the same order as differences between states in the United States. This is most certainly not the case. Differences between Micronesian cultures, as these delegates observed, are of much greater depth and significance and, as we have seen, lay behind many, if not most, of the problems the ConCon encountered.

The Committee finally wound up with two drafts of a committee proposal, one emphasizing diversity, the other land. They worked back and forth between the two, trying to find phrasing that would state precisely what they wanted. The problem, however, was they were not entirely sure what they wanted, given the underlying apprehensions about the diversity clause. In their penultimate meeting they had essentially decided upon a draft guaranteeing that land cases would be dealt with by state courts when one of the delegates asked to delay the committee's vote, arguing that a little more technical legal advice was called for. When the committee reconvened on the morning of the ConCon's last day they were preoccupied by the questions of a bicameral Congress and direct presidential elections. Only seven of the twelve members were present and because seven votes were required to report a proposal favourably out of committee, it was effectively killed. The committee took up the topic briefly, but in the absence of its main advocates, it voted to table the proposal.

Just as the final session of the Plenary was about to begin, the Pohnpei delegation met to discuss this state of affairs. Judge Johnny — head of the delegation — was consumed with bringing the land issue to a successful conclusion. It was of critical importance to the Pohnpei delegates, who for a variety of reasons felt they needed to demonstrate to their people that they had won at least a few of the mandated changes (they had not met with much success thus far). Shortly after the plenary was called to order, he asked to have the diversity proposal (Del. Prop. 5) called out of committee and considered by the plenary. His motion met with no opposition and the proposal was taken under consideration. He then introduced an amendment to it, which recast it as the land jurisdiction proposal he had also introduced (Del. Prop. 18). This explicitly excluded national courts from 'jurisdiction in cases where an interest in land is at issue'. There were short recesses as the Pohnpeians attended to minor objections from several other delegates, changing a few phrasings to suit them, and then the plenary voted unanimously to approve the measure as Convention Proposal No. 1. What appears to have been a rather extraordinary measure was in fact a fairly simple one that had already been agreed upon and was held up largely because of mistakes made in committee by insufficiently organized delegates.

The Proposals III - some shared problems

Full faith and credit

I turn now to two amendments that cannot usefully be identified with particular states, the first because three different delegate proposals with nearly identical language were introduced, and the second because Chuuk, the state that introduced it, was least engaged in the debate over it. 'Full faith and credit' was popular enough to have been submitted in three different delegate proposals (Del. Props. 19 [Pohnpei], 55 [Yap], 60 [Chuuk]). The language in each was lifted directly from Article IV, Section 1 of the US constitution, the only difference among the three lying in how much of the American article was borrowed. The wording of the first, introduced by the Pohnpei delegation, which contained most of the language adopted in the final draft approved by the plenary, specified that 'Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state', and went on to charge Congress with prescribing the means of implementing the measure.

In introducing the committee proposal (Com. Prop. 6), its importance for promoting unity among the states was stressed.

The clause in the United States, and as proposed for inclusion in the Constitution of the Federated States of Micronesia, is intended to be a unifying force among the states and between the states and the national government (Standing Comm. Rept. 13:2).

It might be argued, however, that this was not all that lay behind it. The measure can also be interpreted as a yet another attempt to promote state equality, one of the ConCon's most pervasive themes. The proposal in effect instructed each state to respect the acts of the others. While noting that in general 'local policy will not override the full faith and credit clause', the Committee Report specified exceptions to the general rule, allowing a court 'to balance its state's interests in the policy against the interests' of another state (*ibid.*:3). It then went on to specify, for the record, that its use of the US constitution's language did not necessarily mean that American case law was relevant in Micronesia (indeed, Del. Prop. 42 and Com. Prop. 19 were drafted specifically to keep the FSM Supreme Court from grounding decisions in US law when there were relevant Micronesian precedents).

The states of the United States are relatively homogenous. In contrast, the states of the FSM have different languages, customs, laws, constitutions, and court systems. These differences must be kept in mind in the interpretation of this clause (*ibid.*).

Some delegates worried that the proposal still threatened to erode 'local customs and traditions', in situations where the laws of other states might conflict with local practices (Government Structure and Function Committee *Summary Minutes*, 14 August 1990). The committee included even more detailed instructions, adding that 'Micronesian customs and traditions and the social and geographical configuration of the FSM might in a given case provide reasons for a court to take a path different from U.S. case law' (Standing Comm. Rept. 13:3).

Even while claiming that the proposal was intended to promote unity, then, the ConCon was still preoccupied with emphasizing differences among the states, arguing that these were substantial enough to warrant a very different interpretation of the American precedent ostensibly being copied. Indeed the only stumbling block that arose in committee was resolved by a key change in wording from the American original, which speaks of 'public acts'; this was rewritten in the Micronesian version as 'statutes' in order to avoid including state constitutions: 'Due to concerns about state sovereignty, such constitutions were not to be encompassed by the proposal' (Government Structure and Functions Committee *Summary Minutes*, 14 August 1990). Having thus assured the states that they were, on the one hand, to be treated as equals and, on the other, would not be forced to conform with the examples of their equals, the proposal sailed through the plenary. It received no discussion and was approved unanimously on first reading.

The Chamber of Chiefs

In 1975 questions about the official status of traditional leaders — and a formal role in government for them — had nearly brought the Constitutional Convention to a halt (Meller 1985:261-286). The debate's final outcome produced a compromise in which Article V, Section 3 specified that 'the Congress may establish, when needed, a Chamber of Chiefs'. The matter remained a sensitive one; in contrast with most other issues taken up by the 1990 ConCon, the delegations had given the Chamber of Chiefs issue a good deal of thought before they arrived. During the planning meetings that pre-

ceded the Convention, Yap — having long maintained that its customs were not the province of the national government — proposed removing Article V's Section 3 entirely from the constitution.³⁵ Kosrae strongly opposed any elevation of chieftainship to a formal status within the government. As the Kosraens pointed out insistently, they no longer had any 'traditional leaders'.

Pohnpei and Chuuk evidenced more ambivalence. Some Pohnpeian delegates maintained that their delegation had been charged with pushing for the establishment of a Chamber of Chiefs, while others pointed out that the delegation had decided to refrain from submitting a proposal to this end. Though traditional chieftainship provides a central organizing structure for the lives of ethnic Pohnpeians, it is less significant among most of Pohnpei State's outer-island societies, and the role of Pohnpeian chiefs remains a thorny issue within Pohnpei State.

Even more torn were the Chuukese. The proposal for a Chamber of Chiefs (Del. Prop. 24) was introduced by eight of Chuuk's thirteen delegates. In itself, this was not unusual: the full delegation submitted only a handful of proposals. However, the first state constitution drafted in Chuuk was defeated by voters largely because it provided for a state chamber of chiefs. It had to be rewritten without this provision before it was approved. The character of traditional leadership in Chuuk is highly complex and the relative ranking of these leaders is continually contested: many Chuukese, it appears, felt that formalizing the role of their leaders would result in some ossification of their relative ranking, while it is the continuous contesting of rank that allows traditional political life to thrive in Chuuk.³⁶ Even though it was a group of Chuukese who introduced the measure, the votes opposing it came largely from Chuuk — and in this the delegates' ConCon behaviour mirrored the political situation at home.

In sum, Kosrae and Yap were opposed to the proposed change, while Chuuk and Pohnpei were ambivalent. Given the degree of opposition to it, it is surprising that the proposal even reached the plenary. That it did is a good indicator of the chiefs' continued influence in the FSM. Few delegates were willing to speak frankly about denying the chiefs a formal role if that is what the chiefs wanted. Undoubtedly a key factor in the proposal's success was the presence of Pohnpei's highly articulate Nahniken of Net (the 'talking chief' of one of Pohnpei's five paramount chiefdoms), who served as vice-chairman of the Civil Liberties and Tradition Committee. The Nahniken's support for the

measure in committee counterbalanced the generally concerted opposition to it mounted by the Kosraen delegation.

The proposal's progress was not smooth. When the plenary first took the measure up, unusually visible opposition to it immediately surfaced. This was relatively early in the course of the ConCon and the committee's leaders, lacking experience the group's internal dynamics, failed to have the proposal tabled while they gathered enough votes to ensure its passage. The measure was defeated on first reading. After sounding out the opposition, the committee arranged to have the proposal recalled and then offered amendments to it.³⁷ As it became clear that it still lacked adequate support, the proposal was deferred, taken up and deferred again, then taken up, amended, and finally passed by a 27-1 vote.

In keeping with their commitment to consensus, all but one of the Kosraens ultimately voted for the proposal, but they nonetheless mounted the most concerted opposition to it, arguing that they had no traditional leaders or chiefs and that if they did choose leaders to represent them in the Chamber of Chiefs, they would be at a distinct disadvantage. While recognizing the fundamental coherence of this argument, the others insisted that Kosrae did have leaders whose status derived largely from their positions in the church and that they were for all intents and purposes 'traditional'. Kosrae's delegates had argued at length that Kosrae's religion was its 'custom' when they recognized that this was the most likely means of eliminating the constitutional prohibition against establishment of religion, and their colleagues were merely putting the same logic to work against them.

Both the committee and the plenary grappled with questions about the very nature of chieftainship itself. Lying at the heart of the debate over the chamber was the matter of just how specific the proposal should be. Some argued that unless the ConCon spelled out exactly what the chamber was to do and how it was to be initially organized, Congress would implement the proposal in whatever fashion it chose, and that given Congress's tendencies, it would be sure to maintain ultimate control over the chamber. In order to create a truly independent chamber, beholden to Congress for neither its finances nor structure, they argued, it was necessary to spell out the chamber's organization in great detail. On the other hand, many delegates — a significant majority of them, it appears — held that no one, not even the ConCon, could tell chiefs what to do.

They had to be able to organize themselves and determine their own functions. One delegate (a Chuukese), in a remark that perhaps best captures the complex nature of traditional leadership roles in modern Micronesian societies, said, 'The chiefs tell us what to do, and we tell them what to do'. This observation in fact reflects much of the underlying ambivalence about the Chamber of Chiefs. As Norman Meller (1985:261) notes, at the 1975 Constitutional Convention Pohnpei's Heinrich Iriarte upset a number of his fellow delegates by observing that 'Some of us are born to rule and some of us born to serve'.³⁸ Iriarte, though an elected delegate, held a high-ranking traditional title and was the younger brother of Nahnmwarki Max Iriarte, one of Pohnpei's two traditional leaders participating in the convention. In 1990 the Nahnmwarki's son, Nahniken Salvador Iriarte, vice-chairman of the Civil Liberties and Tradition Committee, also spoke of those 'born to rule'.³⁹ No matter how much Micronesians might respect their own chiefs — and those of other communities and islands — few are willing to grant them the power implicit in any claim that they are born to rule.

The Pohnpeian nahniken nearly defeated his own cause as he was attempting to stress the importance chiefs retain in Pohnpeian society. Just as the plenary began reconsidering the proposal after its initial defeat, a middle-aged Pohnpeian, stripped to the waist and bearing a stalk of sugar cane over his right shoulder, entered the Convention's Chamber and strode purposefully onto the ConCon floor.⁴⁰ ConCon President Moses called to the sergeant-at-arms to intercept him, but in seconds the man was crouching before the nahniken's desk. The president quickly gavelled a recess as the man carefully placed the cane against his chief and began speaking in a quiet voice. A member of his family had died earlier that day and he was performing a *luhke*, the traditional request for his chief's presence at the funeral. In a few minutes he departed and the cane was carried away. Later, there was disagreement among those present about the extraordinary timing of the *luhke*, coming as it did just as the nahniken was about to speak. Some argued that it had been deliberately arranged, while others said that this was not likely, given that the episode undoubtedly served to further alienate those already dubious about assigning the chiefs a formal role in government. In either case it was probably the ConCon's most dramatic moment. Following this interlude, the nahniken rose to begin speaking on behalf of the Chamber of Chiefs proposal.⁴¹ He discussed the peace-keeping role chiefs traditionally play, emphasizing that they could promote harmony and unity

within the FSM, and that they were ready to serve the nation night and day in these capacities. His words were somewhat vague and contradictory: in the fashion of proper Pohnpeian oratory, he avoided any appearance of telling people what to do.

There were still too many delegates with reservations about formally empowering the chiefs, and the measure was deferred again as more satisfactory wording was sought. Eventually, the ConCon's most influential delegates took charge of the proposal and worked skilfully to resolve resistance to it. This was the only occasion on which I saw parliamentary skills deliberately brought to bear as a means of solving an otherwise intractable problem — evidence of the proposal's significance. They managed to draft phrasing that was simultaneously vague enough to assure that the chiefs themselves would be able to determine the chamber's official role, and specific enough to overcome fears that Congress would exercise power over it. By combining a number of different amendments and drafts, they rewrote the Constitution's Article V, Section 3 so that 'a chamber of chiefs is hereby established'. Its primary role would be 'to advise on matters of customs and traditions, to promote and protect customs and traditions, and to promote peace and unity'. The role of the national government — that is, the Congress — in establishing the chamber would be to 'take every step necessary and reasonable to provide' for the chamber's operations.

If the delegates were not prepared to gainsay the chiefs in the public arena of the ConCon, the Micronesian people were very much prepared to do so in the privacy of their ballots. The proposed change was defeated overwhelmingly in the constitutional referendum. It received the lowest number of favourable votes in Kosrae and Pohnpei, placed second to last in Yap and Chuuk, and received the lowest number of votes overall. Ironically, only in Kosrae, seat of the most articulate opposition to it, did the proposal receive more than 50 per cent approval (it got 55 per cent). In Pohnpei 48 per cent of the voters supported it, in Chuuk 39 per cent, and in Yap 34 per cent.

This massive opposition to the Chamber of Chiefs is evidence not of chieftainship's declining significance in Micronesia, but of just the converse. The fact that in the traditional leaders' presence the ConCon delegates could not bring themselves to gainsay them testifies to the nature of the dilemma. The chiefs retain tremendous influence, of various types and springing from multiple sources. In general, Micronesian polities rely on the strengths of their chiefs to guarantee certain defensive functions — in relation to both the exterior

and supernatural worlds — and people are thus inclined to support them. At the same time, however, they strongly resist any attempts on the part of the chiefs to interfere too much in the everyday, domestic sphere of community life. They accomplish these dual, contradictory tasks with dual — or tripartite — political structures in which various leaders, factions, and communities ceaselessly compete with one another and thus serve to check overweening ambition and unwarranted attempts to exercise power.

As the entire thrust of the ConCon made clear, Micronesians have significant doubts about the power of their national government, generally perceiving the Congress as entirely too strong. Permitting the chiefs to take on a formal role in the national government would not only have enhanced their power, but decreased the dual character of the present-day Micronesian scene, with Congress on the one hand and the traditional polities on the other. Keeping the chiefs out of government seems to have been a deliberate means of preserving both their role as protectors of the people and the traditional structures of competing power blocs. For all that the FSM constitution portrays itself as a guardian of Micronesian customs and traditions, the Micronesian people see their guarantees situated elsewhere, and aim to keep them there. It is only from this perspective, I think, that we can understand why it was that only in Kosrae, with no chiefs, a majority actually voted in favour of the Chamber of Chiefs, while in Yap, which most observers would agree has the most viable traditional polity and the only state government with an official role for chiefs already in place, the chamber received its greatest opposition.

The problem of ratification

I turn now to the final proposal submitted to the 1990 ConCon, Delegate Proposal 104, forwarded to the plenary as Committee Proposal 35. It had the potential for effecting greater changes in Micronesia than any other proposal considered by the ConCon, because it was meant to make final ratification of all the other proposed amendments considerably less difficult. Article XIV, Section 1 of the 1975 constitution requires that constitutional amendments be 'approved by three-quarters of the votes cast in each of three-quarters of the states'. This proposal amended that figure to 'a majority' vote in three quarters

of the states. As finally modified, the amendment also specified that this change would become effective on 3 November 1990; given that the constitutional referendum could not possibly have been held until some time in 1991, this 1990 date meant that the change would be retroactive, and the new ratification requirement would thus apply to the referendum itself.

The proposal, submitted by Robert Ruecho', chairman of the General Provisions Committee, two days before the ConCon's close, came in response to the sense, widely shared among the delegates, that gaining the approval of three quarters of the voters in three states would be nearly impossible, and that the ConCon was therefore a largely futile effort. Several approaches to effecting a change were considered, including holding a special election to decide on this single item, but in the end it was decided that a place on the referendum ballot itself would be adequate for the task.

As the Committee Report (Standing Commission Report 49, p.2) acknowledged, 'concern was expressed that this proposal would make it easier for amendments to be approved by a minority of the total number of voters in the nation'. When the plenary took up the item for consideration, it was pointed out that 51 per cent of the voters in three states might approve a measure while it received no votes in a fourth state, thus creating a situation in which the amendment would in fact be put into effect on the vote of an absolute minority. Indeed, if an item were approved by narrow margins in Kosrae, Pohnpei, and Yap and defeated overwhelmingly in Chuuk such a scenario might well be possible. Delegate Ruecho' responded that the present requirements for ratification were almost impossible to satisfy. 'It would mean', he argued, 'that having a ConCon every ten years is a waste of time'. Two Kosraen delegates, in keeping with the position they had enunciated throughout the convention, that is, defending the sovereignty of the states, maintaining that none should be required to acquiesce in changes with which they disagreed, and calling instead for consensus (that is, unanimity), voted against the proposal. It passed 24-2, and thus raised the possibility that the ConCon's work might ultimately be sanctioned by the voters. Indeed, had 49 Kosraens cast their ballots differently for this one item, the outcome of the entire ConCon would have been far different from what it was.

The ratifying referendum

The 24 proposed amendments approved by the ConCon, plus two added by the FSM Congress, were presented to voters in a constitutional referendum on 2 July 1991. The FSM national government mounted an educational programme, in order to help voters understand the implications of the proposed changes. This programme, unlike those which have preceded important referenda in the past, was decidedly neutral in content. This is not surprising given the simple fact that, with few exceptions, the proposals had to have been relatively neutral in order to have made it through the ConCon.

The most potent item on the ballot, as we have seen, was the final amendment to come out of the ConCon, lowering the ratification requirement from a three quarters majority to a simple majority in three states. This measure was approved in Yap and Pohnpei, but fell a few votes short of 75 per cent in Kosrae. As the delegates had foreseen, their work was nearly all for naught. Ultimately, only four amendments were approved by the voters.

None of the proposals finally ratified had much to do with tensions among the states. Rather, all four were products of the ConCon's other key theme, the states' shared antagonism toward the national government. The following changes were effected:

- (1) Congress's power to define 'major' crimes was limited to control over 'national' crimes, that is, its charge is now defined by the nature of the crime, not its severity;
- (2) courts were required to use Micronesian precedents before turning to American law;
- (3) the prohibition against indefinite land-use agreements was limited to non-citizens and governments;
- (4) the national government's role in education and health issues was redefined, so that it is no longer a concurrent power and its responsibilities in these areas are now enumerated.

Voting patterns among the states varied widely, reflecting some of the same outlooks manifested at the ConCon. In Kosrae every proposed amendment was approved by at least 50 per cent of the voters, but only four items received 75

per cent or more approval. In Chuuk only two amendments were approved by 50 per cent of the voters (53 per cent and 54 per cent, respectively). In Pohnpei only four proposed amendments received less than 75 per cent approval (and one of these received 74 per cent) and in Yap only three proposals received less than 75 per cent of the votes. The Kosraen and Chuukese votes clearly reflected their delegates' views that any change from the *status quo* could only hurt them. In particular, the Chuukese appear at first glance to have been overwhelmingly opposed to the proposed changes, and this would seem to indicate a shared sense that their numbers do give them a sizable advantage within the federation. For this reason, it is worth taking a closer look at the returns from Chuuk State, which in fact showed marked variation: some in Chuuk did indeed want change.

In most of Congressional District 5, the western and northern atolls, the amendments were *approved* by approximately 65 per cent to 80 per cent votes. Only one precinct, Nomwin, voted decisively against them, while Unanu and Onou approved some amendments and opposed others. In Congressional District 1, the southeastern atolls (known generally as the Mortlock Islands), the overall yes vote on individual items ranged from approximately 37 per cent to 45 per cent, with the majority of the items receiving about 43 per cent approval. But there was enormous variation within this region, with six precincts approving most items and only five opposing them. Lukunor approved the proposals by an approximately 84 per cent vote, and five other precincts approved them by two-thirds to three-quarters votes. On Satawan, with a particularly large population, on the other hand, only 3 per cent of voters approved the proposals. Although more communities actually favoured than rejected the changes, Satawan's monolithic opposition carried the Mortlocks against the proposals.

In Congressional District 3, the southeastern lagoon (southern Namoneas) including Tonowas, Param, and Uman, the vote tended to be close, with six items approved by 50 per cent votes. Six precincts gave most proposals outright approval and one, Penienuk Elin, approved the proposals with votes exceeding 90 per cent. In three others, a minority of proposals was approved. In Congressional District 2, which comprises the lagoon's main island Weno (Moen) and the rest of the northeast lagoon (northern Namoneas), the proposals were defeated decisively, with yes votes ranging from approximately 23 per cent to 38 per cent, and the average vote for approval around 34 per cent. In three precincts, however, all or nearly all the proposals were approved and in five others a minority of them was approved.

In Congressional District 4, the western lagoon (Faichuuk), the approval rate ranged from approximately 33 per cent to 39 per cent, with the average vote for approval around 38 per cent. In some of the precincts there, opposition to the proposals was overwhelming. In Neirenom the vote for nearly every item was 0–111, in Sopou it was 1–98, in Nethon 2–43; in a number of others it averaged more than three-to-one against. On Romolum, on the other hand, the vote averaged approximately 80 per cent in favour of the proposals and in Monowe on Udot approval averaged nearly 90 per cent.

We can see in this pattern of voting a phenomenon widespread in the FSM. In general, outlying atolls tend to favour harmony within the FSM and to shy away from controversial positions, believing that their position as minorities within their states is likely to be protected by a larger government under which nearly everyone is a minority. Thus Chuuk's atolls, with the notable exception of Satawan, largely agreed with the work of the ConCon and a significant majority of voters throughout the rest of the FSM. The southeast Lagoon opposed most of the proposals but did approve six. The two main actors in Chuuk State, Weno, the capital, and its staunch opponent, the Faichuk area in the western Lagoon, on the other hand, came out strongly against the proposed changes.

Many in the FSM see Chuuk dominating Congress with its large numbers and consequent control of the speakership, which has been recently viewed as a more powerful office than the FSM presidency. Opposition to Congress, which lay at the core of so much of the ConCon's work, was apparently read in Chuuk Lagoon, at least at some level, as opposition to Chuuk itself. And thus the Chuukese tended to favour the *status quo*, rather than the strict state equality formula pursued by Kosrae or the more general sense that the FSM needed to shift power away from the centre, that is, away from Chuuk's population numbers.

Kosrae's vote may be read as an opposite but nonetheless parallel trend. Given their small numbers, the Kosraens also saw themselves more likely to benefit from the *status quo*. They feared that in the absence of the significant changes they had pursued — intended to channel power through the states as a community of equals — any changes at all were liable to be threatening. A narrow majority of Kosraens supported most of the ConCon's proposals,

apparently agreeing with the Chuukese that if anyone benefitted from them it would be Kosrae rather than Chuuk.

The tensions between Kosrae and Chuuk, which so defined the ConCon and lay at the root of its basic inability to implement any broad changes, extended to the referendum, where the two states' lackluster support or even outright opposition defeated nearly all the amendments the ConCon did manage to hammer out. The people of Yap and Pohnpei, like their delegates, were largely committed to stripping the central government of its power and to truly transforming the nation's character. Their support was not, however, sufficient to the task and in the end the referendum merely served to reaffirm the basic history of the ConCon itself: no one was especially happy with the character of the current FSM government, but there was entirely too much disagreement about which changes were necessary to reshape it.

Conclusion

The 1990 Federated States of Micronesia Constitutional Convention ended much as it began. In coming to the ConCon, the delegates brought with them the shared sense that 'We don't need two drivers anymore'. Everyone was eager to see political, economic, and social responsibilities — and the funding to discharge them — transferred from the central government to the states. But tensions between Chuuk and Kosrae nearly paralyzed the entire convention. Each seemed convinced that a change would work against them. The Kosraens feared that Chuuk's large population would effectively take over the federation and relegate Kosrae to an entirely marginal position. The Chuukese believed that a principle conferring upon 7,000 Kosraens the same political weight as Chuuk's 55,000 people was fundamentally unjust. No resolution of this dilemma, nor any sort of compromise, was achieved.

The ConCon served only (or at least primarily) to further heighten the tensions within the FSM, both between the states and their federal government and among the states themselves. In time, I believe, unhappiness with the central government, which has been growing steadily since its inception, will result in a concerted effort, quite possibly accompanied by some violence, to wrest power from it. When this happens, however, relations among the states them-

selves will have so deteriorated that no new accommodation among them will be found.

When the current Compact of Free Association with the United States expires in 2001, then, the FSM will dissolve and a series of microstates, even smaller than the FSM's 100,000 plus population, will emerge. But each of these (with the exception of Kosrae) will in turn include ethnic minorities who have been protected by the FSM's necessary commitment to heterogeneity. In Yap and Chuuk, there are old cultural patterns of comity and cooperation among the islands. For millennia these were underpinned by the exigencies of island living in the typhoon spawning belt. On Pohnpei such traditional ties have never really existed. But today security derives not from traditionally-sanctioned patterns of mutual aid and respect, but rather from ties of dependency upon the United States, the United Nations, and a few of the larger Pacific Rim powers. Across the region, each of the dominant peoples within these newer polities will be inclined see their own minority populations as competitors for foreign aid funds and for the limited resources remaining on the larger islands. Given regnant attitudes, these high island peoples may well encourage the atoll peoples to go their own ways, as well.

It is thus not at all unlikely that the early twenty-first century will see the formation of a series of Tuvalu- and Tokelau-, or even Niue-sized political entities forming in Micronesia. All of Micronesia will look like Kiribati, Belau, and the Marshalls. Since this is a pattern that may well also develop in Africa, among some of the old Soviet republics, and — if Burma is any guide — in Southeast Asia, it may not seem quite so strange in a decade or so as it does now. Such fissioning goes quite against the grain of twentieth-century political thought, conditioned as it has been by sheer size of a handful of superpowers and superstates. But changes in technology may make it possible for statelets to coexist with giants, even if the quest for power does not make it likely. The historical trajectory of colonialism, which once strung these islands together like so many gems on an empress's necklace, has passed its apogee; the golden chain has snapped and the stones scatter.

Notes

- ¹ Throughout this essay I shall use the term 'Micronesian' in its most restrictive sense, that is, with reference to the peoples of the Federated States of Micronesia. Other Micronesians are now generally known by more localized terms, such as Belauans, I-Kiribati, etc.
- ² The Commonwealth of the Northern Marianas, formerly part of the Trust Territory, has a dominant Chamorro majority and a minority population of Central Carolinian descent, as well as a relatively large number (approximately 50 per cent of the total population) of immigrant labourers, much like Nauru, with its 'guest-workers', who mine the phosphates.
- ³ Some Micronesians, however, maintain that there is mythohistorical precedent for modern political linkages among Kosrae, Pohnpei, Chuuk, Yap and the islands lying between them.
- ⁴ I am not suggesting anything remotely like stasis; these island societies and cultures have undergone major changes during this time, and have influenced each other in the process. But on the larger islands, at least, there is little or no indication of large-scale displacements or hostile occupations until the arrival of the Europeans and the diseases they brought with them; continuity seems more significant than discontinuity. The atolls, on the other hand, have always been more vulnerable to the mass destruction of typhoons and prolonged droughts, and most of them have probably been abandoned and resettled repeatedly.
- ⁵ The character of political relations within Yap proper (i.e., the island of Yap), however, must be contrasted with the traditional dominance of a part of Yap over the atolls to the east.
- ⁶ The ConCon's official *Journal* has never appeared; preliminary transcripts of some plenary meetings were circulated. Official records of committee meetings exist only in summary minutes and standing committee reports, which rarely recount the give and take of discussion and debate.
- ⁷ In the course of a debate concerning traditional rights over submerged reefs, one delegate was moved to exclaim, 'Those reefs didn't just fall down from the sky. They were there before 1975, so someone must have rights over them!'. His was an attempt to remind FSM bureaucrats (and others) that the states consider themselves to have existed prior to the establishment of the FSM and that their claims to rightfully control resources are based on this interpretation of history.
- ⁸ Indeed, even continued Trust Territory status garnered more votes than Free Association. The totals for Yap, Chuuk, Kosrae, and Pohnpei were: 'Indepen-

dence' 6,822, continued 'Trust Territory' status 5,288, 'Free Association' 5,004 (Petersen 1979:484).

- ⁹ A full-scale study of the 1990 ConCon would have to explore in depth the connections between the conventions. In the present context I can do no more than refer the interested reader to Norman Meller's *Constitutionalism in Micronesia* (1985), which covers in detail nearly every aspect of the 1975 Convention.
- ¹⁰ The US had hesitated to bring the termination question before the Security Council, which oversaw the Micronesian Trusteeship. There was considerable likelihood that the USSR would exercise its veto, and level charges that American militarization of the area was in violation of the basic Trusteeship principle. In December 1990, days after the US had agreed to supply the USSR with nearly two billion dollars in food credits, the Security Council was asked to terminate the Trust Agreements for the Northern Marianas, the FSM, and the Marshalls, which it did with the Soviet Union's approval.
- ¹¹ Pohnpei's Bethwel Henry (who had served for many years in the Congress of Micronesia and the FSM Congress) introduced a minor modification to the qualifications for service in Congress (Del. Prop. 70).
- ¹² Few Micronesians make permanent moves anywhere other than to seats of government, that is, state and national capitals. Thus most interstate migration is to Pohnpei.
- ¹³ In US jurisprudence, parties interested in a particular outcome of a judicial proceeding may submit commentaries as 'friends of the court', known as *amicus curiae*.
- ¹⁴ The *Congressional Journal* (4 December 1989) reports that in public hearings held in Yap and Pohnpei, consensus was also supported.
- ¹⁵ Several observers thought the margin was closer; even division votes do not necessarily provide a clear-cut count when a show of hands is accompanied by the reticence that tends to characterize Micronesian public political performance.
- ¹⁶ To form three-judge appellate panels the FSM Supreme Court names judges from the state supreme courts.
- ¹⁷ This was one of the few references to Meller's enormous contributions to Micronesian constitutionalism and its history that I encountered at the ConCon, and it was to a briefing paper from before the ConCon, not to his record of the Convention itself. The delegates' generally ahistorical approach to the ConCon both impells my attempt to record it and inclines me to think that this record will receive scant attention.

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- ¹⁸ One Yapese delegate, demonstrating his genuine commitment to representative government, acknowledged — after the defeat in committee of several proposals he had been advocating — that he had personally opposed them.
- ¹⁹ In this it stands in marked contrast to arguments in American constitutional law which focus on the Preamble's opening phrase, 'We the people'. Indeed, one of the objections initially levelled at the constitution was that it drew its impetus from the people rather than the states.
- ²⁰ Indeed, only one proposal even lends itself to interpretation as a call for greater national government powers, Delegate Proposal 68, which specified that promotion of health care, education, and legal services should be priorities of the national government. However, the intent of this proposal was both to remove health and education from the powers held concurrently by the national government and to overcome the FSM Congress's perceived failure to provide adequate funding in these areas, and it was thus one more implicit criticism of the national government.
- ²¹ Pohnpei's at-large senator, Bailey Olter, of outer-islands origins, had served as vice president under President Nakayama and it was widely believed that he would succeed to the presidency. Because Pohnpeians assumed that it was their state's turn to occupy this high office, however, the election for their at-large seat was hotly contested, and an ethnic Pohnpeian, Leo Falcam (who had never served in Congress) won. It was in this context that Congress decided not to name Pohnpei's senator as president.
- ²² The Compact specifies that this be done in consultation with the FSM national government, but does not require the FSM's approval.
- ²³ Dealings with the European Community were explicitly cited as being complicated by the ambiguities of the FSM's political status.
- ²⁴ Opposition to alterations in the original constitution's language was first posed in the plenary by former president Nakayama, who asked that certain phrases in it, though no longer pertinent, be allowed to remain for historical (and partly nostalgic) reasons.
- ²⁵ It should be noted in this context that the Pohnpeians' interest in secession has been both consistent and in keeping with their feelings about the FSM and free association in general. It is by no means a tactical threat.
- ²⁶ 'The term "Woleai" includes all of the related islands to the east of Ulithi, except for Fais' (Lingenfelter 1975:150).
- ²⁷ Kapingamarangi is one of the outlying Polynesian atolls, and its customs have very different historical roots from those of the 'Micronesian' islands.
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- ²⁸ One of the delegates had with him a pamphlet produced by the Trust Territory's 'Education for Self-Government' programme following the 1975 Constitutional Convention, entitled 'A Glossary of Words and Terms used in the Constitution'. In it, 'custom' is defined as 'Some practice which has existed for a long time and is accepted by a community or a group as being proper although it is not a written law'. 'Tradition' does not appear in it. The only time I heard reference made to this pamphlet was during this discussion of custom versus tradition.
- ²⁹ Not all the expatriate advisers opposed this amendment. Indeed, one was an articulate advocate of it.
- ³⁰ This episode in some ways hearkens back to a scene encountered at the original constitutional convention, when an initial attempt to introduce several articles protecting civil liberties—specifically freedom of the press and speech—met with strong resistance by some of the 'traditional leaders' who served as delegates. These men argued, rather cogently, that in their societies kin and community groups had both the right and the responsibility to seek redress when offended. They were troubled by what such guarantees for potentially offending acts or speech might do to those traditional rights. Although several clauses protecting customary rights were written into the constitution, and reaffirmed by the 1990 ConCon, the American chief justice of the FSM Supreme Court in fact explicitly denied the right of kin and community groups to engage in certain actions grounded in these rights and responsibilities (*FSM v. Mudong* and *FSM v. Benjamin*, *FSM v. Ruben*).
- ³¹ The Yapese did not re-elect this at-large senator in 1991 and he was precluded from a second term as president. At the same time, the Pohnpeians elected Bailey Olter, who had been FSM vice-president under President Nakayama, and Congress chose him as president.
- ³² Expatriate workers with work permits approved by one state are generally free to travel to and work in other states.
- ³³ On Yap, land can only be transferred through traditional means and this issue was not of particular concern to the Yapese delegation. Although land was not a crucial subject for Kosrae either—few outsiders reside there and the island's population was so decimated by disease in the nineteenth century that it is still relatively underpopulated—large numbers of Kosraens live on Pohnpei and access to land there is an issue for them.
- ³⁴ In other hearings, it became clear that no one was certain about the current right of aliens with work permits to travel and work in other states. 'Could Yap', one legal

staffer asked, 'kick the FSM Attorney General [an American] out?'. No one seemed to know.

- ³⁵ In this matter, the Yapese position was similar to Pohnpei's: the national government in Micronesia is not a traditional category and thus does not represent traditional values or practices. In being 'Micronesian' it is neither Yapese, Chuukese, Pohnpeian, nor Kosraen.
- ³⁶ While Yap's and Pohnpei's chiefly systems also entail ceaseless status competition, it is usually possible to find *some* agreement on which titles are currently ascendant. This is one of the marked differences between Chuuk on the one hand and Yap and Pohnpei on the other.
- ³⁷ Requests to recall a defeated proposal had to come from someone who had voted against it.
- ³⁸ As explained in note 9, I have deliberately avoided comparing the 1990 ConCon with the original constitutional convention. In the case of the Chamber of Chiefs proposal, however, the delegates themselves made continual reference to the attempts in 1975 to grapple with issues of custom and tradition, and much of their debate can only be understood in the context of questions left open by the ambiguous outcome of the 1975 Convention — that is, the clause that allowed for but did not require establishment of a Chamber of Chiefs.
- ³⁹ The NetNahniken was born after his father had already become Nahnmwarki. This conferred upon him *Ipwen warawar* ('Born over the ditch') status and made him, in strictly spiritual terms, the highest-ranking person on the island. By the standards of traditional Pohnpeian culture, he was indeed 'born to rule'.
- ⁴⁰ While the ConCon was in session, access to the Chamber floor was strictly limited to delegates and official staff. This episode was the only occasion on which I saw anyone else enter onto the floor.
- ⁴¹ This was the only delegate speech made from a podium. Acting in his capacity as 'talking chief', the Nahniken was assuming the normal chiefly position: raised up above everyone else present.

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