

Individual Land Tenure in American Sāmoa

Merrily Stover

For American Samoans, as for many Pacific Islanders, traditional land tenure provides stability in a fast-changing world. Yet even in countries where land tenure generally follows traditional practices, land is increasingly held by individual or small family units, rather than by large kin-based groups (see Ward and Kingdon 1995). The shift to individually owned lands in many Polynesian societies began with European settlement and colonial rule during the nineteenth century.¹ Governments frequently imposed land registration and private ownership to secure land for settlers and facilitate development of commercial agriculture. Land registration also protected indigenous land rights and gave “order” to the land system. All too frequently, however, crippling land fragmentation, multiple ownership, and even land alienation have resulted.

For the most part, such problems have not disturbed American Sāmoa, whose indigenous land tenure system is protected by law. However, like other Pacific Islanders, some American Samoans are choosing private land ownership, which contradicts the indigenous system. Where land is used primarily for residences and small gardens, the new practice gives land ownership to individuals, not groups, and grants owners the right to sell land to other Samoans and to will the land to their heirs.

This essay explores this new practice—its geographical and historical roots. It tries to explain why American Samoans embrace this system, even though rhetoric and law support traditional land practices. The essay then briefly reviews land problems of some neighboring Polynesian groups. Finally, it explores factors that have allowed American Samoans to avoid some of those difficulties and suggests actions to maintain successful land tenure practices in this small island community.

Research was conducted in American Sāmoa on the island of Tutuila in

1985–1987. Archival work was conducted in the Territorial Land Registration Office, Pago Pago, American Sāmoa, to determine the extent of registered individual land: the number of claimants, amount and location of land, and any land transfers. To find out who lived on the newly privatized land and what distinguished these families from others in American Sāmoa, I interviewed heads of households of 63 families living on Tutuila. Of those families, 37 lived on individual land, 23 were on communal land, and 3 lived on freehold land.

AMERICAN SĀMOA: GEOGRAPHIC AND POLITICAL BACKGROUND

The islands of American Sāmoa are part of the Samoan archipelago, located in the tropical Pacific at 14 degrees south and 171 degrees west, about 2,300 miles south-southwest of Hawai'i. American Sāmoa makes up the eastern portion of the Samoan archipelago, while the western islands constitute the independent state of Sāmoa (see map 1). Of American Sāmoa's seven islands, the main islands are volcanic (Tutuila, 'Aunu'u, and the Manu'a Group of Ta'u, Olosega, and Ofu). The two remaining islands are both coral islands: Rose Island, which is uninhabited, about 250 miles east of Tutuila, and Swains Island, 280 miles north of Tutuila (Farrell 1965, 300).

The main islands of American Sāmoa are typical of high islands of the Pacific, with deep, steep-sided valleys. Because of the rugged terrain, only a limited amount of land is suitable for habitation or agriculture. Villages traditionally ring the coast of the islands, and garden plots follow the valleys into the mountains (Farrell 1965, 307–314). The largest island, Tutuila, has an area of 14,043 hectares (34,700 acres).

In 1995, American Sāmoa's estimated population was 56,000, of whom 96 percent lived on Tutuila, the political, commercial, and educational center of the territory. Nearly one-third of the residents of American Sāmoa were born in Western Sāmoa (ASG 1995, 15, 26, 34). Population density for the territory is 234 persons per square kilometer. American Sāmoa's annual growth rate of 3.7 percent is one of the highest in the Pacific region (ASG 1995, 15, 16).

Only a very small percentage (0.05) of the workforce support themselves primarily through agriculture. Most American Sāmoa workers (61 percent) are employed by private industry (eg, tuna canneries), or by the American Samoan Government (32 percent; ASG 1995, 144). Nearly 12

The Samoan Islands



MAP I.

percent of the mean household income comes from remittances (ASG 1995, 152–153).

Politically, American Sāmoa is an “unorganized,” “unincorporated” territory of the United States. An “unorganized” territory is one for which the Organic Act, establishing a civil government, has not been enacted by the United States Congress. American Sāmoa’s civil government, with its elected governor and legislature (*fono*), was not established through congressional act. An “unincorporated” territory is one in which the provisions of the US Constitution need not fully apply (Van Dyke 1992, 3–6). Among the territories of the United States, American Sāmoa is unique in its nonorganic and unincorporated status. However, like other territories, American Sāmoa has one nonvoting delegate to the United States Congress who is elected every two years. The US Department of the Interior has oversight over the welfare of the territory. In 1992, the Department of the Interior, along with the Federal Emergency Management Agency and other grant programs, provided 73 percent (\$108,035) of the total territorial government revenues (ASG 1995, 130).

TRADITIONAL SAMOAN SOCIAL ORGANIZATION AND LAND TENURE

In Samoan society, land tenure is an integral part of the social organization and is tied to both the kinship system and village organization.² As in other Polynesian societies (see Firth 1963; Howard and Kirkpatrick 1989), the cognatic descent group, that is, a kin grouping organized by cognatic, or nonunilineal, descent, is at the core of the Samoan social system. The cognatic descent groups (*āiga*) are the “owners” of the land. Rights to land use come with membership in the descent group.

Membership in the kin group is dependent on two factors: genealogy and service. A genealogical tie must link a person to the group’s founding ancestor. Those links can be traced through either male or female lines or both.³ The name or the title of this ancestor identifies the kin group and is the chiefly title that the group gives to its leader (*matai*), chosen through consensus of the group. Because genealogical links may be traced through both female and male lines or both, an individual may potentially belong to many kin groups. Service to the group is recognized by contributions of labor, goods, and money. Until such time as membership is activated through service, rights (including land rights) in

a kinship group are merely potential and considered dormant (S Tiffany 1975, 432).⁴

The elected head of the descent group is the *matai*. A *matai* may be either a chief (*ali'i*) or a talking chief (*tulāfale*), each title having its own specific and complementary duties. While both men and women may serve as *matai*, most *matai* are men. *Matai* are rarely removed, even if involved in criminal or other scandalous activity. A *matai* administers the family estates and ensures that land is used in the best interests of the 'āiga. However, the 'āiga is the ultimate landholding group.⁵ Any decision to alienate family lands should be by consensus of the assembled descent group ('āigapotopoto) (Holmes and Holmes 1992, 49; Laughlin 1981, 39; W Tiffany 1979, 265–268).

Two concepts support the role of *matai* in the land tenure system: authority (*pule*), and service (*tautua*). *Pule* is the exclusive power to make administrative decisions over family lands. *Pule* belongs to the *matai* (Nayacakalou 1960, 115). Complementing *pule* is *tautua*—obligations that 'āiga members must render to their *matai*. *Tautua* places a person under the protection of a *matai*, a necessity in a society where “to have no *matai* is to be an asocial entity” (Nayacakalou 1960, 115).

A *matai* may call on the 'āiga to donate produce from the land. With the growth of the cash economy, this right extends to earnings from the sale of produce and to salaries of workers. The amount of *tautua* depends on the situation and the demands of an individual *matai*. Those who feel a *matai* is too exacting may rekindle kin ties elsewhere and move to serve a different family. The sentiment that patience is a virtue, and some day a subordinate may be chosen to be a *matai* and the one in charge, is reflected in the popular Samoan proverb, *O le 'auala o le pule o le tautua* (the path of service is the path to authority).

The estate of a given 'āiga is located in a specific village where the *maota* or *laoa* (the designated residence of the title) is located and where a core of the kin group usually resides. The village council (*fono*), composed of the *matai* of the village, has jurisdiction over matters that affect interfamily relations, including village norms of proper behavior. In cases of extreme violation of village rules, such as murder or adultery, the *fono* also has the right to banish people from the village, and hence from their lands (see Shore 1982).

Traditionally, only in rare instances was land individually held (Holmes 1971; Lockwood 1971; Schultz 1978; Shore 1982; W Tiffany 1979). Land

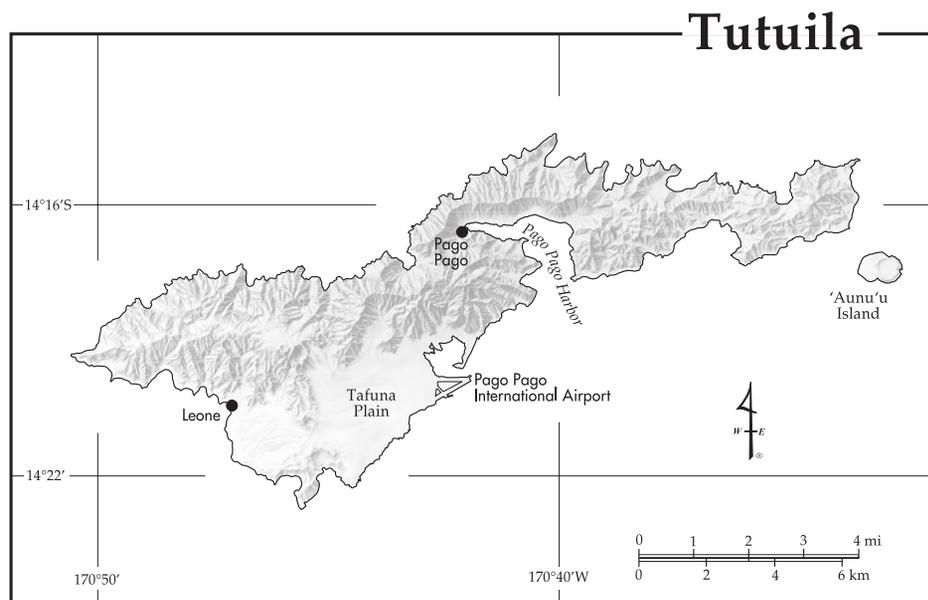
cleared with a *matai*'s own labor may be considered an individual claim as long as the land is worked. If the plot reverts to bush, all claims are lost (Mead 1969, 72; Nayacakalou 1960, 113). With family consent, a spoken will or gift (*tofi*) may give land to someone in return for special services (Holmes and Holmes 1992, 50). Mead noted that on infrequent occasions, some *matai*, knowing that the title would not be passed to their own children, might clear a plot for them (1969, 72). Most lands, however, are cleared under the direction of a *matai* and remain associated with that title to benefit the *'āiga*.

Even though Sāmoa's land tenure system has changed with western influences,⁶ the basic rules outlined here continue to operate for the majority of landholdings in American Sāmoa. This essay focuses next on a small but exceptional portion.

INDIVIDUAL LAND

In American Sāmoa, land held in the indigenous manner is referred to as "communal" or *'āiga* land, while that held individually under the new form is called individual land. Communal land and individual land make up the two categories included in the classification "native land." Most of American Sāmoa's land is administered as communal land. However, 726 hectares (1,794 acres) now registered as individually owned represent nearly one-quarter of all the land registered in the territory (ASG 1995, 92).

Individually held land is concentrated in one of the territory's few regions of level terrain (map 2). This area, known as the Tafuna Plain, extends from the mountains to the sea on Tutuila's southwestern side. Historically, Tafuna was of little importance. It was used primarily for subsistence gardens of banana and taro, and for pigeon hunting. The name Tafuna is glossed as "a place where rubbish is burnt" (Milner 1966, 227). Tafuna is also the name of a small Samoan village now existing within the larger area of Tafuna. Once a coastal settlement, the village was moved inland during World War Two to facilitate construction of the airport. The jurisdiction of Tafuna village is small and well defined. In this essay, the word *Tafuna* refers to the larger area. For the most part, Tafuna's wooded acres remained uncultivated until World War Two, when US forces built an airport on the Tafuna coast. Roads were cut and acres of bush were cleared for storing materials around the airport site. When the navy's construction battalion departed, local workers remained to use clearings for homes and gardens.



MAP 2.

Most of the area of Tafuna lies outside village control and so is an anomaly in American Sāmoa. The Tafuna area does not look like a village, nor does it function like one. There is no central commons (*malae*), no council (*fono*), no appointed mayor (*pulenu'u*), and no hierarchy of *matai* titles (*fa'alupega*) that characterize Samoan villages (Shore 1982; Holmes 1974, 1987; Mead 1969). Like much of the rest of American Sāmoa, closed-walled houses, modeled after Euro-American styles, separated by stone walls or hedges, dominate the area. Traditional open-walled houses (*fale*) are occasionally found in the back as sleeping places for workers from Sāmoa or Tonga, or placed smartly in front for meetings of the family *matai*. Now, however, corrugated metal and two-by-fours replace thatch and log poles. The region has the look of a growing suburb, with a web of paved and unpaved roads connecting newly constructed homes, shops, and plantation gardens.

History of New Land Tenure System: The Legal Decisions

The current categories of land in American Sāmoa have their roots in treaty and policies of the nineteenth century. The Final Act of Berlin (Article IV, section 1) signed in 1889 by the United States, Germany, and Great Britain attempted to achieve political stability in the Samoan Islands by

resolving land-claim disputes. From this act the International Land Commission and the Supreme Court were established to adjudicate land claims of foreigners in Sāmoa, claims that totaled more than the total area of the archipelago (Olson 1997, 153–154). Fourteen percent of the land was ultimately awarded to foreigners; remaining lands were seen as held under Samoan traditional customs and designated “communal lands” or “native lands” by the court (Olson 1997, 154–155). From the beginning of this imposition of western legal tradition on land in Sāmoa, central government authority has been primary in protecting Sāmoa’s customs regarding land and in ensuring its inalienability (Olson 1997, 153–156). Much of the process of land adjudication was concerned with determining who had power within the Samoan system to transfer land. The commission concluded that a chief’s authority or *pule* was limited: that while it might be strong at the individual level, any sale of *‘āiga* or family lands required the consent of the family members (Olson 1997, 159–160).

In 1900, when American administration began in Sāmoa, the government recognized two categories of land ownership that still exist today: native and freehold. Native land refers to land administered under the indigenous system. Rights to native land belong to members of the cognatic descent group associated with the *matai* title, as described earlier. Ninety-seven percent of the land in American Sāmoa continues to be classified as native land. Freehold land is that granted by the International Claims Commission in Apia before the United States took possession of eastern Sāmoa. Freehold land may be freely sold or transferred (Lutali and Stewart 1974, 124).

Since American Sāmoa is a territory of the United States, an easy explanation of how individual land tenure arose would be because of government attempts to “Americanize” the territory. However, the policy of the United States administration in Sāmoa has been to preserve the native land system. The founding documents guarantee protection of land rights of the Samoan people.⁷ Two of the earliest regulations by the US administration in Sāmoa forbade the alienation of Samoan lands (4-1900) and declared the preservation of Samoan customs when not in conflict with the laws of the United States (5-1900) (see W Tiffany 1979, 259–260).

While the high court tried to make decisions that reinforced Samoan customs, over time the tie between *matai* title and land title eroded, reducing the power of *matai* and kin groups over landholdings and strengthening the position for individual claims (Ala‘ilima 1984, 1). Sev-

eral factors were responsible. To begin with, judges tended to favor the cultivator or the actual user of the land in cases of land dispute. Since no laws prescribed how the High Court should decide disputes, the judges called on “natural law,”⁸ which gave title to those who first cleared unoccupied bush (W Tiffany 1979, 260). Judges felt such decisions upheld Samoan custom, noting that “Samoan families acquired title to their communal family lands by going out into the virgin bush, taking possession, cutting down the trees, and claiming the land cleared as their own” (quoted in W Tiffany 1979, 260). Thus, land titles were given to the persons who cleared unoccupied bush land regardless of connection to *matai* title.

Second, the court applied English common law and supported adverse possession claims where the claimant held open possession of the land against the *matai*.⁹ The court maintained that adverse possession did not require living on the land. If a claimant were using the land for a plantation, for example, or if others, such as brothers, sisters, or other relatives occupied the land on behalf of the claimant, then adverse possession could be claimed. However, the court rejected adverse possession when it believed the original settler cleared land on behalf of the larger descent group. In such cases, the land was considered *‘āiga* land. When plots were awarded on the basis of adverse possession, the claimant received separate title. Descent groups lost control over the land and the right to evict people. Claimants thus not only gained title to the land but also some independence from descent group obligations (Olson 1997, 167–168; W Tiffany 1979, 262).

A third factor weakening the bond between land title and *matai* was that the court never recognized the superior claim of one paramount chief or village to all lands extending from the ocean to the mountains as had been done in Hawai‘i (Ala‘ilima 1984, 1). Judges maintained that the *matai* title was a political one and rejected claims of land title based solely on a relationship to a *matai* title. Use and cultivation were the keys to ownership rather than claimed inheritance or political title (ASR 1983, 51).

Finally, the government’s decision to freeze *matai* titles and to disallow the creation of new titles affected the *matai*–land relationship. The American administration recognized early on the importance of the *matai* system and the need to maintain order in title disputes. A registration system was therefore initiated whereby every *matai* title was to be registered by 1906. The court assumed invalid all titles not registered. Within

the Samoan system, however, *matai* titles exist in perpetuity, and an unfilled title continues to exist. Titles may lie dormant for generations (Tagupa 1983, 24). Registration denied revival of inactive titles in new situations.

The court also rejected title splitting, whereby two or more titles may be created from a single title. A family may give the same *matai* title to more than one person (Tagupa 1983, 24). The result of closed registration and the court's disapproval of title splitting discouraged the extension of *matai* titles over newly cleared lands. When land is registered as individual land, it is bound not to a *matai* title but to a specific person.

In 1945, the court for the first time recognized personal ownership of land other than that of freehold land (*Tuimalu v Samaile*). The court maintained that such individual property, rather than being returned to the *'āiga*, was inheritable by children of the claimant (ASR 1983, 52). In 1947 the court acknowledged potential problems of land alienation because of its decisions and supported a statute prohibiting alienation of land to non-Samoans on the basis of "race."¹⁰ The law required that a person be of 75 percent Samoan blood to own property, a limitation that has since been modified to 50 percent Samoan ancestry (ASC 1981, 37-5).

In the years following World War Two, a land rush began as many Samoans, aware of the possibility of private landownership, began to clear plots. Boundary disputes arose, and claimants were often forced to defend their land in court against villagers and *matai* who claimed the land belonged to their kin groups (ASR 1983, 52; Lutali and Stewart 1974, 125-128, 134). The court's decisions defined individual land.

While legally classified as native land, individual land is now a recognized land category for records and statistical purposes. Individually owned land is that which has been cleared from virgin bush by persons acting on their own initiative. Land that is cleared as part of a village project or at the request of a *matai* is communal land (Lutali and Stewart 1974, 125). Many of the High Court's cases concerning individual land are those where a person has attempted to register land and someone has objected within the sixty-day limit allowed now by law (Lutali and Stewart 1974, 125; ASC 1981, 37-2).

Some individual-land cases have tortuous court histories. One such case concerned land known as Malaeimi, over which litigation began in 1895 and continued until 1994, including an unsuccessful appeal to the

Supreme Court.¹¹ The latest rulings have supported communal over individual land claims (*Bishop of LDS v Hodel and others* 87-1332 (DCC); *Reid v Puailoa* AN 004-93; LT 041-79).

Characteristics of Individual Land Practice

Most individual land on Tutuila is between 0.1 hectare (0.25 acre) and 0.5 hectare (1.25 acres), and is primarily used for house plots and small gardens. Like most people in Tutuila, landowners and their families are generally employed by the large local government or the tuna canning industry (Stover 1990, 172, 213). Households on individual land tend to be smaller than those on communal land. However, like those on communal land, one-third of the households on individual land have three or more generations living together (Stover 1990, 210).

At its base, of course, individual land is legally different from communal land. Not only may owners sell individual land, with restrictions regarding the racial background of the buyer, but they may also deed the land by will. In contrast, Samoan communal land may not be passed on through will; land rights are granted to those descendants of the original titleholder who maintain active membership rights, as described earlier.

Who Inherits? Because most of the original claimants or purchasers of individual land are still living, many owners have only marginally faced the problem of who will inherit their land. The question is important, however, in determining the viability of the new practice. Three patterns of inheritance exist now for individual land: formal division among the offspring, formal passing to the spouse, and informal passing to all of the offspring.

Some landholders have designated specific portions of land for each child, in the hope of preventing conflict among offspring. One example of successful formal division of land among offspring is that of the Tofa family (pseudonym). Mr and Mrs Tofa, along with their four children, had worked together to clear several acres of land in the 1970s. On reaching adulthood, each child was given approximately 0.8 hectare (2 acres) of land, which was formally transferred and registered at the Territorial Land Records Office. Each plot is clearly marked. While the adult Tofa children see themselves as one family working together harmoniously, each has a separate home and clearly defined plans for the inherited land.

A few landowners stated their intent to will their individual land to

their spouse. Some landowners felt this action would eliminate, or at least postpone, contentions among the children. One landowner who had two living wives, and offspring by both, willed all his land to the two wives. He determined the boundaries of the plots each was to get. Each wife will then divide the land among her own children. "It's up to them, then, what they give to their kids," he said.

By far the most common pattern of inheritance expressed by landowners was for land to be shared equally among all children. This practice follows the traditional Samoan pattern that gives all offspring potential membership in their parents' descent groups and potential land rights as a consequence. Although individual land may be legally willed to specific heirs, in practice very few wills are drawn. An informal process of self-selection exists whereby one or two offspring remain behind on the land to look after the property and often to care for aging parents. In almost all cases, the majority of offspring live elsewhere on Tutuila or have moved to Hawai'i or the United States mainland. I could find no pattern of birth order regarding the children left behind on the land. Youngest, oldest, and middle were all equally represented. Although females were represented more often than males, this was not statistically significant (Stover 1990, 229).

Occasionally many descendants remain. For example, I interviewed a landowner (aged 74) who had three of his ten children and at least ten of his thirty grandchildren living with him in a modest house on a one-hectare ($\frac{3}{4}$ -acre) plot. He seemed quite unconcerned about what would happen to his land after his death. His children would inherit it, he said when asked. Beyond that he had little to say. What will happen with the next generation is unknown, but it would appear that if even a fraction of this man's descendants laid claim to the land chaos would result without some other arrangement.

Formal Role of Matai. A few families with larger acreage are turning to the formal use of the office of *matai*, or to the western legal institution of a trusteeship. One pattern is to elect a leader, from the offspring of the original landowner, who then receives a *matai* title from a branch of the family. The leader has obligations to the larger descent group that owns the *matai* title but also serves as leader to the smaller group on individual land. The *matai* title is tied to the land only through that specific person. At death, the *matai*'s title returns to the descent group. Families hope that leaders of following generations will seek *matai* titles.

My uncle is the *matai* of our family here. Of the children [of the original owner] he is the leader now. . . . He got his titles from Western Sāmoa. Every year he makes at least two or three *malaga* [journeys] over there. . . . It is difficult to maintain that sort of status being a high-ranking chief away from the village that he should be in. But he chooses to live over here. He is our *matai* over here. If we have any problems we go to him first. I don't know about the next generation—if there is anyone in the entire family that would even want to be a *matai*. . . . I really don't think there are very many of the grandchildren that want to. . . . There's going to have to be someone in the family that takes the titles in the future. My uncle's titles are both from Upolu. The chances are those titles will go back to someone there. (Resident of individual land, male, aged 39)

Other families have opted to put their individual land in trust, under the care of an appointed trustee. Aware of the potential problems of fragmentation from the division of land among heirs, these families seek to keep the estate as a unit and to allow all heirs to have potential rights to the land, but to have the administration of the land given to a court-appointed third party. Both systems, that of the elected *matai*, and that of the appointed trustee, appear to work satisfactorily when the number of people with active claims to the land is small. The majority of the heirs in these cases reside overseas, leaving a relatively small number to deal with the uses and distribution of the family estates. In both cases, the pattern is similar to the notion of optation (Firth 1957, 4) that characterizes the indigenous Samoan system. Individuals have potential rights to land that are activated by membership in the group. In these cases, unless a person is actually on site or communicates directly with those living on the land, the rights to the land and the rights of the heirs are dormant.

This system of individual land tenure works because for the most part the land is used for residences, not for agricultural subsistence. As long as family members earn their living through wage labor on the island, small plots of land may continue to suffice. Furthermore, since the majority of the children of landowners tend to migrate overseas, the problem of small land plots and large families is avoided, for the time being, at least.

Why Live on Individual Land? Landowners themselves articulate three reasons for choosing to live on individual land. The first is logistical, that of finding a place to live in the capital center of Tutuila. The second is the desire to control land, especially to be able to give land to one's biological

children. The third is the desire for greater autonomy in one's life, free from the restriction of village and *matai* control.

Residents of outer islands, in particular, want individual land for logistical reasons, because access to employment, schools, businesses, and government offices of American Sāmoa can be very difficult unless one has a place to stay on the main island of Tutuila. As one landowner explained, "People from Manu'a and Western Sāmoa need their own place here for convenience." Other landowners agree. "Both me and my wife are Manu'a. We don't want to live there. Sure, there is plenty of land. But everything is in Tutuila. Jobs, stores. There is nothing over there for us" (Landowner, male, aged 44).

Most people on the outer islands have relatives on Tutuila, but establishing land rights may be difficult unless ties are strong. Furthermore, if newcomers do move in with kin, crowded conditions and social obligations may make life uncomfortable. Thus, buying individual land is an attractive solution. A Tutuilan with a spouse from another island will often acknowledge the logistical need for individually owned land to assist the spouse. Under Samoan custom, a person who has married into a village is considered an outsider, and, unless tied to the village by children born there, is expected to return to the original village when the host spouse dies. Such is the case of this government worker: "My wife is from Manu'a. I'm buying individual land so that my wife will have a place on Tutuila after I die. She has no family land here to go back to. The village may let her stay if our children are living there, but that is uncertain. I want to have a place on Tutuila that is secure for her" (Resident of communal land, male, aged 45).

The second reason articulated for living on individual land is to secure land for one's own biological children. Communal land, as discussed earlier, is never inherited. It is owned in perpetuity by the corporate kin group. Individual people come and go as members of that corporate group, but they don't inherit the land, which is under the control of the *matai*. Thus when a *matai* title passes to a new person, the new *matai* may reallocate land. Although each active member of the kin group will have rights to some land among the family's estates, the exact plots may differ. With investments in modern houses with accompanying mortgages and furnishings, residents are increasingly unwilling to chance having to move. One landowner who chose not to live on communal land stated, "We want to live on individual land. . . . I don't want to be subject to a

new *matai*. He could make me move my boundaries. I don't want to have boundary problems with the family. . . . I want my privacy. This is my land here, and I will give it to my own children" (Landowner, female, aged 32).

By securing individual land, people hope not only to provide for their children but also to shield their children from familial conflicts. "I don't want my kids to suffer," one resident repeatedly stated when explaining why she wanted individual land. Another landowner echoed her sentiments: "People want land for their children. They want to avoid family clashes over getting land for their children. Sometimes there are clashes. Some of the clashes are between lineages [sic]. But with their own land, children don't have to be subjected to the decision of that" (Landowner, male, aged 56).

I found that even *matai* with control over large family estates owned individual land. This land was not for themselves, although in some cases they were benefiting from the rents, but was land for their children, as security for the future. As one landowner explained, "Even a *matai* does not know who will take over his title. The new *matai* may come from another branch of the family. So his own children may be subjected to someone else's will. His children may be at a disadvantage in another generation" (Landowner, male, aged 52).

Samoans cite freedom from *matai* authority as a reason for choosing individual land. Many people fear the power of the *matai* to evict persons from the land. By law, a *matai*'s powers of eviction are limited. A blood relative serving the title may not be evicted from family land except for some extreme violation. Nevertheless, this fear of evictions was repeated and is a common reason given for owning individual land.

Freedom from the structure and restrictions of village life is an additional factor. Residents who have lived overseas often either do not want to return to village life or have not trained their children to conform to strict Samoan ways. Many say the transition from overseas life to village is too difficult. "The reason people live on individual land is because of the culture. The kids are born in the US and can't take communal living. They want to do things on their own—not what other people tell them to do" (Landowner, male, aged 70).

The desire for privacy is also frequently expressed, both by those on individual land and those desiring to live there. "We lived in the States for fourteen years," noted one landowner. "We live by ourselves here.

We like our privacy.” “With individual land, it’s your own land; the family has no right to come over. It’s different in that you are on your own. It’s up to you to look after yourself. You can sleep all day. You don’t have so-and-so to boss you around” (Resident of communal land, female, aged 41).

Even those who have never left Sāmoa may favor the freedom away from a village. A seventeen-year-old girl, living in a household of sixteen people on individual land, observed, “It is much better to live on individual land. In our family the children are too wild and make too much noise. We would not fit into a village. We would get too many fines.”

For most landowners the decision to live on individual land is their own; for some however, the choice is made for them when the option of living on communal land is specifically denied because of weak ties to the land. In my survey, I found that most landowners are not closely related genealogically to the present holder of the *matai* title of their descent group (Stover 1990, 201–202). Since *matai* are responsible for land-allocation decisions, those closest to them, or favored by them, will benefit from the distribution of the family’s estates. As the population of Tutuila increases and as family members return from overseas, this close link to a *matai* title becomes important in securing rights to land. Thus the privilege of living overseas, of having more education, and perhaps of serving in the US armed forces and receiving retirement benefits, has associated disadvantages. The time abroad may lead to the weakening of ties to a village, the descent group, and the descent group leader. “Most people when they return from overseas want to live on family land. They want to live there because their family is there. Also because it doesn’t cost money to get land. But they can’t live on family land. It is too crowded. Their ties are not close enough to the village, so they are outsiders. The *matai* says, ‘Who are you? I don’t know you.’ They are ashamed” (Resident of communal land, female, aged 36). One landowner who was denied land by his *matai* supported this sentiment: “My family owns land in A [a village on Tutuila]. . . . In 1984 when I retired from the military, I went to the chief who lives in A. The chief told me to look for land in Tafuna. That I should buy land there. Maybe he was trying to help me, but I was very hurt” (Landowner, male, aged 46).

Although legally there are no *matai* titles governing individual land, the majority of landowners still see themselves as serving a *matai*. Most continue to maintain ties with their ancestral village and with their descent

group by giving money, goods, and labor at times of family crises and ceremonies (*fa'alavelave*). Furthermore, whether personally holding a chiefly title or not, most owners of individual land see themselves as functioning as *matai* on their own property. The owner often expects and receives labor and goods (*tautua*) from those living on their property. A *matai* title enhances the authority of the landowner.

Comparisons of Individual Land in Sāmoa and American Sāmoa

Individual land has arisen in Sāmoa as well as in American Sāmoa. However, the two systems take different forms. The Treaty of Berlin (1889) defined land categories, and the role of the central government in enforcing traditional Samoan land practices was established by both governments with the division of the archipelago in 1900. While both countries continue to have policies prohibiting land alienation, the economic foundations, political structures, and judicial decisions through the years have differed, resulting in differing systems.¹²

First, individual land in American Sāmoa is used primarily for residential house lots in suburban districts where wage labor, together with minor gardening, form the base of the economy. In contrast, in Sāmoa, while some individual land is found in the urban center of Apia, the new tenure system is found primarily in rural areas because of the need to increase land security for long-term cash crops such as coconuts (O'Meara 1986, 1990, 1995).

Second, while owners of individual land in American Sāmoa may have a *matai* title, such a title is not necessary to own or to have authority over land. In Sāmoa, however, under the new practice, a person who clears land must have a *matai* title in order to have recognized authority (*pule*) over that land (O'Meara 1990, 147–148). Third, while in American Sāmoa rights of inheritance are determined by the landowner and may go to the spouse, the children, or be willed to someone else, in Sāmoa, under the new system, rights of inheritance are assigned exclusively to the children (O'Meara 1986, 109, 133; 1990, 129). Finally, while individual land in American Sāmoa is a legally recognized category, in Sāmoa it is not. The Lands and Titles Court, the Samoan body responsible for arbitrating land disputes, officially opposes changes to the traditional land tenure system (O'Meara 1990, 129).

One may argue that the Samoan government supports some ideals at the base of the individual land system. For instance, the Samoan Supreme

Court ruled that while *pule* over land accompanies the *matai* title, family members cannot be evicted from lands that they themselves have improved or cultivated, “subject to their rendering all due and proper *tautua*” to the *matai*. Furthermore, when referring to commercial or cash cropping, the court recognized that *matai* may allow untitled persons to claim the fruits of their own cultivation (Olson 1997, 164). Such rulings acknowledge the beginnings of private property.

LAND TENURE PROBLEMS OF TAHITI, NEW ZEALAND, AND RAROTONGA

How have other Polynesian societies dealt with land tenure changes and what can American Sāmoa learn from them? I briefly examine the situations in Tahiti, New Zealand, and Rarotonga in the Cook Islands, which share similar indigenous kinship structures and land tenure systems. Each society was governed by a colonial power: the French in Tahiti, the British in New Zealand, and the New Zealanders in Rarotonga. However, the “unhappy marriage” of custom and western civil code (Finney 1973, 119) has created problems of multiple ownership and land fragmentation that confound people in all three societies. Several factors support these unhappy unions, including enforced land registration, inheritance rulings by the courts, contract law, and modern communications, combined with misinterpretations of traditional land rights.

Tahiti

In Tahiti, and in New Zealand, colonial governments, desiring settlement by immigrant populations, considered land registration essential to ensure security for the newcomers. French policy established compulsory registration of every land parcel, beginning in 1852. Officials did not always distinguish private land from land registered on behalf of the larger kin group. Thus, land was often registered as the private property of the group’s trustee, with members deprived of land rights in the process (Panoff 1971, 50–51; Oliver 1981, 441–443; Tetiarahi 1987, 51).

Much land that was registered, however, quickly departed from the individualistic pattern of the French Civil Code. After two or three generations, land generally rested in the hands of many people, usually because the descendants of the original owner failed to continue to divide the family estates. These lands are known as “joint” lands or “undivided”

lands. Under this system all co-heirs have rights of usage. However, absent members who favor cash to an inheritance in property often pressure their families to individualize these properties (Finney 1973, 51, 95).

In theory, land registration facilitates the sale and transfer of land; in fact, with multiple owners for land, the opposite may occur. Michel Panoff (1964) argued that in Tahiti, multiple ownership of single lands by large numbers of people has been the best protection against foreign alienation. The process of acquiring the agreement of so many people on so many places is too cumbersome for most would-be buyers. On the other hand, developers have managed to buy up land in recent years, dispossessing many Maohi from their land (Polynesian Cloud 1995).

New Zealand

In New Zealand, the Treaty of Waitangi of 1840 marked the beginning of official land dealings between Māori and Europeans. The treaty served to control land alienation and to legitimize the authority of the British Crown (Webster 1986, 1). Despite official attempts to limit land alienation, Māori land was continuously transferred to Europeans. To help settle disputes among Māori landowners, and to facilitate the transfer of Māori land to European settlers, the Māori Land Court was established in 1865. The court developed rules for land succession, partitioning, and land-title investigation (Layton 1984, 429; Kawharu 1987, 144; Webster 1975, 132).

The first land titles issued were tribal charters and were welcomed as a source of security for Māori groups and their lands (Kawharu 1987, 145). However, later court rulings on succession to land title divided and alienated Māori land (Webster 1975, 133; Crocombe 1976, 89). The court maintained that all recognized children of an owner who died intestate had equal shares in the land. Thus, all children inherited equally, no matter how distant or estranged. The process continued for each generation so that now blocks of land may be owned by thousands of shareholders dispersed throughout the country. The land court law has resulted in bilateral inheritance as the sole requirement for membership in the kin group and for claiming rights to land (Webster 1975, 134; Firth 1972, 463; Kawharu 1987, 146).

Enforced bilateral succession has had social consequences. Because rights to land are not negotiable, the group's authority over individuals is diminished. At the same time, individuals' rights are reduced because

of the lack of alternatives available (Kawharu 1987, 146). Multiple ownership has caused traditional landowning groups to disperse. Many owners are forced to leave their parcels and live and work elsewhere, often in urban areas either locally or abroad. Although some owners are able to return to the land upon retirement, ties to ancestral lands are often weakened (Firth 1972, 464; Pitt 1976, 114; Webster 1975, 133, 135).

Struggles for land claims and compensation for treaty violations abound. While the government has given cash and returned land to some tribes (An Apology . . . 1995, 36), the Waitangi Tribunal has more than five hundred claims before it and has been able to settle only a few (Barber 1996, 18).

Rarotonga

Rarotonga also struggles with problems of land fragmentation and multiple ownership, which, as in New Zealand, resulted from enforced registration along with the colonial government's misunderstanding of the indigenous system. From 1901 until self-government in 1965, the Cook Islands were under the jurisdiction of New Zealand, which set up a land court system based on its own model in dealing with Māori lands (Crocombe 1976, 89). Land registration was established to determine who "owned" the land, and land courts ensured that tenure was carried out in accordance with "aboriginal native custom." The court maintained that bilateral lineage was the basis for land inheritance and awarded title to all the children of a previous owner. Such decisions led to excessive fragmentation of land after only two generations (Crocombe 1987b, 60–61; 1997, 1). What the court did not recognize, as it failed to recognize in New Zealand, was that while lineage was a factor in inheriting land rights, the social obligations of group membership kept those rights active. By insisting that all children of an owner inherit equally, the court gave no special recognition to group service, the residential group on the land, or to their leaders. Such court decisions have been a major cause of the decline of chiefly authority in the Cook Islands, leaving many families without effective leadership.

Another result of the decisions is a crippled economy, including decline in agricultural production. In urban areas, insecure tenancy has led to dilapidated buildings and overcrowding as workers, unable to negotiate permanent leases for land, are forced to build their homes under informal

arrangements (Crocombe 1987b, 10–61, 68; James 1986, 121–124). In an attempt to prevent occupancy rights from extending into perpetuity for absentee family members, the High Court in 1985 directed that all occupancy rights would lapse automatically within five years if applicants had not begun construction. While some families resist the decision, its effects on security of tenure are still to be seen (Browne 1994, 210–211).

In all three places, land registration initially narrowed the number of indigenous people with access to land, for the act of registration required that designated persons be given ownership rights. As a result, descent group members were often prevented from exercising peripheral rights. However, subsequent land inheritance rulings had the opposite effect of broadening inheritance rights. Tahiti, New Zealand, and the Cook Islands gave inheritance rights to all descendants of a registered land owner. Thus hundreds of people may “own” the same piece of land; or, in cases where the land has been subdivided with each generation, an individual may have rights to a tiny fragment worth very little economically in itself (Crocombe 1987c, 371; Firth 1972, 463; Webster 1975, 133).

Modern law has not codified criteria such as active group membership, which served to limit the traditional inheritance of land rights. Such criteria are generally contingent on social situations that by their ever-changing nature may not lend themselves to the rigidities of law. Colonial powers often understood the ideal pattern of land tenure but not all of the processes involved. As a result, the ideal was made rigid by law, and to an extent dysfunctional. The notion of land contracts, whereby agreements are enforceable in a court of law, is another important factor supporting land individualization. Contract law focuses on the individual, who has signed a deed and is responsible for it, rather than the group of which that person may be a part. Thus, individual rights take precedence over group rights.

When contract law is combined with bilateral rules for land inheritance, chaos may result. Because one piece of land may have many owners, insufficient room exists for all claimants. In Tahiti, the Pape‘ete courts are crowded with cases of Maohi evicted from their land. The volatile situation has led to street demonstrations and protest assemblies and fueled a radical political movement (Tetiaraahi 1987, 46; Tarahoi Statement 1997, 1). In New Zealand, Māori leaders have attempted to counteract splintering and fragmentation of land through incorporation and amalgamation of Māori lands (Crocombe 1987c, 375–376; Kawharu 1987, 147). How-

ever, land problems are dividing the nation, leading to allegations of new apartheid as Māori militancy flares with land claim frustrations. Settlement of land title is hampered because different people and kin groups may claim the same piece of land (Barber 1996, 18). In Rarotonga, land problems are a major reason for emigration to New Zealand and Australia, where three Cook Islanders live abroad for every one at home (Crocombe 1987b, 68; 1997, 5).

Contributing to the picture are modern transportation and communications, which have enabled long-distance ownership to continue. In pre-industrial times, claims to land would be lost when someone left the area. Now, members may easily remain in contact with each other over long distances and keep rights to land “warm” and membership claims active (Crocombe 1987a, 2–3). The fact that people cling to their tiny parcels of land in spite of pressures indicates that the land means more to them than its economic value. Land continues to provide a place to “belong to” even if one does not reside on the land or make one’s living there. The Māori proverb *Whatu ngarongaro he tangata, toitu he whenua* (People perish, but the land remains) is still significant.

THE AMERICAN SAMOAN SYSTEM: WHY DOES IT WORK?

While the creation of individual land reflects changes in American Sāmoa, the islands’ land system as a whole suggests a fairly successful adaptation to present-day conditions for many American Samoans. Problems of alienation, fragmentation, and multiple ownership that plague other island societies are not issues there. Why does the American Samoan system continue to function fairly well in the late twentieth century? I now explore those factors that support its success, then give suggestions for its continuation.

Factors Supporting Success

To begin with, American Sāmoa’s own historic and geographic place has preserved it from some of the problems of its Pacific neighbors. The main thrust of colonization in American Sāmoa came in the twentieth century, when empire building was declining, and respect for, and understanding of, indigenous culture was perhaps more enlightened. Unlike the European powers, the United States was not interested in land for settlement, nor in land for the wealth it might contain or create. For the United

States, interest in Sāmoa was primarily strategic. Eastern Sāmoa offered a site for refueling ships and later airplanes. While such purposes required little land, they did require a stable native population. Thus reinforcement of the status quo of both land tenure and social organization was desirable. Land registration was not required.

American Sāmoa's peculiar status as an "unincorporated" territory of the United States, a status that does not confer all constitutional rights on its citizens, has supported customary social organization and new land tenure practices. For instance, the *matai* system based on ranked chiefly titles, the cornerstone of Samoan culture by many interpretations, could be forbidden by the US Constitution (Article I, section 9), which prohibits titles of nobility. Land ownership rights based on race or ancestry, as individual land has been defined by the American Sāmoa courts, may violate the Fifth and Fourteenth Amendments of the United States Constitution, which ensure equal protection under the law (Van Dyke 1992, 24). If the provisions of the US Constitution were fully applied, it is likely the traditional system of land tenure would not survive (Laughlin 1981, 39, 65). Furthermore, the financial support that the territory receives through the Department of the Interior relieves demands for intensive economic development and protects Samoan traditional land practices as a result (Tagupa 1994, 186–187).

Second, strict territorial legislation prevents land alienation. The governor of American Sāmoa must approve in writing the sale of any communal lands by any *matai*. For land other than freehold, persons of less than fifty percent Samoan ancestry cannot own land, and children of mixed heritage who are less than fifty percent Samoan may not inherit land. To own land in American Sāmoa, a person not of one hundred percent Samoan ancestry must have been born in American Sāmoa and have lived "with Samoans as a Samoan" for the past five years (ASC 27, 201–208, 172, and 179). Supporters of the restrictions see that the law is necessary to prevent Samoans from succumbing to the fate of the Hawaiians and others who became dispossessed peoples in their own islands (Laughlin 1981, 46–49).

Third, American Sāmoa supports a variety of land tenure forms. Not only are there the three legal divisions of communal, individual, and freehold land, but within those divisions a range of practices occur as well. In my study of individual land tenure, I found that land governance ranges from the tight nuclear family to broad extended families on the land,

from use of *matai* titles and *matai*-extended-family interactions to those with few identifiable traditional customs. American Samoans as a population thus have a range of tenure options—and thus of lifestyle options—available to them. This social system, as reflected in land tenure, can accommodate new ways of living that have come with economic and social changes.

Fourth, rules for land inheritance are not yet rigid. The courts have not enforced any inheritance pattern, such as bilateral inheritance. Furthermore, the American Sāmoa court has a history of supporting land claims on the basis of criteria other than strict kinship. In cases of conflict, as reviewed earlier, the court has often supported the cultivators and users of the land.

Fifth, the land tenure systems are effective because many residents leave the islands for economic and educational opportunities, relieving population pressures. Sixty-five percent of households of individual landowners have children living overseas (Stover 1990, 183–184), so problems of land fragmentation and multiple ownership, arising from small land plots and large families, are somewhat avoided. For communal land, in my sample 35 percent of the households had offspring residing overseas. Samoans are not counted separately in the US census, but it is estimated that sixty thousand American Samoans live in the United States (personal communication, Office of US Congressman from American Sāmoa).

However, Samoan migration is both unidirectional and circular, both permanent and temporary (Franco 1987, 3). Building on an ancient tradition of travel (*malaga*) for visiting and resource sharing, modern Samoans may return from overseas for varying lengths of time, particularly to help out with family concerns. In 1994, 38,512 residents returned to American Sāmoa, but 41,230 departed, leaving a net loss of 2,718 among returning residents (ASG 1995, 121). At the time of the last census, 4.8 percent of the population over five years of age (1,914 people) had lived in the United States or New Zealand five years previously (USDC 1992, 143), so the number of residents returning to stay is still fairly low. Should more heirs to the land return permanently to American Sāmoa, problems of land fragmentation and multiple ownership may result.

Finally, an indigenous model of land tenure remains strong throughout the territory. Active kin membership through *tautua* continues on communal lands and individual lands. The courts have recognized *tautua* as a

requirement for use rights in communal land. Furthermore, the indigenous model enables Western Samoans to live and work in American Sāmoa, and is at the same time reinforced through the immigrants' understanding of the practice and their willingness to participate in it.

Hooper argued that traditional cultural patterns do not simply dissolve but instead adapt themselves to new patterns of economic relations (1985). In American Sāmoa, where wage labor has all but replaced subsistence agriculture, the new land tenure system can be seen as adapting to this change. Individual plots reflect incomes of individual families, rather than economic efforts of the larger *'āiga* or village. Nevertheless, within those plots, management of the land continues to draw on indigenous models. The family leader, or *matai*, still is found in the role of the landowner, whether male or female, and whether an official *matai* title has been conferred or not. The gathering together at times of life crises (*fa'alavelave*) such as weddings and funerals continues to be important for the families on individual land as well as on communal land. Landowners and their families thus feel that they are still very much a part of the Samoan system.

Looking Ahead: A Prescription for Continued Success

While bilateral inheritance is not enforced in law, the seeds for that practice may have been laid. For individual land, where land has been passed to the next generation, the plots are almost always given to all the biological offspring. One may also see the beginnings of multiple ownership and absentee landlords through the controlling presence of absent kin. Frequently, out of a sense of family love and fairness, specific sections of an estate are designated for siblings living elsewhere. Their wishes are then taken into account when decisions are made regarding use of the land.

In order to prevent land tenure problems such as land fragmentation and multiple ownership, laws must continue to recognize the value of the Samoan traditional land system for all of American Sāmoa. Specifically, the court should continue to uphold active membership in the landholding group as a condition for land use rights for both communal and individual land. The application of strict bilateral inheritance should be avoided.

For individual land, the courts should continue to support family land trusts, recognizing them as modern adaptations of Samoan land customs. The courts should also address a deeper problem by allowing new *matai*

titles to be created for individual land. Having titles associated with the land would enable traditional land tenure practices to be applied more easily. Authority over land would be given by the heirs to a single person who would be the recognized family leader. The new *matai* would make decisions concerning land rights and land distribution on behalf of the heirs. Even on small plots of individual land, inheritance and use rights could be dealt with in this way. Further division of land would be avoided, except by decision of the heirs as a group. Authority over land would rest with the titleholder; control over the title would rest with family members. Population fluctuations could be accommodated. Land belonging to someone overseas would not be held idle. Individual land tenure would be brought fully into the fold of the *fa'asāmoa*, the Samoan way, and could govern that land in a new day with practices that have proved fit for an island community.

Scholars have maintained that the inflexibility of the traditional *matai* system has hindered Samoans' economic progress in the twentieth century (Fairbairn 1985, 305; 1993, 253; Nayacakalou 1960, 117; O'Meara 1990, 128–129). Their concerns focus on an agriculture-based society trying to find its place in the world market system. American Sāmoa's economy is no longer primarily agricultural: the demand for increased land productivity is not as central as in years past, nor the same as in Sāmoa. American Sāmoa needs to ensure housing for members of the workforce and the extended families whom they support and who support them. The *matai* system, with its ability to accommodate members, coming and going, may be well suited. Social obligations, viewed with concern in the context of economic development (eg, Fairbairn 1985; Pitt 1970), may be a positive adaptation in the modern age. Even on individual land, kin ties, made strong through social interaction and not legal inheritance alone, would determine rights to land.

Ron Crocombe, who has spent his professional life studying land tenure in the Pacific, has suggested solutions to the problems of land tenure on Rarotonga and other islands (1997, 5–7). He has advocated conversion of land to freehold if a person has occupied the land continuously for twenty years. He has also suggested that residents be allowed to buy up to one-quarter acre of land for house sites and small businesses, providing the land be occupied by the buyer. These suggestions reflect to a certain extent the practice in American Sāmoa.

However, Crocombe has also suggested time limits and residency for

people claiming succession to land. A person who has not claimed rights to a specific piece of land within a given period (eg, thirty years) will lose those rights. Furthermore, residency on the island is required to claim rights. Crocombe suggested that a person living abroad who had left in good standing could continue to hold symbolic rights, eg, rights of identification, which could be activated to full rights to land should the person return to reside on the island. These recommendations, I feel, are also appropriate for American Sāmoa and should be considered by lawmakers.

CONCLUSION

I have argued that the changes in land tenure in American Sāmoa resulted from an interaction between Samoans using land in their own interests and the courts trying to control conflict in the process, and not from a calculated plan of action on the part of the American Samoan government. Court decisions, however, have affected the way Samoans handled their land. The court codified rules for claiming land and created a new category of land ownership. As the new category was delineated in law, Samoans made it a category in fact. While American Sāmoa has avoided some of the pitfalls of other Pacific islands in its land tenure practice, the territory needs to be aware of those pitfalls. I have recommended actions that I hope would keep the system strong.

Marshall Sahlins wrote of a “condensed paradigm,” whereby a single factor represents larger, more intangible qualities or events in society (1985, 138). Land tenure systems concern human relationships, social organization, and ideology. Changes in land tenure mirror greater societal changes and thus may be seen as a condensed paradigm of those transformations. Conflicting attitudes toward land tenure changes in American Sāmoa reflect an ambivalence toward broader social events. On the one hand, individual land represents the modern world, a move toward “self-sufficiency,” that is, a move away from reliance on the extended family. On the other hand, the new land tenure system is perceived as a threat to old ways, to the family descent group and its leaders. The fact that more than one form of land tenure (ie, individual land and communal land) is supported by Samoans indicates that more than one set of values is acting.

The majority of land in American Sāmoa is communal land, and it is unlikely that more individual land will be registered. The opportunity to begin anew through clearing one’s own plot and registering is now rare.

With judicial and legislative support, however, individual land may be incorporated fully into the Samoan way, not as just an adjunct to customary life, but as a significant option for Samoans in the modern age.

* * *

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Notes

1 For example, for the Cook Islands, see Crocombe 1987b, 1997; for Fiji: Ward 1995; for Hawai'i: Linnekin 1983, 1987; for New Zealand: Kawharu 1987; Webster 1975; for Tahiti: Finney 1973; Tetiarahi 1987; for Sāmoa: O'Meara 1995.

2 Davidson 1967; Gilson 1970; Holmes 1971; Holmes and Holmes 1992; Lockwood 1971; Mead 1969; Oliver 1981; O'Meara 1990, 1995; Schoeffel 1977; Shore 1982; Turner 1884.

3 Ember 1959; Epling and Eudey 1963; Fana'afi 1986; Freeman 1964; Gilson 1963; Holmes and Holmes 1992; Sahlins 1964; Shore 1982; S Tiffany 1975, 1976.

4 See also Crocombe 1974 for discussion of classification of land rights.

5 Holmes 1987, 40; Lockwood 1971, 31; Nayacakalou 1960, 112-113; O'Meara 1986, 116; Pitt 1970, 94; Schultz 1978, 44; Shore 1982, 60.

6 Davidson 1967, 46; Keesing 1934, 273-275; Lockwood 1971, 32; Nayacakalou 1960, 117; O'Meara 1990, 143-145; 1995, 122-135.

7 See the Deed of Cession of Tutuila and 'Aunu'u of 17 April 1900, and the Deed of Cession of Manu'a Islands, 26 July 1904, signed by the chiefs of Sāmoa ceding authority to the United States Government (ASC 1981, 2-4).

8 "Natural law" is defined in more than one way in the American Sāmoa court. One definition is "The tacit and implied assent of all mankind, that the first occupant should become the owner." A second definition is that occupancy alone is sufficient to gain title. However, the court maintains that all sides agree that "the view that the occupant who first takes possession of the land with the intention of having it as his own thereby becomes the owner is approved in Maine's Ancient Law" (High Court no 92-1948, cited in W Tiffany 1979, 260).

9 The requirements for adverse possession, specified by statute, are that "Actual, open, notorious, hostile, exclusive and continuous occupancy of real estate for 30 years confers a title thereto by adverse possession, which is sufficient against all" (ASC 1981, 37-3).

10 Samoa's racial laws, when challenged, have been upheld. The court in *Haleck v Lee* (4 ASC 519, 1964) and *Craddick v ASG* (AP 10-79, 1980) reviewed the history of the treaties and laws as evidence that the United States Government from the very beginning of its time in American Sāmoa recognized a compelling interest in restricting land alienation (ASR 1983, 10-17).

11 The case involved the Mormon church, which leased 300 acres from the *matai* of the Puailoa family. When the *matai* died in 1929, the church continued to pay rent to his widow for land that the widow sold to the church in 1953. In 1978, the Puailoa family petitioned the court to set aside the earlier decision that supported payment of rents to the widow. Although the petition was denied, the Puailoa family began farming the property. In 1979, the church brought trespass action against the family. The family asserted that the deed conveying the land to the church was void because the land was communal property and could not be alienated. The court ruled in favor of the Puailoa family, asserting that Malaeimi could not be freehold land since it was not in the records as such in 1900. Since the land was not freehold, it could not be conveyed to the church. The decision has been appealed numerous times, with different legal arguments raised, including that the land was "individually owned" by the widow. The court found that the property did not meet the Samoan definition of individually owned, and that even if it did, it could not be conveyed to the church because of the racial restrictions on ownership of individual land (*Federal Reporter* 1988, 374-387).

12 Davidson 1967; Epati 1981; Gilson 1970; Keesing 1934; Lawson 1996; Olson 1997; Schultz 1978; Stewart 1974; S Tiffany 1978; O'Meara 1986, 1990, 1995.

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Abstract

This essay analyzes land tenure in the United States Territory of American Sāmoa. It reports the development of a new type of private land that withdraws lands from traditional descent groups and gives ownership rights to individuals. Although most American Samoans practice the indigenous kinship-based system of land tenure, the new system is legally recognized and upheld through court decisions. The essay reviews the geographic and political background of American Sāmoa as well as customary Samoan social organization and land tenure. The legal history of American Sāmoa's individual land tenure is recounted, and characteristics of the new system are detailed. A brief comparison with individual land in Sāmoa (formerly Western Sāmoa) is made, and three case studies of land tenure in other Polynesia countries are discussed. The findings show that American Sāmoa's land tenure systems are successful in supporting the needs of its people. Together, the traditional and the new systems of land tenure enable American Samoans to make their living in the economic system as it exists in the territory. While the traditional system sustains Samoan culture and identity, the individual land system supports alternative living arrangements and reintroduces returning Samoans to their native land. A prescription for continued success encourages both land systems and requires active membership in the landholding group as a condition for land use rights.

KEYWORDS: American Sāmoa, land tenure, New Zealand, Rarotonga, Sāmoa, social change, Tahiti