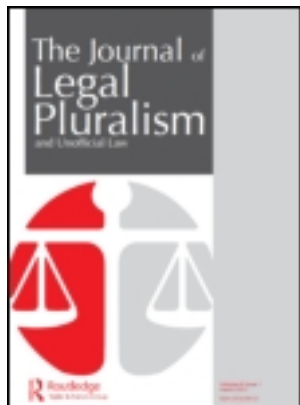


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Articulating Custom

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ARTICULATING CUSTOM THE POLITICS AND POETICS OF SOCIAL TRANSFORMATIONS IN SAMOA

M D Olson¹

Introduction

Social theorists and political philosophers tend to conceptualize law and custom in terms of an opposition of normative structures, and they tend to place the locus of these structures' respective production at opposite ends of a dimension of discursive practice. In a Weberian conception, the differences refer to the tensions between rationalism and traditionalism. More generally, they refer to conceptions of law as stated rules about social mores emanating from the state, and to conceptions of custom as norms of behavior generally not stated and not reflected upon in everyday life. Consistent with more pluralist perspectives of law, I argue here that the construction of both law and custom is discursive and subject to similar and often the same political processes determined by the nature of state-local relations. This perspective derives from an attempt to understand the politics of law and custom in the islands of the Pacific. It corresponds to realist perspectives in legal philosophy, in the sense that it takes law to be what lawyers and judges say it is, but it does so without privileging those imbued with the

¹ I am indebted to Nancy Peluso and Vinay Gidwani for their efforts in reviewing an earlier (and far more impenetrable) draft of this paper. And I am grateful for the constructive comments and insights offered in an anonymous review. This paper was written and most of the research conducted while I was affiliated with the Center for Sustainable Resource Development, University of California at Berkeley. Field research was conducted under a Fulbright-IIE grant. I completed the revisions while a United States National Science Foundation International Research Fellow affiliated with the East-West Center in Hawaii. I appreciate the support provided by these institutions, but also the support of the many individuals within them and others who contributed materially to the understanding it attempts to convey.

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authority of the state as the final or sole arbiters of law or of custom. And it is consistent with a conception of human agency emphasizing people's ability to modify and manipulate the rules and relations structuring society and their capacity to penetrate and deflect the more hegemonic aspects of law and custom, as shown in current debates in social theory. But it does not assume that these abilities are equal, and it is concerned less with theoretical debates than with understanding how law and custom are leveraged in social conflicts about meaning and the authority to control both people and political resources.²

Pacific island states were created principally through the actions of colonial authorities who were generally dependent upon modifying custom in giving local effect to central governance. This dependence was more general to states created under principles of 'indirect rule' - commonly meaning central governance through local elites or 'chiefs' and referring to an approach to central administration replicated widely throughout the colonized world during the latter quarter of the nineteenth century. It was manifest in the respective states' attempts to appropriate the authority vested in the pre-existing and created administrative structures which colonial authorities encountered or devised (Olson n.d.a). But more significantly it was manifest in their attempts to control the construction of customary political authority. To govern effectively the colonial state needed to control who would hold the socially legitimated positions of such authority, just as it needed to control the general authority attached to customary political titles. This dependence has not diminished today in the islands of the Pacific.³ And the

² For relevant reviews of conceptions of law and custom in social theory and political philosophy, see MacCormick (1983) and Cotterrell (1986), but also Krygier (1979) for the difficulty of understanding law in stateless societies as posited by Hart (1961) and the implications of Hart's conception of law to social theory. For more general theories of law in legal philosophy see Hart, but also Austin, Hagerstrom, and Kelsen, among others discussed in Lloyd and Freeman (1985). For related conceptions of law in legal anthropology and references to earlier theories in the anthropology of law, see Moore (1973), but also Starr and Collier (1989) for a more recent conception. See Giddens (1984) for a general exposition of structure-agency debates in social theory, Henry (1987) for a related conception of "discursive production in state law and private justice", Thompson (1984) for a discussion of general theories of discourse, including conceptions of hegemony, ideology, and consciousness, and Woodman (1998) for a recent review of debates concerning legal pluralism.

³ By the 'islands of the Pacific', or the 'Pacific islands', I mean islands located in the Pacific Ocean except those islands or parts of islands more commonly associated with countries in Asia.

tensions it creates, particularly within customary law, is the subject I wish to explore with respect to Samoa.

By ‘customary law’ I refer to the norms and rules conditioning what people do, but also, and more significantly, to the social-political processes through which rights are negotiated, expressed and enforced within a social group. State courts in the Pacific commonly recognize distinctions between state law and customary law, but they tend to do so in narrower terms than those just expressed.⁴ They also commonly assume the role of the final arbiters of the content of law and custom, as conceptualized within legal philosophy. But the basis of state legitimacy in the Pacific generally depends upon the extent of the state’s protection of local political institutions controlling land and custom. And the commonly invoked view, that the state is defined by its monopoly over legitimated force and is the only source of legitimate law, presumes either a greater acceptance of state authority or a greater ability to obtain compliance to the asserted authority of the state than generally exists within the territorial boundaries Pacific island states claim (Olson n.d.a). This was equally true at the time the states gained their independence as when they were first created. The implicit tensions shift the expression of political contention to the level of discourse determining the currency of particular conceptions of law and custom. And the transitive nature of custom creates an opening for its reinterpretation through the agency of the state which few if any state courts avoid passing through (as shown in Olson 1997). Yet, as the following discussion will show, the efficacy of local political institutions depends upon maintaining the fluidity of

⁴ Other common terms referring to the distinctions at issue include ‘common law’ (Simpson 1973), ‘folk law’ (van den Bergh 1986), and ‘native law’ (Hooker 1975). But each tends to comprise one aspect of customary law as defined in the text and to depart further from ‘law’ as conceptualized generally in early Roman jurisprudence and defined by van den Bergh (1986: 68) as “the public pronouncements of bodies or persons vested with authority by tradition”. As applied by legal scholars and used in legal philosophy, ‘common law’ tends to refer to the unwritten rules and prior decisions, or precedents, established by a body or community of formally trained legal practitioners functioning within the institutions of the state. This conception corresponds most closely to the courts’ conceptions of ‘customary law’ in the Pacific. ‘Folk law’, as the term is generally used in legal anthropology, tends to involve a distinction between ‘people’s law’ and ‘lawyer’s law’ including the ‘common law’ produced by lawyers and jurists. And ‘native law’ or ‘indigenous law’, as applied by colonial authorities, tends to refer to the forms of law operative within the territory of the colonized prior to the formation of the colonial state and generally in opposition to state authority.

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custom's potential meanings; and codifying or articulating principles of custom through the institutions of the state tends to serve state interests in strengthening state authority, if not universally then at least in the islands of Samoa.

Samoa consists of two states, respectively east and west of a line of partition first instituted in 1900 with the establishment of separate colonial authorities.⁵ The state's authority in each developed through similar means and from similar conditions. But the strength of state authority within Samoan villages is far different today in the west, where it means very little, from that in the east, where state authority is far more controlling of both people and the construction of custom. The emergence of this difference has been as much a function of the process of state formation as a product of Samoan reactions to colonial authority (Olson n.d.a). But it has very different implications for an understanding of the tensions between state law and customary law and the associated rights to speak authoritatively about land, law, and custom in Samoan villages today. These implications are addressed below, first in terms of colonial conceptions of customary authority, and then in terms of the geography of Samoan politics and the politics of Samoan land and chiefly titles, before I conclude with some additional comments on law, custom, and the making of 'chiefs'. While my focus here concerns Samoa, the more fundamental political relationships I seek to explicate have, I submit, more general applicability to, or implications for, understanding similar processes within societies similarly dependent, in effecting social control, upon the control of land and the character of customary authority.

Although they tend to be conceptualized differently, law and custom are subject to similar processes determining rights to name, or interpret, and to order enforced, a rule as 'law' or as 'custom'. The politics constructing both are often the same, but their geopolitical referents usually differ. In centrist, or state-centered, conceptions, 'law' is the law of the state and 'custom' is a norm locally derived,

⁵ Germany took control of the islands of Samoa west of the 171st meridian; the United States took control of the islands to the east, as determined in an agreement concluded additionally with Great Britain in late 1899. New Zealand replaced German authority with the outbreak of World War I, and continued as the administering authority under successive League of Nations and United Nations mandates until Western Samoa's independence in 1962. The eastern islands remain a territory of the United States (see Olson n.d.a). In 1997, the state in the west adopted the name 'Samoa' as opposed to 'Western Samoa'. For clarity and consistency, I refer here to this state as German Samoa (for the period of German rule), Western Samoa (for the period of New Zealand administration), and, more generally, as western Samoa (for all periods including the period since independence). And I refer to the state in the east as American or eastern Samoa.

specific to place, ordering, perhaps, according to ‘the way things have always been done’, but without the ‘force of law’.⁶ Yet custom, just like law, refers to an authority recognized as legitimate within social groups. And ‘authority’ is merely the right to state the rule with which people should comply. The means mobilized in seeking compliance with the rule give the rule its ‘force’, whether the rule is uttered as ‘law’ or as ‘custom’, through the state or through some other authority such as a local ‘chief’. The efficacy of the rule's distinctions depends upon its political currency. And its political currency depends upon the locus, nature, and dimensions of its referent (political) economy (Bourdieu 1978, 1987). All of which is to say that the efficacy of the rule depends upon the extent of its recognition as valid by those who would enforce it, or choose to comply with it, or who may seek means of resisting it. And the extent of resistance or compliance is merely a manifestation of the politics of social control promoting the dominance of different rules advancing different interests’ as custom or as law.⁷

Colonial Conceptions of Customary Authority

[T]he difficulty in Samoa is not to find who is a chief, but who is a common man (Turner 1884: 174).⁸

By the time colonial authority reached the Pacific, colonial conceptions of customary authority were still based primarily on European notions of ‘chiefs’ in

⁶ The quoted passages are a play on Diamond's (1971) discussion of “the rule of law versus the order of custom” and the debates involving Bohannan and others in Nader (1965), who distinguish between law and custom based upon the significance of effects and a criterion of coercion, but who tend not to distinguish their views from centrist conceptions of law.

⁷ For similar pluralist critiques of legal centrist perspectives, see especially Griffiths (1986), Merry (1988), and von Benda-Beckmann (1986, 1988). See, for example, Chanock (1985) and Moore (1986) for a discussion of similar themes of custom and customary law's extra-local constructions in Africa, Cohn's (1983) discussion of colonial representation of authority in India, and Burns' (1989) critique of custom's representation in state law as conceptualized and expressed by van Vollenhoven (Holleman 1981), among others of the Leiden school in the context of the Dutch East Indies and Indonesian *Adat*.

⁸ Comments of a ‘stranger’ to the Rev. George Turner, who lived in Samoa between 1842 and 1861.

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Europe, and their conceptions of the more paramount of 'chiefs' tended to be equated with European notions of the sovereign king. The former notions, of 'chiefs', served their purpose. The latter, of 'kings', did not once colonial authority had been declared, although 'kings' clearly were of value to the colonial powers prior to the declaration of colonial authority to the extent that such kings could protect Euro-American interests. And 'kings' or 'chiefs' with the authority to rule were necessary in effecting colonial interests to the extent that they continued to serve the colonial powers. When they did not they were removed or their authority undermined, much in the way that conversely their authority often increased through their relations with Europeans and Americans, and European and American governments. Chiefly authority was created through Euro-American agency in such a way as to make it dependent upon Euro-American support and, after the establishment of colonial authority, upon the backing of the colonial state (Olson n.d.a; cf. White and Lindstrom 1997).

Prior to the establishment of colonial authority, the colonial powers' principal difficulty in Samoa, as in the Pacific, concerned the lack of a central authority, such as a sovereign king, sufficient to effect internal political stability. The colonial powers resolved their differences with respect to who should be the king of Samoa, but when this strategy failed to effect Samoa's political stability, they partitioned the islands, established their authority, and abolished the kingly title they had effectively created. They also abolished several prominent titles more clearly Samoan in origin, but similarly associated by them with political contention and prior civil conflict. After partition their principal difficulty concerned their relations with more local district and village 'chiefs'. But the chiefs they encountered did not always fit their ideal conceptions or pragmatic needs. And they often encountered too many chiefs or too many people representing themselves as chiefs, such that the "difficulty" first noted in the mid-19th century in finding who was a "common man", appears to have been generally accepted by the late 1890s as conventional wisdom.⁹

Colonial authorities also encountered two distinct classes of Samoan 'chiefs': the

⁹ As by Kramer (1994, 2: 108), an ethnologist who conducted research in Samoa in the late-1890s, when quoting Turner (as noted in the text), as a means of offering ways of distinguishing between chiefs and commoners. And, as noted by American Samoa's first Commandant (or Governor) in his annual report: "nearly every other man was an hereditary chief of greater or lesser degree" (Tilley 1901: 86). The more general application of the sense conveyed is revisited later in the text. The administrative history referred to is documented in Olson (n.d.a), and additional examples from the archival and Court records supporting the argument made are cited in Olson (1997).

ali'i and the *tulafale*. They equated the *ali'i* with their conceptions of 'chiefs' proper, and they equated the *tulafale* with an executive class, the 'spokesmen', or 'orators', of the chiefs. They bestowed upon the *ali'i* the administrative duties commonly associated with the *tulafale* as a means, in the east, of elevating the authority of the chiefs relative to the orators, who were perceived by colonial authorities, east and west, as the underlying cause of Samoa's prior civil strife. Or, as the architect of American Samoa's administrative policy explained at the time of the policy's institution, the *tulafale* "often... forced the *ali'i* to obey [their] dictates ... [and through their] rivalries... would keep the village in a state of fomenting strife" (Gurr 1901: 4). The same author extended this view to the district in a Court decision denying the rights claimed by a high ranking *tulafale* to remove the title of a high ranking *ali'i* and name the *ali'i*'s successor:

If the claim ... were upheld, no chief could exercise any real authority, the foundation of any government would be shaken, and all reverence and respect for chiefs would be lost (*Toomata et al.*, No. 3-1902, 1 ASR 25 (date unknown) 32¹⁰).

In contrast, colonial authorities in German Samoa seemed less concerned with the balance of power between the chiefs and orators than in bending to the Government's will the true power in the village or the district. And such power, they too discovered, was often realized in the form of an orator or an orator-chief, a *tulafale-ali'i*, or more accurately a *to'oto'o-ali'i*, literally a chief with an orator's staff (Olson n.d.a). But both state courts reasoned that prior to partition many of Samoa's chiefly titles had been controlled through force. "[O]nly a few successions are settled without strife", Erich Schultz, the first chief justice of German Samoa, wrote in describing the principles of title succession. He added, referring to these titles in their more generic sense as the titles of *matai*:

When ... disputing parties had ... recourse to violence, victory naturally did not remain with the rightful party, but with the stronger.... A lawful *matai* belonging to a beaten party, must necessarily expect to be dispossessed by a relative who

¹⁰ The decision was written by E.W. Gurr, the principal judge of the High Court, first Secretary of Native Affairs of American Samoa, and the principal architect of the early government of American Samoa. For clarity and brevity, I follow the protocol of legal citations with respect to court cases. The number before the journal refers to the volume of the journal. The number immediately following the journal refers to the page number on which the case begins. The number after the date refers to the page on which the quotation occurs. See ASR (1900-93).

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supported the victor. (Schultz n.d.: 36).¹¹

The general image conveyed of constant conflict, whether accurate or erroneous, suggested, if it did not justify, both the need for the Courts' mediation and the degree of caution they should take when exercising their authority. Both Courts applied their authority as a last resort, and they recruited and relied upon Samoans of high ability and rank, chiefs, orators, and orator-chiefs alike, to assist them (see, for example: Gurr 1901; GAP 1900-14 (1903) 17.A.3(1): 1-8). Their respective interpretations were usually consistent with each other, and their rulings were generally based upon similar conceptions of Samoan custom and tradition. Where they deviated from each other, this tended to be according to the constraints placed upon them by other institutions of the state. These differences, however, as I will soon discuss, had quite striking effects on chiefly authority, the number of chiefs, and chiefly rights to speak authoritatively.

In the 1920s the executive branch of American Samoa strictly limited the number of title-holders of any one title to one individual, and the number of *matai* titles to those titles that were generally recognized and easily determined. At the same time the High Court of American Samoa began to articulate more clearly in their decisions the principles they applied in adjudicating title disputes, and the state legislature, or Fono, began to articulate the criteria and emphasis the Court should apply in its judicial procedures. The Fono's stated preferences, however, were generally at odds with the stated preferences of the Court. In essence, the Court sought to include standards of fitness in determining title succession, principally as a means of identifying suitable officials for local government. The Fono, comprised mainly of Samoans of high rank, emphasized hereditary rights in an apparent attempt to determine who, or which branch of a family, would control who would succeed to that family's title under the constraints being imposed upon them by the colonial state.¹² Thus the Fono sought to reassert the authority the

¹¹ Dr. Erich Schultz was the first principal jurist of the western Court in its first incarnation as the Land and Titles Commission. He was also the principal assistant to the first Governor of German Samoa, Dr. Wilhelm Solf, and, in 1911, Solf's successor as Governor-General of German Samoa. Like Edwin Gurr, his counterpart in the east, Schultz was fluent in the Samoan language and considered by colonial authorities to be very familiar with Samoan customs. The term *matai*, as used in the text, refers to the chiefs, orators, and orator-chiefs in terms of their formal relations with the families of which they are part and whom the titles represent.

¹² The Fono narrowed the criteria the Court should apply to hereditary rights in 1926, and reasserted this preference in 1936 (AS Fono 1926-52, 1936). In 1937 in response to the Court the Fono amended the order of priority to: "The wish of the

ranking chiefs and orators commonly claimed to have had prior to the establishment of colonial rule to name not only the successors to their titles, but to choose who should hold the other titles they claimed to be under their control (as in *Toomata et al.*, quoted above; see also, for example, 1 ASR 226 (1910) and Schultz 1911). The net result was an increasing emphasis on direct descent from the previous title-holder and other principles inconsistent, except in a limited way, with generally accepted Samoan customs and practices.

In contrast, the Court in the west was restricted neither by statute nor by strict constructions of Samoan custom in determining the principles they should apply. “The rules [of custom] ... are elastic and must ... be adapted to family tradition or to the history of the village concerned...” explained C.C. Marsack, principal jurist of Western Samoa in the years just prior to the islands’ independence (Marsack 1961: 10).¹³ Similarly the Court in the west did not feel equally bound by considerations of blood: “no one has a vested right to title by way of inheritance... the mere fact of the blood tie gives them no preemptive right” (Marsack 1961: 10). Nor did the Court feel compelled with the same convictions to limit narrowly the number of title-holders per title as in the east: “The attitude

majority of the family”; “The forcefulness, character, personality and leadership of the candidate”; “The best hereditary right”; and “the value of the holder of the *Matai* name to the Government” (AS Fono 1926-52, 1937: 60). The priorities were switched again in 1952, with “hereditary right” placed first; “the wish of the... family...” placed second, followed by the “forcefulness, character...” of the candidate, and the candidate’s “value ...to the Government” (AS Fono 1926-52, 1952). There they have essentially remained. As the court records suggest, determining the first two criteria proved far more difficult than determining the last two, which tended to be evaluated in similar terms and redefined with shifts in government policy. See for example: 22 ASR 2d 94 (1992); 5 ASR 2d 13 (1987); 4 ASR 2d 148 (1987); and 2 ASR 2d 15 (1984), which review many of the Court’s prior decisions and difficulties. For additional perspectives and details on the High Court’s adjudication of chiefly title succession disputes and the history of the Court, see: Lutali and Stewart (1974); W. Tiffany (1979).

¹³ Marsack was Chief Justice of the Western Samoa Land and Titles Court from 1947 until the eve of independence in 1962, and he articulated the basic principles the Court has essentially followed ever since. His voice was also the clearest with respect to the Court’s policies in the entire period following Erich Schultz’s departure with the outbreak of World War I. For much of the intervening period from Schultz’s departure until Marsack’s arrival, the Court was rendered ineffective by the loss of legitimacy general to the colonial state (see Olson n.d.a).

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of the Court”, Marsack wrote, “...is that there should be one title-holder... to each well-known and generally accepted branch of a large family”. But, he added, “[t]he Court recognises the authority of the *aiga* [the extended family]... in cases where that body has the *pule* [authority], to split the title and unless objection is made... the Court cannot interfere with exercise of that discretion” (Marsack 1961: 8). Equally significant, the Marsack Court did not apply any explicit consideration of the value of the title-holder to the government other than the capacity to maintain peace within the family, the standing of the family, and the standing of the title of the family within the family and the village.¹⁴

The Geography of Samoan Politics

The mamalu [honor] of the family is the matai¹⁵

The distinctions above refer to the Marsack Court’s recognition of a group’s

¹⁴ He should convince the persons appointing him that he will look after the family for the benefit of the family and not for his own aggrandisement. He should have a good knowledge of the family history and traditions... a thorough appreciation of the standing of his family and of the title in the community, and ... be of such character that he is able to maintain that standing in the eye of the district and in the Council of Chiefs and Orators. (Marsack 1961: 13)

The principal exceptions to the above rules concerned the four titles the colonial authorities associated with the title of the Samoan king, which were more strictly regulated. And despite the use of gendered pronouns, the Courts, east and west, concurred with Marsack’s interpretation that “There is no reason either in Samoan tradition or in the laws of the country, why a woman should not become a *matai* and hold the appropriate title” (*ibid.*: 9). The issue of gender and rights of title will be addressed more fully later in the text. For a more complete discussion and history of the western Court’s adjudication of *matai* titles, see: S. Tiffany (1974); Meleisea (1987).

¹⁵ *O le mamalu a le ‘aiga ‘o le matai*. A Samoan proverbial expression referring to the significance of the *matai* and the *matai* title in terms of their social standing with respect to other social groupings. *Mamalu*, ‘dignity’, ‘honor’, ‘influence’, according to Pratt (1911), is a currency of honor, rising and falling with the actions of the title-holder and the family of the title (Olson 1995).

rights to bestow and remove their titles. But they also refer to a more fundamental relationship. The application of the rights associated with a chiefly title and the maintenance of any asserted rights of a title within larger social aggregations, such as a village or district, depend upon the acceptance of the title and titleholder by the respective members of each group. In this sense, Marsack's reference to the authority, or *pule*, of an *'aiga*, or extended family, to 'split' a title, refers, more accurately, to the group's rights to bestow the titles of the group on more than one individual. To split a title would literally mean to create two or more titles from one title and two or more separate groups, and thereby imply separate and distinct, if not different, rights associated with each of them. While there is an abundance of evidence to suggest the occurrence of such a phenomenon in Samoa, the evidence clearly supports the extension of the logic just expressed: it suggests that the recognition of such rights is not at the discretion of the group controlling the bestowal and removal of the title, such as the family, but of the groups willing to enforce them, such as the village and the district. The evidence also suggests that the process of establishing separate titles from one title name, as the term 'split-title' conveys, is one of political negotiation or re-negotiation of rights and obligations amongst and between villages and districts and the extended families who constitute them (Olson 1995).

In the mid-1970s the High Court of American Samoa began to re-interpret the conception of title splitting in Samoa, in terms similar to, but narrower than those just stated. "We are ... cognizant of the fact that in the long history of the *matai* system, there had [sic] been no split titles", the Court wrote in a 1974 decision reversing its position accepting split titles as a "derogation of Samoan custom" (*In the matter of the high chief title "Mauga"*, 4 ASR 132 (1974) [*Mauga*] 40). The decision explicitly critiqued the conception of 'split titles' applied previously by the courts in the east, and, by inference, the conception applied by the courts in the west. In so doing the Court made the following semantic and legal distinctions.

Each *matai* of high rank and head of a family, or *Sa'o*, is an entity. Two or more persons holding the same title by consent of the family members hold it as a single *matai* title. All jointholders of the said title share equally in its remunerations [sic] and responsibilities.... The exceptions are improvisations for the sake of peace in the family, but not traditional....¹⁶ Should we assume the power to split a *matai* title [the Court

¹⁶ The reference to "improvisations" modifies the Court's explanation offered in the text and as explained further in the subsequent note.

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concluded], it must follow that we should assume the responsibility to split communal lands, [*kava*] cup title, *Taupou* title [or *sa'otama'ita'i*, a ceremonial title of a high chief's daughter], honorific salutation [or *Faalagiga*]... traditional shares in [food distribution or *tufaaga*]... and all other prerogatives traditionally inherent to the *matai*... [including their traditional seat or *pou* in the *fono*, or council, and their guesthouse site or *tulaga-maota*..., the geopolitical locus of their title]... Should the splitting continue, Samoa and its culture and custom will eventually disappear (*Mauga*: 138-141).¹⁷

The criteria listed by the Court in *Mauga* above provide a means of differentiating between titles and title rights as generally practiced within Samoan villages today. Of specific relevance are the references to the spatial, or geopolitical, dimensions associated with a chiefly title. As suggested in the quoted passages, each chiefly title in Samoa is associated with a specific group, such as an *'aiga*, or extended family, and each title is held as a name by the representative of that group. But each group is also associated with a specific place within a broader social space, such as a village (*nuu*) or a district (*itumalo*), both as the literal foundation or house site of the group and as the physical seat of the title-holders within formal meetings. The holder of a chiefly title represents the group's rights and honors. But rights to speak, the order of speaking, and the right to speak authoritatively, in formal meetings within and between groups, are regulated by the groups according to the history of their constituents' relations (Olson n.d.b; cf. F. and M. Keesing 1956). Thus one's literal and physical location within a geopolitical space reflects the nature of one's rights, or *pule*, just as one's social standing within a group determines the extent of one's *pule*, or rights to speak and to speak authoritatively (see also Duranti 1994).

The more general significance of the tensions referred to concerns the fact of the insertion of an authority, such as the Court, external to the social groups negotiating the strength of title rights. The common concern of both Courts was, in Marsack's words, for the "lowering of the dignity of important titles" through "splitting" the title and the *pule*, or authority, associated with it (Marsack 1961: 8). That concern heightened during the 1950s with Western Samoa's preparation for independence. Only *matai* could stand for election to Parliament, and only registered *matai* could vote. Independence raised the stakes of political

¹⁷ The passages in brackets are quoted from the judgment but inserted here for the sake of brevity and clarity. The more complete reference by the Court to the "remunerations [sic] and responsibilities" of the *matai* appears on page 138 of the decision.

representation at the center, with the result that Western Samoans began to increase the number of their *matai*, and *matai* increasingly began to register their titles with the state (Marsack 1961: 8). In 1978, or 16 years after Independence, tensions peaked when, in response to the attempted registration of numerous titles considered to have been bestowed in ways “contrary to... Samoan custom and usage”, the Court Registrar deleted 1400 names, or ten percent of all registered *matai*, from the voter roll three months prior to the elections.¹⁸ An immediate crisis ensued. It was defused four days later with an amendment unanimously passed by Parliament convened in emergency session that required the Court to hold hearings prior to the deletion of any title. In 1990, pressures and problems persisting, Parliament instituted universal suffrage.

In the east, the pressures were different, if not considerably less. During the 1950s, American Samoa devised two legislative houses based, in part, on the United States model and implemented in final form with ratification of a territorial constitution and the acceptance of this constitution in 1960 by the controlling authority of the territory, the United States Department of the Interior. Members of the Senate were to be selected according to generally accepted principles of custom, as determined in district and village councils; members of the House of Representatives were to be elected according to principles of universal suffrage (Olson n.d.a). Additionally, while all *matai* had been required to register their titles with the state since the 1920s, and while they were encouraged to do so when the state banned the use of registered titles by unregistered title-holders, the incentives to register one's title(s) with the state increased with the anticipated closing of the *matai* register. This capped, in 1969, the number of titles the state indicated it was prepared to recognize (ASC 1973). As a consequence of state policies, the number of state registered *matai* in American Samoa remained relatively constant. But, as the population increased, the ratio of registered *matai* to resident population declined, from one to twelve in 1922 to one to twenty-seven by 1952 and in probable excess of one to sixty by 1990.¹⁹

¹⁸ As reported in the Government journal *Savali* (Nov. 27, 1978) and cited in Olson (1995).

¹⁹ The number of registered *matai* titles in American Samoa increased from 663 in 1922 (Pollack 1922: 3) to roughly 700 by 1952 (3 ASR 50 (1952) 53). By 1972, or three years after the *matai* register closed, the number had increased to 735, but 240 were without title-holders (Lutali and Stewart 1974: 399). Resident population in American Samoa increased from approximately 8000 to 19000 between 1920 and 1950, and to 46600 by 1990. Of this number, approximately 17000 individuals were neither citizens nor nationals of American Samoa; 15000 were permanent residents, most of whom were born in western Samoa (AS 1993).

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In contrast, the ratio of registered *matai* to resident population in western Samoa increased by a factor of three beginning in the year prior to Independence: from one registered *matai* per twenty-four residents in 1961 to one for every eight by 1988.²⁰ The numbers are deceptive. In the villages of the districts of greatest increase, the ratio of *matai* to residents approximated one to three by 1990, or one ‘chief’ for every three people. This, however, was not a result of inflated numbers of *matai* holding titles primarily as a means of voting in parliamentary elections. The number of such *matai palota*, or ‘ballot *matai*’, in these villages tended to be insignificant relative to the total number of *matai*, and the use of such titles tended to be inconsequential except perhaps at the time of elections. And yet were the number of ‘ballot *matai*’ eliminated from the equation, and the number of long-term non-resident *matai* and other comparable phenomena clouding the analysis discounted, the ratio of resident *matai* head of households to resident population, even in a village and a district at the extreme end of the phenomenon, approximates, at one to twelve, those ratios estimated to have obtained during the first third of the century in villages of Samoa both east and west of the line of partition (see Olson 1995).²¹

Intuitively it is to be expected that an increase in the number of *matai*, including cases of more than one person holding the same title, will devalue any one title and *matai* titles in general. This is how the Courts in Samoa framed the phenomenon of proliferating numbers of *matai*. But this tendency, and the more common tendency to interpret the increased numbers of *matai* in terms of total *matai* electors, glosses over the principal dynamics underlying the proliferation of *matai* in western Samoa. The phenomenon represents a geopolitical subdivision of ‘*aiga*, or extended families, according to the basis, or pattern, of such division operating at an increasing dimension of scale in ‘*aiga*, *nuu* (village), and *itumalo*

²⁰ or from 4682 to 20,856 *matai* (from the *Savali* (29 February, 1988 and 31 July, 1989). Resident population increased from 114,000 to 161,000 between 1961 and 1991 (Olson 1995).

²¹ See also, for example, Grattan (1948: 155), who gives a ratio of 1:11 for Western Samoa in the 1920s. While there are clearly more *matai* than before and more *matai*-headed households, there are far more *matai* than before who are living in households under the superior authority of the head of household, for example, the father or the mother of the title-holder. Thus, just in terms of the distinct political units a ‘household’ contains, the ratio of the number of households to the number of household members (i.e., total resident population) does not differ from ratios for the 1920s in villages with the greatest relative increase in *matai*.

(district). It reflects the extension of such geopolitics to within the level of the *'aiga*, where, as previously suggested, a *matai* title legitimates one's rights to land and the establishment of a separate political unit, such as a household, within an extended family, a village and a district, and where one cannot establish a separate household without holding a *matai* title and controlling sufficient land to meet the household's needs and its obligations to the *'aiga*, the *nuu*, and the *itumalo* (Olson 1995). The primary difference concerns the restriction on the number of available title names, where the lack of clearly defined rights associated with *matai palota* titles reduces their value as titles within a village.²² Thus any increased pressures Samoans place on their families for a title with clearer rights are likely to result in an increase in the number of title-holders per title in so far as the number of socially acceptable titles to choose from is limited. And the ability to establish a separate division within a family is limited by the availability of land sufficient to enable the newly created division to meet its social obligations and thereby maintain or increase its social standing within the larger groups of which it is part.²³

²² As measured, for example, by the reluctance of *matai palota* to use their titles as titles within the village of their origin. The term itself and the circumstances of its use suggest the status 'ballot *matai*' hold within a village. With universal suffrage, the titles have little value and less standing by virtue of title alone. The titles are, however, used by outsiders within a village, as a form of honor and a means of social incorporation, and they are commonly used outside the village and the country by village members, and at times by those only remotely connected to the village of the title. Such practices predate the more recent pressures to increase the number of *matai*, as suggested by archival records and oral histories (Olson 1995).

²³ A similar phenomenon occurred for similar reasons as early as 1910, when colonial administrators attempted to shift a village following devastation of village lands by lava flows. In the analysis of colonial administrators, the component groups of the village increased the number of their *matai* as an "attempt by every village part to get as much land as possible, at the expense of the other" (GAP 17.B.5(5):9). The interpretation of motive may or may not be accurate, but the proliferation of *matai* occurred similarly through increases in the numbers of holders of a families' titles, as opposed to new titles, or titles of recent re-creation; and each such increase gave a family the opportunity to control greater areas of village lands. In the more recent phenomenon, elections for district representatives opened the floodgates of acceptability, but the process proceeded according to the principles just explained.

The Politics of Land and [Chiefly] Titles in Samoa

The twin cornerstones of the Samoan way of life are communal land tenure and the *matai* system. Each is essential to the other. Without the *matai* system... the communal land system becomes anarchy. Without the communal land system, there is no reason for a *matai*. (American Samoa Chief Justice Gardner in *Tavai v Silao*, 2 ASR 2d 1 (1983) 2)

The courts of both states considered the protection of Samoan culture and custom to be dependent upon the integrity of Samoan chiefly titles, and they considered the integrity of Samoan chiefly titles to be a condition of their protection of Samoan 'communal land', or 'communal land system'. The basic principles and protections are formalized in the respective state constitutions, and they appear as central tenets of the state's expressed sense of its internal legitimacy from the earliest beginnings of the colonial state (Olson n.d.a). But both states and the courts of both states promoted changes in Samoan rights to land and the land rights associated with Samoan titles in ways antithetical to the Courts' stated conceptions of Samoan custom. Through their land policies, and through the Courts' adjudication of land and *matai* title disputes, each state promoted conceptions of property based on principles of social justice expressed in English common law, conceptions of law and society privileging the rights of individuals over the rights of groups and providing the philosophical and moral justification of institutions of private property. The Courts, which tended not to reflect upon the inconsistencies, tended to re-interpret as 'Samoan custom' the conceptions of land rights which the colonial state's civilizing influence attempted to effect, promoting, in the process, a more general acceptance of the concepts within Samoan societies. The 'acceptance', however tenuous, tended to occur by way of the incorporation of the concepts into Samoan politics, and through the application of political strategies asserting rights to land that were contingent upon the Courts' continued recognition for their persistence or success (Olson 1997).

The Courts in Samoa promoted a conception of 'natural law', or a law of nature, which privileged the rights of individuals to claim land, to convey the land to their direct heirs, and to control exclusively both land resources and the benefits derived from them. Similar conceptions of natural law were promoted with colonialism and through colonial attempts to promote economic and social development throughout the world (Hooker 1975). But such claims would have had little chance of success in Samoa without the Courts' judicial recognition, as expressed, for example, in the following terms just after the turn of the century by the American Samoa High Court:

[T]he individual owner of property, notwithstanding his well established rights to it, was subject to the will of the community and upon commission of any act contrary to [their] desire... he would be banished or have to submit to gross degradation imposed by the people (*Maloata v Leoso*, 1 ASR 134 (Date Unknown) 137).²⁴

By the late 1950s such individual rights appear to be accepted by the Courts as general and common to Samoa (Olson 1997). And they appear more generally accepted by others by the mid-1980s, as suggested in the following comments from a study in Samoan land tenure:

[I]t has become the desire of almost all Samoans to ensure that the rights to the use of and *pule* over lands which they have developed are exclusively theirs, and that those rights will pass only to their children, rather than to other non-resident or even co-resident members of the extended family (O'Meara 1987: 79).

Felix Keesing similarly predicted, on the basis of a similar study conducted in the 1920s, what he termed the increasing “localisation of property in the groups actually using the soil” (F. Keesing 1934: 275). Erich Schultz expressed the same sentiment just after the turn of the century when writing, somewhat hopefully, that “[t]he idea of personal ownership is taking root... through [the strength of one's hands]” (Schultz n.d.: 14-15). But, rather than assuming the general acceptance of the principle in Samoa today, it is far more plausible to view the articulation of the principle, in political terms, as the assertion of rights which the Courts will recognize (S. Tiffany 1980). And it is far more plausible to interpret such assertions as the continuous re-negotiation of rights locally within customary political processes, including the re-negotiation of rights commonly asserted but untenable prior to the establishment of colonial authority. It is the nature of political relations that determines the strength of any right (Macpherson 1978). The interpretations quoted above suggest the nature of the tensions. But the principles articulated by them, in the language of English common law, tend to obscure the processes by which such rights to land are determined, if not to misstate altogether the rights being negotiated, recognized, and enforced.

The conception of common law applied emphasizes the rights of individuals, but tends to ignore the vested rights or claims of those people upon whom the

²⁴ The composition of the Court places the date of this decision before 1908.

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recognition and enforcement of the rights depend. And the emphasis on the rights of those directly engaged in agriculture, which the conception of natural law promotes, obscures the rights of those who are not agriculturalists, and in Samoa of those who are not *matai*. In Samoa the ideology that individuals derive rights to land from their direct engagement in agriculture emphasizes the rights of males, who are the primary agriculturalists. A similar focus by the Courts and others on chiefly titles in terms of their role in legitimating individual rights to land cleared and planted by individuals ignores the land rights of women, who in Samoa tend not to hold chiefly titles. And it ignores the land rights of those members of a family who do not hold chiefly titles nor engage in agricultural production in general. In Samoa these rights are obscured to the extent that rights of *pule* are interpreted as unlimited rights and as rights inhering in *matai* titles and individual title-holders as opposed to being held on behalf of and vested in groups.

The above comments arguably apply not merely to Samoa but more generally. Moreover, they imply that the superior right or authority within a social group does not reside in the chiefly title-holder nor with the title of chiefly authority. And in Samoa it does not. The Courts themselves understood as much, at least at the turn of the century, and if only in a limited way. This is suggested, for example, by the following comments from Erich Schultz with respect to *matai faiava*, or *matai* who derive their title from their wife's family: "She gives [the title] usually to a relative, or to her husband ('o le fai-ava') and keeps the *pule* only for herself" (Schultz n.d.: 6). In Schultz's analysis, the men have the status of the title, but not the authority commonly associated with it. A superior *pule* over the land and the title resides in the female and not her spouse by virtue of blood relationship to the *'aiga*. The man who cultivates land within the village of his wife does so under the protection of the family of his wife, just as the man who cultivates land under his own title or the authority of another title-holder does so under the protection of the family of the title. The extent of the recognition of these and any other rights depends upon the accepted norms and current politics of the controlling family, village, and district (Olson 1995).

Such conceptions of rights separate from the *pule* of the title suggest a basic tension between the strength of individual rights and the vested rights of those groups recognizing, legitimating, and enforcing them. Generally translated as "authority" ... "a command, an order, to order, to command, a decision, authority, to decide with authority...", according to Pratt (1911) *pule* can refer to varying degrees of authority, or rather, of rights to speak and act with authority, each limited by the extent of their geopolitical contextual meanings, continued recognition and social acceptance (Olson n.d.b). But to equate *pule* with individual rights or with 'ownership' in any form, let alone with exclusive property rights, as is commonly done, is clearly erroneous to the extent that *pule* derives from *tautua*, referring to the nature of the obligations. And it is especially

so in cases where the adequacy of the *tautua* is left, even by the Courts, undefined, negotiable within, and subject to, the regulating norms and politics of the family and the village (Olson 1997). No degree of *pule* or authority in whatever form can be fixed or absolute in Samoa or anywhere else outside of statutory law, just as no right defined by its social legitimacy can be successfully asserted if no one wishes to recognize or enforce it. And such assertions of individual rights are meaningless when individuals and their ‘property’ are soon parted, symbolically and materially, as in Samoa, in its most extreme form, through physical removal, or banishment, of the individuals, and destruction, through burning, of the property.²⁵

More individuals hold *matai* titles in western Samoa today than ever before and more individuals may be holding any given title at the same time than in the past. But not all *matai* are equal in terms of their *pule* or voice or standing within a family or a village or a district, even in comparison with those holding the same title. Court records suggest as much. And they also suggest that despite a strict policy of one title-holder per title in the east and the emphasis of the eastern legislature on a strict construction of hereditary right, the Court has continually confronted evidence of practices to the contrary. “This Court has become all too familiar with the contention that a law enacted by the Fono [the state legislature] can be violated or ignored whenever the person who does not like it claims that the law is contrary to custom or tradition”, the American Samoa High Court explained in one case of three offered here by way of explanation:

One instance of this phenomenon is the belief that a single title can be simultaneously occupied by a ‘court-selected *matai*’ and a rival ‘family-selected *matai*’. The idea is apparently that the former has the right to use the *matai* title on his resumé while the latter possesses the power and authority traditionally pertaining to the title. (*Leifitele v Sotoa*, 6 ASR 2d 91 (1987) 94)

²⁵ That such sanctions, commonly observed at the turn of the century, more frequently before, and less since, still occur even in their most extreme forms in (at least western) Samoa is suggested by two very recent and widely noted incidents of the death and destruction of individuals and their ‘property’ through the actions of their respective villages. Had the individuals so punished accepted the lesser sanctions and the superior *pule* of the village, the ultimate punishment, death, would probably not have been meted out, and the individuals would have ultimately been restored to their former status as accepted members of their respective villages (Olson 1995).

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Having been selected as the sole and legitimate title-holder [by the Court], the defendant then publicly holds himself out as merely a co-holder of the title in a manner thoroughly repugnant to that very legal process which made him the *matai* (*Members of the Aoelua family v Aoelua*, 17 ASR 2d 88 (1990) 89).

With the family's consent as well as plaintiff's ... defendant has since held himself out as a *matai* and has accordingly participated in council matters both at the village and county level.... [H]owever, plaintiff was elected to register the title in order to comply with the requirements of the law... Until recently the parties have co-existed. Defendant, however, has proven more popular with the village and county. He has been nominated by the county to [be] County Chief, which position the plaintiff also desires (*I'aulualo v Faleseu*, 10 ASR 2d 26 (1989) 27).

While the above comments suggest the expression of one judicial logic, they are from three separate cases describing the same general phenomenon. The practices noted represent a means of complying with state law while adjusting to political pressures within the family, the village, and the district. They also constitute more flexible means of readjusting the norm or strength of rights formally recognized within a family through a title as a result of prior politics and political conditions than Court adjudication procedures currently allow. "The traditions of ancient Samoa abound with stories of *matai* who obtained their titles for reasons other than blood descent from a previous title holder", the Court noted in a decision echoing Erich Schultz's assessment at the turn of the century "that many families are not at present the lawful owners of their possessions" (Schultz n.d.: 36). "Many titles in Samoa were created or conferred long ago in ways which, had the present statute been then in force, would have been illegal, and yet those titles and all their holders are now recognized as legitimate" (*Leaana v Mulitauaopele*, 17 ASR 2d 75 (1990) 83).

The traditions the Court referred to in the case just cited included "such customary institutions as *igagato* (conferral as a reward) and *matu'upalapala* (a 'commission' to avoid the extinction of the line)". In a prior case between the same litigants, the Court distinguished between the meaning of "matu'upalapala", as "an irrevocable commission", and "tofiga", as "a revocable commission" (*Leaana v Mulitauaopele*, 16 ASR 2d 63 (1990) 66). With *igagato*, or "conferral as a reward", each represents varying degrees of *pule* associated with a title, or varying degrees of separation of the *pule* from the title. Other such institutions or customary practices, of 'gifts' or events conferring rights of title, or, as described by Schultz, of rights to title in name only or the use of titles as names but without

“the authority it confers” (Schultz 1911: 44-45), frequent the testimony recorded by the Courts. But such claims conflicted with the authority vested in the titles by the state in the east. And such customary practices conferring rights to titles increased the difficulty of adjudicating varying degrees of *pule* based on competing traditions, which were tantamount to hearsay and thus generally inadmissible within a state court of law (Olson 1997). The state’s criteria for adjudicating titles reduced the degree of uncertainty in the Court. But, as applied by the eastern Courts, they also reduced the flexibility possible in adjusting the value attached to a particular title. And they reduced the local capacity to confer formal recognition of rights of varying strength through bestowal of the family’s titles in ways still commonly practiced in the west.

In the west, local politics rendered insignificant any prior Court attempts to restrict the number of title-holders per title. Furthermore, state administrative policies, and state-local relations rendered ineffective any attempt by the state to restrict title succession based upon strict conceptions of direct descent. *Matai* who commonly hold more than one title in western Samoa tend to do so from families based in different villages. The titles represent formal ties to several families, and rights of descent through various means, for example, through the mother, the father, or by adoption, but not necessarily from recent generations, nor in narrowly defined terms (Olson 1995). It is very difficult to understand the meaning and authority attached to a chiefly title anywhere without understanding the social-political contexts within which the title and the title-holder function. This statement is likely to be far truer today in western Samoa than in eastern Samoa, where the value attached to a chiefly title is very clear with respect to the value bestowed upon it by the state. In western Samoa, the authority attached to a title lies less in the title than in what the title-holder does and says on behalf of those the title represents, which is, in essence, the measure of a title’s internal legitimacy.

In the 1920s colonial administrators estimated that roughly one out of every three adult males in Samoa held a *matai* title.²⁶ With the increase in population and the restriction on *matai* numbers, this ratio is clearly far lower in the east today no matter how an adult male is defined. The probability of becoming a *matai* in eastern Samoa is by design, and through the authority of the state, very low. In western Samoa, the current probability of a given individual acquiring a title seems a near certainty, especially if that person is an adult male, much as it appeared to foreigners at the turn of the century for Samoa as a whole. The

²⁶ See Pollack (1922: 3), Grattan (1948: 155), and F. Keesing (1934: 245), where an “adult male” is defined as equal to or greater than 16 years of age.

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incentive to hold a title, or more than one title, derives, in part, from the opportunity to formalize rights, establish rights or establish and formalize social ties. But it also represents the increasing access to and opportunity to participate in and implicate the *faasamoa*, the normative order or cultural ideology of Samoa, through the holding of *matai* status. And it represents a person's more formal incorporation into the politics of the *faasamoa*, literally that which is made to be Samoan, to the extent that one seeks to maintain or apply the rights of a title. In the east, the incentives to circumvent the normative structure of authority appear greater than the incentives to participate in its reproduction and maintenance through attempts to acquire titles which are increasingly difficult to obtain (Leibowitz 1980). In the west, incentives to acquire titles appear increasingly determined by the nature of the changing political economy of titles and the increasing extension of social, political, and economic relations far beyond the geopolitical borders of the family, the village, the district, and the state.

Law, Custom and the Making of 'Chiefs'

Throughout the Pacific, and in areas that experienced 'indirect rule' throughout the world, the colonial state's dependence on governing through local authorities based in custom created the necessity for the regulation of custom's construction by the state. In regulating custom, colonial authorities commonly re-conceptualized those aspects of customary authority they considered antithetical to their conceptions of a civil society. And they commonly promoted their conceptions of a civil society through the courts they established to mediate chiefly title disputes, just as they promoted their conceptions of social justice when adjudicating customary rights to land. The courts they established based their judgments on similar conceptions of land rights, as articulated, for example, in English common law, or in the dominant conceptions of natural law. But in Samoa the colonial authorities when regulating chiefly title succession applied similarly conceived principles of custom differently east and west of the line of partition they had created. The differences were more a product of the different relations between state and local authorities than a reflection of different colonial interests. Yet the differences helped create, with far greater effect in the east than in the west, the kind of dependence on the authority of the state which colonial regimes attempted to induce with respect to chiefly authority in general.

The state's capacity to regulate the authority attached to chiefly titles in eastern Samoa channelled that authority in ways which in turn reinforced the authority of the state. And the state's ability to restrict the numbers of titles and of title-holders in the east changed the expression of power which was mobilized in those customary practices which determined title succession and title rights, and which are still common in the west. While the differences, east and west, are often

striking, the respective creations of chiefly authority are suggestive of a more fundamental political relationship: social power depends upon the ability to manipulate the operative structure of rules for political gain. Under colonial regimes, central authorities commonly manipulated the structure of rules operative within both central and local social spheres when attempting to effect the dominance of their authority. Similarly, with the creation of such centralized authorities, effecting political gain for most of the colonized increasingly meant negotiating state authoritative resources and mediating social relations of power expressed through the institutions of the state. And people's ability to maintain or re-position themselves socially within the groups of which they were part was likely to be equally dependent upon accessing and implicating such external political resources in the past under colonial regimes as it is today in more places than Samoa alone. 'Power' in this sense refers to the ability to mobilize social action in support of a particular claim. It depends as much upon people's willingness to recognize and enforce a claim as it does upon the ability to compel compliance through physical coercion or force. And invoking the meaning people vest in custom has a value which is at least equal to, if not more than the value people vest in state law when attempting to mobilize support for one's claims, especially when state power seems very far away.

The tendency to equate chiefs with the capacity to govern or rule implicit in colonial conceptions of chiefly authority, conflicts with the past and present imagery of chiefly authority operative within a Samoan village. Chiefly titles in Samoa represent the dignities and honors of a social group. The title-holders or 'chiefs' do not necessarily possess any real power or authority, either in the groups of which they are part or in the groups in which they are placed as representatives by virtue of their titles. And yet their value to the groups they represent depends upon their ability to effect the group's interests within other social spheres. And their ability to effect these interests depends upon the title(s) they hold and their ability to speak effectively about the history of these groups' relations. And while it may still be equally true, east and west, that "[p]ower in Samoa is wielded most fully when a great personality is fitted to a great title" (F. and M. Keesing 1956: 45, 84), it is far more likely that the language of custom these authors described continues to be "the rich and mobile medium" through which power is expressed to a greater extent in western Samoa than in eastern Samoa, where the customary powers of the chiefs and orators within their respective domains have been separated and strictly regulated by the state. And it is far more likely still to be true in the west than in the east, as a high orator once explained to them, that "people do not recognize any [decision] unless the ruling chief of their group pronounces it" (F. and M. Keesing 1956: 149). State law means very little locally in western Samoa unless it is re-expressed through an authority that is based in custom. In eastern Samoa, individuals have greater

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means of directly invoking the authority of the state and having it mean something. And they have greater incentives and more opportunities for circumventing the normative structure of rules constituting custom and characterizing customary practices of chiefly title rights which are so strongly regulated and re-constructed through the eyes of the state. State law in the east has more of the effects commonly associated with 'law' as conceptualized in legal philosophy. But, in these terms, state law in the west has more of the effects commonly associated with 'custom', and the only law that consistently matters in western Samoan villages is the 'law' expressed through customary means.

Colonial authorities encountered a chiefly system in Samoa significantly altered through Samoan encounters with Europeans long before the establishment of colonial rule. While the various ramifications of this thesis have yet to be fully explored, the statement is undoubtedly true and applicable far more generally than only to Samoa, for the social-political landscape within which Samoans and many others throughout the world found themselves changed dramatically with European arrivals. When discussing Samoan abilities to govern themselves in the years just prior to partition, Augustin Kramer, a noted ethnologist, commented, in tones of praise, that "every adult Samoan is a politician" (Kramer 1994, 2: 96). The same could easily be said of Samoans today, especially in the west, where every adult Samoan, or at least every adult Samoan male may very well hold a chiefly title. But then being a politician is one of the functions of 'chiefs' everywhere, in the past as well as today. And how many or how few there may appear to be is a product of the social-political environments within which such 'chiefs' function and with whom they choose to be politically engaged. The chiefs whom colonial authorities encountered were seldom the kinds of chiefs they envisioned, but then chiefs are seldom who or what they try or may seem to be to others.

References

- AS
1993 *American Samoa Statistical Digest*. Pagopago: Economic Development and Planning Office.
- AS FONONO
1926-52 'Record of Proceedings of the Annual Fono of American Samoa.' RG 284 High Court and Governor's Office files. San Bruno, California: United States National Archives.
- ASC
1973 *American Samoa Code*. Orford, New Hampshire: Equity Publishing Corp.

ASR

1900-93 *American Samoa Reports*. By year and in two series. Pagopago: The High Court of American Samoa.

BENDA-BECKMANN, Franz von

1986 'Anthropology and comparative law.' Pp. 90-109 in Keebet von Benda-Beckmann and Fons Strijbosch (eds.), *Anthropology of Law in the Netherlands: Essays on Legal Pluralism*. Dordrecht: Foris Publications.

1988 'Comment on Merry.' *Law & Society Review* 22: 897-901.

BERGH, G.C.J.J. van den

1986 'The concept of folk law in historical context: a brief outline.' Pp. 67-89 in Keebet von Benda-Beckmann and Fons Strijbosch (eds.), *Anthropology of Law in the Netherlands: Essays on Legal Pluralism*. Dordrecht: Foris Publications.

BOURDIEU, Pierre

1978 'The economics of linguistic exchange.' *Social Science Information* 16: 645-668.

1987 'The force of law: toward a sociology of the juridical field.' *Hastings Law Journal* 38: 805-853.

BURNS, Peter

1989 'The myth of Adat.' *Journal of Legal Pluralism* 28: 1-127.

CHANOCK, Martin

1985 *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia*. Cambridge: Cambridge University Press.

COHN, Bernard

1983 'Representing authority in Victorian India.' Pp. 165-209 in Eric Hobsbawm and Terence Ranger (eds.), *The Invention of Tradition*. Cambridge: Cambridge University Press.

COTTERRELL, Roger B.M.

1986 'Law and sociology: notes on the constitution and confrontations of disciplines.' *Journal of Law and Society* 13: 9-34.

DIAMOND, Stanley

1971 'The rule of law versus the order of custom.' *Social Research* 38: 42-72.

DURANTI, Alessandro

1994 *From Grammar to Politics: Linguistic Anthropology in a Western Samoan Village*. Berkeley: University of California Press.

GAP

1900-14 'Papers relating to German Administration of Samoa.' English translation by T. Newberry of German Samoa Administration Papers. Archives of German Colonial Administration. New Zealand: National Archives. Microfilm copy at The Pacific Collection, University of

POLITICS AND POETICS OF SOCIAL TRANSFORMATIONS IN SAMOA
M.D. Olson

- Hawaii, Manoa.
- GIDDENS, Anthony
1984 *The Constitution of Society: Outline of the Theory of Structuration*.
Berkeley: University of California Press.
- GRIFFITHS, John
1986 'What is legal pluralism?' *Journal of Legal Pluralism* 24: 1-55.
- GRATTAN, F.J.H
1948 *An Introduction to Samoan Custom*. Apia: Samoa Printing and
Publishing.
- GURR, Edwin W.
1901 'Report on government of Tutuila.' RG 284 HC 8. San Bruno: United
States National Archives.
- HART, H.L.A.
1961 *The Concept of Law*. Oxford: Clarendon Press.
- HENRY, Stuart
1987 'The construction and deconstruction of social control: thoughts on the
discursive production of state law and private justice.' Pp. 89-108 in J.
London, R.J. Menzies, and T.S. Palys (eds.), *Transcarceration:
Essays in the Sociology of Social Control*. Aldershot: Gower.
- HOLLEMAN, J.F.
1981 *Van Vollenhoven on Indonesian Adat Law: selections from Het
Adatrecht van Nederlandsch-Indie (Volume 1, 1918; Volume 2,
1931)*. The Hague: Martinus Nijhoff.
- HOOKER, M.B.
1975 *Legal Pluralism: an Introduction to Colonial and Neo-colonial Laws*.
London: Oxford University Press.
- KEESING, Felix M.
1934 *Modern Samoa: Its Government and Changing Life*. London: George
Allen & Unwin.
- KEESING, Felix M. and Marie M. KEESING
1956 *Elite Communication in Samoa: a Study of Leadership*. Stanford:
Stanford University Press.
- KRAMER, Augustin
1994 *The Samoan Islands*. English translation by T. Verhaaren of *Die
Samoa-Inseln* (1902). Two volumes. Honolulu: University of Hawaii
Press.
- KRYGIER, Martin
1979 'The concept of law and social theory.' *Oxford Journal of Legal
Studies* 2: 155-180.
- LEIBOWITZ, Arnold H.
1980 'American Samoa: decline of a culture.' *California Western
International Law Journal* 10: 220-271.

JOURNAL OF LEGAL PLURALISM
2000 – nr. 45

- LLOYD, Dennis, and Michael D.A. FREEMAN
1985 *Lloyd's Introduction to Jurisprudence*, 5th ed. London: Stevens.
- LUTALI, A.P. and William J. STEWART
1974 'A chieftal system in twentieth century America: legal aspects of the matai system in the territory of American Samoa.' *Georgia Journal of International and Comparative Law* 4: 387-401.
- MacCORMICK, Neil
1983 'Contemporary legal philosophy: the rediscovery of practical reason.' *Journal of Law and Society* 10: 1-18.
- MACPHERSON, C.B.
1978 *Property: Mainstream and Critical Positions*. Toronto: University of Toronto Press.
- MARSACK, C.C.
1961 'Notes on the practice of the court and the principles adopted in the hearing of cases affecting (1) Samoan matai titles; and (2) land held according to customs and usages of Western Samoa.' *Mulinuu: Land and Titles Court*.
- MELEISEA, Malama
1987 *The Making of Modern Samoa: Traditional Authority and Colonial Administration in the Modern History of Western Samoa*. Suva: Institute of Pacific Studies, University of the South Pacific.
- MERRY, Sally Engle
1988 'Legal pluralism.' *Law & Society Review* 22: 869-901.
- MOORE, Sally Falk
1973 'Law and social change: the semi-autonomous social field as an appropriate subject of study.' *Law & Society Review* 7: 719-746.
1986 *Social Facts and Fabrications: 'Customary' Law on Kilimanjaro, 1880-1980*. Cambridge: Cambridge University Press.
- NADER, Laura (ed.)
1965 'The ethnography of law' *American Anthropologist* (Special Publication) 67 (6): 2.
- OLSON, M.D.
1995 *The Spirits of Vaoto: Changing Political Authority, Ideology, and Environmental Practice in Samoa*. PhD dissertation. University of California, Berkeley.
1997 'Regulating custom: land, law, and central judiciary in Samoa.' *Journal of Pacific History* 32: 153-179.
n.d.a "'Indirect rule" and the rule of law in Samoa.' Forthcoming, *Journal of Historical Geography*.
n.d.b 'Context, subtext, and social space in Samoan micro-politics.' Unpublished manuscript.

POLITICS AND POETICS OF SOCIAL TRANSFORMATIONS IN SAMOA
M.D. Olson

- O'MEARA, J. Tim
1987 'Samoa: customary individualism.' Pp. 74-113 in Ron G. Crocombe (ed.), *Land Tenure in the Pacific*, 3rd ed. Suva: Institute of Pacific Studies, University of the South Pacific.
- POLLACK, E. T.
1922 'Administration of affairs in American Samoa.' RG 284 GO 178, Monthly Reports, Governor of American Samoa to The Secretary of the Navy, 348-22, April 18, 1922. San Bruno: United States National Archives.
- PRATT, Rev. George
1911 *Pratt's Grammar and Dictionary of the Samoan Language*, 4th ed. Apia: Malua Printing Press.
- SCHULTZ, Erich
n.d. 'Samoan laws concerning the family, real estate and succession.' English translation by Rev. Father E. Bellwald from the original in German. Typed manuscript, 36 pages. Manoa: The Pacific Collection, University of Hawaii.
- 1911 'The most important principles of Samoan family law, and the laws of inheritance.' *Journal of the Polynesian Society* 20: 43-53.
- SIMPSON, A.W.B.
1973 'The common law and legal theory.' Pp. 77-99 in A.W.B. Simpson (ed.) *Oxford Essays in Jurisprudence (Second Series)*. Oxford: Clarendon Press.
- STARR, June and Jane F. COLLIER (eds.)
1989 *History and Power in the Study of Law: New Directions in Legal Anthropology*. Ithaca: Cornell University Press.
- THOMPSON, John B.
1984 *Studies in the Theory of Ideology*. Berkeley: University of California Press.
- TIFFANY, Sharon W.
1974 'The land and titles court and the regulation of customary title successions and removals in Western Samoa.' *Journal of the Polynesian Society* 83: 35-57.
- 1980 'Politics of land disputes in Western Samoa.' *Oceania* 50: 176-208.
- TIFFANY, Walter W.
1979 'The role of the High Court in matai succession disputes in American Samoa the first seventy years.' *Samoan Pacific Law Journal* 5: 11-29.
- TILLY, Benjamin F.
1901 'Report of Commandant of Naval Station, Tutuila.' Pp. 85-87 in United States Congress, Report of the Assistant Secretary of the Navy. 57-1, House Doc. No. 3. Washington, DC: Government Printing Office.

JOURNAL OF LEGAL PLURALISM
2000 – nr. 45

TURNER, George

1884 *Samoa: A Hundred Years Ago and Long Before*. London: MacMillan.
Reprinted 1984. Suva: Institute of Pacific Studies, University of the
South Pacific.

WHITE, Geoff, and Lamont LINDSTROM (eds.)

1997 *Chiefs Today: Traditional Pacific Leadership and the Postcolonial
State*. Stanford: Stanford University Press.

WOODMAN, Gordon R.

1998 'Ideological combat and social observation: recent debate about legal
pluralism.' *Journal of Legal Pluralism* 42: 21-59.