

**SOCIETY, LAND AND LAW : LAND POLICY IN
WESTERN SAMOA**

by

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In comparison to most other Pacific island nations Western Samoa is culturally and linguistically homogeneous and geographically compact. It is a small nation of 1,090 square miles (2,823 square kilometers) comprising two major and three minor volcanic islands. There is little climatic variation, and differentiation in land quality is based largely on topography and recent vulcanism. Although historically there has been considerable European, Chinese and Tongan intermarriage almost the entire population of 158,000 is of Samoan descent and 89 percent claim to be pure Samoans.(1)(Department of Economic Development 1980:1). All but 10 percent ally themselves in varying degrees with fa'a Samoa, the Samoan traditional way of life, and live in extended family groups in villages. Approximately 2,000 adults are legally classified as having independent or "European" status.(2)(Kleis 1982:6).

The Constitution of Western Samoa provides for a triple system of land tenure giving a base for divergent social, political and economic interests. Eighty percent of all land is held under traditional tenure; 12 percent is Crown land made up largely of the Western Samoan Trust Estates; and the remaining 8 percent is privately owned freehold land. Land policies which initially formalised differences in tenure and socio-economic structures have since reinforced them, and have assisted in widening urban-rural dichotomies. If type of tenure, quality, location and economic value of land are aggregated and then correlated with socio-economic status and location of those who control land, what initially seems a series of minor divisions in homogeneity appear to have more major implications.

Today rapid social change is leading to formal and informal fragmentation and individualisation of all three types of land.

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While in the past the effect of formal policies could be counterbalanced to some extent by informal adaptation and cross-cutting rural-urban linkages, these balancing mechanisms are becoming increasingly ineffective as the periphery is marginalised; as attitudes towards land and the way of life change; and as both urban and rural communities are drawn further into a capitalist economy. This paper looks at the three systems of tenure over time and examines the changing relationships between society, land and law.

The Traditional System

In 1830, the time of first mission contact, the population of Western Samoa was estimated at 47,000 (Fox and Cumberland 1962:120), the majority of whom lived in coastal villages comprising between 200 and 400 people. Pre-contact Samoa was a small-scale, homogeneous society based on subsistence agriculture. There was little division of labour and the social, economic and political structures were interdependent and based upon a pivotal relationship between a system of hierarchically ranked chiefly titles and the control of land. Reciprocity and redistribution were important elements in the lives of the people and control of resources was inherent in the maintenance of status and rank.

The two main foci of power, influence and authority were the extended family, or aiga, and the nu'u, or village. The village was, and is, a virtually autonomous entity made up of a number of aiga and their lands which stretched in non-contiguous plots from the sea inland and were usually divided from other village lands by rivers or ridges. Beyond these lands were village lands and in the interior, district lands. Each aiga was led by a matai, or chief who was elected by the family. He held a specific title to which were linked clearly defined areas of land over which by virtue of his title he had pule, or control. The matai was responsible for organising and controlling the family labour force; the production of food and goods; determining how and by whom aiga land should be used and for the distribution of all produce. Untitled men in the family provided the labour force and had little rank or status.

While all family members with genealogical links to the title holder had rights to live on family lands, their extent depended upon age, sex, residence and closeness of blood links to the title holder. All rights depended on rendering tautua, or service to the matai. If his wishes were not obeyed he had legitimate authority to punish or banish, but such decisions would usually be made in consultation with other family members. Banishment was not as serious as it sounds, as Samoa had a bi-linear inheritance system and young men and women had the choice of residing in any other aiga with which they had links. If land was short in his natal village or opportunities for gaining a title were better within his maternal aiga, an ambitious young man could move to a

village where his possibilities for advancement were greater or where the situation was more congenial. This flexibility not only ensured life-time security for all but also provided checks and balances against the autocratic behaviour of the matai. An overbearing matai found himself without a labour force and was unable to maintain the presentation of food and goods which his social position demanded. Untitled men also had usufruct rights to village lands, which they could work on their own account.

Families generally knew the exact boundaries of their land but since these were not recorded and ambitious matai used land to enhance their positions, disputes were frequent. Such cases were dealt with by the village fono, or council. This comprised all village matai who had legitimate authority to formulate and enforce village laws and to legislate in all arguments. The fono was also responsible for the communal work of the aumaga - the organisation of untitled men. The fono with its system of autonomous authority defined and protected the rights of its people, in particular their rights to land.(3)

Although changes in land use have been dramatic and the system has adapted to external and internal pressures custom is still used as the basic referral point in any matters concerning Samoan customary land.

Colonialism and Change

Western Samoa's history of German, American and British settlement and German and New Zealand administration, together with a high degree of Samoan factionalism, provide the foundation for the present divisive systems of land tenure.

The first mission settlers in the 1830s acquired small portions of land around the coast. Samoa at the time provided a popular trading and re-victualing station for European ships and as trade in coconut oil expanded the German firm Godeffroy and Sons established headquarters in Apia. In the early 1860s the firm's activities expanded to commercial plantations, a move followed by competing British and American interests (Gilson 1970:276). At the time there was no official colonial power, but a series of British, American and German consuls working in collaboration with a group of high ranking Samoan chiefs amongst whom there was an increasing struggle for supremacy. There was no official land policy and documents pertaining to land purchases were placed with the various consuls who were also called on to resolve land disputes between Samoans and Europeans. Captains of visiting warships were also considered to have to the official capacity, if not the knowledge, to deal with such matters.

Initially land in Samoa was sold in fairly small quantities, the price per acre ranging from ten dollars in trade or cash depending on the distance from Apia (Gilson 1970:271). It was

difficult to purchase more than three or four acres at a single transaction because of the ways in which family lands were allocated. The acquisition of large plantations meant dealing with a number of different matai in different villages. Most land was purchased in the vicinity of Apia - a settlement which was rapidly expanding into an important Pacific trading port.(4)

By the mid-1860's concern arose among some Samoan chiefs as to the advisability of selling land and some high ranking chiefs adopted "laws" to wholly forbid its sale, but because "these laws undertook to restrain commerce, they were refused endorsement by the consuls" (Gilson 1970:373).

The situation soon changed as disputes among the Samoans as to which of the highest ranking chiefs should become "king" escalated into full scale civil war - an event doubtless encouraged by the ready availability of arms. By 1871 the demand for weapons was so widespread and so competitive that "land was alienated at a wholesale and apparently suicidal rate"(5) (Gilson 1970:281). A speculative and indiscriminating market for land emerged and large tracts changed hands without consideration of location or the authority of those selling it. By 1880 Godeffroy and Sons had purchased 25,000 acres (10,117 ha) including large and valuable holdings of top quality land near Apia. Other large American and British companies engaged in speculation and development, acquired tracts of land in Upolu and Savai'i (see figure 1). Although there were a number of small companies and individual planters the large German companies dominated the scene. Between 1865 and 1882 German plantations had been laid out and planted at Vaitele, Vailele, Utumapu, Motootua and Tulaele (all in the vicinity of Apia) and at Mulifanua, Falealili and Falelatai.(6) The bulk of alienated land was on the island of Upolu within reasonable distance of the port. With few exceptions it occupied the largest single stretch of fertile land in the country.

By 1889 land sales were so out of hand that the Berlin Conference on Samoan Affairs in 1889, prohibited further purchases outside the Apia metropolitan area and ordered a commission to be set up to investigate the legality of claims to land by foreigners. This was a German initiative and could perhaps be seen as a move to protect German dominance and commercial interests rather than the future stability and rights of the Samoan people. When the commission finally began work in 1893 claims totalled more than twice the total area of the country.(7) The commission considered that ten years of continuous cultivation constituted a valid claim. This favoured German companies which were among the earliest settlers and who could cultivate larger tracts of land because they had monopoly on indentured Melanesian labourers whom they imported in their own ships.(8) The commission conceded 60 percent of German claims but only 7 percent of the American and 3 percent of the british (Lewthwaite 1962:146). The

decision of 1889 effectively provided for the future division between freehold and customary land. Subsequent changes have been minimal.

In 1900 Germany took over the administration of Western Samoa and with a stable government firm land policies were formulated and freehold land properly surveyed and registered. The regime of Solf, the first governor, was paternalistic. He was determined to protect Samoan land and traditions and equally determined to transform customary lands into productive agricultural units. Village planting of copra was enforced and Samoans were encouraged to plant cocoa. The large company plantations were based on copra, cocoa and rubber. Cocoa was highly successful and its economic potential brought about an influx of settlers, resulting in considerable pressure from both settlers and Samoans to reintroduce land sales. Solf remained adamant. In 1907 Solf and the Samoan chiefs formally agreed that land in the immediate vicinity of Apia could be sold, and that as large tracts of customary land were unused, 40 year leases could be arranged through government, but only if they did not hinder native production or reduce native cultivable lands to less than 3 acres (1.21 ha) per capita(9) (Lewthwaite 1962:149). Chinese labour introduced in 1903 assisted the economic boom and, together with the Melanesians, was used not only on plantations but on road works. By 1914 over 2,000 Chinese and 800 Melanesian labourers were in Samoa and almost all major plantations were linked to Apia by waggon or bridle paths.(10)

Although efforts had been made to incorporate Samoans into a monetised economy, with the exception of producing a little copra for sale, they continued to live in much the same way as in the past. By refusing to work as paid labourers Samoans were not drawn into the capitalist systems in the same exploitive way as many other Pacific islanders. Samoan integration into a cash economy was limited and resulted from inter-marriage, not policy. Although cohabitation between Samoans and foreigners was frowned upon by both German and New Zealand administrations(11) cross-cultural marriage was considerable. After two or three generations of private European settlement, many immigrant families by 1900, were part-Samoan, but continued to live a European lifestyle.

The outbreak of the First World War ended what was probably the most economically productive era in Western Samoa's history. In 1914 New Zealand troops occupied Samoa. The military regime of the next five years with its policies of repatriation of indentured labour, heavy export duties and repatriation of many German nationals brought about the economic collapse of the major plantations. Many small planters were forced or chose to abandon their plantations. Following the Peace Treaty in 1919 German properties were granted to New Zealand as war reparations and became known collectively as Crown lands. These highly productive

plantations fell into total disrepair breeding weeds, pests and disease. The 1918 influenza epidemic which killed one-third of the Samoan population added to the social and economic disruption. In 1920 Western Samoa became a League of Nations Trust Territory under New Zealand. The civil administration was forced with decaying plantations, declining population, a poor economic situation and social unrest, and the problems of what to do with the land.

The New Zealand administration was paternalistic, and sought to preserve the interests and traditional culture of the Samoan people. As a result it was more concerned with the interests of the 32,000 Samoans than with the 1,200 mixed-race people or the 835 Europeans.(12) The Samoa Act of 1921 set out the path followed by the New Zealand administration for the next 40 years. Part IX of the Act deemed that land in Samoa was either Crown land, European land or Native land; that it was unlawful "for a Samoan to make any alienation of Samoan land or of any interest in native land whether by way of sale, lease, license or mortgage". Neither could a contract of sale be made regarding crops or minerals not already severed from the ground. Following German precedent the Act allowed for the lease of native lands for periods up to 40 years with the agreement of the Administrator "on such terms as he thinks fit ... and [which] are in the interests and desires of the owners". Revenues were to "be received by the Crown in trust for the owners of the land". Freehold, European land, on the other hand could be sold, leased or mortgaged at the owner's discretion.(13)

The three systems of tenure, each including sizeable quantities of land now became formalised. Customary land remained governed by traditional laws upheld and contained within government legislation. European land was held in fee simple under English common law; and Crown lands came under the control of the State. These three systems and the policies relating to them are now investigated separately.

Crown Lands

When the New Zealand administration took control of Western Samoa the Crown lands (the former German plantations and the property of the German Imperial Government) comprised 113,560 acres (45,958 ha) of which 18,000 acres (7,284 ha) were fully cultivated. There was considerable disagreement as to what to do with these lands. Desperate efforts were made to lease or sell them, but takers were few and most offers unacceptably low. However with the decision to reverse former policy and to reintroduce Chinese labour, together with an increase in cocoa prices many of the more intensively cultivated cocoa plantations were sold or leased to local European residents or new settlers.

By 1924 a decision had been made not to sell further properties. The Annual Report of the Administrator stated that there was:

great satisfaction expressed by representatives of the native race at the decision not to sell its Crown Estate lands, but to temporarily dispose of them by lease, in order that these lands may be available in the future for the natives, should they increase in numbers
AJHR 1924 A-4:4.

The New Zealand Government "reserved the power to the Administrator to define certain areas in the leased properties....for use when required by natives". Richardson was careful to state that making land available "to natives did not materially affect the leasehold value of the estates, but should add considerably to the health and contentment of the natives concerned" (loc.cit).

Land shortages created problems along the north coast of Upolu where Samoan villages were hemmed in by European and Crown Estates. As the Samoans disliked living inland because "they would be ridiculed as inferiors if they lived in the bush(14) (loc.cit), portions of Crown Estates near their villages were made available as grants. At this time the large copra plantations at Vaitele, Vaialele, Mulifanua and Magia were placed under a government Board of Control and to avoid confusion with other Crown Estates were to be known as the New Zealand Reparation Estates. In 1930 the Board of Control was replaced by a general manager whose authority derived directly from the Minister of Island Territories in Wellington. The Estates were operated as a trading concern and over the next 40 years the total profits went to improving health and educational facilities in Samoa.

The New Zealand policy of land redistribution clearly favoured the interests of Samoans. In 1932 part-Europeans and Europeans petitioned the New Zealand parliament "for cutting up and leasing out of the New Zealand Reparation Estates" on the grounds that "such measures will be in the interest of New Zealand as well as the Mandated Territory and furthermore would relieve distress and unemployment existing at present amongst Europeans settlers"(15) (April 19, 1932). This petition prompted an investigation into the Reparation Estates. A report dated August 1932 provides both recommendations and incidentally, a clear picture of the administration's attitudes towards part-Samoans. It dismissed the petitions:

They are signed almost entirely by undesirable persons employed in the various trading establishments, who are almost destitute of means either to buy or farm the plantations and who wish to obtain parts of the cocoa areas which would inevitably be ruined in a few years.

Extensive ownership of land in the islands by impecunious half-castes would be detrimental to the island

Report on the New Zealand Reparation Estates, August 18, 1932.

Based on the rationale that "private ownership can make land pay, where public control fails" and that "most prospective tenants ... are half-caste or white men married to half-castes ...and tropical indolence and lassitude is developed in most of them to its finest flower", the report recommended a gradual disposal by sale and that the proper type of buyer be preferred "remembering that the islands are small and a very few persons may have considerable influence in the future". (op.cit:10).

The opinion of the previous administrator Sir George Richardson was also sought. In a letter published in the press he expressed support for the part-Samoans:

I heartily concur in the proposal to lease the Reparation Estates. I realised some years ago that such a policy would ultimately be necessary in the interests of that comparatively large section of the community - the locally born Europeans, including those of mixed descent...I have always viewed with anxiety the large number of boys who receive a good education ... and have no future prospects...because of the absence of a land policy providing for their absorption as planters
Richardson:1932:3.

However his over-riding concern was for the Samoans. He added, "I satisfied myself that the true interests of the native race would in no way be prejudiced by this policy" and reminded both the public and the administration that:

...these estates are the sole property of New Zealand. They represent the only material reparation the people of this Dominion have received for the stupendous sacrifice of lives and money by New Zealanders in the Great War...

loc.cit .

There was a resultant change in policy. The administration increased its efforts to employ those of part-Samoan descent(16) (AJHR 1934:4) and made land available at Aleisa, on the high, inland slopes of Upolu on 33 year lease. Rental was extremely low and government assisted in the original cost of clearing and fencing. The lease provided for 30 year right of renewal, required the land to be cultivated and enabled the father to pass the leasehold to his children. This land was made available only to those of part-European descent. Those of Chinces extraction were ineligible, it being considered that "those of Chinese/Samoan

blood have considerably more affinity with the Samoan fundamentals of life" (AJHR 1939:6). It is more likely however that their exclusion from land was a matter of administrative embarrassment. Ideally Chinese/Samoans did not exist - it was against the law for Chinese and Samoans to cohabit.

By 1939, 60 part-Samoans and their families were settled at Aleisa on 50 acre (20.23 ha) blocks and an additional 650 acres (263 ha) were being made available. It was estimated at the time that there were 2,900 European/Samoans and provision had been made in Samoan Status Ordinance 1934 for part-Samoans to choose their legal political status (AJHR 1939:8). The Ordinance allowed for a reversion to Samoan status "for instance to resume their rights to Samoan lands"(17) (loc.cit). The choice was usually made on factors of location and lifestyle rather than degree of Samoan blood.

The policy to lease unused estate land to part-Samoans continued as did the policy to make large land grants to villages. Eighteen thousand acres (7,284 ha) were given to villages in Falealili District, 900 (364 ha) at Mulifanua, 2,000' acres (809 ha) at Lauli'i, 1,063 acres (430 ha) at Falelatai and Samatua, 826 acres (334 ha) at Satuimalufilufi and 318 acres (129 ha) to Manono (Seseaga and Burgess 1982:6). Urban villages were granted land at Vaivase, Fagalii, Faleata and Vailele. Many of the cocoa plantations originally leased to Europeans were sold outright. The European families controlling freehold plantations either inherited or made available from the Reparation Estates, had by the 1950s become part-Samoan families.

In 1955 land was leased to part-Chinese. Blocks of 20 acres at Tanumalala, again well inland, were provided on 25 year leases with a further right of renewal, at 8 tala (dollars) a year.

Prior to independence under the Samoa Amendment Act (No.2) of 1956, the assets of the New Zealand Reparation Estates were transferred to the Western Samoa Trust Estates Corporation (WSTEC), controlled by a board of local directors, the majority of whom were appointed by government. The corporation acted as trustee for Samoans and all profits were paid to the government. At independence in 1961 the Estates comprised approximately 33,000 acres (13,355 ha). Of this remaining Estate land, 11,754 acres (4,757 ha) were considered uncultivable(18) (Fox and Cumberland 1962:246/7).

Following independence WSTEC continued the policy of making land available when it was socially or politically expedient and as the pressure on land in and around Apia became greater. As the value of freehold land increased, considerable pressure was placed on government to release ESTEC land for residential and agricultural purposes. Small areas were granted or sold to

village matai as representatives of their families. Rather than providing the expected agricultural and residential land however, much of it was sold for urban sub-division.

By 1981, although economic inputs had been massive,(19) WSTEC was running at a considerable loss and was deeply in debt. "It was inevitable that political considerations would intrude into management decisions"(20) (Leung Wai 1983:3). Political instability had brought about continual management changes and a series of court cases dealing with misappropriation of corporation funds and misuse of assets, increased public dissatisfaction. A way out of the financial problems was to sell WSTEC property near Apia. The Prime Minister, Tofilau Eti declared that the sale had two main purposes: "the first is to raise extra money for WSTEC, the second to provide an environment where people could do as they wish"(21) (Samoa Times 20 January 1983:1). The ESTEC Act of 1977 allowed sale of WSTEC land on approval from Cabinet and in January 1983 the sale of 250 acres (101 ha) of prime peri-urban plantation land was approved. The first 27 lots were sold at T5,000 a quarter acre (.10 ha). An editorial in the Samoa Times (January 20, 1983:13) while commending the board on its decision raised the question "where are people going to get money to buy the land?". This was particularly pertinent as further blocks were priced at between T8,000 and T13,000 a quarter acre. In a nation where the average public servant earns around T3,000 a year and the cost of living is extremely high, it is well beyond the reach of urban Samoans reliant on wages, or rural Samoans reliant on low market prices for copra and taro. Only those who already own freehold land which they can mortgage, those who control the commercial enterprises or those with undisclosed sources of cash can afford to buy it.(22) WSTEC was in a hurry for cash and in July 1983 the National provident Fund purchased the three subdivisions outright for 2.3 million dollars, approximately one million dollars less than WSTEC had expected to realise. There has been no alteration in sale price to the public.

Reviewing the Crown land policies it is clear that since 1920 they have been influenced by the community's need for land and by the attitudes, values and beliefs of the various administrations. These led to increased fragmentation and individual ownership of land and to an unequal distribution along ethnic lines of the economically valuable land. Productive cocoa plantations near Apia were sold to Europeans in the belief that only they had the necessary organisational management and economic skills; high quality, uncultivated land on inland slopes was leased to part-Europeans and Chinese/Samoans to remove them from the urban area where they were considered an embarrassment; while large tracts of both uncultivated and copra plantation near the coast were granted to Samoans, it being recognised that they were not interested in "land in the bush". Land adjoining the Samoan villages was seldom of such high quality as that a little further inland and most of the grant land reverted to customary tenure. Land that has been

individualised more recently has provided much needed village residential and agricultural land but has also provided an opportunity for urban based matai to accumulate capital.

While in the future it may be in the economic interest of government to sell or lease the entire estates, this could result in great social and economic inequalities.

Freehold Land

Freehold land in Western Samoa is held in fee simple. An absolute interest can be bought, sold, mortgaged or leased but sale or long lease is restricted to Samoan citizens, unless consent has been given by the Head of State. All transactions must be registered with the Department of Lands and Surveys and any subdivision approved by the Director of Lands. Value of freehold land is determined by the market. There is no land tax, nor are there rates. No legislation enforces town planning or controls the subdivision or use of land.

As a direct result of historical events and past land policies, a considerable quantity of the freehold land is within easy access of Apia. It is fertile land, largely owned by those of European descent, who with some exceptions are urban based and comprise the nation's merchants, professional and administrative class. Many identify closely with European culture and legally have independent political status. The Constitution provides for individual voting rights for those Samoan citizens who wish to prove their European descent.(23) The Legislative Assembly comprises 47 members, 45 of whom must be matai and voted for only by matai . The other two seats are voted for by the individual voters who have universal suffrage.

Freehold land today is one of the most valuable national assets and one of the few opportunities to accumulate capital. Since 1973, with population growth, urban drift and scarcity of freehold residential land, the price of urban property has increased by between 1500 and 2000 fold. Land at Vaivase Uta, on the outskirts of Apia which sold for T250 an acre in 1973, was resold in 1979 for T2,500 a quarter acre and sold again in 1983 for T12,250 a quarter acre. In the same decade salaries have increased by approximately 30 percent and the value of locally marketed produce by 70 percent. Those who hold customary land or are dependent upon wages are increasingly economically disadvantaged, particularly as customary land remains inalienable and cannot be legally used as security for loans.

Considerable changes are taking place in the distribution of wealth and access to political power. An important factor in these changes is the increasing economic inequality afforded by the contrasting opportunities associated with freehold and customary land. At independence economic and political power were

effectively separated. Economic control rested with the urban part-Samoans whose formal political representation was minimal (2 seats in 47). Political power was in the hands of the largely rural matai and was dependent upon the traditional system of rank and authority. There were some exceptions but they were minor.

As the village agricultural and economic situation declined and as many high ranking, politically important matai moved to Apia(24) the locus and base of power shifted. Simultaneous with the urbanisation of the political elite, many urban part-Samoans strengthened their identification with indigenous Samoan culture and while maintaining a European life-style activated links with their Samoan families and in time accepted matai titles, foregoing their rights as individual voters. This allowed them to stand for election in the constituency from which they derived their title and gave them a numerically greater opportunity of election.(25) It also provided the opportunity for more part-Samoans to be represented in parliament. Bestowing titles on the economically influential provided mutual benefits. The aiga gained access to cash and goods and the new matai access to the status and rank that has traditionally been necessary for political success. A matai also gained access, should he wish to activate it, not only to the family lands pertaining to his title, but also to the family labour force, which he could direct to work where he chose.(26)

Although these events seem to be leading toward a more homogeneous society with greater urban-rural linkages and a more equitable distribution of assets between urban and rural families this has not yet emerged. Political and economic power is aggregating to an urban elite comprising a disproportionately large number of part-Samoans who not only control inherited freehold land and business interests but have also achieved integration into the traditional system, with its specific political advantages. As values change, rank is less important than wealth in determining status and authority. Today many urban Samoans want to live independent lives on privately held land and rural Samoans want to move to town. Few can afford it.

Lack of policies relating to freehold land leaves those who own it in a strong position. While lack of price control or land tax could be seen as a way of obliging rural Samoans to remain on their family lands, it has led to gross overcrowding in the urban and peri-urban villages on customary land to which rural Samoans can claim genealogical links. It also means that many urban dwellers live on land to which they have extremely insecure tenure.(27)

Customary Land

The Constitution (Article 101:2) defines customary land as that held "in accordance with Samoan custom and usage". However neither the Constitution nor any other statute defines "Samoan custom and usage". Customary land remains unsurveyed, unregistered and inalienable except to government. Officially it has no market value. The body responsible for settling all land disputes, for determining Samoan custom and usage and in effect for making and adapting policy with regard to customary lands is the Land and Titles Court, established in 1903 to deal with land and title disputes between Samoans. In 1935 the Native Land and Titles Ordinance 1934 came into force setting out the jurisdiction and power of the Court. It remains virtually unchanged. The Court has exclusive jurisdiction in disputes over customary lands and matai titles and has the responsibility and authority for providing guidelines as to their usage. The Court comprises a President, who is the Chief Justice of the Supreme Court, a number of assessors and eight judges appointed by the Head of State on the advice of the Judicial Services Commission. The decision of the Court is final but it has no direct power to enforce its decisions, and there are instances when its decisions have been overturned by government.(28) It is able to lay down principles that its judges consider have become accepted as custom, but its decisions are a matter of interpretation "which is becoming more difficult as external influences multiply" (Epati 1983:67). As policy is unwritten and informal it is relatively flexible, but the Court is a conservative body concerned with maintaining the dignity and cohesion of the traditional system. Not surprisingly, its interpretation of usage is sometimes a little out of touch with village reality and widespread changes in control of land.

In the interpretation of customary tenure, land comes under the direction of the matai, and the aiga is seen as a cohesive, supportive group. In reality, in many districts there is increasing individualisation and fragmentation of family holdings, and untitled men and their immediate families have much greater autonomy than in the past. Although several attempts have been made to give untitled men formal private access to land, none have been accepted by government. In 1924 the New Zealand administration wanted to provide secure, individual tenure for untitled men. The Fono of Faipule passed legislation to allow untitled men lifetime leases on ten acre holdings within village lands (AJHR 1927:8). But when the administration tried to push the innovation further, proposing that "Samoans be empowered to bequeath their cultivated land to their next of kin or near relatives ...the Faipules felt it would seriously disturb the existing social custom in Samoa" (loc.cit). The entire scheme was dropped. A further effort was made in 1965 with the introduction of the Alienation of Customary Land Act, which permitted the leasing of customary land for periods of 20 years to

matai or foreigners. A move to have this extended to untitled men was defeated (Holmes 1971:98). Again in 1973 a plan to make district lands available on leasehold to untitled men was quashed by the matai .

However, what has proved impossible to achieve by legislation has been achieved by informal adaptation. Changes in the ways in which matai titles are held and by whom are fragmenting family holdings and giving untitled men more individual control. Titles today are bestowed upon younger, better educated, employed and urban-based men, many of whom have been educated overseas and who have little interests in village lands. Although some urban matai appoint a monotaga , or representative, to oversee their village affairs, the matai are no longer immediately concerned with the land. This has led to increased individualisation of usage for untitled men and their ability to pass land which they have cultivated to their sons. While this may have some advantages, an urban-based matai can leave some village families without political representation at village or national level and without adequate access to agricultural assistance or information.(29) When a matai holds more than one title, he represents more than one family, but is allowed only one vote in national elections.

The fragmentation of family lands is assisted by the increased incidence of title splitting. In the past each title usually had only one holder but it is common today to find four or five holders of the one title. Title splitting is usually for election purposes. At independence 4,700 titles were registered, with a ratio of one matai to 21 persons. Today more than 15,000 titles are registered and the ratio is 1 to 11 (Kleis 1982:2). Although some titles are bestowed with the understanding that the holder has no access to land, this stipulation is seldom specified. Today when three or four men share the pule over land which fifteen years ago was the pule of one, the original family holdings are fragmented as each matai establishes his own faletama , or sub-group on his portion of land. The usual pattern is for each matia to take control of the portions of land he worked as an untitled man, but this is a matter for consensus amongst the families. Not surprisingly the situation has made extra work for the Land and Titles Court. Widespread fragmentation is counterbalanced to some extent by outmigration and by the number of matai who are urban based or who have more than one title and maintain active pule in only one location.(30)

As well as the fragmentation and individualisation of customary village lands a tendency has emerged for some ambitious, usually urban, matai to accumulate control over tracts of leasehold, freehold and customary land. With considerable economic resources and the authority to command the family labour force they have moved into newly accessible district lands and by

clear-felling and cultivating have effectively gained informal individual tenure of such land - land that in the past was reserved for the individual use of untitled men.

The situation indicates an adaptation of customary land tenure and usage to modern pressures, but adaptation favours the urban-based, titled men who have access to information, loans, labour and large tracts of land, leaving untitled men working on family lands where they are constrained by small, scattered holdings many of which are under senile tree crops and are no longer fertile. Untitled men seldom have sufficient authority to command labour or loans, and because of the small size of their production units have no marketing influence. Recently however, a slight change in policy regarding agricultural development has resulted in an increased effort by the Rural Development Unit to assist untitled farmers. This shows partial government recognition of the realities of customary tenure.

Conclusions

Historically, Samoa's land policies have brought about changes not only in land tenure but in political, economic and social structures. There are no policies for land reform or the promotion of a more equitable distribution of resources. Earlier policies, by determining how land was held and by whom, have resulted in widening economic and rural-urban inequalities, and have assisted in an aggregation of power and influence to a small urban elite. This apparently homogeneous nation has quite distinct internal social, economic and political divisions based largely on location and control of land. While informal adaptation to land policies and change may in future bring about greater economic and cultural linkages between urban and rural families and the opportunity for a more equitable distribution of resources, this would be counter to experience in other Third World countries. The situation might well result in what Western Samoans consider inconceivable - the growth of a landlord class and its corollary - the landless.

ENDNOTES

1. Cross-cultural marriage and cohabitation has been very widespread since contact. It would be more accurate to state 89 percent of the population adheres to Samoan cultural values.
2. See Kleis, 1982 p.6. Differentiation was originally introduced to allow political representation to Europeans and part-Europeans who did not have access to Samoan lands. Their franchise was originally based on landholding. It is now based on documentary evidence of European forefathers.
3. See Stair, 1897; Turner 1884 p.159-163; and Davidson 1967, p.15-30.
4. See Davidson 1967 p.31-75; Lewthwaite in Fox and Cumberland 1962 p.130-155.
5. Family lands under the control of one matai were in small, non-contiguous plots, seldom totalling more than 50 acres (20.3 ha). When land was sold in large tracts it was probably village or district land over which no one matai or aiga had authority. Such lands were usually sold illegally and led to the same land being sold by different matai to different purchasers.
6. See Fox and Cumberland 1962 p.239-265. Also see Gilson 1970 p.280. Originally plantations contained a wide variety of crops including tobacco, copra, coffee, tea, cotton, cocoa, rubber, pineapples, vanilla, pepper. Today, the large plantations are predominantly copra.
7. See Holmes 1971 p.97. Also see footnote 9.
8. For a full account of Melanesian labour in Western Samoa and its aftermath see Meleisea, 1981. Also see Lewthwaite in Fox and Cumberland 1962 p.142-143.
9. It is uncertain whether this was per capita of the villages concerned or of the entire Samoan population as by this time a number of peri-urban and north coast villages were well below this limit.
10. See Meleisea, 1981 p.7.
11. Governor Self regarded the Samoans as inferior and despised intermarriage between Samoans and Europeans, maintaining it weakened both races. (See Meleisa, 1981:4). The New Zealand administration legislated against cohabitation between Samoans and Chinese labourers.

12. New Zealand policies regarding land, health, and education clearly favoured the interests of the Samoan people over part-Samoans. Part of the administration's mandate was to "promote the material, moral well being and social progress of the native race".
13. See the Samoa Act, 1921. No.16. 7th December 1921.
14. This situation still applies. Together with the phrase "out the back" it has negative connotations. In the past it referred to those who literally lived in the bush and who usually held low status. Today both phrases are used to refer to those who live in rural villages.
15. Petition from Europeans and part-Europeans in Apia, to the Honourable Members of the Petition Committee, New Zealand Parliament. 19th April 1932.
16. The policy of the administration to employ part-Samoans was not altruistic. Many part-Samoans, because they were urban based, had better educational qualifications than Samoans. Their administrative experience gave them a considerable advantage over Samoans at independence as they had a monopoly over both administrative positions and skills. Many part-Samoans became directors of government departments.
17. This Ordinance was basically a property franchise. See footnote 2.
18. There is still uncertainty about the exact status of some of this land and confusion in some villages as to whether customary rules should apply. Recent granting of WSTEC land in the village of Vailele resulted in considerable inter-village violence because of the way it was distributed by the matai in the village. (See Samoa Times June 17, 1983:3).
19. In 1972 the World Bank Agricultural Identification Mission identified WSTEC as having great agricultural potential and considered only capital was lacking. Over the next decade approximately 20 million dollars was made available in soft loans and grants from World Bank, Asian Development Bank, EEC and ADAB.
20. A report on WSTEC by Leung Wai, Director of the Development Bank was reproduced over three issues of the Samoa Times , June 1983.
21. See the Samoa Times , January 20, 1983:1 for the full report.

22. Many Samoan families receive remittances from relatives overseas. In 1982 they were unofficially thought to have amounted to 14 million dollars. Although this cash increment softens differential access to cash, it is usually spent on consumer items, school fees and church donations.
23. A large number of part-Samoans retain allegiance with the aiga and live in rural villages and an increasing number of urban Samoans live individual live-styles on private land and have little contact with the village, but do not have "individual voter" status.
24. Of the 45 Samoan seats in the Legislative Assembly, 26 members reside permanently in or very close to Apia; 6 divide their time between the village and town. The remainder live in the villages (both urban and rural) from which their titles originate. It should be pointed out that there are villages on customary land within the Apia urban area.
25. In the 1982 election 1,702 individual voters voted for two seats. Some Samoan constituencies have as few as between 77 and 100 voters per seat. The Samoan constituency with the largest number of voters per seat is Faasaleleaga No.1 with 646 (See Electoral Rolls, Registry of Electors and Voters).
26. Since indentured Chinese labour was stopped in 1935, shortage of labour has been problem for some part-Samoan planters who do not hold matai titles. Untitled men are still not regarded as having the authority to direct labour. Although this is changing with increased urban drift and economic necessity it is true of rural areas, in particular Savaii.
27. Rural relatives often live on the urban property of matai who are living or visiting overseas. These people are usually untitled and are among the most socially and economically disadvantaged in the urban areas.
28. In 1969 the Ordinance was amended (no.29) to stop increased title splitting. In 1979 the Registrar, Tuiletufuga Enele, removed over 1,000 titles from the register maintaining that they were not created in accordance with Samoan custom. As this involved some influential matai, including an MP, the Legislative Assembly reversed its previous decision.
29. See Thomas, 1981 p.1-35 for an account of differential access to information and assistance.
30. Personal communication with Tuiletufuga Enele, former Registrar of the Land and Titles Court; Tapusatele Tuatagaloa, Registrar, Land and Titles Court; Savea Formai Sapolu, Director, Rural Development Unit; Tuatagaloa Fetu, Faipule, Falealili District. (August/September 1983).

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