

## The changing face of Samoan custom

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### Introduction

This article is dedicated to the late Professor Guy Powles whose academic research and publications have included in-depth studies of Polynesian customs and traditions, in particular those relating to chiefly authority.<sup>1</sup> This paper continues and extends the discussion on Samoan custom and traditional authority to which Powles has significantly contributed.

Whether in casual conversation or in formal discussions among Samoans, reference to Samoan custom portrays a sense that custom is static. To the Samoans custom is the law that defines what is right and wrong, what is good and bad, what is desirable and not desirable, and so forth. This paper argues that there are current practises that clearly indicate a gradual change in custom in the last generation or so. Three examples of aspects of Samoan custom will be discussed in this paper. They include decision-making and punishment in the context of village council meetings (*fono*), and customary land-ownership and usage.<sup>2</sup> All case studies are

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<sup>1</sup> See Guy Powles: 1970. 'Fundamental rights in the Constitution of Western Samoa', Research paper submitted to Victoria University of Wellington, September 1970; 1973. 'The status of customary law in Western Samoa', Master of Law Thesis, Victoria University of Wellington, Wellington, New Zealand; 1979. 'The persistence of Chiefly Power in Western Polynesia', unpublished PhD Thesis, The Australian National University; 1980. 'Law and Authority in Pacific Island Decision Making', *Pacific Perspective*, 9(2):45-55; 1984. 'Relations Between the Executive and the Public Service in Pacific Constitutions', *Pacific Perspective*, 13(1): 79-85; 2005. 'Chiefly Systems and Pacific Island Constitutions: Comparative Trends Relevant for Samoan Studies', in So'o, A and Lafotanoa, T., eds. *The Journal of Samoan Studies*, 1:119-146.

<sup>2</sup> For more reading on Samoan customs and traditions, see Asofou So'o: 1991. 'Universalsuffrage in Western Samoa: The 1991 general elections', Canberra: The Australian National University, Discussion Paper, No. 10; 1998. 'The price of election campaigning in Samoa', in P. Larmour, ed., *Governance and reform in the South Pacific*. Canberra: National Centre for Development Studies, Research School of Pacific and Asian Studies, The Australian National University, Policy Paper 23, pp288-304; 2000a. So'o, A. and Huffer, E., eds., *Governance in SAMOA*. Canberra: Asia Pacific Press, The National University of Samoa; 2000b. 'Civil and political liberty: the case of Samoa', in A. So'o and A. Huffer, eds., *Governance in SAMOA*. Canberra: Asia Pacific Press, The National University of Samoa, pp133-150; 2001. 'Samoa views on consensus and dissent', in So'o,

derived from the personal experience of the present author who is one of the joint-holders of all the titles discussed. He is also a regular participant of the two *fono* being discussed, as one of the joint-holders of both the ranked *ali'i* and *tulāfale* titles of the two village *fono*.

Although personal insights could be interesting, it has its limitations. Firstly, the other participants who are mentioned and/or implicated in the narratives and discussions in the text remain silent as they have not been given the opportunity to have their say and/or critique the text. Secondly, the author may be too close to the selected case studies to be neutral and objective in the manner in which the text is narrated and discussed. In the author's defence, the focus of the paper is to illustrate the theme of gradual change in customs from his own personal experience as a participant in the selected case studies.

*Matai* are chosen by their respective families through a traditional process of consultation until a unanimous choice of candidate or candidates for the family title is found although in some cases this is not possible, in which case submissions are prepared by contesting candidates and their supporters and decided in the Land and Titles Court. It is more common now, compared to 30 years ago, to have multiple holders of one *matai* title. Only in a minority of cases do we have titles that are held by two or three people. It is very rare to have a title that is still held by one person.

The next section discusses in detail the *fono* decision making processes and protocols in two villages.

### Decision-making

Like most if not all villages of Samoa, Village 1 (V1) and Village 2 (V2) were established by single holders of family titles. In most cases the names of these *matai* are mentioned or made

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A, *et al*, eds. *Measina a Samoa*, Apia: Centre for Samoan Studies, The National University of Samoa, 1; 2006. 'Governance and rendered services', in So'o, A, *et al* eds., *The Samoa National Human Development Report*. Apia: The National University of Samoa, pp149-172; ed., 2007a. *Changes in the Matai System: O Suiga i le Fa'amatai*, Apia: Centre for Samoan Studies, The National University of Samoa; 2007b. 'The Rewards and Challenges of Holding Several *Matai* Titles', in A. So'o, ed., *Changes in the Matai System: O Suiga i le Fa'amatai*, Apia: Centre for Samoan Studies, The National University of Samoa, pp229-246; 2008. *Democracy and Custom in Samoa: an uneasy alliance*. Suva, Fiji: IPS Publications, The University of the South Pacific.

reference to in the village *fa'alupega* (ceremonial greetings). Village *fa'alupega* is likened to a village constitution where the names of its founding *matai* are mentioned, as well as their ranking and associated authority in the village *matai* hierarchy. Today, only a very minority of titles are held by single holders, thus the evolution of the following protocols currently observed in villages with multiple holders of what used to be a single family title. V1 and V2 are classic examples of this phenomenon although I shall use only V1 to illuminate this point. The situation in V1 is generally true across the country.

V1 was founded by five families. Each family's title was held by one individual only. As the family and village population grew, two developments began. The first was that the founding titles began to be split among more than one holder. Today, of the five founding titles, one is now split among 11 holders, the second is split among five holders, the third is split among seven holders, the fourth is split among four, and the fifth is split among six. The second development is that lesser titles (*pitovao*) were conferred by the founding titles on other members of their respective families. Functionally, the *pitovao* (literally part of the forest but it refers to that piece of land as a part of the family land under the stewardship of the family *matai*) is primarily to serve the founding titleholder who conferred it and secondly to help serve the village as a whole. *Pitovao* do not speak in village *fono* unless they are asked to do so. In their respective families, they help the founding titleholder administer and manage the affairs of their respective families. In the *fono* however, they attend the *fono* but do not have speaking 'rights'. The total population of *pitovao* in V1 who reside permanently in the village would be somewhere up to 70. About the same number reside permanently in other villages and overseas. The following section discusses the current situation in the *fono* with multiple holders of founding or ranked titles, and *pitovao*.

Certain protocols or customs are observed in all village *fono* when making decisions. In order to understand these protocols, it is important to understand the concepts of ranked titles versus lesser titles, seniority among multiple holders of the same title, seniority among different titles of the same rank, the relationship between the orators (*tulāfale*) and paramount chiefs (*tamāli'i*) and the relationship between and among orators of ranked titles.

Determined by title and village histories, ranked titles (*matai fa'avae* - literally founding titles) are those recognised and accepted in and outside the village to have a say in village decisions. It is likened to a financial member in a club who therefore has the right to vote when making

decisions. Holders of these titles are chosen by their respective families as already explained. Lesser titles are chosen by holders of the ranked titles. Their primary role is to help the ranked titleholder administer their family affairs. Holders of lesser titles do not actively participate in village decision making as they are represented by their respective ranked titleholders. This concept of ranked versus lesser titles applies to holders of both *tamāli'i* and *tulāfale* titles.

In cases where there is more than one holder of a ranked title, seniority could be determined by age, length of time during which one person has held the title compared to 'recent' holders of the same title, or it could be a holder with special leadership qualities respected among the other holders of the same title apart from age and length of title tenure. Seniority in this sense refers to ranking among holders of the same title and applies equally to *tamāli'i* and *tulāfale* titles.

In most villages there could be more than one ranked title of both the *tamāli'i* and *tulāfale* categories. Furthermore, each of these ranked titles, whether *tamāli'i* or *tulāfale*, would have their own senior titleholders in the sense already explained. In such cases, there could also be seniority among the senior holders of both the *tamāli'i* and *tulāfale* ranked titles. In this context, a senior *tamāli'i* is referred to as the *ali'i matua* (literally senior *ali'i*) or the *fa'aaloaloga* (he/she whom the whole village respects). If it is a *tulāfale*, he would be referred to as the *tu'ua*. *Tulāfale* execute village decisions and speak on behalf of the *tamāli'i* and the whole village in formal occasions such as title conferral ceremonies, funerals and during parlays between villages, among others. During village meetings they formally welcome *matai* to the meeting and administer the meeting agenda. Making decisions is the prerogative of the *tamāli'i*. Having briefly discussed the village protocols, or customs, relating to village decision-making generally, I now concentrate on the two village case studies, V1 and V2.

Like all Samoan villages, V1 and V2 have village ceremonial greetings or *fa'alupega*. *Fa'alupega* implies village history and its authority structure. Village protocols and customs are the practical applications of *fa'alupega*. Of the three key ranked titles in the V1 *fono*, two are currently vacant and the third one hardly attends. Of the two that are currently vacant, one is a *tamāli'i* and the other a *tulāfale*. The four titles in the second tier of the village *tamāli'i* rank attend the *fono* regularly. The *tulāfale* title that is currently vacant is the highest rank *tulāfale* in the village. The second tier *tulāfale* titles and the remaining *tulāfale* attend the *fono* regularly. When making decisions in V1, the issue to be discussed is raised by one of the *tulāfale* who take their position of respect at the front of the *fono* house. Once raised the issue

is then discussed by the *tamāli'i* until a decision is reached. Sometimes, the *tulāfale* seated in the front side of the *fono* house may have a view. The decision however is made by the *tamāli'i* once they come to a unanimous viewpoint. Sometimes the *tamāli'i* could also raise an issue to be discussed.

V2 follows the same general process in decision making as V1. The main difference in the decision making process between the two villages is that in V2, the discussion resulting in a decision is the prerogative of the *tamāli'i*. The *tulāfale* could come into the discussion but only to clarify some of the details relating to the case under discussion. In some cases the *tamāli'i* would defer to the view of the senior *tamāli'i* (*ali'i matua* or *fa'aaloaloga*) if a unanimous viewpoint among the *tamāli'i* could not be reached. Similarly, the joint holders of a ranked *tamāli'i* title may defer to the view of their senior colleague as their collective view.

In summary the main change in village decision-making is associated with the relatively recent developments of multiple holders of founding titles and the conferral of lesser titles. This change across the country and certainly in the two villages discussed here must have been present for at least 50 years.

### Punishment

This section gauges the similarities and differences in the two villages' respective customs relating to village punishment over time. In both V1 and V2, decisions relating to punishment are the prerogatives of the village council (*fono*). The *fono* is the supreme authority in the village. It makes the village laws, interprets the laws and executes the laws. All the village *matai* make up the *fono*.

The main difference between the two village *fono* lies in their system of punishment. In order to understand the current system of punishment administered by the two villages it would be helpful to go back in time to about 30 years ago. Back then the guilty family or person would be asked to provide a certain number of pigs and taro to feed the village *fono* as their punishment. The stipulated food items and quantity have to be provided on the same day at a stated time, usually by four in the afternoon. If the guilty family or person fails the deadline, the family or person is suspended from the village. Suspension means one could no longer attend and participate in the village *fono* and all village affairs. It is cutting village ties with

that person or family. It could be likened to a person or family being ex-communicated by the village. If it's a single person that has been found guilty and has therefore to provide the stipulated quantity and type of food for the *fono*, it is not just the guilty person that leaves the *fono* house to source the food penalty, the whole family must leave the *fono* house to accompany their guilty member. This form of punishment is not as severe as banishment where the guilty person or party is told to leave the village.

Today, punishment in V2 could be in the form of provision of food and money although it leans heavily to food. Food could include pigs, cattle, cartons of fish and/or cartons of beef. Money could be any amount specified as part of the punishment. If the punishment is given on the day and the guilty person or family is directed to have the materials and/or money provided on the same day at the stipulated time, the guilty family must abide by that or else a more severe punishment would follow. Sometimes the punishment is provided in the next *fono* if that was the wish of the *fono*. In V1, on the other hand, all punishment is in the form of money. In relatively 'lighter' incidents of un-wanted behaviour like being drunk and being absent in *fono*, the punishment is always in monetary form. Money is mostly saved for village developments and is managed by one of the holders of the ranked *tulāfale* titles or by another *matai* to whom the village council has entrusted that responsibility. Sometimes it is distributed among the senior *matai* present. The amount to provide as punishment depends on the type of crime committed and the degree of seriousness of the crime being committed. The amount ranges from \$10 to \$500 and even more.

The two villages differ slightly in the manner in which decision are made. In V1, the *tulāfale* sitting in the front of the meeting house in-charge of the meeting agenda brings to the attention of the *fono* a case for deliberation. The *tamāli'i* takes the lead in the discussion giving their views as to whether or not the allegation is substantiated. Once all the *tamāli'i* have spoken, the *tulāfale* may contribute to the discussion. The final decision is given by one of the *tamāli'i*. Once the decision of whether or not the allegation is substantiated, the *tulāfale* responsible for the meeting agenda hands down the penalty. If the penalty has to be provided on the same day, the whole family leaves the *fono* until the stipulated quantity of food and/or the amount of money are brought to the *fono*. In V2, on the other hand, the whole discussion until a verdict is reached is the prerogative of the *tamāli'i*. Anyone in the *fono*, besides the *tamāli'i*, could be asked to provide information that is related to the case under discussion. Once a verdict is reached, the *tulāfale* in charge of the meeting agenda states the financial penalty. Only rarely

would the punishment be in food quantity. Generally, in very serious cases, the guilty family or person is directed to provide food instead of money. Moreover, in such cases, the guilty party is directed to have the food provided to the village before the end of the day. The village in this context are all the *matai* in the *fono*. The end of the day is normally about four o'clock in the afternoon. An example of a serious case could be that of repeated disobedience of village directions, repeated non-providing of stipulated penalty, or repeated offending either of the same crime or of a different one.

The main change in village custom highlighted in these case studies is the type of penalty handed out to the guilty party. Up to some point in the past, which is probably about 30 years ago, village penalty in both villages were in the form of food to be provided to the village. That has totally changed to money in V2 except in very serious types of offences as already explained. In V1, on the other hand, it is still predominantly food penalty except in a very few cases where money is given as the penalty. There seems to be two main reasons for opting for a financial punishment. The first is so that the guilty person is personally responsible for paying his own fine. The second is to bring in money the *fono* could save for future village developments.

The cultural impacts of money and food penalties are significantly different. The money penalty follows closely the Western notion of common law and its associated system of penalties. That is, the guilty person is punished, not the whole family. The whole family implies the extended family in contrast to the nuclear family which includes the parents and their children only. When the individual is punished it could also involve the parents and the individual's siblings but not the extended family. It is therefore the guilty person (and sometimes with the assistance of members of his nuclear family) who is responsible for coming up with the money ordered by the *fono* as the penalty. The amount of money to provide depends on the seriousness of the crime committed. Contrastingly, in the case of food penalty, which normally requires the whole family to leave the *fono* and not to return until the type of food and quantity stipulated by the *fono* are provided, it is the whole family of the guilty person that is punished, not just the guilty individual. As a result the impact of this kind of punishment could be explained at two levels. The first level is the deep embarrassment on the whole family that would have to leave the *fono*. It is a deep insult on the whole family. It is even more insulting on the ranked *tamāli'i* who is or are members of the guilty person's family, as they too must leave the *fono*. *Tamāli'i* are the *matai* in the *fono* that decide the fate of the guilty

villagers. However, if that same *tamāli'i* is a member of the guilty person's family, he/she must also leave the *fono* with the rest of the 'guilty family'.

With regard to the money penalty, the guilty individual and sometimes also the members of his/her nuclear family are responsible for providing the amount stipulated by the *fono*, in the case of food penalty, the whole family collectively are responsible for coming up with the food quantity stipulated by the *fono*. The onus is on the family as a whole to discipline their guilty colleague as they would not want to be exposed again to such public shame in the future, as well as having as well as having to contribute resources to the penalty of their guilty colleague. Because the family has been collectively shamed, it becomes their collective responsibility too to discipline their guilty colleague. Arguably, the guilty individual is unlikely to re-offend. In most cases that has been the case.

As already discussed, with regard to a money penalty the guilty individual is responsible for producing the money stipulated by the *fono*, although in most cases his or her nuclear family (parents and brothers and sisters) would also contribute to the penalty. In this way, the collective shame upon the whole family is absent here. It has only been the nuclear family that has been involved instead of the extended family which would include hundreds of people who descend from the family title. As such there is no sense of a family collective responsibility to the guilty individual. Nor have they been made collectively responsible for the guilty individual. As such the collective family level of discipline and/or pressure put on the individual not to misbehave in the future is also missing. In the short the impact on the individual and the family that is part and parcel of the food penalty is absent in the money penalty. Logically, therefore, there is a strong likelihood that the guilty individual will re-offend. This has been the case in V2 as discussed next.

For close to 20 years now, V2 has had the practice of money penalty. The pattern has been that the same individuals are the repeated offenders. Before further comment on this pattern of repeated offending, another possible contributing factor to this pattern needs to be discussed. This factor relates to the frequency and dates of *fono*. About 20 years ago, *fono* were held on Mondays generally once a month. Since then *fono* are convened on Saturdays and when key ranked *tamāli'i* and *tulāfale* of the *fono* are likely to be available. The main reason for the changed date and frequency of meetings relate to the composition of the *fono*. In some villages throughout the country the key ranked *tamāli'i* and *tulāfale* have permanent jobs in town. It is

only logical therefore that *fono* are held on Saturdays when everyone is likely to be available for the *fono*. For the same reason, meetings may not always be held on the expected dates if the key ranked *matai* of the *fono* are not available. For example, because of the important role and rank of the *ali'i matua* in the V2 *fono*, he has to be available for all meetings.

The presence of the *ali'i matua* in V2 *fono* has always been critical. He had the final say in almost all decisions. The *mana* he had acquired over the years of governance experience derived from growing up in the village and being one of the longest members of its *fono* – having had his title conferred at a relatively young age, his modern education, work experience and rank as a judge of the Land and Titles, his leadership skills and deep knowledge of village history and custom has given him a special presence in the village *fono*. Conversely, his absence is even more critical. When he passed away in 2011, a vacuum, in terms of all the leadership qualities and the *mana* with which he was identified, was deeply felt among the villagers.

The period after the passing of the *ali'i matua* was characterised by the non-recognition of a single voice that could influence a final decision and the general authority associated with it. Competing authorities became the norm. Competing authority have sometimes resulted in uncertainty in future village direction. It has also resulted in relatively long spaces between *fono*. Until such a time the *fono* decides who its next *ali'i matua* would be this will be an on-going problem.

In summary, the authority vacuum created by the passing of the *ali'i matua*, the irregular calling of village meetings and the lengthy period of time between meetings thereafter, and the administering of money penalties have collectively contributed to the pattern of repeated offending by the same individuals.

How do V1 and V2 compare in terms of changes in their respective customs? Both villages use money and food penalty although in different degrees. Village 1 uses food as its main form of penalty with money used occasionally. Village 2, on the other hand, uses money more regularly than food as its form of penalty. Only in more serious offences would it resort to the food form of penalty.

Due to a combination of factors already discussed, the pattern of repeated offending of the same individuals in V2 was a major point of discussion in its last two meetings. When it was first discussed the *fono* decided to bring back another aspect of village governance custom that has been allowed to lapse. About 20 years back, the village practice was that as soon as there was an allegation about a villager committing an offence, one of the *tulāfale* would publically indicate in a special manner that the *fono* was being summoned to convene the very next day. The *tulāfale* blows the conch followed by calling out in his loudest voice to indicate to the whole village that a village *fono* would convene the following day. This action is repeated several times whilst walking from one side of the village to the other until the whole length of the village is covered. The prompt summoning of the *fono* is meant to deal with the offence swiftly. It was both punishing the offending party and also a deterrent. This kind of special *fono* is called a *fono manu* (literally, a special *fono* being convened through a public call). The decision in V 2 to bring back the *fono manu* was to help reduce village offending and repeated offending by dealing with those offences and offenders swiftly. *Fono manu* bridges the relatively long gaps between *fono*. One *fono manu* has taken place following an incident of negligent drink-driving which damaged the church property of one of the three main village denominations. *Fono manu* as discussed illustrates an aspect of village custom that was allowed to lay dormant until there was a need to resurrect.

The next section examines the allocation and usage of customary land to gauge changes in Samoan custom relating to those aspects of custom.

### Customary land

The allocation and usage of customary lands in the two families of Family 1 (F1) and Family 2 (F2) will be used as the two case studies in this section. To explain the allocation and usage of customary land in F1, it is important to understand its genealogy first. In early 1800s, the family title M was held by one person. He was succeeded by another single holder who passed away about 60 years ago. He became the last time the family title M was held by one holder. He was in turn succeeded in the early 1960s by three joint-holders. Seeing that the family had expanded to this size in three generations, the joint-holders of M resolved that as from that point on, the three separate branches of the three holders will continue to use the family land which up to that point they were using. At this point, the discussion will focus on Branch 1 (B1) of F1.

About two decades before the verbal resolution of the three holders upon their succession to Title M, the man who eventually became the title-holder in B1 in the 1960s, whose name is Holder 1 (H1), had developed the parcel of land called Land 1 (L1) with his young brother (H2) and H1's two sons (S1 and S2). Three other pieces of land in B1 were developed at about the same time. Land 2 (L2) was developed by H1 and H2's other two brothers, H3 and H4. Land 3 (L3) was also developed by H1 and H2 and H1's two sons. Land 4 (L4) was B1's allocation from the whole parcel of land for Title M land following the distribution by the *fono* at that time of village land to its constituent families.

H1 and H2 are buried in L1. Over the years, H1's son, S1, remained on L2 where he raised his family. When he also passed away, his body was also buried in L1. His children still occupy L1 to this day. When H3 and H4 got married, they left the village and moved to live in the villages of their respective wives to the present day. Thereafter, L2 was used by the siblings of H1 and their respective children. H1's son (S2) and his two daughters (D2 and D3) continue to use L3 to this day. H2's son (S3) and daughter (D1) and their respective children continue to occupy L4 to this day.

In the late 1970s, a small retail shop by a non-family member was constructed on L1 with the approval of S1. The other three siblings of H1 lodged a complaint at the Land and Titles Court against the construction of the retail shop arguing that their consent had not been sought, let alone given. They argued that all siblings of H1 had equal right to L1. In the end, the retail shop was allowed to continue operating under the collective approval of all of H1's siblings. In the early 1990s, family approval was supposedly given to formalise a portion of L1 to be gifted to the Congregational Christian Church for the construction of a church building. At this time, S1's son and S1's young brother S2 were two of the joint-holders of Title M. The signature in the papers that formalised the gifting of that piece of L1 was that of S1's son only. When S1 found out about this, he was not happy and had the issue discussed with his older brother S1 who at the time was lying very sick in bed. He passed away a few days later. S1's argument was that he was the other holder of the M title, the senior of the two, and more importantly, he is also a son of H1. In the end, S1 agreed to have both names sign the papers that gifted away a piece of L1 for the construction of the church.

In the early 1990s, another *matai* of the same village lodged a complaint in the Land and Titles Court against what he alleged to be an illegal occupation of his land. The land to which the

complaint related was L4. As the senior holder of the M title in B1 at the time, it was S2's responsibility to respond to the complaint. S2 and his brother S1 and their respective families had always worked on this land in the late 1950s and early 1960s, so S2 had a good grasp of the history of usage of this land. The Land and Titles Court ruled in favour of B1 whose party in the Court was led by S2. S1, S2's older brother, had passed away, otherwise he would have been the leader of B1's responding party in court. Thereafter one of the grandsons of H2, who at the time of this land dispute occupied L4, continued to occupy L4 down to the present.

How does the land narrative thus far relate to changes in custom? In order to answer this question, it is important to understand first the practices relating to land usage and ownership. As already explained the family title is Title M. When the title was split among three holders in the early 1960s, a new practice was established. That is, the totality of Title M family land was also split among the three holders. In other words, three branches of the family had been established and each branch had the ownership on the family land they had been using/occupying up to the time of the title split. Thereafter, additional practices evolved within B1 in relation to L1 and L4. That is, L1 and L4 have since been occupied by S1 and his children, and H2's son and daughter and their respective children. Despite that, collective ownership of L1 and L4 still resides in the B1 as a whole. The holder of the M title therefore had the ultimate authority over B1 land. The land disputes already referred to in L1 and L4 are evidence of this collective authority over B1 land. In this sense, the practices in B1 are consistent with the custom of collective ownership of land. Secondly, that collective ownership of customary land is entrusted to the current holders of the family title, which, in this case, the holders of the main title of Family M, in B1 Branch. This has been consistent with rulings of the Land and Title's Court in matters of this nature that have been brought before it. Section 37 (Law to be applied) of the Land and Titles Court Act, 1981 gives the Land and Titles Court full jurisdiction over custom and usage to 'decide all matters in accordance with what it considers to be fair and just between the (petitioning) parties' (Section 37 [2]).

But changes in land usage and authority over land in the whole family of Title M were still evolving. Two disputes in the mid-1967s bring to the fore additional changes to existing practices. The first of these disputes followed soon after the passing of one of the three holders of Title M. He was also the eldest of the three joint-holders of the title. Soon after H1's death, the senior members of B1 decided to elect a successor. Although the five children of H1 were present, the question of whether or not to inform the two remaining holders of Title M became an issue. Except S1, his other four siblings wanted to inform the existing holders about their

decision to elect a successor of H1 and that their choice of candidate was S1. S1 and one of their cousins rejected that view. The matter ended up in the Land and Titles Court with two disputing parties. One party comprised S1 and one of their cousins and the second party included the two remaining holders of the family Title M and the other siblings of S1. The court ruled in favour of the second party.

A second dispute arose not long after the first dispute in the same year. This time around, it was a land dispute relating to another family land called L5. S1 had requested the use of that land on which to raise his cattle before the title dispute. The request was given the green light. However, after the title dispute already discussed, a follow up on the original request was declined. Among the reasons given to justify the second decision was that S1 at that time was already holding a *matai* title from another family in the village. The implication is, that perhaps S1 should be requesting land from that family upon which to raise his cattle. Secondly, although it was not made explicit, the authority over L5 resides in the remaining holders of the family title, Title M. Again, this is consistent with the rulings of the Land and Titles Act, 1981 in issues of this nature. However, a family understanding had been breached. As already mentioned, when the title was conferred on three holders in the early 1960s, the clear understanding was that each of the three branches established were allocated the family land that they were occupying and/or using at that time. Now, B1 land following that decision was turned back under the authority of the two existing holders as if its land to which the whole family under Title M are entitled. Thereafter the senior holder of the title occupied L5 into the early 1970s. The next time the title was conferred on new family members was towards the end of 2008. By which time only one of the three original three that jointly held the title in in the early 1960s was still alive. The relatively long span of time between 1967 (the time at which the land of B1 reverted back to the whole family of M Title as already discussed) and 1988, and the fact that the remaining holder of the three original joint-holders of the family title was the last one to occupy Land 5, gave the impression that L5 was collective family land that therefore rightly belongs to the three family branches and not just to B1 Branch. At this point in the evolution of land usage and ownership in the Title M family, it was apparent that usage and ownership of L5 had reverted back to the whole family during the leadership tenure of the senior family title holder.

Other changes in customary land ownership and usage were introduced when Title M was next conferred in late 1988. It was further split among 12 new holders, four from each of the three

branches. The 13<sup>th</sup> holder was the last surviving holder of the title when it was first split in the early 1960s. He passed away two years later. The most senior of the 12 new holders was S2, the younger son of H1. He was responsible for more changes in land usage and authority as explained now. Before his older brother, S1, passed away, S1 and S2 organised to have both the signatures of S2 and S1's son (one of the four joint-holders of the Family M Title in B1 when the title was conferred in 1998) in the official document to formalise the gifting of a portion of L1 for the construction of one of the village churches. These signatures in the gifting document further signify B1's collective ownership of L1. In a separate incident of a land dispute over a portion of L4 that was decided in the Land and Titles Court, S2, as the senior holder of the title in B1, was the leader of his disputing party in the Land and Titles Court hearing. The Court ruled in favour of his party. The court ruling consolidated collective ownership by B1 over L4.

Sometime after the title conferral ceremony in 1988, S2 announced to the whole family that even though there were now 12 holders of Title M, only those who reside permanently in the village would be given land to use. Those residing outside the village inclusive of those living overseas, on the other hand, can only expect land to use when they reside in the village. He also contributed to the history of land usage in L5 as explained now.

In the mid-1990s, a grandson of H2 started to build a small house on L5. He believed that L5 rightly belonged to his sub-branch of B1 as one of his uncles (brother of his mother) was the last person to reside there. As soon as S2, now the senior holder of Title M, found out about this, he summoned to his house the grandson of H2 and told him to pull down his house and vacate the land as L5 does not belong to him or his sub-branch only. It belongs to the whole of B1. Thereafter, S2 occupied L5 and started to raise cattle on it. S2 passed away in late 1999. After three years of family consultations his son, S21, succeeded to the title. The family in the same consultations decided to add one more title-holder per branch. In 2002, S21 and his second cousin - the same person who built his house on L5 only to be told to have it pulled down and to vacate the land – were conferred with Title M. The two holders from the other two branches had theirs conferred two years later after a title dispute petition in the Land and Titles Court.

A petition was lodged by one of the three branches of the Title M family against one of the two holders whose titles were conferred in 2002. Even though the petition was against one of the

holders, it was interpreted by B1 as a petition against both holders. It was also interpreted as a legal attempt by that branch of the family to have the Land and Titles Court give a ruling in their favour as the sole authority over the family title. The additional implication of such a ruling would be that the sole authority over the customary lands of Family M resides with that Branch. The third branch of the family also lodged a petition with the Land and Titles Court to support B1. The Court rules in favour of B1, that is, the two titles that were conferred in late 2002 were confirmed. Interestingly, it was never made explicit in the proceedings of the hearing that complainant's real intention was to claim sole authority of the family title and therefore family lands as well. Perhaps that branch was not confident enough that it would succeed should it go through with a title authority claim. Or perhaps B1 was reading too much into what was probably a straight forward petition against the conferral of the title on those two candidates in 2002.

In the mid-2000s, S21 and his cousin put up a cattle fence on L5. Up to that point, S21 and his siblings had continued occupying L5 as their father before them did up to the time he passed away in the late 1990s. On the same day the fence was put up, S21 received from the village mayor a letter from the same branch of the family that contested his title in the Land and Titles Court in the early 2000s in which the Court ruled in favour of the new titleholders. The authors of the letter claimed that the authority over L5 resided with them. A meeting of the three family branches was called at which the authority-claim over L5 was withdrawn thereby allowing S21 and his cousin to continue with their cattle fence. The clear impression that was conveyed in the family meeting was that L5 belonged to the whole family, not just to S21 and by implication his branch of the family, B1. Ironically, the letter clearly stated that L5 belonged to the authors of the letter. The authors of the letter belong to the same family branch whose senior titleholder in 1967 declined S1 from B1 access to L5. The titleholder in B1, who was the most senior titleholder among the three joint-holders of the family title when it was jointly conferred for the first time in the early 1960s, had passed away earlier in 1967.

Two years ago, the *fono* was looking for a family to offer it land upon which to build a new school. The need to construct a new school followed the destruction of the old school building during Cyclone Even in 2012. At the time when S21 was overseas on duty travel L5 was offered by the 'family' to the School Committee for that purpose. The offer had to be formalised in the *fono*. At the next *fono*, it was informed by the Chairman of the School Committee that the family of Title M had offered L5 upon which to build the new village school. Absent at that

*fono* were the two second cousins of S21, both joint-holders of Title M in B1. They were overseas on a government organised tour. Immediately after conveying to the *fono* the family land offer, S21 politely contested the claim that the ‘family’ had offered L5 to the village because he did not know anything about this offer nor had he given his consent, let alone been asked for his consent. He politely asked the *fono* to delay any decision on the land offer until the whole family had discussed this issue. The *fono*, though disappointed as they were probably given the impression all along that the whole family of Title M would have no issue with gifting L5 to the village, accommodated S21’s request.

Two family meetings followed soon after the *fono*. The family meeting included members of the B1 only at which S21 clarified a number of issues including the fact that he had always had the intention of building his residence on L5. He was also disappointed that even though he was occupying L5, it was gifted to the village without seeking his views. B1 eventually decided to have a meeting with the other two family branches to explain to them that S21 had intended to build a residence on L5. When the whole family met, it was clarified by them that if they had known that there was an intention of S21 to build a residential house on L5, they would not have prematurely gifted L5 to the village. There was no issue therefore about S21 building his house on L5. A few months later S21 started building a house on L5, where he and his family now reside.

The discussion thus far indicates two pulling forces. The first is the pull to have collective ownership of family land. This collective ownership can be in the form of all family land, as in all land belonging to Title M, or it could be in the form of collective ownership on branch land, as in the case of B1. The second pulling force is the pull for individual ownership of land. Individual ownership is a vexed issue. It is individual ownership at the time the claim for ownership is made as initiated by a particular family individual. Over time however, that individual ownership inevitably becomes collective ownership as that individual’s ‘branch’ expands through his/her children and their children and so forth.

It is the combination of these two pulling forces that establishes practices and eventually customs. Generally, customs as used here are institutionalised practices. The latest development in land usage in Title M family explores further the evolution of practices relating to customary land. Although there has not been any family conversation or discussion relating

to L1 and L4, it is generally assumed among the three joint-holders in B1 that L1 and L4 have been allocated to the lines of S1 and H2.

The latest development in family usage has been the construction on L1 and L6 of small retail shops. In the application for business licenses on customary land, the consent of the family matai is required. In the case of joint-holders, everyone must give their consent. Recently, retail shops have been built on L1 and L6. Obviously business licences had to be obtained in order to operate the retail shops. The author, who is another joint-holder of the same title has not been informed about these two retail shops nor was he asked to give his consent. The present author has no issue with the two retail shops as long as they are not used sometime later as justification for authority over L1 and L6. Normally, a complaint would have already been lodged with the Land and Titles Court against the construction of the two retail stores because the present author and probably other joint-holders of the same title have not been informed about these developments. At least the present author has not been informed about the construction of the two retail stores on two separate family lands.

#### *Land in the family of Title N*

Title N is one of the ranked *tamāli'i* titles of the village. It used to be held by one holder until the early 1900s when it was split among two holders. The second joint-holders were conferred the title in 1948. Before they passed away, the title was conferred on two more candidates making it four holders at the same time. The original split between two holders in the early 1900s determined the two branches of the family, Branch C1 (BC1) and Branch C2 (BC2). The two new titles that were conferred in the mid-1980s make it two holders per branch.

Not long after the conferral of the title on two candidates in the late 1940s, the village *fono* had to undertake another allocation of village land in the virgin bush part of the village as the village had grown and more people had been conferred village titles. As with other village families, the family of Title N was allocated land. The two holders divided their parcel between them and their respective branch members. The holder of BC1 further divided his branch portion among the constituent members of his branch who were his cousins, the siblings of their parents who were sisters and brothers. Parcel A was allocated to Cousin 1 (C1). When C1 passed away in the mid-1960s his portion continued to be occupied by his children. When the children of C1 passed away, the land continued to be used by their children in turn. Not long after the senior joint-holder of BC1 passed away in the mid-1990s, the second joint-holder took over

the C1 land without consulting the grand children of C1. This second joint-holder has also passed away and the land originally allocated to C1 is now occupied by his own children.

Holders of ranked titles are referred to as *Sa'o*, literally, correct or just. The implication is that holders of these titles are looked upon and respected by their respective families and the whole village as always doing the right and correct thing. In terms of authority, what they say and decide almost always are accepted. Sometimes, however, they tend to overstep that authority. One of the ways in which the *sa'o* overstep their authority is when they get too selfish and greedy, sometimes preferring their own immediate children over other the family members. The Law Reform Commission is currently undertaking public consultation to get the views of the public on the question of whether or not to curb the authority of the *sa'o*. If it's a positive response, the next question is how that might be done. The bottom line is that there is now a general concern in some quarters of the community about the abuse of *sa'o* authority by some holders.

Back to the issue of the holder of Title N in BC1 regarding the portion allocated to C1 but was later taken over by the incumbent holder of Title N in BC1 at that time that action could be interpreted in two ways. From the point of view of the descents of C1, the take-over was inconsistent with the original division of land among the siblings in BC1. It was a forced take-over as it was taken over without any knowledge of the descents of C1. It was the *sa'o* overstepping his traditional authority. It was abuse of authority. The holder responsible for this 'forced' takeover could have seen it differently. First, he probably thought that it was his legitimate authority to take over the land as he was the *sa'o* and was therefore quite legitimate to do whatever he wants to do. Furthermore, he probably thought that it was a legitimate occupation as there was no descendant of C1 physically occupying the land at the time he took it. Thirdly, that his second cousins, who had been occupying the land, had all passed away and that none of their respective children would stand in his way. Furthermore, one of his cousins, who had passed away, was the only one from their line of the branch who had a *matai* title, even though it was a low-ranking family title. It is possible therefore that he took over the land because this branch of the family was no longer rendering traditional service (*tautua*) to the family. When the author was conferred a low-ranking family title in the late 1990s, the *sa'o* told him that this land was going to be allocated back to him. It never happened. The *sa'o* passed away in the early 2010s.

In 2010, the author and eight other family members of BC1 were conferred with the *sa'o* title. With the remaining *sa'o* following the passing of the senior joint-holder already discussed, there are now 10 holders of the *sa'o* title in BC1. Of that number, three reside permanently overseas, three reside permanently in the village, one resides permanently in the village next door, two reside permanently in town, and the author resides in town during the week days because of work and consistently resides in the village in the weekends and participates actively in all family, village and village church activities. After six years, there has not been any discussion about land, that is, whether there would be land allocated to the new holders or not. If not, then is the whole practice of customary land associated with *sa'o* titles now a practice of the past? This point will be discussed further later when pulling together all the evidence discussed in this paper. From the land practice in this family, another case study is discussed now.

#### *Land in the family of Title O*

The second to the last single holder of Title O (O1) passed away in 1951. During his time, he had allocated portions of the land to his three sisters and one brother. His fourth sister married a minister of religion and had left the family to follow their religious calling. She was not allocated a portion of the family land and her descendants have not returned to the family. By the time the *sa'o* passed away, his siblings had clearly understood their respective land allocations. Their descendants continue to occupy the same lands to this day.

O1's oldest son, O2, succeeded to the title. During his time as the holder of the family title, he allocated his father's portion of the Title O land among his siblings, four sisters and two brothers. The descendants of these siblings still occupy their allocated lands to the present except in one case. O2 had 11 children and because their allocated portion of the land had been filled up, one of O2's daughters and her husband occupied the land allocated to the youngest brother of O2. His portion had been un-occupied as he was a minister of religion who had followed his religious calling. His children have not resided in the family and would very rarely come to visit the family. He has passed away and it is unlikely his children and their children would return to the family.

There was one significant family dispute at the time of O2's tenure. It was significant because it influenced family affairs in the following generation. The family dispute related to the issue of a successor to the *sa'o* title held by O2. It was decided in the Land and Titles Court where

four claimants were appointed. All these four holders had since passed away. Two new holders were elected by the family to administer its affairs. One of the two current holders, the author, had the title transferred to him after his uncle decided to return overseas where he and his family had resided before he took up the title. The title transfer followed consultation with the family where their endorsement was given. The title was formally conferred in late 2006. The author resides permanently in Samoa and the second holder resides permanently overseas. In the practical sense, therefore, the author manages the affairs of the family.

In 2013, the author conferred other family titles on 14 family members to help him administer and manage the family affairs as he resides permanently either in town because of work commitment or at his other residence in the village of one of his parents.

Issues relating to the authority over the family customary land surfaced recently. The issues were associated with Parcels A, B and C. The origin of Parcel A is not very clear. From the family information gathered so far, it appears that Parcel A was allocated at the time during which O1 was holder of Title O to his sisters. The issue arose when the descendants of one of O1's sisters fenced off the whole land for their cattle farm thereby blocking access through this land to other family lands occupied by other family members. Portions of the fenced off land had been occupied by the descendants of the other sisters of O1. The fencing off was therefore taken to mean that only this line of descendants could access the land. It further implied that that line only had the authority on that family land. The issue was brought to the author's attention at one of the family lunch meetings. The author clarified to the whole family two issues. First, access to other family land through this land had been blocked. Second, the access by the other descendants to the fenced-off land had also been blocked. The descendants of O1's sister who fenced off the land were instructed to allow access through the fence for members of the family who access their land through this land and that the access of the descendants of the other sisters of O1 must be allowed. No further complaints had been brought to the author's attention thereby indicating that the issue had been resolved.

At the time O1 was alive, his children had planted on certain places of Land B. Nearly 70 years later after O1 passed away in 1951, his children had treated those places on Land B upon which their parents had planted as their 'individual' portion of Land B. One of the four joint-holders of Title O following the decision of the Land and Titles to split the title among four holders already mentioned, and the last of the four holders to pass away, fenced off that part of the land

for his cattle farm, a joint-initiative with the husband of the daughter of one of the title-holder's first cousin. Not long after the title-holder passed away in 2008 His cousin started building small Samoan houses on his parent's place on the land. It was reported to the author at another family meeting. The author instructed the small houses to be pulled down as it was standing in the middle of the cattle paddock. Despite instructions from the author, the house was not pulled down. Additionally taro and bananas were planted around the house. After taro and banana were planted around the house a fence was put up to fence off this portion of Land B. Worse still the fence kept moving away from its original location obviously to increase the portion of Land B for the interest of the cousin. It came to a point where the son of the deceased titleholder got so frustrated that he verbally stated his frustration to his father's cousin, who reacted violently by instructing the husbands of his two daughters to bash up the son of his deceased cousin. This was reported again to the author at another family meeting at which the author issued a strong reprimand to the offender. The offender was again instructed to stop what he was doing and to pull back his fence to where it was originally located.

### Conclusions

There is evidence from the type of village punishment administered in the two villages discussed that clearly indicate a change in that aspect of custom in the last 30 years. Likewise there is evidence in the collective decision making protocol in the *fono* of the two villages that point to change in that aspect of custom in the last 50 years. Evidence from the development, allocation and usage of customary land also indicate a change in that aspect of custom as well. Family arrangements in the way they develop, allocate and occupy land need to be recorded for consideration in Land and Titles Court in order that if disputes arise in the future that require a decision of the Land and Titles Court, that decision is consistent with existing family practices.

In the cases relating to customary land two observations come to the fore. The first relates to the on-going tension between 'individual' and collective ownership. Collective ownership of course refers to the authority over land residing with the whole family under the leadership of the titleholder(s). Individual ownership on the other hand requires further explanation. Let's say there were three siblings who were all boys. The family land that the three siblings and their father developed is their collective family land. Three generations later, the descendants of each of the three siblings had occupied different lands that originally belonged to the three siblings. There is now a feeling that whichever land that was occupied by each of the three

original siblings should come under the 'individual' authority of their respective descendants. The opposing sentiment however is the feeling among the other descendants of the same siblings that regardless of where the descendants of the original siblings resided, the land of the original siblings and their father belonged to all the descendants collectively regardless of where the descendants of each sibling had resided between now and the time of the original siblings and their father. All the land case studies discussed in this paper has resonance of this ownership dynamic between 'individual' and collective ownership of customary land.

The second observation relates to the authority over land pertaining to successive holders of the family title(s). The question is: Should the next holder(s) of the family title uphold the decisions of their predecessors in the allocation of family land to its members? There are at least two cases already discussed in this paper where there are examples of successors to the family title who have changed the decisions of their predecessors. There are also examples of current holders of the family title trying very hard to uphold the decisions of their predecessors. In all cases, the change and upholding of decisions of previous titleholder(s) have not reached the Land and Titles Court. The Land and Titles Court would have made its views known on this land ownership and usage issue had it come before it. Section 37 of the Land and Titles Court Act, 1981 empowers that Court to decide on matters relating to custom and usage 'in accordance with what it considers to be fair and just between (petitioning) parties' (Section 37.2).