AMERICAN SĀMOAN LAND TENURE—APPORTIONMENT OF COMMUNAL LANDS AND THE ROAD TO INDIVIDUALLY OWNED LAND RIGHTS

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> *When a village was established, the land in that village belonged to the people of that village. A* mātai *could claim land for his family or clan by clearing and then working it. Any land that was not under the direct "*pule*" of a* mātai *remained belonging to the people of the village. Paramount chiefs would have a more general control of larger areas. It is important to keep in mind that the power of a* mātai *was really defined not by title name, but by the land which he had control. Through this system, ownership of land from the mountain peak to the reef was defined among the various families, villages, and districts. Leuma v. Willis,* LT 047-79, slip op. at 4 (Land and Titles Div. Dec. 16, 1980)

Prior to 1800, all lands in American Sāmoa were native lands (Crocombe 1987; 14–18). Native (communal) lands were identified not by boundary markers or survey pegs but as specific tracts of large, medium, and small lands collectively owned and controlled by the *āiga* (family) within a *nu'u* (village) and demarcated by settlement, cultivation, and virgin bush lands where the natural features of rivers and hills were understood as boundary land markers (Meleisea 1987: 1–6). Family clans, descendants of family lines, and successors to the *mātai* (chief) title have a direct interest in the communal lands, because they are what would be considered in the Western context

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"part-owners" of communal lands. The powers and authority vested in mātai leadership over communal lands were (and are still currently) balanced between the state and local governance in the villages and districts. The senior mātai are stewards of the communal lands and serve the families by protecting the assets of the āiga.

The legal pathway to alienate native American Sāmoan lands from family clans and the *faʻamātai* (chiefly institution) began under the American Naval Administration by introducing adverse possession land rights in 1901. These USN Commandant-governors legally recognized "title" to real property to be lawfully acquired (without compensation or consent) by clearing a piece of land and occupying it for a given period. If someone lived on a property belonging to someone else without permission, known or unknown to the true owners, for a certain amount of time, the "squatters" could take a claim to the Naval Court to adversely possess the real property and take individual title to that property. USN Commandant-governors embraced adverse possession rights and allowed native lands to be disentangled from the family clans and village, then owned as "individually," just by squatting (living there with or without permission; *Kaliopa v. Silao*, 2 A.S.R. 2d 1, 1983). The adverse land possession principle has created a judicial anomaly in the American Sāmoa land tenure system.

The Navy's empire-building in American Sāmoa established American law and values, which in some cases overruled Sāmoan customs. Ultimately, US authority demonstrated how Western law would reign supreme when it became entangled with culture. The Navy's power over the administration and adjudication of the introduced Western law, like principles of adverse land possession that require corroboration of testimony, perfectly supported the discourse of empire-building. The Naval Commandant not only was the commander of the Tutuila Naval Station but also the appointed governor and Naval Court Chief Judge. There was no separation of powers or checks and balances during the Naval Administration over American Sāmoa from 1900 to 1950. There were no executive or legislative branches. The US Constitution only partially followed the flag.

The Naval Administration instituted American property laws alongside the traditional Sāmoan land tenure system in American Sāmoa. Adverse land ownership rights were determined to be a milestone of enlightened Western jurisprudence for land issues where Sāmoan customary laws were deemed insufficient, without merit, and uncivilized. The application and usage of adverse possession rights in American Sāmoa allows an individual person to stake a claim to real property based upon various elements of land possession. Actual possession required that all claimants provide evidence through testimony and corroboration, hostile possession required physical occupancy over a requisite period, open and exclusive possession required conspicuous occupation that leaves no doubt regarding ownership by village residents, and notorious possession

required the opportunity for the true owner to learn that his supposed land has an adverse claim upon it (Kelley 1990, 26).

Anthropologist Walter Tiffany describes the Naval Court, when confronted with the difficulty of deciding between land claims premised on hearsay-based family traditions, decided in favor of who was on the land and awarded title according to the common law notion of adverse possession (Tiffany 1981: 136–53). Naval judges at the turn of the twentieth century were deeply concerned about foreign Sāmoans from German Sāmoa. Not just their presence in the newly minted only southern Pacific US territory but the influence of Germany and the Kaiser. The Navy's priority was to demarcate American Sāmoa as an American territory from the German influence and any land claims by Sāmoans in German Sāmoa. The introduction and incorporation of adverse possession rights to native lands are the building blocks of nationalistic empire building, cloaked as an instrument to civilize and standardize Sāmoan society. There was an imbalance between the "individual" versus Sāmoan communal concept by the Navy's emphasis of the individual's right to title. This preference corrodes communal lands available for Sāmoan community land tenure and threatens the faʻamātai (Soʻo 2007; Vaʻai 1999). The apportionment of communal lands deteriorates the authority and power of the faʻamātai system within the village. In effect, this leaves less and less land over which the senior mātai have authority and power as stewards for the āiga.

The Navy preoccupied itself in strategic, military, and geopolitical positioning in the South Pacific region vis-à-vis American Sāmoa territory; thereby, their sole focus was to keep the resident Upolu mātai title holders from using their mātai titles to claim lands in American Sāmoa. No one bothered with the impacts that apportioning customary lands through adverse possession would have upon the communal land holdings—not to mention their natural resources and access to those resources to family clans and their future generations. Adverse land possession claims divided customary lands from family clans lands and the inherent obligations under the faʻamātai. Adverse possession land rights evolved into individually owned land rights in one generation.

Individually owned land tenure is a court-established land tenure classification that was entirely created in the judicial branch without a single piece of legislation in over 100 years to define, address, or limit individual rights. Individually owned land tenure is a hybrid form of land tenure classification, part fee simple but restricted to American Sāmoan ancestry from Tutuila, Aunuʻu, and Manuʻa Islands. Individually owned land tenure has not only resulted in the apportionment of communally owned lands, but also forever disentangles access and usage to family clans, delimits the authority of faʻamātai over the lands and removes the family clan obligation between the mātai and family using the native land.

The unabated and unmonitored growth of registered individually owned lands gave rise to the fear of the 1979 Territorial Planning Commission. This early planning commission foresaw the negative impacts that individually owned land rights would impose upon communal obligations to the family clans and culture. They cautioned that Sāmoans would convert communally owned lands into individually owned lands because there was a growing "minority of Sāmoans that wanted to break free from communal obligations," in part so that these lands then could be willed to their children. They wisely saw the writing on the wall that Americanization, or the "I" culture, beginning to take hold and more and more American Sāmoans wanting to own land that did not carry obligations of the faʻamātai and *faʻasāmoa* (Sāmoan culture, custom, and language) structures. In the 1979 case *Craddick v. Territorial Registrar of American Samoa*, the petitioners asserted that individually owned lands comprised less than 4 percent of all lands in American Sāmoa (*Craddick v. Territorial Registrar of American Samoa,* CA 61–78, slip op. (Trial Div. May 10, 1979) (Order Denying Motion for New Trial or Rehearing Civil Action No. 61-78). The fear of the 1979 Territorial Planning Commission has come to fruition.

From 1979, less than 4 percent of lands were registered with the Territorial Registrar as individually owned; in 2013, 25.7 percent are now registered as individually owned (American Samoa Government Statistical Yearbook 2013, 97). There are more individually owned lands registered with the Territorial Registrar than the American Samoa government is recorded as owning. Meaning, 25.7 percent of the population live apart from the cultural obligations of the family clans and faʻasāmoa on individually owned lands. Lands that were all communally owned in 1880 are now being converted and registered as individually owned, and unlike the family clan lands, do not carry the obligations owed under a communal faʻasāmoa lifestyle. Communally owned lands are being progressively removed from the authority of the faʻamātai, which as a result lessens the authority of the institution and the quantity of land stock available to redistribute to family clans. Family clans to the 25.7 percent of individually owned registrants do not have access, communal usage of the resources, and are disentangled from any cultural, custom, or traditional obligation to communal sharing, distribution, or redistribution during times of need, disaster, or customary need.

Decisions and Vernacular Language Usage in High Court, Tracing Individual Ownership

In land dispute cases from 1900 involving adverse land possession rights, or rather, foreign rights to native lands, rights were based upon the court's determination of rightful ownership through dominion or authority over the lands.

What is peculiar to American Sāmoa in comparison with any other American jurisdiction is the hybrid legal system: the burden of proof rests with the āiga or family clans to prove their occupancy, cultivation, and authority over what they believed were communally owned lands. The pendulum swung so far to the other direction that the burden of proof to evidence land rights rested on the āiga to effectively evidence their dominion or authority over lands starting with the Naval Commandants in the early 1900s then the Department of the Interior appointed judges from the 1950s to 1970s. The Naval Court limited testimonies to forty and thirty years because of their belief that Sāmoan oral history communities without written deeds or surveys are hearsay. Āiga were required to sufficiently evidence their ancestral ties to communal lands to prove their own occupancy and cultivation to retain their lands.

The mātai possesses dominion, authority, and stewardship over the communal lands only if he or she holds the mātai title by consent of the āiga (*Talala v. Logo,* 1 A.S.R. 165, 1907). Acts of dominion and authority over communal lands are not only forms of possession; they are inherent to the faʻamātai and faʻasāmoa systems. Select native lands are left untouched and unassigned to āiga members by the authority of the senior mātai and village council. Under the Naval Administration, however, lands that were left virgin, without an individual occupying the land and evidencing "dominion over it," were reduced to a "virgin bush land" terminology by the Naval Court and further widened by the post-1950 Department of Interior appointed foreign judges. This "virgin bush land" classification assumes that it is without Sāmoan ownership (Coulter 1957, 87). What the Naval Court failed to recognize is that native lands also included unassigned lands that were unoccupied and uncultivated, possibly attributable to low population count, deference to cultural considerations, or preservation for future generations.

Although the Naval Court correctly recognized that land in customary ownership is not permanent and can have fluid occupancy, some Sāmoan traditions purposely leave "virgin bush lands" unoccupied and uncultivated. For example, in Sāmoan custom, sleeping quarters and guest houses of senior mātai title holders and their āiga are built on communal lands. These structures give notice to neighboring villages that certain āiga have claimed such lands under the senior mātai title holder. Native lands were assigned to be left open for such accommodations within the villages. In addition, senior mātai title holders and their āiga are buried on communal lands, and certain lands were purposely kept uncultivated for burial purposes. *Malaga* (journey or visit) that were performed in the early 1900s required *malae* (vast open space) for visiting villages, dignitaries, and guests. There is no perfect comparison between Western and Sāmoan traditions in terms of the exercise of authority and dominion over land ownership. Western law expects to find an individual who is visible and physically

exercising dominion over the lands to claim ownership. Yet, in Sāmoan tradition there are ancient understandings that large tracts of communal lands can go uncultivated and unused for decades. Ownership and authority over them is held under the faʻasāmoa, with senior mātai assigning different land parcels for specific purposes.

Ancient Statute of Merton

As early as 1901, the Naval Court applied English common law with respect to property ownership without ever balancing custom, culture, and dissimilarities in law or environment. Early naval jurists failed to consider the roots of English property rights and ownership when applying common law property rights in American Sāmoa. The Naval Court embraced the legal presumption of individual rights to land, which was based on the eighteenth- and nineteenth-century English common law writings of William Blackstone and Henry Maine and which was frequently referenced in land dispute cases in American Sāmoa from 1901 to the 1940s.

Individual land ownership did not exist at the beginning of English common law; there were, as dictated by the Ancient Statute of Merton, the English statute written by Henry III of England and the Barons, only estates of land (Ancient Statute of Merton 1811; ch. 4, vol. 143, 262). This older land system gave birth to fee simple and freehold types of land tenure. The Crown provided landed estates for tax collection purposes paid by every Duke, Earl, Viscount, Baron, and vassal. The Crown did not award land in perpetuity. Land ownership was not permanent. The Crown had power and control over the peerage system to ensure the Crown had definitive ownership of all land holdings exercising a key demonstration of economic domination over its subjects. Loyal subjects received land estates from the Crown. Anyone perceived to be an enemy of the Crown could be removed from the lands, stripped of noble title, have all their material wealth confiscated by the Crown, and even be imprisoned under a charge of treason. Crown land was given and taken away as the monarchy saw fit.

The Naval Court embraced the Blackstone and Maine legal doctrine to validate the presumption that unoccupied native land, such as virgin bush land did not belong to the district, senior mātai, or family clans. Meaning, all native American Sāmoan land purposely left uncultivated or unoccupied was legally remade, by introduced foreign legal doctrine, into unowned lands belonging to no one.

The presumption that virgin land belongs to no one was not applicable in England, and it was not applicable in American Sāmoa either for two reasons. First, in faʻasāmoa custom, all large and small tracts of land are communally held,

whether the lands are occupied and cultivated or unoccupied and uncultivated. The Naval Court did not recognize these basic Sāmoan principles of land tenure and ruled that land ownership rights could only be evidenced by a person visibly sitting on the land. Second, at the root of English common law there were only estates of land, not individualized land, thereby concluding that unoccupied, uncultivated communal lands in American Sāmoa belonged to no one based on the English common law property rights is spurious at best. In fact, fee tail[1] and life estates[2] were prominently used in England to ensure the noble class's dominion and authority over the lands through the peerage system (Black's Law Dictionary 2001). Land estates awarded to loyal subjects were taxed with sunset dates earmarked for eventual reclamation to the Crown. The Naval Court did not consider or evaluate the potential impacts of applying law derived from a European peerage system on native land ownership in American Sāmoa.

Case Law's Evolution from Adverse Land Possession Rights to Individually Owned Land Tenure

In 1900, there were only two types of land tenure in American Sāmoa: native and freehold land classifications. Figure 1 depicts how individually owned land was developed through adverse land possession principles by the High Court from 1901 through the 1980s.

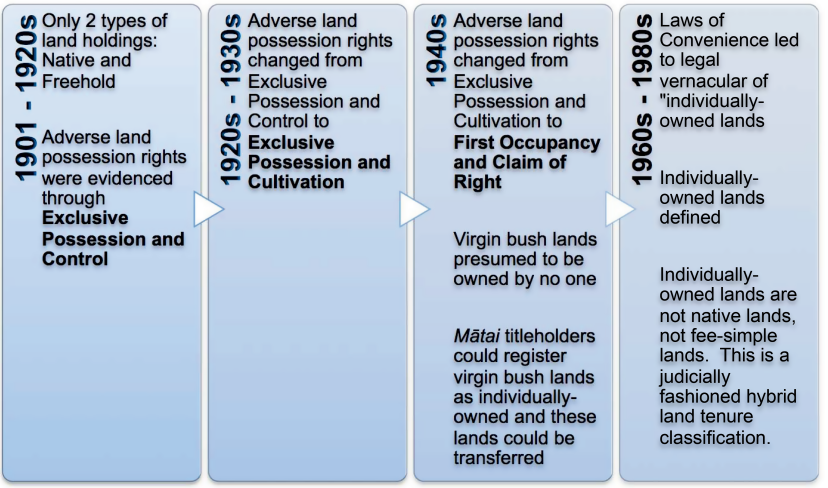

FIGURE 1. **1901–1980s, Tracing Adverse Land Possession Rights to Individually Owned Land Tenure.**

Between 1901 and 1930, the Naval Court under various naval commandants recognized and decreed adverse possession rights to claim legal title over communal lands whose ownership was primarily evidenced by exclusive possession, control, and cultivation. These early cases were built on the premise that adversely possessing land did not require customary consultation or the checks and balances of legislative or executive branches to include American Sāmoan voices. The Naval Court applied adverse possession rights in American Sāmoa simply because it was accepted in every other "civilized" place where Western law reigned supreme. There was no further legal inquiry or customary consultation to determine whether these foreign land rights abrogated the commitments in the Deeds of Cession to protect Sāmoan culture, or how these foreign land rights would coexist with the local culture and customary institutions (faʻamātai and faʻasāmoa). The 1900 and 1904 Deeds of Cession signed by the Manu'a, Tutuila, and Aunu'u reigning high chiefs explicitly protect Sāmoan culture and customary lands in exchange for their allegiance to the United States.

Oral Tradition Termed "Hearsay" and Oral History Limited to Forty Years

Pacific Islanders passed down genealogy, legends, spiritual and cultural myths, taboos, and history of family lands through oral histories. Like other Pacific Islanders, American Sāmoans had no recorded land surveys, written deeds, or any form of written land ownership records. The transition from oral history to written language (Sāmoan and English) only came in the mid-1800s as the missionaries set up schools in the villages that began by teaching Christianity, Western behaviors, and dress to the Sāmoans. Eventually Christianity became imbued into the fabric of Sāmoan society.

In defending native land claims against adverse possession claims, defendants had to evidence continuous possession and cultivation. The Naval Court considered oral testimony (without written records) hearsay and, therefore, inadmissible as evidence. Out of necessity, the Naval Court admitted some oral history (which typically would have been considered hearsay in America) but placed limitations on testimony based on the oral history of family lands (native or communal). In *Tialavea v. Aga* the court stated:

> Most of the tradition was handed down orally—all of it orally for about 200 years for Samoans a good many years after the missionaries came to Samoa about 1830 [. . . .] It is common knowledge that tradition handed down orally over a long period of time is frequently not very trustworthy. This elementary fact is the reason that tradition in one family about an event occurring years before is frequently entirely different from the tradition in another family about the same event.

> And the longer the tradition is handed down, the more it is subject to error. After all, tradition is only hearsay (*Tialavea v. Aga*, 3 A.S.R. 272, 275, 1957).

USN Commandant Harry P. Wood distrusted testimony given by Sāmoans that reported oral history of ancestral claims to land. Wood limited oral history of family knowledge in land ownership disputes to forty years after hearing conflicting testimony between the same and different branches of ancestral lineages laying claim on communal lands. Wood, bewildered by inconsistent testimony, avows:

> I am willing to hear the history of this family as it bears upon this piece of land, but I am not willing to hear the history of this family just as history. The question is who owns this land Auvau or Patea? However I am perfectly willing to listen to the history of the family, if the witness does not state what someone a long time ago said. In a *Mātai* name case I do not go back further than ten *Mātai*s, which is never over 75 years, but in a land case 40 years is far enough. All I want to know is who has undisputed possession of this land for the past 40 years, which is twice the usual time of 20 years. If you cannot prove your case without going back several hundred years your case would not seem to be [a] strong one. I will only allow the family history as it pertains to this particular piece of land for the past 40 years (*Patea v. Auvau*, 1 A.S.R. 380, 1926).

Oral history testimony was belittled as "pure tradition" by the Naval Court and an unacceptable form of evidence (*Tuiolosega v. Voa,* 2 A.S.R. 138, 1941). In *Tuiolosega v. Voa*, the plaintiff, representing himself, claimed that he cleared land called Mati on the island of Olosega in the Manu'a Group that was entirely virgin (bush) land and that he planted coconuts, manioc, bananas, and *taro* (a tropical plant grown for its edible corms) and lived there for a long period of time (*Tuiolosega v. Voa,* 2 A.S.R. 138, 1941). The Letuli family, a branch of the Voa family clan, testified on behalf of the defendant to ownership and based their testimony on oral history passed down from one generation to the next generation. The Letuli witness testified that prior to 1918, the Voa family had entered the bush land and planted fruits and took fruits upon their claim of ownership (*Tuiolosega v. Voa,* 2 A.S.R. 138, 1941). The Naval Court declared that the Letuli family exercised open, notorious, actual, visible, exclusive, continuous, and hostile occupation while under a claim of title before and since 1918. The Letuli family were awarded the land in Olosega because Judge Arthur A. Morrow determined their possession, which was testified to have continued

for more than twenty years and was "clearly adverse to any claims to Tuiolosega or his family." Morrow specified that Tuiolosega's testimony was entirely pure tradition. Oral history of family clan usage and its relationship to land ownership in Sāmoan custom was reduced by the court to testimony that "he had no personal knowledge as to the ownership of the land."[3] Judges reducing oral history testimony as "pure tradition" fractured the customary institutions of faʻamātai and faʻasāmoa by the apportionment of customary lands whereby reduced the power and authority of the faʻamātai system over the use, access, and natural resources on the customary lands. In *Vili v. Faiivae*, Judge Edwin W. Gurr stopped witnesses from testifying about their genealogies because it was believed to be what he described as pure tradition (*Vili Siopitu Faatoa v. Faiivae*, 1 A.S.R. 38, 1906). But, disallowing testimony about genealogy, however conflicting such testimony from opposing parties was, severely limited the opportunity of witnesses to prove their genealogical connections to communal lands and the interconnections to the mātai structure that may have allowed them to occupy and use the land.

In *Tufaga v. Liufau,* the Naval Court stressed that the testimony of both parties was founded solely upon pure tradition and that the High Court cannot favor the statement of one party over another. No party's claim was declared to have any solid foundation in fact (*Tufaga v. Liufau,* 1 A.S.R. 184, 1903). Without written records, and with conflicting testimonies about ownership of lands, the Naval High Court was often left to make assertions or assumptions about where and how the rule of law could be logically applied.

In *Letuli v. Faaea*, the parties claimed ownership over Olosega lands called Falesamātai, which were composed of Falesama-Uta, Falesama-Tai, Fanuaee, Loíloí, and Taufasi. The defendant claimed that their ancestor Afe gave permission to Letuli to enter and use the lands for the past twenty years. Letuli claimed his right to the land was not by permission but through a claim of ownership (*Letuli v. Faaea*, No. 8-1941). Morrow decided that the defendant's witnesses had no personal knowledge that Afe gave Letuli permission to enter Falesamātai, rendering the Letuli testimony pure hearsay. Going even further, Morrow stated at the end of the testimonies that "Tradition in one family does not rise even to the dignity of reputation in the community as to the ownership of land" (*Letuli v. Faaea*, No. 8-1941).

1901–1930

In 1901, USN Commandant-governor Benjamin F. Tilley strongly laid out adverse possession rights in landmark *Leiato v. Howden* to firmly establish the political sovereignty of the US territory as separate from German Sāmoa. Tilley vehemently professed:

> The case before the court was of the greatest importance to all the people of Tutuila; that if this unproved claim of the chief in Upolu were admitted it must be upon the grounds of tradition or family stories; that such would involve nearly all the lands in Tutuila. That the government of the United States could not admit nor approve claims to lands in Tutuila by people in Upolu unless such claims be fully proved: that in the present case there was no evidence whatsoever [. . . .] This case is one of the greatest importance, for the reason that it involves a claim to land by people who have not lived on the land for a long time. Included in the same class of claims are all the claims of the residents of Upolu claiming land in Tutuila. The court has found it imperative—absolutely necessary—to follow the practice that is generally now in every civilized portion of the earth, and that is to recognize that the occupancy of the land for a fixed period, constitutes an ownership of the land (in this case 10 years uninterrupted occupancy). It is absolutely necessary, as I have said, that the government, through the court, shall take such extent to protect the natives of Tutuila, who have so long occupied the land, cultivated and improved it, from the onslaught of claimants from Upolu (*Leiato v. Howden,* 1 A.S.R. 45, 1901)

The newly formed Naval Court applied the principles of adverse land possession, but USN Commandant-governor Uriel Sebree defined the period of occupancy for claiming a prescriptive land title was ten years prior to the land dispute.[4] This ten-year period of occupancy became the standard for all land title claims in American Sāmoa.

In 1905, USN Commandant-governor Charles B.T. Moore defined exclusive and hostile possession in adverse land disputes. In *Sapela v. Mageo,* exclusive possession was defined as "a possession exclusive to all persons whatsoever" and hostile possession was "done or made in such manner and under such circumstances as to leave no doubt that they came to the knowledge of the owner or someone [*sic*] representing him" (*Sapela v. Mageo,* 1 A.S.R. 125, 1905). Moore also emphasized that, although there may have not been written notice, there must have been possession so open and notorious it would raise a presumption of notice to him "equivalent to actual notice" (*Sapela v. Mageo,* 1 A.S.R. 125, 1905). Moore ruled in favor of the plaintiff in *Maloata v. Leoso*, declaring "that the Plaintiff has cultivated and improved the land permanently and has reaped the produce, the fruits of his labor" (*Maloata v. Leoso,* 1 A.S.R. 138, 1905). Although just five years earlier all land was considered native lands, Moore declared that "It was a well known [*sic*] custom in Samoa that the **individual owner of property**, notwithstanding his well-established [*sic*] rights to it, was subject to the will of the community and upon the commission of

any act contrary to the desire of the community he would be banished or have to submit to gross degradation imposed by the people" (emphasis in original; *Maloata v. Leoso,* 1 A.S.R. 138, 1905). Moore may have based this assertion on a misinterpretation of the mātai title system, under which the individual has *pule* (authority) over the native lands at the will of the family clans. He may have understood "individual owner of the property" as meaning that the mātai title holder had authority at the will of the āiga, per the faʻasāmoa custom. The definition of individual in the Sāmoan context, however, is not analogous to the Western definition. The mātai title holder is not perceived as an individual in the Western sense because his authority and dominion over native land is but a link in the Sāmoan customary chain of mātai title holder, senior mātai, orator, village council, county chiefs. Moore introduced a legal term with specific meaning into the laws about land rights vested in an individual—an introduction that became a stepping stone on the path to recognizing individual rights to property.

Between the 1920s and 1930s, the Naval Court's rules of evidence for adverse land rights evolved from exclusive possession and occupancy to exclusive possession and cultivation. Occupation evolved into cultivation. Cultivation became the new requirement to evidence adverse rights. Village ordinances imposed by the USN commandants, under penalty of hefty fines, required all individuals and mātais to cultivate taro, *taʻamū* (variety of giant taro), coconuts, and bananas. In 1926, Wood proclaimed cultivation as a key element to evidence adversely claimed land:

> In whichever one of these examples this particular case comes under, or any land case, it is not necessary to go back into the dim past to clear your title. You do not have to rely on stories that have been handed down in a family for ten generations to establish a title [. . . .] In this particular case, I want to know who is taking care of the land, who is cutting the copra and living there, saying "this is my land" (*Patea v. Auvau*, 1 A.S.R. 380, 1926).

In 1930, the Naval Court further decided that to determine ownership of land, they must consider the āiga that took all produce and profits from the land for over twenty years (*Satele v. Afoa,* 1 A.S.R. 424, 1930). In *Tuimalo v. Mailo*, the Naval Court proclaimed, "The best evidence of communal ownership of land is clearing, planting, cultivating, and building upon the land" (*Tuimalo v. Mailo,* 1 A.S.R. 434 at 26, 1931). Although the requirement of cultivation replaced that of control, exclusive possession remained a steadfast requirement (*Talo v. Tavai,* 2 A.S.R. 63, 1938). For the first fifty years under the Naval Administration, it operated as a unitary system of government without separate branches to

check and balance power, rights, or justice. The post of USN Commandant-governor had supreme powers to expand or limit laws and then indoctrinate them through Naval village and enforce them though ordinances, fines, and imprisonment. The Naval Court purposefully created legal pathways to individual ownership of land founded on American principles and values of individual land ownership, as a territorial appendage, the view of land, possession, and ownership became intertwined with civility and democratic governance. The Naval Court expanded and redefined property laws to replicate Western models of economic development like cultivation, which are also essential revenue measures for government operations of tax collection.

1930–1940

Without any US congressional oversight, commission, or agency to monitor whether the actions of the Naval Administration met the commitments embodied in the two Deeds of Cession and were within the spirit of the 1899 Treaty of Berlin, USN Commandant-governors did next to nothing to research the negative impacts their decisions would have upon customary lands, culture, and traditions. There was no territorial blueprint for Commandants on how to balance civil and military operations in the only South Pacific US outpost. Although the Naval Commandants lacked consistency and long tenure on the bench, Morrow was consistent in his decisions as the longest serving judge in the Naval Court—to the detriment of Sāmoan customary land tenure and faʻamātai.

Morrow made brazen and inaccurate assertions that private land ownership was embodied in faʻasāmoa (*Talo v. Tavai*, 2 A.S.R. 64, 1938). Morrow effectively defined and recognized "private land ownership" in American Sāmoa such that his legal doctrine did not appear to conflict with the two Deeds of Cession. Adverse land possession added the legal possibility of individual ownership to a system of land tenure classification that had previously only had categories of native and freehold. Prefatory right to individual ownership of land was recognized by the Naval Court as distinct and separate from the native or otherwise communal lands under the faʻasāmoa and faʻamātai structures. In 1933, in *Avegalio v. Suafoa*, three āiga members in the Leone district all claimed ownership to a specific parcel of land (*Avegalio v. Suafoa,* 1 A.S.R. 476, 1932). Salaveʻa testified that the land was owned by him as an individual, not by mātai title rights or communally. He claimed it was individual, not individually owned, because this land classification had not yet been created by the court. Salaveʻa testified that he had received the land as an individual, not a native, from his father Fepuleaʻi, and that Fepuleaʻi had received the land as an individual from his father, Suʻa. Wood seemed to be taken back by this bold claim of individual ownership, because in court he proclaimed, "You know, do you not, that there

is very little land owned in American Samoa by individuals, how did it happen that this land came to be owned by an individual" (*Avegalio v. Suafoa,* 1 A.S.R. 476, 1932). Wood apportioned the land. Avegalio was awarded land west of the stream and north from the road passing through it to the northern boundary. Wood declared that the Salave'a family did not use or cultivate the land for at least twenty years and the weight of testimony favored the Suafoa family having had an uninterrupted and adverse use of the period for at least forty years under a claim of right.

Laws of Convenience

Morrow stated that the Naval Court had determined the possession of land created presumption of ownership in the possessor (*Avegalio v. Suafoa,* 1 A.S.R. 476, 1932). In *Talo v. Tavai*, Morrow relied upon sixth century *Corpus Juris Civilis* (first codification of Roman and Civil Law), seventeenth-century English statutes of adverse land possession rights in possessor and occupant and early twentieth-century work by real property scholar Herbert Tiffany. Taken together, these sources creatively devised limitations on how native land might be held under Sāmoan custom. Under Sāmoan custom, dispersed and low population numbers and large tracts of land with unassigned parcels would always make exclusive possession difficult to prove. Applying ancient Western real property principles without carefully considering the long-term impacts to Sāmoan custom and native lands effectively rubber-stamped the "Laws of Convenience," giving weight to civil codes and laws that favored the possessor who is in "open, notorious, actual, visible, exclusive, continuous, hostile, and [. . .] adverse possession." American Sāmoa High Court Justice Thomas Murphy stated on record when dealing with communal land disputes the court introduced a series of ad hoc decisions has resulted in what he termed "Law of Convenience" (*Kaliopa v. Silao*, 2 A.S.R. 2d 1, 1983). The Law of Convenience introduced Western property concepts: actual, hostile, open, notorious, exclusive, and continuous or uninterrupted for a statutory period where elements of adverse possession were applied to settle and stabilize land disputes. In *Kaliopa*, it states:

> As Justice Murphy has often commented, the so-called law in the field of communal land ownership in American Samoa consists of a series of ad hoc decisions in which various courts have come to varying results in differing factual situations. This has resulted in what Justice Murphy calls the Law of Convenience. This is not at all surprising as, during the last 83 years the members of this court have tried to blend a thousand-year-old Polynesian culture with a contemporary legal

> system which has its roots in the English common law. The Treaty of Cession guaranteed the Samoan way of life and the Constitution of American Samoa advises that it is our responsibility to protect persons of Samoan ancestry against destruction of the Samoan way of life. A.S.C.A. section 1.0201 states that we should apply the common law of England "as is suitable to conditions in American Samoa." Section 1.0202 states that the customs of the Samoan people are to be preserved. A picture emerges that is bright and clear—the protection of the Samoan way of life is the court's primary responsibility. The twin cornerstones of the Samoan way of life are communal land tenure and the matai system. Each is essential to the other. Without the matai system to administer it, the communal land system becomes anarchy. Without the communal land system, there is no reason for a matai. In American Samoa, the family owns the land. A matai, selected by, and object to removal by, the family, allots the land to family members who pay a type of compensation comparable to rent in the way of service to the matai—actually, to the family. In return the matai undertakes the protection and well-being of the family members. Such is the basic Samoan custom and tradition. We western judges, schooled in the common law, valiantly attempt to support the matai system and communal land tenure and, in so doing, all too often confuse the issues by attempting to apply common law labels with which we are comfortable to factual situations which are controlled by Samoan custom and tradition. Accordingly, the average opinion sets forth a factual situation, states the controlling Samoan custom, then attempts to apply a common law principle—together with supporting citations—in an attempt to justify the decision. We should stop trying to rationalize Samoan customs and traditions by recourse to common law principles and precedents. We should accept Samoan customs and traditions as controlling authority. These customs and traditions need no common law support. Actually common law principles, which are based on private ownership of land, are often the antithesis of Samoan customs and traditions which are based on communal land tenure (*Kaliopa v. Silao*, 2 A.S.R. 2d 1, 1983).

Individually Owned Lands

In 1938, Morrow manufactured individually owned right to land ownership in American Sāmoa. In the case of *Faʻaafe and Unaʻi v. Sioeli*, Morrow awarded individual land ownership through adverse possession to the plaintiffs as

tenants in common (*Faaafe v. Unai,* 2 A.S.R. 22, 1938). This decision to manufacture individually owned land rights was a judicially created land right without a legislative or executive branch to balance these introduced rights with the will of the people.

Apportioning native lands is more than splitting lands from family clans to individuals and leaving less lands to the family clans and stewardship authority under the faʻamātai. Individuals that own land, under the individually owned land classification are disentangled from the family clans and obligations to rendering service by using native lands for redistribution and assignment for specific usage or nonusage for family clan and senior mātai needs. Senior mātai have less and less land to redistribute, preserve, or use for family clan needs; ultimately weakening the faʻamātai system in deference to a Western lifestyle of individual ownership of real property. Morrow manufactured a land right to apportion native lands from family clans and the faʻamātai. The American dream of individual land ownership does not sit easily alongside with faʻasāmoa or faʻamātai institutions, which require native land to survive as an institution.

Sioeli surveyed "Asiapa" land in Fagatogo and claimed that this land was not native land but individually owned, whereas the plaintiffs, objecting to his land registration, claimed Asiapa was individually owned by Faʻaafe and Unaʻi (*Faaafe v. Unai*, 2 A.S.R. 22, 1938). Without having provided any factual or legal references in law, Morrow declared that, based on the land surveys of Asiapa and both party's sworn testimonies, Asiapa was not native land but individually owned. The claim by both parties that Asiapa was individually owned outside of native lands is preposterous; in 1900, there was only native and freehold land tenure. Sioeli testified that approximately sixty years before the case was heard, Mailo had sold the land to Sioeli's father, Taeu Paea, and that upon his death, Asiapa was willed to Sioeli (*Faaafe v. Unai,* 2 A.S.R. 22, 1938). This testimony concludes that in 1878 Mailo sold "Asiapa" land to Taeau Paea as individually owned land. This could not have happened in 1878 because there were only native lands in American Sāmoa at that time and a very select few parcels of freehold lands.

Morrow did not critically question Sioeli's testimony how the land was individually owned by his father or willed to him; he side-stepped these assertions altogether by deciding Sioeli's entire testimony was based on hearsay (*Faaafe v. Unai,* 2 A.S.R. 22, 1938). Not one witness in this case or any other case from the 1900s have testified how and when these lands were not native and instead, individually owned (other than native ownership under the matāi). From 1900 to 1938, no single case ever explicitly defined or identified how, where, or when native lands were remade into "private or individual" lands. There were only generalizations from the bench with strong affirmations that private ownership existed in Sāmoan custom. Morrow's presumption that private ownership

existed in Sāmoan custom drove forward the widespread application of adverse possession of lands to legally convert native land into individually owned land.

1940–1960

Between 1930 and 1940, "Law of Convenience" rights began to apportion native lands in American Sāmoa. The concept of individually owned land was cemented and enlarged by the Naval Court when native virgin (bush) land was legally defined as belonging to no one. Virgin (bush) land belonging to no one is legal fiction.

Between 1945 and 1947, the Naval Court placed the burden of proving positive title on the traditional mātai title holder. Mātai were shouldered with the burden to factually evidence occupation and claim of right to own native lands under the faʻamātai and faʻasāmoa institutions as stewards on behalf of the family clans. A series of cases starting in 1945 established a presumption that uncultivated virgin lands were "not native lands" and belonged to no one. This meant that all uncultivated virgin lands were presumed to not be under the faʻasāmoa or faʻamātai pule.

In the 1945 case *Tiumalu v. Lutu*, the Naval Court acknowledged the rights of individually owned land. This landmark case established the presumption of individual ownership, as well as the right for the property to be inheritable (*Tiumalu v. Lutu,* 2 A.S.R. 222, 224, 1945). In Tiumalu, the court divided ownership of two pieces of land, Asi and Sigataupule, in Fagatogo village. Sigataupule land was awarded as individually owned to Lutu Simaile (the defendant) not through customary practices but through intestate succession of right through the defendant's deceased father, Afoa. In other words, the court granted the title vested in Lutu Simaile through inheritance. In contrast, Asi land was awarded to the plaintiffs as communally owned. The court acknowledged that, absent evidence of communal ownership, land could be defined as "individually, as opposed to communally, owned" (*Tiumalu v. Lutu,* 2 A.S.R. 222, 224, 1945). This meant that if the parties in dispute claimed that these lands belong to no mātai or were not part of āiga lands—for example, virgin lands—the Naval Court may declare these lands freely available to become individualized.

The Naval Administration opened the door to a form of alienation of lands. Alienating native lands from family clans (and future generations) and the faʻasāmoa and faʻamātai institutions. Morrow's decisions further laid the groundwork for individually owned land tenure. Several years later, in *Tago v. Mauga,* Morrow again made declarations about Sāmoan culture and land ownership without bothering to pinpoint legal precedent or historical foundation, stating that "Samoans acquire title to bush land under custom by open occupation and use coupled with claim of ownership" (*Tago v. Mauga,* 2 A.S.R. 285, 1947). Morrow

makes clear distinctions between bush lands and native lands: this improper legal fiction opens the floodgates to individual land ownership by adversely possessing native lands owned by the district but left unoccupied or uncultivated by the senior mātai. Bush lands belonging to no one is not based on Sāmoan culture, factual foundation, or legal justification. In *Tago,* Morrow eagerly accepted Vaipito as individually owned land and gave Sami and Faʻafeu Mauga individual land rights based on testimony from persons such as Pulu and Soliai, who claimed that the previous mātai title holder Mauga Moimoi owned it individually and not through his paramount mātai title (*Tago v. Mauga,* 2 A.S.R. 285, 1947).[5] Morrow expanded the alienation of lands, by ruling that land could be freely willed to his heirs, his adopted daughters Sami and Faʻafeu (*Tago v. Mauga,* 2 A.S.R. 285 at 7, 1947). Morrow accepts the testimony on behalf of Sami and Faʻafeu Mauga that Mauga Moimoi entered Vaipito while it was bush land "owned by no one" and that he acquired title to it through first occupancy and claim of right (*Tago v. Mauga,* 2 A.S.R. 285 at 2, 1947). Morrow mentions briefly the fact that Sāmoan custom does in fact address first occupancy and claim of rights but does not supply factual foundation or precedent. Not once in any of his cases does Morrow provide the legal basis for how and when virgin lands became "owned by no one" within Sāmoan custom. Morrow declared that in Sāmoan custom, individual land ownership existed and then later without factual foundation declared that bush lands belonged to no one (*Talo v. Tavai*, 2 A.S.R. 64, 1938).

Attributes of Individually Owned Lands

In 1948, Morrow partially defined individually owned land by attributing certain characteristics to that land classification. In *Taatiatia v. Misi*, Morrow continued to declare that virgin bush land belonged to no one, applying the old English law of Blackstone and Maine to the American Sāmoan land system (*Taatiatia v. Misi*, 2 A.S.R. 346, 347, 1948). Morrow created new methods for converting land to individual ownership by ruling that individually owned lands could be created if a mātai gives them away as such (*Gi v. Taetafea,* 2 A.S.R. 401, 403, 1948). Morrow claimed that this had been done in the past by pronouncing:

> We know judicially that some *mātai*s in American Samoa have, with the consent of their family members, given family lands outright to certain members of their families. Taetafea testified that she was present and heard old Gi in 1905 make a gift of this land to her and her husband and that such gift was a reward for splendid service rendered by her husband and herself to Gi; also that such gift was followed by possession by the donees (*Gi v. Taetafea,* 2 A.S.R. 401, 403 at 10, 1948)

In *Muli v. Ofoia*, several weeks later Morrow declared that, if virgin, unclaimed land is occupied and cleared for an individual's benefit, the court would determine this as sufficient evidence to right of individual ownership (*Muli v. Ofoia*, 2 A.S.R. 408, 410, 1948). The twentieth-century laws against the alienation of land were meant to stop foreigners from stripping away native lands from Sāmoans; instead, native lands were being apportioned from faʻasāmoa custom and through its improper legal fiction that virgin lands belong to no one.

1960–1980

On July 1, 1951, the Secretary of Interior took over the administration over the territory of American Sāmoa. The Naval Court transitioned into a civilian High Court with judges appointed by the Secretary of Interior. By the 1960s, individually owned land tenure had become firmly planted in the legal vernacular of American Sāmoan land tenure. Sāmoans, both mātais and non-mātai, recognized that native lands could be apportioned and registered as individually owned lands if an individual continued to adversely possess the land for a statutory period or if an individual cleared virgin bush land or if a mātai gifted the land as individually owned.

In *Government v. Letuli* the High Court awarded very large parcels of individually owned land on prime real estate near the only international airport by citing the earlier cases of acquisition of title by first occupancy and claim of ownership:

> This court has ruled many times that Samoans may acquire title to land through first occupancy accompanied by claim of ownership. Soliai v. Lagafua, No. 5- 1949 (H.C. of Am. S.); Faatiliga v. Fano, No. 89-1948 (H.C. of Am. S.); Gi v. Teʻo, No. 35-1961 (H.C. of Am. S.); Magalei et al., Lualemaga et al., No. 60- 1961 (H.C. of Am. S.). This doctrine of the acquisition of title by first occupancy coupled with a claim of ownership is approved in Main's Ancient Law (3rd Am. Ed.) 238. See also 2 Blackstone 8. The most common way for a Samoan to acquire title to land is to clear a portion of the virgin bush, put it in plantations on the cleared area, and claim it as his own land or the communal land of his family. This is a recognized way of acquiring land of his family. This is a recognized way of acquiring land according to Samoan customs (*Government v. Letuli,* LT No. 016-63, 1963).

The High Court again referred to Blackstone and Maine, using the same irrelevant English philosophies, to justify the individualization of land ownership in

American Sāmoa. Earlier 1920s and 1930s court decisions had replaced exclusive possession and cultivation requirements with first occupancy and claim of right. After sixty years, the *Fono* (bi-cameral Legislature) tried to define individually owned lands, but it failed to pass by majority vote in two consecutive Fono sessions:

> Sec.9.0103—INDIVIDUALLY OWNED LAND: Individually owned land means land that is owned by a person in one of the first two categories named in Sec. 9.0102, or that is in court grants prior to 1900. Such land may be conveyed only to a person or family in the categories mentioned in Sec.9.0102, except that it may be inherited by devise or descent under the laws of intestate succession, by natural lineal descendants of the owner. If no person is qualified to inherit, the title shall revert to the family from which the title was derived.[6]

At least seven attempts to define individually owned lands never made it out of the first house.[7] As the Fono couldn't muster enough political will to define this judicially made land tenure, the High Court proceeded to invent its own definition.

In the 1974 case *Haleck v. Tuia*, the High Court expanded once again the definition of individually owned land rights by deciding that individual land rights are established when a person enters virgin bush land that no other person previously cultivated, provided that the first occupier clears the entire land "substantially," and a "considerable plantation was developed" (*Haleck v. Tuia*, LT No. 1384-74, 1974). Still other possibilities for creating acceptable types of individually owned land registrations were discussed, including no objections being made to the registering of the land at the Territorial Registrar's office; an individual entering the land on other than the direction of mātai; the work being done entirely at the individual's expense; and the work being other than a "communal effort" (*Haleck v. Tuia*, LT No. 1384-74, 1974). The High Court added another definition for individually owned land. Whereby previously the registrant needed to be the first occupant and establish a claim of right when clearing virgin bush land, in 1974, the court modified the claim of right, stating that it could be based on "substantially clearing the entire land." By this time in the late 1970s, individually owned land rights and the concept of private land ownership had taken hold within American Sāmoa.

The defining attributes and expanding definitions of individually owned land was built on precedent cases, and the 1977 *Fanene v. Talio* case perfectly reveals how individually owned rights apportions communal lands and disentangles family clans from faʻamātai and faʻasāmoa institutions. The access and use of resources that had once been shared among family clans on contiguous

parcels of land were forever disrupted. *Fanene v. Talio* was complicated because eleven cases were consolidated into one trial, some parties claimed sections of Malaeimi land as individually owned, others claimed sections as communally owned, several leases existed, and some parcels were large lands and others much smaller lands (*Fanene v. Talio,* LT 64-77, slip op., Trial Div. April 22, 1980). Fanene claimed 265.9 acres as individually owned although a major part of the entire acreage remained virgin bush. Fonoti claimed 35 acres ("Alatutui") as individually owned land based on adverse use of land for over thirty years and first occupant claims. Fagaima claimed 34 acres of individually owned land based on adverse possession of thirty years. Tauiliili claimed 24.4 acres of individually owned land through clearing virgin bush in its entirety and performing some cultivation. Sotoa claimed 21.15 acres of individually owned land entirely cleared by his father and cultivated and thereby demonstrating dominion over the land. Moeitai claimed 1 acre of individually owned land. Uiva Te'o claimed 79.86 acres as individually owned land on the extreme southwest portion of the Fanene lands called "Etena." Tuiaana Moi claimed individually owned lands through adverse possession and first occupant claims. Heirs of Niue Malufau claimed 12.55 acres and 18.015 acres. Fanene claimed lands of 265.9 acres. Leapaga claimed 4.37 acres of land ("Lepine") as communal property. One of the rulings by the High Court in the eleven consolidated cases decided in favor of Fagaima, who was declared the individual owner of the 34.04 acres of land against Fonoti, Tauiliili, and Sotoa āiga. Fagaima's winning claim shows how 34.04 acres were forever removed from the total 265.9 acres that once were used by the Fanene āiga.

The Malaeimi land parcels were divided amongst āiga clans and made into individually owned lands. Most of these land parcels were individualized because of the 1960s cases that established first occupancy and claim of right as elements for establishing individual ownership, and the other cases were individualized by outright adverse possession or by clearing virgin bush land in its entirety. On appeal, Justice Richard I. Miyamoto described individually owned land as that land:

> (1) cleared in its entirety or substantially so from the virgin bush by an individual through his own initiative and not by, for or under the direction of his aiga or the senior mātai, (2) cultivated in its entirety or substantially so by him, and (3) occupied by him or his family or agents continuously from the time of the clearing of the bush (*Leuma, Avegalio, et al. v. Willis,* LT 47-79, slip op., Land and Titles Div. December 16, 1980).

Miyamoto's ruling has become the leading case on defining individually owned land rights. This case set the legal pathway to "how to convert and

register" bush lands into individually owned lands, side-stepping the *Saʻo* (mayor) and faʻamātai. Miyamoto introduced a lower standard for individualized land by stating that the land could be cleared substantially and not necessarily in its entirety. The pathway to individual ownership once again opened even wider.

Close the Pathway in Legislation or Referendum Vote

From the missionary era, the communal nature of traditional Sāmoan land ownership was thought to be a hindrance to progress and civility. George Turner suggested that the Sāmoan "communistic system is a sad hindrance to the industrious and eats like a canker worm at the roots of individual and national progress" (Turner 1884, 161). In the very first 1900 land dispute cases, USN Commandants were resolute on drawing a line in the sand between German Sāmoa and US territory of American Sāmoa. In the Navy's eyes, alienation of land by German Sāmoans symbolized a failure of their mission to establish a strong American (military) presence. The preoccupation with foreign Sāmoans were fueled by the fear of German Sāmoans "owning" American Sāmoan land and using their "foreign" mātai titles to land claims from German Sāmoa.

Without a blueprint of territorial oversight and administration over a people dissimilar in language, history, culture, and custom; the weight of justice without a governing system of checks and balances empowers the state with absolute control. Individually owned land classification was developed by American Sāmoa case law, not by statute or democratic vote and is a category of land holding that recognizes personal "native effort" without communal ties settling and occupying bush land (*American Samoa Government v. Haleck*, LT 10-08, slip op. at 6, Trial Div. May 1, 2013). Native land currently accounts for 26.7 percent or 2,106 aces of registered lands. Individually owned land accounts for 25.7 percent or 2,029 acres of registered land. Church-owned registered land accounts for 13.1 percent or 1,030 acres and government-owned accounts for 21.9 percent or 1,651 acres of registered land. The total land acreage in American Sāmoa is 48,767 acres or approximately 76 square miles. About two-thirds of all land acreage in American Sāmoa cannot be used for residential or commercial activity because the land is sloping, porous, and steep. Therefore, there are about 32,511 acres of unregistered lands that compose these two-thirds of lands, which I define as native (bush) lands. There are in total 7,888 acres of registered lands. Meaning, there are 8,368 acres of land that compose the one-third arable and accessible lands that have yet to be registered.

These 8,368 acres are theoretically able to be registered as individually owned lands by adverse possession. Some may claim that adverse possession claims are a thing of the past, no one adversely possesses land anymore. Look

around Oceania. No one is safe from alienation of lands. It is time the Fono address this land tenure issue or put this issue as a referendum general ballot vote. Perhaps individually owned lands are a way of the future, a new adapting form to culture and native lands. I like to think that, as more and more American Sāmoans have become educated, serve in all branches of the military, and live around the world, and with the many graduates of graduate programs on-island, perhaps the people have yet to have an opportunity to directly voice their opinion on this land tenure issue. The time is ripe for individually owned lands to be addressed locally before this issue becomes a coat tail to the federal courts. Then, this issue will be addressed once again, by foreigners.

NOTES

1. Fee tail is an estate that is inheritable only by specified descendants of the original grantee, and that endures until its current holder dies without issue.

2. Life estate is an estate held only for the duration of a specified person's life, usually the possessor's.

3. Justice Arthur Morrow referenced in this case, *Talo v. Tavai*, 2 A.S.R. 63 (1938); *Letuli v. Faaea,* No. 8-1941 in which title to land cannot be evidenced by hearsay. There is no such exception to the hearsay rule, also referencing *Howland v. Crocker*, 7 Allen (Mass.), 153; *South School District v. Blakeslee*, 13 Conn. 227, 235.

4. Ten years became the precedent to adversely claim land (see *Tiumalu v. Fuimaono,* 1 A.S.R. 17, 1901; *Laapui v. Taua,* 1 A.S.R. 25, 1901; *Mauga v. Gaogao*, H.C. LT 2-1905; *Pafuti v. Logo,* 1 A.S.R. 166, 1907).

5. Pulu first testified that he was familiar with the land because he was a mātai title holder in the Mauga āiga, and he was seventy years of age and had a very long history to the lands in general and then he stated that the Vaipito belonged to Mauga Moimoi as an individual. However, after a court recess, he changed his testimony stating that Mauga Moimoi did not own the land as an individual. However, Judge Morrow refused to rescind his original testimony and believed his original testimony was more accurate in that Mauga Moimoi owned the land as an individual.

6. Act of April 7, 1962, Pub.L.7-19, codified IX Code American Samoa, section 9.0103 (1961). According to Article I, Section 3 and Article II, Section 9, Rev. Const. Am. Samoa, this legislative bill must pass two successive legislatures for it to be enacted into law. S.107, 15th Fono, 3d Sess. (1978); H.157, 15th Fono, 3d Sess. (1978); H.220, 15th Fono, 4th Sess. (1978); S.2, 16th Fono, 1st Sess. (1979); S.59, 16th Fono, 2nd Sess. (1979); H.119, 16th Fono, 2nd Sess. (1979); S.97, 16th Fono, 3d Sess. (1980).

7. S.107, 15th Fono, 3d Sess. (1978); H.157, 15th Fono, 3d Sess. (1978); H.220, 15th Fono, 4th Sess. (1978); S.2, 16th Fono, 1st Sess. (1979); S.59, 16th Fono, 2nd Sess. (1979); H.119, 16th Fono, 2nd Sess. (1979); S.97, 16th Fono, 3d Sess. (1980).

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