

A CHIEFTAL SYSTEM IN TWENTIETH CENTURY AMERICA: LEGAL ASPECTS OF THE *MATAI* SYSTEM IN THE TERRITORY OF AMERICAN SAMOA

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I. HISTORICAL INTRODUCTION

American or Eastern Samoa, the smallest United States territory,¹ has been an unincorporated, unorganized possession² of the United States since April 17, 1900.³ The international intrigue that precipitated America's annexation of Eastern Samoa and the German (and later, New Zealand) acquisition of the now independent country of Western Samoa⁴ is well documented and is beyond the scope of this paper.⁵

A small, but sociologically significant group of islands, the Manua archipelago,⁶ formally joined American Samoa in 1904.⁷ In 1925, Swains Island, an 800 acre coral atoll entirely owned by the descendants

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¹American Samoa has an area of 76 square miles as compared with the Virgin Islands of 133, Guam of 212, and the Canal Zone of 553.

²Congress has neither passed an organic act setting up a Samoan government, incorporated American Samoa into the United States, nor made the U.S. Constitution applicable in its entirety to the territory. See 48 U.S.C.A. §§ 1661-66 (Supp. 1973). See also *United States v. Standard Oil Co.*, 404 U.S. 588 (1972) for a brief discussion of Samoa's territorial status.

³On that date 19 *matais* (leaders) ceded the islands of Tutuila and Aunu'u to the United States, represented by Commander B.F. Tilley, USN.

⁴Western Samoa came under German suzerainty November 14, 1899, and remained so until August 30, 1914, when she became a New Zealand mandate until her independence on January 1, 1962.

⁵See, e.g., J. GRAY, *AMERIKA SAMOA* (1960), for an excellent history of Samoa through 1950. For a more thorough insight into 19th century Samoan history see S. MASTERMAN, *ORIGINS OF INTERNATIONAL RIVALRY IN SAMOA, 1845-1884* (1934) and R. GILSON, *SAMOA 1830-1900* (1970). For a brief discussion of legal aspects in Samoa just before annexation, see Ide, *Some Legal Phases of the Samoan Troubles*, 33 AM. L. REV. 481 (1899).

⁶Ofu, Olosega, and Ta'u lie about 60 miles east of the main island of Tutuila. (Dr. Margaret Mead's research for her renowned anthropological study of adolescent Samoan girls took place on Ta'u in 1925-26).

⁷Manua was ceded July 16, 1904. See 48 U.S.C.A. § 1661 (Supp. 1973).

of a 19th century New Yorker, Eli Jennings, was added when it voluntarily came under control of American Samoa.⁸

The United States Navy governed American Samoa from the inception of its territorial status until July 1, 1951, when President Truman transferred its administration to the Department of the Interior.⁹

During its seventy-four year territorial history, Samoan jurisprudence has developed a curious blend of English common law, U.S. federal statutes, the Samoan Code as enacted by the *Fono* (its legislature), United States and Samoan case law, and most importantly, and certainly most interesting, Samoan custom or as it is known in Samoa "*fa'a Samoa*" (the Samoan way).¹⁰ Much of the Samoan customary law discussed in this article is applicable to similar concepts in Western Samoa, but the division of the two Samoas has led to some interesting differences over the years.

Although anthropologists have been intrigued with the *matai* system (the system of chieftal leadership in American Samoa) since it was first studied in the last century, little has been written about the case, statutory, and customary law governing the workings of the *matai* hierarchy. It is hoped that this paper, at least partially, will fill that void. The importance of the *matai* system and the laws governing it in relation to the Samoan social structure probably cannot be overemphasized.¹¹

II. THE *Matai* SYSTEM AND ITS ORIGINS

The statement of Dr. Margaret Mead that, "Rank, not of birth but of title, is very important in Samoa,"¹² is as true today as it was when Dr. Mead did her research nearly fifty years ago. The entire social web of the islands finds its mettle in the hierarchy of the *matai*. Certainly the *matai* system is one of the twin cornerstones of Samoan life; the system of communal land tenure being the other.

Unquestionably, the *matai* occupies a very special niche in Samoan society, factually and legally. A special division of the High Court adjudicates title disputes.¹³ The Code of American Samoa provides for

⁸48 U.S.C.A. § 1662 (Supp. 1973). Henceforth "Samoa" will refer to American or Eastern Samoa.

⁹Exec. Order No. 10,264, 3 C.F.R. 765 (1949-1953 Comp.).

¹⁰AMERICAN SAMOAN REV. CODE § 1.0102 (1961) provides that customs of Samoa not in conflict with the laws of the territory or the U.S. shall be preserved. For a brief overview of the Samoan legal system see Stewart, *American Law Below the Equator*, 59 A.B.A.J. 52 (1973).

¹¹Of 232 civil cases pending before the trial division of the High Court as of Nov. 1, 1971, 70 dealt with *matai* or land disputes.

¹²M. MEAD, *COMING OF AGE IN SAMOA* 49 (1961 ed.).

¹³AMERICAN SAMOAN REV. CODE § 3.0202 (1961) provides for a *Matai* Department of the Land and Titles Division of the High Court, staffed by three Samoan judges.

procedures to be followed in registering *matai* titles¹⁴ and there is a registrar and registration book solely for *matai* titles.¹⁵

While the importance of the *matai* system in Samoa is unquestioned, there is uncertainty as to the exact origin of the system. The inception of the *matai* is lost in antiquity; however, a few general comments may be worthwhile.

As is the case with many words in other languages, there is no word in English that is a direct synonym to "*matai*". It is sometimes used interchangeably with "title" making the term "*matai* title" redundant. It is often used, especially by the *papalagi*¹⁶ (Caucasians), as a substitute for "chief", but as will be seen, the term "chief" has a more narrowly defined meaning. Probably a more accurate synonym for "*matai*" would be "leader". "*Matai*" may have developed from a combination of the Samoan "*mata*" (eye) and "*iai*" (to or toward) so that *matai* may be derived from the concept of looking toward or up to another. As the ancestors of the Samoans and their Polynesian brothers sailed east from Asia they looked toward the leaders that emerged during the perilous journeys.¹⁷ Those individuals who had occupied positions of leadership in previous homelands and those that developed into leaders in the newly settled islands were naturally looked upon with favor and eventually became members of the group known as the *matai*.

III. THE HIERARCHY OF THE *Matai*

The *matai* system as it has developed through the ages has become complex in the extreme and an exhaustive study is best left to the anthropologist or sociologist.¹⁸ However, a working knowledge of the system is necessary if one is to understand the law of the *matai*.

Matai titles are of two general types—*alii* (usually translated as chief) and *tulafale* (talking chief, or orator—a more recent term). The highest *matais* in modern Samoa¹⁹ commence at the top with the *alii itumalo*,

¹⁴Title 6 AMERICAN SAMOA REV. CODE (1961).

¹⁵AMERICAN SAMOA REV. CODE § 6.0103 (1961).

¹⁶The word can be translated as "skybursters," or those who came from heaven. The first missionaries to arrive in Samoa in 1832 quickly showed that Europeans were mere mortals, but the name has persisted to the present.

¹⁷See P. BUCK, *VIKINGS OF THE SUNRISE* (1938) for a good treatise on the presumed migrations of the Polynesians from Asia. The theory that the Polynesians may have migrated westward from South America has not received general acceptance. *But see* T. HEYERDAHL, *AMERICAN INDIANS IN THE PACIFIC* (1952) and *SEA ROUTES TO POLYNESIA* (1968).

¹⁸See, e.g., M. MEAD, *THE SOCIAL ORGANIZATION OF MANUA* (1969). For a general bibliography see F. KEESING, *SOCIAL ANTHROPOLOGY IN POLYNESIA* 89 (1953).

¹⁹Prior to annexation, the highest title in Eastern or Western Samoa was generally regarded as being that of the *Tui Manua* or King of Manua. The title was not revived after the death of *Tui Manua* Elisara on April 2, 1909. See Gray, *supra* note 5, at 161.

which has been translated as county chief. The *alii itumalo* are elected in the traditional *fa'a Samoa* manner, discussed below. Under the Revised Code of American Samoa,²⁰ the governor appoints the county chiefs who, nearly always, have already been elected to be an *alii itumalo*. Theoretically they are of equal rank, but as in any society, situations arise that may alter the relative prestige of positions that are of equal stature on an organization chart.

For example, the case of *Taufaasau v. Manuma*²¹ discusses the relative importance of the *Mauga* title. The present *Mauga* title holder is a county chief and is also the governor of the eastern district of the island of Tutuila.²² After the death of the previous title holder, the High Court noted, "Historically the *Mauga* is known to be among the oldest and most influential *matai* titles of American Samoa . . . Due to the strategic location of the village of Pago Pago (the situs of the *Mauga* title) . . . the successive Europeans and later Americans who lowered anchor at Tutuila would quite naturally be expected to be in contact with *Mauga*, the leading *matai* of the village of Pago Pago."²³ The court pointed out that as visitors were interested in the commercial potential of Pago Pago harbor, the importance of the *Mauga* was not to be discounted. Hence, influences generated by European, and later American, contacts with Samoa have had an impact on the *matai* system.²⁴

The next level of *matai* occurs in the village. Nearly all of the fifty-nine villages in American Samoa have an *alii sili o le nu'u* (high chief of the village). It is probable, but not mandatory, that the *alii sili o le nu'u* would also be the *pulenu'u* of the village. *Pulenu'u* can be translated as "village power" and is usually referred to as the village mayor. The *pulenu'u* is appointed by the governor with the advice of the village council, county chief, and district governor.²⁵

The village high chief has one, and sometimes more, high talking chiefs (*tulafale sili o le nu'u*) who speak for the village high chief at village council meetings and other formal occasions as desired by the

²⁰AMERICAN SAMOA REV. CODE § 2.0206 (1961).

²¹[1963] Am. Samoa App. Div. No. 123. Reports of Samoan cases are not published and are not generally available. Citations are to the records of the High Court of American Samoa in Fagatogo.

²²The governor of American Samoa appoints the three district governors. AMERICAN SAMOA REV. CODE § 2.0203 (1961).

²³While Pago Pago is thought of as being the capital of the territory, the legislature, High Court, and most businesses are located in Fagatogo. The Governor's offices are in Utulei.

²⁴In 1970, the territory elected its first nonvoting delegate to Congress. It is expected that Samoa will eventually elect its own governor and lieutenant governor. These three elected positions may provide some interesting nuances in the *matai* hierarchy.

²⁵AMERICAN SAMOA REV. CODE § 2.0301 (1961).

chief. The talking chief performs other functions as well and plays a definite role in the *fa'a Samoa*. Some villages, like Nu'uuli, for example, have no single individual who is denominated the village high chief. Chiefs of the same rank are responsible for the affairs of the village.²⁶ It is possible, of course, for a *matai* in a village to emerge as the de facto leader though he is not the village high chief.

Ranking below the village high chief are the *alii* (chiefs) and talking chiefs (*tulafale*). The number of talking chiefs might not correspond to the number of chiefs. For example, in the village of Annu'u on the tiny island of the same name there are three chiefs and five talking chiefs. Below the chiefs and their orators, are found the *alii vaipou* and *tulafale vaipou* (*vaipou* meaning "between the posts"). These chiefs and orators do not sit at one of the supporting posts of a *fale* (Samoan open air house) during meetings of the *matais*, instead, they occupy inferior places between the posts. There is at least one *alii* and one *tulafale* for each *aiga poto poto* (extended family).

IV. AUTHORITY OF THE *Matai*

Among non-Samoans who find themselves dealing within, or on the periphery of, the Samoan culture, there is frequently misunderstanding as to the degree of authority that a *matai* might be expected to possess. First, and probably foremost, the leading *matai* of an extended family has the authority to designate which members of the family will work particular portions of the family land. Communal or family land makes up about 96% of the total land area in Samoa,²⁷ and so control over family lands is a power which is extremely important. The *matai* also has the authority to determine where the various nuclear families that make up the extended family will live,²⁸ assuming they are living on their family's land. Obviously the authority to determine where one lives and works (if he is involved in agriculture on family lands) is a power, the analogue of which would be difficult to find in the continental United States.

It should be noted that the *matai* has such authority only over those members of his own extended family; *matais* of lesser rank might have control over individuals within a much closer spectrum so that some *matais* might have control over no more individuals than would a parent

²⁶The villages of Lailii and Malaeloa, however, do not have a high chief of the village, but rather are traditionally headed by a high talking chief. In Lailii two high talking chiefs possess the same title and are the highest *matais* on the village.

²⁷WOLF MANAGEMENT SERVICES, ECONOMIC DEVELOPMENT PROGRAM FOR AMERICAN SAMOA 262 (1964). See Stewart, *Land Tenure in American Samoa*, 10 HAWAII B.J. 52 (1973).

²⁸Taesali v. Samuela, [1958] Am. Samoa No. 13.

in Western society.

In addition to controlling the use and occupation of communal lands, the *matai* may exercise other influences over the lives of his extended family. Individual families within the extended family can expect to be asked to contribute money or goods (usually food) for various events of importance to the family such as, weddings, church dedications, and *matai* investitures.

The *matai* should be aware of the financial resources of each family over which he exercises authority and after consultation with the families, if necessary, he will ask each to give a certain amount of money or food for these functions. It is an expected part of the *fa'a Samoa* that the families will give as requested, unless the requests are obviously exorbitant.

In addition to the periodic "assessments" described above, it is expected that if one lives on communal land he will perform "service" or *tautua* to the *matai* exercising his *pule* or control over the land.

In *Vaotua v. Puletele*,²⁹ the High Court held that as Puletele lived on Vaotua communal land she must render service to her *matai*, notwithstanding the fact that she was not a blood member of the family, but was related to Vaotua only through marriage. In *Vaotua* the *matai* attempted to have Puletele evicted for failure to perform service to him. The attempted eviction failed of its own weight when Vaotua testified that he would not have accepted service had it been offered.

The concept of service to a *matai* is probably not understood by many non-Samoans. Service implies that the occupier of communal land deliver something of value to the *matai*, perhaps once a week or less often. The service rendered is in addition to the special assessments for particular events previously discussed.

Food items have traditionally been used in rendering service to a *matai* and might include fish, taro, coconut products or pork, as typical examples. In modern times, one can also find money used as a medium of service. It should be remembered that lesser *matais* are expected to give service to higher *matais* in the appropriate hierarchal chain just as an untitled adult might be expected to render service to his *matai*.

Obviously the *matai* has considerable influence, to greater or lesser degrees, in his immediate and (perhaps) extended family by virtue of his having control over communal lands and through the *matai's* expectation of service rendered by those occupying the family lands. Conversely, the *matai* has considerable responsibility toward his family and must insure that all members are properly provided for. Also, the

²⁹[1954] Am. Samoa No. 20.

matai is obligated to protect the family, so far as he is able, from those who would harm the family or one of its members.³⁰

Occupiers of communal land are expected to render service to the *matai* exercising control over the land whether or not the tenant is a family member. A *matai* may, and with increasing frequency does, give permission to a nonfamily member to occupy communal land. In such a case, service is required and is legally sanctioned just as if the occupant were a family member. The High Court in *Fano v. Teleuli*³¹ directed a nonfamily member to vacate communal land when the occupier failed to render service to the appropriate *matai*. It is equally well understood that the duty to render service is present when the tenant and *matai* are of the same family,³² the more normal situation.

V. THE LAW OF BECOMING A *Matai*

The law regarding succession to a *matai* title is both statutory and the product of case law. Title 6 of the Revised Code of American Samoa³³ provides that at a minimum, a candidate for a *matai* title must be one half Samoan by blood, must live with Samoans as a Samoan,³⁴ must be a descendant of a Samoan family and chosen by his family for the title, and must have been born on American soil (or fulfill certain other requirements if he was born in a foreign country).

When a title becomes vacant through death of the previous *matai*, relinquishment of a title, or the removal of a *matai*,³⁵ the successor is elected at a *fono* (meeting) of the blood members of the previous *matai*'s family.³⁶ The meeting must include all the clans of the family. In *Vainini v. Ala*,³⁷ the election of a candidate was voided by the court when it was found that only one of the four clans of the Vainini family voted for Ala at a meeting called by him to elect a new *matai*.

The exact definition of a clan insofar as *matai* disputes are concerned

³⁰*Id.*

³¹[1955] Am. Samoa No. 2.

³²*Ifopo v. Vaiao*, [1948] Am. Samoa No. 84.

³³AMERICAN SAMOA REV. CODE § 6.0101 (1961).

³⁴The candidate must live within the *matai* system and participate in the *fa'a Samoa* or Samoan customs.

³⁵AMERICAN SAMOA REV. CODE § 6.0108 (1961) provides for the removal of a *matai* by the High Court for "good cause" upon petition of ten members of the *matai*'s family. A *matai* may also be removed if he is absent from American Samoa for more than one year. See AMERICAN SAMOA REV. CODE § 6.0110 (1961). See also *Lepule Family v. Lepule*, [1963], Am. Samoa No. 86, in which a *matai* was removed when he moved permanently to the United States. It is not mandatory, however, that a *matai* reside in the village to which his title is appurtenant.

³⁶AMERICAN SAMOA REV. CODE § 6.1014 (1961).

³⁷[1965] Am. Samoa No. 87.

is uncertain at this time. In *Reid v. Kuaea*,³⁸ the court discussed three theories as to the definition of a clan: first, that the number of issue of the first holder of the title determines the number of clans; second, there are as many clans as there have been holders of the title. The third theory is a product of the second and holds that when siblings hold the title consecutively, only one clan is involved.

The authors of this article agree that the first theory is the superior one if genealogy can be traced back to the original title holder. Unfortunately, the court in *Reid* did not resolve the question of the proper determination of the number of clans in a family.

Once a candidate has filed notice of intent to register a title, other candidates for the title have 60 days within which to file an objection to the registration.³⁹ When two or more claimants allege the right to hold a title and the conflict cannot be resolved among the family to which the title is attached, the matter is referred to the Land and Titles Division of the High Court for a hearing before three Samoan associate judges. A Caucasian judge plays no part in the decision. This contrasts with procedure in Western Samoa where a *papalagi* chief justice is also President of the Land and Titles Court.⁴⁰

VI. CRITERIA USED IN ADJUDICATING *Matai* DISPUTES

Section 6.0107 of the Revised Code of American Samoa lists four factors the High Court is to consider in trying *matai* disputes. The factors are to be considered in the following priority:

1. The best hereditary right in which the male and female descendants shall be equal in families where this has been customary, otherwise the male descendant shall prevail over the female.
2. The wish of the majority or plurality of those clans of the family as customary in that family.
3. The forcefulness, character, personality, and knowledge of Samoan customs [of the claimants].
4. The value of the holder of the *matai* title to the family, the village, and the country.

Regarding the first criterion, the courts examine genealogy charts provided by the parties, examine witnesses and determine which of the claimants has the blood relationship which is closest to the previous title holder in his clan.

³⁸[1963] Am. Samoa No. 93.

³⁹AMERICAN SAMOA REV. CODE § 6.0106 (1961).

⁴⁰Prior to 1970, a mainland American justice participated in *matai* decisions. This is no longer necessary. AMERICAN SAMOA REV. CODE § 3.0301(3) (d) (1961).

The examination as to blood relationship can and should be quite thorough. In the 1956 case of a dispute as to the registration of the Velega title of the island of Ofu,⁴¹ the claimant ultimately prevailing had one half Velega blood while another claimant had only 1/256 Velega blood. A candidate with such a tenuous hereditary claim to the title in question would have to present a very strong case in regards to the other three criteria under the code to convince the court that he should prevail.

Petitioners in a *matai* contest are required to submit to the court a set of pleadings undoubtedly unique in American jurisprudence, in which the *matais* of the village to which the title is attached must affirm that the title is an "old *Matai* title of Samoa."

Further the claimant must present a petition signed by 25 adult family members requesting that he receive the title. The claimant must file a claim of succession to the title and complete a genealogy questionnaire.

In the *Lealaimatafao* title⁴² dispute a total of 850 individuals who purported to be extended family members signed petitions in support of one or another of the four claimants. The successful candidate had 271 signatures on his petition as contrasted with 311 for another claimant. However, the court found that many of the 311 signatories of the petition were not blood members of the family and hence noted that it is not always a bare majority of signatures on a petition that determines support for a title claimant. The strict language of the code provides that the court should determine the wishes of a majority of the clans. However, the wording of the *Lealaimatafao* and other opinions seem to indicate that the court may consider the wishes of family members without regard to their clan membership. It should be noted that until 1962, the court was obligated under the language of the code to consider "the wish of the majority or plurality of the family,"⁴³ with no mention made of the clans of the family.

The court must also determine as best it can the very subjective traits of character, personality, knowledge of Samoan customs and value of the claimant to his family, village and country. This determination is, in many situations, a difficult task and is accomplished by examining witnesses well acquainted with the candidates' qualifications and by questioning the candidates themselves in considerable detail. For example, in a dispute over the *Talolo* title,⁴⁴ the court made note of the general activities and earnings of the respective candidates. In the case

⁴¹Aioletuna v. Tufele, [1956] Am. Samoa No. 3.

⁴²Ioane v. Malaga [1956] Am. Samoa No. 23.

⁴³The previous wording was found in Code of American Samoa § 933 (1949) and was changed by Public Law 7-38 (1962).

⁴⁴Selusi v. Tasi, [1948] Am. Samoa No. 99.

of the claimant who eventually was given the title, the court went into considerable detail as to the crops raised by the claimant and his previous service in the U.S. Armed Forces.

Regarding the fourth criterion, the value of a potential *matai* to his family, village and country can best be measured, according to two relatively recent cases, by the candidate's demonstrated ability in handling the affairs of his nuclear or extended family.⁴⁵ No doubt the court will be increasingly concerned with other attributes that bear on a candidate's qualifications for a mataiship as Samoa moves into an era where more complex decisions will be required of *matais* in order that Samoa does not become an overdeveloped resort, with the consequent environmental and sociological impairment that might be expected. It may be instructive to note briefly other criteria that the court might take note of when examining candidates as to their fitness for holding a title.

While the older candidates may have an advantage in some respects,⁴⁶ once the case comes to court for determination, the judges are quite likely to choose a young candidate over an older one, all other pertinent facts being equal, because the younger candidate should be able to serve his family for a longer period of time.

Matais may be of either sex, but males predominate.⁴⁷

In recent times the court has often taken the relative amounts of education possessed by the candidates into consideration. "Samoa is being affected by western culture. Industry is coming in. The better educated *matai*, other things being equal, will be better able to take care of the affairs of his family than the *matai* with inferior education."⁴⁸ However, in one case, the court noted that a college degree was not a guarantee of effective leadership and chose a candidate with less education but a greater demonstrated capacity for leadership.⁴⁹

Some Samoans suggest that if at all possible a title should be alternated among the clans, so that one clan does not monopolize the title. The court mentioned this principle in one case,⁵⁰ but noted that it was not bound by any agreement among the clans to alternate a title. It is of course true that the longer a title is held by the members of the same

⁴⁵*Supra* notes 42 and 44.

⁴⁶*See* Gilson, *supra* note 5, at 29, 32. (The authors do not feel that all of Gilson's conclusions on *matai* succession apply today).

⁴⁷*See, e.g.,* Tiumalu v. Tiumalu, [1956] Am. Samoa No. 7, and Reid v. Kuaea [1963] Am. Samoa No. 93, in which the female candidates prevailed.

⁴⁸*Aioletuna v. Tufele*, A[1956] Am Samoa No. 3. The winning candidate had attended teacher training school and also had the superior blood lines.

⁴⁹[1960] Am. Samoa App. Div. No. 5. (Case title unknown).

See In re Salave'a, [1971] Am. Samoa. L/T No. 1187, and *In re Toeaina*, [1971] Am. Samoa L/T No. 1165.

clan, the more tenuous will become the blood relationship of members of other clans to the previous title holder in their clan.

The great majority of *matai* disputes are eventually settled without it being necessary to resort to the resources of the High Court. Of those cases reaching the adjudication stage, a reading of court files indicates that most of the cases involved situations in which the judges were able to find that all four of the codified criteria, or at least three of the four, were attributes possessed by one of the candidates, making the selection process not too difficult, once the relative qualifications of the candidates were determined.

The selection process is more difficult when two candidates are found to have two of the four criteria listed in the code. Normally, if one candidate prevails on the issue of heredity, he will also prevail on the question of the preference of a majority of the family clans. Such is not always the case, however. In *Vainini v. Ala*,⁵¹ one petitioner prevailed on the issue of heredity (one half title blood versus one eighth for the other claimant) and still lost the case because the other claimant prevailed as to the three remaining criteria. *Vainini* illustrates the proposition that blood relationship to the previous title holder is the most important factor in selecting a new *matai*, but it is certainly not the only factor to be considered either in fact or in law.

In a case which went to the appellate division of the High Court, *Utu v. Aumoeualogo*,⁵² Chief Justice Arthur A. Morrow noted that claimant Aumoeualogo prevailed in the eyes of the court on the third and fourth issues, tied with another claimant on the second issue and lost on the most important issue, namely that of blood relationship to the previous holder of the title in question. In the *Utu* case the important *Salanoa* title was at stake. The High Court held that Aumoeualogo was entitled to bear the *Salanoa* title as he was the only claimant with two of the four codified criteria in his favor. A case has not been found in which the court held two or more contestants to be equally fit for the same title in that they might have the same blood relationship to the previous holder and be equally qualified to hold the title. Should such a situation develop, and the family could not settle the matter itself, the court would be faced with a dilemma. Though no cases are precisely on point, a candidate with superior blood lines would probably prevail, even though two or more candidates were judged equal in value to their family, village and country.⁵³

⁵¹[1965] Am. Samoa No. 87.

⁵²[1964] Am. Samoa No. 104.

⁵³Interview with retired High Court Chief Justice Arthur A. Morrow in Fagatogo, American Samoa, January 28, 1972. The court has held that the third and fourth criteria combined are

VII. SPLIT TITLES

Candidates have on some occasions decided that a title contest would not be in their best interests and have attempted to register and hold the title jointly. Because of the prestige and authority that go with some titles, it is easy to understand why candidates might decide to split a title. It should be noted that only titled Samoans may run for a seat in the upper house of the *Fono* or legislature while anyone may run for a seat in the lower house.⁵⁴ This fact alone would tempt some individuals with political ambitions to agree to split a title, notwithstanding the other obvious reasons for doing so.

While there is some precedent for more than one individual to hold the same title at the same time, the practice is definitely frowned upon. The High Court recognizes that the authority of the *matais* is diluted when more than one person holds the same title. Further, the chain of command in island life becomes hazy under such a practice. In a 1964 case, *Fanene v. Fanene*,⁵⁵ the court permitted the *Fanene* title of Pago Pago to be split, but only after evidence was introduced showing that the title had been split previously. In practice, the court has permitted more than one person to hold a title at the same time only in exceptional circumstances. It must be remembered, however, that a family might decide to split one of its titles and, if no objectors presented themselves to the territorial registrar, the court would have no opportunity to get involved in the matter.

Only a minuscule portion of American Samoa titles are split at the present time. The more important ones include: the high talking chief titles *Mulitauaopele* of Laulii and *Salave'a* of Leone; and the high chiefs *Liufau* of Aua, *Fanene* of Pago Pago, and *Alo* of Fagasa.⁵⁶ It can be predicted that the *Matai* Title division of the High Court will not look favorably upon the splitting of additional titles that are not historically bifurcated.

It is of interest to observe that in independent Western Samoa the splitting of titles is more common, but the Supreme Court of that country is well aware of the dangers of such a practice and does not encourage it.⁵⁷

entitled to more weight than the first (blood line) criterion. See *Utu v. Aumoeualogo, id.*; *Galea'i v. Poumele*, [1971] Am. Samoa L/T No. 1150 and *In re Toeaina*, [1971] Am. Samoa L/T No. 1165.

⁵⁴AM. SAMOA CONST. Art. II, § 3 (1967).

⁵⁵[1964] Am. Samoa No. 167.

⁵⁶This list is intended to be illustrative but not necessarily exclusive.

⁵⁷MARSACK, NOTES ON THE PRACTICE OF THE SUPREME COURT OF WESTERN SAMOA (Justice Dept. W. Samoa 1961). Marsack also notes that numerous co-holders of a title could make control

VIII. MULTIPLE TITLES

There is no statute that prevents an American Samoan from holding more than one *matai* title. However, the High Court has never sanctioned the practice and a perusal of *matai* court decisions shows that nearly every opinion concludes with the admonition that the prevailing claimant must resign from any mataiship he might hold before he may register for his newly won title. As recently as 1971, a successful litigant in a title dispute was issued an order to show cause why he should not be held in contempt of court for failing to divest himself of his old title before registering for his new one. Upon reflection, the victorious claimant decided that he preferred his old title and he was forced to relinquish his new title.⁵⁸

In conversations with various *matais* in Samoa, it is not too difficult to find those who claim to hold more than one title, but should litigation regarding the practice reach the High Court, it is unlikely that the holding of multiple titles would be approved.

IX. NEW TITLES

In the competition for a limited number of titles,⁵⁹ it was not surprising that it would occur to some that the creation of new titles would be a way to lessen the competition for the available titles. The danger of such a procedure is self-evident. It dilutes the value of longstanding titles and, hence, weakens the prestige and authority of those possessing the well recognized titles. It has been a ploy in American and Western Samoa to invent a title using the name of some geographical landmark as the denomination of the newly created title. The American Samoa *Fono* passed a bill⁶⁰ effective January 1, 1969, that closed the register of *matai* titles. Titles not registered prior to that date are void. Western Samoa has accomplished the same thing by judicial interpretation.⁶¹

X. CONCLUSION

As has been stated, the system of mataiships and the consequent social and authoritarian ramifications attendant to a *matai* title cannot be overstated in their importance in understanding the functioning of Samoan society. However, it is recognized that history has shown that

over communal land unworkable as happened in one case in Western Samoa where there were 17 co-holders of one title.

⁵⁸See *Liufau v. Leau*, [1971] Am. Samoa L/T No. 1091.

⁵⁹The office of Samoan Affairs, Government of American Samoa, lists 735 *matai* titles. About 240 of the titles were vacant as of March 10, 1972.

⁶⁰Public Law 10-61 (1968), AMERICAN SAMOA REV. CODE § 6.0111.

⁶¹Marsack, *supra* note 57, at 17.

chieftal societies, whether their locale be the moors of Scotland, the African velt, the American plains, or hundreds of other locations, have all changed radically when touched by the myriad aspects of the modern era.

Certainly, it is inevitable that the Samoan *matai* system will have to change in many ways or suffer a lingering death shared by chieftal systems in so many parts of the world. A very recent survey conducted on the island of Savai'i, Western Samoa, by a psychiatrist from the South Pacific Commission, Noumea, New Caledonia,⁶² indicated that some *matais* are experiencing problems in functioning within their roles in the changing Samoan society. While the survey was far from a complete one, it was found that *matais* in Savai'i had a greater incidence of psychosomatic disorders than was found within the population as a whole. The survey noted that among the trends creating problems for the *matais* included the return of many Samoan young people to the islands after having been educated abroad and having acquired expertise in specific fields such as agriculture, engineering, and medicine which are of great value to the community. The *matais* normally would not possess such expertise and may feel threatened by those who do. The *matais* have, at the same time, been called upon to exercise increased responsibility as a result of independence in Western Samoa (and increased autonomy in American Samoa). The problems incident to this increased responsibility, without a corresponding increase in ability to handle it effectively, in some cases, have caused problems. In short, the survey concluded that rapid cultural change produced a demand for assumption of new roles by the *matais* for which they were not equipped and, in addition, the roles were sometimes poorly defined.⁶³ It is particularly significant to note that the authors of the survey indicated that although a *matai* might be in control of the land for his extended family, that in some cases a discernible shift in thinking has occurred in that *matais* may tend to think more in relation to their immediate or nuclear family.⁶⁴ Such thinking is akin to mores in the Anglo-Saxon world where one thinks more of his immediate family, at least on a daily basis, than he would of his more distant relatives. Even where younger, well educated Samoans are elected to mataiships, the problems still manifest themselves. Because these individuals have spent considerable time away from Samoa they are not as well versed in the folkways and

⁶²SCHMIDT, REPORT ON VISIT TO WESTERN SAMOA (South Pacific Commission, Noumea, New Caledonia, 31 March to 25 April 1971; and 1 to 16 August 1971).

⁶³*Id.* April report at 5.

⁶⁴*Id.* August report at 3.

customs of Samoa. In other words, they are not as knowledgeable of the *fa'a Samoa* or Samoan way as are older *matais*.⁶⁵

The authors feel that a strong, enlightened *matai* system is essential to Samoa, for an emasculated chieftal system, without a corresponding new set of social controls to fill the resulting void, could make for very real problems in future Samoan society.

⁶⁵*Id.*