DISPUTING IN CUSTOMARY LAND COURTS:

CASE STUDIES FROM THE SOLOMON ISLANDS*

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In the Solomon Islands, land disputes are heard in local courts and customary land appeal courts, both of which are staffed with indigenous personnel. The operation of these institutions is illustrated with examples drawn from local courts and the district level land appeal courts on the island of Malaita, one of the most litigious areas in the country. This material suggests how localized "customary" courts work, and we see the kinds of problems that characterize systems of this kind.

I. *Solomon Islands Court System.*

The central government in the Solomon Islands was slow to assume responsibility for land arguments between local people. In 1921 a new resident commissioner, R.R. Kane, proposed a "Native Code Regulation under which native district headmen would supervise their subdistricts and native courts would be established,[1] but the high commissioner felt that natives were not sufficiently developed to be entrusted with judicial authority and no native courts were created. Kane's successor, F.N. Ashley revived the proposal[2] and again it was rejected by the high commissioner, because he believed "there is always a tendency for a Native Court to be used for improper purposes and to become an instrument of injustice and oppression."[3] As a result, government involvement in native land cases took the form of *ad hoc* intervention by British district officers in the field who had to operate without guidelines; indeed, even a direct request from one district officer in 1933 for "instructions regarding future procedure in dealing with the disputed

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* Based upon fieldwork on Guadalcanal and Malaita, Solomon Islands, in 1978. Comparative material from Samoa is drawn from work in American Samoa and Western Samoa in 1969-71, 1973, and 1978.

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1. British Solomon Islands Protectorate. Kane to Phillips, 4 October 1921. This reference, and footnotes two through four, are cited from a doctoral thesis being prepared by Ian Heath at the Department of History, La Trobe University, Melbourne, Australia. His research on the Western Pacific Archives was done in 1976, and he was in Honiara as a consultant to the Lands Division of the Ministry of Agriculture and Lands during the time of my work in the Solomons in 1978.

2. Western Pacific High Commission. Resident Commissioner to High Commissioner, 25 September 1929.

3. Western Pacific High Commission. High Commissioner to Resident Commissioner, 6 January 1931.

ownership of land"[4] received no detailed response, and district officers continued to have a free hand adjudicating land arguments until native courts (which became local courts in the early 1970s) were created by special regulation during the second world war.

These courts were intended to operate in accordance with local customs, and for this reason they have always been staffed exclusively by Solomon Islanders. On Guadalcanal in 1944, for example, the headman was court president, and other members included the assistant headman, village constables, and members of the council, of whom at least six had to be present. The president's decision was final, although he had to "pay due regard to the advice of the other members of the court."[5] Decisions involving native customs were reviewed by the British district officer, but losers had no right of appeal.

Despite native staffing, local courts did not originate as indigenous institutions, and they were not perceived as indigenous by participants. Hogbin reported in 1944 that court members believed they had been appointed to assist district officers, who were overworked, and he cited an incident to illustrate the general attitude. A visiting resident commissioner "...wondered whether he ought to refrain from putting in an appearance at the Court, thus emphasizing that the Administration looked upon it as the people's own concern, or whether he ought to attend as a gesture of politeness... [The court president] immediately replied, 'But the Court *doesn't* belong to us: we never had Courts before: it's a Government affair: the people would be offended if the Commissioner stayed away.'"[6]

Today there are about sixty-five local courts established with warrants authorized by the Native Courts Act (Chapter 46). Each consists of a president and vice-president and two to nine members, all of whom are Solomon Islanders appointed by the governor, who can also remove any court member for sufficient reason. These courts are empowered in their warrants to hear all customary land disputes and other civil matters where the amount in question does not exceed a certain value, usually $200; their jurisdiction in criminal cases is limited to cases punishable by six months imprisonment and fines up to $200. Each administrative district also has a customary land appeal court staffed by Solomon Islands judges appointed by the governor with warrants under authority of section 231A of the Lands (Amendment) Act 1972 (Chapter 93). Section 231B of this Act allows any person three months to appeal local court decisions dealing with customary land to these district level courts. Each appeal court contains a president,

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4. British Solomon Islands Protectorate. District Officer Shortlands to Government Secretary, 31 October 1933.

5. The composition and operation of the Guadalcanal Local Court is outlined in a document prepared by District Officer Trench and reproduced as appendix B in Hogbin (1944).

6. Hogbin (1944:266).

vice-president and not less than three other members, and no lawyers are permitted to argue cases before them. An appeal from a customary land appeal court to the High Court is possible, but only on points of law or procedural irregularities in the lower courts.

In May 1976 the Ministry of Agriculture and Lands of the Solomon Islands released the findings of a Special Select Committee on Lands and Mining established to examine current land policies.[7] Committee members toured the districts soliciting opinions from villagers on issues concerning use of customary land, rights of expatriates holding alienated land, development projects and land registration programs. One of the areas investigated by committee members was the process for settling land disputes between Solomon Islanders. The Western District team reported that people believed that "native land court proceedings are alien and allow considerable injustice..."[8] and the Malaita District team was told that "...the present native court system may be alright for other cultures but this does not necessarily mean that it is also suited to the local situation and cultures."[9] People on Malaita believed disputes were getting worse and that "...if nothing is going to be done about it,... the present judicial machinery... is more likely to be a danger to the country's future stability... [A] law and court system that is based more on the people's customary land tenure practices is more likely to minimize land dispures..."[10] Summarizing what people said in all the districts, the committee said:

> We heard many complaints about courts and land. Local Court justices were accused of favouring relatives and accepting bribes. Court procedures were frightening and favoured people who were better educated or could argue better. Decisions were not clear and the same cases were heard again and again. There were too many appeals, and all courts were accused of not following custom.[11]

II. *Case Studies.*

There are numerous court files to support the committee's report that the local courts can favour relatives and allow the same cases to be heard repeatedly. These complaints are related, since losers have grounds for appeal when they can demonstrate relationships between a judge and the other party, which is often easy to do. Indeed, Solomon Islands Crown Counsel David Campbell has noted that "...with the communities so closely knit together, parties are normally involved in

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7. *Report of the Special Select Committee On Lands and Mining* (1976).

8. *Ibid*, p.71.

9. *Ibid*, p.78.

10. *Ibid*, p.78.

11. *Ibid*, p.12.

complex relations outside the court forum and this makes the judicial process open to allegations of bribery in a lot of cases."[12]

These problems are illustrated in a petition for a rehearing of a 1976 land case on northeastern Malaita.[13] The loser protested because the court President was the uncle of the winner and had in fact lived with the winner in the village for an entire week at the time of the trial. In his request for a rehearing, the loser cited numerous irregularities in local court procedures which were grounds to reopen the case:

> (1) In the Court when I wanted to ask [winner] questions of the important facts in the land. The President did not permit me to do so. He said: You are not permitted to do so. Through the whole day only [winner] asked more questions and spoke a lot.
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> (2) When we were in the land I pressed hard and asked [winner] I said, what is tabu here? [Winner] gave no answer. Instead the Court President gave an answer and said, anything tabu here is [winner's]. Don't ask [winner] about it.
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> (3) When we were in the custom offering place or altar... [winner] did not show anything, not even a stone, nor a bones or anything that is important in the land. I stepped forward and showed them my tabu places... The Court President refused to see them.
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> (4) We came to another place where [winner] claim the wall stone there. I asked him, can you show us the wall stone? The President said, it must be already covered with the soil. [Winner] did not say anything. At last I showed them the wall stone. This of course had proved that I was telling the whole truth about the land because there was no difficulty for me to pin-point the area.
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> (5) We claimed up the tabu place, but [winner] did not show anything. I showed the Court President the baking stones we used in the olden days. We still in the same place I showed the President the bones of my great-great-grandfathers, but the

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12. Campbell (1977:46).

13. The following quotations are from a petition to rehear Civil Case No. 11/76, West Baegu/Fataleka Local Court. The records are filed at Auki, Malaita, at the Malaita District Customary Land Appeals Court MD/LAC/14/1977.

President did not want to look at them.

(6) ...I showed the Court President the pig fence of a man... This man... asked me or have permission from me to live on the land.

(7) After the land prove, only the President and the clerk came back with me to [the village]. But the two Judges still held up behind with [winner] and his people for about two hours. This to me having caused some great confusement of how this case was dealt with, as judges they should be independently alone.

In summary, the loser of the case complained that "these sort of underground movements to some extent would come up to what we called corruption, and again I was not happy with the judges of their job." He was granted a rehearing before the Malaita District Customary Land Appeal Court.

Local courts may be held in temporary leaf buildings or outdoors, where there are no facilities for storing a permanent record of court decisions. If the file of a case is lost or intentionally destroyed, it might be heard again and subsequent decisions can then be appealed by losing parties who claim the earlier court action favored their side. For example, in 1974 the East Small Malaita Local Court awarded land to W; this action was immediately appealed by L on grounds that "My case... has already been heard by the... Native Court in 1956... Since that time the court record has been destroyed. The lands were awarded to me by the Court in 1956 and that is why I am appealing against this new case..."[14] In December 1974 a British district officer conducted an enquiry at a village on Malaita to determine what happened to the 1956 court decision. During the enquiry, the court clerk at the 1956 trial testified that he had gone to work on a Russel Island plantation in 1958 and left his court records in a box with his brother, who was to hand them over to his successor. However, when the clerk returned in 1961 on a plantation recruitment trip, he found the record book was gone from the box, and he was told that a member of the court staff (a relative of the case loser) had burned the book because it contained "rubbish writing." A headman of the area said he had heard the book burning story, and the new court clerk denied receiving the record book or any other court files from the brother of the plantation worker. The district officer was reduced to taking a show of hands to see if villagers could remember a trial taking place in 1956. About fifty villagers attended the enquiry, and sixteen of them, "the greater majority of older people present", raised their hands to show they believed a 1956 court had indeed awarded the land to L. The district officer concluded that L had grounds to appeal the 1974 trial, and the case was reheard by the Malaita Customary Land Appeal Court in 1977. That did not lead to resolution of the dispute either, because the appeal court concluded its review with an order that "...this court feels that... this case should be reheard by another Local Court in Malaita District. Also that the clerk to the court tries to provide

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14. Filed under MD/LAC/11/1977 at the Malaita District Customary Land Appeal Court, Auki.

the 1956 Court Records mentioned in the points of appeal."[15] After four hearings spanning a period of twenty-one years (the initial 1956 local court trial, the 1974 trial, the 1974 enquiry, and the 1977 appeal), this land dispute was no closer to settlement than it was in 1956 when it was first referred to the courts.

Judicial bias and inadequate record-keeping are two factors contributing to dissatisfaction with local court performance. There are also complaints that court proceedings do not culminate in clear decisions. This may be a general characteristic of indigenous legal systems. Whereas western courts assign guilt and liability, local courts may be more concerned with assuaging animosity between neighbors so that residents can live together in harmony after the trial is concluded. A decision labeling people "guilty" or "liable" is not as useful for this purpose as a court ruling that both parties are somewhat at fault and should compromise to achieve a peaceful settlement. A New Zealand Court President in Western Samoa had this difference in mind when he said that his own court "...is not as good a thing as your own custom. With me, there must always be a winner and a loser; in the Fa'aSamoa [Samoan custom], after a fair settlement, matters are more equal."[16] However, cases reach the court when negotiation at the local level has failed, so that court reluctance to act decisively may not be acceptable to either side.

In 1974 a local court on Malaita heard a case[17] in which the plaintiff charged that "...the defendant did his work on malaria spraying. And he did spray my devil[18]." The defendant was employed by the government to spray villages as part of a malaria control program. He testified that the plaintiff was not home at the time of spraying, but the plaintiff's son was present. Defendant asked the son "...in which part of the house I shall start spraying. He showed the places start at the entrance of the house and went around nearly at the back of the house and stop there. Also the roof of the house. Then I was doing my work and finished. This is a second time I spray the same house. First in 1972 I did spray the same part of the house... I asked [son] showed the same places." Plaintiff admitted that his son had given permission and instructions on what part of the house to spray, but explained that his son "...did not know where the devil is because he was away during I put my devil." According to the son's testimony, "...the devils were keeping or staying at [another house]. After I went to Western Solomons the house were always keeping the devils getting rotten, they took them out from that house to another village they put them at the top entrance of the house [which was sprayed].

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15. *Ibid.*

16. This statement by the Court President is filed with L.C. 852-1939 at the Lands Court in Mulinu'u, Western Samoa.

17. Quotations from this case are from Gwaunatafu Local Court, LC437687, 2 October 1974, filed at the Malaita District Customary Land Appeal Court, Auki.

18. The term "devil", introduced by missionaries, now refers to ancestral relics, such as a tooth or piece of hair from the deceased.

I did not know the place they kept." Whereas a Western court might find the defendant not liable for damages in such circumstances, the local court judgement was that "...both sides were got mistake. They did not know the place they were keeping the devil of the house. Court can reduce the compensation for the defendant can pay. Not full compensation." The Solomon Island juges then ordered the defendant to pay $5.00 compensation to the plaintiff and fifty cents court fees. Perhaps neither party to this case understood the decision; it did not explain to the government worker what principles had been used to find him partially liable, and it was not fully satisfactory to the plaintiff who had committed himself publicly to getting full redress. On the other hand it did avoid loss of face for the plaintiff and strained social relations between the government and villagers that might have followed a clear finding of no liability at all.

When local courts seek compromises in land cases, they may award land to one side but give use rights to the other party; there are also decisions that simply divide contested land equally between plaintiff and defendant, with the hope they will settle their differences with the passage of time. Instead, hostile relations can fester as both strengthen claims through continued occupancy and plantings, with the result that the same cases keep re-appearing in court.

A characteristic of land cases in the Solomons is the willingness of judges to hear arguments based upon alleged events in the distant past. In 1974 a landowning plaintiff P charged that a defendant D was planting coconuts on his land without permission.[19] D came into the court with some witnesses from his own village and argued the land was his because the ancestors of the current holder P had used physical force to acquire it. A witness gave the court a bloody account of how P's ancestors came onto the land:

> First they killed the men at Kwaibora... At this fighting Moloia run away and stay with my great-grandfather... Second fighting Tonaono was killed. This was the... second time that [D's] men went out from Fouthaoro [the disputed land]... Ludae and Gwaikao [sons of Tonaono] were safe and went to Aioo. When [they] were big enough they then came back to Fouthaoro the second time. For the fear of the people [they] left everything to Kwatemanu and went out from Fouthaoro. I looked after these ngalinuts... When Ludae and Gwaikao came back I gave their ngalinuts to them. After this Ladae and Gwaikao were killed. [P's men] killed the men at Adoabu. This shows that Fouthaoro land is [D's] land. At the death of Ludae and Gwaikao, Alairamo [son of Ludae] and Raraagalo were safe... because they went

19. Malaita District Customary Land Appeal Court MD/LAC/6/1976.

> to Unasi... [D, the son of Alairamo] then brought up there. After killing... Alairamo and Raraagalo were stopped not to come back again. That is the reason that [D] do not know anything about Fouthaoro... [P] then spoil everything that [D] owned it before... One big ngalinut was burnt... a tabu place... was spoiled... by making a road to go on the sacrifice place. He also burnt up a tabu place... where Doloi was buried.[20]

A witness from the village where D's father lived confirmed that "[D] was not at Fouthaoro because there were lots of fighting between him and other people", and another witness stated that "my father told me [D] was not from Aiolo [village where D was raised]. [D] went to Aiolo because his mother is from there... They told the people there not to tell [D] about his home. That is the story I heard from my father." In short, the defendant had no ancestral burial places on the land, no property, and no history of occupancy; his case was based on the alleged murder of a great-grandfather Tonaono and his grandfather Ludae.

In rebuttal, plaintiff cited long occupancy, presence of ancestral sacrifice places, land gifts and use rights given by P's ancestors, and blood money paid to his grandfather:

> The Fouthaoro land is my land shown to me by my grandfather and my father. They also showed me all the tabu places and the devils in each tabu place. They told me of some pieces of Fouthaoro land given to several people and the names of these men. Any piece of Fouthaoro land given to anybody must be given by my great-grandfathers.[21]

He described tabu places on the land "where the first man to come on Fouthaoro land" and where there once was "a feast of all the men he killed instead of pigs." He also described a fight where a man was killed so that blood money was paid in compensation to P's grandfather. "Why this money was not paid to [D's] grandfather? If Fouthaoro is his land, why some pieces of Fouthaoro land was given by my grandfather to several people? Fouthaoro is my land."

In their decision, judges noted that "every plots of ground given to various people were given by [P]", that "when they first came to Fouthaoro they have asked [P] to settle in the land" and that "[P's] men were buried at [the land] but not [D]"; consequently, P was declared the landowner. However, the court went on to say that "[D] should stay but must ask [P] for everything on the land"' so that [D] was successful in obtaining use rights to the land. Unwilling to accept this compromise, [D] went two years later to the Customary Land Appeal Court of Malaita

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20. *Ibid.*

21. *Ibid.*

District, arguing "My lines were absent for 77 years then returned... We all know that [P] is a liar, he never owned the land. We live there for 13 generations before [P] came. [P] has been giving money and presents to the Court Justices, the court clerk and to witnesses." (Under direct questioning in court, [D] admitted "I never saw but only suspected" that money was given.) After rehearing the entire case, the appeal court decided: "As a member of this court is related to the tribe of [P] and furthermore on the evidence the court has heard today, the western boundary of the land in dispute has not been established. This court therefore orders that the case to be completely reheard by the West Kwara'ae Local Court, as soon as possible."[22] At the time of field work in 1978, the case was still unresolved.

Because there is no statutory period in the Solomon Islands that confers security of tenure under adverse possession, land claimants can make a variety of arguments to win land rights. Examples from the Fouthaoro trial are the alleged murders of D's ancestors and P's claim that blood money had once been paid to his grandfather, "proving" that his ancestors were the recognized landowners and not D's people. Oral accounts of unrecorded events in the distant past are often conflicting. The British magistrate on Malaita[23] recalled a court tour on land where each side contradicted everything said by the other; indeed, when one designated some rocks as a sacrificial tabu place, the other said it had no ancestral significance at all and was in fact used as a bathroom. The facts can never be established, and each side may sincerely believe the other is intentionally trying to mislead the judges. Each is convinced the final decision does not take into account their version of the "evidence", and the result again is dissatisfaction and appeals.

A former local court judge who in 1978 was President of the Malaita Customary Land Appeals Court explained conflicting versions of tradition as the result of younger people coming to court with imperfect knowledge of what really happened a generation or two ago. "Older people know better than today the history and the ancestors. The young man who goes to school does not know our culture and he does not study with his father about his ancestors. They cannot tell you their ancestors. Only a few of the young people are interested in their generations."[24]

In the final case, from Ontong Java, family members quarrelled about an old battle involving their great-grandparents, and the case went through the familiar appeal process which resulted in a reversal of the local court action. In 1974 a local court in Ontong Java received a complaint that "[Plaintiff] brings [defendant] to court because [defendant] wants to push him off little island..."[25]

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22. *Ibid.*

23. Personal interview at Auki, Malaita, on July 17, 1978.

24. Personal interview at Malaita District Customary Land Appeal Court on July 13, 1978.

25. The records from this 1974 Pelau Local Court trial on Ontong Java are filed together with the 1976 appeal records at the Malaita District Customary Land Appeal Court MD/LAC/8/1976.

Both agreed that the island was first settled by Aluku, who had two sons, Kulia and Avaa. One day a war party approached, and an informant

> ....ran ahead to that island and told the two brothers about the coming... Avaa told Kulia to get ready because he was the first born, but Kulia did not say anything. So Avaa got ready himself and fought those men. Because some of their men were wounded so they got on their canoe and went home. Avaa went to their house and told Kulia that they both had share of that island, but his children and grand-children would not have any shares of that island.

The defendant, a great grandson of Avaa, used this tale to persuade the court that the plaintiff, a great grandchild of Kulia, had no rights to the island. Plaintiff countered that "Kulia started to fight... until just only one man left before his brother Avaa asked for his turn otherwise he would not be on this island and also his children and grand-children etc." However, the local court awarded the island to the defendant after it "...assured that Avaa was the one who fought the enemies, because he built a heap of stones on that island for his memory or to show that he was the one who fought the enemies. It is still known to the people today." This 1974 judgement did not settle the matter, because the loser brought it up again two years later before the Malaita Customary Land Appeal Court, arguing that "After we settled on this island they put the heap of stones there. We had already planted nuts there before they put the stones." The appeal court, impressed by the fact that the losers in 1974 had actually planted coconuts on the island while the other side "...have only placed a heap of stones on the island", reversed the decision of the local court, and decided that: "It would therefore seem that both lines have rights to the island. However, because of the above reasons [the 1974 loser] is the senior party and [the 1974 winner] the junior. [The 1974 loser] owns all the coconuts but both parties have equal shares of the island."[26] The appeal court decreed that the local court should divide the island but not the coconuts, so that the 1974 loser got rights to all the coconuts and half of the island and the 1974 winner received rights only to the other half of the island.

In the words of Crown Counsel Campbell: "In land matters it is unusual for a Local Court decision to be accepted for long by both parties. This results in the aggrieved party biding his time for perhaps a year or so and then convincing the court to rehear his case."[27] In the meantime, animosities grow as factions recruit support and strengthen their cases for the next court confrontation.

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26. *Ibid.*

27. Campbell (1977:46).

III. *Discussion.*

The Special Select Committee on Lands and Mining reported in 1976 that all courts were accused of not following custom, and yet this is not the impression one gets from reading case files. During an interview on Malaita in 1978, the President of the Malaita District Customary Land Appeal Court cited evidence that his court considered in reaching land decisions: burial sites, testimony of village residents, location of sacrificial places and ceremonies held for ancestral spirits, transfers of land in payment for homicides that avenge deaths, who planted and uses trees, and who currently occupies land are all regarded as relevant evidence in land disputes. In addition we see from the previous cases that disputants also establish claims by citing land gifts and use rights conveyed by ancestors, bravery in old battles, and knowledge of land features displayed during court tours.

Because courts in the Solomons admit these kinds of customary considerations as evidence, they face the difficult problem of determining which of two or more contradictory versions of past events is correct. Unrecorded land transfers are easily denied, especially when they happened long ago, and attempts to establish traditions of a particular family can lead to an impasse when different branches of the family contest each others' stories.

Sometimes these disagreements occur when witnesses invent "tradition" to deceive judges into granting land rights to which they have no legitimate claim. A case before the Ugi Local Court is an example of perjury brought to light.[28] In 1974 this local court reach a land decision:

> ...after hearing a considerable amount of confusing mythological evidence and contentions as to which chief in olden times rode in the front of the common canoe on a journey and which rode behind ...both sides come originally from the same stock and... have become divided into separate branches of a common line. The dispute in the Local Court centered round who was the senior member of the now divided line...

A year after the trial, two of the witnesses confessed to a priest that they had lied on the stand in return for a promised share of the land. The priest called them into the church building and obtained a written confession, which he forwarded to authorities:

> What [winner] had said in his story was true and perfectly right. So it is I who helped [loser] to make up a false generation for [loser]. Some people we put in [loser's] generation are not true...

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28. The 1974 Ugi Local Court documents and subsequent confession are filed at the High Court building in Honiara under Native Land Appeal Case No. 2 of 1975.

> We did this so that [loser's] generation is nore than [winner's]... I helped [loser] to do this in a falsed way and untrue statement. And I tell the truth before God that all the sayings of [winner] are true and perfectly right. I know myself that what [loser] and myself did is falsed in the sight of God.[29]

Of course perjury is not the only explanation for discrepancies in testimony. A chief justice of the High Court of American Samoa regarded contradictions as unavoidable, given the nature of customary evidence:

> Needless to say, tradition handed down by word of mouth... over a period of 100 years is subject to great error. If A tells B a story and B tells the same story to C 25 years later and C to D 25 years later and D to E 25 years later and E to F 25 years later and F to G 25 years later and G to H 25 years later and A could be brought to life and H should tell him what he had heard from G, A would not recognize it as the same story he had told B 125 years before. This simple fact explains why one member of a family who has learned family tradition from one source may testify to an entirely different family tradition from that which will be testified to by another member of the same family who has learned the family tradition from another source. Both may be equally honest but may tell different stories.[30]

Consequently, when courts admit such material as "evidence", decisions are based upon which oral history judges choose to believe. Losers with different convictions about what really happened several generations ago will then charge the court with not taking into account customary practices, by which they mean their ideas about the past. For this reason courts which give the greatest weight to customary considerations remain susceptible to the charge of ignoring it alrogether.

Not all customary land courts in the Pacific are so willing to admit undocumented events in the remote past as evidence. In American Samoa, for example, judges will allow customary arguments such as who first cleared land and whose ancestors are buried on it, provided these points can still be established. But when witnesses disagree, judges may dismiss conflicting stories as inadmissable hearsay and proceed to reach decisions by means of adverse possession rulings. The principle

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29. *Ibid.*

30. High Court of American Samoa, Land and Titles Division, Number 3-1962. Cited in Tiffany (1975).

of adverse possession gives land title to persons whose possession has been "actual, open, notorious, hostile, exclusive and continuous" for a period of time specified in a statute of limitation, which is currently thirty years in American Samoa.[31] The use of adverse possession in Samoa preceded establishment of the American Administration in 1900. In the 1906 case *Pafuti v. Logo* the court noted that:

> The Samoan Lands Commission, created in consequence of the Tripartite Agreement of 1890, between Germany, Great Britain, and the United States, refused to disturb undisputed adverse possession running for more than ten years and was upheld for doing so by the Supreme Court of Samoa up - so far as this court knows - to the time of the division of Samoa between the United States and Germany.[32]

In 1909, the President of the High Court of American Samoa explained the rationale for the adverse possession rule as follows:

> It may be well, in this connection, to cite the following United States cases: *Wood v. Carpenter* 101 U.S. 135 [states that] 'Statutes of limitations are vital to the welfare of society and are favored in the law. They are found and approved by all systems of enlightened jurisprudence. They promote repose by giving security and stability to human affairs...'; *Naddo v. Bardon* 51 Fed. 493. [states that] 'No doctrine is so wholesome, when wisely administered as that of laches. It prevents the resurrection of stale titles and forbids the spying out from the records of ancient and abandoned rights... It gives to the actual and longer possessor security, and induces and justifies him in all efforts to improve and make valuable the property he holds...' See also Vol. 5, *Pomeroy's Equity Jurisprudence*, Sec. 23. ...[N]otwithstanding the contention of the plaintiffs that the original entry was unlawful and oppressive, so long a period of time has elapsed that a court of justice must assume that the original entry was acquiesced in... The Complaint of

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31. Code of American Samoa, Title 27, Chapter 15, Section 1401, 1973.

32. Cited in High Court of American Samoa, Trial Division, Number 14-1903, which commenced in 1903 and was decided on September 15, 1909.

plaintiffs is therefore dismissed.[33]

Over the years the length of time required by the statute of limitations was increased from ten to twenty and now thirty years, but the principle remained the same. In a 1938 case, for example, the chief justice noted that:

> This Court has decided that the Statute of 21 James I. c. 16, passed by the English Parliament in 1623 limiting actions for the recovery of real property... is a part of the law of American Samoa. *Talo v. Poi*, No. 16-1937; *Leapaga v. Taumua L.*, No. 8-1938. The result of adverse possession... is to divest the true owner of his title and to vest it in the adverse possessor. *Maxwell Land Grant Co. v. Dawson*, 151 U.S. 586, 14 S. Ct. 458, 38 L. Ed. 279. '...in the United States and Canada the doctrine is almost universal that possession for the statutory period not only bars the remedy of the holder of the paper title but also extinguishes his title and vests title in fee in the adverse occupant.' 2 Corpus Juris 251 citing in support thereof a multitude of cases from numerous federal and state courts...[34]

In American Samoa, therefore, arguments about who fought ancient battles (as in the 1974 Ontong Java case) and claims that current occupants used force to enter land generations ago (the Fouthaoro case) present no difficulties for the court; decisions are based upon who holds land during the most recent thirty year statutory period.[35]

The western judicial principle of adverse possession was introduced into Samoa by overseas judges. There is no likelihood of this occurring in the Solomons, where people do not want foreign judges or professional lawyers to have any involvement in land cases because "...the law logical arguments they play on that level do not always make sense according to the custom and cultural way of reasoning."[36]

In the Central District, there was a general feeling that even appeals should not be allowed to the High Court of the Solomons, because "High Court judges do not understand anything about our customary way of landownership and therefore they should not pass judgements over what they

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33. *Ibid.*

34. High Court of American Samoa, Trial Division, Number 14-1938.

35. For a discussion of the implications of adverse possession rulings for cognatic descent groups in Samoa, see Tiffany (n.d.).

36. Special Select Committee on Lands and Mining, p. 54.

do not knows."[37] Popular sentiment against "logical arguments" of western courts was so strong that the Select Committee, in its final report, even recommended that old cases decided by the High Court which "may not have followed custom" should be re-opened and heard again by regional land courts staffed by Solomon Islanders.[38]

The recommendations of the Select Committee were based upon general principles which emphasize group ownership of customary land:

> Most land in the Solomons is owned by groups: lines, tribes or clans. Individuals may own land that they got as rewards, compensation or by warfare fro groups. But when these individuals die, th r descendants will become groups that claim their rights to the land by showing how they are related to the first owner.[39]

People opposed individual ownership, because it:

> ...encouraged selfishness. They were concerned that once a man was registered as the individual owner of a piece of land he could then sell it to someone outside his group, or decide that someone outside his group could get it when be died. In this way land could be lost from the group forever.[40]

A basic premise of the committee's report was that traditional landowning groups must be kept intact, because "cash crops, development projects, and wages are an unreliable alternative to subsistence gardening."[41] The committee said that "land should be returned to and kept under the control of the groups that own it"[42], and even descendants of group members who have been living outside of the Solomon Islands should retain their land rights: "People agreed that Solomon Islanders living abroad as a result of the labour trade (Black birding) should be able to get rights if they showed they were ready to fit back in to the customary way of life."[43]

It appears, then, that the kinds of decisions being handed down by the Solomon Islands land courts do reflect widely held values. People are allowed to resurrect dormant claims based upon ancestors' occupation

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37. *Ibid*, p. 54.

38. *Ibid*, p. 14.

39. *Ibid*, p. 6.

40. *Ibid*, p. 17.

41. *Ibid*, p. 6.

42. *Ibid*, p. 6.

43. *Ibid*, p. 29.

of land generations ago, and there are no decisions that undermine group ownership by granting individual title to persons for adverse possession. Despite criticisms of native courts cited in its report, the committee recommended that they be retained,[44] so that the present system of local courts and customary land appeal courts will most likely continue to decide land disputes in the newly independent Solomon Islands.

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