

**LAW REFORM IN PLURAL SOCIETIES. By Teleiai Lalotoa Mulitalo Ropinisone
Silipa Seumanutafa. Springer 2018. The World of Small States, Vol. 2. 185
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This book, which is about Samoa, law and custom is useful to read in the context of three controversial Bills that were tabled in Samoa's Parliament in February 2020. They are *The Constitutional Amendment Bill 2020*, *The Land and Titles Bill 2020* and *The Judicature Bill 2020*. They were prepared for by the Samoa Law Reform Commission under the leadership of the author of this book (based on her PhD thesis) and reflect many of the opinions expressed in it. The Bills address a claim that the constitution of Samoa is inadequate because it provides for individual rights but not for Samoan communal rights. The three Bills were prepared to remedy this defect, 57 years after Samoa became an independent state, by removing the Land and Titles from under the protective umbrella of the constitution and setting it up as a separate entity with new processes aimed to give Samoan customary law equal status to the provisions of law in the Constitution of Samoa.

The title of the book is somewhat misleading because Samoa is not a plural society. That term refers to countries with several different cultures, like Fiji, for example, which has a multi-racial population including an indigenous population with distinct customs, and people belonging to three major religious traditions, Christian, Hindu and Muslim. In contrast, Samoa has a homogenous population comprised almost entirely of ethnic Samoan Christians. It becomes clear that the author is actually referring to *legal pluralism*; a situation where there are two or more separate legal systems in a country – as, for example, in Malaysia, where there is a dual system of courts to include Muslim Sharia law as well as the law inherited from British common law under the Constitution, and some recognition in law of the customs of certain ethnic minorities as well. At present Samoa has two branches of law and courts under its Constitution, one set of courts being based on common law and the other, a Land and Titles Court, which adjudicates disputes in relation to Samoan customary land and titles. Both courts are subject to the protection of fundamental rights under the Constitution of Samoa.

This reviewer was looking forward to reading a description and discussion of Samoa's customary law in the book, but that is missing. The author does present an extensive review of laws and Acts of Parliament, of which many provide for Samoan custom but, she argues, not sufficiently. Even though the author asserts that in Samoa "there is an overwhelming desire for customary law to be the basis of Samoa's legal system" (p.58) the reader is not told what these customary laws that Samoans desire actually are. She does not explain why, if this is so, there have been so very few cases taken to the Supreme Court of Samoa over conflict between custom and law. Of those few, most contested the Samoan custom by which a village council may banish a wrongdoer and his or her family from a village, with associated destruction of their property (which falls foul of laws against arson). Furthermore the book does not explain why the conflicts between law and custom most frequently aired by village elders in public consultations on law reform concern the constitutional provision for freedom of religion. These concern cases where a village council objects to the establishment of a new religious denomination and the building of its church in a village.

Teleiai contends that "customary laws must form the basis of Samoa's legal system" and that "all parliamentary laws must be contextualized to fit the Samoan customary environment" (p.59). In the discussion of examples of laws, many touch on the powers of a village council. For example there is

limited value to a dog control ordinance if village councils are unaware of it, or choose not to enforce it. But this and other good points don't speak to a need to make law 'more Samoan', although they do speak to weakness in Samoa's system of local government suggesting a need to review the village Fono Act to be more explicit about the powers and duties of village councils. Today only about half the population of Samoa lives in villages that are subject to village council rules, of which most are unwritten and which vary from village to village. The other half of the population live in suburban settlements, where there are no customary rules in force and little in the way of effective local government. Nevertheless, wherever Samoans live they are likely to share, respect, and observe cultural protocols, which is evidence of the vitality of Samoan culture.

The book argues that fundamental rights are in some sense incompatible with customary law. But as Jonathon Sumption said:

"There are probably only two categories of right that are truly fundamental and generally accepted [in all societies]. First, there are rights which are fundamental because without them life is reduced to a crude contest in the deployment of force. So we have rights not to be arbitrarily detained, injured or killed. We have equality before the law and recourse to impartial and independent courts. Secondly, there are rights without which a community cannot function as a democracy, so there must at least be freedom of thought and expression, assembly and association, and the right to participate in fair and regular elections (The Reith Lectures 2019: *Law and The Decline of Politics*).

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It seems to this reviewer that the most ardent Samoan traditionalist would agree with these words. 120 years ago Samoa had no constitution, no written laws, no courts, and no police. Severe disagreements in those days resulted in violent feuds between families and wars between villages and districts. Since 1900 Samoans have lived under a legal system which more or less successfully mixes Samoan custom and modern laws that mostly grew from historic bedrock of British common law and the United Nations Universal Declaration of Human Rights that was drafted by representatives with different legal and cultural backgrounds from all regions of the world in 1948. Since 1962 the government of Samoa has stood, mainly successfully, on three separate posts. The first post is the parliament which makes the laws. The second post is the public service which does the work of government under the laws. The third post is the independent justice system that upholds the laws. Although Teleiai has done a creditable job of pulling together an extended legal argument, this reviewer thinks that her case is contradicted by the facts of Samoa's history.