

An Ethics of Responsibility in Samoan Customary Law

**The Head of State of Samoa, His Highness Tui Atua Tupua Tamasese Ta'isi Efi,
Keynote Address, Law, Ethics & Responsibility Symposium, Hopuhopu,
Ngaaruawaahia, Waikato-Tainui College for Research and Development
25 November 2014**

I dedicate this address to King Tuheitia. I am deeply honoured that despite your ill-health you have come to join us today.

I wish to also acknowledge Sir Eddie Taihakurei Durie. Thank you for the scholarship that helped restore the self-respect and pride of our fanauga.

And lastly, I wish to say to our Pacific family, o le lave i tiga, o le ivi, le toto, ma le aano – he who rallies in my hour of need is my bone, my flesh and my blood.

Let me begin...

When Betsan invited me a few months ago to participate in this symposium, she explained that it was about “responsibility within law and custom”, focusing particularly on the management and governance of water. In our discussions about the symposium’s focus she mentioned the notions “climate change”, “climate justice”, “public good”, “common good”, “western law” and “indigenous custom”. She suggested that the symposium would benefit from having perspectives on these from the wider Pacific fanauga, beyond Aotearoa New Zealand, and from cultural custodians such as myself.

I accepted Betsan’s invitation because I am committed to the indigenous cause. I consider it my duty as a cultural custodian to share with the young what I believe is the best of my Samoan indigenous culture and customs. To do this I have had to probe and make visible uncomfortable areas of discussion within contemporary Samoan society and culture. This has been no easy task and I worry constantly about how best to do it. Much of the discomfort has largely been because the Samoan indigenous reference has been unfairly relegated to the sidelines of Samoan society for it refers too much for many to what Samoans have described as a time of ‘darkness’; a time that many would prefer not to remember or have been colonised to believe is not worth remembering¹.

Over the years I have made suggestions towards a methodology for probing these areas, both lovingly and critically; noting that such a methodology requires deliberate attention to, among other things, the question of how best to involve the young in this conversation. If we – meaning us elders – want the wisdom and values of our

¹ See Suaalii-Sauni, T.M. et al (Eds). 2014. Whispers and Vanities: Samoan indigenous knowledge and religion. Wellington, NZ: Huia Publishers.

forebears to live beyond us, we have a duty, indeed a responsibility, to involve the young, to listen to them, to advise and guide them, and to learn from them.

Today I wish to share some of the wisdom that was imparted to me by the cultural custodians of my youth, so that their knowledge and my rendering of it can be exposed to the rigours of good critical intellectual debate in this time and space. So that it can live and grow and hopefully find meaning in the hearts and minds of present and future generations who have or will have the challenge of managing our public goods for the good of all.

Samoa has undergone significant changes since becoming an independent nationstate. As a nation-state she has drastically changed the way she manages her environmental resources. She has relegated her belief in a sacred kinship between people and animals, plants, waterways, ocean, mountains and other parts of the biosphere to the background in favour of the modern twin technologies of domination, what Max Weber called the spirit of capitalism and the protestant ethic². The familiarity that Samoans have shown with biblical concepts such as heaven, hell and original sin, and with the ethic of industry in Proverbs 10:4 which says: “Lazy hands make for poverty, but diligent hands bring wealth”, far exceeds their familiarity with our own Samoan indigenous concepts and sayings, some of which I will explore further on.

By sidelining, sometimes even condemning, our Samoan indigenous reference in favour of modern industry and Christian prejudices, Samoa altered the sacred balance she once privileged between people and the environment, where the environment was believed to be kin. We have, as Cardinal Maradiaga describes, bought into the arrogance of the modern mind and “deified ourselves as owners of the planet” and “turned our backs on our role as God’s stewards on Earth”. We have become a conceited race in need of what the Cardinal describes as “creatural humility” – the kind of humility that brings us literally back to earth and finds balance and intimacy in our knowledge of and respect for the sacred kinship we share with the environment and with God. This was always a part of our indigenous theology³.

As a result of turning our backs on the wisdom of our forebears we can find redemption in owning up to the truth of Maradiaga’s words: “Only through universal unitedness between men, animals, plants and things will we be able to push aside the conceit of our race - which has come to think of itself as the despotic ruler of.

2 Weber, M. 1976. *The Protestant Ethic and the Spirit of Capitalism* – translated by Talcott Parsons; introduction by Anthony Giddens. London: Allen & Unwin.
Creation - and turn it into the elder brother of all of its fellow creatures”

3 Maradiaga, O. 2014 (May 2). Opening address to: Sustainable Humanity, Sustainable Nature: Our Responsibility Conference at Vatican. Online at:
<http://catholicclimatecovenant.org/wpcontent/uploads/2014/05/RODRIGUEZ-MARADIAGA-Sustainable-Humanity-English.pdf>. Accessed 22 November 2014.

It is my contention that in sidelining our indigenous reference we have made it easier for us to walk the path of environmental destruction. And, because of the dire impact that rising sea levels is having on our homes and livelihoods right now, the wisdom of our decision to sideline our indigenous knowledges must be relooked at and relooked at now. In light of the very real evidence presented by scientists on the causal connections between rising sea levels and other climate changes and industrial pollution, our Pacific countries must rally together to force those most accountable for the breakdown of nature's protective mechanisms to take responsibility for their abuses. We must work together as a united collective towards redressing our wrong. Real solutions can only be sustained by working together. This includes working together to revive the wisdoms of our indigenous past. As Pierre stated so eloquently on Sunday, the problem of climate change is not just about ensuring that we put up a good fight against the industrial abusers, but that we find the will as individuals, as respective nations, and as a region to come together to work towards the protection of this place – the Pacific – that we call home.

Every country has its own challenges and must devise its strategies accordingly in order to rally their troops. Gaining buy-in is as much about changing mindsets and dealing first with issues in-house, as it is about changing the mindsets and actions of corporate giants who live and manoeuvre from outside.

In Samoa no longer are individuals, families or villages perceived by members to be responsible for managing their own waste. Rather it is perceived the responsibility of the government or state. Moreover, no longer are individuals, families, villages, believed responsible for sorting through their wrong-doing. Again this is perceived the responsibility of the government or state. In resolving disputes people are drawn to the courts – a state-run machine – as a first rather than last resort. The state has become judge, standard bearer and arbiter of what is good, responsible and ethical. But who is the state? Who is the court? And, what dominates and influences their minds and actions? We are the state. We are the court. And we, as humans, dominate and influence our own minds and actions.

The centralisation of government in Samoa has meant that traditional or customary environmental management systems have changed to suit the new global order. Thinking through how best to develop a new paradigm of responsibility that can take seriously the values of our forebears requires bringing their values back to the forefront of our minds and hearts, re-energising them, even re-creating and re-casting them if need be as Sister Vitolia Mo'a advocates in our recently launched book *Whispers and Vanities* ⁴.

Engaging in forums such as this can help. These forums provide much needed opportunities to sharpen our understanding of the issues. They offer an opportunity

⁴Mo'a, V. 2014. "Le Aso ma le Taeao – The Day and the Hour: Life or Demise for 'Whispers and Vanities'?" In *Whispers and Vanities: Samoan indigenous knowledge and religion*. Suaalii-Sauni, T.M. et al (Eds). Wellington, NZ: Huia Publishers. pp.45-57.

to think more widely and deeply about central concepts sometimes taken for granted in this highly complex debate. And such forums offer the opportunity to converse about these concepts with others of similar convictions and purpose. Core concepts such as “the indigenous” and “indigenous customs”, for example, deserve close attention in this conversation.

Like its use here in Aotearoa New Zealand, the term indigenous for me signals a reference to the native people of a land (i.e. to tangata whenua in Maori; or to tama or tagata o le eleele in Samoan) and to their customs, traditions and worldviews. Unlike Maori, however, the indigenous population of Samoa are the majority or dominant ethnic population and/or culture group. Ninety three per cent (93%) of Samoa’s population today is Samoan.⁵ Furthermore, the traditional Samoan chiefly system – the faamatai – is still an integral part of modern Samoan systems of government, even if somewhat modified. The Samoan language is used right throughout the country, in all aspects of life, and is a formal and informal part of government and educational literature and service delivery. The indigenous – or what some might prefer to describe merely as Samoan – is therefore in Samoa still very much a part of our everyday modern lives.

What complicates and further demarcates the use of the term ‘indigenous’ in the Samoan context from the way it is used in Aotearoa New Zealand, is, as implied earlier, the question of religion. The way Samoans think about and practice their introduced Christian religious culture influences how they think about and define their Samoanness and arguably their ‘indigeneity’. For, as Toeolesulusulu Damon Salesa describes, “Samoans became Christian, and Christianity became Samoan, much like the confluence of rivers”.⁶

There is a merging of rivers here that finds the Christian and the Samoan to be one and the same. Many Samoans find that they are no longer able to separate their Christianity from their Samoanness or their Samoanness from their Christianity. By probing what this means I am forcing my Samoan people to address the underlying issue of arrogance that also insidiously pervades the mindsets of those who resist taking proper responsibility for the unnatural changes we are experiencing with our climate. That is, the issue of a loss of grounded humility. In both cases we have to admit that in our haste to assert our technical superiority as a species we seemed to have lost our way. By revisiting our indigenous references we may be pleasantly surprised to find a new pathway forward.

⁵ These statistics for 2014 were found on the world population review website. Total population for Samoa as of 2014 is recorded on this website as 195,000. See <http://worldpopulationreview.com/countries/samoa-population/>. Accessed 21 November 2014.

⁶ Salesa, T.D. 2014. “When the Waters met: Some Shared Histories of Christianity and Ancestral Samoan Spirituality”. In *Whispers and Vanities: Samoan indigenous knowledge and religion*. Suaalii-Sauni, T.M. et al (Eds). Wellington, NZ: Huia Publishers. pp.143-158.

Reflecting on questions of indigeneity is important to the cause of developing the new paradigm of responsibility advocated by the organising committee of this symposium. The intention or aim for this symposium they state is “to open a new paradigm of responsibility and guardianship or stewardship of water, which is different from rights and ownership approaches to public goods”. A “trusteeship system” is proposed as an alternative to owning public goods such as water. And an emphasis is placed on moving away from an “owning” mentality or ethos to one of “responsibility” and/or “guardianship/ stewardship”. This latter ethos we can again find extant in our traditional or indigenous references.

Let me illustrate this by reference to seven core principles or concepts in Samoan customary law. These include the concepts of “tuā’oi” (boundaries; jurisdiction), “tulafono” (laws; custom laws; lore), “aganuu” (general cultural principles and custom laws), “agaifanua” (cultural principles and custom laws relating specifically to a village or district or family), “matāfaioi” (designated work and/or responsibility), “tofā sa’ili” (the perennial search for wisdom) and “va tapuia” (relationships that are sacred or spiritual).⁷ There are many more but these are sufficient to make my point.

Breaking words down into component parts or tracing their etymological histories gives useful context to meaning and allows us to trace shifts in meaning over time and to evaluate the whys, hows and wherefores of such shifts. Doing this also provides vivid insight into why a language and its words are said to carry the soul of a people. Let me begin with tulafono, which is generally translated today to mean “laws”, i.e. state or custom laws.

The word tulafono brings together two concepts. The first is the concept of a chiefly head or heads (i.e. tula). The second is the concept of a meeting, i.e. fono. The tula as the head of a chief is considered tapu for it is the site of wisdom and discernment. What is produced from the collaboration of tula within a fono are tulafono or sacred laws. The process of producing tulafono is sacred in that it seeks a dialogue with God. The process usually involves six steps. These are:

- Step 1. Tuvao Fono (literally meaning, ‘to step into the forest’). This was the stage when a tula would ‘break new ground’ or raise new issues. It is usually the start of the fono.
- Step 2. Lo’u Fono (literally referring to the ‘bending of a branch’ – lo’u refers to a branch). This was the stage in the fono where an issue is raised and explored and those who had the right to critique were given the space to do so.

⁷More discussion on these concepts can be found in my earlier work, some of which has been published in the following edited collection: Suaalii-Sauni, T., et al. 2009. Su’esu’e Manogi: In search of fragrance: Tui Atua Tupua Tamasese Ta’isi and the Samoan Indigenous Reference. Le Papaigalagala, Samoa: Centre for Samoan Studies, National University of Samoa.

- Step 3. Lauga Togia (lauga meaning 'a speech' or the act of 'speaking' and togia meaning to designate according to tradition and custom a right or privilege). This stage gave those who had been given the right to make interventions in formal deliberations the space to do so.
- Step 4. Faai'u Fono (faai'u meaning to conclude or end). This stage gave those who had the right to conclude the meeting or fono the space to do so, or alternatively if they wished to rule that the fono revisit an issue again through the same speaking order, they could also do that.
- Step 5. Faaola Fono (faaola means literally to give life). This usually involved situations where the wisdom and intervention of a tamaalii or high chief (as opposed to orator chief or tulafale) was required. His was the wisdom of the long view, the perspective of someone concerned with the bigger picture.
- Step 6. Tulafono. This is the last stage of the tulafono process and involved the finalisation of a rule or law (also called tulafono) to be used for the governing of behaviour and/or setting of standards for the family or village.

In each of the above steps, even when the tulafono is more or less set, there is recognition that the tulafono or law is always open for negotiation and reprocessing (using the tula-fono process) if new circumstances arose. While there was certainty and meaning in this customary process, there was also flexibility. Within this process operates the principle of tuā'oi, which is loosely translated as boundaries.

Tuā'oi as a word is shorthand for the phrase, "i tua atu o i e le au iai lau aia po o lau pule", meaning "your rights (aia) and/or authority (pule) do not extend beyond this point". It is here that the image of a boundary, a line that cannot be crossed, is made vivid.

By Samoan custom tuā'oi demarcates rights and responsibilities but in relation to agreed boundaries. These boundaries can be physical, social and sacred. They are both designated (from God) and negotiated (between men) and when there is general consensus, usually through a 'fono of chiefly heads' process, then they are usually observed, respected and enforced. When taken through this kind of rigorous process, the need to change the fundamentals of a tulafono and tuā'oi rarely arises.

The highest and most sacred tuā'oi was considered that between man and God. In that relationship there is a boundary that man cannot cross. Man's relationship with God informed the basis of the boundaries within all his other relationships: his relationships with fellow men, with the cosmos, with animals and the environment. And such boundaries or tuā'oi guided human understandings of rights and responsibilities. Like tulafono, while tuā'oi once established may seem immovable, there was always room for renegotiating boundaries where it was apparent to all that continuing certain tuā'oi created more harm than good.

Both these concepts of tulafono and tuā'oi assume a particular way of understanding the relationship between man and God, man and the environment, man and the cosmos, man and fellow men. In the Samoan customary context, God is understood as God progenitor not God creator as in the Hebrew version of creation. God was indeed perceived God the Father but as both ancestor and paternal protector. This was because my forebears wanted their God to be close not distant. They saw and felt His presence in ways that represented for them both the mysteries and the bonds of kinship.

In this Samoan version of God, God was, like the Christian God, a God of love and respect. He had all-knowing power and knowledge. He created and knew all, but in his act of procreation, He was with us as close kin not as distant Father. All his creations were kin. We were family with the cosmos, the environment, the animals, the plants, the trees, the water, and so on and so forth. We lived on this earth as family. We protected each other as family. We respected tulafono and tuā'oi as family.

Within such a model of God and family there is immense loving and respect. It is on this basis that I cannot bring myself to believe that my Christian God, a loving God, didn't speak or connect with my people for all those 3000-odd years before Christianity came to Samoa. And as I have written elsewhere, it seems a gratuitous insult to both God and my forebears to assume that there was a disconnect between them for all that time. This theology informed the basis of their customs or custom laws, today embedded deep within both our aganuu and agaifanua. Let me now turn to these two concepts.

The significance of aganuu and agaifanua is that both speak to the two frameworks of customary law that operate within Samoa today. Aganuu is a body of rules or laws of general application. It is differentiated from agaifanua by its common reference and use across villages and districts. In other words, when one speaks about aganuu one is usually referring to common Samoan conventions and customs. When one speaks of agaifanua one is usually referring to those conventions and customs considered particular to a village, district or family. There is an often cited saying, "E tofu le nuu ma le aga-i-fanua", translated to mean "for each village its own conventions". As stated in conversation with Sailau, this saying "underscores the idea that while Samoan customs as general principles derive from the village context, when carried out each village has rules or practices that are idiosyncratic or particular to them. The boundary between one village and the next is protected by custom by the principle of tuā'oi, which assumes a concept of rights whereby the rights and authorities of one village will not encroach on those of another".⁸ Through the four concepts discussed thus far of tulafono, tuā'oi, aganuu and agaifanua one already gains a clear sense that our forebears had a system of law and order that

⁸See Suaalii-Sauni, T. 2010/2011. "'It's in your bones!': Samoan Custom and Discourses of Certainty", *Yearbook of New Zealand Jurisprudence*, pp.70-88, 76-77.

was both logical and orderly and founded on a deeply spiritual and enlightened sense of morality and justice, and on a oneness and kinship with nature.

Each of these four concepts can be found within the methodological and epistemological imperatives of the tofa sa'ili (the perennial search for wisdom) and the va, especially the va tapuia – i.e. that relational space (va) that is protected by tapu or sacred boundaries (tuā'oi) which demands humility and grace from all people to all of God's creatures. The significance of these two concepts – the tofa sa'ili and the va tapuia – lies for our purposes in the way they force us as thinkers to consider by their mere existence how deeply enlightened and aware our forebears were of the importance of maintaining the kind of humility Cardinal Maradiaga speaks of today.

My last concept for analysis is that of matāfaioi. I have left this to last because it speaks most directly to the concern of this symposium, that of developing a paradigm of responsibility. This is a concept that originates from the environment, and in particular from working the land. Like tulafono, matāfaioi is made up of two main parts: matāfai and oi.

Reverend George Pratt suggests that the term matāfai refers to the use of land mainly for planting and harvesting of food crops such as taro. When Samoans speak of harvesting they usually use the word faamatāfai (faa is the prefix meaning to do or to be of). This harvesting or matāfai, however, is not random. It is done in an orderly fashion and involves harvesting land already understood to be apportioned to the harvester. Oi, on the other hand, refers to a cry of pain. When these two parts are brought together to form the word matāfaioi, the word is meant to conjure images of hard work and allude to the wisdom of the idea implicit within that hard work, which is that rewards do not come without hard work and hard work is not without pain and struggle. This is the image and wisdom implicit in the concept of responsibility.

Today the word matāfaioi is used to describe responsibility. Responsibility is assumed here to be something that is apportioned or designated. Sometimes that designation or apportionment is considered divinely ordained, i.e. a tofi or designation from God. But it can also be imposed by secular appointment. Either way it assumes a work ethic that privileges a faithfulness of service and a respect for the benevolence of God.

A paradigm of responsibility that can incorporate the indigenous must take into account all of the different nuances raised in this discussion, not only for the concept matāfaioi, but for all the other six concepts and/or frameworks discussed. These seven concepts illustrate the richness of our Samoan indigenous reference and serves as starting points for discussion on how we might rethink and re-language an ethics of responsibility for the Pacific and for humanity moving forward.

Let me end by making reference to three things.

- First, as people of the Pacific, the Pacific Ocean is a central part of who we are. We cannot have a conversation today about responsibility for water and the environment without addressing issues of climate change and the devastating effects of rising sea levels on our many small low lying islands. Climate change is an urgent priority for the world, but its effects are most especially felt by us here in the Pacific. We owe it to ourselves and our children to find ways to rally together to keep our homes and their homes from sinking under.
- Second, in our rallying we would do well to remember that we share a proud history as indigenous peoples. This history and heritage holds some of the keys needed to unlock and re-energise our spirits and regain our humility. It is easy to feel overwhelmed and despondent by the magnitude of the climate change problem and the uncaring attitudes of those who perpetuate it. But Pierre is right. As individuals we are small, insignificant and powerless. But as a collective we are a force to be reckoned with.
- And third, the main objective of our cultural or indigenous wisdom inherent in the seven concepts I have explored is to seek and identify love, justice, goodness and decency and to locate them in our lives. Before we spurn the wisdom of thousands of years of vision and experience on the false premise that we are too small to make a difference, we should remember the proverb: If you think you're too small to make a difference, then you haven't slept with a mosquito.

Soifua.