CONSEQUENCES OF GOOD INTENTIONS
EXPLORING LAND RIGHTS IN THE COMMONWEALTH
OF THE NORTHERN MARIANA ISLANDS

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For my father
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### TABLE OF CONTENTS

1. INTRODUCTION ..................................................................................................................... 1  
   1.1 METHODS ............................................................................................................................ 9  
   1.2 SURVEY OF RESOURCES .................................................................................................... 12  
   1.3 ARTICLE XII AND ME ......................................................................................................... 14  

2. COLONIALISM, CHAMORROS, AND CAROLINIANS ............................................................. 17  
   2.1 A BRIEF COLONIAL REVIEW ............................................................................................... 18  
      2.1.1 SPAIN .............................................................................................................................. 18  
      2.1.2 THE CAROLINIANS ....................................................................................................... 19  
      2.1.3 GERMANY ...................................................................................................................... 21  
      2.1.4 JAPAN ............................................................................................................................ 24  
      2.1.5 THE UNITED STATES .................................................................................................. 29  

3. THE COVENANT AND THE CONSTITUTION .......................................................................... 37  
   3.1 THE COVENANT .................................................................................................................. 38  
      3.1.1 SECTION 805 ................................................................................................................ 39  
   3.2 THE CONSTITUTION ........................................................................................................... 44  
      3.2.1 “LONG TERM” AND “NMI DESCENT” ....................................................................... 48  

4. THE PROBLEMS .................................................................................................................... 55  
   4.1 ARTICLE XII—PROTECTING FROM EXPLOITATION? ......................................................... 57  
   4.2 ARTICLE XII—PROMOTING ECONOMIC ADVANCEMENT? ............................................ 62  
   4.3 ARTICLE XII—PROMOTING ECONOMIC SELF-SUFFICIENCY? ......................................... 65  

5. ARTICLE XII IS CHALLENGED AND THE PUBLIC REACTS .................................................. 73  
   5.1 THE LAWSUITS .................................................................................................................. 77  
      5.1.1 WABOL V VILLACRUSIS .............................................................................................. 77  
      5.1.2 FERREIRA V BORJA, ALDAN PIERCE V MAFNAS, AND THE HOTEL NIKKO: “RESULTING TRUST” .............................................................................................................. 79  
      5.1.3 DIAMOND V MATUSUNAGA: “CHANGE OF LAW” ....................................................... 82  
   5.2 THE COMMUNITY RESPONDSS ......................................................................................... 83  
      5.2.1 PUBLIC LAW 8-32 AND SAIPANESE MOBILIZED ON ARTICLE XII ....................... 84  
   5.3 INDIVIDUALS MAKE THEMSELVES HEARD .................................................................... 87  
   5.4 ARTICLE XII TODAY ......................................................................................................... 97  

6. CONCLUSION ......................................................................................................................... 100  

7. BIBLIOGRAPHY .................................................................................................................... 104
Chapter 1: Introduction

In 1987 a plot of land on a tangan tangan covered hill resting high above Saipan’s Lao Lao Bay was leased for 55 years. The Chamorro families who own the land relinquished their “short” term use of the land to a group of Americans who were unable to permanently purchase land in the Commonwealth of the Northern Mariana Islands (CNMI).

Off of Back Road in the scarcely populated and spread out village of Papago, the land, because of its remote location and often impassable road, had been used as an occasional weekend retreat by the families who own the land. They, like many other Chamorro families used their lancho, or ranch, for hunting and as an escape from town. A good spot for catching ayuyu (coconut crabs), abundant in papaya, coconut, and mango, and kept cool by the constant wind traveling in from the Pacific Ocean the land was largely left alone.

Over half a century earlier, during the Japanese occupation, the land had been used by the administration to run trains transporting sugar on tracks that ran through two jungle-covered tunnels. Today, two Japanese wells sit unused and bullets, grenades, helmets and other reminders of the battles fought during WWII remain scattered throughout the red clay-like dirt that blankets the land. Though there is no visible

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1 Tangan tangan is the local word for the bush that today covers much of the island. After WWII the island’s natural land cover was largely destroyed. In an effort to prevent the erosion of the exposed topsoil, the American Navy planted the strong, fast growing, and quick to spread foreign plant around the island. Successful in preserving the topsoil, the plant has become a weed taking over much of what was left of Saipan’s native ground cover.

2 I have chosen to use the word American when I speak of people, primarily Caucasians, from the United States. Though Chamorros and Carolinians became American citizens through the Covenant when the island became a Commonwealth upon the disintegration of the Trust Territory, the word “American” remains commonly used in reference to white people from the United States. This is not to say that Chamorros and Carolinians do not consider themselves Americans, as a Carolinian friend told me once, “I am a Carolinian first, and an American second.”
evidence of the brief German occupation, the long and devastating Spanish administration can be recognized by the deer that feed deep in the jungle and the Catholic Church that sits in the neighbor village of San Antonio. There also remains evidence of an earlier presence: sherds of red clay pottery—Marianas Redware—can be found, as well as amazingly smooth football-shaped sling stones—reminders that the land was home to people long before.³

After drawn out negotiations, the land was leased and subdivided into twelve lots. Upon the signing of the lease it was agreed that the Chamorro owners would give up any use of the land until fifty-five years were through—the maximum length of a lease allowed by CNMI law. My family chose our plot, land that sits on a hill over the center of Lao Lao Bay. There, during certain times of the year the moon seems to rise right out of the bay—huge, yellow and beautiful.

During high school, I worked at the Northern Marianas College. Because my main duty was to sit and answer a phone that refused to ring, I passed many hours talking with my supervisor, Anne. Anne was a Chamorro woman who, after high school, had moved to Washington, married, and raised a family. Once her children had finished school, Anne had decided to return to Saipan.

Upon her homecoming Anne was told that her family had decided to sell a large piece of land that had been left to her and her siblings when her parents had passed away. Though she had hoped to move onto the land it was no longer an option. Anne was given

³ It is estimated that the Northern Mariana Islands were first inhabited around 1800 and 1500 BC. Russell, Scott, Tiempon I Manmofo'na: Ancient Chamorro History and Culture of the Northern Mariana Islands, Saipan: Division of Historic Preservation, 1998, 5.
her share of the lease payment. Her siblings had signed a 55-year lease and she would not have the use of the land again during her lifetime.

One day while Anne and I were discussing the day’s newspaper and struggling through the crossword puzzle, she asked me where I lived. I began my usual detailed description: “Going toward Capitol Hill, coming from San Vicente, you take the first right after passing the turn-off that takes you down to Lao Lao Bay. It’s a dirt road and you follow it through two tunnels until…”

“Are the mangoes ripe yet?” she asked.

“Almost” I replied, oblivious to where the discussion was heading and surprised that she had so quickly figured out my directions.

“Have you been up there?” I asked.

“That is my land,” was Anne’s acrid reply.

“Oh…” I said, uncomfortable and unsure of an appropriate response.

There was an immediate tension in the air as I unsuccessfully tried to think of something to say. I could not, and we never spoke of it again. Anne and her family would not have their land back for 50 years but when the lease expires my family’s house will be on it. We became aware of a tangible divide that we were incapable of bridging.

In 1986, after over two decades of negotiations, the Commonwealth of the Northern Mariana Islands emerged out of what had, after World War II, been the Trust Territory of the Pacific Islands (TTPI). As a commonwealth, the people of the Northern Mariana Islands agreed to develop a closer relationship with the United States than Palau, the Marshalls and what would later become the Federated States of Micronesia, all of
which opted for further political autonomy through their respective Compacts of Free Association. While the status of commonwealth guaranteed a wealth of federal funds for the CNMI government and citizens, along with other securities, the leaders of the Northern Mariana Islands recognized the challenge of maintaining the Chamorro and Carolinian language, culture, and way of life in the shadow of the United States. The primary safeguard was to ensure that land remained in the hands of the CNMI’s Chamorro and Carolinian populations. Established first in The Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, it is guaranteed that Chamorros and Carolinians maintain inalienable long-term land rights.  

Section 805 of the Covenant provides:

"[...] The government of the Northern Marianas, in view of the importance of ownership of land for the culture and traditions of the people of the Northern Mariana Islands, and in order to protect them against exploitation and to promote their economic advancement and self-sufficiency: (a) will until twenty-five years after the termination of the Trusteeship Agreement, and may thereafter, regulate the alienation of permanent and long term interests in real property so as to restrict the acquisition of such interests to persons of Northern Mariana Islands descent..."

Section 805 was further detailed in the Constitution of the Commonwealth of the Northern Mariana Islands. Article XII states, “The acquisition of permanent and long-term interests in real property within the Commonwealth shall be restricted to persons of Northern Marianas descent.”

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The term “Northern Marianas Descent” is used in the Constitution and the Covenant in reference to the CNMI’s Chamorro and Carolinian populations. Throughout this paper I use Northern Marianas descent interchangeably with Chamorro and Carolinian. Although there are Chamorros and Carolinians who cannot own land in the CNMI (a result of the way in which Northern Marianas descent is defined in the Constitution which I will discuss in further detail in a later chapter), they are not included in this conversation unless otherwise indicated.

The Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America, 1975.

Through Section 805 and Article XII, people of Northern Marianas descent would be "protected" by law from permanently losing their land, and in turn their cultural stability, to investors and the influx of outside developers that would come from Japan, Korea, China, Australia, and the United States. These outsiders would come to advantage of the island's beaches, historical significance, temperate weather, favorable tax laws, the "made in the USA" stamp, and the financial security that investing under the US flag offers. The Chamorro, Carolinian, and American leaders who worked to negotiate the Commonwealth Agreement determined that, through securing long term land rights in the hands of Chamorros and Carolinians, they would be protecting people of Northern Marianas descent against exploitation and marginalization as they began to develop economically and move toward greater self-sufficiency.

The [Constitutional] Convention's purpose in implementing the restrictions on and alienation is to protect the culture and traditions of the people of the Northern Mariana Islands, to promote the political growth needed in the first critical years of the Commonwealth, to accomplish the political union with the United States with a minimum of cultural and economic dislocation, and to provide the political ability needed to survive in the family of nations. [...] Land is one of the principal sources of social stability. It gives roots to the pride, confidence and identity as a people that will permit the cooperative action necessary to a successful Commonwealth. 7

In order to encourage outside investment in the CNMI and so as not to stifle the burgeoning economy the delegates considered it necessary to create a system through which outsiders could have extended use of land. At the same time it was important that the CNMI's Chamorro and Carolinian people not be permanently alienated from one of their most valuable resources, land. While land was considered a "principle source of social stability" it was also a means through which Chamorros and Carolinians—who had, for the most part, been denied economic wealth throughout their colonial

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history—could access the tangible wealth and lifestyle as part of the American family. While it is argued that land "gives roots to the pride, confidence, and identity as a people" money and material wealth can also be a means of pride, confidence, and identity. Through Section 805, land could be leased, often for millions of dollars, and after 55 years that land would be returned to the owner. Through leases, which were initially limited to 40 years but were later extended to 55 years, Chamorros and Carolinians could have immediate access to capital without becoming permanently marginalized on their own islands.\(^8\)

Through the 40-year allowance, the CNMI opened to outside investors and experienced an immediate and intense increase of economic activity and development.\(^9\) Land prices skyrocketed as Chamorros and Carolinians became multi-millionaires literally overnight. In a few years, property values on Saipan jumped by 2000 percent, as Saipan became an investment hotspot for Japanese investors anxious to take advantage of the yen's favorable edge over the dollar.\(^10\) Hotels were built, garment factories constructed, and thousands of foreign workers were brought from primarily the Philippines and China to build the resorts and golf courses, maintain the grounds, and sew the clothes that supported the booming economy.

With the new money came other developments. While Section 805 and Article XII were developed to protect those of Northern Marianas descent from being exploited by outsiders, they cannot prevent Chamorros and Carolinians from being exploited by other Chamorros and Carolinians. They also do not apply to the United States military,

\(^8\) Article XII of the CNMI Constitution determined "long-term" land rights as anything over 40 years. Today, through two Constitutional Conventions, voters of the CNMI have extended this period to 55 years.
\(^9\) When I use the word development I am speaking of physical development. Construction, electricity, water, and other tangible improvements in the CNMI’s infrastructure.
which currently has 55-year leases with the option to renew, throughout the CNMI, in particular on the island of Tinian. Over three quarters of the island of Tinian has been leased by the military with the “option” to renew. And while Article XII works to protect people of Northern Marianas descent from being exploited by outsiders, it has, along with other CNMI laws, created an atmosphere that allows for the exploitation of others.

In addition to protecting the Chamorros and Carolinians of the CNMI from exploitation, Section 805 also promises to help promote economic advancement in the Commonwealth. The CNMI economy prospered during its first decade largely due to the development of tourism and the garment industry. While hotels and garment factories have proven highly lucrative for the islands, they are also two sources of income that rely largely on factors outside of the CNMI’s control. The success of tourism on Saipan and the other islands greatly depends on the economic condition of Korea, China, and primarily Japan. These countries invest millions of dollars in the CNMI and also provide large numbers of tourists. As Asia’s economy slowed down the CNMI’s economy has suffered greatly.

The garment industry, while not entirely dependent on the Asian economy, depends on the maintenance of certain local laws such as a low minimum wage, productive immigration laws, a favorable tax situation, and lax environmental policies. It is also dependant on international trade agreements, an issue that has recently become a major threat to the industry in the CNMI. The sustainability of the garment factories has
been challenged as the US Federal government regularly threatens to enforce a regular rise in the Commonwealth’s minimum wage and a takeover of immigration.\footnote{The CNMI Constitution allows for internal control of immigration. Initially implemented as a means to protect the people of the NMI from an overwhelming foreign presence, the CNMI’s immigration laws have allowed for just the opposite. Upon the creation of the Constitution it was argued that US immigration laws would provide an avenue for uncontrolled foreign immigration. Local control would provide the CNMI with the ability to restrict immigration so that social and economic stability in the developing Commonwealth would not be threatened by an overwhelming population of foreigners. But the CNMI’s immigration laws have become relaxed in order to allow for the high numbers of “guest” workers needed to maintain the tourist and garment industries. The Federal Government has threatened to take-over CNMI immigration, a proposal that is strongly challenged by the CNMI government and the industries that benefit from the current situation.}

Section 805 of the Covenant promises to help move the CNMI toward economic self-sufficiency. However, as the CNMI’s economy has developed, it has become increasingly dependent on outside economies, foreign labor, and heavy funding from the United States. Has Article XII truly “protected” the people of the CNMI from exploitation and assisted them in maintaining their culture? Through a well-intentioned effort to preserve Chamorro and Carolinian culture, language, and way of life while promoting economic advancement and self-sufficiency, Section 805 and more specifically Article XII, created an atmosphere that would challenge the very things they were intended to protect.

Article XII is an issue that has been heatedly debated since its creation. This project in no way attempts to answer whether Article XII is right or wrong for the CNMI, rather this is a critical examination of the law and the role it has played in the first twenty years of the Commonwealth. Although the laws assure that long-term land rights remain in the hands of the Chamorros and Carolinians, the effects of the land laws have had a variety of implications since the signing of the Covenant. The impact of Section 805 and Article XII is not only illustrated through deeds to land and title exchanges. The CNMI today is home to thousands of people of non-Northern Marianas descent and the issue of
who can and cannot own land is a controversial topic. While it is often identified and sensationalized as being an issue of “outsider” against “insider” the reality is more complex.

Methods
Throughout this project I have used a number of research and writing methods and applied them to the sections where they would be most effective. I have used books, newspaper articles, interviews, and memories to formulate my interpretation of Article XII. This paper is my understanding of an entangled subject that has shaped and continues to affect the Commonwealth. Although some might argue that I am overemphasizing Article XII’s reach and depth in the Northern Marianas, I argue that the CNMI of today is a result of Article XII. Just as the United States has been defined largely by its Constitution, so has the CNMI been shaped by its Constitution. While the latter document is largely a reflection of the former, Article XII is a major disjuncture between the two that is important to understand.

I address Article XII in the CNMI by focusing on Saipan for three main reasons. First, Saipan has been a major location in each administration and, while colonizing powers impacted Rota and Tinian, Saipan was often the focal point of colonial efforts. Second, a majority of the Article XII issues that arose in the 1980s and 1990s took place on Saipan. As the primary tourist destination in the Marianas, Saipan saw more development and thus more Article XII suits. Finally, I grew up on Saipan. I am familiar with the island and the issues related to Article XII that developed there. It should be understood that while I write of the Commonwealth of the Northern Marianas, as the
Constitution applies to all fourteen islands, I focus much of this paper on Saipan and the impact of Article XII on this island.\textsuperscript{12}

My first chapter looks at the history of the Northern Mariana Islands. Beginning with the land tenure system of the Chamorro people prior to the arrival of the Spanish I then turn to the three centuries of colonial rule that followed. Avoiding the rote recitation of each administration and its activities, I focus primarily on the colonizing power’s approach to the islands’ land and the Chamorro and Carolinian population’s access to it. How did the foreigners impact the physical land and its “ownership?” The western concept of ownership was foreign to the people of the Marianas prior to colonization and the rules changed with each new administration. I argue that through land control each administration effectively marginalized the Chamorro and Carolinian population forcing them to accept the imposed regulations.

This chapter also discusses the arrival of the Carolinians on Saipan. The term “Northern Marianas descent” in the Constitution applies to Chamorros and Carolinians of the Northern Marianas although in many studies of the CNMI the Carolinian community is glossed over. The people of the CNMI are regularly discussed as a single uniform group and regularly the Chamorro culture is presented as the single culture of the islands. Therefore, in order to have a more complete understanding of land issues in the CNMI, it is necessary to recognize that Chamorros and Carolinians are two very distinct groups. Referring to the two groups as one indigenous unit promotes the continued marginalization of the Carolinians. Though I use the term Northern Marianas descent throughout this paper in reference to both groups, it is with the understanding that it is

\textsuperscript{12} This is not meant to imply that Article XII has not impacted the rest of the CNMI. It certainly has.
often necessary to differentiate between the two groups in order to present a more realistic portrayal of the situations.

Chapter Two looks closely at Section 805 of the Covenant and Article XII of the Constitution and the logic behind their evolution. Section 805 of the Covenant promises to protect the Chamorros and Carolinians of the Marianas against exploitation, promote their economic advancement, and help them work toward self-sufficiency. I discuss how the laws have achieved, or failed to achieve, these three goals.

I do not suggest that Article XII is solely responsible for the challenges and problems facing the CNMI. The CNMI prior to the end of the Trust Territory was not an idyllic undeveloped Pacific paradise. The CNMI wanted development—but how much development and what kind of development? The CNMI wanted money and infrastructure—but at what cost? The intention of Article XII was to protect the people of the CNMI from long-term land alienation. The framers of the Covenant and the Constitution (American and CNMI delegates) saw Article XII as a buffer, a way to limit the effects of the negative impact of outside investment.

Chapter Three follows the development of Article XII as it became increasingly complicated and controversial, often emphasizing the ethnic divisions in the CNMI. Looking closely at three lawsuits, I explore three main issues that arose in response to Article XII. In this section I rely heavily on court documents and discussions I had with attorneys on Saipan heavily involved in the debate.

Chapter Four presents people’s responses to the actions of the Courts and Article XII’s impact. For this section I have collected a number of letters written to the community by NMI residents of various ethnicities. Some were published as letters to
the editor of Saipan's papers and others were presented at public hearings. I think that these provide valuable insight into people's thoughts, opinions, and feelings about the issue.

**Survey of Resources**

This paper centers on the two defining documents of the Commonwealth of the Northern Mariana Islands—*The Covenant to Establish a Union Between the United States of America and the Commonwealth of the Northern Mariana Islands* and the *Constitution of the Commonwealth of the Northern Mariana Islands*. The words used by the documents' creators have largely determined the direction that land alienation policies have taken through interpretation by the Courts and the people of the CNMI. Section 805 of the Covenant, through its broad language, provided room for the developers of the Constitution to determine the specifics of Article XII. Though this paper looks to both documents, it is Article XII through which Section 805 has been defined and applied that is of particular significance.

The transcripts from Constitutional Conventions have provided insight into the process through which Article XII came into its specifics. It was not an easy process, and there was much heated discussion between the representatives responsible for developing the Constitution and determining the future of land ownership. The disagreements expressed during the Constitutional Convention are indicative of the turmoil that would later arise in the CNMI as a result of the law, its restrictions, and its interpretation. The *Analysis of Constitution of the Commonwealth of the Northern Mariana Islands*, a document written by the Constitutional Convention, provides an explanation behind the
Constitution's various laws. The official reasoning for Article XII and the detailed argument behind it has provided me with valuable insight into the law's initial intentions.

The work of husband and wife team Howard Willens and Deanne Siemer has provided significant secondary sources on the topic. Willens and Siemer were involved in the status negotiations and have written a number of articles and two books on the era of "decolonization" in Micronesia in which they focus primarily on the Northern Marianas. The Trust Territory Archives, available through the Pacific Collection at the University of Hawaii at Manoa's Hamilton Library, has provided primary documents, such as the proceedings of the Constitutional Conventions through which Article XII was created and later redefined.

Marybeth Herald's article, "Does the Constitution Follow the Flag into the United States Territories or Can It Be Separately Purchased and Sold," provides a close look at Article XII and Section 805 and their relationship with the United States Constitution. Herald argues that the CNMI's land alienation policies are unconstitutional and that as a part of the United States, the Commonwealth is subject to the laws laid out through the US Constitution. Specifically, the US Constitution states that all citizens have the right to own land. Herald goes on to disagree with the US Court's decision to allow room for land alienation through the CNMI's Covenant with the United States. Through her article Herald provides a valuable and interesting critique on Article XII and Section 805 that I have found very helpful in understanding the complexities of the subject.

I have not come across any studies or writings on the social aspects of Article XII, the CNMI Constitution, or the Covenant. When land rights have been studied, they have primarily been examined through historical or political approaches that discuss the larger
issues of political status or colonization. These works play into my topic but also speak to the necessity of new scholarship in order to better understand Article XII and land ownership in the CNMI. A dialogue needs to begin. I have interviewed people from the Northern Marianas in order to gain a better understanding of public perception of Article XII. I did not limit my discussions to Chamorros and Carolinians. Rather I spoke to people from different ethnic and cultural backgrounds who call the Marianas home. Because the NMI is such a diverse place, I think that it is important to recognize that this issue effects not only the Chamorro and Carolinian population or the people who can afford to lease land. In one way or another Article XII has affected every person living in the NMI.

I have found the CNMI’s daily newspapers to be particularly productive resources. The Marianas Variety has followed the issue since the beginning and has detailed the developments. Of particular interest to me have been the letters to the editor. The people of the CNMI have used the “Letters to the Editor” section of the papers to comment on and debate Article XII and its evolution. It has proven a very interesting and helpful forum through which a variety of NMI citizens have felt comfortable expressing themselves, their stories and their points of view.

Article XII and Me

Undoubtedly my greatest resource throughout this project has been my personal experiences in the CNMI and with Article XII. In 1985 my family moved from Pohnpei, Federated States of Micronesia to Saipan. My father was a lawyer who worked primarily on international and real estate law. When the Article XII saga started to develop and
suits began to be brought against non-Northern Marianas Descent investors by Chamorro and Carolinian landowners, my dad went to work representing the investors.

It was not an issue that we discussed at school or one that I talked with my friends about. It was too heated, too personal, and being one of only a few "Americans" in the school, I did not need to alienate myself any more than I already was as a result of my fair skin. In my mind Article XII was a legal reminder that I would always be an outsider to the place that I called home.

Through my undergraduate and graduate education I have come to see Article XII differently. I no longer harbor the resentment that I grew up with and I appreciate the goals behind it as determined in the Constitution and the Covenant. Having been exposed to the injustices dealt native Hawaiians and the indigenous Chamorros of Guam, I appreciate the efforts of the Commonwealth’s negotiators to create an atmosphere that would prevent the Chamorro and Carolinian communities from losing their land and all that it represents for the island’s cultures. However, as I have developed an appreciation for the laws, I have also come to see that through Article XII and Section 805 the CNMI has changed dramatically and these changes have not necessarily coincided with the reasons for Article XII and Section 805 as determined by the Constitution and the Covenant. The CNMI is facing challenges that have come about as a direct result of Article XII and the issues have yet to be addressed by the community as Article XII continues to be seen as primarily as an “outsider” v “insider” issue.

In the summer of 2004 I returned to Saipan for two months after being away for a year. I spent two weeks in the law-firm where my father once worked going over boxes of files that followed the Article XII situation. As I scanned documents that had been
prepared by my father, I ran into pieces of my family’s history. Pictures drawn by my sister, the aspiring artist, on the back of notes taken by my dad during a meeting regarding an Article XII lawsuit, a note from my mother, and doodles by my brother were reminders that this is an issue that has shaped my life and that of many others. As I begin to write I am very aware of just how personal this issue is. While at times my analysis might come across as critical of Article XII and its legacy it is by no means indicative of my feelings for the Commonwealth, its people, and the place that has raised me. I have a great amount of respect for the developers of the Covenant and the Constitution and the people who have been integral in the evolution of the issue. I care about Saipan, the CNMI, and its future and thus I think it is important to raise issues that will determine our future.
Chapter 2: A Background—Colonialism, Chamorros, and Carolinians

The Mariana Island chain lies 15 degrees north of the equator and 1000 miles east of the Philippines. The Marianas is made up of fifteen islands including Guam, Saipan, Tinian, and Rota. Today, only a three-hour flight from Narita, Japan and Manila, Philippines, much of the islands’ more recent history has been determined by its proximity to Asia. Though geographically and culturally connected, today the Mariana Islands are divided into two political units; the Commonwealth of the Northern Mariana Islands and the Territory of Guam.

The Northern Mariana Islands have been subject to centuries of colonial rule. After over two hundred years of Spanish domination, through war and negotiation, political control of the islands has passed from Spain to Germany, to Japan, and finally to the United States. Often the center of the region’s colonial government, the Mariana Islands have been greatly impacted by the influx of foreign power and all that it has entailed.

In effort to “successfully” colonize the islands Spain, Germany, Japan, and the United States employed a variety of methods to rid the Chamorro and Carolinian people of traditional forms of land ownership. The colonial governments, in order to document land title—a practice that would allow them to lay claim to a vast majority of the islands’

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14 By recent I am referring to the past three hundred years of colonization. The Marianas was inhabited long before Spain arrived.
15 The Commonwealth of the Northern Mariana Islands includes Saipan, Tinian, Rota, Agriuguan and the “Northern Islands”—Farallon de Medinilla, Anatahan, Sariguan, Guguan, Alamagan, Pagan, Agrigan, Asuncion, Maug, and Uracas—none of which are permanently inhabited. Pagan and Anatahan have been home to several Chamorro and Carolinian families, but due to the islands’ volcanic activity, they are currently uninhabited.
16 I use the term “Micronesia” throughout the project in reference to the Federated States of Micronesia, Palau, the Marshall Islands, the CNMI, and Guam. Nauru and Kiribati, though geographically part of the region, experienced a significantly different colonial history. Thus, unless otherwise noted, they are not included in this discussion.
land—recognized individual or family owned plots. Communal land, despite its role in Chamorro, Carolinian, and village life, was often considered vacant and thus the property of the colonial power.

Each colonizing power had its own approach to land management and control in the Northern Mariana Islands. The actions taken to document land holdings and transactions were in large part determined by the country’s short and long term goals. Chamorro and Carolinian concepts of land, how it was owned, whom it belonged to, its value, and how it was exchanged were disregarded as the colonial governments worked to de-indigenize the islanders and take increasing control of their territory.

A Brief Colonial Review

Spain

In 1521 Ferdinand Magellan landed on Guam. Though Magellan’s voyage put the Marianas on the European map, the islands were largely left alone until 1668 when Jesuit priests traveled to the archipelago to establish a mission. As so often was the case throughout the era of colonization in the Pacific, the arrival of these outsiders wreaked havoc on the indigenous community. Scott Russell, a longtime CNMI resident and historian writes in his book *Tiempon I Manmofo’na: Ancient Chamorro Culture and History of the Northern Mariana Islands*, “within thirty years, their [Spain’s] efforts to Christianize the Chamorros led to the collapse of the traditional society and to a dramatic drop in the size of the indigenous population.” 17 The exact numbers are debated, it is estimated that prior to European contact the Marianas was home to more than 40,000

people although some have suggested a pre-Magellan population of over 100,000.\textsuperscript{18} By
the first census conducted by Spain in 1710, that number had been reduced to less than
4,000.\textsuperscript{19}

To further devastate the Chamorros, the Spanish administration moved the
majority of the Marianas population to Guam. By the 1700 only Guam and Rota were
effectively populated, a successful method of extinguishing the fierce fighting and
resistance of the Chamorros against Spanish domination.

In many ways the Spanish occupation can be said to have had the greatest impact
on the islands and people of the Marianas. The Chamorro language and culture of today
is largely a result of the Spanish influence that dominated two centuries of the islands’
history. This is not to say that during the Spanish period—or any following
administration—Chamorros and Carolinians passively accepted the imposed
administrative goals. The incorporation of Spanish language and religion into Chamorro
language and culture was an active effort that successfully allowed for the preservation
and perseverance of Chamorro culture.

The Carolinians
Not long after the Spanish government succeeded in depopulating Saipan, they granted
permission to a new people searching for a new home. Traveling from the distant
Caroline Islands, these people, who make up about a quarter of those classified as
Northern Marianas descent, arrived on Saipan after their islands had been devastatingly

\textsuperscript{18} Hempenstall and Rutherford, \textit{Protest and Dissent}, 98.
damaged by typhoons.\textsuperscript{20} In search of land that would provide water and food, the first Carolinians were guided by Chief Aghurubw, to Saipan, where they received permission from the Spanish government to settle. Saipan was much different from the atolls they had left. A lush, high volcanic island the island had much to offer its new inhabitants. The Carolinians, established themselves on Saipan’s coastline. Having the island largely to themselves, the Carolinians settled into life in their new home with very little interference from the Spanish administration. Land was held by clans, and controlled by the women of the extended family. Scott Russell writes:

Carolinians[...], having had very limited contact with the Spanish, maintained their traditional cultural patterns with little modification.[...] Carolinian families were much larger than their Chamorro counterparts, and were organized into matrilineal clans. Private ownership of land, with the exception of homesteads awarded to them by the Germans, did not exist, as traditional land holdings were controlled by clan matriarchs.\textsuperscript{21}

Today, Saipan’s Carolinian community annually celebrates Chief Aghurubw Day. He is remembered as a brave man with great vision who, through his navigational skills and perseverance, brought his people to the island that became their home.

Today, Saipan’s Chamorros and Carolinians remain two cultural groups. Though intermarriage has occurred and “Chamolinian” is a common term in reference to a person of mixed descent, from my experience on Saipan the two groups remain distinctly different.

\textsuperscript{21} Scott Russell, \textit{Tiempon Alemen: A Look back at the German rule of the Northern Mariana Islands 1988-1914}, 18.
Germany

After two centuries of Spanish rule, in November 1889 a small group of German officials took formal control of the Northern Mariana Islands. Germany, in an effort to increase its position as a global power, and following the lead of countries such as the United States and Great Britain, saw Micronesia as a small part of its larger effort to secure its piece of the colonial map. The global powers of the time were colonizing the world, and even the smallest islands of the Pacific would not be left behind. This brief occupation, which lasted fifteen years, is known to Chamorro and Carolinians as Tiempon Aleman.22

When compared with the Spanish, Japanese and American administrations, Tiempon Aleman is often viewed as having much less of an impact. Scott Russell, in his book Tiempon Aleman writes:

[A]ttempting to identify the lasting legacy of the German administration is difficult. Today, islanders speak no German and the old folk songs and dances that were proudly performed as late as the 1960s have been forgotten. Unlike Spanish, Japanese, and English, no German words were adopted into the Chamorro or Carolinian languages, and little German blood was introduced into the local gene pool. Even local cuisine, with the possible exception of a few baked goods was unaffected by fifteen years of German rule.23

As did each administration, the Germans approached land ownership with ideas and methods that best suited their intentions in the Marianas. Russell argues that the German’s approach to land ownership was largely protective of the Chamorro and Carolinian communities. Georg Fritz, the German administrator, according to Russell, risked his own reputation in effort to document the islander’s land claims and establish land alienation prohibitions to prevent the islands from being entirely snatched up by settlers.

22 Russell, Tiempon Aleman: A Look back at the German rule of the Northern Mariana Islands 1988-1914, 1.
23 Russell, Tiempon Aleman, 45.
While Germany may have allowed Chamorros and Carolinians the opportunity to document their title to land, it was through this program that the German administration continued to marginalize the people of the NMI. This method of land alienation, which is often portrayed as a generous and benevolent act on behalf of the administrative power, provided German, Japanese, and American administrators with an orderly system of land control.

Despite these efforts to document land title, a majority of the land remained unofficially claimed due to a number of factors including communally held land and the language barrier. It was culturally problematic for one person to step forward and claim land that belonged to an extended family or clan. And, because all “official” land transactions and claims were in the language of the colonizer, it is not surprising that a number of Chamorros remained uniformed of the policies. Many of those who were informed were unable to justify their claim to land in the German language. Chamorros and Carolinians who could speak German were much more likely to be able to prove land ownership than those who could not. This led to certain families acquiring large amounts of land. And while Chamorros and Carolinians were allowed only to lease their land to outsiders—an approach that would persist through the next two administrations—this regulation only applied to the small portion of land that had been “officially” recognized by the government. The remaining land, considered property of the government, could be used and dispersed at the will of the foreign power.

Beginning slowly toward the end of the Spanish period, and increasingly during the German administration, Chamorros on Guam were given homesteads on Saipan,
encouraging a repopulation of the island. Spain after successfully depopulating Saipan began to repopulate it. The German administration continued to provide homestead land. Russell writes:

Fritz’s homesteading program had three lasting effects. Firstly, it caused a substantial number of Guam’s Chamorros to resettle on Saipan, thus reinforcing the Chamorro majority that persists to this day. Secondly, the policy of granting homesteads to landless people undoubtedly served as a model that was emulated first by the TT and finally Commonwealth governments. [...] Finally, the homesteading policy served to introduce Carolinian recipients to the concept of private land ownership.

Obviously the homesteading program had an enormous impact on Saipan and its people. Russell writes that it allowed many of Guam’s Chamorros to settle on Saipan. As he also points out, the Japan, Trust Territory, and Commonwealth governments would also adopt the homesteading program. The Japanese and Americans repeated much of what was imposed by the Germans. Despite these administrations efforts to prove themselves different from those who came before, the colonizing mission largely defined the actions taken. Finally, while Russell writes that the Carolinians were “introduced” to the concept of private land ownership, forced would be a more appropriate word. If Carolinians had any desire to maintain land rights as increasing numbers of Chamorros returned to the island that they had had largely to themselves since their arrival, it was necessary to work within the confines of the colonizer.

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24 Russell, Tiempo Alemán, 3.
25 Russell, Tiempo Alemán, 46.
26 I have been unable to locate any information detailing whether or not a majority of those who took advantage of the homesteading program were families who originated from Saipan prior to Spain’s massive effort to move all Chamorros to Guam.
27 Despite the homesteading program, the Germans remained unsatisfied with Saipan’s small population and began to resettle Carolinians from other parts of Micronesia. The first to be resettled was a group of 67 Pingelapese, two years later a typhoon that devastated Woleai and Ulithi allowed the Germans to relocate about 400 people to Saipan, and in 1909 six hundred Mortlockese were resettled on Saipan. Though in the end many of these people returned home, these people undoubtedly left their mark on the island. Today one of the islands largely Carolinian villages is named Oleai. See Russell, 15.
As colonizing powers attempt to change the indigenous political structures that exist upon their arrival to best suit their purposes, they also manipulate the land to best meet their goals. Fritz believed that islanders could develop a greater degree of “civilization” if they adopted “a core set of European values.” These values included, “a strong work ethic, private land ownership, order and efficiency, the accumulation of wealth, and a home life centered around the nuclear family.”28 In exchange for land grants in the Northern Mariana Islands, the German administration required that settlers grow coconut trees in exchange for free passage and land. “In an effort to make the land as productive as possible, Fritz required landowners to plant not less than a quarter hectare of their holdings in food crops.”29 Today as you drive through Saipan, these land grants can easily spotted. While most of the island has coconut trees scattered throughout, these areas have large patches of coconut trees, planted in orderly lines that stand as a reminder of a time that copra provided a major source of German Micronesia’s income.

Japan

1914 saw the control of Micronesia transfer to Japan. In an immediate effort to make their presence felt the Japanese dispatched a sizable entourage to the islands. Mark Peattie in his book Nan’yo: The Rise and Fall of the Japanese in Micronesia, 1885-1945, a study of the Japanese occupation of Micronesia, writes, “whereas the Germans had posted some 25 officials to administer some 2000 islands scattered over some three million square miles, by the mid 1930s the Nan’yo-cho [the name for the Japanese

29 Russell, *Tiempon Aleman*, 14
Government in Micronesia employed nearly 950. This sizable number is indicative of Japanese intentions for the region. Unlike Germany who primarily occupied the islands in an effort to increase its international prestige, Japan’s impetus for acquiring Micronesia was an integral part of their vision for a Japanese controlled Pacific. Japan did not just want a piece of the map; as part of the Greater East Asian Co-Prosperity Sphere, it intended to make Micronesia an integral part of their country.

As stated earlier, each administration (except the Spanish) initially made some effort to protect the islanders’ land rights. Like Germany, Japan appeared willing to provide Chamorros and Carolinians with protective measures that would ensure a degree of land rights and control. Peattie writes:

When the Japanese came to the island they encountered a patchwork of native landowning systems. [...] At the outset the Nan’yo-cho made several important decisions. First, it chose to consider that all communal land apparently unused or uncultivated should belong to the colonial government. In order that private Micronesian land should be protected against the incursions of Japanese land speculators, it also declared that no Japanese individuals or corporations could buy, sell, or mortgage land in Micronesia, though it placed no restrictions on the sale or transfer of land between Micronesians themselves. Lastly, the regulations permitted Micronesians to lease land to Japanese citizens for a period of no more than ten years.

Of course, this did not take into account, or perhaps it did, that a great amount of Chamorro and Carolinian owned property was not held through documented title and was often left alone for long periods of time. Just because it was not being “used” did not necessarily mean that it did not belong to a person or family. “It soon became apparent,

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30 Mark Peattie, Nan’yo: The Rise and Fall of the Japanese in Micronesia, 1885-1945, 68.
31 Peattie, 96-97.
however, that land ownership was impossible to determine, since most Micronesian
claims were based on oral testimony or tribal custom."32

As a result of the various undocumented approaches to land holdings that were
employed by Chamorros and Carolinians, the Japanese administration began a land
survey and registration process that was intended to identify land ownership, measure
boundaries, and establish land title. While Peattie writes that this method of land
clarification can be viewed as a preplanned administrative effort to speed up land
alienation within the Chamorro and Carolinian populations, he argues that to the Japanese
it was essential to good order and that it was a process "undertaken with painstaking care
and scrupulous honesty."33 Much like Russell's approach, Peattie is intent on presenting
an all too optimistic interpretation of Japan's intentions in Micronesia. The colonizing
power's goals and best interests define colonial administrations. Thus, it is unrealistic to
argue that any colonial government would put the islanders' land rights ahead of their
own administrative goals.

Peattie then touches on some of the real issues faced by Chamorros and
Carolinians in regard to their land. He writes:

In other cases the Islanders were either too afraid to contradict the terms of the
survey or unclear as the Japanese intentions concerning the land. [...] Moreover,
though the South Seas Government in its registration effort did not set out to
defraud Micronesians, neither did it make it easy for them to obtain a favorable
government decision on their claims. The land commission created for the 1933
land survey accepted petitions seeking confirmation of land titles, but these had to
be presented in Japanese and the ultimate decision was conveyed in the same
language, which placed considerable burden on Micronesian petitioners, few of
whom could negotiate in Japanese.34

32 Peattie, 97.
33 Peattie, 97-98.
34 Peattie, 98
These land policies disenfranchised Chamorros and Carolinians in favor of an increasing number of Japanese citizens who began to flow into Saipan in the late 1920s. “By 1925 more than five thousand Japanese were settled in the Marianas, out of a total Japanese [Micronesia] population of seven thousand. Five years later, the total number was nearly 20,000, of whom 15,000 were in the Marianas.”35 Peattie writes, “It is easy to understand how Micronesians could harbor suspicions about the motives behind Japanese surveys when again and again they saw the best communal land taken by the South Seas Government, which then leased it to Japanese farmers and settlers.”36 In the Marianas Japanese outnumbered Chamorros and Carolinians ten to one.37 “Harboring suspicions” as Peattie writes, sounds as if the Chamorros and Carolinians were unnecessarily paranoid. It discredits the islanders’ perception of Japan’s intentions and their interest in maintaining control over their land.

This alienation escalated as an increasing number of Japanese began to move to the Marianas. In 1931, the Japanese administration legalized the transfer of land from Micronesians to private Japanese individuals or corporations.38 And as the islands became increasingly militarized with the approach of WWII, the situation facing Chamorro and Carolinian land ownership drastically worsened. “Houses, beaches, agricultural plots, recreational areas, all lands and buildings deemed necessary for the Japanese defense of the islands were seized by the military, at first with monetary

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35 Peattie, 155.
36 Peattie, 98.
37 Peattie, 115.
38 Peattie, 99.
compensation, and then, as the islands were either attacked or besieged in the last few years of the war, without any payment whatsoever.”

As the Germans had used land policies to effectively change the islands’ landscape so that it might best serve their purposes, so did the Japanese. The Northern Marianas had become a major sugar producer for mainland Japan and was landscaped accordingly. “Except for the central mountain core, most of the island was now laid out to sugarcane [...]. Coffee and pineapples flourished on the slopes of Mt. Tapotchau and in the southern part of the island the marshlands around Lake Susupe were converted into rice paddies.” While Chamorros and Carolinians had cultivated sugar and rice, it had never been to the extent of that imposed by Japan.

While most were marginalized during the Japanese administration, that marginalization and the ability to claim pieces of land was applied in degrees to the Northern Marianas’ Chamorros and Carolinians. The Japanese tended to favor the Chamorros of the Marianas as the “most advanced and adaptable. [...] Below the Chamorros, on the lowest rung on the imperial order, were the so called kanaka, a general and completely pejorative, term applied to all Carolinians [...].” This tiered treatment, to varying extents, would continue through the American administration. Because most Carolinians maintained the cultural values and practices that they had brought with them when they migrated to the Northern Marianas, while escaping the brunt of Spain’s colonizing efforts, they faced less pressure to adopt those of the colonizing power.

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39 Peattie, 99.
40 Peattie, 196.
41 Peattie, 112.
United States

After WWII, the United States administered the islands as the Trust Territory of the Pacific Islands (TTPI). Designated a Strategic Trust by the United Nations, Micronesia held great military significance following WWII and into the Cold War period. The Marianas was considered a critical strategic possession. The planes carrying the atomic bombs that devastated Hiroshima and Nagasaki had taken off from Tinian and the United States planned to maintain control of the islands that they had fought so hard to occupy. The designation of “Strategic Trust” allowed the United States full powers of administration, legislation, and jurisdiction in the TTPI under general supervision of the United Nations Security Council.42

First administered by the United States Navy, land transactions involving Chamorro and Carolinian held lands were highly regulated. These regulations, though appearing to be an effort of goodwill by the colonizing power, were in reality another method of controlling the islands and their land as best suited the US. The Americans followed much the same land practices as those enforced by Germany and Japan. The administration controlled the majority of land and initially encouraged Chamorros and Carolinians to maintain a largely subsistence life-style on the land that was not occupied by the American military.

Throughout the history of colonialism in Micronesia, a sense of “Micronesia” as a single cultural and political group has been primarily in the eyes of the colonizer. The United States was no exception. The TTPI was governed as a single territory with several districts. In a report prepared for the United States government that looked at

how the US might best proceed with their Pacific territory, Anthony Solomon acknowledged, “cultural and linguistic differences among the districts produced little consciousness among the people of being ‘Micronesians.’ The interviewers found ‘no traditions of unity but rather a history of individual island cultures.’” Despite this imposed unification, the Chamorros of the Marianas saw themselves as a distinct cultural group and while Micronesians worked toward political status negotiations with the United States as a unified group, the NMI’s Chamorros wanted to negotiate separately.\textsuperscript{44} Willens and Siemer in their book, An Honorable Accord: The Covenant between the Northern Mariana Islands and the United States state, [...] the Northern Marianas leaders [...] were seeking a future political status that best served their people. After three-hundred years of colonial rule, the leaders believed that voluntary affiliation with a major power was the only way to achieve local self-government and economic growth.\textsuperscript{45}

The United States, while governing the islands of Micronesia as a single entity, also recognized that the Northern Mariana Islands, because of their extensive and devastating colonial history were very different from other parts of Micronesia.\textsuperscript{46} Early into the United States’ administration of the islands, the Department of Interior understood that it was dealing with “‘a group of linguistically, culturally, and historically differing people who have never known political unity except through the accident of

\textsuperscript{44} As I will discuss later, most of the NMI’s Carolinians did not initially echo the desire for separate status negotiations.
\textsuperscript{46} This is not to imply that other islands were not also greatly affected by colonialism. All of Micronesia was greatly impacted. But I would argue that the Marianas saw the greatest change and devastation throughout its colonial history.
foreign administration". While the people of the Marianas had adeptly adapted to the situation forced upon them and incorporated the cultures of their colonizers into their lives, they had also lost a great deal of their pre-colonization lifestyle. The Solomon report recognized that the reality in Micronesia was not a cohesive group of "Micronesians."

Familial or clan patterns of life were important political factors except in the Marianas. Saipan alone had active political parties, and it had one of the few viable local governments in Micronesia. Reflecting the absence of communal land-tenure systems and the fact that the remaining traditional clan chiefs did not compete with elected officials, Solomon’s report characterized the Northern Marianas as being quite Americanized in its customs and attitudes. This quote, in colonialist fashion, grossly oversimplifies the significance of “familial and clan patterns” and completely ignores the Carolinian land tenure practices that even today remain largely communal. That said, it is also reflective of the space that exists between the various islands, which was further emphasized by three centuries of invasive colonialism. The Northern Marianas had negotiated a legacy of colonialism unparalleled in the Trust Territory. This “Americanized” attitude described by the Solomon Report is representative of the ability, developed out of necessity, of the people of the NMI to adapt to each colonizing power.

This separateness from the rest of Micronesia was further reinforced by the United States as the navy and later the Department of Interior initiated systems favoring the Marianas in efforts toward a more developed island economy and society. David Hanlon, in his book Remaking Micronesia writes, “the navy developed a more discriminating sense of which island groups within the region held the most promise and potential. Consequently, special programs were devised to enhance the prospects of

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47 Willens and Siemer, National Security and Self Determination, 96.
48 Willens and Siemer, National Security and Self Determination, 44.
development in the Northern Marianas. Expectations for the remainder of the islands were significantly reduced.\textsuperscript{49} The Navy designated Saipan as the headquarters of the Trust Territory. People of the NMI, particularly Saipan, began to be placed in government positions that were not available on the other islands. Saipan’s private sector also began to flourish as a result.\textsuperscript{50} Tourism became a viable industry. The first six months of 1973 saw 19,318 visitors to the Northern Marianas, about fifty percent more than the same period in 1972. No other district in the Trust Territory had even 2,000 visitors during the same period.\textsuperscript{51} A United Nations Visiting Mission criticized the United States for “putting more money into Saipan than the other districts and that ‘such financial discrimination can have the result of further encouraging Saipan’s feeling of separateness from the rest of the territory.’”\textsuperscript{52}

It was during this period that the Northern Marianas in an effort to establish separate political negotiations initiated an effort to reunify the Marianas island chain and politically join the Territory of Guam. Because a majority of NMI voters favored a closer relationship with the United States than did the rest of the Trust Territory, leaders saw reunification with Guam as an opportunity to become permanently affiliated as a Territory and as a way to break free from the other areas of the Trust Territory.\textsuperscript{53} Reunifying the Mariana Island chain would also allow the Chamorro people, who had

\textsuperscript{50} Willens and Siemer, \textit{An Honorable Accord}, 13.
\textsuperscript{51} Willens and Siemer, \textit{An Honorable Accord}, 99.
\textsuperscript{52} Willens and Siemer, \textit{National Security and Self Determination}, 17.
\textsuperscript{53} In preparation for the United Nations Visiting Mission, NMI political leaders conducted a poll of residents on desired future political status. The voters constituted 89 percent of 2,800 eligible voters: 1,557 on Saipan and 85 on Tinian desired to become a part of the United States through the political framework of Guam. 818 on Saipan and 57 on Tinian wished to become US citizens by becoming a separate territory of the United States. 21 on Saipan and 6 on Tinian desired to maintain the same status. From Willens and Siemer, \textit{National Security and Self Determination}, 25.
been politically divided since 1898 when the United States took possession of Guam and Germany took control of the northern islands.

The people of the Northern Marianas demonstrated this desire to part ways with rest of Micronesia in a number of ways. At one point 100 Chamorro women, who were organized by the Women’s Auxiliary were prepared to lie down on the Saipan airport runway to prevent the Trust Territory’s High Commissioner, who was against separate status negotiations for the NMI, plane from landing. 54 This effort to reunify with Guam and as a result break away from the Trust Territory, though supported by a majority of Northern Marianas voters, was not desired by all. 55

The Carolinian opposition, who maintained a relationship with their ancestral homelands in the Carolines, worried that in a politically separate Marianas, they would undoubtedly become an even smaller minority leaving them exposed to possible by the Chamorro majority. 56 In response to possible reunification with Guam, twenty-two “tribal elders” argued through a petition, that Carolinians at the time made up about 25 percent of the Northern Marianas population, that they were descendants of Carolinians who had settled in the Northern Marinas between 1810 and 1869, that they had retained their traditional customs and identity despite the many immigrations, and that they were against reintegration with Guam, because “it would not provide any advantage ethnically, socially, politically, and economically.” 57

54 Richard F Taitano in Willens and Siemer, National Security and Self Determination 99.
56 Willens and Siemer, National Security and Self Determination, 22.
In addition to Carolinians, the people of Guam did not exactly welcome the opportunity to be reunified with their northern neighbors. With the exception of a brief period during World War II, Guam had been a territory of the United States since 1898. As the rest of Micronesia switched hands from Spain to Germany, and then to Japan, Guam was incorporated into the United States' overseas colonies. Willens and Siemer write:

When the question of reintegration was placed before the Guamanian voters, about thirty-two percent of the registered voters turned out and a majority of those rejected union with the Northern Marianas. Various explanations were offered for this disappointing and unexpected result, including Guamanian concern about the economic burdens that would result from any reunification, wartime memories of the role played by Chamorro interpreters from Saipan working for the Japanese, and rivalries among Guamanian politicians interested in the upcoming gubernatorial election.\footnote{Willens and Siemer, \textit{Honorable Accord}, 23.}

The disinterest of Guam to reintegrate with the Northern Marianas forced the leaders of the NMI to begin to pursue new avenues for permanent affiliation with the United States as they began to stray further and further from the efforts of the rest of the Trust Territory to develop a relationship that allowed for a higher level of autonomy. To further emphasize the majority's desire to break from the Trust Territory and as a threat to the United States, in 1968 Saipan's Municipal Legislature passed a resolution calling upon the governments of Australia, France, the People's Republic of China, the Republic of China, the USSR and all other members of the world community to advise the people of Saipan of the advantages of alliance with their respective governments.\footnote{Saipan Municipal Legislature Resolution 21-14-1968 (December 19, 1968). From Willens and Siemer, \textit{National Security and Self Determination}, 128.} In 1970 the Marianas Legislature expressed their intentions through a resolution endorsing the creation of commonwealth status, which simultaneously displayed the majority's
disinterest in continued negotiations as part of larger Micronesia. It read, “Whereas, if bloodshed is to be avoided, the officials of the United States are urged to submit the Commonwealth proposal directly to the people of the Northern Marianas and if favorably acted upon, proceed to establish the Commonwealth and let the other districts remain as they are until they are developed to the point where they desire to join the Commonwealth.”

Determined to withdraw from the Trust Territory, the legislature resolved that the Marianas would “secede from the Trust Territory of the Pacific Islands by force of arms if necessary, and with or without the approval of the United Nations.”

Through the Trusteeship Agreement, the United States agreed “to promote the political, economic, social, and educational advancement of the inhabitants of the Trust Territories” and to “foster the development of such political institutions of the Trust Territory toward self-government or independence as may be appropriate to the particular circumstances if the Trust Territory and the freely expressed wishes of the people concerned.”

The majority of the people in the Marianas, however, desired permanent affiliation with the United States, an affiliation the details of which would be established in the Covenant and the Constitution.

With the exception of Spain, each administration made an attempt to appear to be protecting Chamorro and Carolinian land rights. These efforts, of course, were never at the expense of Germany, Japan, or US colonial interests. From the beginning, each new administration, officially provided some legal authority that established land rights and preservation. In Japan’s case these protections only lasted until they infringed on the

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61 Willens and Siemer, National Security and Self Determination, 193.
rights of the increasing number of Japanese immigrants. The United States, also implemented similar regulations. By limiting the ability of Chamorros and Carolinians to control their land, the different administrations appeared to be protecting but instead were promoting the colonizing mission. It came down to what was best for the power, and all the better if it appeared to the world that the islanders’ land rights were being protected. By controlling land, the colonizers were controlling the people. So while it might often come off as surprising goodwill on the power’s part, it was largely one of many efforts at self-preservation. Land rights were recorded, but only those who could substantiate their claims to German, Japanese, and American officials could get legal recognition. This undoubtedly marginalized a large part of the Chamorros and Carolinian populations as land transactions were primarily maintained through oral agreements and land was passed down through traditional arrangements.
Chapter Three: The Covenant and the Constitution

From the beginning the people of the Marianas made clear their desire to maintain control of their islands and their land. Throughout Commonwealth negotiations, the leaders of the Northern Mariana Islands worked to secure a level of autonomy that would allow the CNMI room to define itself and its new relationship with the United States. The negotiations resulted in a Commonwealth that was different from the United States' other territories. Of particular importance during negotiations were three exceptions to the United States Constitution that were as argued critical in the Northern Mariana Islands.

At the beginning of the 20th Century, the United States Supreme Court, in the Insular Cases, determined that the Constitution need not be applied in its entirety to territories that were not destined for statehood. It was concluded that only fundamental rights must be applied. The Insular Cases were important during Commonwealth negotiations as the Northern Mariana leaders argued that the right to a trial by jury, the right to own land, and the right to equal representation through "one man-one vote" were not considered fundamental in the NMI.

It was argued that because of the strong family system that existed in the CNMI a trial by jury was not necessarily the most effective means through which to pursue justice. The claim that equal representation was not fundamental in the Northern Marianas was a result of the populations of Tinian and Rota, which are much lower than Saipan. In order to assure that Tinian and Rota would be represented in the CNMI, the negotiators saw this as a key issue in the establishment of a successful Commonwealth. Finally, during the first joint session of Marianas Political Status Commission
negotiations with the United States, the Northern Marianas Chairman questioned whether the islands would have the ability to limit the purchase of local land to outsiders. It was a sentiment that was largely supported and would be developed further in the Covenant and the Constitution.\(^{63}\)

**The Covenant**

On June 17, 1975 the “Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America” was approved by a plebiscite in which 94 percent of the electoral participated and of whom 78.8 percent voted to adopt the new relationship.\(^{64}\) After years of negotiations the Northern Marianas had exercised its right to self-determination as established in the Trusteeship Agreement and had chosen permanent affiliation, through commonwealth status, with the United States of America. Nearly one month later the agreement was passed by Congress, officially marking the beginning this new relationship.

The Covenant provided the framework through which the Commonwealth was established and the relationship with the United States was defined. Thus it was important that Covenant negotiations clearly define crucial requirements. Once approved there would be little opportunity for modifications. It was agreed that the United States Constitution could not be fairly applied in full to the people of the new commonwealth. As such, three provisions were included in the Covenant despite their incompatibility with the United States Constitution. First, the Commonwealth government was not required to provide its citizens with a jury trial. Second, the Covenant allowed for a

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\(^{64}\) HJ Res. 549 94th Congress, 1st Session July 10, 1975; Umanidat, 1995, 1.
malapportioned legislature to ensure fair representation of Rota and Tinian. Finally, the Covenant determined that, for the first twenty-five years following the termination of the Trusteeship, long-term land interests were to remain in the hands of those of NMI descent.

The United States views the Covenant as a binding and non-negotiable contract. It was agreed that the United States Constitution, in its entirety, was not compatible with the CNMI’s cultures, values and ability to develop a healthy and self-sufficient Commonwealth. As the Ninth Circuit Court later stated:

[...]American rule over the NMI derives its legitimacy from the consent of the NMI people and from the United States’ respect for the NMI’s unique customs and values. As a result, the court has concluded that certain constitutional rights are at odds with local ways and need not be strictly applied there, provided that the territorial inhabitants themselves demanded release from such rights.

Section 805

Section 805 of the Covenant states that only people of NMI descent can hold long-term land rights in the CNMI. The leaders of the CNMI and the US negotiators agreed that the Northern Mariana Islands needed to proceed with caution as it was introduced and incorporated into the “American family” and the global economy. This would be accomplished by limiting peoples’ ability to buy and sell land. Marybeth Harold, in her article, “Does the Constitution Follow the Flag into the United States Territories or Can It Be Separately Purchased and Sold,” critically examines Section 805 and Article XII. She

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65 Tinian and Rota, despite their low populations, are guaranteed representation in the CNMI legislature. Without this guarantee it is likely that Tinian and Rota would not have any representation at all.

66 The term “NMI descent” used in the Covenant was left for the Constitution to define.

writes, "Covenant Section 805 sought to address the problem of outside pressure exerted on the local community. Negotiators feared that outsiders would exert undue pressure on people of Northern Mariana Descent to sell long-term interests in the land for immediate short-term gains."

The United States did not want to risk the Northern Marianas being bought up by foreign powers. Despite efforts to decolonize, the United States continued to approach the islands with a very colonial and strategic attitude. Because of its location in the Pacific, and the escalating Cold War, the Northern Mariana Islands were seen as strategically crucial to the United States. Through tight control of land, the United States was assured, to a certain extent, that its territory would not fall into the hands of foreign powers. Of course, during an era where decolonization was being pushed by the United Nations around the world, this reasoning risked being viewed as self-serving, thus it was polished into an effort to protect Chamorro and Carolinian land rights. This "protection" could very well be interpreted as a continuation of the colonial pattern that the United States and other outside administrations had imposed on the people of the Northern Marianas. Marybeth Herald writes:

United States negotiators also face the competing concern that they will be viewed as 'colonizing' the territory and therefore will want to appear to be granting a measure of independence or self-government.

This is not to suggest that the land alienation policy was conceived without actual interest in the short and long-term welfare of the people of the CNMI. The Northern Mariana Islands had been under the control of foreign powers for over two centuries. While Chamorros and Carolinians had generally been allowed access to land, this access

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68 Herald, 748.
69 Marybeth Herald, 759.
had been limited and regulated. As a commonwealth the Northern Mariana Islands would be open to the outside world. Section 805 was created to provide a buffer, an opportunity for Chamorros and Carolinians to develop a sustainable economy without having to sacrifice long-term land rights as a means of encouraging foreign developers. This was a policy that would, in theory, work out in the best interest of both parties. But while many Chamorros and Carolinians supported the land restrictions, others saw it as a limitation of their rights as United States citizens. Efrain Camacho, a Chamorro, stated in Guam Business News:

"The question I raise is, is it really Constitutional to limit my rights?" [...] "I'm being told what to do with my land. I can't sell it to Mr. Jones or Mr. Kawasaki. If I cannot sell my land to you, is that not an infringement on your rights? The will of the people needs to be looked at again. The intent was good, but the end result was something that was not intended."  

Briefing Paper 12, a document prepared by a US law-firm hired by the Northern Marianas to assist in the negotiations, was presented to the US and NMI negotiators detailing Section 805. It states:

Ownership of land is one of the fundamental aspirations of most citizens, and ownership of a significant portion of the land by its citizens is one of the attributes of an economically sound and prospering political entity. These considerations are of particular importance in the NMI where land is in very limited supply.  

There may be circumstances under which the normal free market system with respect to acquisition of land may be wisely suspended in order to permit the citizens of an economically developing area to accumulate enough economic power to compete effectively with outside interests in the free market. The Covenant reflects the judgment of the people of the NMI that they currently find themselves in such circumstances. The Covenant requires restrictions on the alienation of land in the Commonwealth—by sale or long-term lease—to persons who are not of Northern Marianas descent.

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72 Wilmer, Cutler and Pickering, 1.
The restriction on land alienation that is part of the Covenant covers a large part of proportions of the land transactions that will occur in the next twenty-five years. The scope and duration of that restriction should not be increased beyond what is provided by the Covenant except for well-articulated and considered reasons. Restrictions on land alienation are costly to the economy and ultimately an inefficient way to equalize economic power. The citizens of the new Commonwealth should take advantage of the restrictions that are provided by the Covenant for the purpose for which they were intended—to encourage local development of a strong economic base. But they should not look to such restrictions as a permanent way of dealing with potential investments by outsiders unless all other practical alternatives prove insufficient. Land ownership is only one aspect of national pride and sovereignty. The institutions of government that are shaped by the Commonwealth Constitution, after gathering experience with self-government, should be capable of setting goals for the economic and social security of the people of the Northern Mariana Islands and of meeting those goals with a minimum of artificial controls.  

It is evident that the Briefing Paper, which would provide the foundation for Section 805 and Article XII, was an effort to justify the inclusion of land alienation restrictions. Possibly unsure of the proposed legislation’s ability to stand up to the United States Constitution, the authors of the Briefing Paper stressed that these restrictions on land were only temporary. While acknowledging the cultural value of land, “land ownership is only one aspect of national pride and sovereignty,” the Briefing Paper clearly emphasizes the economic aspects of the proposed land restrictions.

The document goes on to state “But they should not look to such restrictions as a permanent way of dealing with potential investments by outsiders unless all other practical alternatives prove insufficient. What were these other practical alternatives? And if the land restrictions were so impractical, why were they proposed as the only effective way of dealing with the Commonwealth’s land? The authors of the Briefing Paper had no other alternatives, nor did the US and CNMI negotiators. The choice to

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73 Wilmer, Cutler and Pickering, 58.
impose land restrictions based on race served the purposes of the CNMI and the United States. Land transactions were controlled and would only leave the immediate control of Chamorros and Carolinians for a specified length of time. They would not lose long-term control of their land, and as a result neither would the United States.

The United States left the specifics up to the NMI. If the land restrictions were to be effective, it was necessary for Chamorros and Carolinians to support them and have a feeling of ownership. But it was also important that the NMI people define the land alienation laws so that it did not appear that the United States was forcing it upon them. Herald writes:

The negotiators left the design up to the NMI, because they wanted to avoid the label ‘colonialist’ that would attach if they designed and imposed the land alienation restriction. It was simpler and more sellable to get an agreement on the grand theory and then to allow the NMI to work out the important details.74

After the passage of the Covenant, the Northern Mariana Islands needed to develop a Constitution through which the laws of the islands would be determined and enforced. Section 805 of the Covenant had determined that land alienation would be prohibited in the NMI, and it was the Constitution that would determine the way it would play out. How would key terms such as “Northern Mariana Descent” and “long-term land rights” be defined? It was through the Constitutional Convention that Section 805 was developed into Article XII.

It was necessary too for the Constitutional Convention to address several issues. Of particular importance was defining Northern Mariana descent, devising a way of dealing with corporations and other “non-natural” persons, determining the extent of the term “acquisition,” deciding the length of time an interest must run to be classified as

74 Herald, 763.
“long-term” and indicating the treatment to be given to transactions violating the restrictions.75 The Briefing Paper states:

There are [...] policy factors that the Convention must balance in dealing with the question of land alienation. First, of course, is the importance of land to the culture of the people of the Northern Marianas. The moral and psychological effects of the people of losing their land would be very serious. Accordingly, the Convention must be conscious of the undesirability of that outcome.

The second factor to be considered is the danger of economic exploitation of the citizens of the Commonwealth. Despite the progress the Islands have made in recent years, many of the people would be at a disadvantage in dealing with experienced business people from other places. The Convention may therefore wish to provide some safeguards against such an eventuality.

The third factor to be considered is the cost of these restrictions to the people of the Northern Marianas. The citizens of the Commonwealth will expect economic development to continue. However, since the Northern Mariana Islands are not rich in capital, non-Marianas investors must be persuaded to provide the resources that are needed for growth. Restrictions on land alienation will impede the flow of capital from abroad, and slow the improvement of the economy. Further, restrictions will, to some extent, distort the market in land and decrease its market value. The Convention therefore must be alert to the economic consequences of the restrictions that are imposed.76

The Constitution

The Constitutional Convention had the responsibility of creating a document that would stand up to challenges and define the basic guidelines through which the Commonwealth would mature. The Constitutional Convention was divided into committees. The Committee on Personal Rights and Natural Resources was charged with developing Section 805 of the Covenant into what would become Article XII. The Committee looked closely at the issues at hand and with the assistance of legal counsel provided a report to the Constitutional Convention presenting the committee’s recommendations:

75 Wilmer, Cutler and Pickering, 4.
76 Wilmer, Cutler and Pickering, 5.
The Committee’s purpose in implementing the restrictions on land alienation is to protect the culture and traditions of the people of the Northern Mariana Islands, to promote the political growth needed in the first critical years of the Commonwealth, to accomplish the political union with the United States with a minimum of cultural and economic dislocation, and to provide the stability needed to survive in the family of nations.\(^77\)

This is a great deal of responsibility to lie solely on land restrictions. Not only was Article XII supposed to protect the CNMI’s culture and traditions, it was also expected to promote the political growth, and prevent cultural and economic dislocation while simultaneously providing the stability “needed to survive in the family of nations.” As I have studied and become increasingly aware of Article XII, its intentions and its implications, I have also come to the conclusion that land restrictions alone are not enough to succeed in meeting the established goals. Nonetheless, the Report goes on:

The Committee believes that restrictions on the alienation of land are necessary to this purpose because the social and economic benefits that are necessary to this purpose because the social and economic benefits that are to be derived from land ownership are unique and cannot be duplicated in any other way. The Commonwealth to be created by this Constitution will be very small. It will have only a few hundred square miles of land and 15,000 people. Although the population may grow in the future, the available land cannot increase. Land is one of the principle sources of social stability. It gives root to the pride, confidence, and identity as a people that will permit the cooperative action necessary to a successful Commonwealth. If it passes out of the hands of the people of the Northern Mariana Islands, these unique social and economic benefits will be lost.\(^78\)

This shift from temporary land restrictions as referred to in the Briefing Papers to what seems to be a permanent situation, is interesting and indicative of the different attitudes toward the CNMI land situation. The Briefing Paper was written by American attorneys for the Chamorro and Carolinian officials while the Report to the Constitutional


\(^78\) "Report To The Convention By The Committee On Personal Rights And Natural Resources," 560.
Convention was a document created primarily by the Chamorro and Carolinian representatives responsible for creating the Constitution. The islanders did not place the same emphasis on limiting the time of the land restriction. Though they would indicate that Article XII would be up for renegotiation 25 years after the establishment of the Commonwealth, it was not an issue that they wanted to rush. As the Report goes on to state:

Land is the only significant asset that the people of the Commonwealth have. There are no substantial mineral resources; there is no commercial enterprise capable of sustaining large numbers of people; there is no valuable location on important trade routes. Virtually all of the land on the islands now belongs to the people of the NMI, either individually or collectively. Substantial economic and cultural dislocation would follow inevitably should this land be lost by transactions with outsiders in the near future. Land is the basis of family organization on the islands. It traditionally passes from generation to generation creating family identity and contributing to the economic well being of family members. 79

Maintaining control of the land was an effort through which Chamorros and Carolinians could maintain control of their island, their economic future, and their culture. By implementing the restrictions, the islanders would, for at least the first 25 years of the Commonwealth, be assured that they would not become alienated from the land that was considered an integral part of who they were. Through Article XII, the people of the CNMI could focus on the development of the commonwealth assured that their land, and thus their culture, was being protected.

The Report also states “Virtually all of the land on the islands now belongs to the people of the NMI, either individually or collectively.” 80 While this was largely true on Saipan and Rota and most of the Northern Islands, the Committee failed to acknowledge that as part of the Commonwealth Agreement two-thirds of Tinian was to be leased to the

79 Report to Constitutional Convention 1, 561.
80 Report to the Constitutional Convention 1, 561.
United States military. The island of Farallon de Mendinilla was also turned over to the United States for various military exercises. Belonging to the United States military is not the same as belonging to the people of the NMI. This rhetoric exemplifies the NMI’s efforts to incorporate the people of the NMI in the larger American “family.” While the land restrictions differentiated the people of the NMI from other Americans, by stating that military controlled land is also land that belongs to the people of the NMI, the Committee was emphasizing the connections that exist as a result of the new relationship.

The Report continues to argue that land regulations at that point in the CNMI’s development were necessary in order to ensure the people of the Commonwealth ample time to adjust to the new political situation.

Restrictions on land alienation are necessary to preserve the character and strength of the communities that make up the Commonwealth. The people of the Commonwealth are willing to sacrifice the short-term economic gain that will come from preserving their family and social order, thus protecting the basis for enduring economic growth. The people are willing to take the time to learn how best to use their land. There are at present no complete land use plans and no zoning regulations. These tools will be necessary to regulate the use of land in the Commonwealth by outsiders and restrictions on land alienation will provide the necessary time to consider and enact these protections.

As it would turn out, Article XII did not force the people of the CNMI “to sacrifice short-term economic gain.” Investors from Japan and other countries willingly invested in the CNMI despite the land restrictions. Article XII did not slow down the development that took place in the 1980s. Because the government and the people of the Commonwealth were secure that through the restrictions they were protected from the dangers that were associated with loss of land, they allowed and encouraged development.

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81 Where as most leases were limited to initially 25 and later 55 years, the United States was given a 55-year lease with the option to renew.
82 Report to Constitutional Convention 1, 561–562.
The Commonwealth is new. The people have little experience in self-government. It is a more prudent course to proceed carefully, accepting change only as it proves to be of long-term benefit to the Commonwealth as a whole. It is necessary to construct certain safeguards at the outset of the Commonwealth government to ensure that the change in the political order is supported by stability in the social order so that the people may conserve the strength necessary to the survival of the Commonwealth as a viable political and economic entity.83

This is where Article XII becomes problematic. The CNMI did not necessarily “proceed carefully, accepting change only as it proves to be of long-term benefit to the Commonwealth as a whole.” Because the government of the CNMI was secure that through Article XII their island and culture was being protected, they did not stop during the rush of development to question the long-term consequences of their unchecked “progress.” The environment would be devastatingly damaged, tens of thousands of foreign workers would be recruited, and the Commonwealth would become dependant on industries, particularly the garment industry that would care little for the long-term health of the CNMI, its people, and culture. Land can help to preserve the family and social order, but as the CNMI has proven in the twenty years since the signing of the Constitution, it alone is not enough when faced with the other challenges that have come about as a result of the intense development that the CNMI has fostered and worked to maintain.

“Long-term” and “NMI descent”

As stated in the Covenant “long-term” land rights would be protected. The definition of the length of time that would determine “long-term” was laid out in the Constitution. Initially, “long-term” was said to be anything over 25 years:

83 Report to the Constitutional Convention 1, 562.
Twenty five years is about the length of time that separates the generations within families in the Northern Mariana Islands and an arrangement that lasts long enough to affect more than one generation should be considered as long term. [...] Under this section, aliens and other persons who are not of Northern Marianas descent will be permitted to use property under leases of 25 years or less. They will be able to build substantial structures and improvements because they will have twenty-five years to amortize these investments. A wide variety of commercial and private uses will be feasible under this limitation.  

Initially, as stated, the maximum period for land leases was 25 years. This would become to 40 in the Constitution, and later, in the Second Constitutional Convention would be changed to 55 years. The primary reason for the extension was to increase the CNMI's attractiveness to outside investors and developers. It was more promising to build a hotel on land that would be available for profit-rendering enterprise for 55 years as opposed to 25 years. The CNMI wanted to makes itself appealing to outside investors. 25 years offered a limited amount of security for foreigner developers. By extending the definition of long-term the NMI made itself more attractive to outside investment while simultaneously preserving long-term land rights for people of Northern Mariana descent. This change has major implications. Instead of one generation being separated from land, it is two. While this shift undoubtedly made the CNMI more appealing for investors, it also challenges the initial goals of the land restrictions.

The Report goes on to define Northern Mariana descent and its specifications. Long-term land rights are, as stated by the Constitution, limited to people who meet the criteria through which one is determined a person of Northern Mariana descent. This is explained in the Report.

84 Report to Constitutional Convention 1, 566.
The Northern Mariana Islands have been ruled by the Spanish, the Germans, the Japanese, and the Americans. Over the years there has been some migration to and from these islands by people from each of these ruling nations and from the other islands in the Pacific. People have occasionally come to the Northern Mariana Islands from other places. Most of these people came as administrators and entrepreneurs. They maintained their citizenship elsewhere and clung to their national identity. They did not adopt the culture or integrate with the people of the Northern Mariana Islands. Throughout the history of the Northern Mariana Islands, those who considered themselves as the people of the Northern Mariana Islands have been the Chamorros and Carolinians who settled on the various islands, formed a cohesive social group, worked for the political and economic betterment of the Northern Mariana Islands, and considered these islands as their home. For this reason the Committee defined the term “person of Northern Mariana descent” as a person who meets two criteria: (1) a citizen or national of the United States and (2) a person of at least one-quarter Northern Marianas Chamorro or Carolinian blood.85

Having laid out the two key criteria necessary for one to hold long-term land rights in the Commonwealth, the Committee recognized the possible ambiguity of “Northern Marianas Chamorro or Carolinian blood,” and the challenges that such a racially based law might face as the CNMI became a part of the United States. Thus the Committee, further defined what it meant to be of “at least one-quarter Northern Marianas Chamorro or Carolinian blood.”

The Committee did not use a racial or ethnic classification for this purpose. All persons who were born in the Northern Mariana Islands prior to 1950 and who were citizens of the Trust Territory are defined as full-blooded Northern Mariana Chamorros or Northern Mariana Carolinians. Similarly, all persons who were domiciled in the Northern Mariana Islands and who were citizens of the Trust Territory are defined as full-blooded Northern Mariana Chamorros or Northern Mariana Carolinians.86

Defining Northern Mariana descent as a distinction free from “racial or ethnic classification” is indicative of the effort to present a restriction acceptable by the United States. The definition of Northern Marianas descent is clear, while some Chamorros and Carolinians of the Northern Marianas were alienated and other non-ethnic Chamorros and

85 Report to the Constitutional Convention 1, 567.
86 Report to Constitutional Convention 1, 567.
Carolinians were included due to the use of a date as the defining factor, it is a system that allows for little confusion. If a person was from the United States mainland and a United States citizen, but had arrived in the Northern Mariana Islands prior to 1950 and became a citizen of the Trust Territory, this person would be considered of Northern Mariana descent and able to hold long-term land interest in the CNMI. This was not a common occurrence as most outsiders who moved to the Northern Mariana Islands after 1945 did not become citizens of the Trust Territory. They maintained their United States citizenship.

On the other hand, some Chamorros and Carolinians were alienated by the definition. Jeff was born on Saipan. His father is Chamorro and his mother is Filipino. Jeff is ethnically one half Chamorro, but Jeff cannot own land on Saipan. Because his dad was born and lived in Palau—where his family had been relocated by the Japanese government—prior to 1950, he is not technically of Northern Marianas descent as defined by the Constitution. Jeff and his family speak Chamorro and consider themselves to be Chamorro. But they rent the land that they live on. They do not have the option to own it.\textsuperscript{87}

In addition to defining what individuals were able/unable to own land, it was also necessary to indicate the regulations through which businesses could own land. The Chamorros and Carolinians of the NMI did not have the capital necessary to get the Commonwealth on the road to economic prosperity. In order to begin to develop the islands it would take money and available land. The people of the NMI had the land and in order to encourage outside corporations to invest in the CNMI while maintaining a level of control the Committee determined that corporations could own land in the CNMI

\textsuperscript{87} Personal Communication with Jeff 15 July 2004
only if, among other regulations, people of NMI descent owned 51 percent of voting shares.

Section Five permits a corporation to be considered as a “person of Northern Marianas descent” if it meets four qualifications. First, a corporation must be incorporated in the Commonwealth. [...] Second, a corporation must have its principal place of business in the Commonwealth. [...] Third, a corporation must have directors that govern its affairs, and at least 51 percent of the directors must be persons of Northern Marianas descent. [...] Fourth, the corporation must have voting shares and at least 51 percent of the voting shares must be owned by persons of Northern Marianas descent. 88

The Committee discussed a provision under which 51 percent of all shares, not just voting shares, would be required to be in the hands of persons of Northern Marianas descent. [...] There is a limited amount of capital in the Northern Mariana Islands at the present time. If 51 percent of all shares, not just voting shares, had to be owned by persons of Northern Marianas descent, expansion of capital through shares would not be possible in many cases because persons of Northern Marianas descent with capital to invest could not be found in sufficient numbers. 89

This section makes clear the CNMI’s desire for outside development. In order to bring in capital it was necessary to provide methods through which outside investors and developers would be able to have some control over the land that they wanted to lease while allowing people of NMI descent to maintain control as well.

During the Second Constitutional Convention, held in 1985, when the maximum length of a lease was changed from 40 to 55 years in order to increase the CNMI’s attractiveness to outside investors, the requirement for which company could hold long term land rights was changed from 51 percent of all voting shares required to be held by people of Northern Marianas descent to 100 percent of voting share needed to be held by people of Northern Marianas descent. This change was an effort to counter the, what the

88 Report to the Constitutional Convention 1, 570–571.
89 Report to the Constitutional Convention 1, 571.
committee saw to be an abuse of Article XII by investors trying to circumvent the integrity of the law.

Finally, the last section determines the consequences faced if a transaction is found violating the regulations as set forth in Article XII. Section 6 remains one of the most controversial aspects of Article XII.

Section 6: Enforcement. This section provides that any transaction made in violation of section 1 is void from the beginning and has no force or effect.90

Investors who knowingly, or unknowingly, violate any section Article XII run the risk of having the property in question, along with any improvements, taken away and returned to the person of Northern Marianas descent without any compensation to the investor.

This report, while following the direction suggested by the Briefing Paper, is critically different. While the earlier Briefing Paper was produced by hired legal counsel at the request of the Constitutional Convention in order to flesh out the land alienation policies, which were vaguely defined in the Covenant, the Report is a product of discussions and of the Convention’s Chamorro and Carolinian representatives. A recommendation by the NMI’s representatives for their people and the future of their islands the Report is demonstrative of their intent to create a Commonwealth that was reflective of the values of the Chamorro and Carolinian cultures.

The Report to the Convention focuses primarily on the social and cultural significance of implementing the proposed restrictions. While the Briefing Paper was fundamentally concerned with the economic reasons for, and implications, of Article XII, the Committee, while supporting the same regulations, chose to emphasize the

90 Report to the Constitutional Convention 1, 573.
importance of land to the well being of Chamorros and Carolinians and the CNMI as a whole. Where the Briefing Paper had stated the importance of limiting the longevity of the land alienation policies, the Committee’s recommendation, while acknowledging the immediate importance of the restrictions, argued that maintaining control of the land is critical for the future generations of the islands. Despite their differences, both documents have helped to shape the rhetoric that has sustained and challenged the land laws in the CNMI as the outside world became increasingly involved in the NMI and its economy. Nonetheless, it must be said that Article XII and Section 805, in addition to preserving long-term land rights for the people of the CNMI was also largely about economic and political power.
Chapter Four: The Problems

To Cast A Stone

Who among you
Shall write our recent history?
Recalling the hordes of foreign workers
Hired to resurface our roadways
Steam rising from masked faces
Dehydrating in the torrid tropical sun,
Or, the sexy garment worker's zippered lifestyle
Going-around-the-world stitching inseams
From the crotch to the ass of designer jeans
Toiling in sweatshops from sunrise to sunset,
Or, hard luck laborers - called U-Drives
Digging ditches, pouring cement, mopping floors
Doing at least three jobs in a typical day,
Or, joining the family as a domestic
Cleaning the house, the yard, the cars & the kids
Cooking meals and teaching toddler how to talk.

Who among you
Can learn from recent history?
Remembering the vital statistics
Written in the numbers we discovered
In a Census showing more of them than us
And worse, they have more babies
Even though we lock them up at night,
"Could this be some kind of epidemic?"

Tim Thornburgh

The precautions taken by the CNMI to protect the islands' land and people have not been without problems. While long-term land interests remain in the hands of the NMI's Chamorros and Carolinians, whether or not the land restrictions are accomplishing their goals as determined in the Covenant and the Constitution, is debatable. As discussed earlier, Section 805 of the Covenant states:

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The government of the Northern Marianas, in view of the importance of ownership of land for the culture and traditions of the people of the Northern Mariana Islands, and in order to protect them against exploitation, and promote their economic advancement and self-sufficiency: (a) will until twenty-five years after the termination of the Trusteeship Agreement, and may thereafter, regulate the alienation of permanent and long term interests in real property so as to restrict the acquisition of such interests to persons of Northern Mariana Islands descent...

These goals are to be accomplished by prohibiting the permanent sale of land to people not of Northern Mariana Islands descent. Protecting against exploitation and promoting economic advancement and self-sufficiency while simultaneously preserving the culture and traditions of the people of the NMI is a great deal to accomplish by restricting land acquisitions. At the time of the creation of the Covenant and the Constitution, it was important that any restrictions imposed did not stifle the prospering economy. In order to promote outside investment and prevent losing the majority of the land as was exemplified in Hawaii and Guam, the leaders of the CNMI, after much discussion and debate, decided that people who were not of Northern Marianas descent would be allowed to lease land but that upon expiration the land would be returned to the initial owners. This solution has not been without its problems.

There are a number of issues that can be examined on this topic but I focus on a few that have proven particularly challenging for the Northern Mariana Islands. First, while protecting Chamorros and Carolinians against exploitation, Section 805 and Article XII do not protect people of Northern Marianas descent from being exploited by others of Northern Marianas descent; Article XII has enabled and encouraged the CNMI to exploit others; and Article XII does not apply to the United States military. Second, through

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*Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union With the United States of America.* Italics by me.
promoting economic advancement, Article XII has assisted in developing an economy highly dependent on tourism and the garment industry. Although the CNMI has tried to balance this outside influence with the 51/49 percentage of people of Northern Marianas descent and people of non-Northern Marianas descent that must sit on a company’s board of directors in order to lease land, the law has been unable to create a sustainable balance in the economy. Article XII also does not control what industries are developed on the leased land. Economic advancement is being encouraged at the price of environmental and social exploitation of the CNMI and its people. Finally, since the establishment of the Commonwealth, the CNMI has become increasingly dependant on foreign economies, foreign labor, and the United States. Economic self-sufficiency has not become a reality for the Marianas, and as we are increasingly dependant on outsiders; it is a goal that is moving further and further out of our reach.

Article XII—Protecting from Exploitation?

Article XII specifies that long-term land rights must remain in the control of the CNMI’s peoples. People of Northern Marianas descent, according to the Constitution are able to buy and sell land without limitation, from and to others of Northern Marianas descent. Upon the influx of outside investors that inundated the new commonwealth there were no protections in place that would prevent certain people of Northern Marianas descent from being exploited by others. Mary Beth Herald writes:
Section 805 allows persons of NMI descent to acquire unlimited amounts of land from other persons of NMI descent. Section 805 places no controls on these acquisitions. Interestingly, if the racial restriction was intended to prevent the people of the NMI from losing their lands or being exploited, it incorrectly assumes: (1) There is no threat of exploitation or cultural dislocation when NMI persons sell their lands to ambitious or unscrupulous persons who happen to be of the correct NMI ancestry, or (2) there are no persons of NMI descent who would exploit persons of NMI descent. The Court and Section 805 also assume that all outsiders constitute a threat.93

During the economic boom of the 1980s that was largely based on the leasing of land by people of Northern Marianas descent to foreign investors and developers, certain people of Northern Marianas descent became extremely rich. It was not necessarily through leasing their own land, but with provided capital certain Chamorros and Carolinians purchased land for low prices from others and then turned around and leased it, making more money than the original landowners would ever see. Often times, non-Northern Mariana descent investors would locate a Chamorro or Carolinian partner. Sometimes, that partner of Northern Marianas descent, without divulging the motivation to the Chamorro or Carolinian with whom he was doing business, would purchase land for a minimal price and in turn lease it to the investor for a sizable sum.94

Article XII could not prevent this type of exploitation that resulted in many people of NMD losing their land, not just for 55 years but forever. It is problematic in this situation to assume that cultural stability is largely maintained by access to and control of land. If a plot of land is leased for 55 years to a person of non-Northern Marianas descent, or if it is sold permanently to a person of Northern Marianas descent, people are still being alienated from that land. If the culture is sustained and perpetuated by a relationship with the land, what happens to the culture when generations are being

93 Herald, 744.
94 The Nikko Hotel Case is an example of this type of transaction. I discuss this further in Chapter Four.
alienated through either leaseholds or sales? It is dangerous to put the responsibility for a culture on a single piece of legislation that in the end comes down to economic priorities. As the generation of Chamorros and Carolinians who were born after the Commonwealth Agreement begin to come of age, the long-term effects of the NMI's land alienation policies will begin to be seen.

Article XII, while attempting to protect against exploitation by outsiders, does not limit the length of time that the United States military can hold land. This is particularly an issue on Tinian. A key factor in Covenant negotiations, the United States initially requested that the entire island be handed over. Willens and Siemer write, "The centerpiece of their land requirements was the entire island of Tinian, a small island lying just a few miles off the southwest tip of Saipan."95 In response to outrage by the island's primarily Chamorro residents, it was agreed that the United States would lease two-thirds of Tinian for 55 years with the option to renew upon expiration. The US paid $17.5 million for the land with the agreement that a base would be built on the island, which would provide jobs and services for a large part of the small community.96 The base was never built as the NMI lost much of its strategic importance with the end of the Cold War and the US military continues to control two-thirds of Tinian's land.

During a conversation that I had with Joanna, a student from Tinian at the University of Hawaii, she expressed dissatisfaction with the land situation on Tinian. Joanna explained to me that although the military has leased the majority of the island, the land remains unfenced and unguarded. The land sits largely unused and while the local people are allowed access to it they are not able to develop the property, as it could

95 Willens and Siemer, An Honorable Accord, 44.
be needed by the military at any time. This land though largely left alone by the United States military is not available for use by the growing Tinian populations.

Mary Beth Herald writes, “Although voicing a commitment to preserving cultural integrity and land ownership in the name of NMI descent persons, the United States also negotiated a 50 year lease on two-thirds of Tinian, and a power of eminent domain.[...] Neither this land displacement nor the military base are entirely compatible with the Section 805 rhetoric.”

While allowing Chamorros and Carolinians to be exploited by each other and the United States military, Article XII has also enabled and encouraged the CNMI to exploit others. Preventing the exploitation of others was not part of Article XII or Section 805 but it is an issue that has been prominent in the Northern Mariana Islands since the beginning of the Commonwealth. The exploding economy of the 1980s, a result of the large amounts of land being leased to investors with large amounts of capital, opened the door for the recruitment of tens of thousands of foreign workers. The Covenant allows for the NMI to control its own immigration. This was incorporated into the Covenant with the idea that such control would allow the NMI to regulate and keep the impact of outsiders to a minimum. But as the NMI began to develop at break-neck speed, foreign workers were recruited to support the island’s development. As such the NMI’s immigration laws have allowed for a largely uncontrolled flow of Filipinos, Chinese, Koreans, Bangladeshis, and other primarily Asian immigrants. The CNMI did not take time to adjust to the large numbers of contract laborers being brought to the islands. Laborers were often the victims of substandard living and working conditions.

97 Discussion with Joanna 04/07/2005.  
98 Herald, 759.
In 1993 the CNMI’s Filipino workers stood up against alleged abuses and poor labor practices. The Marianas Variety reported, “The Filipino community in the CNMI recently asked the Philippine government to temporarily stop sending contract workers to the Commonwealth until laws to stop labor abuses and to alleviate the living conditions of alien workers have been implemented.” This kind of protest was rare.

Because the CNMI is also in control of its own minimum wage, which is kept as low as possible in order to provide cheap labor in a failing attempt to sustain the economy, the majority of the Chamorros, Carolinians and other Americans will not work for the low pay that contract laborers will. While the CNMI has been working to raise the minimum wage in order to appease the United States Federal government, as a result of a number of complaints, the low minimum wage is one of the primary reasons that the garment industry was able to flourish on Saipan.

The garment factories, which are primarily foreign owned, sit on leased land. That land will be out of the control of the family who leased it for about two generations. If a culture is tied to the land, and a garment factory sits on that land, and in that factory hundreds of foreign workers sweat for long hours receiving the minimum pay allowed by the law creating name brand clothes that will immediately be packaged and shipped to the US mainland, what does that say about the culture? How is that culture expected to survive when the land is occupied by a variety of foreign forces and access is denied? What kind of connection will the children and grandchildren of the generation who negotiated the leases have with the land in 55 years?

100 Today the CNMI’s garment industry is in rapid decline as the United States has altered international trade agreements and as a result has lifted quotas on imported garments from China. The CNMI no longer offers the economic advantages it once did, as labor is much cheaper and readily available in China.
Article XII—Promoting Economic Advancement?

In the mid-1980s through the early 1990s the CNMI experienced an economic boom. The result of a combination of factors, including security guaranteed by the US flag, the prospering Asian economy, favorable tax and immigration laws, and seemingly unregulated access to land, tourists from Asia (primarily Japan) began to travel to the CNMI and investors wanted to capitalize on the budding industry. Total visitor arrivals to the Commonwealth increased from 117,149 in 1980 to 417,146 in 1990 and 736,117 in 1996. Total visitor spending was an estimated $587.8 million in 1996. William Stewart, a local economist, writes:

As recent as 1976 [...] the Northern Mariana government collected only 3.9 million in local revenues, sixteen years later the economy had grown to the point where it produced forty times that amount internally for government use, (157 million in 1992). The ‘boom’ started around the mid-eighties, in 1980 there was only 740 hotel rooms and tourist expenditures were a low $58.8 million. By 1992 the industry had grown to 2,928 rooms and visitor’s expenditures were estimated to be $494 million.”

As a result, the 1980s saw Chamorros and Carolinians leasing their land for unprecedented prices. While beachfront property was the highest in demand, inland the prices were high as well. Golf courses, hotels, water parks, and luxury shops are only a few of the businesses that helped to drive up the prices of land in the NMI during the 1980s. Sam McPhetres in *Umanidat: A Journal for the Humanities* writes,

The practice was to lease prime beachfront land for the maximum allowable and pay the whole lease up front. Prices soared as high as $4,000/sq meter. Local people became instant millionaires and preservation of the land for cultural purposes was an idea that was held primarily by those who didn’t have any land to lease.”

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102 *Umanidat*, 1995 3.
This statement, though it simplifies the complex ties that existed and continue to exist in the CNMI among the economy, Chamorros and Carolinians, their culture, and the land, signifies the divide that exists in the CNMI in regard to the land alienation laws. Many people were made rich during the 1980s. Many people leased their land. But, despite this semi-temporary alienation it is necessary to recognize that there remains a connection to the land even if access is unavailable for 55 years. Though I cannot speak for all Chamorros and Carolinians, I can say that many to whom I have spoken will point to a piece of land that they or their parents leased and say, "that is my land." At those times there is no mistaking a sense of a connection that exists despite the hotel, store, or home that sits on it. There is a belonging and whether it is the land belonging to the person or the person belonging to the land, or as I suppose both, it should not be disregarded.

Chamorros and Carolinians who had grown up in the stagnant economy of the Trust Territory were suddenly being offered millions of dollars for their property. Many had other property they could move to or maintained a piece of the leased land. Some people built new houses, some bought homes in the United States where their children could live while attending college and almost everyone bought new cars. My father used to say that you could tell when someone had leased land—the next day they would arrive at work in a shiny new truck. One day he had closed a deal and the Chamorro client had left his office with a check for millions of dollars from the Japanese corporation that had leased the family's land. The next day his client walked into the local Ford dealership and, after paying in cash each of his children and his wife left with a new car of their choice.
It is hard to describe the feeling of Saipan in the 1980s and early 1990s. For some there was a sense that we were on our way to great things. A Guam Business News article described the land disputes that would develop in the 1990s, “Saipan was to become the Maui of the Marianas, Tinian the Las Vegas [...]”\(^{103}\) Others saw the changes as foreboding. Fred Kluge a one-time Peace Corps Volunteer on Saipan writes in his book, The Edge of Paradise, about a meeting with Dave Igitol.

Igitol’s family land, a 4.8-hectare tract just north of Tanapag village, is the largest beachfront parcel left on the island. [...] “All the beach areas are sold,” Igitol told them, hanging tough. “There might be a few 100 by 100 parcels left, but all the rest are sold. If you look left and right you see hotels and tourists. You should be proud to see me between them. I am the only local on the beach.” It wasn’t that simple though. Igitol was part of an extended family, a family of Saipan Carolinians. [...] Carolinians own land as a family, and the family that claimed this lucrative parcel included fifteen members of Dave Igitol’s generation. One cousin wanted to sell a portion of the land as an individual. Family meetings turned tense, lawyers were hired. [...] The Igitol’s were still in court when I left the island. And the Japanese offer-latest not last-was up to 40 million.”\(^{104}\)

The type of tension experienced by Igitol and his family was not uncommon. Family members would disagree on whether or not to sell family land. This confusion was emphasized by the lack of clear title on much of the island’s land. Many members of a family would claim to be the rightful owner of a certain plot that had belonged to a parent or grandparent. Numerous lawsuits were brought about as a result of family members suing family members over property that had been leased or sold. It was also not uncommon for a property line to be defined by a tree, a rock, or some other natural marker. Because there was often no official documentation of who owned land some individuals would take advantage of the situation and sell land that did not belong to them.


\(^{104}\) PF Kluge, The Edge of Paradise, 138.
Article XII has brought about internal as well as external problems for the people of the CNMI but they have not remained passive bystanders in all that has happened to the island. The different peoples that call the CNMI home have been and remain actively involved in the situations facing the commonwealth. One example was laid out in the Constitution. The writers of the Constitution understood that the majority of capitol coming into the NMI would be from foreign investors. In an effort to mitigate the power of outside forces, Article XII determined that a 51 percent of a corporation’s voting shares must be people of Northern Marianas descent in order for that corporation to own land. This provision provided an opportunity for Chamorros and Carolinians to become incorporated into the enterprises that were making Saipan their place of business. With Chamorros and Carolinians wielding some of the decision making control, there would exist local input into the critical issues facing the hotel, garment factory, or other business.

While Article XII has helped the CNMI develop economically it has not come about without raising serious issues about the direction that the islands have taken since the establishment of the Commonwealth. Article XII limits the length of time that a non-Northern Marianas Descent person is allowed to lease land but it does not censor, in any way, what can be put on that land once it is leased.

**Article XII—Promoting Economic Self-Sufficiency?**

Saipan’s economy prospered in the 1980s and 1990s as a result of the tourist and garment industries. They were the impetus behind the massive development and large amounts of money suddenly flowing in and out of the island. These businesses, although highly

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lucrative for the NMI are also almost entirely dependant on outside factors. The Commonwealth's economic stability, or instability, depends heavily on the Asian economy, access to cheap labor, and funds dispersed from the United States federal government. While the CNMI has enjoyed the most lucrative economy in the former Trust Territory, it is not an economy that has been built on sustainable development. Tourism can be said to be sustainable, but when it is almost solely dependent on tourists from Asia, primarily Japan and Korea, it is also dependent on the economies of those countries. Willens and Siemer write:

> The boom in the Japanese economy during 1986-1991 contributed greatly to this growth—both through investment in the hotels and tourist related activities and in providing during the peak years about 60 to 70 percent of the tourists. Korea was the commonwealth's second largest and most rapidly growing market in 1996, when Korean tourists increased about 50 percent over 1995 and represented about 25 percent of the visitors. An estimated $750 million to $1 billion in foreign investment, most from Japan, flowed into the flourishing Marianas.\(^{106}\)

Garment factories are sustainable only as long as the CNMI provides the most profitable place of business. When Japan and Korea face a problematic economy, the Northern Marianas feels it exponentially. Following the Asian economic crises of the 1990s the CNMI's economy felt the effects almost immediately. Recently, due to international trade agreements, the garment industry has begun to pull out of Saipan leaving the Commonwealth increasingly dependent on funds from the United States.

Garment factories and tourism have been successful in the NMI in large part due to the accessibility to cheap labor (primarily from the Philippines and China) and the demand for services by outsiders. Saipan's tourist industry caters primarily to Japan, Korea, and China, while the garment industry sends the manufactured clothes to the United States where they are sold in stores such as Gap, Banana Republic, and under

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labels that include J Crew and Calvin Klein. Between 1983-1999, the garment industry added about 16,000 jobs, employing 13,000 foreign and 2,500 local workers. Willens and Siemer write, "with about 32,700 foreign and 11,000 local resident workers employed in the entire Saipan economy in 1999, the garment industry employed about 41 percent and 23 percent of all these workers respectively."\footnote{Willens and Siemer, An Honorable Accord, 360.} In 1999, a study on the commonwealth economy (conducted by the Northern Marianas College and funded by the Department of Interior) concluded that tourism and clothing produced about 96 percent of the commonwealth's exports and were responsible for about 85 percent of its total economic activity.\footnote{Willens and Siemer, An Honorable Accord, 360 FN 30.} This dependence on two industries that in turn are heavily dependant on factors outside of the NMI's control leaves the NMI in a precarious position.

Stewart writes:

In an economy dominated by the tourism sector few local people are directly participating in the rewards generated by the industry. Unless this record changes, the local people will not be full participants in the Commonwealth's future growth potential. By 1995 of the 3,388 hotel rooms in the CNMI, only five percent or 165 rooms within 12 hotels or motels were controlled by local people. Of this number 7 of the hotels were located on Rota and Tinian with a total of 85 rooms or 52 percent of the total number of locally owned hotel rooms.\footnote{Umanidat, 1995, 11.} As he goes on to point out, garment factories are not much different:

Then an Asian garment manufacturer discovered that products manufactured in the Commonwealth could enter the United States duty free. The rest is history. The first factory opened in about 1983 and at one time there were twenty-six. [...] Additionally, a local law requiring twenty percent local hire in all large enterprises forced the factories to recruit in the other Micronesian islands for workers to make up their quotas. [...] Thousands have come to Saipan seeking a better life since 1986. This has resulted in unexpected drains on the infrastructure, both social and economic.\footnote{Umanidat, 1995, 4.}

\footnote{Willens and Siemer, An Honorable Accord, 360.}
\footnote{Willens and Siemer, An Honorable Accord, 360 FN 30.}
\footnote{Umanidat, 1995, 11.}
\footnote{Umanidat, 1995, 4.}
In a 1997 article for *Umanidat* Sam McPhetres wrote, “There are an estimated twenty-six garment factories in production using Asian labor to manufacture garments for export to the United States [...] 11,000 workers are employed by this industry.”

McPhetres also states:

The 1990 census showed a population of 42,000 of which 20,000 were indigenous. The 1995 census revealed a total population of nearly 60,000 and by 1997, officials were using 65,000 as the figure. The indigenous population remained relatively steady while the Filipino population swept past 20,000. The Chinese came in at 7,000. [...] In fact, while the total US citizen population is cited as 27,000 in the census report, this figure includes those children born to guest workers, non-US citizen parents who have a higher birth rate in the CNMI than local mothers.

McPhetres goes on to point out that “of the 4,575 business licenses issued only 299 or 6.5 percent were issued to United States citizens and of this number only 143 (4.8 percent) were issued to indigenous people.”

*The Marianas Variety* reported:

The Commonwealth now finds itself in the strange, if not unique, position of having an economy that has far outstripped the capacity of the indigenous population to provide the necessary workers for the labor force. I know of no other area or country, with the possible exception of Saudi Arabia, that is in a similar position. For almost all the other areas throughout the world the exact opposite is true, not enough jobs for the available work force to occupy.

According to the Bank of Hawaii, the 8.7 percent annual growth rate during 1980-1995 was “by far the highest population growth rate on record for any economy in the Pacific, comparing with 2.5-4.0 percent typical for developing countries and 1.0-1.5 percent growth for developed countries world wide.” Although the Chamorro and Carolinian population increased at 3.4 percent annually, the non-Northern Marianas

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113 *Umanidat*, 1995 3.
Descent population, which supported the tourism, manufacturing, and related activities, grew at a rate of 15 percent.\textsuperscript{115}

The number of foreign workers being brought into the CNMI during this period is staggering. It was not long before the CNMI's Filipino and Chinese populations outnumbered the islands' Chamorros and Carolinians. These contract laborers—or guest workers as the government likes to call them—have little political weight. They cannot vote, are not eligible for a variety of public services, and can rarely become permanent residents. Thus, today Chamorros and Carolinians, although numerically a minority, maintain political control of the islands. But, the children of these contract laborers are born United States citizens, eligible for all social services, and upon turning 18 will be able to vote in CNMI elections. The staggering numbers force one to question who will be in control of the CNMI in twenty years. A discussion I had with a friend illustrates the situation.

Ton, a Chamorro from Saipan, and I were sitting in the back of a truck outside the Waikiki Shell. While we were waiting for friends, he asked me what I was studying. I explained that I was looking at Article XII. Hesitantly, he looked at me and asked if I agreed with it. I replied that I agreed with the idea of Article XII, but that I do not think it is without faults.

Ton went on to tell me that he had taken a Hawaiian history class. He said that he was amazed at how much had been taken away from the Hawaiians, and that Article XII was keeping Saipan and the rest of the Marianas from experiencing a similar fate.

"Look at all the Filipinos here," Ton said. "They run the island and have more power and money than the Hawaiians. It is good that Saipan is not like this. In Saipan,\textsuperscript{115} Willens and Siemer, \textit{An Honorable Accord}, 361, FN 31.
we still have the land, the money, the government. But I think we have to be careful, more and more Filipinos keep having babies.”

While the CNMI’s population would continue to grow, the CNMI’s tourism industry would be hard hit by the Asian economic crises. Tourist arrivals fell by roughly 200,000 in 1999, a 30 percent decline from 1997. Commonwealth revenue collections from tourist related activities declined $54 million over the same two-year period.\textsuperscript{116}

Article XII ensures that land cannot permanently leave the control of Chamorros and Carolinians of the Northern Mariana Islands. It guarantees this protection in order to achieve the goals—protect against exploitation, promote economic advancement, and help develop self-sufficiency—laid out in the Covenant and the Constitution. But as I have discussed, the success of Article XII in achieving those goals is questionable. The long-term land protection does ensure that upon the expiration of leases, land will return to the person of Northern Marianas Descent who leased it. But that assurance has proven not completely capable of protecting all Chamorros and Carolinians against exploitation. It has allowed for and encouraged economic advancement, but at the cost of sacrificing true protection against exploitation of people of Northern Marianas Descent and non-Northern Marianas Descent people and the development of a healthy, self-sufficient economy. The CNMI that emerged out of the Trust Territory of the Pacific Islands was a place that after centuries of colonial control finally had a voice in its own political, economic, and social development. The Chamorros and Carolinians, who had long been second class citizens on their own island, through the leasing of their land had potential access to capital as never before. For many, the CNMI’s economic growth, took precedence over the Constitution’s other goals. The opportunity for development was

\textsuperscript{116} Willens and Siemer, \textit{An Honorable Accord}, 362, FN 33.
immediate and there was a sense of urgency. The Northern Mariana Islands chose permanent affiliation with the United States in part because they wanted to be free of the slow paced development that they understood the other parts of the Trust Territory were pursuing. The NMI wanted to develop. Article XII allowed for that development and simultaneously assured the people that their culture would be “protected.” It is an impressive measure taken by the relatively small population in direct contradiction with the larger power’s defining document, the United States Constitution. But as I have tried to show, limiting permanent land transactions alone is not enough to accomplish its goals.

Through the land the people of the CNMI have been able to maintain political control of their island. But today this control is beginning to be challenged as the number of children born to foreign workers increases. These children are born United States citizens and when they turn eighteen are able to vote in CNMI elections. The economic boom, fueled by foreign laborers and foreign money, while helping the CNMI achieve a certain amount of economic stability has seriously challenged the islands’ social and environmental stability. Thousands of foreign workers were needed to maintain the economy, Saipan’s environment began to feel the pressure of the hotels and golf courses that forced sewage into the lagoon due to unprepared infrastructure and inadequate laws. Today Lao Lao Bay’s reefs have been devastatingly damaged due to run off from the surrounding golf course and land clearing that sweeps the white limestone that is the surface of many of Saipan’s roads into the ocean, covering the reef with silt and suffocating it.

The CNMI of the 1980s and early 1990s was a place where many believed that it was necessary to take advantage of the foreign capital while it was being made available
and worry about the consequences when things slowed down. Through maintaining control of the land, Chamorros and Carolinians have been able to establish themselves politically and economically but the full consequences of Article XII have yet to be seen. When the twenty-five years established in the Constitution as the initial time period for the land alienation law is up, thousands of non Northern Mariana Descent CNMI citizens will be able to vote. It remains to be seen if Article XII will remain an integral part of the CNMI Constitution in 2011.
Chapter Five: Article XII is Challenged and the Public Reacts

Despite one’s perception of the changes that were taking place in the Northern Marianas during the 1980s and early 1990s, most people would agree that there was a developing sense of tension. This tension existed between Chamorros and Carolinians and those who could not own land, between the foreign laborers and those who issued their paychecks, between those who chose to lease out their land and those who did not, between the lessee and the lessor. This tension between became a part of the social atmosphere of the late 1980s and 1990s.

Saipan was changing fast. In 1993 the tension that had escalated through the 1980s came to a head. The catalyst was a case brought about by two Chamorro sisters who had leased their land in the early 1980s. The San Roque property became the sight of Saipan’s largest resort, Hotel Nikko.

The Nikko is anything but modest. Heading toward the north end of the island, after passing Lower Base, the day seems to slow down. There are fewer people, less cars, and there is a general quietness that grows as one progresses north toward some of Saipan’s most beautiful views and most horrible memories. Suicide Cliff, a sheer limestone wall that cuts 1000 feet into the air out of lush jungle below, and Banzai Cliff, a two hundred foot drop into cobalt blue ocean that crashes with unimaginable force into the jagged coastline were the sights of one of the island’s most gruesome war stories. Japanese civilians and soldiers, upon learning that American takeover was inevitable, chose to jump off the cliffs to avoid the torture that they had been told would be inflicted upon any taken captive. Women threw their children and husbands pushed their wives.
Thousands of people killed themselves. It is a place where one does not linger after dark, a place where history hangs heavy in the air.

But before reaching these places, one must first pass through Tanapag village into San Roque. As you enter San Roque, the Hotel Nikko towers ahead. Now the second tallest building on the island, the pastel pink, purple, and blue hotel sits with its walls covered in fiery purple and red bougainvillea. The Nikko was the NMI’s first resort. Complete with a water park, numerous restaurants and shops, a terrarium, tennis courts, racquetball, a ray pond, a shark pool, and an array of beach equipment and activities, the hotel had much to offer its primarily Japanese clientele. It is a separate world. A tourist can arrive in Saipan, be whisked by bus from the airport to the hotel in 20 minutes and spend the entire vacation on the Nikko property.

As the CNMI’s economy began to slow, people began to look closer at Article XII and the land deals that had been made during the development frenzy that was coming to an end. Had they all been legal? Had they all been fair? Could they be challenged? As it would turn out many could be challenged and many were. Article XII became the source of numerous court cases that caused problems in the legal system and the social system in the Marianas. If the tension was escalating going into the 1990s, in 1993 it skyrocketed. As Sam McPhetres explained in an article in the Marianas Variety:

“We are in a scary situation.”

Thus said Samuel F. McPhetres, chairman of the Economic Development Committee of the Saipan Chamber of Commerce, in a personal note during the opening of the 1993 Economic Symposium at the Aqua Resort Club Wednesday.
McPhetres said he had been an observer of the social and economic situations in the CNMI for many years, both by profession and avocation. "There has been a dramatic increase in 'us v them' conflicts in the Commonwealth," he said. "These issues can be summarized in their extreme by the rise in statements to the effect that 'if you don't like Saipan, leave' colliding with 'we saved you from the Japanese, you should show more gratitude'.”

“This is expressed in the current bitter debate over the nature of Article XII of the Constitution. But it does not stop there. It is present in the breakdown of families and the epidemic explosion of drug use. It is part of the non-resident worker treatment issue. It can be found in the deteriorating relations between the Commonwealth and the federal government.”\(^\text{117}\)

People were angry—angry with lawyers, angry at judges, angry with Chamorros and Carolinians, angry with white people, angry with the developers, angry at the government, angry at the constitution—this anger was funneled into the courtroom.

No case aroused more intense reaction than did the Hotel Nikko suit. Following what would become known as the "resulting trust" argument, two Chamorro sisters and their attorney Theodore Mitchell, sued for the return of the land that they had sold in 1983 for $30.00 a sq. meter, to a person of Northern Marianas descent who had purchased the land with funds provided by partners who were not of NMI descent.\(^\text{118}\)

The original landowners argued that they had been cheated and that the use of a Chamorro “middleman” was unfair and that they had sold the land under false pretense without being made aware of the foreign role in the transaction. The sisters wanted their land back and according to the Constitution, if they won the case the transaction would be considered *void ab initio* and the land, along with the hotel would be returned without

\(^{117}\) Marianas Variety, 2 July 1993.

\(^{118}\) I mention the name of the attorney because as the Article XII situation developed certain attorneys became associated with the cases they argued. As people of the NMI defended and attacked Article XII, the lawyers became central to the arguments. Ted Mitchell represented Chamorros and Carolinians who thought they had been cheated, while people like Rex Kosack and the Carlsmith Ball law firm were known to represent the defendants.
restitution. The Nikko case, unlike any other Article XII case ignited the NMI community.

On June 23 1993 the front page of the Marianas Variety, declared, in powerfully large font “Warning from JAL, Nikko: ‘We will leave Saipan.’” Japan Airlines, the largest provider of Japanese tourists to the NMI and Hotel Nikko, the defendant in the Article XII lawsuit and Saipan’s largest resort were unhappy with the situation and were preparing to sever all ties with the NMI if the case was decided against them. The article went on to state:

“And if this happens, every bank, developer, and investor in Japan will know why,” said Mitsuo Kitajima, Nikko president, and Tsunehisa Hayami, senior vice president of Japan Airlines Development Co., Ltd. in a letter to the Senate.

“Our hotel once stood as a symbol of the CNMI’s bright economic future,” they said. “Unfortunately, today our hotel stands as a symbol of the Article 12 lawsuits that threaten the CNMI’s economy and tourism industry.” [...]

The JAL companies issued the warning because of lawsuits filed by the former owners of the land occupied by the hotel in San Roque to get their property back, including the hotel.

“We began flight operations to Saipan in 1977, and later in good faith built a beautiful multi-million dollar hotel on privately owned land,” they said. “We brought tens of thousands of tourists to the CNMI and provided jobs to local residents, contractors, building suppliers and others.”

After receiving the highest price ever paid for privately owned land in CNMI, the former owners filed an Article 12 complaint against the JAL group, the two officials said.

“The plaintiffs seek to use Article 12 as a way to get the property back, including the hotel, without having to pay any restitution for the hotel or the land,” they said.119

Under Article XII, when a lease expires the land is returned to the person of Northern Marianas descent who holds the long-term rights to a piece of property. That

person is not required to make any payments for "improvements" made to the property while it has been in the hands of lessee. The same stands for leases found to be violating Article XII; they are returned to the person of Northern Marianas descent found to be the rightful owner of the property without any restitution.

The Article XII lawsuits and the legal dramas that ensued in the early 1990s are extremely complex. It would take an entire thesis to examine the entanglements and the layers of the politics, pressures, and legalities of the situation. It is a very interesting and important aspect of the overall effects and impact of Section 805 and Article XII, but one that will not get the attention it deserves in this project. The legal warfare that took place was based on, and resulted in, an extremely technical state of affairs that I am not equipped to understand, let alone discuss and argue. That said, in order to have a more complete—and complex—understanding of Article XII and Section 805 in the CNMI it is necessary to have an idea of what took place inside the courtroom.

The Lawsuits

*Wabol v Villacrusis*

In *Wabol v Villacrusis* the United States Ninth Circuit Court determined that the NMI’s land alienation restrictions, as determined in the Covenant, could coincide with the United States’ Constitution’s equal protection guarantee. In *Wabol*, Villacrusis, a person of non-Northern Marianas descent, leased land from Wabol, a person of Northern Marianas descent, for a period of time longer than that which was allowed by the CNMI Constitution. When Wabol sued to void the lease arguing that it violated Article XII, Villacrusis filed a counter-suit challenging the constitutionality of Section 805 of the
Covenant and Article XII of the NMI Constitution. The Ninth Circuit determined that Section 805 and Article XII were not subject to an equal protection attack. The Covenant established that in the Northern Mariana Islands, land ownership was not a fundamental right. As such people who were not of Northern Marianas descent were legally excluded from long-term land ownership and were not given the "equal protection" that would be applicable in the United States under the United States Constitution.

Because the NMI and the United States chose to exempt this provision from the reach of equal protection guarantees, this aspect of equal protection did not apply in the CNMI. Mary Beth Herald writes:

The Ninth Circuit’s analysis ultimately resulted in the conclusion that the fundamental right to equal protection was not implicated because the right to buy land in the NMI is not fundamental enough to be protected from race discrimination in its exercise.

In its decision the Ninth Circuit stated, “[i]t appears that land is principally important in the Commonwealth not for its economic value but for its stabilizing effect on the natives’ social system.” They went on to note that “[l]and traditionally passes from generation to generation creating family identity and contributing to the economic well-being of family members.”

This decision by the United States Ninth Circuit Court was important for a number of reasons. First, it validated the Covenant and its ability to stand up to the United States Constitution. Second, it validated the CNMI’s land alienation laws. Finally, the Court’s decision reinforced the argument that land ownership in the CNMI is

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120 Herald, 724. Taken from Wabol, 958 F.2d at 1460.
121 Herald, 725.
122 Herald 727.
123 Herald 744, quoting Wabol, 958 F.2d at 1461
124 Herald 744, quoting Wabol (quoting Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands174-176 (1976)).
a fundamental right only for those of NMI descent as a result of the role land played in the traditions of Chamorros and Carolinians and the problems that might arise as a result of losing that land.

This decision while celebrated by many was frustrating for others, particularly people who were not of Northern Mariana descent who had hoped that the United States Court would judge Article XII as a violation of the US Constitution and thus illegal in the CNMI.

Ferreira v Borja, Aldan Pierce v Mafnas, and Hotel Nikko: “Resulting Trust”

After Wabol v Villacrusis established Article XII’s credibility and ability to stand up in court, people began to look closely at the law and ways in which it might be violated. The “resulting trust” theory was argued in a number of important and high profile Article XII cases including the lawsuit brought against the Nikko Hotel. A resulting trust, as argued by Theodore Mitchell, a lawyer who represented a number of Chamorros and Carolinians in Article XII lawsuits, occurs when a person of non-Northern Marianas descent, recruits a person of Northern Marianas Descent to purchase a desired plot of land with funds provided by the non-Northern Marianas Descent person. That Northern Marianas Descent person would then lease the property to the non-Northern Marianas Descent person or corporation. When the lease expired, the person of Northern Marianas Descent who purchased the land would be the owner. In the 1980s this was a common practice, non-Northern Marianas Descent persons or corporations typically preferred to lease land from a person whom they knew they could trust and a Chamorro or Carolinian negotiating a land transaction was more likely to get a better deal
than an outsider who is assumed to have substantial financial backing. It was argued that this person was nothing more than an agent for the non-Northern Marianas Descent lessor and as such they did not truly own the land because they were not free to do with it as they chose. When the non-Northern Marianas Descent person provided the funds through which the Chamorro or Carolinian was to lease the land, a ‘resulting trust’ occurred leaving the person of Northern Marianas Descent obliged to the non-Northern Marianas Descent investor.

Attorney David Nevitt, who represented the Nikko Hotel in their Article XII lawsuit, discussed the ‘resulting trust’ theory with Guam Business News:

Some Northern Marianas residents have devised a scam by which a land owner leases his property to a developer, and after the project is completed makes up a story that he bought the land from the previous landowner with money provided by investors not of NMI descent, usually rich Japanese investors, Nevitt says. The former landowner then files an Article XII land alienation lawsuit claiming that the landowner is merely an employee whose job is was to purchase the land for investors, who in reality do not exist. Prior land alienation court decisions have resulted in the land being returned to the previous owner as if the land sale had never occurred. In the end, both current and former landowners secretly agree to split up what potentially can be a huge settlement, especially after the land has been developed.125

*Ferreira v. Borja* was the first Article XII case decided in Commonwealth courts.126 On September 13, 1988 Justice Ramon Villagomez of the CNMI Superior Court struck down the purchase of land by Diana Chong Ferreira, a woman of Northern Marianas descent from Mr. Borja the original land owner, because of the involvement of her non-Northern Mariana descent partners. The ruling was controversial as Ferreira’s partners in the land transaction were her non-Northern Mariana descent husband and

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James and Barbara Grizzard, a married couple also were not of Northern Mariana descent. Justice Villagomez ruled that because of the involvement of funds from individuals who were not of Northern Marianas descent the land in question was not owned solely by Diana Chong-Ferreira. When she purchased the land using funds partially provided by her husband and the Grizzards a “resulting trust” was established. The Court determined Chong-Ferreira’s husband and the Grizzards trusted that as a result of the combined funds used to purchase the land the transaction Chong-Ferreira would be obligated to make decisions regarding the land only after consulting with her partners. Justice Villagomez ruled in favor of the prosecution concluding that such a “resulting trust” in which the person of Northern Mariana Islands was not seen as free to determine the future of the land violated Article XII of the CNMI Constitution. Such a transaction, as determined by the Constitution was ruled void ab initio. The land was to be returned to the original owner, without any compensation.

The CNMI Supreme Court heard the Ferreira case on appeal in 1991. In a 2-1 split decision in 1992, the Court ruled that the purchase violated Article XII because the partners actually held ownership of the land under “resulting trust” doctrine. But in 1992, the Ninth Circuit of the US Court of Appeals disagreed, finding the “resulting trust” doctrine did not apply. They vacated the CNMI decision and sent it back to the CNMI Supreme Court to hear again.

It was the resulting trust theory that many people in the CNMI found extremely threatening. This argument could challenge any land transaction that used any money from a person of non Northern Marianas descent. It could also challenge any transaction that used a “middle man.” While there were instances in which landowners were taken
advantage of by schemes intended to obtain property as cheaply as possible, there were also many valid land transactions that would face litigation as a result of this argument. It was not uncommon for an Article XII lawsuit to be threatened by original landowners and the lessee or new owner—even if they believed that there was little evidence to support having their land taken away—would settle out of court in order to avoid years of litigation.

The resulting trust theory resulted in an increasingly tense situation in the CNMI. People felt betrayed, people were betrayed. Because literally any land transaction could be brought into question and face litigation there was a growing sense of distrust in the CNMI. While some were applauding the courts’ Article XII decisions, others were losing faith in the CNMI’s justice system and its ability to fairly interpret the CNMI’s Constitution. As people lost faith in the system many lost faith in each other.

_Diamond v Matsunaga: “Change of Law”_

_Diamond Hotel Co., Ltd. V. Matsunaga_ was one of the later types of Article XII cases. On April 15, 1993 Judge Castro ruled that a lease held by the Diamond Hotel on land behind the Joeten Center in Susupe violated Article XII because it contained a “change of law” provision. This provision, commonly found in CNMI leases, provided that if Article XII changed to permit leases longer than 55 years, anytime during the duration of the lease, then the lessee would have an opportunity to obtain an extension of the lease or long-term land rights. Matsunaga sued Diamond Hotel arguing that Diamond Hotel had illegally included a change of law provision in the land lease.

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127 SMART Times, June 1993.
Because the provision violated Article XII the plaintiff sought the entire transaction to be ruled *void ab initio*.

This argument, while more straightforward than the resulting trust argument, threatened a number of significant land transactions in the CNMI. The change of law provision had become a regular addition to many leases. Many investors stood to lose a great deal if they were proven to have violated Article XII. This argument and others created an general questioning of the security of land transactions in the CNMI. People and businesses were on edge not knowing when they might be charged with an Article XII violation.

**The Community Responds**

The Nikko was not the only business that was threatened by Article XII lawsuits. Tourism began to decline and the business community started to feel a slowdown of the economic boom. While this was definitely impacted by Article XII, as people were reluctant to invest in a piece of land that could possibly be taken away, it was also a result of the Japan’s receding economy. CNMI House Leader Stanley T. Torres, in an interview with the Marianas Variety said:

“JAL and Hotel Nikko bring in millions of dollars to the local economy. If they leave, no one will want to come here to replace them,” he said. “Prove it to me that someone else wants to come here. I haven’t seen any evidence of it. None. Nansay, Sheraton, and other large companies have already said goodbye to the CNMI. Who wants to come here? Nobody.”

“I strongly support Article XII. It’s intent is to promote economic advancement of local people. It helped do that in the beginning, not now the opposite has resulted. I resent the fact that Article XII has been turned upside down to block economic advancement and to cheat outside investors. The CNMI is the only place in the world where investors are meeting these kinds of problems. What’s happening now reverses the intent of the Covenant and the CNMI Constitution.”
"We need to fix these problems before they swallow us up."

Many developers were waiting to see the result of the Nikko case before beginning construction. One Japanese investor/developer stated in a 1992 issue of Guam Business News:

The fate of the Lau Lau Bay Resort hinges solely on a land-alienation lawsuit filed against the Hotel Nikko Saipan. The outcome of that case should interpret Article XII, titled “Restrictions on Alienation of Land” for all major developers. In short Article XII restricts land ownership to people of Northern Marianas descent, which was no problem for Japanese investors who, until recently were willing to take risks on 55-year land leases. “A big problem for us is Article XII,” Taguchi says. “Before, when the Japanese economy was strong enough, taking a risk on Article XII was not a problem. Now the Japanese banks won’t release the money until they see a favorable result from the Article XII Nikko case.”

As Mr. Taguchi and Mr. Torres expressed, many members of the business community and CNMI residents were unhappy with the trend of lawsuits that were threatening the stability of their investments. Thus Public Law 8-32 was proposed by lawmakers, members of the business community, and individuals as a means to solve the “Article XII crises.”

Public Law 8-32 and Saipanese Mobilized on Article XII (SMART)

Public Law 8-32 (PL 8-32) was introduced to place a cap on the contingency fees lawyers charged Article XII litigants, and to shorten the period within which Article XII claims could be brought up by the original land owner versus the purchaser of the real estate property. It also did away with the resulting trust theory as applied by CNMI courts and provided restitution for those who would lose their investment on a property reclaimed...

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128 Marianas Variety, 29 June 1993.
through Article XII. PL 8-32 was introduced as a response to the turmoil created in the CNMI by the many Article XII cases being taken to the court.

PL 8-32, while supported by a number of the CNMI’s senators was strongly lobbied for by powerful members of Saipan’s business community. Marian Aldan-Pierce, who had herself been the target of a groundbreaking Article XII case and worked for Duty Free Shoppers (DFS) was one of the most vocal members of the Chamorro community in favor of the passage of PL-82.

DFS, a chain of retail stores commonly found in airports throughout the United States, offers duty free products to people traveling outside of the country. The company has several stores on Saipan, including the DFS Galleria an upscale shopping center in the center of the island’s most popular tourist area, Garapan. In addition to having its business impacted by a decrease in tourism, a consequence, it was argued of the land disputes, Duty Free Shoppers was also facing an Article XII lawsuit. Duty Free Shoppers supported PL 8-32 along with many other members of the community. People who were in the process of taking cases to court or people who believed they had been victim to an Article XII violation did not support PL 8-32; they argued that the legislation changed the fundamental aspects of the land restriction.

Saipanese Mobilized on Article XII was a strongly supported group that worked for the passage of PL 8-32. SMART debuted with a newsletter in 1993. This newsletter was seen by members as an effort to educate the public about Article XII and keep the people of the CNMI informed as issues regarding land alienation developed according to the priorities established by SMART members. An excerpt from their first newsletter follows:
[...] we are an organization of thousands of local people, who came together out of concern for our commonwealth and our mutual well-being. That concern lives on—and we need a way to communicate to each other and with each other, to stay in touch with Article XII developments that impact our lives.\textsuperscript{130}

During my research I was unable to come across an organized group that countered the opinions publicized by SMART. This discrepancy is not surprising. Many people who supported SMART were those who financially had a great deal to lose through Article XII. They had substantial financial backing and support from businesses such as Duty Free Shoppers. The opposition was lacked that type of financial support.

PL 8-32 was an avenue to stop, or at least slow, the lawsuits that were taking over the CNMI courts, politics, and daily newspapers. By placing a cap on attorney’s contingency fees, lawyers would not seek out Article XII cases a means to make millions. Prior to PL 8-32 some attorneys were charging somewhere around 50 percent contingencies, which, if the land in question has a multi-million dollar hotel on it, was a great deal of money. Limiting the period within which Article an original landowner could bring up Article XII claims would put a stop to cases such as the Nikko. The transaction in question in the Nikko lawsuit had taken place in 1982 and was brought to court in 1993. Public Law 8-32 put a time limit on all claims. PL 8-32 also did away with the resulting trust theory that had been frequently used by attorneys and supported by a number of CNMI judges. It could no longer be argued that a land transaction, which came about in part as a result of a person of Northern Mariana descent using funds supplied by individuals who were not of Northern Mariana descent, was in violation of Article XII. And if land was reclaimed due to an Article XII issue, the investor must be provided restitution for the investment lost as determined by CNMI courts.

\textsuperscript{130} SMART Times, June 1993.
Individuals make themselves heard

The CNMI did not sit idly by as the fight for and against PL 8-32 and Article XII unfolded. People responded. People came together in support of and against the issues Article XII was bringing to the fore. One such group was SMART. But people also stood on their own to present their opinion. One of the most popular and effective means of arguing one’s case was to write a letter to the editor of the NMI’s daily paper the Marianas Variety. The CNMI’s newspapers are widely read and provide a forum for those who wish to have their opinions heard and discussed throughout the community. Dozens of letters in response to Article XII were published in the papers. In this section I have selected a few letters that provide a reflection of the different opinions of Article XII and the effect it was having. These letters illustrate the sentiments of individuals and those who supported them. They are not intended to represent the CNMI as a whole but rather I present these letters as examples of individual’s personal reactions to the situation.

On March 23, 1993 the Marianas Variety, printed a letter to the editor written by Lino Olopai, a respected member of the Carolinian community. The letter entitled An Article 12 Epidemic discussed the “alarming rate” at which Article XII related problems were spreading throughout the CNMI. Olopai argued that the majority of cases of this “Article XII epidemic” were not the result of people within the CNMI but rather from outside investors. Pointing out that the majority of the hotels in the CNMI, a top source of Article XII cases, were foreign owned he questioned how much benefit the CNMI’s Chamorros and Carolinians are really seeing. He wrote, “we need to develop but not the
kind of developers that get rich overnight at the expense of the local Chamorros and Carolinians. I strongly, believe we should cancel more hotels."

In response to claims made by members of the tourism industry, in particular Toshimi Yoshida, the president of the Hotel Association of the Northern Mariana Islands, who had made claims that the problems with Article XII facing the CNMI would have a negative impact on the tourism industry, Olopai wrote that such statements underestimated the ability of the CNMI to draw investors. He wrote:

Do you readers really believe that no one will come here and invest, help us develop, because of Article 12? This is an insult to all of us who voted “yes” for our Covenant, especially insulting to those who negotiated for Article 12. To our present governor who chaired the first Constitutional Convention and especially insulting and degrading to the US delegation who approved Article 12.

Disagreeing with efforts underway to pass PL 8-32 Olopai argued that the proposed legislation was “nothing but a scam to change the intention of Article 12 and to undermine out leaders.” He went on to write that PL 8-32, when passed, would protect foreign developers and encourage them to “disregard, disrespect, criticize, abuse, etc...” the intent of Article XII. Olopai and many other people in the CNMI were becoming increasingly frustrated with the much of the development taking place on the islands. PL 8-32, instead of focusing on protecting the developers, Olopai stated it was also necessary to protect the islands and their people:

We need some sort of development and are looking, and we welcome the kinds or types of developers that are sensitive to the local people, toward their language, culture, laws, and equally important, their environment, etc., and who will include these as part of their development.

In closing Olopai offered recommendations how the CNMI might best contain the “Article 12 epidemic.” He suggested that Article XII be left alone, and PL 8-32 not be passed. He also asked that anyone who circumvented Article XII be charged with a
criminal offense. Finally Olopai sought to make it a law that all land transactions, legal or illegal, be reverted back to the original owners and should be handed over to the CNMI government only as a last resort.\textsuperscript{131}

Olopai's letter, one of the few from the Carolinian community, illustrates the dissatisfaction many people in the CNMI had with the uncontrolled development. This development, as Olopai describes, was designed to provide services for tourists and the "local people" were expected to be satisfied with the indirect benefits that were a result of a successful tourist industry. But people like Olopai were becoming increasingly frustrated with developer efforts, as they understood, to circumvent the intention of Article XII.

Expressing sentiments not very different from Olopai, Kenneth Govendo wrote to the papers demonstrating that the Article XII issue could not simply be looked at as an issue of ethnicity. On June 25, 1993 Govendo, an American attorney married to Chamorro woman responded to JAL and Nikko's statement that they would leave Saipan. Published in the \textit{Marianas Variety}, Mr. Govendo's letter \textit{Adios JAL, Hotel Nikko Saipan} is a commentary on the CNMI's ability to successfully develop without the two companies.

Govendo begins his letter illustrating the extremely large sign that he thought should be placed by the Nikko Hotel calling for new investors. A large, colorful, sign that would announce:

\textsuperscript{131} \textit{Marianas Variety}, 23 March 1993.
For Lease, 55 years. Land with new 313-room hotel on it. Formerly occupied by Hotel Nikko Saipan. Includes beautiful shopping center across the street. Prefer American, Australian, Taiwanese, or Hong Kong investors. Situated in tropical paradise with clean beaches and friendly local people. Lessee must train and hire local people for mid-management positions. Located 3 hours from giant tourist market in Japan. Direct flights to and from by Continental Micronesia, ANA, and Northwest Airlines. Lowest Income taxes under the American flag. Direct inquiries to Governor Lorenzo I. Guerrero, Saipan, Northern Mariana Islands, (670) 322-5091.

Govendo, obviously being somewhat facetious, was nonetheless trying to indicate the CNMI’s ability to attract other investors. When the Nikko and JAL threatened to pull out of Saipan, there was wide spread concern that the island’s tourism industry would disappear with them. Govendo did not share these sentiments. Claiming that the Nikko’s Article XII dilemma was a result of the company refusing to fairly compensate the people of Northern Mariana descent from whom they acquired the land, Govendo went on to declare that the Nikko did not stand as a symbol of the CNMI’s “bright economic future” but rather stood for the “incredible patience of the local people of Saipan.” The people of Saipan, he writes, struggled so that tourists would be comfortable:

While your tourists lived in comfort with 24 hours of water and power, the locals had power outages and water hours. While you made tons of money, you paid $2.5 million a year in taxes. […] Not bad, Nikko. Tell us your net profit, please. I bet your $60 million investment has already been recouped.

In closing Govendo stated that Nikko and JAL’s claim that they would leave the island was nothing but an empty threat to scare the people and government of the CNMI into clearing up their Article XII lawsuit. But if they did decide to leave, as Govendo expressed “adios, Nikko and JAL. Welcome to the CNMI, new investor.”

While Govendo’s letter is not exemplary of the island’s “white” population, it is significant that not all “white people” were against Article XII. And as the next letter

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demonstrates not all Chamorros and Carolinians supported the trend of Article XII lawsuits.

Initially presented at the public hearing for what would become PL 8-32, Herminia Fusco, a Chamorro woman married to an American man, presented her testimony regarding the Article XII situation. Her speech was later published in the Marianas Variety as a letter to the editor entitled, Concerned about family’s future.

Mrs. Fusco began her testimony by introducing herself as a woman of Northern Mariana descent, who with the exception of the years she spent in college, had spent her life on Saipan. The Fusco’s were not “real estate wheeler-dealers” but rather a family that worked hard, paid their bills, and worked to build a comfortable life for themselves and their daughter. Although Fusco had not become involved in any Article XII litigation, the explosion of land related lawsuits had caused her to become concerned about her family’s future.

The “resulting trust” theory that had become so successful and prominent in CNMI courts as a method of arguing and winning Article XII cases directly threatened the security of the Fusco’s life on Saipan. Because her husband was not of Northern Mariana descent, Fusco worried that the funds used to purchase the land they lived on could be brought into question. She stated:

Any piece of property in the CNMI that has ever been bought or sold can be questioned as to the source of the buyer’s money. Any piece of property that is acquired by an indigenous man who has a non-indigenous spouse can also be questioned. I have worked continuously since I married my husband 19 years ago; at times I have made more than him. Do I have to maintain a separate bank account for my savings incase I ever want to buy a piece of property? If I don’t, what is to stop someone from saying I was controlled by my husband or used his money?
Fusco went on to argue that the instability of land transactions in the CNMI would directly affect the islands' economy. Unlike Govendo and others who welcomed the Nikko's departure as a result of their failure to develop in a manner fair to the island's people, Fusco testified that CNMI had been unfair to the Nikko.

Do we expect that after encouraging Nikko to build their hotel we can take it away from them, not give them back the money they spent on the land and improvements, and they will bow down and thank us and ask us if they can please continue doing business here? The Japanese certainly aren't that dumb. Are we?

She went on, saying that while the CNMI would experience severe economic repercussions with the departure of Nikko and JAL, the companies would simply turn to another island that would provide them with the atmosphere needed to successfully run their tourist based businesses. Fusco stated:

A $100 million investment may seem like a lot to us but it wouldn't even buy one 747 airplane. Japan Airlines can walk away from Saipan only slightly poorer, but quite a bit wiser, and I wouldn't blame them all if they did. Saipan isn't the only island in the world with sandy beaches, although it sometimes seems that we think it is.

While the people of the CNMI might see large amounts of money flowing in as a result of Article XII lawsuits, Fusco stated that the money would not last forever. And when the money from the successful lawsuits runs out the CNMI will be left to face severe economic problems. Her testimony reads:

Sure, the twisted logic of our courts and Mr. Mitchell may create a handful of new local millionaires. But what happens when the new Rolexes and Toyota 4-Runners wear out? The economy will be in shambles, and those with the job skills or financial resources will move to the states. Those that don't can content themselves with fishing, farming, and food stamps or work in the garment factories.

Addressing the proposed PL 8-32, Fusco pleaded for its passage expressing her inability to understand how "anyone with even the slightest amount of morals can fault
this bill.” She also argued that it was unreasonable for people of the CNMI to expect that after making millions of dollars selling land they could get that land back for free without having to pay the money back or pay for improvements made to the land.

In closing Fusco asked that lawmakers and the community recognize that the court’s interpretations of Article XII were “wrong, immoral, self-serving, and embarrassing.” Any loopholes that existed in Article XII needed to be fixed but that it was wrong to penalize “locals and outsiders, that stand to be hurt simply to satisfy the few who have sold their ‘precious’ land once and who will sell it again as soon as they get the chance.”

As Mrs. Fusco explained, many people believed Article XII lawsuits to be motivated by greed. People who had sold their land in the early 1980s for a fraction of what it was worth in the 1990s were unhappy that they were unable to reap the full benefits of the CNMI’s economic boom and wanted their land back. Theodore Mitchell represented many of these people who filed Article XII cases.

In response to PL 8-32 Theodore Mitchell, who represented the Nikko and a number of other Article XII plaintiffs, wrote Re-Article 12... a letter to the editor of the Marianas Variety. In his letter Mitchell addressed the community responding to what he claimed was a widespread misunderstanding of PL 8-32 and SMART.

Disagreeing with a claim by a local paper that the passage of PL 8-32 made the CNMI a ‘dependable place to do business’ as it cleared up many of the problems associated with Article XII, Mitchell wrote that PL 8-32 was nothing more than special interest legislation that would allow international investors to violate the CNMI Constitution.

133 Marianas Variety, 9 July 1993.
Mitchell attacked the majority of the Commonwealth Legislature for “breaching its obligation to uphold the and defend the Commonwealth Constitution.” After which he went on to state that the lawmakers who voted for PL 8-32 were not lawyers and were unable to fully grasp the bill, which Mitchell wrote was “legally complex and difficult to understand.” While these lawmakers might not have fully understood the complexities of the bill Mitchell argued that they did understand PL 8-32 was passed in order to save businesses such as Duty Free Shoppers and Hotel Nikko. Mitchell writes:

But they [lawmakers] all know one thing: The purpose of the legislation was to obliterate the Supreme Court’s interpretation of Article XII and to save Duty Free, Nikko Hotel, and others who had violated Article XII and stood to suffer the sanctions intended by the framers, namely, loss of the fruits of their own misconduct.

In response to SMART and its efforts in the passage of PL 8-32, Mitchell writes that the group was not the grass-roots organization that they would like people to believe. Rather it was a movement initiated by Duty Free Shoppers, Carlsmith Lawfirm, which represented the Nikko Hotel, and other defendants in pending Article XII cases who put to work “a few local people to fight their multi-million dollar battle for them.”

Mitchell goes on to state that the real problem facing the CNMI was that international investors had obtained a large share of the CNMI’s economy. It was through this economic power that these international investors had been able to manipulate Article XII and its intentions. Mitchell goes on:

The real problem with what is happening here is that far too many of the international investors who were allowed to take an equal share of the economic life of the Commonwealth are now using their economic power to take by force that which Article XII denies them, namely, ownership of scarce Commonwealth real estate.\footnote{Marianas Variety, 26 October 1993.}
As demonstrated by Fusco, Article XII not only affected large businesses and hotels but it also affected individuals who would have preferred to be left alone rather than face multi-million dollar lawsuits. Because of the volatility of the topic and the potential repercussions of taking a vocal position on situation, many felt the only way to express their opinions was through anonymous letters to the editor. In the anonymous letter written to the Marianas Variety, the author of What Article 12 has done expresses his emotional story of his struggle with Article XII.

The author, whom I will refer to as anonymous, begins his letter by introducing himself as a person of Northern Mariana descent who lived on Saipan before and after attending college in the United States. Anonymous lived with an American family while attending college. This family treated him like a member of their family and supported Anonymous while he worked hard to succeed in school and as he dealt with cultural and language differences. When Anonymous graduated from college his “stateside” family who were very wealthy and had no children of their own, paid for his parents on Saipan to travel to the United States to attend the ceremony.

On the day that Anonymous and his parents were scheduled to return to Saipan, he was pulled aside by his “stateside” parents and given a check with which he was to buy land and build a house of his own. They wanted to help him get a good start on Saipan and Anonymous was free to pay them back whenever he found himself financially able. He writes:
The day we were to leave the US, my family there took me aside and told me they wanted to give me a gift to help me get a good start back in Saipan. I told them that my stay with them and the times we shared were a gift that I would never forget and felt very much in their debt already. They explained that since they had no children of their own and were financially very well to do that they wanted very much to do this one thing for me. What they did was give me money to buy land in Saipan and said that I could pay it back whenever I felt able to do so. The important thing to them was that I would be able to have a place of my own when I returned to Saipan.

Upon Anonymous’ return to Saipan, he used the money given to him to purchase a piece of land and built a small house where he later lived with his wife and two children. But, as he writes, his happiness was jeopardized when an Article XII case was brought against him as a result of the origin of the money used to purchase the land he lived on. Frustrated with the situation Anonymous writes:

Why? What have I, my parents, my wife, my children or my family in the States done to deserve this? I’ll tell you what we’ve done wrong. Nothing. So why are we in this position? Because the person I bought the land from knew that I got the money to purchase it from an “outside source” and went to talk to a certain attorney about the situation. This “certain attorney”, who is also driven by greed just like the person I bought the land from, told him that he could get him back “his land” because I was really just a “front” for the people in the States that really owned the land and that violated Article 12.

This “certain attorney” that Anonymous refers to is Mr. Mitchell who represented many Article XII litigants and coined the “resulting trust” theory. Anonymous ends his letter with a plea for “local people” to see through the efforts of this “certain attorney” and realize that the trend of reclaiming land was wrong hurting the CNMI and its people. He writes that the intentions of Article XII had been repeatedly violated and that it needed to stop.135

These letters are only a few of those written to the CNMI’s papers throughout the Article XII debate. I tried to choose letters that gave a variety of different attitudes and

135 Marianas Variety 8/3/1993 Letter to the editor
arguments. These letters provide valuable insight on an issue that was flammable fodder for any conversation. The CNMI’s papers are widely read and these letters provided an opportunity for the community to express themselves and become familiar with the situation at hand.

Article XII Today

Upon the passage of PL 8-32 the wave of Article XII cases flowing in to the CNMI courts began to subside. The major arguments that had been employed by the plaintiffs had become, as a direct result of PL 8-32, invalid. After Governor Lorenzo I. Guerrero signed PL 8-32 into law, Article XII slowly left the front pages of the CNMI papers. Article XII cases dropped drastically and people became increasingly careful when considering a land transaction. While it may no longer be a daily topic of conversation, Article XII stands as a very important part of the Constitution. It is still debated and it remains an area of contention between many.

In 2005 the CNMI is facing serious economic troubles. The garment industry, as a result of international trade agreements, has begun to pull out and the tourism industry is failing to rekindle the tourism boom of the late 1980s and 1990s. The latest testament to the CNMI’s dwindling tourism industry was the recent announcement by Japan Airlines that they would be ending service to Saipan.

While the CNMI had once provided the factories with an extremely profitable location from which to do business, the new trade agreements, which lift certain quotas on the amount of textile imports by the United States from Asian countries such as China, have created an atmosphere in which the Commonwealth can no longer effectively
compete. On Saipan, the garment factories recruited thousands of workers primarily from China, paid for their travel, and were responsible for their housing. It was worth it for the companies because they had been able to send their clothes to the United States mainland duty free. Now, those factories can relocate to China, where the supply of labor is abundant and the restrictions of doing business in a United States commonwealth do not exist and continue to trade duty free.

The CNMI also faces problems left behind by the departing garment industry. According to the Saipan Tribune, over one thousand, primarily Chinese garment workers, have lost their jobs and have been abandoned by their recruiting company without any way to return to China. There are not enough jobs available in the CNMI to provide these people with employment. While the government has begun a process of sending them home, the cost of repatriating thousands of overseas workers will further burden an already struggling economy.

On May 22, 2005 it was reported that Japan Airlines intended to end all services to the CNMI. Japan Airlines is responsible for over 50 percent of the CNMI’s Japanese tourist arrivals. Their announcement poses major problems for the tourism industry and the CNMI in general. While there have been numerous efforts by the government, the Japanese community, and the various businesses that make a majority of their money from tourists, there seems to be little chance that JAL will change their minds.

As has been discussed, Article XII intended to help the CNMI become economically self-sufficient. But today the Northern Marianas face serious economic problems as the two primary sources of revenue, aside from the United States

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136 Saipan Tribune, 5/24/2005
government, begin to move elsewhere. Article XII, while succeeding in maintaining long
term land rights in the hands of people of Northern Marianas descent, has failed to create
a commonwealth that is able to support itself economically. Having become reliant on
industries that are dependant on factors outside the control of the Northern Marianas, the
islands did not explore other economic opportunities that could have helped to develop
the aspirations of Article XII.

Today all the long-term land rights in the Commonwealth of the Northern
Mariana Islands belong to people of Northern Mariana descent. While land has been
leased, Chamorros and Carolinians have not become landless peoples. The land that has
been leased, as Article XII stands now, will be returned the owners upon the expiration of
the leases. It will be another thirty years or so before a substantial number of land leases
begin to expire.

Article XII will be up for renegotiation in 2011. As determined in Section 805 of
the Covenant, the land alienation restrictions were to remain in place for at least 25 years
after the termination of the Trusteeship Agreement. People in the CNMI need to begin to
discuss Article XII and its future. It is an effort that will need to be tackled carefully and
conscientiously but one that should not be ignored. The community needs to examine
closely the successes and failures of Article XII as it stands today. I do not think that
Article XII should be overturned. But I do think that it needs to reevaluated and critically
studied.
Chapter 6: Conclusion

Visions of 2020

The last tourist left
twenty years ago.
Five thousand hotel rooms
as empty as a busted flush
pay tribute to the legacy of greed
inflating every land owner, lawyer
and land broker’s blue sky dream
of making millions leasing land.
Dealing land in the boom of the ‘80s
was as sure a bet as holding a royal flush
until the yen for land on Saipan
collapsed as the new millennium dawnd
killed by the twin dragons of recession & inflation.

The last guest workers left
fifteen years ago.
Without indentured help
no more streets were paved,
in hotels no more beds were made,
in massage parlors no more johns were laid,
in churches no more lost souls were saved,
in garment factories no more jeans were sewn

in karaoke no more love songs were sung,
All along the silent streets
not even a shadow of the last customer is seen

Abandoned storefronts exhibit bare shelves
as empty as the pockets of a gambler
stripped clean by bad hands, by sour deals,
by called bluffs. Only cockroaches prosper
having attained title to the land
by exercising Darwinian stewardship
an imperialism of the insect world.
The last high rollers left
ten years ago. The rest reside
in an overgrown parcel of land
shadowed by the cathedral at sunset
and shaded by tombstone tributes
that cannot the raises and calls
of the ghosts of gamblers ready to cut deals
for hotels, casinos, and homes they no longer
own

Tim Thornburgh\textsuperscript{138}

The Northern Marianas, particularly Saipan, is often looked at as a place that has sacrificed its social stability for fiscal wealth. Fred Kluge, a onetime Peace Corps Volunteer on Saipan, depicts his understanding of Saipan in his book \textit{The Edge of Paradise}. Kluge, like many, argues that somewhere on the road to “development” Saipan took a wrong turn. Saipan disregarded its values and culture for economic development the likes of which Micronesia had never seen before, and possibly will never see again. But like every issue raised in this paper, the situation is not so simple. The leaders of the Northern Marianas created the land alienation laws, partly, in an effort to shelter its people and culture. In turn those laws have enabled outside, and inside, forces to challenge the culture and its people.

Article XII enabled the CNMI to take advantage of a great amount of wealth from Japan and other countries. During the boom of the 1980s roads were paved, water and power systems improved, and material wealth of many reached an extreme never before seen in the islands. The islanders maintained political control and all land leased was guaranteed to be out of the immediate control of Chamorros and Carolinians for no more than 55 years. The Chamorros and Carolinians of the CNMI maintain long-term control

of the land and I have attempted to begin to question has been happening in the meantime.

This thesis has been an effort to examine and raise the issues that have come about—at least in part—as a result of Article XII. Through presenting the many layers of Article XII and Section 805 I have worked to present a fair and real interpretation of the situation facing the Northern Marianas. But, this is only one interpretation, more are needed.

When I began working on this project, I started out a staunch defender of Article XII and its principles. The CNMI’s land alienation laws had prevented people of Northern Marianas decent from losing control of their land as has happened in other American territories such as Guam and in Hawai‘i. But as I became more involved with the topic it was increasingly clear that the elements of Article XII that I had been exposed to were very superficial and that there was much more to it than I had expected.

At the end of this thesis, I find myself still in support of the land laws but also frustrated with Article XII’s failures. Article XII has not been able to achieve its goals as stated in the Covenant. The Covenant states long term land rights will be controlled, “in view of the importance of the ownership of land for the culture and traditions of the people of the Northern Mariana Islands, and in order to protect them against economic exploitation, and to promote their economic advancement and self-sufficiency[...].” \(^{139}\) These are very important issues. Article XII has proven unable to protect the people of the CNMI against exploitation, and while it undoubtedly provided a certain level of economic advancement, it has not created a self-sufficient commonwealth. The Covenant and the Constitution, left these very important aspects of a healthy and vital

\(^{139}\) The Covenant, 1975.
political, social, and economic entity to a law that simply restricted long term land rights. Unfortunately, but not surprisingly, Article XII has been unable to achieve these lofty assignments. But, at the same time, one cannot disregard the importance of what it has accomplished. Article XII has successfully kept the land of the CNMI in the hands of Chamorros and Carolinians, an accomplishment that should not be overlooked. Article XII was created through good intentions in an effort to preserve Chamorro and Carolinian culture, language, and way of life while simultaneously promoting economic advancement and self-sufficiency. But, as I have argued throughout this thesis, Section 805 and more specifically Article XII, created an atmosphere that would eventually challenge the very things they were intended to protect.

Article XII will be up for review in 2011. The people of the CNMI will have the opportunity to change the land restrictions or leave them as they are. More discussion needs to take place, a dialog must begin, so that Article XII can best suit the needs of the CNMI and its people.
Bibliography


--------“To Cast A Stone,” in Umanidat: A Journal of the Humanities. 3(1).


