THE PACIFIC INSULAR CASE OF AMERICAN SĀMOA:
ADVERSE LAND POSSESSION, INDIVIDUALLY OWNED LAND, AND THE FUTURE
OF AMERICAN SĀMOA

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Line-Noue Memea Kruse

Dissertation Committee:

David Stannard, Chairperson
William Chapman
Brandy Nālani McDougall
Luciano Minerbi
James Dator

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ABSTRACT

The February 19, 1900, General Order No. 540 of the United States Naval Department was enacted vis-à-vis Executive Order No.125-A, thus placing the ‘Sāmoan’ Group’ under the control of the Naval Department. The Naval Department had supreme legislative, executive, and judicial power over the Sāmoan Group with the intention of expanding the United States Naval Station in the Pago Pago harbor of Tutuila.

The Naval Administration instituted American real estate laws alongside traditional Sāmoan land tenure laws in American Sāmoa. One of the significant real estate laws introduced was adverse land possession. This land ownership right was determined to be a milestone of enlightened western jurisprudence for land issues where Sāmoan customary laws were deemed insufficient and without merit. The evolution of adverse land possession principles in American Sāmoa has worked to erode the traditional communal land tenure system and fa‘asāmoa culture

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1 In this dissertation, I utilize the macron in Sāmoa and, wherever applicable, diacritic marks in the use of Sāmoan words. Within the Sāmoan language speaking community, the use of diacritic marks is not consistent and it is because of this inconsistency that I have chosen to use the diacritic marks for the reader to accurately pronounce Sāmoan words without fear of mispronunciation. For further elaboration of diacritic marks and the Sāmoan language, see, Eseta Tualaulelei, et al., “Diacritical Marks and the Sāmoan Language,” (working paper, Language and Linguistics Department, University of Hawai‘i at Mānoa, February 2014.)


4 American is italicized when referring to American Sāmoa to reinforce a conscious awareness that American Sāmoa is normalized within this colonized term of belonging to America as a territory. Looking at Homi Bhaba where colonial subjects living in a convoluted colonial world where as a subject of a difference that is almost the same, but not quite is applicable to this dissertation; whereby the process of being an unincorporated and unorganized territory of America, the only one of its kind without a vision or plan towards statehood, produces a profound and ambivalent society where the colonial subject is only partially present. This ambivalence towards the annexation of American Sāmoa provides an interesting opportunity to re-look at the term American Sāmoa as a place where the description may in itself promulgate colonial features of dependency and careless regard of self-determination.

5 For this dissertation, when dealing with fa‘asāmoa, the main core values are taken from gagana Sāmoa as “O tūma ‘upu fa’aaloalo ‘ia tausisi i ai ia faiia I aso ‘uma o le ʻolaga o le Sāmoa,” translated in English as “Customs and ways of behaving as well as words of deference and respect which every Sāmoan must practise each day,” S.P.
by laying the groundwork for individually owned land rights. This type of land classification is incongruent with the Sāmoan communal land tenure system. This dissertation will examine the early Naval Court decisions and the incorporation of adverse land possession rights that has evolved into the individually owned land classification in American Sāmoa.

The system of classifying land as individually owned takes away precious land holdings from communal tenureship, which is not regulated or monitored by the American Sāmoa Territorial Registrar. Since the Naval Court decisions more and more lands have become individually owned, a trend that has damaged the communal land holding system and the fa’asāmoa culture. Preserving what remains of traditional land tenure cannot be achieved without examining the political and legal relationships between American Sāmoa and the U.S. This dissertation will analyze these relationships to recommend practical alternatives to shelter Sāmoan cultural institutions within the American body-politic.

Ma’ilo, Palefuiono (Apia: Fanuatanu, 1972). For additional resources of fa’asāmoa that have helped to shape my approach to this dissertation and my philosophy in teaching from an indigenous Sāmoan perspective, see Tupua Tamasese, “Fa’aSāmoa speaks to my heart and soul,” (Keynote address to the Pasifika Medical Association Conference, Auckland, New Zealand, 2000); Asiata S. Va’ai, Sāmoa Faamātai and the Rule of Law (Apia: National University of Sāmoa, 1999); Malama Meleisea, The Making of Modern Sāmoa: Traditional Authority and Colonial Administration in the History of Western Sāmoa (Suva: Institute of Pacific Studies, 1987); Felix Keesing, Modern Sāmoa: Its government and changing life (London: George Allen & Unwin, 1934).
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American Sāmoa is a Polynesian island group located in the Pacific Ocean. Its culture is island-based in regards to land and ocean, with our people using the limited natural resources to provide for its people and way of life.

Cultural identity is the core basis of the Sāmoan people, and communally owned lands are the central foundation that will allow our cultural identity to survive in today’s world. Communally owned lands provide a space for Sāmoans to live together with āiga members in a village setting to practice our Sāmoan traditions. The fa’amātai is the Sāmoan chiefly system and is fundamental to the socio-political organization of the Sāmoan society. It is the traditional system of governance. The fa’amātai system exists because there are communal lands for all members of the āiga to serve and protect the collective interests. The fa’amātai system is based on āiga clanship, composed of immediate āiga (father, brother, etc.) and a nexus of āiga potopoto (extended family). Every single mātai (chief) title has authority through which they exercise their oversight responsibilities over the āiga. The mātai has stewardship over the communal lands of their āiga and thus directs and supervises the āiga living on these land parcels according to tradition, cultural obligation, and duty. If communal lands are eliminated or significantly reduced, the purpose and importance of the fa’amātai system will vanish.

I am not neutral in this writing process. I am the Territorial Planner in the American Sāmoa Government, Department of Commerce. My professional responsibilities include strategic planning of the territory to advocate for safe, enjoyable, and orderly land use. As the first Sāmoan to hold this position in the territory, I also feel responsible to try to ensure that the protections of the remaining communal lands are preserved for future Sāmoans to enjoy and use for our culture. My professional goals and personal convictions are sometimes at odds.
This dissertation is important to me and other Sāmoans because I believe our culture and heritage will not survive without our communal lands.
INTRODUCTION

Ia uluulu a mata-folau⁶

The U.S. territory of American Sāmoa consists of five volcanic islands and two atolls, called Rose Island and Swains Island. Tutuila, Aunu’u, Ofu, Olosega, and Ta’ū are the five main islands. The capital, Pago Pago, is located in Tutuila and is the densest populated island, composed of over 90 percent of the territory’s residents.

American Sāmoa is located in the Pacific Ocean and is the only U.S. territory south of the equator. Pago Pago harbor, a natural inlet in Tutuila on the central south coast, is one of the deepest and most sheltered harbors in the Pacific Ocean.⁷ In the late 1800s the U.S. had already established a diplomatic Consul office in the Independent State of Sāmoa (Sāmoa). During this time, the U.S. Navy sought to construct naval and coaling stations in Tutuila, having recognized the significant military value of the harbor and its strategic positioning within the commercial shipping trade lines between East Asia, colonial-Pacific outposts, and the U.S. The Pago Pago harbor was of great value for America as a naval station for coal, and as a commercial transshipment outpost, especially during times of war, since Germany already had a presence in the Pacific region.

Separate negotiations were made by Tutuila and Aunu’u mātai in 1900, and then, in 1904 Manu’a Islands mātai signed the Deeds of Cession with the U.S., thereby ceding the islands and atolls and their allegiance to the U.S. U.S. President William McKinley signed Executive Order 125-A, which authorized all ceded islands to be directly under the U.S. Secretary of the Navy for

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⁶ This Sāmoan phrase means to “have a vision while on a journey.” I use this phrase in the introduction of this dissertation because it is important to have a vision for American Sāmoa.

⁷ Pago Pago harbor’s full seaway depth is 40 feet and cargo pier depth is 53 feet.
a naval station. Tutuila and Aunu’u were politically organized as a sovereign kingdom apart from the Manu’a kingdom, which required separate and distinct negotiations from the reigning mātai leadership. From 1900 to 1950, the U.S. military had absolute control, power, and authority over American Sāmoa.

**Research Questions**

Three main questions drive the research, analysis, and objectives included in this dissertation. First, how does American Sāmoa fit into the U.S. body-politic? Second, how has its peculiar designation as an unincorporated and unorganized territory and its unique relationship with the U.S. impact the indigenous cultural institutions of fa’amātai and communal land tenure? Third, what have been the significant or negative impacts of individually owned lands to American Sāmoan culture?

**Dissertation Objectives**

This dissertation will first analyze adverse land possession principles and the court decisions introduced in the 1900s by the American Naval Administration to address communal land disputes in the new territory of American Sāmoa. The Naval Court introduced adverse possession principles that resulted in what High Court Justice Thomas Murphy described as the “Law of Convenience.” This dissertation will conduct research of case law from 1900 through the 1980s to examine the correlations between adverse land possession rights and the birth of individually owned land ownership. Prior to 1900, American Sāmoan lands were native, but laws that were initiated at the turn of the century, which were designed by the Naval Court, allowed for, but left largely undefined, the individualization of land through adverse land possession rights. The Naval Court took no steps to understand the complexity of the Sāmoan communal land tenure, under which virgin bush was purposely left untouched and unused in

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8 Title 48 U.S.C. §§ 1661, 1662.
order to provide lands for future use, ceremonial use, and future growth of āiga\(^9\) members. The “Law of Convenience” aptly describes the Naval Court’s ad hoc inoculation of adverse land possession principles to claim rights to land, as well as its interpretation of virgin bush land as having belonged to no one. The Naval Court made improper legal decisions—often based on outright fictions—that “bush lands” without possession and cultivation were \textit{res nullius} (belonged to no one). These rulings created a semantic slippery slope that distinguished “bush lands” from “native lands,” and legitimized a form of land categorization which dispossessed āiga access, ownership, and rights to land.

Second, this dissertation will examine the individually owned land classification, which was contrived and defined by the Naval Court system within the context of Sāmoan custom and the political framework of engendering American nationalism within the society. This nationalism was engrained through absolute power and political control, which in turn was used to translate ideological values into rules, codes, and policies. Archival research of Naval ordinances that have been in place since 1900 will help to expose the systemic inoculation of American values and ideals of individualism, capitalism, domesticity, and civility. Investigation into registered mātai titles from 1900 to 1969 will provide quantifiable data regarding the fa’amātai system, allowing deeper study about how the individualization of land de-structures communal land composites. It will uncover the subversion of the fa’amātai institution, which spread as communal lands were stripped of their previous stewardship and authority. The “Law of Convenience” was appropriated without balancing customary use and traditions, which resulted in the Naval Court disbelieving the oral testimony of Sāmoans. The Naval Court considered title to lands completely within the framework of proof that parties present in court, thereby enforcing adverse land possession principles: actual, hostile, open, notorious, exclusive,

\(^9\) Family or kin.
and continuous use of lands. Adverse possession principles became the prescriptive authority of land ownership; these legal rights gave birth to individually owned land rights and tenure.

Lastly, this dissertation will examine American Sāmoa’s political relationship with the U.S. and offer practical alternatives to the existing territorial status that may further secure communal land tenure and protect Sāmoan customs. The U.S. considers American Sāmoa as both a domestic and foreign territory, and this “foreign in the domestic sense” policy has resulted in abysmal outcomes for the people of American Sāmoa. The interdisciplinary nature of this scholarship helps us understand American Sāmoa’s legal standing, particularly via the examination of the U.S. Supreme Court cases over the Insular areas from the nineteenth and twentieth centuries. The presumption that each Insular issue warrants a case by case review has resulted in conflicting decisions, which has exacerbated these problems. The dissertation will discuss how an application of the Hawai‘i Research Center for Futures Studies method of scenario modeling will be constructive to research drivers, trends, and emerging issues to design a “futures visioning process” and alternative future scenarios for American Sāmoa.

Chapter Overview

Chapter One details the scope and method of this dissertation and analyzes the history of land tenure in the territory, pre-U.S., and the changes under the U.S. Naval Administration. This chapter describes how the ‘Law of Convenience’ was introduced into the vernacular of individual owned land ownership classification in American Sāmoa by the Naval Court. Fa‘asāmoa and Sāmoan communal land tenure is discussed in order to understand the changes and challenges posed under a dual system of western laws, like adverse land possession principles, and Sāmoan customs and traditions in villages and the communal lifestyle. Chapter One provides original research of the traditional political structure in relation to all registered
mātai titles in all 11 districts since the 1900s. *American* Sāmoa is the only unincorporated and unorganized territory within the U.S. system, and this political system protects against the alienation of communal lands from *American* Sāmoans and fa’asāmoa traditions. This chapter also analyzes other territories and the impacts these political relationships have had upon the indigenous land tenure systems.

Chapters Two and Three probe the historical and cultural background of *American* Sāmoa, before and after the Naval Administration ruled over the territory from 1900 to 1950. These chapters examine the interests that foreigners had in the Sāmoan archipelago during that era of geopolitical politicking over Pacific outposts. Chapter Two examines the evolution of *American* Sāmoa’s political and legal status with the U.S., and the benefits of its unique territorial relationship as the only unincorporated and unorganized territory. Chapter Three discusses the Naval Administration powers and authority in the territory, and analyzes the demographic changes in the territory and how these changes affect villages and society in *American* Sāmoa.

Chapter Four examines the Insular cases and situates *American* Sāmoa within the U.S. Supreme Court’s complex legal web of decisions that sometimes conflict or confuse due to the selectiveness of using legalese upon certain territories but not others. This chapter also conducts original research of the Insular Cases that have directly impacted the way in which *American* Sāmoa has been defined by the U.S. Supreme Court as an unorganized and unincorporated territory. Because of this unique territorial status, this chapter surveys the history of the application and use of unincorporated status and U.S. non-citizenship within the U.S. body-politic, and the direct implications this type of classification has on the customary land tenure
system and fa‘amātai system. Chapter Four also compares other unincorporated territories and the impacts of this form of political status to each jurisdiction.

Chapters Five and Six scrutinize the introduction of adverse land possession principles by the Naval Court and its evolution into a foreign land tenure classification: individually owned lands. These chapters identify how the Naval Court justified adverse land possession rights as a means to stabilizing land titles and integrating civility within a new Pacific Island territory under the U.S. flag. These chapters also identify how customary land dispossession took hold and grew under the introduced western concepts of adverse land possession and individually owned land. Chapters Five and Six showcase how the Naval Court decisions segmented customary lands under the façade of enlightened jurisprudence. Chapter Five shows how Naval judges opposed the Sāmoan orature system of ancestry, genealogy, and customary (non-written) rights to communal lands under the fa‘asāmoa system, and how the Naval Court purposefully sought to de-structure the indigenous land system in favor of a western system of land ownership where rights are vested in an individual. These chapters demonstrate how the ‘Law of Convenience’ was made into improper legal fiction by the Naval Court and how it produced the foreign land classification of individually owned lands from 1901 to the 1980s. More specifically, these chapters show how individually owned lands not only de-structures the communal land tenure system but also instills and encourages an entirely new concept of land ownership that is not rooted in the same values or principles as fa‘asāmoa.

Chapters Seven and Eight survey the practical legal and political alternatives for American Sāmoa in order to more securely protect the communal land tenure system. These chapters also propose preferred futures for the territory through a specific model of scanning that may provide the citizenry with a brighter future for its progeny.
CHAPTER ONE:

AMERICAN SĀMOA, INDIVIDUALLY OWNED LANDS, CULTURE

"It is obvious that in the annexation of outlying and distant possession grave questions will arise from the differences of race, habits, laws and customs of the people, and from differences of soil, climate and production, which may require action on the part of Congress that would be quite unnecessary in the annexation of contiguous territory only inhabited by people of the same race, or by scattered bodies of native Indians."

--Downes v. Bidwell, 182 U.S. 244, 282 (1904)

The quoted epigraph reflects the dilemma of American expansion and colonial exploits where the entanglements of cultures, traditions, races, foreign languages, and customs became a complex burden on American courts. During the American expansionist period into the Pacific and Atlantic Oceans during the nineteenth century, academics, politicians, legislators, and the military fought in a vicious national discourse over the issue of annexation of foreign lands and these alien cultures into the American body-politic. Political and constitutional experts at this time argued over how these foreigners would be administered and what place, if any, they would have within the U.S. political and legal system. American history books marginalize the place of American Sāmoa in the last years of the nineteenth century. More often than not, this period of expansionist American “empire” projects are dedicated to Cuba, the Philippines, and Hawai’i where academics have enthusiastically debated the intent, outcome, and significance of empire and national American identity. Studies of empire shape the national consciousness, even outside of academia, inspiring many people to consider the role that empire has upon national identity and to examine the ways in which we see ourselves and those who are unlike ourselves.

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Expansionist empire-building in the Pacific faced constitutional challenges of how to absorb foreign island territories into the American body-politic. Three principal classifications were espoused for how territories would be absorbed into the U.S. First, there would only be states, meaning that if the U.S. annexed any foreign possession, the possession would automatically become a state. This scenario pushed forward the idea that the only territories to be admitted into the U.S. were those that would automatically become states and any lands not fit for statehood would not be suitable as a territory.\(^{12}\) Second, the U.S. would consist of states and territories. Territories would be indefinitely relegated to this political status and would not be given the same recognition and rights as states.\(^{13}\) Third, the U.S. would consist of states and territories dependent on congressional legislation and international treaties.\(^{14}\) These three classifications were welcomed by the political elites, conservative jurists, and papaālagi\(^{15}\) businessmen because of their attitudes towards foreign lands being annexed or what would be territories of the U.S.

*Law of Convenience into Vernacular of Individual Land Ownership*

I propose to analyze the introduced “Law of Convenience” and the evolution towards individual land ownership in *American* Sāmoa, beginning with the Naval Administration introducing western legal concepts that purported to establish ‘legitimate’ jurisprudence under

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\(^{12}\) U.S. Department of the Interior highlights the federal definitional differences between a United States possession and territory; “territory” is defined as an unincorporated United States insular area, of which there are currently thirteen, three in the Caribbean (Navassa Island, Puerto Rico and the United States Virgin Islands) and ten in the Pacific (American Sāmoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Atoll, the Northern Mariana Islands and Wake Atoll), and “possession” is equivalent to “territory.” Although it still appears in Federal statutes and regulations, “possession” is no longer current colloquial usage. This will be further elaborated upon in Chapter 3.

\(^{13}\) Ibid.


\(^{15}\) For an explanation of how the term papaālagi is used within the context of Sāmoan history and vernacular application to all foreigners, see Gray, *Amerika Sāmoa*, 3-5.
the newly adopted American government. The High Court consisted exclusively of Naval
officers acting as the executive, judicial, and legislative administrators over American Sāmoa.\textsuperscript{16}
Arnold Leibowitz writes that President McKinley conferred “the control of Eastern Sāmoa under
the authority of the Department of the Navy with a very broad grant of authority.”\textsuperscript{17} U.S. Naval
(USN) Commandant B.F. Tilley indicated as much to King Tui Manu’a upon their first meeting.
Tilley felt the harbor of American Sāmoa was crucial to the Navy declaring to King Tui Manu’a,
“But…whether you come or not, the authority of the United States is already proclaimed over
this island.”\textsuperscript{18}

The Naval Court introduced adverse possession principles to adjudicate land disputes,
under the assumption that an individual possessed the right to title and to land well established
within common law, both English and American.\textsuperscript{19} No serious discussions were held amongst
these Naval jurists as to whether adverse possession posed any risk to the traditional communal
land system or culture. This concept was considered to be acceptable civil jurisprudence
applicable in all western democracies – as a colonial territorial appendage, the view of land,
possession, and ownership became intertwined with civility and democratic governance.

American Sāmoa High Court Justice Thomas Murphy stated on record when dealing with
communal land disputes that a series of ad hoc decisions by the High Court has resulted in what
he calls “Law of Convenience.”\textsuperscript{20} The “Law of Convenience” was decided upon using
introduced western concepts: actual, hostile, open, notorious, exclusive, hostile, and continuous

\begin{flushleft}
16 Gray, \textit{Amerika Sāmoa}, 105-108.
18 Ibid.
\end{flushleft}
or uninterrupted for a statutory period were elements of adverse possession introduced into the legal framework to adjudicate indigenous land disputes.  

Individually Owned Lands

Starting in 1900, the Navy had full authority and power to set up a Naval coaling station in American Sāmoa and more firmly position American transpacific trade. These U.S. administrators legally recognized ‘title’ to real property to be lawfully acquired (without compensation or consent) by clearing a piece of land and occupying it for a given period of time. If someone lived on a property belonging to someone else without permission, known or unknown to the true owners, for a certain amount of time, the ‘squatters’ could claim adverse possession of the real property in court and take the title to that property. At no time did the Naval jurists explore the historical nature or extent of the communal land tenure whereby occupied, vacant, or unused lands were treated and appropriated under the culture or communal system.

Adverse land possession has subsequently become a judicially sanctioned activity. Land can be disentangled from the āiga and village, then owned as fee simple or “individually,” just by living there (with or without permission). The adverse land possession concept has created a judicial anomaly in the communal land tenure system. Land can now be taken from a family and owned by another person without permission or adhering to cultural protocol. To Sāmoans, the idea that land could be ‘owned’ without consent from mātai or the village was unheard of before


22 U.S. Navy presence in American Sāmoa will be more fully covered in chapter 2.
adverse possession. This unfamiliar type of land ownership and this individualistic notion of land rights birthed the system of ‘individually owned lands.’

In 1975, 1,441 acres had been recorded by the Territorial Registrar as individually owned lands.\textsuperscript{23} By 2007 over 500 more acres had been registered as individually owned lands, totaling 1,962 acres.\textsuperscript{24} According to the most recent 2013 \textit{American} Sāmoa Statistical Yearbook, the total land acreage in the territory is 48,767 acres, of which two-thirds is inaccessible, leaving about 16,255 acres theoretically available. Of that available land, approximately 7,888 acres have been registered with the Territorial Registrar. Of the registered acreage, only 27 percent (2,061 acres) represents communal lands, and another 26 percent, or 1,962 acres, are registered as individually owned lands.\textsuperscript{25} In \textit{American} Sāmoa today, more individually owned land is registered than the entire government of \textit{American} Sāmoa itself (the government has registered 1,651 acres or 20.9 percent of the total land).\textsuperscript{26} Conversely, 8,555 acres of land are not registered with the Territorial Registrar. If the \textit{American} Sāmoa Government does not safeguard these remaining lands from being transposed into individually owned tenure, little land will remain for government or communally owned registration. Table 1 below detail the registered lands with the Territorial Registrar division under the Department of Legal Affairs (Attorney General’s Office).

\textbf{Table 1: Land Ownership Registration, 2003 – 2013}

<table>
<thead>
<tr>
<th>Designation</th>
<th>ACRES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acreage Total</td>
<td>7,888</td>
</tr>
<tr>
<td>Freehold</td>
<td>1,072</td>
</tr>
<tr>
<td>Government-owned</td>
<td>1,651</td>
</tr>
</tbody>
</table>

\textsuperscript{23} Ibid.
\textsuperscript{24} Ibid.; \textit{American} Sāmoa Statistical Yearbook 2013, prepared by the Research and Statistics Division, American Sāmoa Department of Commerce (2013), 97.
\textsuperscript{25} See Illustration 2A.
\textsuperscript{26} \textit{American} Sāmoa Statistical Yearbook 2013, 97-98.
Public Law 7-19 (1962) defined individually owned land as:

Owned by a person in one of the first two categories name in Sec.9.0102, or that is owned by an individual or individuals, except lands included in court grants prior to 1900. Such land may be conveyed only to a person or family in the categories mentioned in Sec.9.0102, except that it may be inherited by devise or descent under the laws of intestate succession, by natural lineal descendants of the owner. If no person is qualified to inherit, the title shall revert to the family from which the title was derived.27

Individually owned lands developed by American Sāmoa case law (not by statute or democratic vote), is a category of landholding that recognizes personal “native effort” without communal ties settling and occupying bush land.28 The recent influx of immigrants increases the likelihood of a future political power struggle within the two-thirds vote in the Fono. In 1960, less than 20 percent of the territory’s residents were foreign-born; today, over 40 percent of the residents were not born there.29 The immigrant bloc may someday soon demand that all lands be available for all American Sāmoa residents regardless of American Sāmoan ancestry. If this occurs, barely

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any communal lands would be left and there would be little or no reason to continue the Sāmoan culture. Communal land accounts for more than 90 percent of the 48,767 total acres, of which two-thirds are unregistered, undeveloped, and inaccessible. Without communal lands, the fa’amātai system will not survive.

Scope and Method

This dissertation first looks at the introduction of adverse possession principles by the Naval Administration as the accepted methodology used in American common law to address land disputes. These methods of taking land from the communal land tenure system for private ownership were applied without regard to the effects upon local customs in American Sāmoa. Walter Tiffany describes how the Naval Court, when confronted with the difficulty of deciding between land claims premised on hearsay-based family traditions, decided in favor of who was on the land and awarded title according to the common law notion of adverse possession. 30

Tiffany also declares that the High Court even used this to allow individual claims to prevail over communal claims, leading to the establishment of the idea of individually held lands:

In systems where the traditional rights and obligations of kin have begun to change in response to new economic and political institutions, a legal idea like adverse possession that individualizes land rights and confers security of tenure against other descent group members may enjoy success to the extent that it reflects emerging social norms. Whether the people of American Sāmoa wish to see their traditional land tenure patterns so affected, only they can say. 31 (emphasis added)

31 Ibid.
By examining the gradual progression of these forms of individualism with regard to communal land and authority of law, the growing acceptance of the “individual” manifests itself later as incorporation of individually owned lands.

Second, this dissertation examines the acceptance of individually owned lands within the context of Sāmoan lifestyle, together with the political framework that engendered American nationalism within the fabric of indigenous Sāmoan society. Nationalism gave birth to modern imperialism, and the political control of undeveloped regions engineered by colonial superpowers allowed Americans to pursue their colonial role as champions of dollar diplomacy.\(^32\) Law acted as a monopoly of the state by which the acceptance of ideology was translated into rules, codes, policies and statutes.\(^33\) The amalgamation of law by the Naval Administration, the federally appointed state apparatus, was an essential aspect of the American state-building process, and the military’s administrative apparatus came to oversee law enforcement, and judicial and executive authority. The constructs of this state legal system assumed monopoly over civil law and customary law, and authority over native lands. Donald Kelley writes that ‘customary law’ progresses in accordance with the mechanisms, modes, requirements, and interests of legal administrators and the legal system.\(^34\) In other words, ‘customary law’ as understood by legal authorities does not necessarily correlate to actual customs.

Third, this dissertation focuses upon the indoctrination that American common law as accepted by the U.S. and Tutuila, Aunu’u, and Manu’a islands and its people were appropriate

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\(^{34}\) Donald Kelley, *The Human Measure: Social Thought in the Western Legal Tradition* (Cambridge: Harvard University Press, 1990), 106.
and lawful under the terms of the Deeds of Cession. Adverse possession has led to the exponential growth of individual land ownership that is antithetical to *fa’asāmoa* culture and value system. Lastly, the examination of alternative political and legal futures of *American* Sāmoa attempts to provide solutions to protect both communal land tenure and the longevity of *fa’asāmoa* through the attainment of sovereignty or quasi-sovereignty.

The application and usage of adverse possession in *American* Sāmoa law allows an individual person to stake a claim to real property based upon various elements of possession. Actual possession required that all claimants provide evidence through testimony and corroboration, hostile possession required physical occupancy over a requisite period of time, open and exclusive possession required conspicuous occupation that leaves no doubt regarding ownership by village residents, and notorious possession required the opportunity for the true owner to learn that his supposed land has an adverse claim upon it.35

The Navy’s intention in introducing adverse possession for acceptance in *American* Sāmoa statute was to legitimize the ownership of privately owned land. Asiata S. Va’ai describes how Sāmoan land tenure,

like other individual systems that are communally based treat land ‘as belonging directly or ultimately to the tribe or the kinship group’ and principles of lineage, access, and usufruct operate as opposed to Western law with based concepts of ownership such as the right to private property and alienability in a market place. The principle difference between custom and the market is that, in the former, land is regarded as an object firmly embedded in social (and metaphysical) relationships, while the latter views land as a commodity and a factor of production…Authority or *pule* is the central principle that governs Sāmoan land

ownership and other customary property.\textsuperscript{36}

Va’ai continues to describe the nature of individualized ownership of land in Independent State of Sāmoa and the customary traditions still within the Sāmoan context of traditional customary land tenure:

The practice described and claimed by O’Meara as the new individualized ownership of land is the traditional concept of *pulefaaaoga* or exploitative authority which gives the occupants – individuals – the rights to control and use family land being occupied and allotted for their use. Land allocated, may moreover continue to remain in the exclusive possession and use of several generations of a particular member or members but ownership remains in the extended family and under its constitutive authority. This is due to the established principle of Sāmoan customary land that all family land is owned by the corporate structure in perpetuity. ‘What property exists is vested in the family, not in the individual.’ As Chief Justice Tiavaasue also stated: Customary land is not land belonging to individuals. Land is under the Protective authority of the Alii and Faipule. Subject to this is the Pule of the *mātai* which authorizes the exploitation and usage of family land. The individual has no land, it is land given by the village to the *mātai*. Just because the individual occupies and uses the land it is not his to own (translation).\textsuperscript{37}

Real property is not owned by an individual, but rather to the village and/or āiga, and no title given, because the land is not owned by any one person or *mātai*. In Roman society, *dominium* or *jus utendi* was understood as the right to use and enjoy, or abuse and destroy – this

\textsuperscript{36} Va’ai, *Sāmoa Faamātai*, 47.
\textsuperscript{37} Ibid., 49.
term has been used to embolden the ownership of things with the view of *dominium* in Roman law. Western concept of land ownership is contradictory to the Sāmoan concept of land ownership. Dominium or ownership as an absolute power over land, things, or even possibly a person, allowed the owner to do as he desired with land—or with a person.

Sue Farran writes that land ownership in the twentieth century, it is “best to define ownership as the ultimate right to the enjoyment of a thing, as fully as the State permits, when all prior rights in that thing vested in persons other than the one entitled to ultimate use, by way of encumbrance, have been exhausted.” For land ownership, this type of land possession goes directly against the Sāmoan customary sense of land use and occupation. Guy Powles describes the tenure of customary land in Sāmoa as follows:

In customary law terms, an interest in customary land is held by an individual through the *aiga* of which he is a member. Membership of the group, which might include several nuclear families, is determined by heredity, relationship by marriage, and personal service to the group and to the *mātai*. Thus, land is vested beneficially in that group of family members who are for the time being living and working on it, or contributing to it, and who are serving the *pule*, or authority, of the chiefly title to which the land pertains. Land is regarded as appurtenant to the title of the *mātai* of the family, who is responsible for administering the title on behalf of the family.

Within the South Pacific region, adverse land possession, by way of occupation over a period of time, has ultimately conferred ownership to the possessor, thus giving case law authority to

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39 Ibid.
40 Ibid., 27
the concept of privately owned land. The notion of acquiring title by adverse possession of land in English common law is based on exclusivity of possession, which entitles the holder of the possessory right to use it and protect it against all other claimants. Naval Commander C.B.T. Moore, who was appointed Governor of American Sāmoa in 1905 stated, “It is not worthwhile for this Court to cite the numberless authorities on the question of the settlement of titles by adverse possession. The doctrine is so well understood that it is a waste of time to discuss it.”

This kind of speech and attitude encapsulates the Naval Court’s rationale for incorporating western legal concepts without deliberate consideration of the consequences to the Sāmoan political, social, or cultural structure. The papālagi erroneously considered these concepts to be vital to the welfare of Sāmoan society through the legal systems of western jurisprudence.

U.S. expansion into the Pacific was also a means of economic growth for nation building empire projects, and an explicit benefit of adverse ownership was the development of land productivity and the acquisition of lands for commerce. Naval ports were building blocks of empires for western progress and democracy. Historian David Hanlon proclaims that in American Sāmoa where there was conflict between American administrative law and policy and fa’asāmoa values and traditions, American law reigned supreme.

The ‘Law of Convenience’ provided a legally acceptable foundation to assert the right of individually owned lands. The principles of adverse land possession have been incorporated into American Sāmoa as acceptable practice to claim land, regardless of whether that land is communal land or virgin bush land. The acceptance of these land principles in law and in

44 For an explanation of how the term papālagi is used within the context of Sāmoan history and vernacular application to all foreigners, see footnote 14 and Gray, American Sāmoa, 3-5.
society have allowed the general acceptance of the conversion of communal lands into individually owned lands. In this way, these land principles are an ultimate threat to the terms of the Deeds of Cession, which specifically require that Sāmoan lands and the entire structure of Sāmoan culture are to be respected and protected. The Deeds of Cession are comparable in some respects to the 1840 Treaty of Waitangi, through which the Māori chiefs of Aotearoa (New Zealand) ceded formal sovereignty of their islands to Great Britain, but also protected their rights to their indigenous lands and to self-governance. The Waitangi Treaty is now constitutionally vital, as the rights of the Māoris as spelled out within the treaty must be considered by the New Zealand government prior to any major decision for Māori land.

Land Tenure

All land prior to the coming of papālagi was owned by the āiga. Papālagi were the missionaries, sailors, beachcombers, and foreign land speculators traversing into and within the Pacific region. The basis of the fa’asāmoa is the fa’amātai system. Extended families reside under the leadership of designated member(s) whom they select to hold the family’s mātai (chief) title. In American Sāmoa, tautua (service) and pule (authority) over communal land always rests with senior mātai of the family. The mātai title comes from a consensus of the āiga, which has stewardship over the family lands. From the early missionary days, the communal nature of traditional Sāmoan land ownership was thought to be a hindrance to progress; historian George Turner exclaimed that the Sāmoan “communistic system is a sad
hindrance to the industrious and eats like a canker worm at the roots of individual and national progress." This communal system may have also led papālagis to perceive Sāmoans as not industrious because they did not fully understand or appreciate the stratified patriarchal communal system. Edward Bicknell describes Sāmoans as such: “The people are of the pure Polynesian race, and are very much like lazy, good-natured children. Gay, kind, pleasure-loving, and fairly intelligent, they are easily excited, but not revengeful.”

Land Categorization

Land is considered one of the most important tangible assets of the Sāmoan people and has traditionally been the central basis for family organization and family identity, and a mechanism to sustain villages in a subsistence society. Land is passed from one generation to the next within the āiga; the mātai title holder has control over the land and assigns holdings to family members.

Five categories comprise the land tenure system. First, “freehold lands” are all lands acquired by court grants prior to the 1900s which have not at the request of the owner been returned to the status of other land tenure classifications. The American Sāmoa 2013 Statistical Yearbook lists 1,072 registered freehold acres. Private ownership of freehold land is comparable to the fee title system, and there are no restrictions on transfer of title or lease tenure. Freehold lands in American Sāmoa are mostly located in Pago Pago, Tafuna, and Leone.

Second, “government-owned lands” are lands that may be conveyed freely to the American Sāmoa Government from the federal government or from native owners for

52 In Willis v. Faitave, 17 S.A.S.R. 2d 38 (1990) it reads, “The court is bound by statute and treaty to recognize freehold grants made by the Land Commission of Sāmoa, which operated in Apia under the supervision of the then-Supreme Court of Sāmoa, prior to the United States-established government. A.S.C.A. § 37.0201(b) (1999) and Vaiiuo v. Craddick, 14 A.S.R. 2d 108 (1990), freehold land is all those lands included in court grants prior to 1900.
53 See Table 13.
governmental purposes. There are 1,651 registered government-owned acres in 2013. Government lands may be acquired by eminent domain through condemnation proceedings, right of way easements, and reclamations.

Third, “church-owned lands” can be acquired through court grants and conveyance by native owners with the consent by the Governor. Church-owned lands total 1,030 registered acres. The leasing of church lands to parties other than the American Sāmoa Government requires the approval of the Governor. Transfer of church lands to non-American Sāmoans is prohibited by law, and the re-conveyance and retransfer of church lands shall be to native American Sāmoans only, again at the discretion of and with approval by the Governor.

Fourth, “individually owned lands” has been construed by judicial rulings as land which shows evidence of cultivation and continuous occupancy that can be owned by an individual, completely distinct from a village or mātai. Individually owned land is a hybrid land classification that is not fee simple and not freehold. There are 2,029 registered individually owned acres, which include land acquired by an individual through court action after the year 1900, through the transfer of communal land to an individual with the approval of the Governor, or through the window of opportunity supported by adverse land possession.

Lastly, “communal or native lands” are held by extended Sāmoan families and subject to the authority of the mātai. There are 2,106 registered communal acres. This authority does not

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54 Mulu v. Taliuta.fa, 3 A.S.R. 82 (1953), at the time of cession of Sāmoa to United States, public property passed to United States Government and not Government of Sāmoa.
55 See Table 13.
56 Ibid.
58 See Table 13.
59 Ibid.
imply fee ownership. Rather, it is a form of stewardship over native lands that allow mātai to allocate land to the āiga network.

The 8,367 unregistered acres are, in theory, open to being converted into individually owned lands under the current land use tenure system. According to the 2013 Statistical Yearbook, there is only a one percent difference between communally owned and individually owned lands, and soon, registered individually owned acreage will outnumber lands registered for communal use. Since 2003, the total area of registered communally owned acreage has grown by 72 acres for all 11 districts in American Sāmoa, while the registered individually owned lands have grown by 126 acres. More people are registering individually owned lands for themselves than there are registered communally owned lands for the village and āiga use.

An “I” attitude, otherwise known as ‘individual’ identity and rights as a ‘person,’ is at odds with the communal lifestyle and traditional system of land tenure in American Sāmoa. The stewardship over land within the context of Sāmoan culture is not permanent; it exists only as long as the current mātai permits it. Communal lands provide the means for Sāmoan traditions to survive by providing villages spaces for customary structures reserved for mātai (faletalimālō), malae (open land reserved for greeting visitors, playing sports, and village gatherings), and homes built on land allocated to each family. Additionally, communal lands provide access to forestry and soil for building homes and traditional meeting houses, access to agriculture, access to streams and fruit trees for domestic consumption and cultural exchanges, and access to lands for farming activity. Furthermore, communal lands carry no property taxes. As more and more lands are converted from communal or native lands into individually owned lands, less and less space is available in the near and distant future for extended families to use as

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farm lands or spaces to host extended family members, for access to food for family and village purposes, or for people residing in each village to provide service towards the fa’amāta. I

Individually owned land curtails the availability of communal lands for future generations and will ultimately result in the death of Sāmoan culture.

*Overview of American Sāmoa*

*American* Sāmoa consists of seven tropical islands and is the only territory located south of the equator, at 14 degrees south latitude and approximately 170 degrees west longitude. Its seven islands are dispersed over 150 miles of Pacific Ocean water. The capital is Pago Pago, located on Tutuila, the main island of the group. Tutuila has a land mass of approximately 56 square miles and has over 90 percent of the territory’s total population. The seven islands are: Tutuila; Aunu’u, off the southeastern tip of Tutuila; the Manu’a Islands, consisting of Ofū, Olosegā, and Ta’ū, and located about 60 miles east of Tutuila; Rose Atoll (an uninhabited wildlife refuge located east of the Manu’a Islands); and Swains Island (a privately-owned coral atoll located several hundred miles north of Tutuila). All seven islands total 76 square miles of land. *American* Sāmoa is about 2,300 miles south-southwest of Hawai’i, over 4,100 miles southwest of San Francisco, and is 1,600 miles east-northeast of New Zealand.

*American* Sāmoa has a mountainous steep terrain, and is in the path of the Southeast trade winds, with an annual rainfall tropical rainfall that averages between 90 inches per year in the drier areas to 300 inches per year in the mountainous areas (2,286 mm and 7,620 mm). October to May is the rainy summer season (locals refer to it as the cyclone period), and the

64 Ibid.
cooler, drier season occurs between June and September. American Sāmoa’s topography, where nearly two-thirds of the land is steep mountains covered with jungle, makes most of its land uninhabitable and inaccessible for agriculture cultivation, which intensifies the necessity and urgency of protecting the habitable valley and flat plain lands. Cultivation of the mountainous slopes is impractical because of leaching and very thin soil, which will only support jungle vegetation. However, the soil in the valleys and plains are excellent for agriculture and human habitat. Land cannot be freely exchanged on the open market, as occurs in other market economies, and is considered essential to the preservation of the fa‘asāmoa culture.

U.S. Possessions, not Territories

U.S. possessions are atolls, coral reefs, national marine monuments and wildlife island refuge sites that do not have permanent human populations. The residents of U.S. possessions are temporarily assigned scientists and military personnel who do not need to seek self-determination or self-governance. In 2015, the U.S. possessions classified are: Baker, Howland, Kingman Reef, Jarvis, Midway, Palmyra, Wake, and Johnston Islands. Of these, Palmyra Atoll is owned by the Nature Conservancy; Wake Island is an unincorporated territory of the U.S. that is administered by the Department of the Interior and the U.S. Air Force (Department of Defense); and Johnston Atoll is managed by the Department of Defense. All except Wake and Johnston Islands are administered as National Wildlife Refuges (NWR) by the U.S. Fish and Wildlife Service of the Department of the Interior.

Prior to the influence of Western nations, the Sāmoan islands included both the Independent State of Sāmoa (formerly known as Western Sāmoa), and the eastern islands, now

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65 Also known as “U.S. Minor Outlying Islands” by the U.S. Fish & Wildlife Service, accessed July 1, 2013.
67 Ibid.
known as *American* Sāmoa. For over 3,000 years, the Sāmoan isles were independently ruled by *mātais*. The *mātais* are part of a complex social and political system of chiefly titleholders of rank. It is not uncommon for these titled rankings to be realigned as land for ownership and other natural resources are exchanged, and as the *mātais* engage in conflict and war amongst themselves.68

**Society**

The Sāmoans’ adaptation of Western lifestyles, governance systems, and the English language proves that even though the *fa’asāmoa* is strong, it allows for changes but the foundation remains: *āiga*, *mātaï* system, and communal lands. *American* Sāmoa has adopted the English language as the official language in the territory, strong Christian influence, and it has an American-style government and education system. Family members offer monetary donations to assist family during *fa’alavelaves*.69 The Western system of currency and monetary exchange is now very much part of the Sāmoan custom.

Before the mid-1970s most *American* Sāmoans relied primarily on traditional subsistence fishing and agriculture. Once modern (Western) self-governance took form, the moneyed economy slowly replaced subsistence living and lifestyle. The first major milestone towards territorial self-governance was the adoption of its first constitution in 1960. However, self-governance in any insular territory is not absolute because the territorial constitution, popular

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68 Fofo Sunia, *The Story of the Legislature of American Sāmoa: In Commemoration of the Golden Jubilee, 1948-1998* (Legislature of American Sāmoa, Pago Pago: 1988). Tui Manu’a, the King of Manu’a, was the exception to these conflicts and wars as they were not involved in the warfare with the outer Sāmoan Islands. 69 *Fa’alavelaves* are cultural and family related events that require family members to contribute money and/or commodity items (fine mats) for weddings, funerals, *mātaï* titles, and church activities. These events also provide financial assistance for basic family needs.
elections, and local governing authority are granted at the discretion of the U.S. Secretary of the Interior.  

Before 1977, all Governors and Lieutenant Governors in *American* Sāmoa were appointed. From 1900 to 1951 they were appointed by the U.S. Department of State, then, from 1951 to 1976 by the U.S. Secretary of the Interior. In the mid-70s, a serious push for more local autonomy motivated the *Fono* to initiate the creation of *American* Sāmoa Public Law 13-23, which put into place procedures to elect the Governor and Lieutenant Governor. With approval and consent of the appointed Governor of *American* Sāmoa, a request was sent to the U.S. Secretary of the Interior for a Secretarial Order that would provide authority for the popular election of the Governor and Lieutenant Governor. The request was approved on September 13, 1977. General elections for first elected Governor and Lieutenant Governor began in January 1978. In the summer of 1978, the *Fono* of *American* Sāmoa further requested the Attorney General be appointed by the elected Governor and subject to confirmation by the *Fono*. The Secretary of the Interior approved this request as well. Between 1900 and 1951, High Court judges were appointed by the Secretary of the Navy. During this time the President of the High Court was a United States Navy Officer, while the District Judge for most of all the early cases was Edwin W. Gurr (an Australian attorney), and the District Judge for the Sāmoan political districts was an appointed senior *mātai*. During the infancy of this U.S. territory, without

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71 Ibid.
73 3 A.S.C. 12(c) and P.L. 15-23, Secretary’s Order No.3009 Amendment No.2, June 27, 1978.
74 U.S. Department of Navy General Order No. 540 (February 19, 1900); President William McKinley Executive Order February 19, 1900.
75 U.S. Department of Navy General Order No. 540 (February 19, 1900) reads in part: “In accordance with the foregoing, the Islands of Tutuila, of the Sāmoa Group, and all other islands of the group east of Longitude 171 degrees west of Greenwich, are hereby established into a Naval Station to be known as the Naval Station, Tutuila, and to be under the command of a Commandant.” The first Commandant over the United States Navy Service in *American* Sāmoa was Commandant Benjamin F. Tilley. Attorney Edwin Gurr was also the author of the two
formal experience in imperialistic expansionism, there was no existing framework of federal-to-outpost governance to implement in *American Sāmoa*. Due to the archipelago’s remote geographic location and a slow, boat-driven mail system, the U.S. Navy Officers stationed in Pago Pago had complete and nearly autonomous power and authority in the islands. There was no master plan for the territory, other than to build a Naval Coaling Station and create a solid American presence in the ‘South Seas.’

This system continued until the 1960s, when the social and economic infrastructure of the territory grew. As a nod to *American Sāmoa*, President John F. Kennedy appointed Governor John Hayden to expedite Sāmoan development. During the 1960s a new hospital, roads, public schools, and television transmission facilities were constructed. *American Sāmoa* was transformed into a modern island economy with the requisite infrastructure to secure private sector growth.

By the mid-1970s, the population and economy of *American Sāmoa*, industrialized at approximately 2.7 percent annually, driven in part by the establishment of the Starkist Sāmoa cannery in Pago Pago harbor. The tuna industry is the backbone of the economy of *American Sāmoa*. The U.S. got tariff-free access to tuna canned in *American Sāmoa*, and qualifying U.S. corporations investing in *American Sāmoa* got reduced federal taxes on income earned there.⁷⁶ Incentives for foreign investment in *American Sāmoa* by the U.S. Internal Revenue Code provided the vehicle for private sector growth, which led to an expansion of supplier businesses to accommodate the tuna industry’s growth.

*Fa‘asāmoa and Communal Land Tenure*

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The structure of the traditional Sāmoan polity is hierarchical. The significance of communal lands in *American* Sāmoa is rooted in the political structure of the Sāmoan society. Malama Meleisea notes a Sāmoan proverb which aptly describes Sāmoan clans: “*O Sāmoa ua taóto, a o se i’a mai moana, aua o le i’a a Sāmoa ua uma ona ’aisa.*” Translated into the English language it means, “Sāmoa is like an ocean fish divided into sections.” Communal lands and *mātai* titles are intertwined, without one or the other either the *fa’asāmoa* system collapses.

Prior to the arrival of the *papālagi* in the 1800s, all land in *American* Sāmoa was considered communal lands. Communal lands were identified not by boundary markers or survey pegs, but as specific tracts of large, medium, and small lands collectively owned and controlled by the āiga (family) within a *nu’u* (village), and demarcated by settlement, cultivation, and virgin bush lands where the rivers and hills (natural features) were understood as boundary land markers. However, uncultivated and unsettled lands belonged to the district, and negotiations for usage were exercised through the *nu’u*. The senior (highest) *mātai* title holders of a district had authority over all district lands. There are traditional *fa’asāmoa* cultural practices that allocate communal lands for specific purposes. For example, the *malae-fono* (meeting grounds) consists of uncultivated and unsettled parcels of land that are exclusively used as a central site for meetings of the principal *mātai* title holders of the village. The *malae-fono* is considered a sacred place. *Malae-fono* sites in *American* Sāmoa have traditionally been prominent sites in the village. The number of such sites has diminished over the last 20 years due to natural disasters and the development of residential homes, roads, and church buildings.

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80 Ibid, 10.  
81 Ibid.
The mātai system is particularly complex for foreigners to understand because it is not uncommon for mātai to hold more than one title from either the maternal or paternal lineage or even from the spouse’s maternal or paternal lineage. In the traditional Sāmoan setting, mātais may also hold various titles within their own āiga. It is the āiga which bestows the chiefly titles upon the mātais. The mātais, once bestowed these chiefly titles by the āiga, exercise control over family communal lands and natural resources on these lands, and command the decision making process of the other family members.\(^\text{82}\) The mātais are then responsible to their families for the overall welfare and stewardship of family lands. American Sāmoa still maintains this societal and cultural framework of mātais and communal land tenure, but it has been affected by outside influences.

**Nu’u (Village)**

A nu’u typically includes 200 and 500 people from multiple āiga groups in American Sāmoa.\(^\text{83}\) There are two types of āiga groups within the context of Sāmoan culture: the immediate āiga and the āiga potopoto (extended kin). The immediate āiga is the western society’s version of the nuclear family and consists of parents and children. The āiga potopoto includes descendants from a common ancestor from either the maternal or paternal lines or both, as well as people related by marriage and adoption. In some cases, also included in āiga potopoto are extended family members from outside the nu’u who are brought into the domestic household to assist the āiga. In the twenty-first century, āiga members living overseas but still showing tautua (service) can still be considered āiga potopoto which permit them to lay claim to rights over and access to the āiga communal lands. However, without tautua to the āiga and


\(^{83}\) There are differences between Sāmoa and American Sāmoa within the fa’asāmoa customs due to topography, population, political affiliations, and other foreign introduced elements that have changed the lifestyle of its people within a place and space.
āiga potopoto, there can be no justified execution of rights to the āiga communal lands by anyone. Traditional Sāmoan villages are patriarchal; sons typically live with their fathers, and daughters move to their husband’s village. Meleisea describes the political structure of the Sāmoan polity:

Each nu’u was governed by a council of mātai, or fono, which made decisions on village matters beyond the scope of individual āiga. The mātai was the custodian of the āiga estate and allocated rights to use sections of land for individual cultivation among members of the āiga, but a great deal of work was organized communally. Fishing, housebuilding (including felling and transporting timber), preparing feasts, hunting, clearing forests, and preparation of war, were among the many activities undertaken under the direction of the fono. Mātai worked along with untitled men and acted as work leaders; only the highest ranking ali’i were unlikely to take part in daily work.84

Mātai (Chief)

Within each āiga there was stratification: mātai, ‘aumaga (untitled men), ‘ausaluma (girls and women). Each of these stratified sub groups had its own dwelling units for specific duties and responsibilities under the mātai.85 ‘Aumaga and ‘ausaluma are distinct in terms of labor and status: the ‘aumaga are to serve as soldiers in war, fishermen, sportsmen, cooks, and are responsible for beautifying the āiga lands.86 ‘Aualuma serve as chaperones to the high-ranking individuals in the āiga, decorate guests’ units, assist in preparations when malaga (visiting guests) come to the village, and perform other tasks given to them by the mātai.87 Prior to

84 Meleisea, Making of Modern Samoa, 7.
85 Ibid.
86 Ibid.
87 Ibid.; Shaffer, 100 Years, 48.
modernization, entire villages would interact by visiting each other, in a traditional social activity called *malaga*. Entire villages would travel to another village for socialization and inter-village talks. The *mātai* would gather to discuss village matters while the untitled men, women, and children from the host and guest village would socialize.

Sāmoan *Fono* (Legislature)

The American Sāmoa *Fono* under the Revised American Sāmoa Constitution, particularly the Senate, is composed of traditional *mātai*. The prerequisite to be an eligible Senator in the *Fono* requires that the individual be *mātai*, and the Senator must fulfill traditional duties and responsibilities to their registered constituency. Article II, § 3 (d) states Senators must: “be the registered *mātai* of a Sāmoan family who fulfills his obligations as required by Sāmoan custom in the district from which he is elected.” Obligations by Senators to fulfill responsibilities as required by Sāmoan custom are not defined, and the High Court resolutely does not have delineated rules prescribing the precise method or custom that a village council must use to elect a Senator ‘in accordance with Sāmoan custom,’ because custom may vary in different counties. These local Constitutional provisions not only recognize the Sāmoan institution of *fa’amātai*, which establishes the chiefly title as the basis for eligibility to the Senate, but also allows for local custom to be practiced according to the will of the people in each district.

The *mātai* (chief) title holder is the leader within the āiga and the trustee of the communal land holdings of the family. *Mātai* is used synonymously to refer to an individual (both female and male) as a Chief and a title holder. A *mātai* titleholder can provide leadership to the āiga, and can become a *high mātai* titleholder if he or she gains a knowledge of taeao (history), oration with taeao mastery (role of the *tulafale mātai* title holder), knowledge of

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88 Revised Constitution of American Sāmoa, art. II, § 3(d).
mythology and legends, genealogy lines, and the ability to recite proverbial expressions.\footnote{Amerika Sāmoa Humanities Council 2009, 4.} A person cannot be the Chief of the āiga without a mātai title. The mātai distributes food, natural resources, and labor among the āiga. The hierarchical nature of the traditional Sāmoan polity meant that all food, goods, shelter, and land are distributed and redistributed by this chiefly authority. The highest mātai distributes these assets accordingly and the lower mātai share their portions with the households within the āiga units. Ultimately, fa’asāmoa life for a Sāmoan is regulated by a set of laws and customs promulgated by village traditions, customs, and practices under the direction of the senior mātai of the village. No hard and fast rules can be generalized to each and every village in American Sāmoa, which is why, fa’asāmoa has been able to survive modernization: it adapts to the changing lifestyle of its people. Table 2 depicts the traditional political structure of American Sāmoa; the districts, villages, and Fa’asuaga (Paramount Chief) has ultimate leadership over its district and the village mātai within each district.

Table 2: American Sāmoan Political Structure

<table>
<thead>
<tr>
<th>DISTRICTS</th>
<th>VILLAGES</th>
<th>FA’ASUAGA\footnote{\textit{Fa’asuaga} is defined as a Paramount Chief in American Sāmoa.}</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sua</td>
<td>Masausi, Sailele, Masefau, Afono, Fagaitua, Amaua, Lauli’i</td>
<td>LE’IATO</td>
</tr>
<tr>
<td>Vaifanua</td>
<td>Vatia, Aoa, Onenoa, Tula, Alao</td>
<td>LE’IATO</td>
</tr>
<tr>
<td>Saole</td>
<td>Aunu’u, Utumea, Au’asi, Amouli, Alofau</td>
<td>FAUMUINA</td>
</tr>
<tr>
<td>Mao’putasi</td>
<td>Aua, Leloaloa, Atu’u, Pago Pago, Fagatogo, Utulei, Gataivai, Faga’alu</td>
<td>MAUGA</td>
</tr>
<tr>
<td>(Launiusaelua)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Itū’au</td>
<td>Fagasa, Matu’u, Faganeanea, Nu’uuli</td>
<td>MAUGA</td>
</tr>
<tr>
<td>Fofō/Alataua</td>
<td>Leone/Asili, Amalu’ia, Afao, Atauloma, Nua, Seetaga, Agugulu, Fa’ilolo, Amanave, Poloa, Fagali’i, Malota, Fagamalo</td>
<td>TUITELE</td>
</tr>
<tr>
<td>Aitulagi/Leasina</td>
<td>A’asu, Aoloau, and half of Malaeloa</td>
<td>FUIMAONO</td>
</tr>
<tr>
<td>Tūalātai</td>
<td>Vailoatai, Taputimu, Futiga, and half of</td>
<td>SATELE</td>
</tr>
</tbody>
</table>
The traditional map (Map 1) below depicts the political districts of Tutuila and Manu’a where the abovementioned villages and paramount mātai titleholders had pule and control over the lands during the 1800s.

**Map 1: Traditional Districts in American Sāmoa**

Prior to the introduction of cash cropping by the U.S. Navy, āiga clans worked together by planting and harvesting agriculture, protecting farm lands, and shielding the village from outsiders. $^{91}$ Taro is the most important staple crop in American Sāmoa. Tutuila utilizes the dry-land method of cultivation while Aunu’u Island and some farms in the Manu’a Islands use the

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$^{91}$ See chapter 4 for cash cropping introduced by the U.S. Navy.
wet-land method. There are over 20 local varieties, including Niue, Manu’a, Pa’epa’e, Pula Sama, Fa’e’ele’ele, and Tusi.92 Taro is inter-planted in large and small areas in between ta’amū, banana mats, coconut, ulu (breadfruit) trees, or in bush lands. Due to the immense rainfall and the fact that most of the islands are composed of vertical uninhabitable slopes, the preparation for planting and harvesting historically has required a collective effort in order to ensure there was enough food to feed everyone in the village. Sāmoans do not cultivate taro through tilling but rather by using weeds as mulch and a planting stick, the oso. Bush (virgin) lands are of unique importance because of their potential use as rotational grounds for agriculture cultivation. The soil rehabilitates itself from crops rotated throughout the year, and provides ecosystem services such as food, wood, fertilizer, water, and medicinal resources, as well as cultural benefits of recreational and spiritual spaces. Prior to western medicine, the cultural and medicinal resources found in the bush lands were highly important in order to cure ailments. Additionally, the bush lands are of great importance for cultural formalities of sharing and gifting of wood and food to extended āiga clans from visiting villages and counties. Although American Sāmoa now practices subsistence farming and cash cropping, bush lands are still vital to food security and the practice of cultural traditions because of the communal lifestyle under the fa’asāmoa. According to the most recent agricultural census in 2008 by the U.S. Department of Agriculture National Agriculture Statistics Service (USDA NSAA), 19,003 acres of cropland in American Sāmoa are used for farming.93 The total use of cropland represents approximately 30 percent of all land

93 U.S. Department of Agriculture, “2007 Census of Agriculture, American Samoa (2008) - Territory, District, and County Data.” v. 1, Part 55, AC-07-55 (June 2011), 9-25; American Samoa Statistical Yearbook 2013, 174. There have only been 3 Agricultural Census conducted for American Sāmoa: 1st - 1998; 2nd - 2003; 3rd - 2008; the 2013 Census was cancelled due to the unavailability of financial assistance from USDA-NASS. In 2008 all agricultural farming, whether commercial resale or home consumption was valued at $49.3 million.
area in *American* Sāmoa. These cultivated croplands are not identified in the registered land tenure classifications, so presumably they are unregistered bush lands that are maintained under the communal land system. The preservation of the bush-croplands is significant, as it will protect cultivation and lands for a growing future population. These lands also represent income to families and provide food security for āiga clans that depend on these bush lands for agricultural consumption at home.

The power and authority within the fa’amātai cannot be undervalued or overstated. The mātai title holder grants resources, responsibilities, access to and use of all āiga communal lands. If there are agricultural crops or river fish on different parts of village lands under two or three mātais, each āiga group must go through their individual mātai to ask for permission to access and use these different communal lands and their resources from each mātai title holder. There are also temporary and permanent land restrictions that a mātai can initiate for land parcels under his supervision. The mātai title holder can place sā (taboo) on agricultural staples during times of famine to ensure that there are enough food and resources available when a malaga visits. This power means food and land is restricted, based on the will of the mātai. In relation to communal lands, all natural resources on the lands, access to the lands for agriculture, access to rivers, and anything else relating to the lands is dictated by the mātai title holder. The mātai titles and the specific lands which relate to them are controlled by the āiga and āiga potopoto, all operating under the senior mātai title holder. This senior mātai title holder is elected by consensus of high mātai title holders. Consensus is the primary method of making decisions. Unlike the culture of some Melanesian countries, in traditional Sāmoan culture there is no overarching tribunal of Sāmoan mātai title holders over all mātai title holders throughout the

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94 Ibid., details may not add to total because of rounding.
Sāmoan archipelago. Formidable village alliances have historically been forged during times of war, but these are temporary and designed for mutual self-preservation.

There are two types of mātai titles: aliʻi and tulafale. Meleisea describes these mātai titles as follows:

Aliʻi titles were those which traced sacred origins through genealogies which begin with Tagaloa-a-lagi, the creator, and are linked to major aristocratic lineages. Tulafale had more utilitarian associations, in accordance with their role of rendering service to and oratory on behalf of the aliʻi.\(^95\)

The traditional fa'amātai system is a complex configuration of mātai titles, all ordered relative to each other. Mātai titles are based upon kinship relations, mythology, and genealogical history, but also upon one’s ability to garner loyalty and support within the āiga and āiga potopoto structure. Each nuclear household has a mātai title holder in traditional Sāmoan society and on communal lands within the village. Within the village, there is a hierarchy of mātai title holders. Each mātai title is ranked relative to the others and is, in the sense of the English language, ‘owned’ by the āiga. Suli moni, suli siʻi, and suli faʻi are distinctions within the traditional Sāmoan fa'amātai system. Suli moni is a blood descendant. Suli siʻi, is someone from a different family who has lived and rendered service to the Saʻo.\(^96\) Suli faʻi, is the adopted heir that is not blood kin, but an adopted child or a daughter’s husband that lives with the āiga and tautua rendered also to the Saʻo.\(^97\) These distinctions are important to a Land and Titles case

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\(^{96}\) Saʻo is defined as a senior mātai title holder (out of several in a lineage).

\(^{97}\) Crocombe, *Land Tenure in the Pacific*, 75-79.
when there is a disputed mātai title; families can petition the court to differentiate between the three to determine the strongest claim to the mātai title.98

The mātai’s pule (authority) is limited by the responsibility to care for the āiga and extended-āiga. If the mātai acts in a way that the āiga feels is unbecoming, or if the mātai does not take good care of the āiga, the āiga may remove the mātai title from the individual and thus remove his authority over the family lands. Crocombe outlines the nexus between āiga and fa’amātai systems in relation to communal land tenure features:

1) Land is owned by extended family āiga, which take their names from their respective mātai titles.

2) Control over land is gained indirectly by acquiring the specific title which has pule over the land. And

3) Access to the title itself is gained primarily by descent from a previous title holder, or occasionally by exceptional service to the present title holder, rather than by descent from those actually occupying the land.99

In American Sāmoa, unlike Sāmoa (Independent State of Sāmoa), there are three significant differences in the fa’amātai system. First, there exists a mātai title registry administered by the Government. Second, only mātai titles that were registered before the cutoff date of January 1, 1969 are recognized. Third, only one person may be assigned to each mātai title.100 In American Sāmoa, the law even makes it a criminal act for an individual to use an unregistered mātai

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98 This may change in the near future for American Sāmoa. A bill that is currently being drafted would eliminate the distinction of a sulī moni. The new legislation would place more emphasis on tautua (service), knowledge of genealogy, etc. Another bill in the Fono seeks to remove the one-half Sāmoan blood requirement for a mātai title claimant and adds a requirement that a claimant must “possess a hereditary right to the title” (remove hereditary right as a point for the High Court when determining candidate for a mātai title). This bill seeks to address the inequality of gender based favoring of male descendants, limiting the right to mātai title to bloodline and endorsement of family. See Fili Sagapolutele, “Bill Amending Qualifications of Mātai Titles,” Samoa News, February 8, 2015.

99 Crocombe, Land Tenure in the Pacific, 78.

If a mātai title recognized by the āiga was not registered before the cutoff date of January 1, 1969, then the mātai title is not recognized by law and the individual cannot use the mātai title. For example, the Sa’o is a required signature on all land use permits on communal lands. Therefore, only a registered mātai title holder can be the Sa’o of the village and only that Sa’o with traditional pule of that land parcel may sign a land use permit for the āiga and extended-āiga under his guardianship. No family can create a new mātai title within the family, since this mātai title will not have been registered before January 1, 1969.

As Arnold Leibowitz documents, in 1950 there were 828 mātai titleholders to the then existing population of 18,160 people. Leibowitz calculated that for every 12 people, there was one mātai titleholder; however, Leibowitz’s calculation is incorrect. It was every 22 people, not 12 people, for every one mātai titleholder at the time. As of 2013 (the most recent date for which data is available), there were 893 mātai titles registered with the Office of the Territorial Registrar, equaling roughly two percent of the 2012 population of 55,519. This equates to approximately one mātai titleholder for every 62 people. Of the 11 districts in American Sāmoa, Manu’a holds the most registered mātai titles. As reflected in Table 3 below, the Fofō district has the fewest registered mātai titles:

Table 3: Registered Mātai Titles in the 11 Districts of American Sāmoa

<table>
<thead>
<tr>
<th>District</th>
<th>Registered Mātai Titles</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

102 A.S.C.A. § 1.0401(b) (1968), In Re: Mātai title Mulitauaopele, 17 A.S.R. 2d 75 (1990). Due to the statute, there have been long-standing court cases over mātai titles that were not registered since the beginning, e.g. Lemeana’i from Bi‘ili village. There have also been instances where the Fono has attempted to re-open the registry, but has failed to succeed on the voting floor.
103 Leibowitz, Defining Status, 407.
104 Ibid.
105 Original empirical research of all registered mātai titles between January 2, 1969 and 2013. Mātai titles were tabulated based upon the Office of the Territorial Registrar’s determination as a registered mātai title in situations of death, resignation, or high court cases (Meeting with Territorial Registrar, October 10th, 2014). The 2012 population count was taken from the U.S. 2010 Census count of American Sāmoa, and this count is what the American Sāmoa Government Department of Commerce utilizes for its population count. See American Sāmoa Statistical Yearbook 2012. See Chapter 2 for more detailed territorial population demographics and the discrepancies between the locally born population count and the U.S. Census Bureau for American Sāmoa.
<table>
<thead>
<tr>
<th>DISTRICT NAME</th>
<th>NUMBER OF REGISTERED TITLES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Su’a</td>
<td>76</td>
</tr>
<tr>
<td>Vaifanua</td>
<td>69</td>
</tr>
<tr>
<td>Sāole</td>
<td>49</td>
</tr>
<tr>
<td>Mao’putasi</td>
<td>132</td>
</tr>
<tr>
<td>Itū’ao</td>
<td>89</td>
</tr>
<tr>
<td>Fofō</td>
<td>47</td>
</tr>
<tr>
<td>Alataua</td>
<td>81</td>
</tr>
<tr>
<td>Leasina</td>
<td>50</td>
</tr>
<tr>
<td>Tuālatai</td>
<td>56</td>
</tr>
<tr>
<td>Tuālauta</td>
<td>84</td>
</tr>
<tr>
<td>Manu’a</td>
<td>160</td>
</tr>
<tr>
<td><strong>Total registered mātai titles</strong></td>
<td><strong>893</strong></td>
</tr>
</tbody>
</table>

Source: Line-Noue Memea Kruse, 2014

Pule over the communal family lands ends upon death of the mātai, and does not descend to the children of the mātai title holder but rather to the successor of the mātai title. This means that if a senior mātai title holder had pule over large tracts of land in a village for 50 years, upon the death, the pule will not go to the mātai title holder’s child but to whomever succeeds to the mātai title. Thus, whatever lands the previous mātai title holder gave to āiga members for domestic or commercial use can be changed or amended by the next mātai title holder of communal āiga lands. In other words, power over communal āiga lands goes with the mātai title and not the individual. In most cases, āiga and āiga potopoto still reside within one household where there is normally one mātai for all the family branches. However, an individual may now belong to many households and in any one household there may be anywhere between four to 20 āiga represented. Mātai title successions in this day and age have created new lines of land and mātai title inheritance that are impacted by emigration of young American Sāmoans in pursuit of education, military, and better socio-economic opportunities in Western Sāmoa (prior to sovereign independence) Chief Justice Marsack and President of the Land and Titles Court stated that the pule rests with the successor in title not to heirs of body; C. C. Marsack, Notes on the Practice of the Court and Principles Adopted in Hearing of Cases Affecting (1) Samoan Mātai Titles; and (2) Land Held According to Customs and Usages of Western Samoa (Apia: Land and Titles Court, 1958), 18.
America, as well as the growing diaspora of educated and skilled *American* Sāmoans living abroad.\(^{107}\) The *āiga* and *āiga potopoto* structure has also been impacted in *American* Sāmoa by intermarriage with non-Sāmoans, and immigration abroad has weakened the traditional *āiga* and *āiga potopoto* structure.

\(^{107}\) See chapter 2.
CHAPTER TWO:
OVERVIEW OF U.S. OCCUPATION IN AMERICAN SĀMOA

Amerika Sāmoa
Lo'u atunu'u pele 'oe
Ou te tiu i lou igoa
O 'oe o lo'u fa'amoemoe
O 'oe ole Penina ole Pasefika
E mo'omia e motu e lima
E ua ta'uta'uua au aqa i fanua
Ma ou tala mai anamua
Tutuila ma Manu'a
Ala maia tu i luga
Tautua ma punou i lou Malo
Ia manuia ia ulu ola
Amerika Sāmoa
O le Malo o le Sa'olotoga
Tautua ma punou i lou Malo
Ia manuia ia ulu ola
Amerika Sāmoa
O le Malo o le Sa'olotoga108

“Amerika Samoa,” American Sāmoa anthem

In the late eighteenth century, the American Continental Congress laid the groundwork for acquiring land “possessions” by annexing “crown lands” west of the Alleghenies and beyond the Ohio River to the royal province of Quebec.109 The colonies felt that the possession of these lands, later established as “The Northwest,” were crucial to connecting and unifying the entire soon-to-be Confederacy and allowing for the economic expansion of current and future member states. The federal government created the Northwest Ordinance of 1787 to establish the government of the Northwest Territory. The Ordinance specified that these new areas were to be organized into territories and then, in whole or in part, admitted as states.110 The Northwest Territory (which was already being settled by immigrants from the original states at the time of the Constitution’s drafting in 1787) was the first ‘territory’ of the U.S.

110 Leibowitz, Defining Status, 6; Sparrow, Insular Cases, 14-20.
The Northwest Territory became the common property of the United States, fulfilling the desire of the colonists to further the expansion and collective power of the confederation. The lands under the Northwest Territory included lands east of the Mississippi between the Ohio River and Great Lakes, which later became the states of Ohio, Indiana, Illinois, Michigan, and Wisconsin. The early conquests of land emboldened the newly established Continental Congress to consolidate their power and control over these early territorial lands.

To enable and encourage the settling of the territory by papālagi Americans, Native American people were systematically removed from their homelands and moved to foreign lands (from the perspective of indigenous tribes, any lands not connected to their tribal lands were foreign) without adequate infrastructure, water, or food, subjugated to Americanization projects, Christianized, and forced to learn and speak English. Native Americans resisted the brutal and imperialistic actions of ‘benevolent assimilation’ despite the claims that these acts were committed to promote integration, democracy, and freedom. Indigenous Native American tribes rebelled. Gunnar Myrdal’s “American Dilemma” where the “disconnect between American egalitarian ideals and the reality of America’s practices” manifested itself as Native Americans defied Americanization projects and forced removal from their homelands by armed military.

Patrick Wolfe meaningfully addresses race as much more than simply a social construct within settler colonialism. He asserts that racism is but a targeting process and that the primary

111 Adams, History of the United States, 43.
motive for elimination is not race or religion, ethnicity, or grade of civilization. The true motive is access to territory. Wolfe and Rosen argued that land acquisition as well as the wealth and opportunities it brought were the principal factors that motivated settlement and imposed the interminable process of Indigenous dispossession, elimination by various means, and the legitimation of settler sovereignty over both land and people.”116 Wolfe suggests that the logic of elimination in settler colonialism strives to tear apart an indigenous society to form a colonial society on land stolen from the native people.117 This logic of elimination specifically produces the “breaking-down of native title into alienable individual freeholds.” Additionally, elimination supports the colonial subversion of animate native citizenship through religious conversion and re-socialization in residential schools where only English is allowed – the fulfillment of biocultural assimilation.118 Displacing the younger generations from the older generations incrementally breaks down the transference of oral history, shared value systems of indigenous traditions, culture, and language.

However, it is worth noting that in this discourse of foreign lands being annexed into the U.S. political system race presented a foundational bias upon the perceived political responsibility to protect American culture and civility from foreign cultures and their traditions. In the late nineteenth century the U.S. fashioned a blueprint for nation-building in the Pacific to counter Europe’s system of imperialism. U.S. colonial structures were described as benevolent, and compared to Spain’s cruel subjugation and domination helped to garner public and political

117 Ibid.
support. Nationalists were fearful that with the American flag spreading to distant lands and ‘savage’ races, protectionist policies were needed to prevent any heathen practices from entering American society. Leading with the torch of protecting American culture from the perceived inferior races were prominent figures, including Henry Cabot Lodge, Theodore Roosevelt, Reginal Horsman, Carl Schurtz, Simeon Baldwin, Sir Walter Scott, and John W. Burgess - all of whom espoused the idea of “Teutonic” superiority over the uncivilized races of dissimilar island people. The tone of national politics was very exclusionary; Melville Fuller’s Supreme Court in 1896 passed the “separate but equal doctrine” implanting segregation and inequality in Plessy v. Ferguson. The Constitution’s almost total silence on territorial expansion gave conservatives, military hawks, and Teutonic (or otherwise Anglo-Saxon) campaigners free reign to determine how territorial foreigners would be treated by the U.S. and who might be considered as such.

American expansionism during the early twentieth century moved quickly from the looming guerilla wars over the Philippines to the assertion of American political rights in Cuba and Puerto Rico. The U.S. savored its new found identity as a superpower country, sending U.S. Navy convoys overseas to establish military bases around the world and to solidify its colonial posts. With these newly acquired lands, came foreign people and dissimilar cultures, languages, customs, and traditions.

Early land acquisition experiments in power, control, hegemony, and conquest—all in the interest to fulfilling the American ideal of democracy and freedom—became the blueprint for American ideology and its expansionist propaganda. The 1840s-era of Manifest Destiny was

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coupled with 1859 Darwinist theory to fuel American attempts to stretch its empire across the seas and into other parts of the world.\textsuperscript{121}

The United States embraced its role as an imperial giant when Spain ceded Puerto Rico, Guam, and the Philippines in 1898 to America as spoils of the Spanish-American war. The U.S. annexed Hawai‘i through the 1898 Congressional Newlands Resolution, in spite of massive Hawai‘ian protests to the Annexation treaty.\textsuperscript{122} This Resolution failed to pass in Congress; however, the annexation of Hawai‘i still proceeded unabated. These American-colonial outposts were governed under the territorial structure laid out 111 years earlier by the Northwest Ordinance.

\textit{Early U.S. Interest in Sāmoa}

American Lieutenant Charles Wilkes ventured into the South Pacific when English missionaries, American and European whalers, Spanish explorers, and German merchants were already conducting business in the Pacific region. Based on what they found during this early prospecting, Germany began to use Sāmoa as an island production outpost in coconut oil and copra.\textsuperscript{123}

In 1839 Wilkes landed in Tutuila without military, Congressional, or Presidential authority, and even without knowledge of the region. Nevertheless, he negotiated a code of rules with certain chiefs on the island of Upolu. The code of rules set out to protect Americans, while promising to not abuse indigenous people. Wilkes also appointed British civil servants to serve


\textsuperscript{123} George H. Ryden, \textit{The Foreign Policy of the United States in Relation to Sāmoa} (New Haven: Yale University Press, 1933), 5-25.
as acting American consuls to Apia. This unauthorized code was designed to congeal American interests in both the Sāmoan islands and the larger ‘Southern Ocean.’ Besides instituting an American presence, these efforts sought to minimize the German and British economic domination in the Sāmoan isles while interrupting the larger Spanish-French trans-Pacific trade routes.

While Wilkes was conducting unauthorized military missions in the Sāmoan Islands, military personnel in Hawai‘i also made advances into the Sāmoan Islands without Congressional approval or Presidential proclamations. The U.S. Pacific Fleet Admiral and U.S. Minister Resident in Honolulu sent instructions to Commander Richard W. Meade to promote “by all legal and proper means, American interests and enterprises,” which Meade faithfully initiated after his arrival in Pago Pago on February 14, 1872. Meade, fulfilling these instructions, drafted an agreement entitled “Commercial Regulations, etc.” with Pago Pago High Chief Mauga. The agreement stipulated that in exchange for the exclusive “privilege” of establishing a naval station in Pago Pago harbor (only Tutuila was discussed, not Manu‘a or Aunu‘u), the U.S. promised to protect the people of Pago Pago. U.S. President Grant pushed forth this agreement to the U.S. Congress; however, it was never ratified by the U.S. Congress, because it was thought to be against U.S. national foreign policy.

These early stages of negotiations between the U.S. military personnel and the High Chiefs of Pago Pago marked the beginning of the American paternalistic attitude towards the illiterate Sāmoan chiefs. The U.S. Foreign Relations Committee, to which this treaty was

124 Ibid.
125 Ibid., 60-61.
 assigned, immediately tabled it; the Committee was focused on Reconstruction efforts at home and turned a blind eye to the military’s exploits in the islands.\(^\text{127}\)

President McKinley’s approach to the Anglo-German negotiations over Sāmoa was basically to abstain; he deferred to the Navy and its determination to hold the Tutuila harbor and its coal shed operations for trans-Pacific trade.\(^\text{128}\) McKinley believed that the Berlin Agreement guaranteed U.S. treaty rights to Tutuila, and that British and German rights in Tutuila would eventually be cancelled together with American rights in Upolu and Savai’i.\(^\text{129}\) The Berlin Treaty was ratified by the U.S., Great Britain, and Germany, “to adjust amicably the questions which have arisen between them in respect to the Sāmoan group of Islands, as well as to avoid all future misunderstanding in respect to their joint or several rights and claims of possession or jurisdiction therein.”\(^\text{130}\) Secretary of State John Hay believed that Tutuila was “the most important island in the Pacific as regards harbor conveniences for our navy, and a station on the trans-Pacific route.”\(^\text{131}\) The Tripartite Convention of 1899 balkanized the Sāmoa Islands; the United States accepted Tutuila, Aunu’u, and Manu’a, while all the rest of Sāmoa fell to Great Britain.\(^\text{132}\) In exchange, Great Britain ceded rights to Germany for Tonga, Solomon Islands, and West Africa, thus fortifying British economic interests in Southern Africa.\(^\text{133}\)

The U.S. Congress sought to stake claim to Pacific islands through legislation and military force in order to propel the U.S. itself onto the international stage. For example, the Guano Islands Act of 1856 authorized any U.S. citizen finding guano deposits to take possession

\(^{127}\) Ibid.
\(^{129}\) National Archives, Record Group 59, M-179, roll 1022, Navy Department to S.D., 30/12/1898, and Cridler memo of 18/1/1899.
\(^{130}\) Treaty of Berlin, art. I.
\(^{131}\) Hay Papers, Box 26, Letterbook 1, Hay to Choate, 4/12/1899.
\(^{133}\) Ibid., 101-102.
of islands not occupied or under another government, effectively making all indigenous inhabitants irrelevant under this commercial expansionist scheme. Great Britain cornered the South American market for guano resources with their colonial outposts. In response, the U.S. Congress granted the authority for American traders to essentially claim ownership of lands and natural resources based on guano findings. Approximately 60 islands, including the Pacific Islands: Howland, Baker, and Jarvis were dispossessed from indigenous populations because of the Guano Islands Act. U.S. Naval Commandant Alfred Mahan campaigned for the establishment of U.S. Naval bases in the Pacific to support and protect expanding commercial and military efforts. The expansion of U.S. Naval bases created a buffer zone to protect the western continental shores and seemed to be a good strategy for securing the trans-Pacific trade routes.

American expansion into Pago Pago was accomplished not through legislative, executive, congressional, or military design, but rather by a few interested individuals who were determined to control from the island the harbor and the trans-Pacific trade route. As the Sāmoan civil wars continued, several Americans of the Central Polynesian Land and Commercial Company (CPLCC) bartered and bought 414 square miles – approximately 300,000 acres of land—from

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134 Guano Islands Act, 11 Stat. 119, enacted 18 August 1856, 48 U.S.C. ch. 8 §§ 1411-1419 reads: “Whenever any citizen of the United States discovers a deposit of guano on any island, rock, or key, not within the lawful jurisdiction of any other government, and not occupied by the citizens of any other government, and takes peaceable possession thereof, and occupies the same, such island, rock, or key may, at the discretion of the President, be considered as appertaining to the United States. The discoverer, or his assigns, being citizens of the United States, may be allowed, at the pleasure of Congress, the exclusive right of occupying such island, rocks, or keys, for the purpose of obtaining guano, and of selling and delivering the same to citizens of the United States, to be used therein, and may be allowed to charge and receive for every ton thereof delivered alongside a vessel, in proper tubs, within reach of ship’s tackle, a sum not exceeding $8 per ton for the best quality, or $4 for every ton taken while in its native place of deposit.”

the chiefs of Tutuila, Upolu, Manono, and Savai’i. The CPLCC were notoriously manipulative land agents from San Francisco and Hawai’i who persuaded Sāmoans to trade or sell tracts of communal lands in return for weapons and ammunition at nominal fees. The CPLCC were infamous for their dubious practices in land transactions in Sāmoa: “the documents in question described the land in the crudest fashion, stated no total or unit price to be paid for it, required by way of immediate payment only nominal deposits pending the outcome of surveys, and stipulated no time limit on the company’s right or obligation to complete the surveys or its purchases.”

In 1872, Captain Meade arranged for shipping rights in Pago Pago harbor while President Grant sent Colonel Albert Steinberger as Special Commissioner to Sāmoa—even though Steinberger also held economic interests in the CPLCC. President Grant hoped that the Steinberger report on the island’s economic potential would persuade the U.S. Foreign Relations Committee to reassess the Meade-Mauga Treaty, but the treaty never made it out of committee for a full Congressional vote. The CPLCC hoped to gain favor with Steinberger by pushing hard for the U.S. acquisition of Pago Pago so they could sell their bartered or lowly paid tracts of land to the U.S. government. American businessmen held 300,000 acres of land through various schemes and manipulative negotiations across the Sāmoa archipelago; these lands were alienated from Sāmoan customary landholdings. While American businessmen were swallowing up large tracts of land, the American military was scheming to enlarge their footprint in Pago Pago.

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137 Charles C. Tansill, The Foreign Policy of Thomas F. Bayard, 1885-1887 (New York: Fordham University Press, 1940), 9; Masterman, Origins of International Rivalry, 115-116; Gilson, Sāmoa 1830 to 1900, 282-283.
138 Gilson, Sāmoa 1830 to 1900, 284.
139 Ibid., 291-305.
because of its harbor. All the while, Sāmoan clans were engaged in civil war, unaware of the geopolitical hostilities raging around them.

*Sāmoa Islands Politicking*

In 1875, after many wars and deaths, the High Chiefs decided by consensus to establish the ‘Kingship,’ or rule for four-year periods, with the throne rotating between the houses of Malietoa and Tupua. The *Taʻimua* (House of High Chiefs) was composed of 15 members who were openly nominated and approved by the sitting ‘King.’ This house had an advisory board and helped the ‘King’ with drafting legislation and regulation of laws. The *Faipule* (Lower House) had a membership of one representative, elected by district ballots, for every 2,000 individuals.140 No law could be passed without the approval of the majority of representatives. This newly established government vested power and authority in the legislature (*Taʻimua* and *Faipule*) rather than the throne, demonstrating how democracy and its forming value system was taking root within the Sāmoa Islands.141

Germany, America, and Great Britain aligned themselves with various sitting kings and advanced their interests through these figureheads. All the while, these kings took advantage of these foreign governments, utilizing their skills of artful prose and politicking to different governments requesting protection against other foreign countries and internal aggressors (the opposing house to the throne). German Chancellor Bismarck wanted to simply annex the Sāmoa archipelago and impose martial law to quell High Chief Mataʻafa and his attempts to solidify Sāmoan interests against foreigners. Bismarck also wanted to quiet American and British critics

141 Ryden, *Foreign Policy of the United States*, 200-308.
of German policies in the Sāmoa Islands by assuming full authority and supreme control of the islands.  

In March 1889, American, British, and German naval ships were moored in Apia harbor, ready for outright war over exclusive rights to Pago Pago harbor and the Southern Ocean trans-Pacific trade route. A two-day hurricane hit the Sāmoa Islands, capsizing ships and causing many deaths and serious injuries in its wake. The hurricane’s destruction of all military vessels resulted in a cessation of warfare between American, British, and German ships.

**Condominium, No Sāmoan Representation**

The three major powers over the Sāmoan archipelago were also aware of the internal tension among the warring Sāmoan factions. A key conflict between Malietoa Tanumafili I, Tupua Tamasese, and To’oa Malietoa Mata’afa Iosefo centered on the question of who would be the new king after the 1898 passing of Malietoa Laupepa from typhoid fever. When Mata’afa’s men around Apia attached and killed British and American military men in retaliation over the destruction of Sāmoan homes by Anglo-American bombardment, it led to direct intervention in the form of an international conference over the Pacific holdings. The Americans wanted to secure the Pago Pago harbor, Germans wanted to protect their large plantations in Upolu and Savai’i, and the British wanted to retain Tonga and their international outposts. The entire convention on the ‘Sāmoan problem’ proceeded without Sāmoan participation.

The drawn out conflict between the Germany, America, and Great Britain, coupled with the dreadful hurricanes in the Sāmoa Islands, compelled Berlin, Washington, and London to negotiate the Tripartite Convention (the Berlin Conference) on April 29, 1899; it was ultimately ratified in 1900 by the U.S. Congress. The parties that were present included the President of the

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142 Tansill, *Foreign Policy of Thomas F. Baynard*, 108.
U.S., the Emperor of Germany, the King of Prussia, the Queen of the United Kingdom and Ireland, and the Empress of India. The Berlin Conference recognized Malietoa Laupepa as the King of Sāmoa, and believed that his signature attested to a certificate would establish the assent of Sāmoa to the Treaty.\textsuperscript{144} Conspicuously, there were no Sāmoan representatives at this Conference, even though the Sāmoan ‘Kings’ and high chiefs had worked for years with government and military officials to develop bi-lateral working relationships. Although it was completed without the participation of the sitting King Malietoa Tanumafili I (son of Malietoa Laupepa) nor any representative of the Taˊimua or Faipule, the Berlin Treaty claimed to be “promoting as far as possible the peaceful and orderly civilization of the people of these Islands.”\textsuperscript{145} The transparency of this thinly disguised attempt to protect each signatory country’s economic and naval interest is especially apparent in Article III. The body of the treaty is relatively brief:

\begin{quote}
Article I

The General Act concluded and signed by the aforesaid Powers at Berlin on the 14\textsuperscript{th} day of June, A.D. 1889, and all previous treaties, conventions and agreements relating to Sāmoa, are annulled.

Article II

Germany renounces in favor of the United States of America all her rights and claims over and in respect to the Islands of Tutuila and all other islands of the Sāmoan group east of Longitude 171 degrees west of Greenwich.
\end{quote}

\textsuperscript{144} Treaty of Berlin, June 14, 1889, art. VIII, sec. 2, 26 Stat. 1497; Treaty Series 313 [hereinafter Treaty of Berlin].

\textsuperscript{145} Ibid.
Great Britain in like manner renounces in favor of the United States of America all her rights and claims over and in respect to the Island of Tutuila and all other islands of the Sāmoan group east of Longitude 171 degrees west of Greenwich. Reciprocally, the United States of America renounces in favor of Germany all her rights and claims over and in respect to the Islands of Upolu and Savai‘i and all other Islands of the Sāmoan group west of Longitude 171 degrees west of Greenwich.

Article III

It is understood and agreed that each of the three signatory Powers shall continue to enjoy, in respect to their commerce and commercial vessels, in all the islands of the Sāmoan group, privileges and conditions equal to those enjoyed by the sovereign Powers, in all ports which may be open to the commerce of either of them.\(^{146}\)

In return for Great Britain’s renunciation of all rights and interests in Sāmoa, Germany ceded all its rights in Solomon Islands, Tonga, Bougainville, West Africa, and Zanzibar to Great Britain.\(^{147}\) Germany and the U.S. were left to balkanize the Sāmoas. Great Britain and America combined forces to suppress Mataʻafa’s efforts to consolidate all Sāmoans in resistance to all foreigners. At the same time, Great Britain and the U.S. were also working to obstruct Germany under Kaiser Wilhelm II. Their growing suspicion of ‘Kaiserism’ and Germany’s naval and colonial expansions facilitated the ease with which American forces joined Britain in 1917 to


\(^{147}\) *Ryden, Foreign Policy of the United States*, 568-572; *Gilson, Sāmoa 1830 to 1900*, 166-221.

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destroy Germany and its Kaiser in World War I.\textsuperscript{148} Kaiser Wilhelm II believed that British, Russian, and French forces were conspiring to topple Germany, which only instigated the American-British alliance against him.\textsuperscript{149}

\textit{1900 and 1904 Deeds of Cession}

Whaling in the South Pacific during the 1800s was considered a glorious and highly prosperous adventure. The U.S. had multiple whaling ships operating in the South Pacific, most notably outside of the Northwestern Hawai‘ian isles. U.S. Commander Richard W. Meade, Jr. Commander of the U.S. Navy vessel \textit{Narrangansett}, entered into an agreement called “Commercial Regulations, etc.” with Pago Pago High Chief Mauga (one of the signatories to the Deed of Cession for Tutuila and Aunu‘u) that granted sole rights to the access and use of the Pago Pago Harbor.\textsuperscript{150} The Commercial Regulations was never binding because it was never approved by the President or ratified by the U.S. Congress, but it nevertheless successfully instigated the commercial relationship between the U.S. and the Eastern Islands.

The relationship between the Eastern Islands (now \textit{American Sāmoa}) and U.S. was further strengthened with the Treaty of Friendship and Commerce of 1878 and the General Act of 1889.\textsuperscript{151} The 1878 Treaty was significant because it gave the U.S. the sole rights to the use of the Pago Pago harbor. The 1889 General Act was an agreement between Great Britain, Germany, the U.S., and the Sāmoan Government that assured “security of the life, property and trade of the citizens and subjects of their respective Governments residing in, or having commercial relations with the Islands of Sāmoa” while also binding the parties “at the same time to avoid all occasions of dissensions between their respective Governments and people of

\begin{itemize}
  \item \textsuperscript{148} Michael L. Balfour, \textit{The Kaiser and his times} (Ann Arbor: University of Michigan, 1964).
  \item \textsuperscript{149} Hedley Willmott, \textit{The First World War} (London: Dorling Kindersley, 2003).
  \item \textsuperscript{150} Sunia, \textit{Legislature of American Sāmoa}.
\end{itemize}
Sāmoa, promoting as far as possible the peaceful and orderly civilization of the people of these islands.”

The Tripartite Convention of 1899 and the Treaty of Berlin renounced British and German rights in the eastern Sāmoa Islands. The mainstay of the written letters to British and American governments by the various sitting Sāmoan ‘Kings,’ prior to the Berlin Conference, was a plea for protection of lands and people—a protectorate exchange for the exclusive use of the Pago Pago harbor and lands for the Navy’s coaling stations directly in line with the trans-Pacific trading routes. After the High Chiefs witnessed the collection of heavily armed naval ships at the Apia harbor pumped for battle, they recognized the unrelenting desire of the U.S. military to have Pago Pago harbor, so they signed the first Deed of Cession to avoid any loss of life and injuries to their Sāmoan villages. On April 17, 1900, the High Chiefs ceded the islands of Tutuila and Aunu’u. Four years later, on July 16, 1904, the islands of Tā’u, Olosega, Ofu, and Rose were ceded to the U.S.

In the preamble to the Tutuila and Aunu’u Deed of Cession, the intention of the High Chiefs is crystal clear:

for the promotion of the peace and welfare of the people of said islands, for the establishment of a good and sound government, and for the preservation of the rights and property of the inhabitants of said islands, the Chiefs, rulers and people thereof are desirous of granting unto the said government of the United States full

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152 Ibid.
153 Gilson, Sāmoa 1830 to 1900, 221; Ryden, Foreign Policy of the United States, 195.
powers and authority to enact proper legislation for and to control the said islands...\textsuperscript{155}

In the 1904 Deed of Cession of Manu’a, King Tui Manu’a and the High Chiefs of the Manu’a group articulated these same principles. The preamble and section (2) read in part:

And Whereas, Tuimanu’a and his chiefs, being content and satisfied with the justice, fairness, and wisdom of the government as hitherto administered by the several Commandants of the United States Naval Station, Tutuila, and the officials appointed to act with the Commandant, are desirous of placing the Islands of Manu’a hereinafter described under the full and complete sovereignty of the United States of America to enable said Islands, with Tutuila and Aunu, to become a part of the territory of said United States;

(2) It is intended and claimed by these Present that there shall be no discrimination in the suffrages and political privileges between the present residents of said Islands and citizens of the United States dwelling therein, and also that the rights of the Chiefs in each village and of all people concerning their property according to their customs shall be recognized.\textsuperscript{156}

The U.S. federal machine did not wait for the Manu’a Islands to sign their allegiance to the U.S.; the Navy displaced Tui Manu’a from his reign over the Manu’a Islands and demanded


\textsuperscript{156} Cession of Manu’a, July 14, 1904, King of Manu’a with Chiefs of Manu’a Islands to U.S. Government, repr. in A.S.C.A. sec. 2 (1981) [48 U.S.C. § 1661].
that the High Chiefs obey the ‘New Government’ and High Court decisions via intimidation and threats of force.  

USN Commandant Uriel Sebree wrote to the U.S. Assistant Secretary of the Navy in the summer of 1902 reporting that Tui Manu’a and his Chiefs had disobeyed a 1902 High Court ruling. Commandant Sebree brought Tui Manu’a’s Chiefs to Tutuila and admonished them all, stating that Tui Manu’a and the Manu’a Islands were under the U.S. flag. “I informed him that all orders must be obeyed,” Sebree wrote, “that if Tuimanu’a could not enforce orders, I might have to put someone else in the position, and if necessary, I would send an officer and some men on shore to govern them.” The USN Commandant held the Manu’a Chiefs in Tutuila on charges of conspiracy because one of Tui Manu’a’s Chiefs, Tulifua, was a Manu’a District Judge believed by the USN Commandant to be conspiring against the U.S. on behalf of Tui Manu’a. The USN Commandant and U.S. federal machine did not recognize Tui Manu’a as King over the Manu’a Islands, which was a completely distinct political-cultural entity from Tutuila. Sebree went so far as to disregard the Tui Manu’a’s nobility and power in the islands and simply treating him as a mere District Judge in Manu’a who needed to be reminded of his place within the U.S. political-body. Once Tutuila and Aunu’u had been ceded to the U.S., Sebree didn’t recognize the Manu’a Islands as a politically autonomous jurisdiction, and demanded that Tui Manu’a and every mātai title holder there to obey the laws of the land. Even more egregious, the U.S. perpetrated an illegal seizure of the Manu’a Islands through the 1900 Tutuila and Aunu’u Deed of Cession. The USN Commandant wrote that, “As a matter of personal convenience, and to save a good deal of tedious and worrying annoyance, I should be glad to receive an order

157 “New Government” was a term used by the Commandants in the High Court to distinguish the time before the American government was established in 1900 to the time after the American Government was established.  
158 Letter from Uriel Sebree, USN Commandant to U.S. Assistant Secretary of the Navy, (June 30, 1902) (on file with the American Samoa Territorial Archives).  
159 Ibid.
cutting loose from the Manua Group, but under the treaty this cannot be done. By the orders of
the President, they are included in the Naval Station, Tutuila, and the form of government
adopted in the same in Tutuila and Manu’a.”\textsuperscript{160}

Both groups of islands felt obligated to feature democratic principles of peace and justice
as fundamental values for governance. Together, the Deeds also expressly preserve the
customary rights and property for all Sāmoans. The pattern of lies and manipulation by the
American military agents in service of solidifying their formal presence in the islands is not
surprising. Wilkes pretended to appoint Williams Jr. as U.S. Consul, Meade led Paramount
Chief Mauga and the other High Chiefs to believe the Meade-Mauga Treaty was fully executed
and recognized by the U.S., and President McKinley issued an Executive Order to place the
Navy over the \textit{American} Sāmoa without confirmation and ratification by two-thirds of the U.S.
Senate as dictated by the U.S. Constitution.\textsuperscript{161} McKinley issued Executive Order No. 540 on
February 19, 1900, directing that:

The island of Tutuila of the Sāmoan Group, and all other islands of the group east
of longitude one hundred and seventy-one degrees west of Greenwich, are hereby
placed under the control of the Department of the Navy, for a naval station. The
Secretary of the Navy will take such steps as may be necessary to establish the
authority of the United States, and to give to the islands the necessary protection.

\textit{Navy Department, February 19, 1900, Serial Order No. 540.}\textsuperscript{162}

\textsuperscript{160} \textit{Ibid.}

\textsuperscript{161} U.S. Const. art. II, § 2, cl. 2. Historically, there has been debate between the Congressional-Executive and Sole-
Executive Powers to enter into international Treaties with sovereign countries. Some Presidents have entered into
Treaties without the two-thirds consent of Congress when it was declared without his powers as Commander-in-
Chief of the Armed Forces or continuation of a prior Treaty. President McKinley used such Sole-Executive Powers
to execute the Deeds of Cession to enter into \textit{American} Sāmoa and ordered the U.S. Department of State vis-à-vis
U.S. Department of Navy full powers over the islands.

\textsuperscript{162} U.S. Navy Department, February 19, 1900, Serial Order No. 540. (General Records of the U.S. Department of the
Navy.)
This era of empire building by the military and their emissaries in collusion with the Executive branch exposes the underbelly of the undemocratic road to democracy development. The nebulous situation in *American* Sāmoa directly resulted from the neglect of the U.S. Congress, advanced by the U.S. President, and enacted by the U.S. Navy to establish total dominion and control over these lands and its people.

*Non-Traditional Territory*

*American* Sāmoa did not fit the traditional mold of a colonized entity. In 1898, it was absorbed into the American body-politic without war or any broad newspaper coverage that would create national interest. The east coast Republican expansionists were far more concerned with Cuba, the Philippines, and Puerto Rico, and aimed to transplant American principles and values into these islands, which were seen as being dominated by harsh Spanish rule. *American* Sāmoa was a political victory that achieved both military control of the eastern islands for coal shed projects and seizure of Tutuila’s harbor, which had been earmarked for naval operations. Due to the indifference of the American media, there was no widespread knowledge of the existence of *American* Sāmoa and no knowledge of the navy’s attempted negotiations with Germany and Great Britain over these Pacific islands.163

National coverage of potential negotiations with Germany would have been met with strong public resistance due to the growing anti-German sentiment regarding the Manila Bay dispute between German naval commander, Vice Admiral Otto von Diedrichs, and American Naval Commander George Dewey.164 Dewey fueled anti-German hostility by claiming that von

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Dierdrichs supplied arms to Spain by way of the Filipino Grande Island.\textsuperscript{165} It is possible that negotiations with Great Britain would also been met with disdain due to the boundary disputes over Venezuela from before the Boer War.

The U.S. Government started to receive reports from sailors, seamen, and missionaries about the migration to the ‘Great South Sea’ and the bustling commercial trading and whaling activities. In 1839, the Department of Navy sent four ships, the \textit{Vincennes}, the \textit{Porpoise}, the \textit{Peacock}, and the \textit{Flyfish}, to complete five weeks of scientific and navigational research in the Sāmoa Group. The ships moored in Upolu, Savai’i, and Tutuila. They collected information and data on land and water measurements, as well as astronomical and meteorological data in \textit{American Sāmoa}.\textsuperscript{166} U.S. Commodore Charles Wilkes, who was the highest authority in the U.S. Government in the Sāmoa Group at that time, led this military expedition and determined that the U.S. citizens trading in the Sāmoa Group required official American presence for security. Without authorization or notification to the Department of State, Congress, or the President, Wilkes appointed John Williams Jr. to be the first U.S. consul in Sāmoa.\textsuperscript{167} Since Wilkes initiated this appointment without proper authority, however, and Williams was relegated to being a commercial agent with no diplomatic powers for eight years. In 1871, New Yorker W.H. Webb and his steamship company were contracted to transport coal by steamship between San Francisco and the South Pacific. Webb contracted U.S. Navy Captain E. Wakeman to determine whether the Pago Pago harbor could be a suitable coaling station for coal-burning

\textsuperscript{165} \textit{The encyclopedia of the Spanish-American and Philippine-American Wars: A Political, Social, and Military History,} ed. Spencer Tucker (Santa Barbara: ABC-CLIO, 2009), 258-260.
\textsuperscript{166} Amerika Sāmoa Humanities Council 2009, 24-25. Lake Lanoto’o has many legends situated to that site and surrounding district spanning back centuries. Not surprisingly during this nineteenth century expansionist period like other ‘discovery’s’ by Europeans and Americans, the U.S. Navy did in fact not discover Lake Lanoto’o in the mountains of Afiamalu.
\textsuperscript{167} John Williams Jr. is the son John Williams, founder of the London Missionary Society.
steamships. Wakeman reported to the U.S. Navy that Germany was vying for all of Sāmoa and that, without U.S. intervention, the islands would become German outposts under the Kaiser.

On February 14, 1872, U.S. Navy Commander Richard Meade was officially sent on behalf of the Department of State to determine the feasibility of a U.S. Naval Station in Pago Pago. Meade surveyed the Pago Pago harbor and the submerged reef in the bay area and set out to initiate relationships with the Paramount Chiefs to pave the way for further American presence. Meade negotiated the Meade-Maugua Treaty with Paramount Chief Mauga and the Chiefs of the Eastern side for the use of the harbor and the establishment of a board to oversee the regulations in exchange for friendship and protection by the U.S. Unbeknownst to Paramount Chief Mauga, who had full authority and powers to enter into the Meade-Maugua Treaty on behalf of his people, this document was never ratified by the U.S. Senate. Paramount Chief Mauga did not know that the signed Meade-Maugua Treaty was still subject to the ratification by U.S. Congress. Ironically, Meade, who did not have the full authority himself to execute a bi-lateral Treaty on behalf of the U.S., doubted whether Paramount Chief Mauga had the authority to sign the Treaty on behalf of his people. Wilkes also hid from Williams the fact that he had no authority or powers to appoint foreign diplomats on behalf of the U.S. Department of State. This type of manipulative approach in the military’s dealings with the Sāmoan people will be discussed in more detail in Chapter Four.

Unincorporated Status Comparisons to Other U.S. Territories

The U.S. relationships with its other U.S. territories, specifically Puerto Rico, Guam, and the Philippines, are ordered by a hierarchy that might be called an ‘economics of importance.’ Territorial issues in Puerto Rico and Guam, for example, were regularly deliberated in the U.S.

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168 Amerika Sāmoa Humanities Council 2009, 24-25; Clinton, Amerika Sāmoa and its Naval Administration.
169 Amerika Sāmoa Humanities Council, 28-29.
Supreme Court and U.S. Congress due to the much greater population of Puerto Rico (estimates of approximately 600,000 people) and the potential revenue acquired through taxes and tariffs on exports and established trade that territories provided as former Spanish outposts.\textsuperscript{170}

Military and economic interests were in alignment over control of trade and communication routes in the Caribbean, mostly the Isthmus of Panama, and the Yucatan channel between Mexico and Cuba. Also of importance was the Windward Passage between Cuba and Haiti, the Anegada Passage, and the Mona Passage between Dominican Republic and Puerto Rico.\textsuperscript{171} In large measure, the U.S. presence in the Caribbean sought to minimize the European sphere of influence and the Spanish domination of sugar production. The U.S. saw these territories as a means to greater wealth, military and economic dominance, and geopolitical power that were achieved by the control of these strategic former Spanish territories.

**Impacts of the Alienation of Lands to Indigenous People**

A comparison of American Sāmoa to the other four U.S. territories helps to explain how the political, legal, and self-governing elements of each territory secure the alienation of land from the indigenous people. Prior to western contact, all the islands shared a common bond: land was highly valued, but had no exchange value with regard to a moneyed market.\textsuperscript{172} The distinctions between the island territories are noted in Table 5 below and highlight the varying degrees of political association and legal status within the U.S. body-politic.

**Table 5: U.S. Territories and their Political and Legal Status**


\textsuperscript{171} Puerto Rico Encyclopedia website, accessed February 5, 2014.

\textsuperscript{172} However, there was value placed within the context of Sāmoa custom. Land may be used as a tool in facilitating clan alliances during times of need for food and security.
<table>
<thead>
<tr>
<th>Name</th>
<th>Location</th>
<th>Area size</th>
<th>Population</th>
<th>Political and Legal Status</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>American Sāmoa</strong></td>
<td>South Pacific Ocean</td>
<td>76 square miles</td>
<td>62,117(^{173})</td>
<td>Unincorporated and Unorganized Territory (vis-à-vis 1900 and 1904 Deeds of Cession)</td>
</tr>
<tr>
<td><strong>Guam</strong></td>
<td>North Pacific Ocean</td>
<td>210 square miles</td>
<td>159,358(^{174})</td>
<td>Unincorporated and Organized Territory (1898 Treaty of Paris – Spain ceded Guam to U.S.)</td>
</tr>
<tr>
<td><strong>Commonwealth of Northern Mariana Islands</strong></td>
<td>North Pacific Ocean</td>
<td>179 square miles</td>
<td>53,883(^{175})</td>
<td>Covenant as Commonwealth - 1976(^{176}) (formerly a United Nations Trust Territory placed under the U.S. administration)</td>
</tr>
<tr>
<td><strong>Puerto Rico</strong></td>
<td>North Atlantic Ocean</td>
<td>3,515 square miles</td>
<td>3,725,788(^{177})</td>
<td>Unincorporated, Organized Commonwealth (1952) - Territory (1898 Treaty of Paris – Spain ceded Puerto Rico to U.S.)</td>
</tr>
<tr>
<td><strong>Virgin Islands</strong></td>
<td>North Atlantic Ocean</td>
<td>134 square miles</td>
<td>106,405(^{178})</td>
<td>Unincorporated and Organized Territory (U.S. purchased from Denmark for $25,000,000 in gold–1917)</td>
</tr>
</tbody>
</table>

The most populated territories are Puerto Rico, Guam, and Virgin Islands, whereas the CNMI and American Sāmoa are the least populated and possess very little arable land mass.

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\(^{173}\) U.S. Census 2010 Population Count for American Sāmoa is 55, 519, website accessed March 8, 2014. This dissertation utilizes the American Sāmoa Government Department of Commerce population count. It is my belief and that of the American Sāmoa Government that the U.S. Census 2010 was not comprehensively enumerated or validated; please see letter provided to the Government Accountability Office that I helped to write, GAO-14-381 [March 2014]; *Economic Indicators Since Minimum Wage Increases Began*, 96-101, website accessed April 1, 2014.


\(^{175}\) Commonwealth of Northern Marianas Islands utilizes the U.S. Census 2010 Population Count, see Department of Commerce Central Statistics Division website, accessed March 7, 2014.

\(^{176}\) Covenant to Establish a Commonwealth of the Northern Marianas Islands in Political Union with the United States of America (Pub. L. No. 94-241, § 1, 90 Stat. 263 [Mar. 24, 1976] 48 U.S.C. § 1801 note). The covenant was approved by the U.S. and CNMI governments, as well as the CNMI people in a voting plebiscite. Under the covenant, CNMI is a self-governing commonwealth in political union with, and under the sovereignty of, the U.S.


Within the Pacific Island communities, land rights were tantamount to the western ideal of citizenship: the belief that each individual belonged to a place, people, and a sense of clanship. Particularly amongst Polynesians, and to a lesser degree in some Micronesian societies, the rights of individuals were a symbol of their status with the landholding clan. The right to land was pronounced in a stratified social hierarchy with the mātai or chief representing the landholding clan. The retention of these land rights are also comingled with the use of land and the relationship with other landholding clans. These rights were never absolute and could be diminished or strengthened, depending upon fellow clanship and the strength of the competing interests. In Polynesia and Micronesia, social class is inherited and thereby interwoven with rights to land. These cultural principles forge a commonality amongst the territories whereby rights to land and culture are intrinsically connected.

American Sāmoa has maintained the core non-negotiable protections in the two Deeds of Cession, customary lands, and mātai system. Within the context of the South Pacific Island communities, land is the heart of culture. Social organization, traditions, customary infrastructure, oral history, indigenous skills, dances, and songs continue to survive because of the access that indigenous people have to its land. The relationship between American Sāmoa and the U.S. in terms of securing the customary land tenure can be seen as a double-edged sword within the territorial flag islands. Sāmoans have always enjoyed the fruits of customary land tenure and the enrichment that the culture gets from the mātai system and the access to and use of lands for traditional living. Customary land tenure has also placed a significant stressor on the economic development of the territory, while in territories like the Virgin Islands and Guam,

land is freely sold and invested in by foreigners. Table 6 demarcates the differences in land ownership between the five territories.

Table 6: Five U.S. Territories and Land Ownership

<table>
<thead>
<tr>
<th>Name</th>
<th>Area size</th>
<th>Population</th>
<th>Indigenous Land Tenure System</th>
<th>Spanish Colony</th>
<th>U.S. Territory</th>
<th>Land Alienation Mechanisms</th>
</tr>
</thead>
<tbody>
<tr>
<td>American Sāmoa</td>
<td>76 square miles</td>
<td>62,117</td>
<td>Communal/Customary</td>
<td>N/A</td>
<td>1900 and 1904 – present</td>
<td>American Sāmoan Code Annotated restricts land to American Sāmoan descent 181 Individually owned Land Tenure Classification</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Mātai System</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Guam</td>
<td>210 square miles</td>
<td>159,358182</td>
<td>Communal</td>
<td>Pre-Contact Period – Hierarchical Stratified Classes: Chamorri (highest class), Atchaot (middle-class), Manachang (lowest-class), Chamorri or matua controlled most desired land 183</td>
<td>1898 – present</td>
<td>1899 – U.S. Land Tax 1899 - 36,030 acres of “Crown Land” property (1/4 of the island) transferred to U.S. Government 188</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>No mātai or big man system</td>
<td></td>
<td></td>
<td>1937 – U.S. Navy owned 7, 225 acres of land (typically through land tax default)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1521 – 1898 Spanish Colony</td>
</tr>
</tbody>
</table>

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181 The only exception is freehold land that can be bought and sold by anyone. See A.S.C.A. §37.0204 (b) (1982): “It is prohibited to alienate any lands except freehold lands to any person who has less than one-half native blood, and if a person has any nonnative blood whatever, it is prohibited to alienate any native lands to such person unless he was born in American Sāmoa, is a descendant of a Sāmoan family, lives with Sāmoans as a Sāmoan, lived in American Sāmoa for more than 5 years and has officially declared his intention of making American Sāmoa his home for life. (c) If a person who has any nonnative blood marries another person who has any nonnative blood, the children of such marriage cannot inherit land unless they are of at least one-half native blood.” Native blood is defined as means a full-blooded Sāmoan person of Tutuila, Manu’a, Aunu’u, or Swains Island, See A.S.C.A. § 37.0201 (1999).


<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1860</td>
<td>Spanish Land Titles Registration – first allowed title of lands to be transferred by adverse land possession.</td>
</tr>
<tr>
<td>1870</td>
<td>U.S. Lt. William Safford was commander and had full authority over the newly imposed U.S. land registry system in Guam. See Robert F. Rogers, Destiny’s Landfall: A History of Guam (Honolulu: University of Hawaii, 1995), 118.</td>
</tr>
<tr>
<td>1880</td>
<td>No Land Surveys</td>
</tr>
<tr>
<td>1880</td>
<td>1700 - 8,896 acres of land taken for ranches, later known as encomiendas.</td>
</tr>
<tr>
<td>1890</td>
<td>1900 – 1,350 families lost land and homes due to U.S. Navy policy.</td>
</tr>
<tr>
<td>1900</td>
<td>1912 Hague Convention – U.S. utilized the principle that land could be taken during wartime battles.</td>
</tr>
<tr>
<td>1937</td>
<td>4,459 acres of land also purchased by U.S. Government.</td>
</tr>
<tr>
<td>1943</td>
<td>U.S. defeated Japan in WWII.</td>
</tr>
<tr>
<td>1943</td>
<td>Military fortification and alienation of land from Chamorro’s.</td>
</tr>
<tr>
<td>1944</td>
<td>Displacement of 11,000 of 20,000 inhabitants from Agana and Sumay.</td>
</tr>
<tr>
<td>1947</td>
<td>1,350 families lost land and homes due to U.S. Navy policy.</td>
</tr>
</tbody>
</table>

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186 Surveying and registration of lands began; no land surveys were completed under Spanish occupation. Size and land usage determined the amount of tax exacted upon the landholder.
187 U.S. Lt. William Safford was commander and had full authority over the newly imposed U.S. land registry system in Guam. See Robert F. Rogers, Destiny’s Landfall: A History of Guam (Honolulu: University of Hawaii, 1995), 118.
188 Souder, Guam, 212-213.
189 Ibid.
185 Ibid., 212-213.
1978 - Constitutionally protected to Northern Marianas people (1/4 blood), Article XII, Sections 1 & 4\(^{193}\) |
|---|---|---|---|---|---|---|
| Puerto Rico | 3,434 square miles | Fee Simple | No mātai or nobility system\(^{194}\) | 1508 – 1898 Spanish colony  
1860 - Spanish Land Titles Registration – first allowed title of lands to be transferred by adverse land possession\(^{195}\)  
Spanish Taxation System for Land  
No Land Surveys | 1898 – present | 1508 – Spanish crown took ownership of all lands – naming them “Crown lands”  
1510 – Few Spanish Officials and wealthy Spanish owned lands  
1815 – Decrees of Grace initiated to stimulate the sugar production. |

\(^{191}\) Commonwealth of Northern Marianas Islands utilizes the U.S. Census 2010 Population Count, see Department of Commerce Central Statistics Division website, accessed March 7, 2014.  
\(^{194}\) Constitution of Commonwealth of Puerto Rico, Art. II, § 14 reads: “No titles of nobility or other hereditary honors shall be granted. No officer or employee of the Commonwealth shall accept gifts, donations, decorations or offices from any foreign country or officer without prior authorization by the Legislative Assembly.”  
\(^{195}\) Ibid.
Cattle lands were transformed into sugar production.

Subsistence farming without land ownership flourished.

1899 – 1930
American corporations owned the best agricultural lands (sugar and coffee).

1890 – Large plantation owners could not compete with the American modern plantation system and moved to cities or worked in the American corporations (sugar and coffee).

1947 – Fidal Cadastre mandated that all real estate and personal tangible property be valued, appraised and taxed.

1950 – Foraker Act enacted the 500-Acre Law to forbid any person or corporation to own or control over 500 acres of agricultural...
Table 6 indicates that colonial islands were never surveyed under the Spanish Crown. When Guam and Puerto Rico came under U.S. control, they already had a foreign taxation system and a state-mandated nobility system. The U.S. introduced a new land taxation and registration system. This changeover under the U.S. Department of Defense (Navy) was not easy for the indigenous people. Since land surveys were never done under the centuries of Spanish occupation, registering un-surveyed lands proved to be onerous and costly. However, surveying land, registering land, and levying taxes on land are profitable ways to collect government revenue. Under the U.S. system, a parcel of land is surveyed, boundaries are identified by pegs or markers (some even cement blocks), and then it is given a land use classification (agriculture, urban, etc.) by which the size and type of land is quantified for tax allocations to the U.S. government. At this point, land becomes alienated from the indigenous people.

All unregistered and undeveloped land was considered by the U.S. Navy to be Crown lands that were owned by the Spanish government. Therefore, according to their reasoning, all unregistered and undeveloped land was transferred to the U.S. Navy (Department of Defense) by the Spanish Crown under the 1898 Treaty of Paris. This alienation of lands became real, as

<table>
<thead>
<tr>
<th>Virgin Islands</th>
<th>134 square miles</th>
<th>106,405¹⁹⁶</th>
<th>Fee Simple</th>
<th>N/A</th>
<th>1917 - present</th>
<th>land.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>No mātai or nobility system</td>
<td>Former Denmark Colony</td>
<td>St. Thomas, St. John, St. Croix (St. John – 2/3 of island is designated as a U.S. National Park under U.S. National Park Service</td>
<td>Line-Noue Memea Kruse, 2014</td>
</tr>
</tbody>
</table>

indigenous people from the Spanish colonies were afraid to register their lands with the U.S. Navy because of the high taxes exacted upon them. Yet, if they didn’t survey and register their lands they would lose it anyway.\textsuperscript{198} After 300 years under harsh Spanish rule, the new procedure under American administration was to survey lands, register them, and pay land taxes to the new government. It was a “catch 22.” Families struggled to pay the annual land taxes. On the other hand, if they chose not to survey or register the lands, the lands would be confiscated by the U.S. Navy.

The fundamental difference in the political and legal status of American Sāmoa versus the other territories is the protection of its cultural cornerstone: \textit{customary land tenure system}. In its 3,000 year history, American Sāmoa has never been a landless people, nor has its lands been sold to non-Sāmoans (the exception is the less than three percent freehold lands sold prior to the 1900 Deeds of Cession). The signing of the two Deeds of Cession with the U.S. explicitly protected the alienation of lands from the Sāmoan people. The former Spanish colonies – Guam, Puerto Rico, and Philippines, all indigenous lands—came under the ownership of Crown Lands belonging to the King of Spain (except for the wealthiest and those of the highest class system). The Spanish Crown mandated international trade, using these colonies as trading and production outposts to enrich the monarchy. Spanish colonial rule left the indigenous people beholden to the Spanish Crown and its nobility for access and use of lands for agriculture and even for the use of key resources like water. Landless classes existed under the Spanish Crown in Guam,

Puerto Rico, and Philippines. Access to lands under the Spanish empire for subsistence farming became so dismal that this led to many landless peasants living in the mountains to survive.\textsuperscript{199} Some landlessness developed under the U.S. due to wartime or economic policies that favored U.S. federal government interests. Truman Clark reveals that during the American Great Depression of the 1930s, the economically crippled Puerto Rico was entirely neglected until the New Deal period.\textsuperscript{200} U.S. Congress did not intervene to assist the thousands of Puerto Ricans who were landless and homeless in “Hoovervilles.” It wasn’t until late in the New Deal era that the landless were offered farming lands under the Resettlement programs.\textsuperscript{201} When the smoke cleared after WWII, in Guam there were virtually no survey pegs left from the U.S. Navy surveys and most of the land records were destroyed. This gave U.S. Navy Officers virtually unbridled authority to determine what lands were to be public or private, and whether compensation was necessary to the Chamorros for the appropriation of land for military installations.\textsuperscript{202} Ron Crocombe explains that, in Guam, lands were primarily taken for military fortification: “Occupied by the Japanese in 1941 and reoccupied by the United States forces in July 1944, Guam became a major military base and forty-eight percent of the island was taken over for military bases.”\textsuperscript{203} Most recently, the 2011 Government Accountability Office Report on the Defense Infrastructure in Guam advised the U.S. Congress that the Department of Defense has yet to fully assess the impacts of 39,000 military personnel to be transferred from Okinawa

\textsuperscript{201} Ibid.
\textsuperscript{203} Ibid., 214.
to Guam by 2020.\textsuperscript{204} It remains unknown how much more land in Guam that the Department of Defense will need to accommodate these U.S. servicemen/women.

CHAPTER THREE:
BACKGROUND OF AMERICAN SĀMOA

O Sāmoa o le atunu’u tofi 205

It is generally accepted that the first Polynesians settled in what is now American Sāmoa about 3,000 years ago. These first inhabitants probably arrived in the Sāmoa Islands from the west, perhaps by way of Indonesia, Vanuatu, and Fiji. 206 They colonized the central Society Islands between A.D. 1025 and 1120 and scattered to New Zealand, Hawai’i, Rapa Nui and beyond between A.D. 1190 and 1290. 207

Sāmoan legends and myths are filled with tales of exploration, trade, and contact between the native Oceanic people who had populated the many islands scattered throughout Polynesia. 208 The double canoe or ilia was used by Sāmoans for seafaring exploration, and Maui and Late are revered in Sāmoan legends as daring voyagers. 209

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205 English translation, Sāmoa has been designated traditionally and culturally among its people in terms of status and/or ranks.
American Sāmoan Historic Preservationist John Enright describes the coming of the foreign strangers to the lands:

Then 28 centuries, one hundred ten generations, into their occupation of these islands, a strange breed of humans, in strange ships, sailed by, then touched on their shores, then came to stay and pray and trade in their beach villages. The papālāgi-the sky breakers-had arrived.210

Europeans in Sāmoa Islands

The first recorded European contact in the Sāmoa Islands occurred in 1722, when the Dutch navigator Commodore Jacob Roggenveen, commanding the ships Thienhoven and Arena, prospected several of the Sāmoan islands in the Manu’a group.211 Forty-six years after Roggenveen landed, two French explorers arrived on the Sāmoas and attempted to create a more permanent Franco-Sāmoan connection, with deadly results.212 French explorer Louis-Antoine de Bougainville commanded the ships La Boudesuse and L’Étoile in 1768, and Comte Jean-Francois La Perouse brought L’Astrolabe and Boussole ships a year later.213 Thirty-nine Sāmoan warriors, as well as La Perouse and a dozen of his sailors, were killed in what is known as “Massacre Bay,” in the village of A’asu on the north shore of Tutuila on December 11, 1787.214 Frederic Pearl and Sandy Loiseau-Vonruff explain that the only history of this first violent

211 Gray, Amerika Sāmoa, 3. Although, Gray raises the possibility that Roggeveen’s arrival to American Sāmoa may not have been the first papālāgi, because upon material exchanges with the Taūans, a girl from the island of Ofu wore a blue necklace. There is no blue coral in the Sāmoas, although it may have come from exchanges with other Pacific islanders from Tonga or Fiji who had fairly frequent contact with Europeans. Roggeveen’s status as the first European may continue to remain unquestioned (4); John C. Beaglehole, The Exploration of the Pacific (London: A & C Black, 1935); John Dunmore, French Explorers in the Pacific: Volume I: The Eighteenth Century, Volume II: The Nineteenth Century (Oxford: Oxford University Press, 1965).
212 At this time, the Sāmoa Group was referred to as the Navigator Islands. Earlier they had been called the Enchanted Isles by European explorers; see Bicknell, Territorial Acquisition, 118.
214 Enright, The Past Surrounds Us.
encounter between Sāmoans and foreigners is from La Perouse’s journal that survived after his death.\textsuperscript{215} It is believed that the French bartered with the Sāmoans for fresh water to alleviate scurvy among the crewmen. Sometime during this period of exchanges and barter, something happened to cause the Sāmoans to attack the French ships. After this deadly encounter, Sāmoans got a reputation for being ferocious and ‘savage’ among voyagers and ship crewmen, even as the idealistic ‘noble savage’ sentimentality persisted amongst genteel European society.\textsuperscript{216} The French government established a monument in A’asu that is recorded with the National Register of Historic Places to commemorate the first deadly exchange between the European and Sāmoan people. Ironically, there is no such monument in American Sāmoa for the thirty-nine slain Sāmoan warriors in the first ‘war of worlds’ between the indigenous Sāmoan people and foreign western encroachers.\textsuperscript{217}

The coming of the \textit{papālagi} navigators had little influence on the civil wars in the Sāmoas. By this time, the Pacific had encroachers from different regions, all engaged in an international war of land grabbing. However, the Sāmoan civil wars raged on while the Sāmoans simultaneously greeted these foreign \textit{papālagi} merchants, missionaries, castaways, voyagers, and military officials, even exchanging material goods with them. Augustin Krämer writes of the endless civil wars contesting power, authority, and control over titles throughout all the Sāmoas:

While the flames of this fire still leaped towards heaven, on a morning in August 1830 the “Messenger of Peace” dropped anchor near Sapapali’i on Savai’i where Malietoa lived. And Vaiinupō who was quickly brought over from Aana, feeling sure that the throne was his, on the evening of the same day greeted the first white

\textsuperscript{216} Ian C. Campbell, \textit{A History of the Pacific Islands} (Berkeley: University of California Press, 1989), 150.
\textsuperscript{217} Enright, \textit{The Past Surrounds Us}.
missionary upon Sāmoan oil, John Williams. He did indeed receive all four titles and died in 1842. On his death bed he gave the counsel no longer to elect a tafa’ifā, but a King of Atua, a King of Aana, and a King of Savai’i ("tupu o Salafai"). After the conclusion of this six year war of 1848 to 1854 Mata’afoa who became Tuiatua in 1857, the uncle of the present one, succeeded in seizing almost all titles. After him it was Tuimaleali’ifano Sualauvī, the son of Tuitofā, who was equally successful around 1869. Then the two Malietoa, Laupepa and Talavou (Pe’a), appeared on the scene. They first fought side by side, then against each other till after his brother’s death (1880) Laupepa ruled alone. Under them the European form of government using two houses, the pule and the ta’imua, had meanwhile been established.\(^{218}\)

In 1893, Hawai’i was a sovereign kingdom until American missionaries and businessmen who hungered for Hawai’ian lands staged a coup.\(^{219}\) The U.S. acquired Puerto Rico, Guam, and the Philippines as spoils of the Spanish American War of 1898. At the same time in the South Pacific, Sāmoa Islands was on the chopping block for balkanization between Governments of Germany, Great Britain, and the U.S. The partition of the Sāmoa Islands came at the dawn of the imperialistic age of geo-political colonial interests to solidify their presence and authority over lands in distant outposts.

British statesmen were entrenched in Southern Africa, and did not want to give up their economic monopoly or their land and mineral interests there to the Portuguese and Dutch, so they were receptive to conceding their interests in Sāmoa to Germany in exchange for Southwest Africa. Sāmoa Islands was divided at the 171 degree west longitude line between Germany,


which had an established presence in the islands of Western Sāmoa (now called Independent State of Sāmoa), and the U.S., which acquired the smaller eastern islands, now *American* Sāmoa.²²⁰

*Sāmoa Wars and Alliances*

The War of 1847 (1847-1853) was an important period of Sāmoan political alliances with *papālagi* foreigners. It was also the time when traditional methods of spears, war clubs, and rocks were being replaced with modern weapons. Guns, ammunition, and telescopes were exchanged for Sāmoan land. The War of 1847 was initiated by Ā‘ana, and Ātu a waged bloody war against Malietoa (Tuamāsaga), Manono, and Savai‘i in retaliation for earlier wars.²²¹ By this point, organized religion had already arrived on Sāmoan shores. By 1847, John Williams had already established the London Missionary Society religion in Savai‘i, Catholicism was established in 1845, and the Methodists already had bases in Savai‘i and Manono islands.²²² Multiple other Christian religions were influencing *fa‘asāmoa* lifestyle, custom, and physical permanent presence by the 1850s. Foreign traders introduced guns into the Sāmoan society, which forever changed both Sāmoan warfare and the customary rites that preceded war, such as ‘*ava* ceremonies and oratory speeches by senior *mātai* titleholders. These cultural rites were no longer necessary, as modern warfare created a new means of engaging in battle. Young Sāmoan men that had fought with only skill, knowledge of the land, and courage changed into young Sāmoan men that could kill with guns – from afar. ‘*Ava* ceremonies preceding wars became a custom of the past.²²³

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²²² Henry, *Sāmoa: An Early History*.
The nature of Sāmoan warfare was also changed by the introduction of war vessels at sea. Taumasila, the first gunship of its kind employed by Sāmoans, was 120 feet long with four nine-powder guns, and rowed with 30 oars. It sank all the other Sāmoan ships. Taumasila was owned by papālagi Eli Jennings, husband to the daughter of one of the Ātua high chiefs, and was used to fight for the Ātua-Ā’ana alliance against Malietoa. The introduction of modern warfare, guns, ammunition, bigger gunships, and Christianity all had impact on the changing nature of the Sāmoan political structure.

With papālagis flocking to the shores of Sāmoa in the 1800s for wealth, land, political advancement, and as a stopover for ship provisions, the influence of foreigners made indelible changes to Sāmoa and its people. The key principles in the April 2, 1889 Berlin Agreement (not to be confused with the 1899 Berlin Treaty), between the plenipotentiaries of the U.S., Germany, and Great Britain were: formally establish power and authority of the plenipotentiaries over Sāmoa, quell wars and facilitate peace, create a centralized government, introduce the Office of the Chief Justice Cederkranz, return Malietoa Laupepa from exile in the Marshall Islands, and establish the international Land Commission (hereinafter Commission) to investigate claims by Sāmoans and foreigners on land issues. Maintaining internal political stability was concentrated on the arbitration and resolution of the alienation of indigenous land to quell tensions in the islands.

In 1894, the Commission uncovered many unscrupulous acts by foreigners attempting to take ownership the lands in all of Sāmoa. During this time, political alliances were made between different Paramount Chiefs and Germany, Great Britain, and America. The political agendas of the Paramount Chiefs in Sāmoa created German, Great Britain and American factions.

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224 The first Chief Justice to Sāmoa under the Treaty of Berlin was Swedish.
225 Amerika Sāmoa Humanities Council 2009, 45.
226 Ibid., 49.
amongst districts and villages in support of specific foreign countries. _Papálagi_ foreigners were busy themselves trying to take away all the land of Sāmoa completely. It was a textbook example of settler colonialism; the methodological process was to alienate the Sāmoans from their homelands.

Malietoa Laupepa, very unhappy with the fraudulent schemes of registration and sales of Sāmoan lands by foreigners, sought out the legal assistance of Australian attorney Edwin Gurr to refute foreigner land claims on behalf of the Sāmoan people.\(^{227}\) Under the Berlin Agreement, Malietoa Laupepa was able to contract Gurr to represent Sāmoan land interests before the Office of the Chief Justice. Gurr later authored the Deeds of Cessions of Tutuila and Aunu’u and Manu’a and became the U.S. Secretary of Native Sāmoan Affairs.

Prior to _American_ Sāmoa coming under the U.S. Flag, Sāmoan lands were already being seized by fraudulent claims of land ownership and the transferring of land from Sāmoans to various _papálagi_ foreigners. The late 1880s and the 1890s marked formal political alliances of _Fa’asuaga_ in _American_ Sāmoa that aligned them with American Government officials who did not want to remain under the control of Upolu Paramount Chiefs, Germany, or Great Britain.

*Naval Administration Authority*

The majority of the scholarship written about the Naval Administration’s control over _American_ Sāmoa has focused on the Sāmoan attempts to protect and preserve traditional customs and traditions through the incorporation of courts and judicial decisions and the Western-style rule of law.\(^{228}\) Before 1900, there was only village-based self-government and no centralized

\(^{227}\) Ibid.

government. The Navy established a central government in 1900 and a legislature in 1948. There was no Governor or territorial Constitution until the powers of the Navy over American Sāmoa were transferred to the U.S. Department of the Interior. In American Sāmoa, the Navy established the judicial, legislative, and civil administration for the islands. No judicial branch of the government existed during the entire naval period, except for the Department of the Judiciary, which functioned like the Department of Administrative Services, and the Department of Public Works.229

The only governing documents which had direct (and supreme) authority over the Navy in its administration of American Sāmoa are the two Deeds of Cession, which expressly stated the U.S. was required to respect and protect Sāmoan lands and property in exchange for Sāmoan obedience and allegiance to the U.S.230

The Navy’s empire-building in American Sāmoa established American law and values, which in some cases overruled Sāmoan customs. Ultimately, U.S. authority demonstrated how western law would reign supreme when it became entangled with culture.231 Without a locally-enacted constitution, written or unwritten, law and authority firmly rested with the Naval Administration.

For example, Naval regulations permitted “a grant of a trust to a son or daughter legally married to a non-native,”232 or to “a child of an inter-racial marriage,”233 and “life estate to a grandson where the father was not native.”234 This direct exercise of authority by the Naval

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229 Morrow, My Thirty-Two Years, 13-18.
230 Tutuila and Manu’a Deeds of Cession; Eni Faleomavaega, Navigating the Future: A Samoan Perspective on U.S.-Pacific Relations (Suva: University of South Pacific, 1995), 35; Eni Faleomavaega, “Historical Documents, Laws, & Deeds Related to American Sāmoa,” American Sāmoa Congressional Office website, accessed July 3. The Deeds of Cession were not ratified by the U.S. Congress until 1929.
231 Elaborated in chapter 4.
Administration created a loophole in the land alienation provisions that were supposedly established to meet the terms of the Deeds of Cession and subverted the intentions of the U.S. Congress to comply and honor those said terms.\(^\text{235}\)

The Navy’s power over introduced law, like principles of adverse land possession that require corroboration of testimony, perfectly supported the discourse of empire-building project. The Navy had ultimate reign, not only in the establishment of law and the way it interacted with culture, but also in the adjudication of those laws. The introduction and incorporation of adverse land possession principles are examples of empire building, the ruse being that its purpose is to civilize and standardize Sāmoan society. Some have suggested that the constructs of race played a role in the expressions of law, culture, religion, and politics in the newly Christianized islands of the South Pacific.\(^\text{236}\) Although this dissertation does not substantially address race within the political morass between the various federal and territorial bodies, race is politically and legally framed under the U.S. Supreme Court’s determination of outlying territories and its people.

The balance between the “individual” versus Sāmoan communal society was upset because the Navy favored individual right to title, which corroded communal lands available for


Sāmoan community land tenure and threatened the fa’amātai. Without traditional lands, mātai titles are meaningless. Analyzing possible alternative political and legal futures for American Sāmoa will aid in protecting the lands and the fa’amātai from further disintegration.

**Population Demographics**

The estimated population in American Sāmoa is 62,117. High fertility and high immigration drive the population structure, even considering the outmigration of American Sāmoans to the continental U.S. There are more American Sāmoans living outside of American Sāmoa than in it, particularly in the U.S. Local-born population has been dwarfed by the immigrant population, most of whom come from Sāmoa (Independent State of Sāmoa), other Pacific Islands, and Asia, principally to work in the canneries. Despite the political divide between Sāmoa and American Sāmoa, their linguistic and cultural ties remain strong due to fa’asāmoa, mātai titles, and communal lands.

Since the 1950s, immigrant Sāmoans from the Independent State of Sāmoa flocked to the shores of American Sāmoa for U.S. currency and employment opportunities with higher pay. Moreover, American entitlement programs are a significant pull for families who gain access to the federal school lunch program, Women and Infant Children’s (WIC) supplemental food vouchers, a free public school system, and subsidized health care system not available in the Independent State of Sāmoa. Between 1920 and 1970, growth population rates were

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238 I will elaborate these issues in Chapters 6 and 7.
239 Based on the 2010 U.S. Census population count, the total actual number of births between 2000 and 2013, the total actual number of deaths between 2000 and 2013, the natural increase in the population (actual number), and net migration the estimated population came to 62,117. Note that this is based on the American Sāmoa Government Department of Commerce population counts, and that of the U.S. Census is not necessarily in sync with the American Sāmoa Government Department of Commerce population counts. My dissertation will draw from both U.S. Census and American Sāmoa Government Department of Commerce population counts. Please see footnotes 169 and 179 for further analysis and documentation reference.
240 United Nations General Assembly, 2011: In 2010, approximately 91,000 American Sāmoans lived outside the Territory, particularly in Hawai’i and Alaska.
extraordinary in American Sāmoa. In 1920, the population was 8,056 people, which grew 24.7 percent in the next decade. By 1940, population had increased another 28.4 percent, and 46.7 percent by 1950, 5.9 percent by 1960, and 35.5 percent by 1970. At least 30 percent of the total population left American Sāmoa’s borders in the 1950s, but growth continued, in large part due to the ineffective immigration management, port of entry control, and a lack of government database system to monitor people who over-stayed. Since American Sāmoa is an unincorporated territory, it is the only U.S. territory that still regulates its own customs and immigration. The problem areas listed above were reported in the 2000 Governor’s Task Force on Population Growth, which also cautioned that, in 2000, with 48 percent of the population under the age of 20 years, population growth would continue for at least another generation.

The American Sāmoa population censuses from 1970 to 2010 illustrate the consistent and steady rate of growth, as shown in Chart 1 below:


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The patterns of migration reveal the inflow of Sāmoans into American Sāmoa for employment and higher minimum wages in U.S. currency and the outflow of American Sāmoans to continental America for military service, education, higher wages, and access to American amenities. Migration from Sāmoa to American Sāmoa is a relatively easy transition, as the shared language, food, religion, dress, traditions and spiritual beliefs, gender roles and everyday patterns of daily life activities are the same or very similar between the two jurisdictions, which are separated by a 20 minute flight or a 6-8 hour ferry, on the Lady Naomi vessel. Migration rates, both in and out, are largely influenced by the economic and employment opportunities in the territory. The migration patterns for American Sāmoa are quite difficult to forecast due to many
factors, including poor computer systems for immigration and customs and immigration sponsorship schemes that leave many illegal over-stayers with sponsor turnovers. Most importantly, the federal government’s unpredictable formula for determining federal minimum wage amounts and implementation dates, the changing restrictions on financial entitlement programs and grants, and investment caps on industries for all territories strongly influence migration.

The population structure charts break down the American Sāmoa population by age and sex in 1970 and 2010. Chart 2 below shows the 1970 population with the classic pyramid shape of a quickly growing population.

**Chart 2: Population Structure of American Sāmoa, 1970**

![Population Structure Chart 1970](source: Margaret Chung, 2012)

Chart 3 below shows the 2010 population, which is sizably larger, with a hollow center in the 20-40 year age group, explained by the net loss of young adults to migration. The broad base,
showing a high population under 20 years of age, justifies the 2010 Governor’s Population Task Force, which shows potential for future growth in the territory.


![Chart 3: Population Structure of American Sāmoa, 2010](image)

Source: Margaret Chung, 2012.

Chart 4 shows evidence of the changes to American Sāmoa’s population structure between 1950 and 2010, including generational aging and rising aged dependency rates, reflecting higher male mortality and a greater likelihood for out-migration.

Chart 4: Rising Median Age in American Sāmoa, 1950 – 2010
In 2000, the median age for males was 21, as opposed to 21.7 for females, which reflects higher male mortality and the expected rise in aged dependency with the higher median age of the population. From 1950 to 2010, the median age rose progressively from 17.7 years in 1960 to 21.3 years in 2000. Taken together with Chart 5 below, the changes to the population structure of age shows the typical smaller center in the 20 to 40 age group, these data indicate a loss of young adults with growing rates of children under 15 years old and senior citizens above 60 years old.

**Chart 5: Summary of Age Structure Changes, 1970 - 2010**
The overall population of American Sāmoa has more than doubled from 1970 to 2010 from 27,000 residents in 1970 to 57,000 net residents in 2010.\textsuperscript{243} Seen in Chart 6 below, American Sāmoa’s rate of natural increase remained high between 2000 and 2010, due mostly to the large base of young adults and its positive impact on birth rates:

**Chart 6: Net Population Growth, 1970 – 2010**

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<tbody>
<tr>
<td>Net increase</td>
<td>5138</td>
<td>14476</td>
<td>10515</td>
<td>-1.772</td>
</tr>
<tr>
<td>Births</td>
<td>10088</td>
<td>14150</td>
<td>17882</td>
<td>15052</td>
</tr>
<tr>
<td>Deaths</td>
<td>1326</td>
<td>1601</td>
<td>2371</td>
<td>2688</td>
</tr>
<tr>
<td>Natural increase</td>
<td>8762</td>
<td>12549</td>
<td>15511</td>
<td>12364</td>
</tr>
<tr>
<td>Apparent net migration</td>
<td>-3624</td>
<td>-1927</td>
<td>-4996</td>
<td>-12366</td>
</tr>
</tbody>
</table>

Noticeable increases occurred during the 1980s when the tuna industries pulled foreign workers in, and the upsurge in net migration in the 2000s demonstrates the high depletion of local residents and the lowered inflow of foreign workers. Retaining a skilled and educated workforce is dependent on a stable and flourishing economy, and the tuna industry has remained the only stable industry in American Sāmoa. Given that the U.S. Congress has ultimate plenary powers over all territories, and that the myriad of federal laws are variably applicable across the territories, each territory faces an uphill battle to secure private sector incentives.

The population growth can be divided into two growth periods: the first under traditional subsistence up until the mid-1970s, and the second under a modern economy from the mid-1970s to present. Infrastructural and educational development really only began when governance over

\textsuperscript{243} 2010 Statistical Yearbook, American Sāmoa Government Department of Commerce; U.S. Census Bureau, adjusted 2010 population count.
American Sāmoa transferred from the U.S. Navy to the Department of the Interior in 1951.244 Until 1951, U.S. Naval Officers served as Governors. Governance over American Sāmoa by the Secretary of the Interior was done through the appointments of Governor, Lieutenant Governor, Chief Justice, Associate Justices, Attorney General, and other governmental offices. The ultimate responsibility for the administration of the Territory rested and continues to reside in the Secretary of the Interior.245

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245 United States Department of the Interior, Office of the Secretary. Elected Governor and Lieutenant Governor of American Sāmoa, Order No.3009, September 13, 1977. [All Secretarial Orders are published in the Federal Register].
CHAPTER FOUR:

EX PROPRIO VIGORE AND THE INSULAR CASES

“Domestic in a Foreign Sense”
“Unorganized”
“Unincorporated”
“U.S. Nationals”

Between 1898 and 1905, American imperialists were pitted against anti-imperialists in the ‘great debate’ over expansion beyond the U.S. continent.246 The U.S. expansionist period began with the Spanish War of 1898. The Treaty of Paris in 1898 between the U.S. and Spain ceded Guam and Puerto Rico to the U.S. The U.S. purchased the Philippines for $20 million, while Cuba was acquired under protectorate status.247 Also, Hawai`i was annexed in this decade, and the U.S. was pushing for a canal site in Central America. Senator Orville Platt’s position was that America had the burden to provide these (formerly Spanish) far-flung territories the access to liberty that only America could provide. President William McKinley’s proclamation of ‘benevolent assimilation’ came during the U.S. Senate’s debate on the ratification of the Treaty of Paris.248

National debate seethed over where America’s ‘sphere of influence’ should expand outside of its borders, turning the 1900 Presidential election into a referendum on colonialism. The expansionists cited Rudyard Kipling’s “White Man’s Burden” as further evidence of the duty and moral obligation of papālagi to civilize and govern these alien and backwards races, including Filipinos, Cubans, Puerto Ricans, and Hawai`ians. Constitutional debates emerged about the Constitutional status of Insular (island) territories. The question of the hour was

whether or not the Constitution “followed the flag.” Constitutional questions on Insular territories provoked discussions about what was or was not “a desirable possession.” In 1897, the Supreme Court’s observation that territories were “inhabited by alien races, differing from us in religion, customs, laws, methods of taxation and modes of thought”\(^ {249} \) compelled the reconsideration of the political and administrative status of Insular territories.

*Ex Proprio Vigore and the Insular Cases*

Three opinions concerning the legal ability of U.S. Congress to acquire and govern territory emerged as early as 1898 (even before the Treaty of Paris debates) in the Harvard Law Review. These opinions created the legal premise for the flag-Constitution issue, which would be used later by the U.S. Supreme Court in deciding the Insular cases. Elmer Adams and Carman F. Randolph proposed that the Constitution follows the flag “*ex proprio vigore*” or as it goes.\(^ {250} \) The supporters of *ex proprio vigore* contended that statehood and extension of rights must be a condition of territorial acquirement. Contrarily, Christopher C. Langdell and others in the government argued, as War Secretary Elihu Root did, that the Constitution follows the flag, but does not "quite catch up."\(^ {251} \) Langdell and other imperialists claimed that U.S. Congress had Plenary Powers to act in whatever way it should choose. The compromise came from Harvard’s professor of government Abbott L. Lowell. Lowell argued that Congress could not do whatsoever it chose, but was not circumscribed into automatically or austerely applying the constitution. U.S. Congress, through its treaty-making powers, could choose to take one of two paths. First, it could incorporate the territory, as it had done with the Northwest Territory and


Hawai‘i. Second, it could keep the territory as unincorporated, which the U.S. Congress planned to do with Puerto Rico, Philippines, and Guam.

Introducing the slippery semantic slope – the two-class “incorporated and unincorporated status” bequeathed to Insular territories—gave a legal loophole to the U.S. Congress. It was in this socio-political atmosphere that the Insular cases were born. The U.S. Supreme Court (and a one-off case in District Court) decided these cases, which determined two schemes of insular territorial acquisition: (1) for incorporated territories, the Constitution applies *ex proprio vigore*, or of its own force; and (2) for unincorporated territories strictly “fundamental” constitutional rights and privileges apply. Table 4 demonstrates how the imprecise the formula was for determining ‘incorporated’ and ‘unincorporated’ as it was laid out in the following Insular cases:

**Table 4: Insular Cases Overview**

<table>
<thead>
<tr>
<th>U.S. Supreme Court - Insular Case</th>
<th>Congressional Act</th>
<th>Insular Case – argument</th>
<th>U.S. Supreme Court/ Appellate Court/ or District Court Decision</th>
<th>U.S. Supreme Court &quot;Doctrines” Majority</th>
<th>U.S. Supreme Court &quot;Doctrines” Dissenting</th>
</tr>
</thead>
</table>
| Downes v. Bidwell (182 U.S. 244, 45 L. Ed. 1088, 21 S. Ct. 770 (1901).) | Foraker Act (1900) - established civil government for Puerto Rico. Also explicitly authorized the imposition of duties on goods entering or leaving Puerto Rico, including merchandise moving immediately to or from any U.S. state. (Act of Apr. 12, 1900, ch. 191, 31 Stat. 77.) | Plaintiff argued that the duty and the portion of the Foraker Act authorizing it violated the uniformity clause, which requires that "all Duties, Imposts, and Excises shall be uniform throughout all the United States." (U.S. Const., art I. 8, para.1.) Also argued that the Act contravened the revenue clause, "[N]or shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another." (U.S. Const., art I. § | Upheld the duty and the Act. Holding that U.S. Congress is not required to treat Puerto Rico uniformly for the purpose of duties, imports, and excises (as it does the continental states). | Justice White's winning "Incorporation Doctrine" - Both White's and Brown's doctrines concluded that while not all provisions of constitution applied, some basic principles would apply *ex proprio vigore*. However, White situated the issue as hinging on whether or not Puerto Rico, at the time of the passage of the tax levy, had "been incorporated into and forms a part of the United States." (182 U.S. 292.) | Justice Brown's 'Extension Doctrine' - He believed that the revenue clauses were not applicable in Puerto Rico, nor binding upon Congress in legislating with respect to the island. "Congress manifestly must intend that the Constitution apply to a territory before every provision of the document is effective there." (182 U.S. at 270-271, 283-
<table>
<thead>
<tr>
<th><strong>Hawaii v. Mankichi, 190 U.S. 197, 47 L. Ed. 1016, 23 S. Ct. 787 (1903).</strong></th>
<th>9, para. 6)</th>
<th>286.)</th>
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<tr>
<td>Application of the Fifth Amendment guarantee of a grand jury indictment &amp; Sixth Amendment guarantee of a jury trial in territories. Mankichi had been convicted of manslaughter in Hawaii. Statutory law after annexation provided conviction without indictment and by a less than unanimous 12-member jury.</td>
<td>Conviction of Mankichi upheld.</td>
<td>Justice Brown &quot;Opinion of the Court&quot; - Constitution had not been extended to Hawaii based upon the Congressional resolution annexing Hawaii to U.S. (217-218) [Extension Doctrine revisited]; holding that the 5th and 6th Amendment rights were not fundamental.</td>
</tr>
<tr>
<td>Justice White - Hawaii was not incorporated (only annexed) by U.S.; holding that the 5th and 6th Amendment rights were not fundamental.</td>
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<tr>
<th><strong>DeLima v. Bidwell, 182 U.S. 1, 45 L. Ed. 1041, 2 St. Ct. 743 (1901).</strong></th>
<th>N/A</th>
<th>N/A</th>
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<tbody>
<tr>
<td>Application that the Port of New York City had no jurisdiction to collect duties on sugar imported from Puerto Rico (after 1899) because Puerto Rico was annexed to the United States.</td>
<td>Upon ratification of the Treaty of Paris, Puerto Rico was not a foreign country for purposes of the tariff laws of the United States, which required payment of duties on goods moving into the United States from a foreign country.</td>
<td>Justice Brown &quot;Opinion of the Court&quot; - We are therefore of opinion that at the time these duties were levied Porto Rico was not a foreign country within the meaning of the tariff laws, but a territory of the United States, that the duties were illegally exacted, and that the plaintiffs are entitled to recover them back.</td>
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<tr>
<td>Justice White - Settle whether Porto Rico is 'foreign country' or 'domestic territory,' to use the antithesis of the opinion of the court, and, it is said you settle the controversy in this litigation. But in what sense, foreign or domestic? Abstractly and unqualifiedly, to the full extent that those words imply, or limitedly, in the sense that the word 'foreign' is used in the customs laws of the United States? If abstractly, the case turns upon a definition, and the issue becomes single and simple, presenting no difficulty, and yet the arguments at bar have ranged over all the powers of government, and this court divides in opinion. If at the time the duties which are complained of were levied, Porto Rico was as much a foreign country as it was before the war with Spain; if it was as much domestic territory as New York now is, there would be no serious controversy in the case. If the former,</td>
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Jones Act (1917): an organic law for Puerto Rico granting full U.S. citizenship to all Puerto Ricans who desired it. Also created a statutory Bill of Rights including guarantees of the first eight amendments.

Application of 6th Amendment right to jury trial in Porto Rico. Porto Rico criminal procedure disallowed a grand jury in misdemeanor cases.

Sixth Amendment protections do not apply to unincorporated territories of the U.S.

Unanimous Decision
- CJ Taft stated that although the Jones Act had granted citizenship to Puerto Ricans, it had not incorporated Puerto Rico. Although Puerto Rico had been under the control of the U.S. since 1898, the territory had not been designated for ultimate statehood, and Congress could determine which parts of the Constitution would apply. Taft distinguished Puerto Rico from the territory in the Alaska purchase, acquired from Russia in 1867, which had been held to be incorporated in Rasmussen v. United States. (306 - 307)


Application of 6th Amendment rights was circumvented because of Alaska's criminal procedure.

Reversed misdemeanor conviction for maintaining a place of prostitution.

Justice White "Opinion of the Court" (no dissent, concurring opinions)
- Found that Alaska had been 'incorporated' into the Union, and,

N/A
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<tr>
<th>Reid v Covert, 354 U.S. 1, 1 L. Ed. 2d 1148, 77 S. Ct. 1222 (1957).</th>
<th>N/A</th>
<th>Application of 6th Amendment rights to a trial by jury.</th>
<th>based on the Incorporation Doctrine, looked at the intent of Congress granting the territorial inhabitants &quot;all the rights, advantages and immunities of citizens of the United States&quot; found in the treaty between U.S. and Russia over the acquisition of Alaska. (197 U.S. at 522). Holding void provision of Act of June 6, 1900 § 171.</th>
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<tr>
<td>Justice Harlan &quot;Concurring Opinion of the Court to reverse on rehearing&quot; - Justice Harlan's concurrence was premised on the idea that the Constitution applies overseas, unless its application was &quot;impracticable and anomalous.&quot; He found that providing Fifth Amendment rights extra-territorially was impracticable and anomalous. Justice Harlan and Frankfurter agreed territorial cases to mean &quot;not that the Constitution 'does not apply' overseas, but that there are provisions in the Constitution which do not necessarily apply in all circumstances in every foreign place.&quot; Id at 74. In the Insular Cases, &quot;there is no rigid...rule that Congress, as a condition precedent to exercising power over Americans overseas, must exercise it subject to all the guarantees of the Constitution, no matter what the conditions and considerations are that would make adherence to a specific guarantee altogether</td>
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<td>Justices Clark and Burton &quot;Dissent&quot; - No reversal on rehearing. Declared that civilian dependents of U.S. servicemen may constitutionally be tried by an American military court-martial in a foreign country for an offense committed in that country. Stating &quot;Congress has provided in Article 2(11) of the Uniform Code of Military Justice, 64 Stat. 109, 50 U.S.C. 552 (1), that they shall be so tried in those countries with which we have an implementing treaty. The question therefore is whether this enactment is reasonably related to the power of Congress &quot;To make Rules for the Government and Regulation of the land and Naval forces.&quot;</td>
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<td>Appellate court emphasized, “a decision in this case [must] rest on a solid understanding of the present legal and cultural development of American Sāmoa. That understanding cannot be based on unsubstantiated opinion; it must be based on facts.” Specifically, it must be determined whether the Sāmoan mores and mātai culture with its strict societal distinctions will accommodate a jury system in which a defendant is tried before his peers; whether a jury in Sāmoa could fairly determine the facts of a case in accordance with the instructions of the court without being unduly influenced by customs and traditions of which the criminal law takes no notice; and whether the implementation of a jury system would be practicable. In short, the question is whether in American Sāmoa circumstances are such that trial by jury would be impractical and anomalous.” (emphasis added) 520 F.2d at 1147.</td>
<td>Appellate court dissent, balancing the stronger presumption that favored the application of constitutional provisions in a territory, like American Sāmoa. 520 F.2d at 1156-1161.</td>
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<tr>
<td>No Congressional Act. <em>Balzac v. Porto Rico</em> laid the grounds whereas jury trials in unincorporated territories were not required under the U.S. Constitution.</td>
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<tr>
<td>Application of 6th Amendment rights to a trial by jury.</td>
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<td>Revised Code of American Sāmoa, Rules of the High Court of American Sāmoa, and the rules and regulations of the Secretary of Interior, which deny the right of trial by jury in criminal cases in American Sāmoa are unconstitutional, and the defendant is permanently enjoined from enforcing any judgment of criminal conviction against plaintiff obtained without according him a right to trial by jury. The District Court for the District of Columbia determined that jury trials in criminal cases would not be impractical or anomalous in the territory and imposed the use of such trials in the territory.</td>
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<td><strong>Majority Opinion</strong> - &quot;The fact is that all of the hard evidence which bears on the actual situation in American Sāmoa today in terms of its legal and cultural development cuts the other way, and leads me to the inescapable conclusion that trial by jury in American Sāmoa as of the time when Jake King went to trial on the criminal charges here involved would not have been, and is not now, 'impractical and anomalous'.” <em>Id</em> at 20.</td>
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Source: Linē-Noue Memea Kruse, 2012

*Downes* is the landmark case here, because it was the first time that the U.S. Supreme Court directly addressed whether or not the provisions of the Constitution affect Congressional legislation in the Insular areas. Under *Downes*, the conflict was the 1900 Foraker Act, which authorized a duty that violated the Constitutional Uniformity Clause. The justices agreed that the Constitution is operative in connection with powers of the U.S. Congress over the Insular

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252 U.S. Const. art. I § 8: “all Duties, Imposts and Excises shall be uniform throughout the United States.”
areas, but, as Justice White declared, the more relevant question was whether Puerto Rico was incorporated “into and forms a part of the United States.”\textsuperscript{253} Examining the concurring opinion, the justices probed the Treaty with France that settled the Louisiana Purchase. Their overall opinion specifies that incorporation must be preceded by the intent by Congress to endow statehood. Dissenting Chief Justice Fuller discounts this kind of legalese because citizenship was not on the table for the Insular areas in question, particularly in Puerto Rico, and so therefore incorporation requiring the precipitation of statehood by the U.S. Congress was in effect a dead end for these Insular areas.\textsuperscript{254} Fuller realized that applying the language of ‘Congressional intentions’ to the incorporation of these foreign lands meant that they might never become incorporated unless the U.S. Congress expressed its intent to do so. Racial ideologies of Anglo-Saxon superiority could have also provoked Congressional and Supreme Court justice concerns about a territory’s ability (intelligence and sophistication) to self-govern, which was the criterion for the endowment of statehood.

The reluctance of the U.S. Congress to confer citizenship and execute a precise formula of incorporation demonstrates what appears to be a systematic denial of Constitutional rights to colored people—whether they were shades of black, brown, or yellow—within the American realm. Imperialists deliberately avoided mentioning race, while the national narrative hinged on racial ideologies, referencing social Darwinism, benevolent assimilation, the ‘white man’s burden,’ and Anglo-Saxonism. Negros also faced the continued denial of citizenship and other fundamental rights and privileges. In the 1830s, Alexis de Tocqueville wrote regarding the North:

The electoral franchise has been conferred upon the Negroes in almost all

\textsuperscript{253} 182 U.S. at 292. Justice White is clear that the intended incorporation in the uniformity clause for “United States” has broader meanings.

States in which slavery has been abolished, but if they come forward to vote, their lives are in danger. If oppressed, they may bring action at law but they will find none but whites among their judges; and although they may serve legally as jurors, prejudice repels them from that office. The same schools do not receive the children of the black and of the European; in the theaters gold cannot procure a seat for the servile race beside their former masters; in the hospitals they lie apart; and although they are allowed to invoke the same God as the whites they must be at a different alter and in their own churches, with their own clergy. The gates of heaven are not closed against them, but their inferiority is continued to the very confines of the other world. When the Negro dies, his bones are cast aside, and the distinction of condition prevails even in the equality of death. Thus the Negro is free [in the North,] but he can share neither the rights, nor the pleasures, nor the labor, nor the afflictions, nor the tomb of him whose equal he has been declared to be; and he cannot meet him upon fair terms in life nor in death.\textsuperscript{255}

George Frederickson writes that racism should be recognized as much more than an attitude or set of beliefs; it also expresses itself in practices, institutions, and structures that a sense of deep difference justifies or validates. Racism…is more than theorizing about human differences or thinking badly of a group over which one has no control. It either directly sustains or proposes to establish a racial order, a permanent group hierarchy that is believed to reflect the laws and decrees of God.\textsuperscript{256}

The U.S. Supreme Court only decided what Puerto Rico was not—it was not fully part of America but rather still, a ‘forming part of America’—meaning that Puerto Ricans were Americans but not citizens, a decision that gave rise to their status as one of ‘domestic in a foreign sense.’

An editorial describing the court’s illogical determination rendered the situation nonsensical:

Little by little the Porto Rican begins to find out where he stands and what he is. Not long ago his country was declared not to be a “foreign country”; his ships are “American”; as artist, he is “American”; as sailor, he appears to be “American”; and now it has been decided that he is not an “alien.” In view of the [Court’s] guarded statements, the almost total absence of discussion, and the fact that the question was narrowed to the interpretation of the word alien within the meaning of a particular act, it is difficult even to surmise the effect of this decision.

The salience of race is the underlying difference between Puerto Rico and other Insular territory ‘Americans’ and ‘continental Americans’ after the Spanish-American war. The experiences of the native peoples of the Insular territories were very similar to those of African

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Americans, Native Indians, Mexicans, and Asian immigrants to the United States in the late nineteenth century. Citizenship by birth has been the cornerstone to American democracy since the colonial days, and was reaffirmed by the U.S. Constitution. Traditionally, citizenship is secured by *jus soli* (birth on U.S. soil) or by *jus sanguinis* (born to U.S. citizen), or, secondarily, through the naturalization process. Although the Constitution of 1789 included multiple provisions that addressed citizenship, it did not provide an exact definition, which allowed the process of determining citizenship to be applied less than equally. In *Scott v. Sandford*, U.S. Constitutional rights were only given to citizens within the American political community, and the U.S. Supreme Court determined that “negroes” were categorized as “beings of an inferior order” and thus not part of the “people” as defined in the constitution. Each of these groups received “partial membership” in the American dominion. Partial membership is a


259 U.S. Const. amend. XIV, § 1.


261 U.S. Const. art. I, § 2, cl. 2: (a member of the House of Representatives must have been "a Citizen of the United States" for seven years); U.S. Const. art. I § 3, cl. 3: (a senator must have been "a Citizen of the United States" for nine years), Act of Mar. 26, 1790, ch. 3, § 1, 1 Stat. 103, 103-04 [repealed 1795] (A "free white person" could apply for citizenship after two years of residency in the United States).

262 U.S. (19 How.) 393 (1857) (*Dred Scott*) at 411. Subsequent U.S. Supreme Court decisions attempted to rectify this wrong to the definition of citizenship by the enactment of the 1868 Fourteenth Amendment that meant to protect people of all races.

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political manifestation of the racial ideology that is consistent with the Supreme Court’s earlier ruling *Plessy v. Ferguson* (1896) and systematic Chinese exclusionary mandates during the turn of the century.264

Race was the determining factor in deciding which territory would be considered a ‘desirable possession’ based upon the ethnic make-up of the society.265 Expansionists argued for the acceptance of foreign ‘alien’ mixtures in distant lands by appealing to the ideals implicit in the ‘White Man’s Burden’—the more foreign, the more likely the blessings of American liberty and advancement will civilize and tame them. At the same time, the U.S. resisted claiming people of ‘too backward’ a race that would threaten the makeup of the political American body. Paradoxically, the inclusion/exclusion scheme succeeds because it does not define the precise method for being classified as part of America. Without a precise method of inclusion, a ‘liminal space’ is created that justifies racially discrimination and the use race to determine when, who, and why a particular people or lands are ‘desirable.’266 Resting on this racially discriminatory scheme of exclusion, the U.S. Supreme Court in the Insular cases has specified U.S. Congress Plenary Power over the Insular areas without limitations.

*Organized, Unorganized, Unincorporated, Citizenship*

264 In *Plessy v. Ferguson*, 163 U.S. 537 (1896) the U.S. Supreme Court held that the "separate but equal" provision of private services mandated by state government is constitutional under the Equal Protection Clause of the U.S. Constitution. The “separate but equal” doctrine was frequently used by courts of law until *Brown v. Board of Education* [347 U.S. 483 (1954)], when it was repudiated as unconstitutional. *Chae Chan Ping v. U.S.*, 130 U.S. 581 [1889]) held that the Congressional Act of 1888 which prohibited Chinese laborer from entering the US who had departed before its passage, Chae Chan Ping was excluded for those reasons even with a certificate of re-entry; court held that the U.S. has the right to exclude foreigners at any time. For exclusionary Chinese citizenship laws and the associated policies see Ngai 2005, 40-59; Lee 2007; General citizenship and race see James Kettner, *The Development of American Citizenship 1608-1870* (Chapel Hill: University of North Carolina Press, 1978).
Territory, narrowly identified by the pre-existing Northwest Territory at the time of the ratification of the Constitution, was considered to be all non-state areas, which were typically wide open spaces of land.\textsuperscript{267} Within the continental U.S., territory classification had subdivisions: unincorporated or incorporated, and organized or unorganized.\textsuperscript{268} A territory that does not have an Organic Act is considered to be unorganized.\textsuperscript{269}

\textit{American} Sāmoa is one of five territories under the U.S. flag. \textit{American} Sāmoa, the Virgin Islands, and Guam are plainly known as U.S. territories. Puerto Rico and the Commonwealth of the Northern Marianas Islands (CNMI) are politically designated as commonwealths but legally classified as U.S. territories. All five of the island territories are considered to be “unincorporated” by the United States, because they are not inevitably destined to become states.\textsuperscript{270} All but \textit{American} Sāmoa are considered “organized” because the U.S. Congress has enacted an Organic act to establish a civil government.\textsuperscript{271} \textit{American} Sāmoa is an anomaly; it is the only U.S. territory that is considered to be “unorganized” and “unincorporated” because, although it has a legislature (\textit{Fono}) and an elected governor, the operation of the civil government is not the result of an Organic Act.\textsuperscript{272} Without an Organic Act, the two ratified Deeds of Cession provide the U.S. Congress with all governmental power over \textit{American} Sāmoa under the U.S. Constitution as repeatedly decided by the Insular cases. Guam and the Virgin Islands are organized territories under Organic Acts; their Constitutions may be changed by the people according to the terms within the Organic Act or by the U.S. In the case of \textit{American}

\textsuperscript{267} Northwest Territory Ordinance of 1787, Act of August 7, 1789, ch.8, 1 Stat. 50.
\textsuperscript{268} Ibid., § 6.5.
\textsuperscript{272} Roman, \textit{Other American Colonies}, 184, 190; Laughlin, \textit{Burger Court}, 84.
Sāmoa, the ‘unorganized’ status does not provide the benefits of being a more versatile governance structure because of the U.S. Congress’s bureaucratic layering of authorities over the territory. For example, revisions of the territorial American Sāmoa Constitution must be approved by the Secretary of the Interior and then ratified by an Act of Congress.\textsuperscript{273}

U.S. Supreme Court decisions dressed up exclusionary laws as ‘territorial doctrine,’ which masks the intent which was to protect the American political community and to prevent continental Americans from further inter-racial comingling.\textsuperscript{274} Citizenship status of people living in Insular territories is determined through the U.S. constitution or the traditional birthright process to citizenship, but rather through an Organic Act. Puerto Ricans received their U.S. citizenship not through the constitution but by the Jones Act of 1917, making them statutory-citizens.\textsuperscript{275}

In Guam, the Organic Act of 1950 established statutory U.S. citizenship for its residents. People of the U.S. Virgin Islands received statutory U.S. citizenship in 1927. United States Code also established start dates for each of these territories to determine when citizenship was conferred upon birth.\textsuperscript{276} In his dissenting opinion, Judge Juan R. Toreulla criticizes the U.S. “Court’s repeated efforts to suppress these [citizenship] issues” with the stigma of inferiority:

Although in a different format than presented on prior occasions, we once more have before us issues that arise by reason of the political inequality that exists

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\textsuperscript{274} Puerto Rico is the best example of a territory that was unwanted as a state due to its racial composition and non-English speaking native population.
\end{flushright}
within the body politic of the United States, as regards the four million citizens of this Nation who reside in Puerto Rico. This is a fundamental constitutional question that will not go away notwithstanding this Court's repeated efforts to suppress these issues. We can now add to that dismal list the endeavors of the lead opinion. This is a most unfortunate and denigrating predicament for citizens who for more than one hundred years have been branded with a stigma of inferiority, and all that follows therefrom. At the root of this problem is the unacceptable role of the courts. Their complicity in the perpetuation of this outcome is unconscionable. As in the case of racial segregation, see Plessy v. Ferguson, 163 U.S. 557 (1896) (overruled by Brown v. Bd. of Educ., 347 U.S. 482 (1954)), it is the courts that are responsible for the creation of this inequality. Furthermore, it is the courts that have clothed this noxious condition in a mantle of legal respectability. But perhaps even more egregious is the fact that it is this judiciary that has mechanically parroted the outdated and retrograde underpinnings on which this invented inferiority is perpetuated. This result is now reached without so much as a minimum of analysis or consideration for the passage of time and the changed conditions, both legal and societal. These changed conditions have long undermined the foundations of these judge-made rules, which were established in a by-gone era in consonance with the distorted views of that epoch. Although the unequal treatment of persons because of the color of their skin or other irrelevant reasons, was then the modus operandi of governments, and an accepted practice of societies in general, the continued enforcement of these rules by the courts is today an outdated anachronism, to say the least. Such actions,
particularly by courts of the United States, only serve to tarnish our judicial system as the standard-bearer of the best values to which our Nation aspires. Allowing these antiquated rules to remain in place, long after the unequal treatment of American citizens has become constitutionally, morally and culturally unacceptable in the rest of our Nation, see Brown v. Bd. of Educ., 347 U.S. 483, is an intolerable state of affairs which cannot be excused by hiding behind any theory of law. The conclusions of the lead opinion in refusing to consider the merit of Appellants' claims is particularly inexcusable because, as will be further elaborated, the present decision cannot be legitimately grounded on the Supreme Law of the Land, which requires that Appellants be provided an effective judicial remedy for the correction of the wrongs they allege. See International Covenant on Civil and Political Rights, art. 2, § 3, Dec. 19, 1966, 999 U.N.T.S. 171 (hereinafter ICCPR) (“Each State Party [including the United States] undertakes [t]o ensure that any person whose [ICCPR] rights are violated shall have an effective remedy,” and to ensure that these rights are “determined by competent judicial, administrative, or legislative authorities.”) The suggestion that Appellants seek a political rather than a judicial remedy to correct the grievous violation of their rights claimed in this action, is, at a minimum, ironic given that it is precisely the lack of political representation that is the central issue in this case. It is this lack of any political power by these disenfranchised U.S. citizens, and the cat and mouse games that have been played with them by the United States government, including its courts, that have resulted in their interminable unequal condition. When this status of second-class citizenship is
added to the also judicially established rule that grants Congress plenary powers over the territories and their inhabitants, i.e., that recognizes in Congress practically unfettered authority over the territories and their inhabitants, one has to ask what effective political process is the lead opinion suggesting be turned to by Appellants to resolve the constitutional issues raised by this case? In fact, the referral by the lead opinion to the exercise of political power by these disenfranchised citizens, as the solution to their political inequality is nothing more than the promotion of the continued colonial status that has existed since Puerto Rico was acquired by the United States as booty after the Spanish-American War of 1898. As such, this suggestion is totally lacking in consequence or substance, and undeserving of a serious response. With the primary vehicle for exerting effective political pressure being barred by the lack of elected voting representatives in Congress, it is a travesty to tout the political process as a means of vindicating the fundamental inequality of the United States citizens who reside in Puerto Rico. The lead opinion's ruling is the equivalent of having decided, before Brown v. Board of Education, that African-Americans should forgo their right to judicial action under the Constitution as the road map to overruling the inequality promoted by Plessy. 277

Citizenship status allocates not just rights, privileges, and recognition but also “notions of membership, representation, or political participation” to an individual within the U.S. sphere, while concurrently situating their place within the American political community. 278 Chief

277 Gregorio Igartúa et. al v. United States of America et. al. No.09-2189, United States Court of Appeals, First Circ., (Nov. 24, 2010).
278 Sparrow, Insular Cases, 161.
Justice William Rehnquist has affirmatively declared: “In constitutionally defining who is a citizen of the United States, Congress obviously thought it was doing something, and something important. Citizenship meant something, a status in and relationship with a society which is continuing and more basic than mere presence or residence.”279 Ediberto Román artfully describes:

Citizenship, therefore, involves more than the right "to go to the seat of government;" it also includes "the sense of permanent inclusion in the American political community in a non-subordinate condition, in contrast to the position of aliens. The label "citizen" is "applicable only to a person who is endowed with full political and civil rights in the body politic of the state. Thus, citizenship signifies an individual's "full membership" in a political community where the ideal of equality is supposed to prevail.280

Classically, the Western concept of citizen can be traced to Aristotle in the mid-300s B.C. He claimed that “a state is composite, like any other whole made up of many parts; these are the citizens, who compose it.”281 Upon drafting the U.S. Constitution, the founding fathers found it important to address the need to protect the citizenry. James Madison writes in Federalist Paper No. 51:

Is it of great importance in a republic, not only to guard the society against the oppression of its rulers; but to guard one part of society against the injustice of the other part. Different

281 Aristotle, Politics Books III 126.
interests necessarily exist in different classes of citizens. If a majority be united by a common interest, the rights of the minority will be insecure. There are but two methods of providing against this evil: the one by creating a will in the community independent of the majority, that is, of the society itself; the other by comprehending in the society so many separate descriptions of citizens, as will render an unjust combination of a majority of the whole improbable, if not impracticable.\textsuperscript{282}

The Fourteenth Amendment to the U.S. Constitution details the provision for citizenship: “All persons born and naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside.”\textsuperscript{283} The Fourteenth Amendment still affirms that some places that are not “within” the United States are still subject to its jurisdiction. Birthright citizenship under the Citizenship Clause, however “is not extended” to persons born in U.S. territories.\textsuperscript{284}

\textit{U.S. Citizenship and American Sāmoa}

Cynics may argue that, relative to the full membership and equality that continental Americans enjoy, the law has created an inferior citizenship for insular ‘noncitizen Nationals’ and ‘statutory granted citizens.’\textsuperscript{285} In \textit{American Sāmoa}’s case, “partial membership” works to

\textsuperscript{282} Rossiter, \textit{Federalist Papers}, 323-324.
\textsuperscript{283} U.S. Const. art. XIV, § 2.
protect the customary institutions and traditions, and so a push for full equality is not embraced by the American Sāmoa citizenry. Full application of the U.S. Constitution would unravel the existing protections to communal land tenure, which is founded upon race and the chiefly (nobility) title system.

In addition to civil and human rights, the following individual rights are enumerated in the Revised Constitution of American Sāmoa, Article I: “separating church and state; freedom of press, religion, speech, and assembly; right to petition the government for redress of grievances, due process prohibits the deprivation of life, liberty, or property without due process of law and requires just compensation when private property is taken for public use.” Certain provisions of the U.S. Bill of Rights also provide for individual rights: the dignity of the individual to be respected, that a person is presumed innocent until pronounced guilty by law, the privilege of the writ of habeas corpus, and the prohibition of cruel or unusual punishments. In American Sāmoa the enumeration of human and individual rights within the Revised Constitution also supports and identifies the customary traditions of the fa’asāmoa, namely customary land.

**American Sāmoa**

American Sāmoans are U.S. Nationals and not U.S. Citizens. The Revised Constitution of American Samoa is able to provide Constitutional protections to native American Sāmoans against alienation of lands and protections against the destruction of the Sāmoan way of life. U.S. Citizenship, however, is derived from the Fourteenth Amendment to the U.S. Constitution or from a specific statute signed into law by the U.S. Congress to confer citizenship.

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286 Ntumy, *South Pacific*, 442.
287 Ibid., 443.
Statutory citizenship has been enacted for every other Insular territory, including Puerto Rico, CNMI, Guam, and Virgin Islands.\textsuperscript{290}

For American Sāmoa, it appears that fear has kept the Fono or any other Sāmoan institution or local civic group from directly addressing the issue of U.S. citizenship within the legislative arena or even at the gubernatorial level. U.S. Nationals may obtain U.S. citizenship via naturalization; if they have lived in any outlying U.S. territory for a minimum of five years immediately preceding their application, they can become citizens by moving to continental America and establishing domicile there for at least three months.\textsuperscript{291}

There is one exception to this rule. Any U.S. National or alien who was on reserve or on active-duty status in the Armed Forces during hostility periods designated by the President through Executive Order—including World War I, World War II, Korean and Vietnam hostilities and who was engaged in armed conflict with foreign forces, may receive immediate citizenship under the special wartime provision.\textsuperscript{292} For soldiers in American Sāmoa, the first time this special wartime provision was used was September 10, 2010, when 42 Toa o Sāmoa soldiers were sworn in as U.S. Citizens by the U.S. Citizenship and Immigration Services (USCIS).\textsuperscript{293} Several dozen American Sāmoa soldiers previously deployed in Iraq were sworn in as U.S. Citizens in October 2014 by the USCIS at the Tafuna Veteran Memorial Monument Hall.\textsuperscript{294} In the future, there may be more U.S. National soldiers eligible for citizenship, as the American

\textsuperscript{291} U.S. Const. amend. XIV, § 1 states: that “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States of the State wherein they reside.” For the process of naturalization (for U.S. Citizenship) of U.S. Nationals, see 8 U.S.C. § 1427 and 8 U.S.C § 1436.
\textsuperscript{292} 8 U.S.C. § 1440; 8 C.F.R. 329.2.
\textsuperscript{294} B. Chen, “Am. Sāmoa Army Recruiting Station Ranked #1 In the World,” Sāmoa News, September 16, 2014.
Sāmoa Recruiting Station is ranked first out of the 885 recruiting stations in the U.S., all its territories, Palau, Marshall Islands, Federated States of Micronesia, Europe, Japan, and Korea.295

American Sāmoa Delegate to U.S. House of Representatives Faleomavaega recently submitted a bill to the U.S. Congress that would waive certain requirements for naturalization. His proposal is not without jabs at the current process:

Currently, U.S. nationals are required to follow the same procedures for naturalization to become U.S. citizens, as legal permanent residents, or green card holders who come to the U.S. from every nation in the world. These procedures, which may take longer than a year to complete, include filing of an application, interview, finger printing, test of English proficiency, test of knowledge of U.S. history and government, and requires that an applicant lives within the United States a minimum of three months prior to applying for naturalization. I find that many of these procedures are unnecessary for U.S. nationals living in American Sāmoa. For example, why should a U.S. National living in American Sāmoa be required to take a test on U.S. history, government, civics, or English proficiency when our public school system is the same as anywhere else in the United States. Despite the historical relationship and the sacrifices that American Sāmoans have made on behalf of the United States, U.S. nationals are still required to travel to the States and live there for 3 months in order to apply for naturalization. My legislation will ease this travel burden by allowing U.S. nationals to apply for citizenship directly from American Sāmoa. After all American Sāmoa is a territory of the United States. As American Sāmoans we are considered non-

295 Ibid.
citizen nationals, but have defended the United States in times of war as if we were citizens. I am hopeful that my colleagues in the U.S. House of Representatives and the U.S. Senate will stand and support this critical legislation which recognizes the sacrifices and contributions by our people to the United States and give U.S. nationals living in American Sāmoa an option to apply for U.S. citizenship directly from American Sāmoa.”

If Faleomavaega’s bill becomes law, there will be no requirement for continental residency. What is alarming about this issue for American Sāmoa is that for Sāmoan Nationals there are two competing values to the issue of citizenship. First, the traditional customs are protected by certain provisions of the Constitution that do not apply in the territory due to its legal status (unorganized and unincorporated). Second, the ideal of full citizenship offers credibility to an American Sāmoan as an equal amongst all Americans – continental and territorial. In some cases, federal jobs are not eligible to them due to not being U.S. citizens, even as war veterans.

In April 2012, the American Sāmoa Bar Association held its fortieth Anniversary Law Conference at the American Sāmoa Community College. There was only one panel discussion on the topic of citizenship. The panel was made up of four Sāmoan attorneys, two of whom proposed to establish a path to citizenship in the territory. One of these two lawyers proposing to establish U.S. citizenship in the territory, (a former representative in the Fono - House of Representatives) lamented that he twice proposed a measure for citizenship in the Fono and that both times it didn’t get past the first reading. What is telling about this conference is the response by the audience; all concerns directed at the issue of citizenship led back to the fears of

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297 American Sāmoa Bar Association Law Conference, American Sāmoa Community College Conference Room, April 28th, 2012; Fainu’ulelei Alailima-Utu, Charles Alailima, Roy Hall, Afoa L. Suesue Lutu (Panelists without papers [all panelists are Sāmoan and practicing attorneys in American Sāmoa]).
what citizenship would do to the protection of customary land that is based on Sāmoan ethnicity and the *fa’amātai* system.

Delegate Faleomavaega echoes the fear about U.S. citizenship for *American* Sāmoa. The basis for his argument is a lawsuit by the Constitutional Accountability Center (CAC), a Washington D.C. based liberal non-profit, suing for U.S. citizenship in *American* Sāmoa. Faleomavaega objects to a federal court taking away the freedom of *American* Sāmoa residents to choose citizenship. In his objection to the CAC, he expressed his deep concerns for the Sāmoan culture and the possibility that choices about U.S. citizenship will be taken from *American* Sāmoa residents:

I am writing to express my serious concerns with the Constitutional Accountability Center’s (CAC) proposed plan to file a lawsuit in federal court to make U.S. citizenship automatic for individuals born in American Sāmoa. As you have noted, the current naturalization process has proved to be burdensome to many American Sāmoans. However, I cannot offer my support to the CAC’s efforts for the simple reason that the issue of U.S. citizenship for American Sāmoans should be decided by the people of American Sāmoa and the U.S. Congress, not by a federal court.

The CAC’s proposed lawsuit poses much uncertainty as to whether our Sāmoan culture will be protected or challenged in federal court. As you are well aware, the application of the U.S. Constitution to American Sāmoa presents significant threats to our Sāmoan traditions founded on a 3,000 year old culture. In *Craddick v. Territorial Registrar of American Sāmoa* the American Sāmoa High Court
upheld cultural preservation laws in American Sāmoa. However, this ruling is not a binding precedent in federal district courts. Moreover, there is a possibility of a third party challenge to our cultural traditions that may not necessarily be in compliance with federal law and certain provisions of the U.S. Constitution.

It should also be noted that the federal court’s ruling in King v. Morton (520 F.2d 1140 (1975) decided that the constitutional right to a jury trial applied to American Sāmoa despite objections from 13 witnesses, including traditional leaders, who testified against having jury trials in the territory. The court’s reasoning in King, was that American Sāmoa institutions had become sufficiently Americanized; therefore, jury trials should be required in criminal cases as it is in accordance with the requirements of “due process” in the U.S. Constitution. Consequently, the federal court created a new mandate by judicial legislation that brought American Sāmoa in compliance with the U.S. Constitution, despite the uncertainty as to whether jury trials could be effectively implemented in the territory.

My concern is that the application of certain constitutional issues to American Sāmoa such as “due process” and “equal protection” may pose a threat to other aspects of our laws that were enacted to protect and preserve our Sāmoan traditions and culture.

In light of the CAC’s initial purpose in filing this lawsuit, I would nevertheless like to inform you that I have introduced an amendment to change certain

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298 Craddick v. Territorial Registrar, 1 ASR 2d 11 (1980).
provisions of the federal immigration law to benefit our U.S. Nationals. The proposed amendment would allow U.S. nationals to apply for U.S. citizenship directly from American Sāmoa, rather than having to travel to a state and maintain residence for three months before qualifying to apply to become a U.S. citizen.

It is critical that the people of American Sāmoa be given an opportunity to decide for themselves whether or not they want U.S. citizenship.

*I cannot support a lawsuit that will cause a federal court to authorize this process, especially when this issue is still uncertain in the minds of the people of American Sāmoa.*”  

Delegate Faleomavaega continued to express his concerns over the CAC’s lawsuit in a local Editorial piece in the Sāmoa News:

On the question whether to grant U.S. Citizenship to the residents of American Sāmoa, I believe this question should be left to the U.S. Congress and the people of American Sāmoa to decide, and not by federal interpretations of federal laws and the U.S. Constitution. The court-pending lawsuit by CAC lawyers, while I respect their right to file-is a clear example of the federal court imposing its will through “judicial legislation,” and by the stroke of the judge’s pen, may likely declare that all U.S. Nationals living in American Sāmoa will automatically become U.S. citizens, without any statutory laws to be enacted by the U.S. Congress to grant U.S. citizenship to U.S. Nationals. Unlike all other U.S.

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territories, American Sāmoans are the only people under U.S. jurisdiction who are classified as U.S. Nationals. And under current federal law, a U.S. National is someone who owes “permanent allegiance” to the United States, but who is neither a U.S. citizen nor an alien. It is very unfortunate that the pending CAC lawsuit will be using American Sāmoans as its “bait” to make its legal claim to overturn past U.S. Supreme Court cases that (e.g. *Downs vs. Bidwell* etc.,) ruled on legal issues that came out of U.S. insular cases-especially from Puerto Rico.300

**Fourteenth Amendment and Fundamental Rights**

The CAC’s ultimate mission is to enforce the Constitution in its entirety, not selectively, regardless of the considerations imposed by race, culture, or indigenous custom. According to the CAC website, its main focus for citizenship rights is taken from the Fourteenth Amendment of the Constitution— the “Citizenship Clause.”301 The trepidation in American Sāmoa about the application of Fourteenth Amendment in its entirety is well founded. The Fourteenth Amendment reads:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in
aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.302

Due Process and Equal Protections

The Fourteenth Amendment, in addition to addressing citizenship, directs due process and equal protections for all American states. The Equal Protection Clause subjects all people to the same laws, while Due Process provides for the protection of life, liberty, and property in the course of the administration of justice. During the Reconstruction Era, the Fourteenth Amendment established Constitutional protections and safeguards to all people—especially important because of the racial segregation and widespread discrimination against people of color. Equal Protection ensured that people of color would enjoy the same rights as papālagi; this clause underpins the equal protection of the laws for all Americans to prevent undue harm by the Government. Due Process affords individuals, regardless of color, fairness and equality in civil or criminal proceedings.

If the CAC lawsuit is successful and the federal courts mandate statutory-Citizenship in American Sāmoa based on the Fourteenth Amendment and the Citizenship Clause, then the Equal Protection and Due Process Clauses will come into play. American Sāmoa currently practices American Sāmoan-only land ownership and the fa ‘asāmoa mātai system that is attached to the Fono, a bi-cameral legislature. In the Senate, “only a registered mātai of a Sāmoan family who fulfills his obligations as required by Sāmoan custom in the county from

302 U.S. Const. amend. XIV § 1-5.
which he is elected may be a Senator.” Additionally, “Senators must be elected in accordance with Sāmoan custom by the County Councils of the County of Counties they are to represent.”

American Sāmoa currently violates the Equal Protection and Due Process Clauses of the Fourteenth Amendment by practicing ethnicity-based land ownership, adhering to a nobility system (mātai), and following an election process that requires of civil servants to the Senate performance of chiefly custom. No other American state has ethnicity-based exclusionary laws and practices that require title and cultural performance for elected officials. The fear among Sāmoans is that if the Citizenship Clause is mandated, American Sāmoa will not be allowed to go on with these “un-Constitutional,” traditional cultural practices.

Unlike the statutory-U.S. citizenship granted by the U.S. Congress to all other U.S. Insular territories, the federal courts have the authority to fully apply the Fourteenth Amendment to American Sāmoa. Delegate Faleomavaega argues that this citizenship issue must be decided by local American Sāmoa U.S. Nationals, not by any overseas entity attempting to circumvent the local political process, including the federal courts in Washington D.C. U.S. Department of the Interior Assistant Secretary Eileen Sobeck testified before the U.S. Senate Committee on Energy and Natural Resources regarding Senate Bill 1237, the Omnibus Territories Act of 2013, on July 11, 2013 in the 113th U.S. Congress. Sobeck recognized the U.S. National status reserved for persons born in American Sāmoa, which was upheld on June 26, 2013, by the United States District Court for the District of Columbia in Leneuoti Fiafia Tuaua et al. v. United States of America et al. Sobeck states that “To date, the Congress has not seen fit to bestow birthright citizenship on American Sāmoa, and in accordance with the law, this Court must and

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304 Ibid.
Sobeck went on to say that the plebiscite called for in section 19 of the Omnibus Act will bring new discussion and a collective vote in the American Sāmoa if the people favor citizenship. The formal procedure vis-à-vis the U.S. Congress should first be met domestically, through the democratic process of voting by residents that live in the territory to determine if they favor birthright citizenship. If so, then American Sāmoa leaders can approach the Secretary of the Interior and the U.S. Congress to seek action on the citizenship issue.

It is political naiveté to think that the federal courts will agree to apply the Fourteenth Amendment selectively in order to protect American Sāmoan customs and traditions. Although the CAC lawsuit may only address the Citizenship Clause now, the outcome of this lawsuit may demand the full application of the Fourteenth Amendment, including Due Process and Equal Protection, in American Sāmoa.307

U.S. Department of the Interior

It is critical to note that the Secretary of the Interior and the U.S. Congress have granted American Sāmoa constitutionally-protected provisions of custom and tradition that are permitted for a U.S territory. In February 19, 1951, President Harry Truman sent a letter to the Department of the Interior about its new role in administering American Sāmoa, (replacing the Naval Administration). The letter states “In particular, I want the people of Sāmoa to have my personal assurance that their traditional rights and lands will be protected while, with their help, the civilian administration finds ways to promote their political, economic, and educational advancement.”308

In 1960, the Department of the Interior issued a special policy statement on American Sāmoa and the need to protect the culture. It proclaims:

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306 Ibid. See also Tuaua v. United States, 951 F. Supp. 2d. 88 (D.C. Cir. 2013).
307 This issue will also be further addressed in Chapter 6.
The political structure of the government shall be in accord with the desires of the Sāmoan people in regard to such adaptations as may be desirable by virtue of Sāmoan customs, traditions and land ownership. During the period of development of self-government, the people and their resources shall be protected against undesirable exploitation. Protection of Sāmoans against the loss of their family lands is an important policy not only as regards the economy, but also as it may affect the Sāmoan “mātai” system. It is the policy to maintain this protection.\textsuperscript{309}

The retention of Sāmoan cultural identity is further articulated in the American Sāmoa Constitution of 1960 and American Sāmoa Code Annotated.\textsuperscript{310} The ‘partial-membership’ of American Sāmoa into the American body-politic, by virtue of its definition by the U.S. Supreme Court as an unorganized and unincorporated territory, tolerates these cultural protections within the U.S. sphere of influence, as long as the U.S. federal courts do not decide otherwise.

\begin{center}
\textit{Growth of Individually Owned Lands}
\end{center}

In a modern, moneyed economy, some traditional aspects of Sāmoan custom have changed with respect to communal lands. War over land and power has been replaced with war in the courts. The American Sāmoa Land and Titles Court is made up of laws, statutes, and regulations that are only partly in accordance with Sāmoan custom.

Substantial distinctions between Independent State of Sāmoa and American Sāmoa Land and Titles Court make land and mātai title disputes that cross the two jurisdictions noteworthy. In American Sāmoa, land and mātai title cases are brought before the Land and Titles Court with lawyers to present the case to the judges. In Independent State of Sāmoa, Western-trained

\textsuperscript{309} \textit{“Annual Report of the Governor of American Samoa to the Secretary of the Interior,”} (1960), 71 [Appendix III, State of Objectives and Policies.]

\textsuperscript{310} \textit{Revised Constitution of American Samoa,} art. I §3; A.S.C.A. 1.0202.
barristers are not permitted to present land and mātai title cases. For both American Sāmoa and Independent State of Sāmoa, the difficulty in determining land and titles disputes without the traditional means of dialogue and/or threat of war required a new system to resolve land and mātai titles disputes. Independent State of Sāmoa created the Land and Titles Court, which was effectively a hybrid system that accommodated both Sāmoan culture and custom, and Western democratic jurisprudence. In the Land and Titles Court, land and mātai title cases are brought before the court not by barristers but by individuals in dispute. Barristers are not permitted to speak on behalf of any claimant in the Land and Titles Court. Judges have no law degrees but are appointed because of their expertise with Sāmoan culture, genealogy, land, history, oratory, and language skills.

In American Sāmoa, all land and titles disputes are first heard at the local government level with the Office of Sāmoan Affairs. The Office of Sāmoan Affairs acts as a neutral third party to resolve disputes. The parties in dispute must meet with the Office of Sāmoan Affairs at least two times before going to the Land and Titles Court. American Sāmoa’s Land and Titles Court has formalized the American jurisprudence of law: attorneys represent disputing parties in front of Western-trained judges accompanied by several Sāmoan judges, a remnant of the Naval past when all Chief Justices were foreigners and needed experts of land and mātai to assist them in adjudicating land and titles cases.311

Mechanisms of Protections and Failures for Communal Land Tenure

Treaties of Cession which require, among other things, "respect and protect[ion . . .] of all people dwelling in Tutuila to their lands,"312 and that "the rights of “all people concerning their

311 See Leiato v Howden, 1 A.S.R. 149 (1906). The President of the High Court was Commandant Tilley with Edwin Gurr as the District Judge of United States Navy, and Mauga Taufaasau as District Judge of Mao’putasi.
property according to their customs shall be recognized.” The Revised Constitution of American Sāmoa mandates a policy of protective legislation, which requires the courts to interpret statutes in a way that is protective of the Sāmoan custom. Articles I and III state in relevant parts:

It shall be the policy of the government of American Sāmoa to protect persons of Sāmoan ancestry against alienation of their lands and destruction of the Sāmoan way of life.

Additionally, Article I, section three, and Article II, section nine, of the Revised American Sāmoa Constitution require that any bill proposing a change in the law respecting the alienation or transfer of land be passed by two successive legislatures by a two-thirds vote of the entire membership of both houses.

Despite all the customary land preservation mechanisms, there is still opportunity for mischief under the current registration statutes. Currently the protective mechanisms are statutes regulating the alienation of lands. Not only has the High Court allowed individualized holding, but the Fono (Legislature) has also made the individualization process relatively easy by passage of the Land Registration Act. This Act provides:

Registration—Absence of conflicting claim a prerequisite.

(a) The owner of any land in American Sāmoa not previously registered may register his title thereto with the Territorial Registrar.

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315 Ibid.
(b) No title to land shall be registered unless the Registrar is satisfied that there is no conflicting claim thereto and unless the description clearly identifies the boundaries of the land by metes and bounds.

(c) Every registration shall specify whether the land is registered as family owned communal land or *individually owned* land.

In other words, any individual can register a claim to "any land [. . .] not previously registered," which comprises the majority of land in the territory, as long as no one objects in 60 days. Such title registration has been consistently upheld by the courts. Walter Tiffany suggests this title registration of native lands leads to individual ownership by effectively "individuliz[ing] land rights and confer[ring] security of tenure against other descent group members."316 Through this registration process, the Territorial Registrar has registered individual title claims to uncleared and uncultivated bush land. Tiffany prophetically asserts that “whether the people of American Sāmoa wish to see their traditional land tenure patterns so affected, only they can say.” In other words, when the local people determine what type of future they want to have, they will be able to influence the furthering, lessening, or other change of protections to traditional land.317

Since individual land tenure was created by the courts without any territorial input or legislative discussion, a few jurists eventually used it to qualify individual ownership elements of land tenure. The American Sāmoa Code Annotated (A.S.C.A.) is silent on the issue of individually owned lands. Individually owned land was born from a series of judicial decisions allowing for this classification of land based upon continuous occupancy and cultivation.318 The Naval jurists expressly relied upon the doctrine in Herbert T. Tiffany in *The law of real property and other interests in land* and Henry S. Maine *On Ancient Law: Its Connection with the Early*

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317 Ibid., 152-153.
History of Society, and its Relation to Modern Ideas (1864) which Associate Justice Thomas Murphy extensively cites in Taatiatia v. Misi. In Taatiatia, Justice Morrow took from Maine and Tiffany, the concept of individual right to land. In Aleona v. Suipolu the Naval jurists proposed the rights of individually owned land by implication to the title or individual right to land and then steadily the doctrine was built upon with successive cases. In 1948, Chief Justice Arthur Morrow, in Taatiatia v. Misi, espoused how a claim of right under “individually owned land” may be granted for virgin lands using the law of old England. Chief Justice Morrow stated:

It is our conclusion from the evidence, which in some respects is conflicting, that Misi entered upon the land in 1919 while it was bush and cut the large trees thereon and that after letting the trees lie for a year he burned them and proceeded to put in plantations, and that he has used the land ever since for plantation purposes. The land being bush and not occupied by anyone was res nullius, the property of no one. When Misi entered upon it and cut down the trees and put in his plantations and claimed the land as his own, it became his in accordance with the customs of the Sāmoans, which customs, when not in conflict with the laws of American Sāmoa or the laws of the United States concerning American Sāmoa, are preserved. Sec. 2 of the A.S. Code. There is no law of American Sāmoa or of the United States concerning American Sāmoa in conflict with the customs of the Sāmoans with respect to the acquisition of title to bush land. Blackstone considered that an original title to property was acquired by the first occupant

under a claim of ownership. Thirty years later, Justice Murphy, hearing the appeal on *Leuma v. Willis* and obviously unimpressed with Judge Morrow’s overview of Sāmoan traditional customary land usage in *Taatiatia v. Misi*, criticized Morrow’s opinion as misinterpreting Sāmoan custom. Murphy disagreed with Morrow’s view that virgin bush belongs to no one, and averred that Morrow was misapplying the law of old England to a completely different land system and culture. In the dissent in Taatiatia, Appellate Justice Murphy questioned Morrow’s application of Blackstone and Maine in *American* Sāmoa. Justice Murphy obstinately quips, “it seems Justice Morrow misstated Samoan custom (that virgin bush belonged to no one), and then applied the law of old England (Blackstone and Maine) to a land system and culture completely different. It is no wonder he got such a result as the concept of homesteading individually owned land.”

The common law of England was introduced into most of the countries in the South Pacific during the colonial expansion. Cook Islands, Niue, Sāmoa, and Tokelau were acquired as dependencies of the British colony of New Zealand. New legislation stated that colonial outpost lands were vested in the British Crown. Tonga followed suit in its Constitution of 1875, which states that “All the land is the property of the King.” The Common law of England was readily used as authority for enlightened western law and civility in the South Pacific region.

The core problem with Morrow’s application of the Commentaries by Sir William Blackstone to incorporate the concept of individual land ownership is that the political philosophy precepts are born from the belief of a Christian God. This assumes two things: there

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325 Ibid., at 9 (1948).
326 *Cook Islands Act 1915* (NZ), sec. 354; *Sāmoa Act 1921* (NZ), sec. 268; *Tokelau Amendment Act 1976* (NZ), sec.20; exception to land ownership were freehold and customary lands.
327 *Tonga Constitution (1875)* §104.
is only one god, and all men are Christian. Sir William Blackstone’s Commentaries Book 2 is taken in part from the works of Cicero, where the focus is upon the individual man. In England, Blackstone’s Commentaries were used like a code, providing ammunition in the creation of legislation, a movement towards clearer and more substantive English law.

In the Enlightenment era, Europeans were beginning to defy the notion that Kings and Queens were earthly representatives of God. Enlightenment thinkers proposed that men are individuals with natural born rights, while the rights of women were later addressed by the French. Enlightenment writings ground the absolute rights of individuals in Christianity scriptures and thought, which hold that the omnipotent Christian creator gave to man “dominion over the all the earth; and over the fish of the sea, and over the fowl of the air, and over every living that that moveth upon the earth.” English Law and Christianity were intertwined, but in American Sāmoa the traditional religion has many gods and the culture is founded on the family and village. The question here of whether the English concept of individual and natural right is absolutely acceptable in different religious and cultural context needs to be addressed.

The application of the Blackstone Commentaries to delineate land ownership in American Sāmoa based on the notion of the ‘individual’ is completely incongruent to the underlying cultural and religious backbone of this Polynesian society. Through the gradual imposition of

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333 Tupua Tamasese, In search of harmony: peace in the Sāmoan indigenous religion, Presentation Pro manuscript given in Rome, Italy, January 12 – 15, 2005; Malama Meleisea, “To whom gods and men crowded: chieftainship
foreign land principles, the Naval Administration promoted concepts of property based on principles of natural justice expressed in English common law. Concepts of law and society prioritized the expression of the individual over the rights of the community, which took the form of family and village. These new formations of natural justice were colonialist attempts to promote economic and social development throughout the world.\textsuperscript{334} Classic legal pluralism, found as the outcome of a colonial encounter in which a Western colonial body of law incorporates an indigenous/customary body of law.\textsuperscript{335} Michael Hooker suggests that since the absorption of the indigenous body of law is always achieved from a place of power, the status and dominion of this body of law is determined by “legal arrangements controlled by the colonial authorities,” a ‘servient’ position vis-à-vis the dominant position of the Western body of law.\textsuperscript{336} Hooker’s theory suggests that these identified set of norms are controlled by the state,
and in the case of American Sāmoa, – by the Naval Administration. The Court, an appendage of the state, exerted its civilizing influence through the authority of law, which led to the acceptance of the conceptions of land within Sāmoan societies.

In 1962 the American Sāmoa Fono (legislature) passed laws recognizing the concept of individually owned land without defining it, but restricted its ownership to: (1) a full blood[ed] American Sāmoan, or (2) a person who is of at least one-half Sāmoan blood, was born in American Sāmoa, is a descendant of an American Sāmoan family, lives with Sāmoans as a Sāmoan, has lived in American Sāmoa for more than five years, and has officially declared his intention to make American Sāmoa his home for life. Associate Judge Richard Miyamoto in December 1974 defined individually owned land as:

land that may be described as that land (1) cleared in its entirety or substantially so from virgin bush by an individual through his own initiative and not by, for, or under, the direction of his aiga or the senior mātai, (2) cultivated in its entirety or substantially so by him, and (3) occupied by him, or his family, or agents continuously from the time of the clearing of the bush.

The 1979 Economic Development Plan for American Sāmoa (FY 1979 – 1984) recognized the threat and trend of individually owned land interest over the traditional communal land concept:

Because most communal land has not been surveyed and registered, portions of “neglected” communal land holdings which had not been developed or cultivated are susceptible to encroachments by Sāmoans seeking individually owned native land.

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337 Ibid., 290-298.
land through homesteading, as well as by members of neighboring aigas who have settled on land without knowing the boundaries of adjacent communal lands. Increasing numbers of such cases are being adjudicated by the High Court of American Sāmoa. As a result, some communal landowners are beginning to feel that property rights must be diligently protected since the law recognizes the forfeiture to others when such lands are not utilized by communal landowners (emphasis added).³⁴⁰

The group that authored the 1979 Economic Development Plan was composed of traditional leaders, mātai, and businesses, they recognized the threat that individually owned land posed to the communal land tenure, and argued that property rights of communal lands must be protected from this introduced ‘homesteading’ practice. It was believed at that time, based on the analysis of the Department of Commerce Territorial Planning Commission that the transfer of communal native lands to individually owned native lands had increased for several reasons, including that

1. A growing minority of Sāmoan families desire to break away from the communal obligations that are required of those who settle on communal land.

2. Individual members of a family do not have perpetual rights to communal lands; therefore the acquisition of individually owned land would assure that property and land could be willed to their children or other heirs.

3. Individually native land is an acceptable form of collateral for obtaining home and business loans.\textsuperscript{341}

The growth at that time of converting communal lands to individually owned lands seems to reflect a more Americanized lifestyle, one free from village obligations. Land ownership enabled private property to be freely used and willed to heirs.

The earlier 1969 Economic Development Plan for \textit{American} Sāmoa, drafted by Washington D.C. consultants under contract to the U.S. Economic Development Administration, describes individually owned lands as a non-threat and praised the work of the U.S. Navy to protect local customs by “recognizing the importance of communal land and traditional systems of tenure” in the Navy’s administration over all aspects of life in \textit{American} Sāmoa.\textsuperscript{342} Implicit here is the idea that in the Navy’s recognition of \textit{American} Sāmoa traditions and culture, it was simultaneously introducing adverse possession concepts and principles without considering the parameters, limitations, or impact upon an indigenous culture. Also disastrous to the traditional communal lands were the desire by some Sāmoans to will privately held land to their heirs and the financial opportunities for individual land owners to invest in residential, commercial, and industrial development in \textit{American} Sāmoa.\textsuperscript{343} The longest serving Chief Justice of the High Court of \textit{American} Sāmoa, Arthur Morrow, declared:

\begin{quote}
In view of the fact that the U.S. Supreme Court has ruled a number of times that racially discriminatory laws are unconstitutional, it would follow in all probability that our racially discriminatory land law would be held unconstitutional and
\end{quote}

\textsuperscript{341} Ibid.  
Americans could come here with plenty of money and buy up Sāmoan land. The Sāmoans would use the money to buy pisupo. [a]utomobiles and take trips to the States. In the end, the Sāmoans would not have their land, the pisupo, or [sic] the money and the automobiles would wear out. They would be in the same situation that the Hawaiians were in when they lost their land.\textsuperscript{344}

Morrow’s analysis would frame the legal discussion of American Sāmoa within the context of the “Insular Cases,” the series of U.S. Supreme Court case laws that address the unincorporated territories of America.

\textit{American Sāmoa Fono (Legislature) “Native” Definition}

The \textit{American Sāmoa Fono} also has had a role in defining who is eligible to own land. According to the A.S.C.A. Title 27 section 201, the definition of a native Sāmoan is “a full-blooded Sāmoan” and a non-native Sāmoan\textsuperscript{345} is “any person who is not a full-blooded Sāmoan.”\textsuperscript{346} Thus, a native Sāmoan was defined as a full-blooded individual regardless of citizenship. This meant that Sāmoan citizens (Independent State of Sāmoa) who were full-blooded Sāmoans were legally recognized as natives of \textit{American Sāmoa} and permitted to own land. Conversely, any individual living in \textit{American Sāmoa} who was not a full-blooded Sāmoan was alienated from land ownership. Because of this, the \textit{Fono} changed the definition of ‘native’ in 1982, restricting the definition of native to “a full-blooded Sāmoan person of Tutuila, Manu’a, Aunu’u or Swains Island.”\textsuperscript{347} Essentially, the \textit{Fono} narrowed the parameters of what it meant to be an \textit{American Sāmoan} native and legally excluded any Sāmoan outside the territory, specifically Sāmoan citizens (Independent State of Sāmoa). Nationality became a determining

\footnotesize {\textsuperscript{344} Morrow 1974, 14-15. \textsuperscript{345} Native and non-native terms are taken directly from the A.S.C.A. \textsuperscript{346} A.S.C.A. § 37.0201 (1999) and 37.0204 et seq. (1982); \textit{Moon v. Falemalama}, 4 A.S.R. 836 (1975). \textsuperscript{347} A.S.C.A. 37.0204, readopted 1980, PL 16-88 §§ 1, 2 amended the law whereby only \textit{American Sāmoan} born or through ancestry.}

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factor in who could be legally recognized as a native and, therefore, entitled to ownership of lands in *American Sāmoa*. To date, the *Fono* has not established regulations regarding individual land ownership.

The increase in individually owned lands does not just impact the communal establishment within a village unit. This type of private land ownership also limits the access to and use of natural flora, fauna, water, and food resources for cultural purposes, not to mention the destruction of the few precious rainforests in *American Sāmoa*.

On April 11, 2008, the American Sāmoa Government (ASG), Department of Commerce, American Sāmoa Coastal Management Program sought a permanent injunction against a private family from what the ASG clearly believed to be the last remaining rainforest area in Tafuna. A family claimed approximately 26 acres of land as “individually owned land” simply by registration through the Territorial Registrar’s office without any signs of human habitation, development, or continuous occupation. The family sought to clear and develop this land, the last Tafuna rainforest, for commercial purposes based on their assertions that these lands were registered as individually owned lands. On May 1, 2013, the High Court of American Sāmoa ruled in favor of ASG for permanent injunction relief. The ruling declared that the rainforest “is, to overstate the obvious, forested—a diametrically opposed set of defining characteristics to land that has been *cleared, cultivated, and occupied*.”

The High Court took a strong position and set a precedent that individuals cannot simply claim rainforest in *American Sāmoa* by cutting some trees down and registering it as individually owned land. The High Court clearly states that “A proposition that rainforest land can be

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349 Ibid.
350 Ibid.
individually owned is plainly nonsense; the two are logical contradictions.” The High Court specifies that no one can “obtain title to lands as his or her individually owned land simply by registering title with the Territorial Registrar.” The High Court identified that for someone who has procured a registration of land as individual ownership, the subject land must have been

(1) cleared in its entirety or substantially so from the virgin bush by an individual through his own initiative and not by, for or under the direction of his aiga or the senior mātai, (2) cultivated in its entirety or substantially so by him, and (3) occupied by him or his family or agents continuously from the time of the clearing of the bush.

The family in this case cited adverse possession entitlements specifically, cutting virgin bush and continuous occupation which enabled their alleged right to claim individually owned lands. During the trial, the High Court emphasized the importance of this rainforest, citing the delicate balance of the island’s eco-system containing indigenous trees, manuma (colored fruit dove), manutagi (purple cap fruit dove), and lupe (Pacific pigeon). Scientists provided evidence no other forest in the lowland area exists that can support these types of indigenous flora and fauna. In Sese v. Leota (1988), Fania v. Atualevao (1990), and Manoa v. Jennings (1992), the courts have advocated for restriction of the individually owned lands and for more restrictive regulations to be implemented by the Fono. The High Court concluded that the public good is served by the preservation of the rainforest: “the public’s interest will not be disserved by

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351 Ibid.
352 Ibid.
353 Ibid.
354 Ibid.
preservation of the lowland’s sole primary forest that contains many of this island’s unique species of trees, birds and bats. In fact, the public’s interest would only be furthered by the protection of the Rainforest.

**Imprecise Territorial Framework**

The political representation for territories at the Federal level is strikingly restricted. Without a floor vote in the Senate or the House, Territorial Delegates are at the mercy of voting senators and representatives from all 50 states. The majority of U.S. Congressional representatives ignore the territorial issues that face the millions of Americans in the Pacific and Caribbean Oceans because the total population of all territorial Americans is not significant enough to warrant concern. Because territories have less than full Congressional representation, the late Senator Daniel K. Inouye of Hawai‘i, the most powerful voice in the U.S. Senate as president pro tempore, became a strong ally of American Sāmoa. Inouye supported the need to study the economic impacts of a minimum wage increase to American Sāmoa’s industries when the national minimum wage issue was discussed in the U.S. Senate.

Territorial delegates are tagata mālō in the ‘aufono, invited to watch and listen but not to vote. Presently, American Sāmoa Delegate Faleomavaega sits on the U.S. Congressional Committees of Foreign Affairs and Natural Resources, in addition to being a Ranking Member of the Subcommittee of Asia and the Pacific; Subcommittee on the Western Hemisphere, Subcommittee of Fisheries, Wildlife, Oceans, and Insular Affairs, and Subcommittee on Indian

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356 Ibid. Avamua Dave Haleck appealed this court case and the Appellate Division of the High Court ruled in Haleck’s favor because the American Sāmoa Government prematurely applied for injunctive relief without first issuing a stop order, sanctions for such activity, and an administrative notice for public hearing. The Appellate Division therefore dissolved all injunctions and vacated all orders. Haleck is now free to apply again for a Land Use Permit and Project Notification and Review System to develop in this low lying rainforest. See Haleck v. Am. Sāmoa Gov’t, AP 06-13, slip-op. at 16 (App. Div. Aug. 16, 2014).

and Alaska Native Affairs, with voting powers in committees.\textsuperscript{358} However, Faleomavaega has no vote on the house floor. Effectively, the American Sāmoa Delegate is like a tagata mālō (guest) in the U.S. Congress, or what can be described as the ‘aufono o ali’i (Council of Chiefs), without the ability to vote like the other ali’i or U.S. Congressional Representatives. Delegates from the territories do the work at the lower levels to gather information, negotiate on terms in the bills, and draft the bills, but cannot sit in the ‘aufono to vote on bills. Territories are tagata mālō in the ‘aufono, to watch and listen but not to vote.

The Executive Branch has affirmed that the U.S. Congress has plenary powers over the Territories.\textsuperscript{359} Between 1898 and 1917, the Judicial Branch established the framework in which the Territorial doctrine is structured. Between 1925 and 1974, the Supreme Court withdrew from seeing territorial status cases, and post-1974 rulings have favored decisive Plenary Powers of the U.S. Congress over the territories.\textsuperscript{360}

Territories have each taken individualized approaches towards lobbying for U.S. citizenship, increased federal government support and awareness, increased local autonomy, and economic and trade free from fetters of the U.S. Department of State. The U.S. Constitution offers very little direction by way of express wording about territorial expansion. The U.S. Congress’s power to admit new states and its authority over the territory and lands are articulated in Article IV Sections 2 and 3.\textsuperscript{361} American expansionism into the Pacific was about military and economic power. The Naval coaling station in Tutuila gave the U.S. power to intercede in international trade and insert strategic military outposts for commerce and warfare. Land was

\textsuperscript{358} Official Delegate Eni Faleomavaega website, accessed July 10, 2014.

\textsuperscript{359} S. Rep. No.94-1033, 94th Cong., 2d Sess. 3 (1976), reprinted in U.S. Code Cong. & Ad. News 6636, 6637-38 (1976), “In the territories, Congress has complete dominion and sovereignty, national and local, and has full legislative power over all matters upon which a state legislature might act.”


\textsuperscript{361} U.S. Const. art. IV, secs. 2 and 3.
essential to American growth, beginning with the 1783 Treaty of Paris and followed by the purchase of the Louisiana territory; the acquisition of California, Nevada, Utah, and parts of Wyoming, Colorado, New Mexico, and Arizona (also known as the Mexican Cession), and the acquisition of Alaska provided the early stages of the U.S. government absorbing new lands into the American body-politic. These early continental lands were formally organized and made into U.S. territories with the presumption of eventual membership in the Union.

The Spanish-American War of 1898 marked the beginning of a new breed of ‘unincorporated territories,’ territories without express predisposition towards statehood or sovereignty that were subject to differential treatment within the U.S. empire. The continual confusion of privileges and benefits versus rights and mandates when analyzing territories, their land issues, territorial policy, and federal mandates requires a closer examination of each flag island’s evolution towards or away from the U.S.

*Philippines, Puerto Rico, and Guam – Unincorporated Classification of U.S. Territories*

The unincorporated Territorial classification was decidedly useful to the national government looking for ways to handle the ‘terminally backward societies’ of these foreign islands. The unincorporated status allowed the U.S. to claim it was pursuing democracy for “former” colonies, while creating a slippery slope legal and ethical responsibilities based on definition. Filipino land and its people were handled differently than the Northwest colonies, for example, because the former were not incorporated into the U.S. body-politic. Unincorporated status given to U.S. territories allowed for only fundamental rights to be applied as a matter of

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law, while non-fundamental rights are not granted. This judicially-created phraseology delineates rights and privileges to legitimize the American imperialist formula for acquiring new territories without bilateral consent to U.S. citizenship or other Constitutional rights.

“Unincorporated” territorial status is a *de facto* classification that allows the U.S. Congress to determine essentially all rights and privileges depending on the extent that each outpost can be considered ‘international’ or ‘domestic.’ The unincorporated territorial classification was the cornerstone of political, legal, and ideological framework that dictated what could and should be done to an outlying possession during the twentieth century empire building.

The U.S. at this time did not have centuries of experiences with empire building, as did the Spaniards or Portuguese who had many colonial settlements throughout the world. Rather, 1898 marked a new horizon for the relatively young American country. The political legitimacy of absorbing the Philippines Islands into the American body-politic as a territory was achieved through propaganda promoting economic interests in Asia. Foreign U.S. policy at that time attempted to draw a distinction between the old and new worlds. The U.S. wanted to support Latin and South American countries’ efforts to gain independence from Spain and Portugal. In the early nineteenth century, the Monroe Doctrine attempted to create distinct spheres of influence between Europe and the Americas; however, the U.S. was not yet a superpower needed to gain international traction and saw expansion into this southern region as a means to do so.

**Philippines**

Before the turn of the twentieth century, U.S. President William McKinley’s Benevolent Assimilation Proclamation espoused the American duty to civilize, educate, and improve the

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social condition of Filipinos. The Philippines was an American project of imperialistic territorial acquisition, and served as naval support base between the Pacific and South China Sea. This military axis facilitated strategic U.S. shipping lines to the Southeastern Asian trading markets of China, Indonesia, and Japan.

At the close of the 1898 Treaty of Paris, the U.S. paid $20 million to Spain in exchange its ceding the Philippines, Cuba, and Guam to America. However, the 1899-1902 Philippine Insurrection, or what is known in the U.S. as the Philippine-American War, was a continuation of the Filipinos’ fight for freedom, formerly from Spain and this time from the U.S. The Filipinos believed that independence would be granted after the 1898 Spanish War. At the signing of the Treaty of Paris, though, no Filipinos, Sāmoans, or representatives from any other indigenous group were permitted access to the negotiation table where their lands were carved up and traded.

In 1892, during Spanish colonial rule, La Liga Filipina society was established as a peaceful mutual aid organization to present economic and social reforms to the colonial rulers in the Spanish Cortes (Parliament). La Liga Filipina set out to unite all the Filipinos across the archipelago into one homogenous voice against the cruelties of the Spanish rule, to educate Filipinos on commerce by way of agricultural techniques, and, most importantly, to create unity throughout the Philippine archipelago. The Spanish Cortes became alarmed by the growing membership of the pro-Filipino La Liga and sought to dismantle it, in part by arresting La Liga

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364 For a more thorough examination of the Philippine-American War and its aftermath, see Miller, Benevolent Assimilation.
366 Miller, Benevolent Assimilation.
368 Ibid.
Filipina’s leader, Dr. José Rizal. Andres Bonifacio, one of the founding members of the La Liga Filipina, was so moved by the reformist ideals that in 1892 he established the Kataas-taasan, Kagalang-galangang Katipunan ng mga Anak ng Bayan, also known as ‘Katipunan,’ a militant anti-Spanish secret society. Katipunan continued to organize Filipinos in provinces throughout the Philippine archipelago and prepared them to take their country’s independence by armed revolution. In 1896, the Katipunan openly encouraged a nationwide armed revolution against the Spanish by initiating multiple revolts in neighboring provinces with minor victories that culminated in Bonafio’s execution in 1897.

The plunging of the American flag into Filipino soil was successful only through the allied resistance against Spain by militant pro-independent Filipino groups like the Katipunan. Unsurprisingly, the exiting Spanish and the entering US did not recognize Emilio Aguinaldo as the President of the First Philippine Republic at the close of the Spanish-American War because he sought to create a politically engaged populace. Democracy was used as a weapon to promote an American-styled nationalistic ideology of dominance. Filipinos who once fought as allies alongside U.S. soldiers against the Spaniards were now considered insurgents, bandits who fought against “civilization and progress.”

The Philippines remained an unincorporated and unorganized Territory for 37 years, from Spain’s cessation until it achieved Commonwealth status in 1935. The Philippines were considered to be a foreign and brutish backwards people without civility or the capability to uphold democratic principles. This, of course, stranded them in an unincorporated Territorial status for their entire time under the U.S. flag.

369 Ibid.
370 Ibid., 150-170.
371 Ibid.
372 Ibid.
Puerto Rico and Guam

Puerto Rico and Guam’s trajectory of political and legal status was mostly through the U.S. Congress and Insular Cases (U.S. Supreme Court). Unlike the Philippines, the unincorporated status of Puerto Rico and Guam had been fueled by territorial-to-federal politicking, ultimately working towards commonwealth and greater self-autonomy. Under International Law, the U.S. acquired these lands by occupation, since they were not already part of a state and cession of land by a treaty.\(^\text{373}\) All ceded islands to the U.S. were placed under military governments directly under the U.S. Department of Defense.

U.S. economic and military interests in Puerto Rico were designed to fortify the proposed canal across the isthmus of Central America, and Guam was the Pacific Island naval position for defense purposes and international trade. The 1900 Organic Act for Puerto Rico and 1950 Organic Act of Guam challenged the federal Supreme Court and the U.S. Congress because the ambiguity of their foreign/domestic status created confusion about federal taxes on their exports to America. Puerto Ricans were experts in political parties and western politics, having survived under Spanish rule for over three centuries.\(^\text{374}\)

The 1900 Organic Act, or Foraker Act, for Puerto Rico was hugely important for the newly inducted U.S. territory. The act granted Puerto Rico a limited government that was both civilian and elected by the populace.\(^\text{375}\) U.S. birthright citizenship was specifically withheld from Puerto Rico.\(^\text{376}\) Guam’s 1950 Organic Act provided the territory with similar measures of limited self-governance, but most importantly, they were granted U.S. birthright citizenship.\(^\text{377}\)


\(^{375}\) Public Law 56-191, 31 Stat.77, April 2, 1900.


Both Organic Acts politically organized the territories, thus changing their status from unorganized to organized.

Although the Organic Acts made these territories politically ‘organized,’ all organized and unorganized territories were and are still subject to the Congress’s Plenary Powers under the U.S. Constitution Territorial Clause.\footnote{U.S. Const. art. IV, § 3.} The second Organic Act or the Jones-Shafroth Act of 1917, for Puerto Rico granted U.S. birthright citizenship and made all federal laws applicable to Puerto Rico, while at the same time designating Puerto Rican exports as ‘foreign.’\footnote{Margaret Leech, \textit{In the Days of McKinley} (Newton: American Political Biography Press, 1959), 487-503.} Even as Puerto Rico was becoming more closely aligned to full statehood with popular elections, civilian government, and U.S. birthright citizenship its unincorporated classification allows the U.S. to treat the territory as a foreign country.

As long as the U.S. Congress does not take action to put an organized and unincorporated territory such as Puerto Rico on a path to statehood, it will still be treated as a ‘foreign’ territory at any time one of the federal branches deems fit to do so. The imposed tariffs on Puerto Rico’s main export commodities such as coffee, sugar, and tobacco were disastrous to its economy. Federal taxes on Puerto Rican exports, which led to various Insular Cases over Puerto Rico, complicated the U.S. government’s administration of the territory, both because of the amount of revenue that was being generated and the precedent that these cases would set for the other territories.

The U.S. instigated, through Puerto Rico and Guam, a precedent for how unincorporated and organized territories can be treated as Americans and foreign countries at the same time.\footnote{See \textit{Rassmussen v. United States}, 197 U.S. 516 (1905).} The evolution of policy in the U.S. Congress and law in the U.S. Supreme Court allows each branch of government to define a territory as domestically American yet at the same time also
foreign in certain aspects. The U.S. Supreme Court manufactured a trivial legal justification for this ‘domestic and foreign’ treatment in *Balzac v. People of Puerto Rico*:

> We need not dwell on another consideration which requires us not lightly to infer, from acts thus easily explained on other grounds, an intention to incorporate in the Union these distant ocean communities of a different origin and language from those of our continental people. Alaska was a very different case from that of Porto [sic] Rico. It was an enormous territory, very sparsely settled and offering opportunity for immigration and settlement by American citizens. It was on the American continent and within easy reach of the United States. It involved none of the difficulties which incorporation of the Philippines and Porto [sic] Rico presents.\(^{381}\)

Efrén Ramos points out that there are benefits to being treated as a foreign territory while also having access to U.S. citizenship, the primary one being political flexibility. Still, Ramos reminds us, colonialism has never been a unidimensional phenomenon over time without caveats of promise and demise.\(^{382}\) Ramos concedes the unlimited power the U.S. government exercises over these unincorporated territories does not conform to democratic ideals, and he compares this American legalistic maneuvering to colonialism.\(^{383}\)

> *Efforts to Retain its Customary Land and Mātai System*

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\(^{381}\) 258 U.S. 289, 309 (1922).


\(^{383}\) Ibid.
Jon Van Dyke aptly describes the unique relationship the US has with each of these five island communities as defined by a matrix of “individualized laws” that has no discernible legal foundation or precise framework that established each political affiliation or territorial status.\(^{384}\)

With a precise framework that leads to a political and legal status, each political jurisdiction knows exactly why and how to be accepted into the U.S. political body. Both parties can forecast how long this union will benefit both sides based on the mutual understanding of why the amalgamation was favored in the first place. *American Sāmoa’s* unincorporated status currently protects its lands from alienation from indigenous Sāmoans.

The primary purpose of the arduous Sāmoan struggle is the retention of its customary lands and *mātai* system. Both Norman Meller and Donald Denoon have articulated some of the challenges: how Pacific communities negotiate who is indigenous, how to see self-determination, and how to achieve such goals within the political hodgepodge tapestry of decolonized states in the Pacific Ocean.\(^{385}\) As noted in Chapter 1, former Governor Coleman (the first *American Sāmoan* Governor) stressed that without the *mātai* system and customary land tenure, the Sāmoan culture would be lost. The commonality between all of the territories discussed previously is the nature in which the convergence of customary practices and the imported laws and rules considerably changed under foreign occupation. The practice of territories (once foreign lands) becoming fully incorporated into the U.S. body-politic as happened with the Northwest Territory, Alaska, and Hawai`i is not likely to be enacted for the current five U.S. territories, even after more than 100 years of unincorporated status. Each jurisdiction faces


diverse areas of promise and challenges; for American Sāmoa, the most important of these is customary land tenure and the mātai system.386

These cultural considerations materialize in the adjudication of High Court decisions in American Sāmoa. Sāmoan judges without legal training or law degrees, who are considered to be experts on custom and tradition are appointed to the High Court and assist in cases, on areas of customary law.387 This practice in the American Sāmoa High Court is an example of the convergence of the practice of Western law and Sāmoan culture. This is a meaningful organizing principle of how Sāmoan customary law changes to meet the changing circumstances under Western law as a U.S. territory.

Considering the declining population data provided in the beginning of this chapter—decreasing numbers of educated and skilled local workforce because of out-migration, coupled with the retiring 65 plus senior population without a skilled workforce to replace the retirees—American Sāmoa faces hard economic times ahead. With only 76 square miles of land, customary land tenure protections for indigenous American Sāmoans could be viewed as the largest economic inhibitor to the territory. No foreign investor can purchase land, and land cannot be sold to non-American Sāmoans.388 The economy has suffered several recent economic blows with a devastating tsunami in 2009, the closure of one tuna cannery in 2010, and minimum wage increases that may jeopardize the tuna industry in the near future. The customary land tenure system has not yet succumbed to these local financial problems of the territory.389

386 Preferred futures for American Sāmoa will be discussed in Chapter 8.
387 A.S.C.A. § 3 et seq.; also, in In re Mātai Title La’apui, 4 A.S.R. 2d 7 (1987), for mātai title disputes there is one law-trained judge as well as four associate judges who are not lawyers but who are chosen for their familiarity with Sāmoan custom.
In the last 114 years, a plebiscite has never been put on the ballot, demanded by the public, or sought by the *Fono* requesting that the local Constitution change this land tenure system to grow its economy. This paints a very clear picture that even with the dwindling educated and skilled workforce and recent economic shocks to the territorial economy; the customary land tenure system is of high value to the people of *American Sāmoa* as the centerpiece of its culture. This centerpiece is secured within the political and legal status of *American Sāmoa* as an unincorporated and unorganized U.S. territory.

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391 This will be further elaborated in Chapter 6.
CHAPTER FIVE:

NAVAL ADMINISTRATION OVER AMERICAN SĀMOA: LEGAL HISTORY

BETWEEN 1900 – 1941, INTRODUCTION OF ADVERSE POSSESSION PRINCIPLES

“It is not worthwhile for the Court to cite the numberless authorities on the question of the settlement of titles by adverse possession. The doctrine is so well understood that it is a waste of time to discuss it.”

USN Commandant C.B.T. Moore, Talala v. Logo, 1 A.S.R. 166 at 174 (1907)

“I do not want to hear any histories or stories that have been handed down – I want to know who has lived on these lands and has worked them for the past forty years – I will tell you why. I have never heard a story in this court that was handed down that the other side did not tell a story that was entirely different so that when we got thru [sic] I did not know which side to believe so it was just time wasted. The stories handed down in any family I do not know whether to believe them or not – what my father told me he saw I believe but anything else might very probably be made up in their mind.

USN Commandant H.P. Wood, Saole v. Sagatu, 1-1919

Q: “Are you familiar with the history of those lands?” – USN Commandant H.P. Wood
A: “That is the reason why I regret that this Court is conducted this way – if a man comes from Manua and occupies that land and uses it and stays there for thirty years then it is said that it is his land.” – Fonoti (witness) in Saole v. Sagatu, 1-1919

“Will you Samoans tell me what you expect of a Judge down here. One would have to have the wisdom of Solomon. One side, Afoa’s, comes in and presents a case and if we stopped there it would be his land, and when the other side gets on the stand they claim it and more so; yet, they live within one mile of each other and both have been gathering copra from the land and not one of them saw the other. How do you expect a Judge coming here from the United States, listen to the witnesses and render fair decision – how could an individual do so.”

USN Commandant E.C. Johnson, Satele v. Afoa, 1 A.S.R. 467 (1932)

The persistence of U.S.-led negotiations with Great Britain and Germany throughout the mid-1800s over the Sāmoan Islands was not for riches, oil, or minerals, as was the case with South Africa and South America. The conquest of the Sāmoan Islands was important because it could push expansionism and strengthen the American nationalistic spirit. The 1898 Spanish-
American War catapulted the U.S. for the first time into international engagements, and the nation began to define itself as a country that was willing to engage in war to protect what it believed to be democratic ideals. This war was a defining moment, one in which expansionism became entangled in the American narrative of upholding democracy after its own brutal Civil War. The ‘Splendid Little War’ (as it was described by Theodore Roosevelt) fed the American political machine with victory and a belief that the Monroe Doctrine called for the U.S. to expand and police democracy outside of the Americas.

The 1899 Tripartite Treaty between Great Britain, Germany, and the U.S. carved up their Pacific Island interests between themselves without war. This was an achievement for the U.S. on the geopolitical front because the oceanic trading lines for commercial trade from Eastern Europe and East Asian countries were located in the Pacific Ocean. The main mission of the U.S. military in the Sāmoan Islands was to secure a strong American presence, which it accomplished through the establishment of the Tutuila Naval Station. Germany had already established itself in the Independent State of Sāmoa with a bustling commercial and international trading post in Upolu.

In 1900, President McKinley issued Presidential Executive Order No.125-A, which delegated control of the American Sāmoan Islands to the Secretary of the Navy. Subsequently, the Navy posted to the Tutuila Naval Station a United States Navy Commandant, who exercised full authority and powers as the Commanding Officer over the U.S. Naval fleet moored at the Pago Pago Harbor as well as heading the civil administration over the American Sāmoan Islands.

USN Commandant Tilley was also President of the High Court (the rough equivalent of a Chief Justice) and the Australian Edwin W. Gurr was one of the principal District Court Judges in the first decade of the Naval Administration. Gurr was by trade a lawyer, previously posted in
Independent State of Sāmoa working on land and title disputes. Eventually he became a member of the Commission investigating land disputes. The 1894 report of that Commission found that *papālagi* foreigners claimed more land acreage than the total area of Sāmoa.\textsuperscript{392} The report found that of the 1,250,270 acres of land claimed by Englishmen, only 36,000 acres, or about three percent, were confirmed; of the 134,419 acres of land claimed by German subjects, 75,000 acres, or about 56 percent, were confirmed; of the 302,746 acres claimed by American citizens, only 21,000 acres, or about seven percent, were confirmed; and of the 2,307 acres claimed by the French, 1,300 acres were confirmed.\textsuperscript{393}

The USN Commandant was accountable only to the Secretary of the Navy, and without colonial experience with island outposts, he was left to devise ‘democratic’ governance mechanisms to create order and encourage obedience to the newly imposed American-styled rule of law. No other island territory or continental state had ever been accepted into the U.S. body-politic through Deeds of Cession without a pathway to statehood being laid out. The USN Commandant created laws (administrative codes and regulations) without proper Naval guidance, a U.S. Congressional mandate, or a Presidential roadmap for *American* Sāmoa, and those laws were then mirrored at the county level through village ordinances.

Between 1900 and 1902, the USN Commandant acted as the Commanding Officer for the U.S. Naval fleet vis-à-vis the Department of Navy commission, and he handled the duties of Governor without having received any formal commission. On April 2, 1902, two years after the arrival of the New Government, USN Commandant Sebree was named the first Governor over *American* Sāmoa by the Department of the Navy.\textsuperscript{394} Until 1902, the USN Commandant was

\textsuperscript{392} Amerika Sāmoa Humanities Council 2009, 49.
\textsuperscript{394} Department of Navy to USN Commandant Sebree, Order Number 303224, February 29, 1902.
commissioned to oversee the Tutuila Naval Station and assumed, without formal commission by the U.S. Secretary of the Navy, responsibility and authority as executive over American Sāmoa. Sebree responded with indifference to the Department of Navy’s additional commission as Governor, writing to the U.S. Assistant Secretary of Navy that “The Station, by Executive Order, comprises of all of the islands of the Samoan Group under our protection or sovereignty. I have, as Commandant, probably performed all the duties of Governor but I have no direct orders, appointment, or commission as Governor. I suppose it will make little or no difference in magnitude whether I am Governor or only Commandant, and personally I have no particular desires or wishes on the matter.”

What mattered most to the U.S. military was the American positioning in the “American” Sāmoan Islands to be severed from the “German” Sāmoan Islands. Achieving a strong and distinct American position meant cutting the cultural ties between the two island groups. John Coulter describes the cultural interconnectedness between the German Sāmoan Islands and American Sāmoan Islands in terms of the mātai title powers of Upolu over Tutuila:

The land on Tutuila, once held by chiefs in the Atua District of East Upolu in Western Samoa [its former name under Germany], made Tutuila, as far as land tenure is concerned, an appendage of Upolu. Because subchiefs held the land in Tutuila in fief for their overlords in Upolu, when the government of Samoa was divided between Germany and the United States in 1900 the subchiefs on Tutuila were glad, for that meant they would probably be freed from their overlords in Upolu. Many titles of mātai on Tutuila [were] also originally from Atua District on Upolu. Because of the political separation of the two when the United States

395 USN Commandant Sebree Letter to U.S. Assistant Secretary of the Navy, April 7, 1902.
occupied the eastern islands, the chiefs on Tutuila have been able to attach more significance to their rank [than they could] when the islands were politically united.396

Customary Law and Common Law Converge Over Communal Lands

In 1901, Tilley set out to monitor and regulate the alienation of customary lands to foreigners with procedures for registration, title searches in Lands Records, public notice of claims, and powers given to the Registrar to verify every land claim by foreigners.397 Other regulations followed during the U.S. Navy’s administration over the territory to restrict the alienation of ‘native lands’ of indigenous Sāmoans to foreigners.398 The powers and authority vested in mātai leadership over communal lands were (and are still currently) balanced between the state and local governance in the villages and districts.

The alienability of customary lands was, however, already a common practice of foreigners throughout the Sāmoan Islands. Most of the land alienated by foreigners was done between 1860 and 1870 during the continual civil wars between Sāmoan clans and island groups. The influx of British, Germans, and Americans and their self-interested political alliances they made with clans, fueled by the importation of guns and ammunition, and directly led mātai leaders to selling customary lands to purchase arms.399 The Supreme Court of Sāmoa and the Commission found that ruling on land claim cases was not an easy process. The difficulty was deciding who had the actual powers to convey and transfer customary land; cases in dispute were caught between, on the one hand, the customary powers of the fa‘amātai system, under which

396 Coulter, The Pacific Dependencies, 80-95.
397 Regulation No. 2-1901, Provisional Regulation Regarding Titles to Land.
398 Regulation No. 9-1906; Regulation No. 6, 1921, Concerning Alienation of Native Lands.
399 Gilson, Sāmoa 1830 to 1900; Meleisea, Making of Modern Samoa.
pule was held with the mātai and, on the other hand the legal bounds of “sale and disposition made by the rightful owner.”

Within the Sāmoan context, the ‘rightful owner’ translates into ‘pule,’ or right over the lands. Malietoa firmly addressed this issue in his correspondence with the Tripartite Treaty signatories; he insisted that “whoever sells land should have some lawful connection with the properties sold.” When the Commission attempted to define the legal parameters of pule within law, they decided that a Chief

is simply guardian, without power of disposal, of tribal lands which, could not be sold. On the death of a Chief the tribal lands reverted to the community, and the control or ‘pule’ was conferred on his successor.[…]such successor not being necessarily the son of the former Chief.[…]In some districts curious instances of associations of selected individuals, from Chiefs and others, were found acting as trustees, and so forming a regular trust, having the whole of the lands in the district under their control, but without power of disposal.

Essentially, the Court created land classifications that segmented customary lands. The classifications meant that land could be held by: (a) an individual; (b) a family (āiga); (c) a tribe [communities/villages] (nu’u); or (d) a district (irūmālō). The Court interpreted custom to create a legal-status of ‘rightful owner’ by extending the social and political parameters of mātai ‘pule’ to include the legitimizing of rights over traditional lands. First, the Court developed the

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400 At that time, the only Court system was using art. IV, sec. 8 of the Final Act of Berlin as a prescriptive section, confirming claims concluded prior to the Tripartite Treaty. See Section 10: “the equitability of consideration received in exchange for land”; Section 4, “whether the land was sold by those empowered to do so, ‘by the rightful owner’ […] for sufficient consideration;” Section 11, “with clear or regular title identifying boundaries.”


classification of ‘rightful owner.’ Second, the Court held that customary lands could be bought. Third, the Court held that consent by the āiga to customary lands by the mātai was required in order to convey or transfer lands.

By the 1890s, the diminishing rights of the mātai over the conveyance or transfer of lands, coupled with the new system of different land classifications, led to the de-structuring of customary lands. After foreigners had alienated large tracts of customary land in Independent State of Sāmoa in the 1860s and 1870s, de-structuring was introduced to American Sāmoa through adverse land possession. Adverse land possession in American Sāmoa was not about foreigners alienating customary land; Sāmoan families and individuals themselves sought to divide customary lands. The Navy was so preoccupied with trying to keep the resident Upolu mātai title holders from using their mātai titles to claim lands in American Sāmoa that no one considered the impacts that splitting customary lands through adverse possession would have upon the communal land holdings—not to mention their natural resources, and access to those resources for future generations.403

Adverse land possession claims divided customary lands from family clan land holdings.404 Traditionally, agricultural lands and village house sites are connected to specific mātai titles. These mātai titles and the customary lands connected to them are owned by the āiga and extended āiga, who operate under the leadership of the mātai title holders, who are selected by the āiga. The mātai and senior mātai decide what lands will be used for homes, agriculture, cooking spaces, malae-fono and malae, burial, cooking sites, open spaces, and also what spaces will be reserved for future generations. Senior mātai also designate some communal land spaces

403 See the Introduction to this study for more information on distinctions made between Independent State of Sāmoa and American Sāmoans in law when trying to exact rights to land in American Sāmoa.
404 See Chapter 1 for more information on family, which within the Sāmoan context refers to blood lines, marriage, and adoption.
for special purposes. There are three districts, and every district has a local government “Governor” to oversee the countries under the district. The local government structure has remained intact throughout 115 years of the U.S. Naval Administration, establishing a balance between Sāmoan custom and Western government. Under the District Governors, County Councils and Village Mayors ensure that all of the villages within the counties are provided for and taken care of within the *fa’asāmoa* context; these officials are responsible for mediating disputes, addressing village concerns, and distributing resources amongst each other. The County Councils and Village Mayors, along with the senior *mātai* of each village, distribute parcels of land to each *āiga* clan to build houses and formal meeting spaces and structures for senior *mātai* and lesser *mātai*, and they allocate lands to be used for agriculture, for access ways for villages to natural resources during times of need (daily and *fa’alavelave*), and for access roads and new schools. Any time a person or *āiga* desires to build a structure or piggery, or to conduct business activity on communal lands, consent and approval by the *Sa’o* is required. The *fa’asāmoa* lives and breathes because there is always service, sharing, distribution, redistribution, dialogue, consensus, decision-making, and punishment that happens within each village, county, and district on communal lands. The *fa’asāmoa* has survived American governance for over 115 years because the *fa’amātai*, the distribution and use of communal lands by Sāmoans within villages, continues to be practiced and protected by local Constitution. However, the population growth and demographics of *American* Sāmoa have

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405 I have often heard in discussions that Sāmoans don’t “need” communal lands they use it because it is available. I refute this argument because if they didn’t “need” to use communal lands – every nuclear family would have bought land by now. Need is relative to the usage and context, and in the Sāmoan context, the missing elements to this western discussion are *āiga*, service, *mātai*, obligation, pride, *alofa* (love), loyalty, village, Sāmoan lifestyle, all of which are hardly able to be reduced to a western scholarly article.
changed greatly, and the dividing of customary lands through adverse possession is threatening its very survival.\footnote{Chapter 6 will also discuss the federal and political issues swirling above American Sāmoa in the Washington, D.C., federal court that will also impact the fa’asāmoa and communal land tenure system.}

As the elderly mature and retire and the number of children grows, enormous population and resource pressures are placed upon counties, districts, and villages. The rate of population growth, especially among children and infants, and the increases of foreign-nationals and illegal undocumented aliens, is explosive. Since American Sāmoa consists of only 76 square miles of land, the dividing of customary lands through adverse possession results in less and less communal lands for use, access, and reserve spaces to conduct customary practices by current and future generations.\footnote{See chapter 3 for population overview and demographic analysis, inclusive of growth of foreign-nationals.}

**Adverse Land Possession—10 Years of Continuous Cultivation and Possession**

During the 1840s and 1870s, alienation of Sāmoan customary lands flourished, which prompted social and cultural unrest that led the Commission to investigate many land claims. It wasn’t just papālagi claims to land; the political jockeying between foreigners, Sāmoan civil wars, and violent hostilities also led to new political alliances, re-shaping of districts to strengthen clans with foreign supporters, and claims to larger tracts of land.\footnote{Warfare was forever changed by the European sailors bartering with and selling of ammunition and guns. The introduction of guns and weapons changed the nature of warfare between clans and districts, making their conflicts much more violent and leading to higher rates of death and mutilation.}

Missionaries, sailors, beachcombers, and papālagi land speculators maximized the numerous civil wars to further their interests in the appropriation of customary land between the 1840s and 1860s in Apia\footnote{In Apia, one mātai charged port fees to the papālagi traders and acted as a facilitator to their trading ventures. See Meleisea, *Making of Modern Samoa*, 31.} (downtown) and the Ā’ana district. Thomas Trood described alienation of land

Having taken possession of Apia and all the coast line in the north side of Upolu, the victors began to sell the land of their enemies, and as they were
in want of money, disposed of it at very cheap rates. In consequence of this the latter when they returned to Apia many months later were disagreeably surprised at the course of events had taken, and many disputes arose between them and the foreigners who had acquired their land, some of which were carried to the courts, but I am unable to say with what results, excepting that in one or two cases which came under my notice, such war titles were declared valid; that fact not protecting the occupants against the repeated attempts of the original owners to regain possession. Certainly such sales ought to have been barred by authorities.410

By 1889, the Commission found that *papālagi* land claims were more than double the entire land area of Sāmoa. Therefore, the Commission needed to establish firm legal principles governing what constituted legal title and claim to land.411 The Commission resorted to the 1899 Berlin Treaty Article IV, section 10412 to prevent the alienation of customary lands. The section states that “Sāmoans should keep their lands for cultivation by themselves and by their children after them;” however, it also validated title to land through adverse land possession principles to allow aliens legitimate and lawful rights to title of lands. It reads:

> undisputed possession and continuous cultivation of lands by aliens for **ten**
> **years or more [should]** constitute a valid title by prescription
> to the lands so cultivated: land acquired in good faith and subsequently improved upon the basis of a title found defective might be confirmed in whole or in part upon payment, by the occupant to the person or persons entitled thereto, of an

additional sum to be ascertained by the Commission and approved by the Court as equitable and just. 413 (emphasis added)

Legal doctrine thus established that continuous cultivation for ten years and undisputed possession legitimized land claims in the Court. For the first time in the history of the Sāmoan archipelago, adverse possession rights were established to validate claims on customary lands vis-à-vis the 1899 Treaty of Berlin. The U.S. Supreme Court relied on these adverse possession principles to advance legitimate title to land that met the conditions of “undisputed possession and continuous cultivation of lands by aliens for tens or more,” conditions that were taken directly from English common law which stated that “a possession of another’s land which, when accompanied by certain acts and circumstances, will vest title in the possessor.” 414 Successful claimants in the Supreme Court returned back to American Sāmoa to enforce the Court’s decisions.

Incorporating Civility and Stabilization to Land Titles, Naval High Court

In the first 40 years of the Naval High Court, the statutory period for recovery of land by adverse land possession increased from 10 to 20 to 30 years of undisputed possession and cultivation. Adverse land possession became a sword to divide communal lands from the family’s landholding under the fa’asāmoa structure of the mātai title system. The dividing of communal lands by evidence of possession and cultivation was done without care to the fa’asāmoa, Sāmoan communal land tenure, or the displacement of family clans once held together by communal lands.

The USN Commandants were military men, dispatched to the U.S. Naval Station in Tutuila to advance the mandates of country, and very little, if any, attention was given to how the

413 Gilson, Sāmoa 1830 to 1900, 407.
414 “the possession must be actual, visible, exclusive, hostile, and continued during the time necessary to create a bar under the statute of limitations,” 2 Corpus Juris 50’.
laws they established could negatively affect the local culture and traditional land tenure. In 1907, the High Court, which was composed of Naval personnel who were not necessarily trained in law, stated that “within ages not so very remote […] titles often changed hands by force more or less violent, and that one of the recognized modes of transfer was war, or force.” Indigenous culture was not a consideration within the formal legal framework of the initial American administration in *American* Sāmoa.\(^{415}\)

The Naval judges believed it was their responsibility to stabilize land titles under the new American administration. One ruling declared:

In this world of uncertainty the gradual progress of civilization tends to eliminate uncertainties, and one of the blessings of civilization is the stability of land titles. A competent court setting forth that after a proper trial he was awarded title to the land, will not be disturbed in his possession after a lapse of many years, unless extraordinary circumstances are shown justifying exceptional action by another Court.\(^{416}\)

USN Commandant C.B.T. Moore, also President of the High Court and Governor of *American* Sāmoa, unequivocally supported adverse land possession rights because these rights were accepted by civilized countries. Moore declared, “It is not worthwhile for this Court to cite the numberless authorities on the question of the settlement of titles by adverse possession. The doctrine is so well understood that it is a waste of time to discuss it.”\(^{417}\) Judge Morrow, in his justification for the usage of adverse land possession principles, states that the American court of law is based upon English common law. He writes:

It is elementary that an act of the English parliament in force at the time of the

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\(^{415}\) *Talala v. Logo*, 1 A.S.R. 166, 171 (1907).


\(^{417}\) *Talala v. Logo*, 1 A.S.R. 166, 177 at 174 (1907).
American Revolution and applicable to the new conditions and surroundings in the States became a part of the law of either express adoption or judicial construction. See 12 Corpus Juris 184-186. Referring to the common law the editors of Black’s Law Dictionary (3rd Ed.) at page 368 say: “…As concerns its force and authority in the United States, the phrase designates that portion of England (including such acts of parliament as were applicable) which had been adopted and was in force here (meaning the United States) at the time of the Revolution. This, so far as it has not since been expressly abrogated, is recognized as an organic part of the jurisprudence of most of the United States (citing various cases).” It requires no argument to reach the conclusion that the Statute of 21 James I, Chap. 16, passed by the English parliament in 1623 and, with certain exceptions, limiting actions for the recovery of property to a period within twenty years after the accrual of the right of action, is applicable and suitable to conditions in American Samoa in the absence of a provision in the Codification prescribing a period within which actions to recover real property may be brought after the accrual right to sue. Nor are the provisions of that statute “repugnant to or inconsistent with the Constitution and laws of the United States of America.” If that statute is not in force here, then there is no limitation upon the time within which an action may be brought for the recovery of real property, and conceivably such an action might be maintained after a hundred years after the accrual of the right of action. Such situation should not be tolerated, and in view of the provisions of Sec. 3(1) of the Codification we do not believe that it was the intent of the legislative authority that it should be. We
think that the phrase English common law as used in Sec. 3(1) should be interpreted to include such acts of the English parliament as were in force at the time of the American Revolution and are suitable to conditions in American Samoa. It is our opinion that the Statute of 21 James I, Chap. 16, is a part of the law of American Samoa.\footnote{Talo v. Poi, 2 A.S.R. 66 (1938).}

Tilley referenced civilization as further justification for these local laws under the U.S. Government by proclaiming, “The Court has found it imperative – absolutely necessary – to follow the practice that is general practice now in every civilized portion of the earth and that is to recognize that the occupancy of the land for a fixed period constitutes ownership of the land.”\footnote{Leiato v. Howden, 1 A.S.R. 45 (1901).} Tilley also presided over a case of Manu’a lands (prior to the Deed of Cession over the Manu’a Islands) in 1900, during the fledgling years of the American Government administration. In \textit{Lagoo v. Mao}, Tilley applies possession, cultivation, and the ten-year standard for awarding land rights in Ofu to establish clear claim of right to title of land.\footnote{Lagoo v. Mao, 1 A.S.R. 15 (1900).}

Sebree affirmed the rights of adverse land possession in \textit{Laapui v. Taua} by stating that “besides proving his cause as alleged in the particulars of the claim hereon, [the claimant has] been in undisputed possession and cultivation of the land in dispute for a period exceeding a term of 10 years prior to the dispute which occurred, forming the cause of the action, and such occupation gives a prescriptive title of the land.”\footnote{Laapui v. Taua, 1 A.S.R. 24 (1901).} USN Commandant and President of the High Court E.B. Underwood in 1903 decided in favor of the party that had demonstrated “continuous cultivation and undisputed possession for a period of over ten (10) years” and

\footnote{Tilo v. Po'i, 2 A.S.R. 66 (1938).} \footnote{Leiato v. Howden, 1 A.S.R. 45 (1901).} \footnote{Lagoo v. Mao, 1 A.S.R. 15 (1900).} \footnote{Laapui v. Taua, 1 A.S.R. 24 (1901).}
therefore had “acquired legal title to all cultivated portion of land.” In 1903, USN President of the High Court B.R. Patrick (Chaplain of the USN Naval Station) stated in Court that the 10-year period of possession was the law over land title disputes in the ‘colony.’ Additionally, in the Tuatoo v. Faumuina case Patrick determined that the rights to title of Alofao lands were evidenced by elements of continuous use and occupation by the plaintiffs. In 1907, Patrick divided parcels of Faletele lands between claimants using adverse land principles of possession and cultivation to decide between directly contradictory testimonies.

USN Commandant Henderson in Tupuola v. Togia decided to award the lands Maia, Lotopa, Afaga, Leoneuli to the plaintiff and Lotopa land to the defendant based on the strongest testimony of continuous possession. USN Commandant and President of the High Court H.P. Wood, exasperated with the conflicting and confusing testimony given in the Court, pronounced, “all we care about is who has used this land openly and notoriously with a claim of right to the land and everyone knows he has used the land and has planted taro and banana on it for the past thirty years, that is all we want to know.” In 1931, Wood felt propelled to pen an article in the Le Faatonu (Government Gazette) about the nature and purpose of the Courts because he still felt the Sāmoan people didn’t understand the Court system and needed instruction and guidance on how to legitimately bring forward land and mātai title disputes in the Courts. In Saole v. Sagatu, Wood also stated that in America there are deeds to show clear ownership of land, while in American Sāmoa all there is to prove ownership is who is using the land for a long time, “planting bananas, taro, [and] coconuts.”

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422 Fatialofa v. Fagamalo, LT. No. 5-1903.
423 Tufaga v. Liufau, 1 A.S.R. 184 (1903).
426 Saole v. Sagatu, LT. No. 1-1919. The limitation of 20 years to claim title through adverse land possession was also applied by the High Court to prohibit land claims due to the statute of limitation. In Tuiolosega v. Voa, 2
For the first 30 to 40 years, military Commandants over the High Court enforced adverse possession because they considered it part of civilized society to recognize and practice the recovery of lands through a select set of elements. There was a high turnover rate of USN military commandants in the Tutuila Naval Station; within each decade at least three to four different Commandants presided over the High Court, not including the substitute naval personnel like USN Chaplain Patrick who had assumed leadership during their leave periods when they returned by boat to America. Each naval officer that became commandant and president of the High Court believed in the ability of an individual to adversely claim land against another, because they believed that it reflected a civilized procedure for mediating land claims and that its legal foundation was grounded in civilized society. This introduction of the concept of “civilization” as a legal standard in American Sāmoa was also a form of ‘Americanization’ because it entailed the idea the individual man has universal rights superseding any indigenous cultural customs. While the administration prevented alienation of customary lands from foreigners, there was no protection to safeguard tracts of customary lands from individuals within Sāmoan villages.

_De-Structuring Traditional Land Tenure and the Moneyed Economy_

Tilley, the first Commandant commissioned by the Department of Navy to the Tutuila Naval Station, employed an “indirect rule” governance system over the territory without any guidance or direction from the Navy. Between 1900 and 1905, before the title of Governor was officially added to the Commandant’s commission, this “indirect rule” was employed by all the USN Commandants. Tilley created an administrative structure and set up three districts—

A.S.R. 138 (1941) the High Court denied the plaintiff’s adverse land claim over land in Olosega because the plaintiff filed against Voa in 1918, but only prosecuted his claim to recover possession in 1941, meaning that the plaintiff did not exercise due diligence. The High Court determined that because Tuiolosega waited for 23 years to prosecute his case, his suit did not stop the clock to the running of the statute.
Eastern, Western, and Manu’a—to oversee purely local matters, with a Samoan mātai over each district. Each of the three districts was divided into 14 counties, each with a county chief. The counties were further classified into 52 villages. Every village had a pulenu’u, a village council, or a council of mātai.

Since the High Court was really just the administrative arm of the civil administration over the territory, the military instituted policy through the enactment of laws. There were no Judiciary or Legislative branches. The USN Commandant appointed local government heads, a Secretary of Native Affairs, Judges, and secretarial staff in his offices. Tilley single-handedly created the 1900 Promulgation and Publication of Law, expressly recognizing and allowing the adverse possession of land by declaring that “No motion for the recovery of real property or for the recovery of the possession thereof, can be maintained unless it appear that the plaintiff, his ancestor or predecessor was united or possessed of the property in question within ten years before the commencement of the motion.” Without branches of government to check and balance the executive authority of the Commandant, the governance system in place could be viewed as an autocracy. The USN Commandant had complete power over the territory while the U.S. branches of government ignored it. The USN Commandant could and did create, interpret, and enforce law and order.

The USN Commandants levied copra taxes against each village in order to sustain government operations. Cultivation and taxes were necessary to start a money economy in American Sāmoa, a change that was necessary to conduct business as a U.S. territory. Cultivation is a principal element of adverse land possession; a claimant must show evidence that

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427 Pulenu’u are liaisons between the customary Sāmoan system of government and central government. The traditional Sāmoan systems of government are the mātai, high mātai, talking mātai, and village council.
428 1900 Promulgation and Publication of Law, No 1, 1900.
429 U.S. Navy Regulation Numbers 21-1900, 1-1917, 3-1921.
they farmed the land, a feat that became easier to prove when the military regulated the
cultivation of lands for copra taxes. Copra taxes were paid by Sāmoans in each district through
copra, the sale of which would go directly to the U.S. military for the operations of
government.\footnote{Each district had a certain amount of pounds required to be brought to government for sale. Bigger districts were required to provide more than smaller districts in terms of poundage of copra.} Therefore, each village mandated that every family or person cultivate their
lands to produce enough agricultural staples to pay the government the monthly copra tax. Table
7 outlines the village ordinances mandating cultivation for taxation purposes and the imposition
of fines when not obeyed.

\textbf{Table 7: Village Cultivation Ordinances, 1900s}

<table>
<thead>
<tr>
<th>Village</th>
<th>Cultivation Ordinance</th>
<th>Civility Ordinance</th>
<th>Fine</th>
</tr>
</thead>
<tbody>
<tr>
<td>Afao</td>
<td>Mātai must have a sugar cane plantation</td>
<td>Illicit cohabitation prohibited</td>
<td>If no fine specified, Court to determine punishment not to exceed $10.00</td>
</tr>
<tr>
<td></td>
<td>Each family must have giant \textit{taro}, banana, plantation</td>
<td>Scandal is prohibited</td>
<td></td>
</tr>
<tr>
<td>Afono</td>
<td>Each person must have a \textit{taro} plantation</td>
<td>Illicit cohabitation prohibited</td>
<td>If no fine specified, Court to determine punishment not to exceed $10.00</td>
</tr>
<tr>
<td></td>
<td>Every person must plant 5 coconuts, 5 bananas, and 5 taˊamiento plants monthly</td>
<td>No nakedness or nuisance in public bathing place</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mātai must have sugar cane plantation</td>
<td>Each family must take care of curtains</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>No person allowed to defecate in the bush</td>
<td></td>
</tr>
<tr>
<td>Aitulagi</td>
<td>Each person must have a \textit{taro} plantation</td>
<td>No defecation in village</td>
<td>If no fine specified, Court to determine punishment not to exceed $10.00</td>
</tr>
<tr>
<td></td>
<td>Every person must plant 5 coconuts, 5 bananas, and 5 taˊamo plants monthly</td>
<td>No one can give away for free \textit{taro}, banana, coconut – there must be payment for all food.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Mātai must have sugar cane plantation</td>
<td>Illicit cohabitation prohibited</td>
<td></td>
</tr>
<tr>
<td>Alao</td>
<td>Plant coconuts, sugar cane, and bananas</td>
<td>Fornication prohibited</td>
<td>Fine for not planting - weed public road for fifty fathoms</td>
</tr>
<tr>
<td>Alofau</td>
<td>Sugar cane was taboo to eat or give away (it could only be bought from the chief for $5.00)</td>
<td>Illicit cohabitation prohibited</td>
<td>Punishment will be given for not cultivating, the specific punishment is not listed</td>
</tr>
<tr>
<td></td>
<td>Everyone must cultivate</td>
<td>Prohibited to spread gossip or slander another</td>
<td></td>
</tr>
<tr>
<td>Amaluia</td>
<td>Everyone must cultivate</td>
<td>Forbidden for men to court women in the aualuma\footnote{Aualuma is the unmarried women’s group in the village.}</td>
<td>Fine for not cultivating - $0.50</td>
</tr>
<tr>
<td></td>
<td>Prohibited to cut sugar cane (except for copra taxes)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amanave</td>
<td>Everyone must plant 5 coconuts, 5</td>
<td>Every man must attend church</td>
<td></td>
</tr>
</tbody>
</table>

\footnote{Taˊamū is a variety of giant \textit{taro}.}
<table>
<thead>
<tr>
<th>Village</th>
<th>Rules</th>
<th>Fine or Punishment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amouli</td>
<td>Monthly cultivation of bananas, and 5 ta’amū plants. Every man must cultivate bananas. Every person must pay for sugar cane thatch of $2.00. Every young man must attend choir practice.</td>
<td>Fine, if man found not cultivating - $2.00</td>
</tr>
<tr>
<td>Aoa</td>
<td>No relative of any chief shall take away taro, banana, or breadfruit. All foods must be purchased. Chewing sugar cane prohibited.</td>
<td>Obedience to policemen. Everyone must attend village meetings. Everyone must bathe with a lava lava. Tattoo taboo. If no fine specified, Court to determine punishment not to exceed $10.00.</td>
</tr>
<tr>
<td>Aua</td>
<td>Prohibited to give away any green products from the trees. Chewing sugar cane is prohibited.</td>
<td>Prohibited to loan out a boat, there must be payment for use. If no fine specified, Court to determine punishment not to exceed $10.00.</td>
</tr>
<tr>
<td>Anu’u</td>
<td>No person is allowed to cut coconut leaves, even with consent of the owner.</td>
<td>No problems or bad language on government roads. Everyone must bathe with a lava lava. No fornication allowed. Everyone must obey the choir leader. If no fine specified, Court to determine punishment not to exceed $10.00.</td>
</tr>
<tr>
<td>Faga’alu</td>
<td>All mātai must have sugar cane plantation. Every man must have a banana and taro plantation.</td>
<td>Illicit cohabitation according to heathen custom is prohibited. Stealing is prohibited. Fono held every month. If no fine specified, Court to determine punishment not to exceed $10.00.</td>
</tr>
<tr>
<td>Fagaitua</td>
<td>No person is allowed to eat coconuts until after the copra tax is paid (exception of sick persons). Everyone shall cultivate banana, pineapple, and kava. Every family shall build chicken houses. Roll call held on scheduled days to weed the public roads. Illicit cohabitation prohibited.</td>
<td></td>
</tr>
<tr>
<td>Fagamalo</td>
<td>Every person must plant breadfruit. Mātai must have taro plantation. Taro must be sold, no taro can be given for free. Malaga to Upolu or Savai’i prohibited. If no fine specified, Court to determine punishment not to exceed $10.00.</td>
<td></td>
</tr>
<tr>
<td>Faganeana and Matua</td>
<td>Every person shall cultivate 100</td>
<td>Fornication prohibited. If no fine specified, Court to determine punishment not to exceed $10.00.</td>
</tr>
</tbody>
</table>

433 Malaga was considered a high expense by the USN.
<table>
<thead>
<tr>
<th>Village</th>
<th>Rules and Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fagatogo</td>
<td>Every man and mātai must plant 50 bananas and 50 ta‘amū. Every chief and young man shall have a 100 taro tops. All banana plantations must be cleaned. Every mātai must apportion to members of his family portion of land for planting purposes. Forbidden to use banana leaves to cover ovens. Illicit cohabitation prohibited. All useful plants be planted in Fagatogo and Faga’alu. Prohibited to wash clothes on the basement of bathing places. Everyone must salute the U.S. flag. No dead person can be buried more than six feet deep.</td>
</tr>
<tr>
<td>Faganea</td>
<td>Everyone must plant 50 bananas and 50 coconuts each month. Prohibited to spread gossip. Illicit cohabitation prohibited. If no fine specified, Court to determine punishment not to exceed $10.00.</td>
</tr>
<tr>
<td>Failolo</td>
<td>Every person must plant 5 bananas, 5 taro, 5 breadfruit, 5 sugar cane stalks, kava, and other useful plants. Prohibited to elope after heathen custom. If no fine specified, Court to determine punishment not to exceed $10.00.</td>
</tr>
<tr>
<td>Faleni</td>
<td>Everyone must have taro, banana, kava, and coconut plantation. Everyone must bathe with a lava lava. Fine for not planting - weed public road for 50 fathoms.</td>
</tr>
<tr>
<td>Futiga</td>
<td>Everyone must have a banana, sugar cane, and taro plantation. Everyone must attend choir practice. If no fine specified, Court to determine punishment not to exceed $10.00.</td>
</tr>
<tr>
<td>Ituao</td>
<td>Everyone must plant coconut, banana, and taro plantation. Prohibited to slander. If no fine specified, Court to determine punishment not to exceed $10.00.</td>
</tr>
<tr>
<td>Lauil’i</td>
<td>Everyone must plant sugar cane, coconuts, bananas, ta‘amū, and tobacco. Chewing sugar cane is prohibited. Prohibited to spread gossip. No begging between families. If no fine specified, Court to determine punishment not to exceed $10.00.</td>
</tr>
<tr>
<td>Leloaloa</td>
<td>No food product is allowed to be given away free according to custom, all food must be purchased. Every mātai must have a guest house. All boats must be charged for use to Fagatogo. Fine determined by village court.</td>
</tr>
<tr>
<td>Leone</td>
<td>Each man must plant 10 coconuts monthly. Each mātai must plant kava in September, 50 ti leaf plants, 50 taro shoots monthly. Each family must plant sugar cane. Each person must have a banana plantation. No person allowed to cut sugar cane. Everyone must salute the U.S. flag. Borrowing is prohibited, every foodstuff must be purchased. Everyone must be present when the copra is shipped to the vessel. Fine for kava - $2.00. Fine for not planting bananas - $1.00. Fine for cutting sugar cane - $1.00.</td>
</tr>
<tr>
<td>Nua</td>
<td>Every person must plant 5 bananas, 5 kava plants, 5 coconuts monthly. Everyone must have a sugar cane plantation. Illicit cohabitation prohibited. Fine determined by village court.</td>
</tr>
<tr>
<td>Nu’uuli</td>
<td>Everyone must plant 25 bananas and 25 coconuts each month. Illicit cohabitation prohibited. Punishment for cohabitation - weed the public road for 80 fathoms.</td>
</tr>
<tr>
<td>Village</td>
<td>Requirement</td>
</tr>
<tr>
<td>---------</td>
<td>-------------</td>
</tr>
<tr>
<td>Masausi and Sailele</td>
<td>Each mātai must have a sugar cane plantation. Sugar cane thatch must be bought.</td>
</tr>
<tr>
<td>Masefau</td>
<td>No taro shall be given away. No coconuts shall be eaten until the copra tax is paid.</td>
</tr>
<tr>
<td>Ofu</td>
<td>All persons must work to bag the copra.</td>
</tr>
<tr>
<td>Onenoa</td>
<td>Everyone must plant taʻamû and banana plantation. All lands since the New Government be in good order.</td>
</tr>
<tr>
<td>Pago Pago</td>
<td>Every person must plant 50 bananas, 50 coconuts, 20 taʻamû, 25 taro every year. Every mātai must have a sugar cane plantation.</td>
</tr>
<tr>
<td>Poloa</td>
<td>Every person must have a taro plantation.</td>
</tr>
<tr>
<td>Seetaga</td>
<td>Every person must plant 5 coconuts, 15 bananas, 5 kava roots, 5 taʻamû plants.</td>
</tr>
<tr>
<td>Taputimu</td>
<td>Every family must cultivate sugar cane plantation. Every man must plant taro, coconut plantation.</td>
</tr>
<tr>
<td>Tula</td>
<td>Sugar cane and bananas must be planted.</td>
</tr>
</tbody>
</table>

The USN also issued concurrent ordinances mandating that each village live a clean, orderly, and respectable lifestyle. Village ordinances reflected the newly imposed Christian and American values. Village punishment and fines were also collected against certain traditional practices in order to develop western-styled conduct. In the village of Afono, no person was allowed to bathe naked in the village pools and illicit cohabitation was forbidden. Each family was required to have a banana and taro plantation, and all families were required to have curtains.
in the windows and care for the curtains. In the village of Alao, fornication was prohibited, and every family was required to plant coconuts, bananas, and sugar cane. Alofau village required ‘cultivation’ and levied a punishment against anyone who did not cultivate. Tattooing within the village was prohibited in the village of Amouli. Aoa prohibited the giving of banana, breadfruit, and taro to visiting malagas and fined $.25 for each violation.

Starting in 1903, malagas started to be regulated by the Government. Anyone wishing to visit Upolu or Savai’i was required to apply with the Secretary of Native Affairs, identifying the villages and purpose of travel. Then, in 1927, malagas were banned indefinitely in American Sāmoa. The prohibition of giving away banana, breadfruit, and taro could have been for food security or to ensure there was enough crops for the monthly copra taxes. For whatever reasons, the law made cultural exchanges illegal, which essentially made cultural customs illegal. When a malaga occurs from a visiting village to a host village, protocol required that the village leaders provide food to show respect to the visiting mātai leadership and village. Hosting villages stage welcoming ceremonies (usu'ali'i-taeao) on arrival of guest villages and upon their departure (aiava) present gifts. These practices reflect the protocol, honorifics, and traditions embedded in

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439 “A Regulation Relating to Samoan Traveling Parties Between the Islands of Savaii and Upolu and the Islands of Tutuila and Manua,” No. 2, 1903. (March 30, 1903).
440 Order Issued March 8, 1927, by H.F. Bryan, Captain, USN and Governor. “In view of the fact that so much time has been wasted in the beginning of this year in cricket games between villages, no permission will be granted for malagas until further orders. No malaga will be made at any time for any purpose without the approval of the Governor.” Cricket games became so widely played that food production was seriously affected, and the civil government and religious missions became so concerned that they made cricket playing a disciplinary offence, not just in Sāmoa but also in Tonga. See Kate Fortunte, “Cricket,” in The Pacific Islands: an encyclopedia, ed. Brij Lal and Kate Fortune (Honolulu: University of Hawai’i Press, 2000), 459.
greeting, hosting, and sending off visiting family, village-allies, and guests of the High Chief and village leadership. The agricultural staples are the most important gifts to a departing village, since these provide them food to redistribute within the village, under the guidance of the mātai leadership.

The village of Fagaitua mandated that every person cultivate and prohibited anyone from eating coconuts until the tax copra was settled, although sick people were exempted.\textsuperscript{441} Cultivation requirements were specific for some villages; in Faganeanea and Matu’u, each person was required to have 100 banana plants and a taro plantation.\textsuperscript{442} Faganeanea and Matu’u laws were specific to each person rather than the family. They also prohibited anyone from eating coconuts or copra until the copra taxes were paid, without exception. Every person living in Fagatogo was required to plant 50 giant taro (\textit{ta’amū}) and 100 taro tops.\textsuperscript{443} The village of Fagasa required every person (not family) to plant 50 bananas, 15 coconuts each month, and to grow taro and kava.\textsuperscript{444} Lauli’i village went even further by requiring that no person shall be without sugar cane, coconut, banana, giant taro, taro, and tobacco.\textsuperscript{445} In Nu’uuli village, each person was required to plant 10 coconuts and 25 bananas, and in addition each mātai was required to have a sugar cane plantation or else a fine of $1.00 was imposed monthly.\textsuperscript{446}

\textsuperscript{441} Village of Fagaitua. Village Laws, 1900. (American Sāmoa Government Research and Archive microfiche Reel 9, Series 12; Reel 10, Series 12).
\textsuperscript{442} Village of Faganeanea and Matu’u. Village Laws, 1900. (American Sāmoa Government Research and Archive microfiche Reel 9, Series 12; Reel 10, Series 12).
\textsuperscript{443} Village of Fagatogo. Village Laws, 1900. (American Sāmoa Government Research and Archive microfiche Reel 9, Series 12; Reel 10, Series 12).
\textsuperscript{444} Village of Fagasa. Village Laws, 1900. (American Sāmoa Government Research and Archive microfiche Reel 9, Series 12; Reel 10, Series 12).
\textsuperscript{445} Village of Lauli’i. Village Laws, 1900. (American Sāmoa Government Research and Archive microfiche Reel 9, Series 12; Reel 10, Series 12).
\textsuperscript{446} Village of Nu’uuli. Village Laws, 1900. (American Sāmoa Government Research and Archive microfiche Reel 9, Series 12; Reel 10, Series 12).
Onenoa village, every person was compelled to plant a giant *taro* and banana plantation. And in the village of Pago Pago, every person was required to plant 50 bananas, 50 coconuts, 20 giant *taro*, and 25 *taro* every year. Upon inspection, the fine levied for noncompliance was $2.00.

Through the centralization of military government and the taxation system imposed upon each village, cultivation was mandated for every village and every person. Crocombe, writing about Pacific Islands coming under foreign countries, says that “With the establishment of centralized government, the functions of intermediate groups and leaders in relation to land tenure were diminished or abandoned, except to the extent the colonial power chose to retain them, or did not effectively replace them. At the same time the colonial governments increased the rights in land held by the state and individuals.”

Forcing cultivation to fill government coffers changed the nature of the Sāmoan subsistence lifestyle into plantation cultivation. Taxation ushered in a moneyed economy in *American* Sāmoa and the value of planting became attached to profit and government operations. Plantation cultivation became a new standard of living in every village.

Taxation and plantation cultivation brought about changes to the Sāmoan lifestyle. Adverse land possession cases required claimants to prove cultivation and possession to the Naval High Court, which was easy because every village mandated that every family or individual conduct some type of cultivation. The threat of hefty fines also guaranteed obedience to the Navy regulations and village ordinances. Without deeds or an established system of

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surveyances\textsuperscript{450} of land boundaries, evidence of cultivation and possession were the primary
evidence the High Court used to award titles in adverse land possession claims.

**Dividing Customary Lands Leaves Less Land for Communal Use and Access**

Adverse land possession allowed the division of customary lands that had traditionally,
under the authority of the *fa’amatai*, been used for the entire family’s benefit. The dividing of
customary lands based on adverse possession disrupts traditional land holding and interferes with
access to the natural resources on the land and access to resources where the land provides a
means of entry. Additionally, the āiga (to which each customary land parcel is assigned) is left
with less to provide for future generations. Descendants of these families and successors to the
*mātai* title have a direct interest in the communal lands, since they are what would be considered
in the western context ‘part-owners’ of that land. The senior *mātai* are stewards of the
communal lands and serve the families by protecting the assets of the āiga. The disruptions to
the āiga communal lands deteriorate the authority and power of the *fa’amātai* system within the
village. In effect, this leaves less and less lands over which the senior *mātai* have authority and
power over as stewards for the āiga.

In the case of *Lauvao v. Misipaga*, which disputed land designated by the Court Clerk as
Faletete, Patrick divided the land based on the High Court’s determination as to what family was
using and controlling the lands.\textsuperscript{451} The parties had conflicting testimonies over ownership, and
each had a different name for the land. The plaintiffs called the land Tamalepaua while the
defendants called the land Fanua Tele. Patrick was not concerned with the naming of the land

\textsuperscript{450} In the first 15 years of the American administration, there was really just one surveyor on the islands that
completed surveys as required by the High Court, B.F. Kneubuhl. Also, see table 6 in chapter 3 for (U.S.) territorial
comparisons of taxation and land surveys of indigenous land.

\textsuperscript{451} *Lauvao v. Misipaga*, 1 A.S.R. 105 (1907).
and considered it irrelevant to ownership.\textsuperscript{452} Both parties concurred with the plaintiff’s testimony that around 1877, a dispute arose between the predecessors of the present parties as to ownership. The parties met and decided that both sides take a solemn oath as to the ownership and the Lord would then decide true ownership by causing the death of the perjurers. Unsurprisingly, Patrick considered this testimony pure superstition and inquired if there were ancestors of the defendants buried inland where the plaintiffs resided. The defendants had no ancestors buried inland and, because the plaintiffs had continuous occupation and cultivated the lands for more than ten years, the High Court declared they positively asserted adverse title to the lands they resided upon.

The High Court divided the lands. The southern portion of land was awarded to the defendants and the northern portion to the plaintiffs. The dividing boundary was declared to be between the houses of the plaintiffs and the house of the defendants at right angles to the westerly beach boundary.\textsuperscript{453} Although Misipaga and Seau had no ancestors buried inland where the plaintiffs resided, they claimed they cultivated parts of those lands and used the fruit often for their families.\textsuperscript{454} Once the decision was made, the families of Misipaga and Seau were forever prohibited by law from using the northern portion of the land or accessing the agriculture and fruits from those parcels of land. Additionally, the Misipaga and Seau would no longer have access to poumuli\textsuperscript{455} or coconut trees on the northern land, which were typically used to make homes and cooking houses.

\textsuperscript{452} Ibid. While the High Court considered the names of the communal lands irrelevant, the village names are important to the village. The names may represent Sāmoan legends, war, significant natural resource on the lands, or symbolism of something unique and tangible to the village.

\textsuperscript{453} Ibid.

\textsuperscript{454} Ibid.

\textsuperscript{455} Poumuli is the Sāmoan and Tongan name for a tree that has is very durable and used as poles for traditional homes and cooking houses. Also known as securinega flexuosa; see G.B. Milner, \textit{Samoan Dictionary} (Auckland: Pacifika Press, 2001), 188.
In *Tupuola v. Togia*, Henderson divided the lands between the parties, stating that “The evidence presented by both sides shows many discrepancies and contractions.”\(^{456}\) The lands in dispute were Maia, Lotopa, Afaga, and Leoneuli (“Fitiuta”) where the plaintiff claimed they had continuous use and possession of the lands for 12 years—two years longer than required—before the defendant tried to expel them from the land in 1905. The plaintiffs testified that they had ancestors buried on some of the lands; the defendant argued that the defendant’s ancestor had allowed the plaintiffs ancestors to be interred on the land. Henderson believed that the defendant’s testimony of his ancestors was weak and unconvincing, so he granted Maia, Afaga, and Leoneuli to the plaintiff and only Lotopa to the defendant, which left, all Togia families that lived on Maia, Afaga, and Leoneuli at the mercy of Tupuola to remain on his lands or be removed at any time.

In *Avegalio v. Suafoa*, Wood divided the land called Lalolasi, awarding the defendant most of the land because he believed Suafoa had an uninterrupted and adverse use of the land for a period of at least 40 years under a claim of right. Avegalio was awarded only that part of the land that lay west of the stream and north of the road passing through it to the northern boundary, while Suafoa retained all the remaining lands. Salavea testified that in Sāmoan custom, allowing family or a friend to use the land also permits them to cultivate and take the fruits of that cultivation, and that therefore the defendant’s testimony that he planted on the lands is meaningless to the issue of land ownership. Wood, noticeably irritated with the testimonies of the witnesses by both parties as to the original owners of the land, proclaimed:

> I have had about five years experience in this Court and many cases about land

> I find that in so many of them that somebody in the kindness of their heart told somebody that they could go on the land and then the grandfather or

\(^{456}\) *Tupuola v. Togia*, 1 A.S.R. 270 (1912).
grandchildren always claim the land. If one man lets a man by the name of Jones use the land, after a few years he gets him to write a paper that he is living on the land thru his permission and then after a few years he does it again and if the man dies he gets the son or whoever lives on the land to sign it and if the son does not write that he brings an action and sues him in Court and then you always know that the other man is living on the land thru [sic] your permission; but they do not do that in Samoa – they let it go for generations and generations. There are many cases where the man in the United States where a man lets the people walk across his land and every year or so he puts a rope up to keep the people off and if he lets them do it for 20 years without putting up a rope he can never stop them.

Early in their administration of American Sāmoa, USN Commandants tried to protect communal lands from foreigners, largely because Gurr had seen first-hand the scale of the land-grabbing by gluttonous foreign speculators. However, the Commandants did not foresee the internal splitting of communal lands and the possible negative effects on the land tenure system in the future. Internal splitting of communal lands was also performed by Sāmoans and mātai title holders, from Upolu who claimed rights to lands in American Sāmoa. Due to the ongoing civil wars throughout the Sāmoan archipelago in the 1800s, many mātai title holders would move between āiga lands in the Independent State of Sāmoa and those in American Sāmoa, seeking the one that would best position them with power, authority, and leadership in the village. If a mātai was given a senior mātai title in a village from Independent State of Sāmoa, he would move there and change his name to whatever mātai title was appointed to him.\footnote{Sāmoan names do not conform to western practices of name-giving from birth to death. In the Sāmoan custom the child may take the father’s name as the first name. Then, upon conveyance of mātai title later in life, the}
Mātai title holders in the Independent State of Sāmoa would relocate to American Sāmoa if the mātai title was of higher significance and afforded more prestige, power, and authority. The USN Commandants considered the mātai title holders from Upolu a threat to the American territory because they were not domiciled there. Because of the military’s aspiration to advance American presence and political power in the region, in the first decade of the court system, the Naval High Court emphasized separation of Independent Sāmoa from American Sāmoa. The military feared that, if the higher ranking chiefs in Upolu all claimed adverse title to lands, no lands would be left in American Sāmoa. During the first half of the twentieth century, Tilley was the strongest proponent of protecting the lands from Upolu mātai. In the first two years of the High Court he made it very clear that occupancy and cultivation was required for 10 years of all adverse claimants, and that Upolu chiefs must prove this positively for any adverse land suits.

Segmenting Customary Lands

Following the signing of the Tripartite Treaty in 1899, the American government demonstrated that they were a much better protector against foreigners alienating customary lands than Upolu’s protectorate – Germany. U.S. military convoys noticed that in the Independent State of Sāmoa there were huge tracts of prime land claimed (many fraudulently) by foreigners, which led the early U.S. administration in Tutuila to enact legislation to prevent that.458 These actions, although seemingly altruistic, were in fact a display of the U.S. government’s protectionism over its outpost lands, part of its political maneuvering to become a power player in the Asia-Pacific region.459

individual then assumes the mātai title as the first name and the father’s name as the last name. In addition, the individual may possess a mātai title, then receive a senior mātai title from the village mātai, at which point the individual will change their name again to reflect the senior mātai title and drop the lower mātai title.

458 See chapter 1.
459 Ickes, The Navy, 1.
Modern writings about *American* Sāmoa’s customary land tenure refer mostly to the Deeds of Cession and the protections of customary land tenure found therein, which bind the U.S. to its promises to safeguard traditional land holdings. However, the influences of the nineteenth century Berlin and Tripartite Treaties established a different conceptual legal framework, forming the norms and molding the customs used to construct an Americanized lifestyle. The U.S. government’s recognition and acceptance of land court decisions from the Independent State of Sāmoa’s Supreme Court and Commission is not surprising; the Courts defined a rightful owner of customary lands based upon English common law, which is the basis of American common law. The Courts segmented customary lands by establishing land classifications that distinguished which land could be owned by an individual, family, tribe, or district. These land classifications fueled the legitimacy of established rights to lands within each class of society. The military embraced these land classifications, as they made it much easier to balance custom and western law.

The military was hard-pressed to stabilize land title claims. On the one hand, they were motivated to provide evidence that *American* Sāmoa was progressing toward “civilization” and the American way of life under their watch. The moneyed economy and capitalistic spirit led to regulations that required cultivation of all lands; every sinnet (coconut husk), *taro*, breadfruit, and banana required monetary payment and nothing could be given away for free. Customary acts of exchanging food between neighbors, families, visitors, and villages were prohibited because of the taxes each village was forced to pay. On the other hand, while the military judges were united in their opposition to any alienation of lands to foreigners, there was a growing desire by Sāmoans to own lands separate from the village, which the principles of adverse land possession readily accommodated. The High Courts favored *mātais* from Tutuila over Upolu,
because doing so protected American interests domestically and, given the restrictive nature of
evidentiary testimony to stabilize land claims, created a pathway for individuals to recover lands
based solely on cultivation and possession, rather than on the village and mātai structure.
Adverse possession divided customary lands, and the guiding principles to claim lands were not
based on hereditary right to title or āiga affiliation but rather upon who had the strongest
evidence of continuous occupation and undisputed possession to prove their claim.

Sāmoans could have negated all these naval decisions had they chosen to appear before
the Judicial Commission. The Judicial Commission comprised of high ranking mātai (no
foreigners) selected by County “Governors” to hear land and mātai disputes. USN
Commandants advocated that all land and mātai cases first seek to have their cases heard
amongst their peers by the Judicial Commission, because they were then eligible for appeal to
the High Court; cases that were heard in the High Court were not eligible for appeal. Wood and
Johnson pleaded with litigants to present cases before the Judicial Commission and Sāmoan
district judge Muli, and reminded the litigants that it was to their advantage to present their cases
to their Sāmoan peers.460 However, no case was ever tried before the Judicial Commission, and
the pleas by the High Court fell on deaf ears. This could be for two reasons: first, because
Sāmoan litigants preferred to have their cases tried not by their peers whom they believed to be
biased about land disputes, but instead before the Naval High Court; or second, the litigants may
have wanted to have their case tried in the highest court possible due to the importance of
customary land to Sāmoans.

The earliest ordinances punished individuals from ‘illicit cohabitation,’ thereby requiring
adherence to western practices of matrimony and domesticity in the village. Nakedness, public

460 Saole v. Safatu, 1-1919; Satele v. Afoa, 1 A.S.R. 467 (1932). In order to have a case tried before the Judicial
Commission, both parties to the lawsuit must agree to have their dispute heard by the Judicial Commission. If one
party refused to have the case heard by the Judicial Commission, then the case was heard before the High Court.
displays of the body, traditional tattooing, cricket games, and *malagas* between villages and islands were all prohibited, to be replaced with American traditions and practices. Americanization doesn’t happen in a vacuum; elements of western lifestyle were mandated by village ordinances that made certain customs illegal. It was not hard to see that a shift to ‘individual’ land ownership was on the horizon. The legal pathway to owning land individually, apart from the family and village, was foreseeable. The further dividing of customary lands was just a matter of time, as the desires of an “I” lifestyle are part and parcel of being American.⁴⁶¹

⁴⁶¹ See the introduction for more about the “I” lifestyle of an American.
CHAPTER SIX:

INDIVIDUALLY OWNED LANDS AND COMMUNAL LAND TENURE

“When a village was established, the land in that village belonged to the people of that village. A mātai could claim land for his family or clan by clearing and then working it. Any land that was not under the direct “pule” of a mātai remained belonging to the people of the village. Paramount chiefs would have a more general control of larger areas. It is important to keep in mind that the power of a mātai was really defined not by title name, but by the land which he had control. Through this system, ownership of land from the mountain peak to the reef was defined among the various families, villages, and districts.”


Early land cases under the Naval Administration established the legal pathway to alienate land by the court-established classification of individually owned land. While the U.S. Congress and the Department of the Interior has successfully maintained its commitment to protecting against the alienation of communal lands to foreigners, indigenous Sāmoans (wanting to own land for themselves apart from the āiga and village) have been participants in the de-structuring and splitting of communal lands.

The unabated and unmonitored growth of registered individually owned lands demonstrates the fear of the 1979 Territorial Planning Commission that Sāmoans would convert communally owned lands into individually owned lands because there was a growing ‘minority of Sāmoans that wanted to break free from communal obligations,’ in part so that these lands could be then willed to their children.\(^{462}\) They foresaw that Americanization would begin to take hold in the territory, and that Sāmoans would want to own land separate from the obligations of the fa’amātai structure. In the 1979 case *Craddick v. Territorial Registrar of American Samoa*, the petitioners asserted that individually owned lands comprised less than four percent of all lands.

\(^{462}\) See Introduction, 41.
lands in *American Sāmoa*. There has been a significant increase in individually owned lands from 1979, when less than four percent of lands were individually owned to 2013, when 25.7 percent are now registered as individually owned.

*Decisions and Vernacular Language Usage in High Court, Tracing Individual Ownership*

In land dispute cases from 1900 involving adverse land possession and individually owned land dispute decisions, foreign rights to native lands were based upon the Court’s determination that the best evidence to land ownership is through dominion or authority over the lands. What is peculiar to *American Sāmoa* over any other jurisdiction in America is the hybrid legal system that created an extraordinary loophole for individual land rights; the burden of proof rests with the āiga to prove their occupancy, cultivation, and authority over the lands. Not long ago, all lands were held as native lands. The pendulum has now swung so far to the other direction that the burden of proof for ownership rights (or, native land tenure in stewardship) now rests on the āiga with ancestral ties to the communal lands to prove their own occupancy and cultivation.

The mātai possesses dominion, authority, and stewardship over the communal lands only as long as he or she holds the mātai title by consent of the āiga. Acts of dominion and authority over communal lands are not only forms of possession; they are inherent to the fa’amātai and fa’asāmoa systems. Native lands can be purposely left untouched and unassigned to āiga members by the authority of the senior mātai and village council. Under the Naval Administration, however, lands that were left virgin, without an individual occupying the land and evidencing “dominion over it,” were reduced to a “virgin bush land” classification by the

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463 *Craddick v. Territorial Registrar of American Samoa*, CA 61-78, slip op. (Trial Div. May 10, 1979) (Order Denying Motion for New Trial or Rehearing Civil Action No. 61-78).
High Court. This “virgin bush land” classification assumes that without an individual “occupying” and visibly showing dominion and authority over the land, it is without Sāmoan ownership. What the High Court failed to recognize is that native lands also included unassigned lands that were unoccupied and uncultivated, possibly due to low population count or in deference to cultural considerations.

While the High Court correctly recognized that land in customary ownership is not permanent and can have fluid occupancy, some Sāmoan traditions purposely leave “virgin bush lands” unoccupied and uncultivated. For example, in Sāmoan custom, guesthouses and sleeping quarters of senior mātai title holders and their āiga are built on communal lands. These structures give notice to neighboring villages that certain āiga have claimed such lands under the senior mātai title holder. Native lands were assigned to be left open for such accommodations within the villages. In addition, senior mātai title holders and their āiga are buried on communal lands, and a certain amount of lands were purposely kept uncultivated for burial purposes.

Malaga’s that were performed in the early 1900s required malae (vast open space) for visiting villages, dignitaries, and guests. There is no good comparison between western and Sāmoan traditions in terms of the exercise of authority and dominion over the lands. Western law expects to find an individual who is visible and physically exercising dominion over the lands to claim ownership. Yet, in Sāmoan tradition there are ancient understandings that large tracts of communal lands can go uncultivated and unused for decades. Ownership and authority over

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466 Coulter, The Pacific Dependencies, 87; reads “There is, however, no written evidence of the ownership of forest lands, and the court bases its decisions of ownership of such lands largely on their use. That is to say, if a piece of forest land has been cleared and used for four or five years and is then surveyed and registered, the registration is likely to be uncontested. If it is contested, the asserted historical circumstances of family ownership will count for something, but actual use of the land by another family is a weightier consideration.”

467 Ibid.
them is held under the fa’asāmoa, with senior mātai assigning different land parcels for specific purposes.

Ancient Statute of Merton

The legal presumption of individual ownership of lands in American Sāmoa is based on the eighteenth and nineteenth century rulings of William Blackstone and Maine of English common law. The early naval jurists failed to consider the roots of English property rights and ownership in order to appropriately use and apply common law property rights in American Sāmoa. The American Sāmoa High Court applied English common law with respect to property ownership without ever balancing custom, culture, and similarity in law or environment. Individual land ownership did not exist at the beginning of English common law; there were, as dictated by the Ancient Statute of Merton, the English statute written by Henry III of England and the Barons, only estates of land. Fee simple and freehold types of land tenure were born from this land tenure system. Estates of land were made available under the Crown to ensure that taxes were being collected by every Duke, Earl, Viscount, Baron, and vassal. Land ownership was not permanent and the Crown did not give land in perpetuity. Power and control over the peerage system was developed to ensure the Crown had ultimate ownership of all land holdings, the better to display economic domination over its subjects. Land estates were rewarded to loyal subjects of the Crown, and military service (e.g. knighthood) was one way to demonstrate this loyalty. Anyone deemed an enemy of the Crown could be removed from the lands, stripped of nobility and noble title, have all of their material wealth confiscated by the Crown, and even be imprisoned for some form of treason. Land was given and taken away as the Crown saw fit. Land was not owned in perpetuity by any individual. It was owned only by the Crown.

468 Ancient Statute of Merton, 1811; ch. 4, vol. 143, 262.
The feudal system collapsed in England, but the American Sāmoa High Court jurists still applied English common law to justify a presumption that unoccupied native land, such as virgin bush land, belonged to no one. This presumption further opened the window of opportunity for anyone who cleared communal land as the first occupant to stake a right of claim. Clearly, Morrow’s presumption that virgin lands belonged to no one was not applicable in England. It was definitely not applicable in American Sāmoa, either, for two reasons. First, in fa’asāmoa custom, all large and small tracts of land are communally held, whether the lands are occupied and cultivated or unoccupied and uncultivated. The High Court did not recognize these basic Sāmoan customs and ruled that land ownership rights could only be evidenced by a visible person sitting on the land. Second, at the root of English common law there were only estates of land, not individualized land, so to conclude that unoccupied, uncultivated communal lands in American Sāmoa belonged to no one based on the English common law property rights is spurious at best. In fact, fee tail\(^{469}\) and life estates\(^{470}\) were prominently used in England to ensure the noble class’s dominion and authority over the lands through the peerage system. This system allowed England to extract revenue and taxes for each parcel of estate land, with sunset dates to ensure that the estates were eventually returned back to the Crown. This is a key difference between the English and the American Sāmoan systems; the High Court did not stop to consider or evaluate the long-term impacts applying law derived from a peerage system might have on land ownership in American Sāmoa.

Case Law’s Evolution from Adverse Land Rights to Individually Owned Land Tenure

\(^{469}\) Fee tail is an estate that is inheritable only by specified descendants of the original grantee, and that endures until its current holder dies without issue. See BLACK’S LAW DICTIONARY 281 (2\(^{nd}\) ed. 2001).

\(^{470}\) Life estate is an estate held only for the duration of a specified person’s life, usually the possessor’s. See BLACK’S LAW DICTIONARY 246 (2\(^{nd}\) ed. 2001).
In 1900, there were only two types of land tenure in *American* Sāmoa: freehold and native. Figure 1 below depicts how individually owned land was developed through adverse land possession principles by the High Court from 1901 through the 1980s.

**Figure 1: 1901 – 1980s, Tracing Adverse Land Possession Rights into Individually Owned Land Tenure**

Between 1901 and 1930, the High Court under various naval Commandants allowed individuals to use adverse land possession rights to claim title over communal lands whose ownership was primarily evidenced by exclusive possession, control, and cultivation. These early cases were built on the premise that adversely possessing land didn’t require collaboration or dialogue. It was applied to *American* Sāmoa simply because it was accepted in every other ‘civilized’ place. In the 1930s, the criteria for adverse land possession evolved from exclusive possession and occupation to exclusive possession and cultivation. The new requirements
favored the users’ rights above all other considerations. Wood, more than any other
Commandant, considered indigenous oral history merely tradition (hearsay) and disqualified
testimonial evidence in the High Court, thereby favoring users’ rights instead of creating balance
between western law and Sāmoan custom.471

Oral Tradition Termed “Hearsay,” and Oral History Limited to 40 Years

When USN Commandants began adjudicating all cases in the Naval High Court in 1900,
they did so without previous recorded surveys, written deeds, or any form of written records of
land ownership. Pacific Islanders passed down genealogy, legends, spiritual and cultural myths,
tabooos, and family lands through orature.472 The transition from orature to written language
(Sāmoan and English) came in the mid-1800s as the missionaries set up schools in the villages to
teach Christianity and western behaviors and dress to the Sāmoans.

In order for a defendant to prove positive title against an adverse land possession
claimant, the defendant needed to prove continuous possession and cultivation. Without written
records, the Court only had oral testimony of witnesses to determine land ownership. Since the
Court considered oral testimony without written records to be hearsay and therefore inadmissible
as evidence, it had great difficulty handling land ownership cases. Out of necessity, the Court
admitted some oral history (which typically would have been considered hearsay in America),
but placed extreme limitations on testimony based on the oral history of family lands.

In Tialavea v. Aga the High Court stated:

Most of the tradition was handed down orally – all of it orally for about 200 years
for Samoans a good many years after the missionaries came to Samoa about 1830

471 See chapter 4.
472 Ngugi wa Thiongo describes ‘orature’ as all forms of oral history passed down from one generation to the next by
way of chant, song, dance, and speech. See, The Pacific Islands Environment and Society ed. Moshe Rapaport
(Honolulu: Bess Press, 1999), 166; Nunn, Vanished Islands.
[...] It is common knowledge that tradition handed down orally over a long period of time is frequently not very trustworthy. This elementary fact is the reason that tradition in one family about an event occurring years before is frequently entirely different from the tradition in another family about the same event. And the longer the tradition is handed down, the more it is subject to error. After all, tradition is only hearsay.473

Wood distrusted testimony given by Sāmoans in High Court that reported oral history of ancestry. After several years of conflicting testimony between families of the same and different branches of ancestral lineage laying claim on communal lands, Wood limited oral history of family knowledge in land ownership disputes to 40 years. Wood, obviously bewildered by the inconsistent testimony, asserts:

I am willing to hear the history of this family as it bears upon this piece of land, but I am not willing to hear the history of this family just as history. The question is who owns this land Auau or Patea. However I am perfectly willing to listen to the history of the family, if the witness does not state what someone a long time ago said. In a Mātai name case I do not go back further than ten Mātai, which is never over 75 years, but in a land case 40 years is far enough. All I want to know is who has undisputed possession of this land for the past 40 years, which is twice the usual time of 20 years. If you cannot prove your case without going back several hundred years your case would not seem to be [a] strong one. I will only allow the family history as it pertains to this particular piece of land for the past 40 years.474

Oral history testimony was considered by the military judges to be “pure tradition,” and an unacceptable form of evidence. Due to case after case of conflicting testimony given by witnesses about ownership of land without any written record, these types of testimony were considered to be pure tradition by the High Court. The limitation to 40 years of oral history to assert land ownership was established to help the High Court balance western law with Sāmoan custom in the early days of unwritten history in American Sāmoa.

In *Tuiolosega v. Voa*, the plaintiff, while representing himself, claimed that he cleared land called Mati on the island of Olosega in the Manu’a Group that was entirely bush, and that he planted banana, manioc, coconuts, and *taro* and lived there for a long period of time. The Letuli family, a branch of the Voa family clan, testified on behalf of the defendant in regards to ownership and occupation, and based their testimony on the word of their ancestors. The Letuli witness testified that prior to 1918, the Voa family had entered the bush land and planted fruits and took fruits upon their claim of ownership. The High Court declared that the Letuli family had open, notorious, actual, visible, exclusive, continuous, and hostile occupation while under a claim of title before and since 1918. Letuli was awarded the land in Olosega because the High Court determined their possession, which was testified to have continued for more than 20 years, was “clearly adverse to any claims to Tuiolosega or his family.” Morrow specified that Tuiolosega testimony was entirely “pure tradition” and that he had no personal knowledge as to the ownership of the land. Some judges deemed pure tradition so convoluted that they did not

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475 *Tuiolosega v. Voa*, 2 A.S.R. 138 (1941). In *Levale et al. v. Toaga*, No. 26A-1945 Justice Wyche stated: “The question of title to real estate in American Samoa is always a difficult one to solve for the reason that in most cases there is no recorded title to, nor description of property. Title to real estate is generally proved by family tradition.”

476 Ibid.

477 Ibid.

478 Morrow referenced in this case, *Talo v. Tavai*, 2 A.S.R. 63 (1938); *Letuli v. Faaea*, No. 8-1941 in which title to land cannot be evidenced by hearsay. There is no such exception to the hearsay rule, also referencing *Howland v. Crocker*, 7 Allen (MASS.), 153; *South School District v. Blakeslee*, 13 CONN. 227, 235.
permit testimony of genealogies to prove connection to communal lands. In *Vili v. Faiivae*, Gurr stopped witnesses from testifying about their genealogies because it was believed to be “pure tradition.”\[^{479}\] However, disallowing testimony about genealogy, however conflicting such testimony introduced by opposing parties, severely limited the opportunity of witnesses to prove their genealogical connections to communal lands and the interconnections to the *mātai* structure that may have allowed them use and occupation of disputed lands. This was especially difficult during the 1800s because of the civil wars. In the Vili case, the defendant wanted to testify about families living on the lands during the Tualati-Lealatua war, but all relevant testimony was prohibited by Gurr.

In *Tufaga v. Liufau*, the Naval High Court stressed that the testimony of both parties was founded solely upon pure tradition and that the Court cannot favor the statement of one party over another. No party was declared to have any solid foundation in fact.\[^{480}\] Without written records and with conflicting testimonies to ownership of lands, the Naval High Court was often left to make assertions or assumptions about where and how the rule of law could be logically applied. In Tufaga, Morrow concluded that the merits of the adverse land possession were fully satisfied.\[^{481}\] Although Tuiolosega adamantly testified that the original entry by Voa was unlawful and oppressive, the Naval High Court was confident that enough time had elapsed for the court to assume that Tuiolosega had acquiesced.

In *Letuli v. Faaea* the parties claimed ownership over Olosega lands called Falesamātai, which were composed of Falesama-Uta, Falesama-Tai, Fanuaee, Lofloí, and Taufasi. The defendant claimed that their ancestor Afe gave permission to Letuli to enter and use the lands for the past 20 years. Naturally, Letuli claimed his right to the land was not by permission but

\[^{479}\] *Vili Siopitu Faatoa v. Faiivae*, 1 A.S.R. 38 (1906).
\[^{480}\] *Tufaga v. Liufau*, 1 A.S.R. 184 (1903).
\[^{481}\] Ibid.
through a claim of ownership. Morrow decided that the defendant’s witnesses had no personal knowledge that Afe gave Letuli permission to enter Falesamātai, rendering the testimony as pure hearsay. Going even further, the judge stated at the end of the testimonies that, “Tradition in one family does not rise even to the dignity of reputation in the community as to the ownership of land.”

1901 - 1930

In 1901, Tilley strongly laid out adverse possession rights in American Sāmoa through Leiato v. Howden to firmly establish the political sovereignty of the U.S. territory from Independent State of Sāmoa. Without mincing words, Tilley declared:

> The case before the court was of the greatest importance to all the people of Tutuila; that if this unproved claim of the chief in Upolu were admitted it must be upon the grounds of tradition or family stories; that such would involve nearly all the lands in Tutuila. That the government of the United States could not admit nor approve claims to lands in Tutuila by people in Upolu unless such claims be fully proved: that in the present case there was no evidence whatsoever […] This case is one of the greatest importance, for the reason that it involves a claim to land by people who have not lived on the land for a long time. Included in the same class of claims are all the claims of the residents of Upolu claiming land in Tutuila. The court has found it imperative – absolutely necessary – to follow the practice that is general now in every civilized portion of the earth, and that is to recognize that the occupancy of the land for a fixed period, constitutes an ownership of the land (in this case 10 years uninterrupted occupancy). It is

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482 *Letuli v. Faaea*, No. 8-1941.
483 Ibid.
absolutely necessary, as I have said, that the government, through the court, shall take such extent to protect the natives of Tutuila, who have so long occupied the land, cultivated and improved it, from the onslaught of claimants from Upolu.

Tilley clearly favored mātai titles in American Sāmoa over those from the neighboring lands of Upolu and Savai‘i in disputes involving U.S. soil in the territory. The newly formed High Court applied the principles of adverse land possession, but Sebree took them even further, declared that a period of occupancy required claiming a prescriptive land title was 10 years prior to the land dispute. This became the standard for all land title claims in American Sāmoa. In 1905, USN Commandant Moore defined exclusive and hostile possession as it was to be applied in adverse land disputes. In Sapela v. Mageo, exclusive possession was defined as “a possession exclusive to all persons whatsoever” and hostile possession was “done or made in such manner and under such circumstances as to leave no doubt that that they came to the knowledge of the owner or some one [sic] representing him.” Moore also emphasized that although there may have not been written notice, there must have been possession so open and notorious it would raise a presumption of notice to him “equivalent to actual notice.”

Also in 1905, Moore ruled in favor of the plaintiff in Maloata v. Leoso, declaring “that the Plaintiff has cultivated and improved the land permanently and has reaped the produce, the fruits of his labor.” Although just five years earlier, all land was considered native lands in the benefit of āiga clans, Moore, who had no formal training in law, declared that “It was a well known [sic] custom in Samoa that the individual owner of property, notwithstanding his well

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484 Leiato v. Howden, 1 A.S.R. 45 (1901).
485 10 years became the precedent to adversely claim land, see Tiumalu v. Fuimaono, 1 A.S.R. 17 (1901); Laapui v. Taua, 1 A.S.R. 25 (1901), Mauga v. Gaogao, H.C. LT 2-1905, Pafuti v. Logo, 1 A.S.R. 166 (1907).
487 Id. at 4.
established rights to it, was subject to the will of the community and upon the commission of any act contrary to the desire of the community he would be banished or have to submit to gross degradation imposed by the people” (emphasis added). Moore may have based this assertion on a misinterpretation of the mātai title system, under which the individual has pule over the native lands at the will of the community. He may have understood “individual owner of the property” as meaning that the mātai title holder had authority at the will of the āiga, per the fa’asāmoa custom. The definition of “individual” in the Sāmoan context, however, is not analogous to the western definition. The mātai title holder is not perceived as an “individual” in the western sense because his authority and dominion over communal land is but a link in the Sāmoan customary chain of county chiefs, village council, senior mātai, orator, and mātai title holder. The mātai title holder is not an individual within the context of Sāmoan customary lands. Moore introduced a legal term with specific meaning into the laws about land rights—an introduction which became a stepping stone on the path to recognizing individual rights to property.

Two years later, in 1907, Moore referenced his own decision, and again applied the 10 years undisturbed adverse possession requirement in American Sāmoa. He justified the adverse principle and 10 year time period by simply upholding the rules of the Sāmoa Land Commission and Sāmoa’s Supreme Court, which were created in the 1890 Tripartite Agreement. In Pafuti v. Logo, Moore emphasized that Logo had undisturbed possession and control from before Pafuti’s 1883 arrival to the village of Aoa. Significant to this ruling was the balancing of western law with fa’amātai and fa’asāmoa, because the plaintiff, Pafuti, was the daughter of Mataafa.

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489 Ibid. at 1.
490 Pafuti v. Logo, 1 A.S.R. 167 (1907).
Mata’afa is a *Tamaāiga*

491 title from the Independent State of Sāmoa. Pafuti stated in court that she was claiming the right of ownership to Aoa lands as the daughter of Mataaafa, and the court obliged her claim of right due to the *fa’asāmoa* custom with respect to this *Tamaāiga* title. Moore recognized her claim of right as an agent for Mataaafa. In communication with Mataaafa for this case, “by reason of courtesy to so high a chief, the question of Pafuti Talala’s relationship was not allowed to be discussed in court, but she was accepted as Mataaafa’s agent.”

492 Although there was no recorded evidence as to Pafuti’s relationship to Mataaafa and no proof of Mataaafa’s claim of title to land, the Naval Court nonetheless, based on Sāmoan custom, granted the plaintiff’s case to proceed. Moore decided that Logo had undisputed possession and control of the lands in question from before 1883 when Pafuti entered Aoa. Moore went even further, stating that even if Mataaafa had certain rights upon Aoa and imposed a *sā*

493 on the lands (as testified by the plaintiff’s witnesses) Logo never lost control or possession of the lands.

494 Logo openly disputed any rights or claims that Mataaafa from the Independent State of Sāmoa made to Aoa since before the new Government. Therefore, Moore granted Aoa to Logo and issued a strongly worded decision in favor of the possessor of lands:

The possession of these lands by Logo and the people claiming with him, was open, exclusive, and continuous, so far as Mataaafa was concerned, from the visit of Mataaafa in 1883 to the visit of Pafuti Talala, as the daughter of Mataaafa, in the year 1903 or 1906, which would make it more than twenty-two years between the two [sic] of any claim of Mataaafa to the lands in question, and this Court cannot consider any secret, underhand communication with Mataaafa as strengthening his

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491 *Tamaāiga* is the equivalent of a “royal” title.
493 *Sā* when used in this context means forbidden or out of bounds.
right to hold these lands. It is not worthwhile [sic] for this Court to cite the numberless authorities on the question of the settlement of titles by adverse possession. The doctrine is so well understood that it is a waste of time to discuss it.\footnote{Ibid. at 4.}

Between the 1920s and 1930s, the High Court’s rules of evidence to adverse land rights evolved from exclusive possession and occupancy to exclusive possession and cultivation. Occupation evolved into cultivation, which became the new requirement to evidence adverse land rights. This change enhanced both oral history and land law in American Sāmoa in the sense that there were tangible cultural assets to prove exclusive possession and improvements to the land by way of clearing it. As shown in Chapter 4, village ordinances, under penalty of hefty fines, required all individuals and mātai to cultivate taro, ta'amū, bananas, and coconuts. In 1926, Wood, openly critical of oral history as hearsay, proclaimed cultivation as key to adversely claimed land:

In whichever one of these examples this particular case comes under, or any land case, it is not necessary to go back into the dim past to clear your title. You do not have to rely on stories that have been handed down in a family for ten generations to establish a title. A title is fact, and you only have to go back twenty or twenty-five years to establish a title. If a man seventy years old acquires a piece of land when he was very young, it would be necessary to go back to the time he acquired it, but in the ordinary case, it is not necessary to reach clear back into the misty past to clear your title. I speak of this because in mātai name cases we allow the different parties to go back a good many years, for the reason that mātai names are a good bit of tradition that have been handed down in a family, but it is never necessary to go back more than ten mātai, which is usually about
seventy-five years. In this particular case, I want to know who is taking care of the land, who is cutting the copra and living there, saying “this is my land.”

In 1930, the High Court also decided that to determine ownership of land, they must consider the āiga that took all produce and profits from the land for over 20 years. In *Tuimalo v. Mailo*, the High Court stated, “The best evidence of communal ownership of land is clearing, planting, cultivating, and building upon the land.” While the requirement of cultivation replaced that of control, exclusive possession remained a steadfast requirement.

1930 – 1940

Without any U.S. congressional oversight, and without any specific commission or agency to monitor whether the actions of the Naval Administration were within the promises of the two Deeds of Cession and within the spirit of the 1899 Treaty of Berlin, USN Commandants and Judges did very little to consider the negative impacts that their decisions would have upon customary lands and traditions. While the Naval Commandants lacked consistency and long tenure on the bench, Judge Morrow was consistent in his decisions and the longest serving judge in the High Court – to the detriment of Sāmoan customary land tenure.

In the 1930s, exclusive possession and control continued to be upheld in court as the basis for adverse land possession claims, although the statutory period of 10 years changed to 20 years. These cases were the building blocks of the court’s philosophy about ownership of native land that marginalized Sāmoan custom. Morrow effectively defined and recognized “private land ownership” in *American* Sāmoa such that his approach did not appear to conflict the two Deeds of Cession. He even decreed private land ownership was within Sāmoan

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Morrow didn’t provide any legal references to his brazen assertions that *fa’asāmoa* practiced private land ownership in some shape or form.

Adverse land possession added the legal possibility to “individual” ownership to a system of land tenure classification that had previously only had categories of native and freehold. Before 1900, individual ownership never existed in *American* Sāmoa, other than select freehold lands. Prefatory right to individual ownership of land was recognized by the High Court to be distinct and separate from the native or otherwise communal lands under the *fa’asāmoa* and *fa’amātai* structure. In 1933, in *Avegalio v. Suafoa*, three āiga members in the Leone district all claimed ownership to a specific parcel of land, which was quite small when compared to the communal land, parcels that make up all of Leone. Each party in this Leone land dispute had conflicting names for the land. The first plaintiff (Avegalio) called it “Aupuga,” the second plaintiff (Salave’a) called it “Mulivai,” and the defendant called the land “Lalolasi.” The different naming of lands by āiga clans continued throughout the first 50 years of the Naval Administration, and largely ended after the Department of the Interior took over the administration of the islands. Salave’a testified that the land was owned by him as an “individual,” not by mātai title rights or communally. He claimed it was “individual,” not individually owned, because this land classification had not yet been created by the High Court.

Salave’a testified that he had received the land as an individual, not a native, from his father Fepulea’i, and that Fepulea’i had received the land as an individual from his father, Su’a. Wood seemed to be taken back by this bold claim of “individual” ownership, because in court he proclaimed, “You know, do you not, that there is very little land owned in American Samoa by

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503 Ibid.
individuals, how did it happen that this land came to be owned by an individual.”\cite{504} In this case, the High Court again decided to split the land. Avegalio was entitled to the west of the stream and north of the road passing through it to the northern boundary. Suafoa received the land in the mātai title solely because of his testimony that his āiga had an uninterrupted and adverse use of the land for at least 40 years, cultivating the land, while Salave’a had not possessed or cultivated the land for at least 20 years.\cite{505}

It was also at this time that Morrow stated that the High Court had determined that the possession of land created presumption of ownership in the possessor.\cite{506} In \textit{Talo v. Tavai}, Morrow relied upon sixth century \textit{Corpus Juris Civilis} (first codification of Roman and Civil Law), seventeenth century English statutes of adverse land possession rights in possessor and occupant, and early twentieth century work by acclaimed real property scholar Herbert Tiffany. Taken together, these sources creatively devised limitations on how native land might be held onto under Sāmoan custom. Under Sāmoan custom, dispersed and low population numbers and large tracts of land with unassigned pieces would always make exclusive possession difficult to prove. Applying ancient western real property principles without carefully considering the long-term impacts to Sāmoan custom and native lands effectively rubber-stamped the Judge’s “Laws of Convenience” without haste, giving weight to civil codes and laws that favored the possessor who is in “open, notorious, actual, visible, exclusive, continuous, hostile, and […] adverse possession.”

In 1938, Morrow created individually owned right to land ownership in \textit{American} Sāmoa. In the case of \textit{Fa’aafe and Una’i v. Sioeli}, Morrow awarded individual land ownership through adverse possession to the plaintiffs as tenants in common. This decision to award individually

\footnotesize{
\begin{itemize}
  \item \cite{504} Ibid.
  \item \cite{505} Ibid.
  \item \cite{506} Ibid.
\end{itemize}
}
owned land was entirely distinct from American Sāmoa customary law about native lands and void of any obligations of service to the fa’asāmoa and fa’amātai systems or the mātai title holders, village council, or āiga. Sioeli surveyed ‘Asiapa’ land in Fagatogo and claimed that this land was not native land but individually owned, while the plaintiffs, objecting to his land registration, claimed ‘Asiapa’ was individually owned by Fa’aafe and Una’i. Without having performed any factual research, Morrow decided that, based on the land surveys of ‘Asiapa’ and both party’s sworn testimonies, ‘Asiapa’ was not native land but individually owned. The claim by both parties that ‘Asiapa’ was individually owned outside of native lands is preposterous; in 1900 there was only native and freehold land tenure. Sioeli testified that approximately 60 years before the case was heard, Mailo had sold the land to Sioeli’s father, Taeu Paea, and that upon his death, ‘Asiapa’ was willed to Sioeli. This would mean that in 1878 Mailo sold ‘Asiapa’ to Taeau Paea as individually owned land. This could not have happened in 1878 because there were only native lands in American Sāmoa, and a very select few parcels of freehold lands.

Morrow did not critically question Sioeli’s testimony that the land was individually owned by his father or willed to him; he side-stepped these assertions altogether by deciding Sioeli’s entire testimony was based on hearsay. How or why these lands were able to be individually owned (rather than native) was never explicitly stated in court or through testimony of the witnesses. From 1900 to 1938, no single case ever explicitly defined or identified how, where, or why native lands were suddenly made into “private or individual” lands. There were only generalizations from the bench with strong affirmations that private ownership existed in Sāmoan custom. Morrow’s presumption that private ownership existed in Sāmoan custom drove forward the widespread application of adverse possession of lands.

507 Fa’aafe v. Unai, 2 A.S.R. 22 (1938).
508 Ibid.
509 Ibid.
The twenty-year period between 1940 and 1960 was a time of immense change for traditional customary land tenure in American Sāmoa. The previous three decades under the Naval Administration had provided the building blocks, but it was in this period that the concept of individually owned land was cemented, when virgin bush was defined as belonging to no one.

Between 1945 and 1947, the High Court put the burden of ownership on the traditional mātai title holder to prove occupation and claim of right. Prior to the Naval Administration, genealogical knowledge of āiga and their lands were all under the fa’amātai structure. Surveys were not needed because, like other indigenous cultures without a written language, natural boundaries were used to distribute resources and demarcate land parcels. During this period, the High Court had settled into a system where exclusive possession and cultivation were enough to adversely possess lands, cultivated or uncultivated. A series of cases starting in 1945 established a presumption that uncultivated virgin bush lands were ‘not native lands’ and belonged to no one. This meant that all uncultivated and virgin lands were presumed to not be under the fa’asāmoa.

In the 1945 case Tiumalu v. Lutu, the High Court specifically recognized the ownership of individually owned land that was not freehold land. This landmark case established the presumption of individual ownership, as well as the right for the property to be inheritable. In Tiumalu, the court divided between the parties ownership of two pieces of land, Asi and Sigataupule, in Fagatogo village. Sigataupule land was awarded as individually owned to Lutu Simaile (the defendant), not through customary practices but through intestate succession of right through the defendant’s deceased father, Afoa. In other words, the court granted the title vested in Lutu Simaile through inheritance. In contrast, Asi land was awarded to the plaintiffs as

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communally owned. The court acknowledged that, absent evidence of communal ownership, land could be defined as “individually, as opposed to communally, owned.” This meant that, if the parties in dispute claimed that these lands belong to no mātai or are not part of āiga lands—for example, virgin bush lands the High Court may declare these lands freely able to become individualized. Here the Naval Administration opened the door to a form of alienation of lands; the ruling, allowed individual Sāmoans to own land but did not proscribe a set of clear criteria to prevent the mass individualization lands. My use of the term ‘alienation of lands’ in this instance does not imply nationality or ethnicity; rather it is meant to highlight that the Naval High Court unwittingly developed the alienation of communally owned lands (or virgin bush lands) from amongst American Sāmoans. Without a clear set of criteria or parameters for individual ownership, the High Court’s decisions during the 1940s have indirectly led to the impossibility of communal lands being preserved in uncultivated large parcels for future generations that rely upon these lands for residence, agriculture, and access to natural resources.

Morrow’s decisions laid the groundwork for individually owned land tenure. Several years later, in Tago v. Mauga, Morrow again made declarations about Sāmoan culture and land ownership without bothering to describe legal precedent or historical foundation, stating that “Samoans acquire title to bush land under custom by open occupation and use coupled with claim of ownership.” Morrow did not provide specific details as to how bush lands were handled in terms of fa’asāmoa because all lands had originally been native. Morrow makes clear distinctions between bush lands and native lands, which action could arguably be considered as him creating an ‘improper legal fiction.’ The legal fiction that ‘bush lands belongs to no one’ is based on no factual foundation or legal justification, which has created a legal quandary.

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511 Ibid. at 223.
Morrow eagerly accepted Vaipito as individually owned land and gave Sami and Fa’afeu Mauga individual land rights based on testimony from persons such as Pulu and Soliai, who claimed that the previous mātai title holder Mauga Moimoi owned it individually and not through his paramount mātai title.\textsuperscript{513} Morrow went even further and ruled that the land could be freely willed to his heirs Sami and Fa’afeu, his adopted daughters.\textsuperscript{514} In the opinion, Morrow only accepts the testimony on behalf of Sami and Fa’afeu Mauga that Mauga Moimoi entered Vaipito while it was bush land “owned by no one,” and that he acquired title to it through first occupancy and claim of right.\textsuperscript{515}

There was still no reconciliation by the High Court between the western principles of first occupancy and claim of right and the \textit{fa`asāmoa} custom and system of native land tenure. Both the High Court and Morrow mention briefly the fact that Sāmoan custom does in fact address first occupancy and claim of rights, but never discuss these elements of custom or tradition, and not once in any of his cases does Morrow provide the legal basis for how and when virgin lands became “owned by no one” within Sāmoan custom.

\textbf{Attributes of Individually Owned Lands}

In 1948, Morrow started to partially define individually owned land by attributing characteristics to the land classification. The Fono failed to vet the statutory language defining individually owned lands and failed to create mechanisms to monitor or regulate this type of judicially-produced land tenure. In \textit{Taatiatia v. Misi}, the High Court continued to declare that

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{513} See Ibid. at 3, Pulu first testified that he was familiar with the land since he was a mātai title holder in the Mauga āiga and he was 70 years of age and had a very long history to the lands in general, and then he stated that the Vaipito belonged to Mauga Moimoi as an individual. However, after a court recess he changed his testimony. However, Judge Morrow refused to rescind his original testimony and believed his original testimony was more accurate in that Mauga Moimoi owned the land as an individual.

\item \textsuperscript{514} Ibid. at 7.

\item \textsuperscript{515} Ibid. at 2.
\end{itemize}
\end{footnotesize}
virgin bush land belonged to no one, applying the old English law of Blackstone and Maine to an American Sāmoan land system and culture that is far removed from European philosophy.

Morrow didn’t stop at defining virgin bush land as belonging to no one. He created new methods to convert land to individual ownership by ruling that individually owned lands could be created if a mātai gives them away as such. He claimed that this had been done in the past by pronouncing, “We know judicially that some mātais in American Samoa have, with the consent of their family members, given family lands outright to certain members of their families. Taetafea testified that she was present and heard old Gi in 1905 make a gift of this land to her and her husband and that such gift was a reward for splendid service rendered by her husband and herself to Gi; also that such gift was followed by possession by the donees.”

Morrow may have misunderstood or misinterpreted the context; the phrases “giving land outright” and “assigning land for particular family’s use” might have referred to the Sāmoan custom of fa’amātai and communal land sharing amongst āiga through distribution and allocation.

Several weeks later, in Muli v. Ofoia, Morrow decided that if virgin, unclaimed land is occupied and cleared for an individual’s benefit, the High Court will determine this evidence sufficient to right of title to individual ownership. The twentieth century laws against the alienation of land were meant to stop foreigners from taking away native lands from Sāmoans; instead, native lands were being stripped from fa’asāmoa custom and de-structured internally by the Naval Administration through its improper legal fiction built upon their introduced “Laws of Convenience.”

1960 – 1980

516 Gi v. Taetafea, 2 A.S.R. 401, 403 (1948).
517 Id., at 10 (1948).
By the 1960s, individually owned land tenure had become firmly planted in the legal vernacular of American Sāmoan society. Sāmoans, both mātai and non-mātai, recognized that native lands could be turned into individually owned lands if an individual continued to adversely possess the land for a statutory period of time, or if an individual cleared virgin bush land, or if a mātai gifted the land as individually-owned. These earlier cases were established precedent in cases of individually owned land rights, and together they outlined specific circumstances in which land title could be awarded to an individual.

In Government v. Letuli the High Court awarded very large parcels of individually owned land on prime real estate near the airport by citing the earlier cases of acquisition of title by first occupancy and claim of ownership:

This court has ruled many times that Samoans may acquire title to land through first occupancy accompanied by claim of ownership. Soliai v. Lagafua, No. 5-1949 (H.C. of Am. S.); Faatiliga v. Fano, No. 89-1948 (H.C. of Am. S.); Gi v. Te’o, No. 35-1961 (H.C. of Am. S.); Magalei et. al., Lualemaga et. al., No. 60-1961 (H.C. of Am. S.). This doctrine of the acquisition of title by first occupancy coupled with a claim of ownership is approved in Main’s Ancient Law (3rd Am. Ed.) 238. See also 2 Blackstone 8. The most common way for a Samoan to acquire title to land is to clear a portion of the virgin bush, put it in plantations on the cleared area, and claim it as his own land or the communal land of his family. This is a recognized way of acquiring land of his family.

This is a recognized way of acquiring land according to Samoan customs. The High Court again referred to Blackstone and Maine, utilizing the same irrelevant English philosophies to justify the individualization of land ownership in American Sāmoa. Earlier

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1920s and 1930s court decisions had replaced exclusive possession and cultivation requirements with first occupancy and claim of right. After 60 years, the Fono finally tried to define individually owned lands, but it failed to pass by majority vote in two consecutive Fono sessions:

Sec.9.0103 – INDIVIDUALLY OWNED LAND: Individually owned land means land that is owned by a person in one of the first two categories named in Sec. 9.0102, or that is in court grants prior to 1900. Such land may be conveyed only to a person or family in the categories mentioned in Sec.9.0102, except that it may be inherited by devise or descent under the laws of intestate succession, by natural lineal descendants of the owner. If no person is qualified to inherit, the title shall revert to the family from which the title was derived.520

This definition was not fully passed by the Fono in two consecutive sessions, and at least seven attempts to define individually owned lands never made it out of the first house.521 The Fono couldn’t muster enough political will to define this judicially-made land tenure, so the High Court proceeded to define it for them.

In the 1974 case Haleck v. Tuia, the High Court expanded once again to the definition of individually owned land rights by deciding that individual land rights are established when a person enters virgin bush land that no other person previously cultivated, provided that the first occupier clears the entire land “substantially,” and a “considerable plantation was developed.”522

Still other possibilities for creating acceptable types of individually owned land registrations were discussed, including: no objections being made to the registering of the land at the

520 Act of April 7, 1962, Pub.L.7-19, codified IX Code American Samoa, section 9.0103 (1961). According to Article I, Section 3, and Article II, Section 9, Cost. Am. Samoa this must have passed two successive legislatures which there is no sign these were passed by both houses.


Territorial Registrar’s office; an individual entering the land upon other than direction of mātai; the work being done entirely at the individual’s expense; and the work being other than a “communal effort.”

The High Court made another caveat to the attributes assigned to individually owned land. Whereby previously the registrant needed to be the first occupant and establish a claim of right when clearing virgin bush land, in 1974, the court modified the claim of right, stating that it could be based on “substantially clearing the entire land.” The High Court favored the possessor once again by modifying the right to individualize land by requiring only that the land be “substantially cleared.” By this time in the late 1970s, individually owned land rights and the concept of private land ownership had fully taken hold within American Sāmoa.

The defining attributes and conceptual definition of individually owned land was built on precedent cases, and the 1977 Fanene v. Talio case perfectly reveals how individually owned tenure de-structures the communal land system. The access and use of resources that had once been shared among neighboring āiga on contiguous parcels of land were forever disrupted.

Fanene v. Talio was complicated because 11 cases were consolidated into one trial, some parties claimed sections of Malaeimi land as individually owned, others claimed sections as communally owned, several leases existed, and some parcels were large lands and others much smaller lands. Fanene claimed 265.9 acres as individually owned although a major part of the entire acreage remained virgin bush. Fonoti claimed 35 acres (“Alatutui”) as individually owned land based on adverse use of land for over 30 years and first occupant claims. Fagaima claimed 34 acres of individually owned land based on adverse possession of 30 years. Tauiliili claimed 24.400 acres of individually owned land through clearing virgin bush in its entirety and performing some cultivation. Sotoa claimed 21.15 acres of individually owned land entirely

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523 Id.
524 Fanene v. Talio, LT 64-77, slip op. (Trial Div. April 22, 1980).
cleared by his father and cultivated, and thereby demonstrating dominion over the land. Moeitai claimed one (1) acre of individually owned land. Uiva Te’o claimed 79.86 acres as individually-owned land on the extreme southwest portion of the Fanene lands called “Etena.” Tuiaana Moi claimed individually owned lands through adverse possession and first occupant claims. Heirs of Niue Malufau claimed 12.55 acres and 18.015 acres. Fanene claimed lands of 265.9 acres. Leapaga claimed 4.37 acres of land ("Lepine") as communal property. One of the rulings by the High Court in the 11 consolidated cases decided in favor of Fagaima, who was declared the individual owner of the 34.04 acres of land against Fonoti, Tauiliili, and Sotoa āiga. Fagaima’s decision exemplifies how 34.04 acres were forever de-structured from the total 265.9 acres that once were used by the Fanene āiga. The High Court also instructed Fonoti, Tauiliili, and Sotoa to resolve any conflicts where the land parcels met, and then to file with the Territorial Registrar.525 The High Court also encouraged all parties to erect monuments marking boundaries in concrete or pipe to prevent further land squabbles.526

All of these Malaeimi land parcels were divided amongst āiga clans and made into individually owned lands with surveyed boundaries and amended maps, all registered with the Territorial Registrar. Most of these land parcels were individualized because of the 1960s cases that established first occupancy and claim of right as elements to establish individual ownership, and the other cases were individualized by outright adverse possession or by clearing virgin bush land in its entirety. On appeal, Justice Miyamoto described individually owned land as that land:

(1) cleared in its entirety or substantially so from the virgin bush by an individual through his own initiative and not by, for or under the direction of his aiga or the senior mātai, (2) cultivated in its entirety or substantially

525 Ibid. at 4.
526 Ibid. at 5.
so by him, and (3) occupied by him or his family or agents continuously from
the time of the clearing of the bush.\textsuperscript{527}

Justice Miyamoto’s ruling has become the leading case on defining individually owned land
rights by the clearing of virgin bush land in its entirety or substantially by a person under his own
volition, and the occupation of said land by him or his agents after clearing the land. This case
has essentially shaped the growth in registered individually owned lands since 1977. Justice
Miyamoto introduced a lower standard to individualize land by stating that the land could be
cleared substantially and not necessarily in its entirety. The window to individual ownership
once again opened even wider.

\textit{Laws of Convenience into Improper Legal Fiction Produced Individually Owned Lands}

The Naval Administration introduced the “Laws of Convenience” as the standard of
western, meaning \textit{American}, property rights. Such laws were thought to symbolize \textit{American}
Sāmoa’s acceptance of “civilization” and democracy in the Pacific. The “Laws of Convenience”
introduced the concept of individual rights to land ownership, which led to the individually
owned land classification. As early as 1907, the Navy was working actively to stabilize land
titles in \textit{American} Sāmoa, since the High Court perceived the native land and linkages to
\textit{fa’asāmoa} as being based on uncertainty and unqualified title ownership.\textsuperscript{528} Slowly but gradually
gaining momentum and force over the decades, the individual notion of private ownership
distinct and separate from communal land holdings took shape, and by the 1980s, the criteria
required to individualize land became more relaxed, and therefore easier to prove in the High
Court. It is remarkable that after 110 years of territorial status the \textit{Fono} has never passed
legislation to regulate or even to define this judicially-manufactured land tenure. Over the last

\textsuperscript{528} See \textit{Talala v. Logo}, 1 A.S.R. 166, 171 (1907).
60 years, the High Court succeeded in both making this land tenure and re-making it by defining, expanding, and narrowing its parameters without objections or delimitations by the legislative branch.

Unfortunately, the individually owned land tenure classification does little to address the conundrums and challenges that led to land laws which were meant to protect native American Sāmoans from the alienation of their lands. Is the owner of individually owned lands the permanent owner of the land in perpetuity? Individually owned land is not completely fee simple because it is conditioned upon at least one-half native blood. The land, by law, is only able to be owned in individual ownership if the owner is at least one-half native blood. This begs the question, if no one in government is monitoring individually owned land ownership and individually owned land growth, then how is the government properly enforcing the prevention of alienation of lands by ensuring the owner is at least one-half native blood as prescribed by law?

If the heir to individually owned land happens to be less than one-half native blood, what happens to the individually owned parcel of land? If heirs to individually owned land are not one-half native blood, as required by statute, is there any governmental agency to declare the lands inalienable, and if so, then what happens to these land parcels?\(^{529}\) If the heirs to individually owned land are less than one-half native blood, does the government have the right to revoke the registered lands because the owner has violated the alienation land laws? If this is the case and the government revokes the registered land, who is vested with the ownership rights

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\(^{529}\) In 1962, the *American Sāmoa Fono* (legislature) passed laws recognizing the concept of individually owned land without defining it, but restricted its ownership to: (1) a full blood[ed] *American* Sāmoan, or (2) a person who is of at least one-half Sāmoan blood, was born in *American* Sāmoa, is a descendant of an *American* Sāmoan family, lives with Sāmoans as a Sāmoan, has lived in *American* Sāmoa for more than five years, and has officially declared his intention to make *American* Sāmoa his home for life, see A.S.C.A. §37.0201 (1999) and §37.0204 et. seq. (1982).
upon revocation? Does the land parcel go back to the original āiga clan, the county council, or the Land Commission to decide?\footnote{See A.S.C.A. §37.02, Land Commission and Alienation of Land.}

The only way to solve these conundrums is, as the High Court has recommended repeatedly, for the Fono to institute parameters and definitions, thereby addressing these issues through the proper branch of government. This branch also will permit direct democracy through the participation of constituents into the decision-making process in addressing individually owned land tenure.
American Sāmoa’s legal and political relationship with the U.S. is currently being reexamined due to the growing number of off-island American Sāmoans wanting automatic U.S. citizenship. Many on-island American Sāmoans maintain the century-old fear that automatic citizenship will result in the U.S. Constitution being applied in its entirety to the territory and that the application of Due Process protections of the U.S. Constitution may invalidate the American Sāmoa Constitution. This would remove the express protections of communally owned lands that limit them exclusively to American Sāmoans. This chapter will identify the U.S.’s political and legal relationships with other territories and affiliated and compact states in order to analyze the political possibilities that could expand American Sāmoa’s self-autonomy and preserve communal land tenure while upholding Sāmoan culture.

Independent State of Sāmoa (Sāmoa), Palau, and Marianas Islands will be analyzed to provide comparison with similar, although not parallel, political status and to examine how their histories intersect at times with the history of American Sāmoa. Table 8 illuminates the different relationships that each Pacific Island jurisdiction has with the U.S.

Table 8: Comparative Political Differences and Similarities, 2015

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531 Sāmoan proverb that means let the crab take counsel with its legs, which means one should think things out before taking action.
<table>
<thead>
<tr>
<th>Citizenship</th>
<th>Federal Financial Aid</th>
<th>Congressional Representative</th>
<th>Political Status</th>
<th>Protections to Land Tenure</th>
<th>Access to U.S.</th>
<th>Eligible to conduct foreign trade/taxee s</th>
<th>Membe r States of U.N.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Palau</td>
<td>Palau Citizen (not U.S. Citizen)</td>
<td>FY2011 – FY2024: direct economic assistance ($107.5 million) for Palau government operations; infrastructure project grants ($40 million) to build mutually agreed projects; infrastructure maintenance fund ($28 million) for maintaining the Compact Road, Palau’s primary airport, and certain other major U.S. -</td>
<td>N/A</td>
<td>Compact of Free Association (Instrument of Political/Legal relationship with U.S.)</td>
<td>Yes, in Compact of Free Association.</td>
<td>Yes. Palau Island treated as foreign country for tax purposes and are eligible for the foreign earned income exclusion.</td>
<td>Member State</td>
</tr>
</tbody>
</table>


funded projects; fiscal consolidation fund ($10 million) to assist Palau in debt reduction; and trust fund contributions ($30.25 million) in addition to the $70 million contributed under the compact.533

<table>
<thead>
<tr>
<th>Sāmoa</th>
<th>Sāmoa Citizen (not U.S. Citizen)</th>
<th>N/A</th>
<th>N/A</th>
<th>Sovereign Country</th>
<th>Yes, in Constitution.</th>
<th>Considered foreign country, must have Sāmoa passport.</th>
<th>Yes, N/A</th>
<th>Member State</th>
</tr>
</thead>
</table>


**Other Political Frameworks in the Pacific Region**

**Independence – Independent State of Sāmoa**

In 1962, Independent State of Sāmoa (Sāmoa) was the first Pacific Island Country to achieve independence. Sāmoa is a Westminster parliamentary democratic country and a model country for other Pacific Island States during an era of formal de-colonization in the Pacific. It was categorized as a least developed country (LDC) by the United Nations in 1971 because it produced the lowest indicators of specific criterion for poverty, human resource, and economic vulnerability. In 2014, the United Nations graduated Sāmoa from LDC to developing country (DC) status, making Sāmoa only one of four countries to graduate to DC status in 43 years.535

Sāmoa consists of 1,090 square miles covering nine islands, with Savai’i (660 square miles) being the largest. Upolu (430 square miles), which hosts the capital Apia, is the second largest. The four main islands lie between 13 and 15 degrees south latitude and between 171 and

173 degrees west longitude.\textsuperscript{536} The 2015 population estimate for Sāmoa is 193,483, with 157,527 residing in the rural areas and 35,957 residing in urban areas.\textsuperscript{537} Sāmoa is approximately 76 miles east south-east from American Sāmoa.

\textit{Mālo (National Government)}

The 1962 Constitution of Sāmoa is derived from Great Britain’s parliamentary democracy but was amended to enshrine national protections for Sāmoan customs. This parliamentary democracy provides for a Head of State, Prime Minister, and Cabinet. At the time of the Constitution’s enactment, the Heads of State (\textit{O le Ao o le Mālo}), selected from amongst the \textit{Tama-a-Aiga}, were given lifetime appointments. In the intervening years, this policy has changed and terms in office are now proscribed.\textsuperscript{538} Sāmoa’s Constitution is distinguished from those of Constitutional monarchies in that a simple majority vote may amend it. The Prime Minister is chosen by a majority in Parliament every five years. The Cabinet, ranging in members from members eight to 12, are appointed by the Prime Minister and sworn in by the Head of State. The Human Rights Protection Party (HRPP) is currently the majority party and holds all Cabinet seats, but it faces formidable opposition in Parliament, most notably from the Tautua Samoa Party, formerly known as the Samoan Democratic United Party.

The national government (\textit{mālo}) is intertwined with the Parliament under its Parliamentarian democratic model. The unicameral legislature, \textit{Fono Aoao Faitulafono} (National Legislative Assembly), is composed of 47 \textit{mātai} members and two non-\textit{mātai} members that serve five-year terms and must be Sāmoan citizens. The 47 \textit{mātai} are elected from ethnic Samoan constituencies; the other two are chosen by the Samoan citizens on a separate

\textsuperscript{536} Constitution of Independent State of Sāmoa, art.1.
\textsuperscript{537} Sāmoa Bureau of Statistics, Population and Housing Census 2011.
\textsuperscript{538} \textit{Tama’aiga} titles: Malietoa, Tupua Tamasese, Mata’afa, and Tuimaleali’ifano.
“Individual roll.” These two seats are reserved for freehold land owners. The Legislative Assembly is formed by the majority power, executive power is exercised by the mālō, and legislative power is vested with the Legislative Assembly. The intertwining of the mālō and Assembly results from the mālō control over legislation through its majority in the Legislative Assembly. The Judiciary branch is independent. Sāmoa’s Constitution protects the culture, as does the Constitution of American Sāmoa, because only those within the fa’amātai system, or mātai title, may vote and stand as candidates in parliamentarian elections.

Mātai title holders who are Members of Parliament serve dual roles. In the village they serve the family from which the title originates, and in Parliament they represent the area in which they are elected. Under the Electoral Amendment Acts of 1990 and 1991, all adult citizens may be eligible to vote in the constituency by residence, service, or via family connections. Voting in constituencies where there is a connection by residence means that if a citizen resides in one village but has a mātai title from another village, he or she may vote where the mātai title originates from. This electoral methodology recognizes the fa’amātai system by prescribing voting rights based on fa’asāmoa connections.

Local Government

Many of Sāmoa’s civil and criminal matters are dealt with by Fono o Mātai (village councils) according to customary law, a practice further strengthened by the 1990 Village Fono Law. The 1990 Village Act provides for the village fono to operate as its traditional political unit, so that it is able to promulgate rules, punishment, and arbitration within the confines of the village. The village mayor (pulenu’u) is nominated by the village council but paid by the local

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539 Freehold lands are not subject to the pule of the villages. The freehold land owners and their interests are represented in Parliament through these two “Individual role” seats.
540 There are approximately 380 village councils throughout Sāmoa.
government to liaise with government officials. The village mayor is not a career servant but is part of the local government structure, with responsibility for reporting on matters in the village and receiving assistance from the local government when necessary.\textsuperscript{541}

Sources of Law, Duality of Customary Law and Western Law

The sources of law are found in the Constitution, Statutes, English common law, and Sāmoan customary law (which are protected in the Constitution). The Constitution expressly prohibits the alienation of customary land beyond limited lease or license, and it may not be amended except by two-thirds majority in a referendum of territorial electors and then only if the Legislative Assembly has amended the Constitution through proper procedures and channels.\textsuperscript{542} Otherwise, there is no delimiting of customary lands. Articles 100 and 101 of the Constitution expressly provide for custom and usage as a source of law in several important ways to protect the fa‘asāmoa culture. Mātai titles and customary land are required to be “held in accordance with Samoan custom and usage.” The Land and Titles Court was created to address mātai disputes and customary land interests.\textsuperscript{543}

Land and Titles Court

The Land and Titles Court has exclusive jurisdiction over custom and customary land disputes, and there is no codification of customary law. Land and Titles Court decisions provide the description and parameters of customary land matters.\textsuperscript{544} Unlike in American Sāmoa eligibility to own customary land is not based on a blood quantum: all Sāmoan citizens that have

\textsuperscript{541} Sui O Le Malo Act 1978.
\textsuperscript{542} Constitution of Independent State of Sāmoa, art. IV, C(1) (c).
\textsuperscript{543} Sāmoa Land Titles Registration Act 2008.
\textsuperscript{544} Constitution of Independent State of Sāmoa, art. 101; Sāmoa Land and Titles Act 1981.
Sāmoan ancestry may hold an interest in customary land.545 Pule over the land through the fa’amatatiai system is assigned under custom and tradition by the mātai and āiga. Sāmoan judges are mātai and appointed for three year terms. They are selected based on ability, character, standing, and reputation, and appointed by nomination of the Judicial Service Commission. The appeals process is limited to this court, and no further appeals are heard once the appeal has been decided upon.546

*Land Tenure and Governance*

Customary land, freehold land, and public land are the only types of land tenure in Sāmoa. Freehold land is privately owned, public land belongs to the government, and customary land cannot be sold or mortgaged. Both customary and public lands may be leased.

Eighty percent of the land in Sāmoa is customary, 16 percent is freehold, and four percent is public. Customary protections against the alienation of land are firmly entrenched in the Constitution; these protections were fiercely sought and hard won during its drafting due to gluttonous land claims made by foreigners in the mid-1800s.547 Only a resident Sāmoan citizen may own freehold land; potential landowners who are ineligible as a resident, must obtain consent of the Head of State.548 The Alienation of Freehold Land Act of 1972 established a system that required the Head of State’s written consent for any transfers of freehold land to companies where more than 25 percent of the shares are owned by foreigners, non-resident Sāmoan citizens, and individuals who are not Sāmoan citizens. These mechanisms restrict the

546 Sāmoa Land Titles Registration Act 2008. In the Land and Titles Court, attorneys are not permitted to represent any party; they may attend as a witness or as a supporter but they are prohibited from acting as counsel to any dispute. Judgements of the Land and Titles Court are solely based on Sāmoan customs and traditions, not on common law or statutory law.
547 Constitution of Independent State of Sāmoa, arts. 101 and 102; see chapter 4.
548 A resident citizen is defined as “(a) the person has resided in Samoa for not less than 2½ years during the period of 3 years immediately preceding that date; and (b) the person intends to continue to reside permanently in Samoa.” See Alienation of Freehold Land Act 1972, §2.
transfer of freehold land to foreigners, foreign-owned companies, and non-resident Sāmoan citizens. Customary lands cannot be alienated.

**Compact of Free Association – Republic of Palau**

The Republic of Palau (Palau) is a vast archipelago of 343 islands with 188 square miles of land and a population of 21,000. It is situated seven degrees north of the equator and 134 degrees east longitude. Palau is an independent country that has a free association with the U.S. and is a U.N. mandated Trust Territory of the United States. The “Free Association” term refers to the negotiated Compact terms, whereby the U.S. committed to Palau’s self-governance in accordance with the freely expressed wishes of the Palauan people. This “territory” status is not to be confused with American Sāmoa’s territory status; this categorization is a specific designation under the U.N. Trusteeship Agreement that authorized the U.S. “full powers of administration, legislation, and jurisdiction” over Palau. In 1947, during the era of decolonization, the U.N. Security Council under the umbrella of the strategic Trusteeship Agreement mandated and enumerated the U.S.’s specific responsibilities to provide for the development and promotion of self-sufficiency or independence should Palau’s constituency desire it.

The U.N. sought the Trusteeship System following the defeat of Axis powers, and agreements were negotiated with individual countries to oversee the administration of territories once held under the Axis rule. In 1945, U.N. the Trusteeship System provided for:

a. Territories held under Mandates established by the League of Nations after the First World War;

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b. Territories detached from “enemy States” as a result of the Second World War;

c. Territories voluntarily placed under the System by States responsible for their administration.\textsuperscript{551}

The U.N. felt that the Trusteeship System was needed in order to assist colonies of former Axis countries in achieving economic and social progress and, ultimately self-determination. It was through the U.N. Charter that humanitarian principles were woven into the fabric of these newly created Trust Territories. For Palau to be placed under the U.S. Trusteeship, fundamental freedoms were guaranteed in order for Palau to realize its self-determination status.

At the Constitutional Convention in Washington D.C., both the Marianas Islands (which will be discussed later in this chapter) and Palau took their own delegation parties to negotiate terms with the U.S. after the 1975 plebiscite gave them Commonwealth status. The plebiscite validated the constituencies’ desire to end the Trusteeship and begin the process of self-determination. The Micronesian states demanded separate status talks and forced the U.S. to concede to their terms. On the eighth plebiscite in November 2013, the Palauan constituency, by a 68 percent vote, ended the Trusteeship relationship with the U.S. and emerged in October 2014 as self-governing. Palau is now a self-governing independent country and the 185\textsuperscript{th} Member State of the U.N.

Palau adopted its Constitution in 1981. The following year, after seven previous failed referendums, it signed the Compact of Free Association (COFA), P.L. 99-658, with the U.S. The COFA granted the U.S. the right to take as much as one-third of the islands’ lands for military

\textsuperscript{551} United Nations Charter, chap. XII, art. 77.
bases. The citizens of Palau favored COFA only as a means to repossess their indigenous lands from the public trust system that had been forced upon them, first by the Japan and later by the U.S. Under the Registration Act, Palau’s National Code declared that all land in Palau can be owned only by citizens of Palau. Corporations owning land must also be wholly owned by Palau citizens. The language within the Code provides authority to the Palau Government to reclaim any lands that were wrongfully taken under the Spanish, German, and Japanese colonial administrations, as well as the right to return these lands to the original owners. The COFA gave Palau full domestic autonomy and allowed for foreign affairs and military protections in ‘free association’ with the U.S. Under the agreement, the U.S. assumes complete responsibility for the military and defense over Palau until 2031. In 1993, Palau held its eighth referendum on a general ballot that resulted in a majority vote in favor of the COFA.

National Government

Palau operates under a presidential representative democratic republic with a Constitution and a tripartite government consisting of separate Executive, Legislative, and Judicial branches. There are currently no registered political parties; while parties have existed intermittently in the past, none have had staying power. The Legislature, Olbiil era Kelulau, is made up of two chambers, each with 25 members serving four year terms. Palau has 16 states, and one delegate is elected from each state. Each delegate and Senator must be a citizen of Palau.

Local Government

No statutory determination of authority or official intergovernmental relationship has been granted to Palau’s Council of Chiefs. The Council is only an advisory committee, and it

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552 Palau National Code, Title 39.
553 Ibid.
554 Constitution of Palau, art. IX.
consults with the President about traditional laws, customs, and its impacts to the laws and Constitution.

Sources of Law, Duality of Customary Law and Western Law

Palau finds its sources of law in the Constitution, Statutes (Palau National Code) and English common law. The Constitution is the supreme law of the land and does not expressly direct jurisdiction between customary law and Statutes.\textsuperscript{555} The Supreme Court has not yet determined when the National Code and traditional law conflict with legal authority.\textsuperscript{556}

Despite Palau’s numerous colonial administrators since the late 1790s and its arduous path to self-governance, Palau has slowly reclaimed its indigenous lands. Spain took control under Pope Leo XIII in 1885 following the Spanish-American War. Spain later sold Palau to Japan to recoup revenue after its defeat in war in 1914. Trusteeship under the U.S. ensued when Japan was removed from power.\textsuperscript{557}

Land Tenure and Governance

Prior to foreign encroachment, lands were held communally and overseen by traditional leaders to provide for family clans in non-permanent usage. When Germany and Japan held administrative control over Palau, indigenous lands were forcibly or coercively taken, either by sale or by governmental procedure to declare the indigenous land owner’s ownership null and void. As a result, when the U.S. took over administration under the Trusteeship, all public lands became \textit{de facto} American lands.\textsuperscript{558} By 1935, as much as 84 percent of Palau indigenous lands

\textsuperscript{555} Ibid, Art. II.
\textsuperscript{556} Palau National Code, Title I, §302, “The customs of the people of Palau not in conflict with the legal authority set out in section 301 [of the Code] shall be preserved. The recognized customary law of the Republic shall have the full force and the effect of law so far as such customary law is not in conflict with such legal authority.”
\textsuperscript{557} Meller, \textit{Constitutionalism}.
\textsuperscript{558} Meller, \textit{Constitutionalism}; Francis X. Hezel, \textit{Strangers}.
belonged to the government under various state policies that stripped indigenous peoples of customary land use and ownership.559 This type of action is well known in the Pacific: government lands are earmarked for military build-up, thereby displacing indigenous peoples, de-structuring culture, and reducing customary family lands.560

Palau has only two land tenure types: custom and freehold. The Palau National Code provides for freehold lands to be sold, leased, or conveyed as the owner desires. Foreigners cannot own land.561 Leases over government and freehold lands cannot extend past 99 years. The preservation of communally owned lands was the fulcrum of the Commonwealth Freely Associated State’s pursuit for self-governance. Palauan government negotiated under the COFA for a decentralized system of governance to maintain internal harmony between the states. The American State Department “Micronesian staffer” failed to create a more pro-American system of stronger centralized federal governance. This failure was so spectacular that the staff was disallowed from attending the last half of the Convention negotiations; it was obvious to Palauan representatives that the State Department was being too influential. Staffers passed notes such as this:

Every effort should be made to assure that the convention does not write constitution containing clauses which would be seriously inconsistent or in conflict with an acceptable (to the U.S.) future political relationship [. . . ] The U.S. quietly should seek to work with the constitutional convention in identifying and avoiding problem areas which could later jeopardize negotiations of a

560 See chapter 3, tables 5 and 6.
561 Palau National Code, Title 39.
satisfactory political relationship.\footnote{562}

Palau’s Senator Lazarus Salii actually went on record as saying that

Some staff members [...] have enormous emotional investments in the
outcome [...] and preconceived ideas of what the outcome ought to be. The staff
are not here to mastermind the Convention, not here to direct or steer us. They are
here to render professional services. If they cannot give us their services without
promoting their emotional and philosophical considerations, they should and this
Convention should—reconsider their position.\footnote{563}

This is a federal presidential republican form of democratic governance, in which the states have
local self-governing powers. The self-governing framework provides for more tradition and
custom to be used under the Palau National Code to determine land tenure rights with the
traditional leaders in every jurisdiction.

Under the COFA, from 1994 to 2010, Palau was given direct assistance of $15 million
each fiscal year in addition to infrastructure assistance, which was valued at approximately $900
million.\footnote{564} In 2011, under the COFA, assistance is slated to decrease by $215 million from
FY2011 to FY2024. Chart 7 reflects the decreasing funding allocations from the U.S. to Palau.

\textbf{Chart 7: Assistance to Palau, 2011 – 2014}

\footnote{562} Cortés, \textit{Land in Trust}, 110.
\footnote{563} Ibid.
\footnote{564} Government Accountability Office, GAO-12-798T. “COMPACT OF FREE ASSOCIATION: Proposed U.S.
Assistance to Palau through Fiscal Year 2024.”
The forecasted decrease in assistance is important to note in the COFA arrangement, because greater financial independence from the national tax base translates into greater autonomy.

Commonwealth Covenant – Commonwealth of Northern Mariana Islands

The Mariana Islands group stretches across 16 islands with 184 square miles of land. The 2010 U.S. Census records the population at 53,833, the majority of which is housed in Saipan. The indigenous people of the Northern Mariana Islands are the Chamorros, who are believed to have originated from Southeast Asia and arrived in the Islands in 1500 B.C. Under Spanish rule, the Chamorros were forcefully relocated to Guam, which opened up their lands to Caroline Islanders to re-settle and populate.

Between 1565 and 1978, the Mariana Islands were under the control of Spain, Germany, Japan, and the U.S. Spain first colonized the islands in 1565 A.D. Pope Leo XIII officially declared sovereignty over the Northern Mariana Islands in 1885. In 1899, following its defeat,
Spain sold the Island chain to Germany, which ruled over the Islands until 1914. Between 1914 and 1944, Mariana Islands were controlled by Japan, and from 1944 to 1947, the U.S. Navy seized control. In 1947, it emerged as a “strategic trust.” The U.N. Trusteeship Agreement authorized the U.S. to administer the Northern Mariana Islands. The Northern Mariana Islands was divested from the Department of State in 1962 and full authority and powers were transferred to the Department of the Interior.

The “Commonwealth” legal designation defines the Northern Mariana Islands as an organized jurisdiction that is unincorporated within the U.S. national body-politic. The Commonwealth Covenant is not organized under an Organic Act but instead organized vis-à-vis the Commonwealth Covenant passed by the U.S. Congress and authorized by President Gerald Ford.

The Commonwealth Covenant was negotiated by the Mariana Political Status Commission, which was composed of representatives from the Northern Mariana and the U.S. from 1972 to 1975. The Commonwealth Covenant was developed to replace the Trusteeship Agreement with a sovereign form of political relationship with the U.S. The Northern Mariana negotiators wanted to define a distinctive relationship that afforded greater self-governance and to limit the federal governments reach. The Northern Marianas negotiated terms for a Constitution and full domestic self-governance, while offering the U.S. complete authority and responsibility for all foreign matters and military defense. The Northern Mariana people developed their own Constitution and the Commonwealth Covenant, which granted them

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565 See chapter 3 for distinctions between organized, unorganized, incorporated, and unincorporated U.S. territories. CNMI are U.S. citizens and are entitled to all the privileges and immunities that all citizens of the U.S. enjoy with the exception of voting for the President of the U.S. (every four years) and to U.S. Congressional elections (Commonwealth Covenant, art. III).
complete autonomy for all domestic affairs under the lawful provisions of the Constitution.\textsuperscript{566}

The Commonwealth Covenant established a presidential representative democratic government with a Constitution. This hybrid system of self-government and political union with the U.S. is truly a distinctive relationship, as it was negotiated to strengthen the relationship between CNMI and the U.S. from the CNMI representatives.

The Commonwealth Covenant went through a rigorous vetting and electoral ballot process. First, in 1975, it was passed by the legislature of the Mariana Islands District of the U.N. Trust Territory of the Pacific Islands. Four months later, the Commonwealth Covenant was placed on a plebiscite, and 79 percent of all registered voters approved. President Ford signed Public Law 94-214, the Covenant to Establish a Commonwealth of the Northern Mariana Islands (CNMI) in Political Union with the United States of America, on March 24, 1976.\textsuperscript{567} On November 3, 1986, the U.N. terminated the Trusteeship Agreement between the Mariana Islands and their people achieved their right of self-determination when the Commonwealth Covenant was formally recognized by the U.N.

\textit{National Government}

The Mariana Islands government operates according to its 1978 Constitution, which was modeled on the American structure and includes Executive, Legislative, and Judicial branches. Under the Commonwealth Covenant, it adheres to the U.S. Constitution, which prohibits all states, territories, and the Mariana Islands from entering into treaties with other countries. Mariana Islands are prohibited from engaging in any bi-lateral or multi-lateral treaties under its political union with the U.S. Mariana Islands are free to participate in international organizations to advance its development, but it cannot enter into any trade treaties under these organizational

\textsuperscript{566}The Constitution of Northern Mariana Islands took effect in 1978.

\textsuperscript{567}48 U.S.C. § 1801. Under the Covenant terms, the plebiscite was required to have at least majority approval of at least 55 percent (Art. 10, §1001(a)).
umbrellas. Typically, the U.S. State Department will have a representative at the international and regional organizations to negotiate on matters such as Trade and Defense.

Local Government

The Mariana Constitution outlines the local government structure, which is led by Mayors who represent the islands of north of Saipan, Aguiguan, Tinian, and Rota. The Mayors sit on the Governor’s Council to advise on domestic matters including local services, appropriations, budget, and the career service system, and to act as the lead individuals in natural disaster emergencies in and throughout all islands. Powers are also given to the elected municipal councils in these islands.

Sources of Law, Duality of Customary Law and Western Law

Mariana Islands have a Constitution, but the Commonwealth Covenant expressly includes specific provisions of the U.S. Constitution, U.S. treaties, pre-Commonwealth laws, and U.S. laws reigns supreme. The legal and political hybrid created under the Commonwealth Covenant is complicated but unquestionably benefits the Mariana Islands, which is tied to the U.S. but retains domestic sovereignty. For example, the Commonwealth Covenant expressly recognizes select sections of the U.S. Constitution applicable to the Mariana Islands: it prohibits any denial of habeas corpus (right to know what they are being charged with by a judge or magistrate); affords U.S. citizenship and the requisite full privileges and immunities including bill of rights freedoms; guarantees freedom from slavery; prevents the Mariana Islands Constitution from impeding any of the freedoms inherent in the U.S. Constitution; and grants the right to vote. On the other hand, the Constitution of Northern Mariana Islands does not require indictments by grand jury or trial by jury. The Commonwealth Constitution enumerates

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568 Constitution of Mariana Islands 1978, art. VI.
569 Ibid.
rights, government and separation of powers, and other taxing powers similar to those found in continental states, but also restricts the alienation of land.

Pre-Commonwealth laws from under the Trust Territory for the Mariana Islands district, if not inconsistent with the U.S. Constitution, Commonwealth Constitution, or treaties and laws of the U.S., are still applicable to CNMI. There is no language in the CNMI Constitution that explicitly addresses custom or traditional law, and it is the responsibility of the Commonwealth Law Reform Commission to draft legislation for the Legislature where there is a gap.

Traditional law is addressed in *ad hoc* fashion, with custom and tradition recognized in different jurisdictions, particularly in the case of family land. In the absence of customary law and written law, the rules of common law written by the American Law Institute are applied to the CNMI courts.

*Land Tenure and Governance*

CNMI is the quintessential example of how hundreds of years of foreign occupation, domination, and control destroy indigenous land tenure. The Commonwealth Covenant and the local Constitution instituted a hard line on the issue of land. The privatization of land under waves of Spanish, German, and Japanese foreign colonizers eradicated the traditional Chamorro land holding system. Indigenous land holdings were eliminated, and large tracts of Chamorro lands were sold to non-Chamorros without consent or payment, which led to the eventual privatization of lands.

Locally, the local blood threshold requires an individual to be at least 25 percent descended from Northern Mariana Chamorro or Northern Marianas Carolinas descent to be

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571 Ibid., § 505.
572 Commonwealth of the Northern Marianas Code, Tit. 7 § 3401.
considered a person of Northern Marianas ancestry. Like in American Sāmoa, land is restricted to only Northern Mariana ancestry, which includes the conveyance of lands through sale, gift, or inheritance. A land commission creates plats, surveys, and determinations of title that influence decisions and registration of titles to land, and these documents go hand in hand with the Superior Court’s certification of the 25 percent blood ancestry requirement.

The Constitution established the Mariana Public Land Corporation (PLC) to manage all public lands, which now account for at least 80 percent of all lands in the Mariana Islands. A separate Trust handles all finances in relation to the management and operation of all public lands.

Examination of Plausible Political and Legal Alternative Status

Following WWII, Pacific Islanders survived colonization, war, privatization, and foreign control and ownership of their lands. Each island jurisdiction forged its own political framework to establish or reclaim self-government and sovereignty. In every transition from colonial entity to independent state, freely associated state, or commonwealth, negotiations revolved around the need to secure a future for the next generations of indigenous islanders. Future generations were the driving force behind the fight to stop the alienation of lands; by reclaiming control over their lands, the indigenous people hoped to secure the culture and communal lands necessary to practice traditions. Stopping the alienation of lands meant stopping the culture from dying.

Plausible alternative legal relationships with the U.S. are examined in this chapter through the

573 Constitution of Mariana Islands 1978, art. XII; see also Warbol v. Villacrusis, 958 F.2d 1450, 1462 (9th Cir. 1992) for U.S. Court of Appeals for the Ninth Circuit that upheld Article XII of the CNMI Constitution (implementing Section 805 of the 1975 Covenant establishing the Commonwealth) stating the prohibition on the alienation of permanent and long-term interests in real property to persons other than those of Northern Mariana Islands descent was constitutional; in particular the opinion explains the application of constitutional principles must be designed “to incorporate the shared beliefs of diverse cultures…Its bold purpose was to protect minority rights,” see, ibid. at 1392.
574 Ibid.
575 Constitution of Mariana Islands 1978, art. XI.
576 Ibid.
experiences of other Insular areas, in particular, the former TTPI. Their experiences and their roadmaps to self-determination offer hard-won lessons and insights for the indigenous people of American Sāmoa.

Status as a freely associated state, together with and a Commonwealth Covenant would provide American Sāmoa full sovereignty over domestic matters. Foreign trade and defense might still come under the U.S. purview should these terms be mutually agreed upon. Palau and CNMI have had over 10 years of self-government in distinct forms of political union with the U.S., and American Sāmoa should consider the stark realities of these arrangements before proceeding down these political roads.

Palau is realizing that the 50-year timeline of U.S. federal assistance may have been too short. The U.S. entered into the Compact with Palau in 1994, and in 2009, during its first review of this political union, the U.S. Congress determined that funding through the Trust for Palau needed to be decreased between FY2012 to FY2023. The U.S. Congress required Palau to make meaningful economic reforms; if it did not the U.S. Congress would delay payments to the Trust and after FY2044 there would be no more direct U.S. assistance or contributions to Palau.577

Citizenship also presents some significant complications. Under the COFA, Palau is sovereign and has its own citizenship. Under the Commonwealth Covenant, CNMI are U.S. citizens. Sāmoa is sovereign and not in any legal political union with the U.S., and also has its own citizenship. It is doubtful that American Sāmoa would choose independence and have its own citizenship. If American Sāmoa wanted to negotiate a Commonwealth Covenant, would the political atmosphere embrace tolerate this type of change to its political union with the U.S.? Would individuals who wanted not to become U.S. citizens be permitted? What does American

Sāmoa have to gain and lose by negotiating a different type of political union with the U.S.? The advantages of a Commonwealth Covenant would include much more self-governance, negotiated sovereignty and freedom from the U.S. federal laws over communal land tenure, freedom to more fully enhance the protections of custom and traditions, and the ability to exercise the right to self-determination. Besides the citizenship considerations, the disadvantages include disruptions to direct and indirect financial assistance, contributions, and grant-in-aid programs, and negative impacts on the Medicaid program, which is currently 100 percent subsidized, with no co-payments and deductibles, and all of the population is presumed eligible.578

Guam and Marshall Islands were not considered in my analysis for this chapter. Guam is unincorporated but an organized territory, organized by an Organic Act passed by the U.S. Congress. Guam’s political relationship with the U.S. has never been considered favorably in American Sāmoa because of the issue U.S. citizenship. All of the past Future Political Status Study Commissions have explicitly mentioned not wanting automatic U.S. citizenship as it was granted to Guam through the Organic Act. The Marshall Islands is also a COFA with the U.S., and for the purposes of this chapter, the CNMI section examines the necessary opportunities and challenges for this particular political and legal relationship with the U.S.

American Sāmoa is in a unique position to analyze the negative impacts from the CNMI and Palau political and economic arrangements under the Freely Associated States and Commonwealth Covenants with the U.S. Considering that under its present relationship, American Sāmoa is the only territory to receive appropriations and grants that comprise of 63 percent of local government operations, that healthcare is 100 percent subsidized, and the

578 The Medicaid program in American Sāmoa operates differently from the 50 states and District of Columbia; eligibility for Medicaid is not evaluated on an individual basis but eligibility is presumed. There are no TANF or SSI programs in American Sāmoa. Every year the percentage of the population below 200 percent of the poverty level is calculated and approved by Centers for Medicaid and Medicare Services (CMS); CMS pays expenditures for Medicaid based on the approved calculations.
communal lands and *mātai* system are protected under the local Constitution, changes to the present relationship should be undertaken only after careful analysis of the challenges of the potential alternative political models.  

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579 American Samoa Economic Advisory Committee, “TRANSFORMING THE ECONOMY OF AMERICAN SAMOA: A Report to the President of the United States through the Secretary of the Department of Interior,” vol. 2 (1992), 75.
CHAPTER EIGHT:

PREFERRED FUTURE FOR AMERICAN SĀMOA

E fofo ele Alamea le Alamea

Over the last 100 years, the historical and political progression of land use tenure has taken place within a shift from a reciprocity society to an individualistic society. Currently, individuals may live on individually owned land and are not obligated to be part of village sharing, politics, or commitments to cultural customs. Sāmoans might assert that their traditional culture will not suffer simply because of individually owned lands; however, over the last century, communal land holdings have diminished, which means that access to and use of these lands and resources for Sāmoan cultural ceremonies, agriculture, and residential homes have been curtailed.

My hope for American Sāmoa is a future in which communal lands and traditional customs are preserved and actively flourish, and in which the current trends towards an individualistic society with individually owned lands are reversed. Considering a range of possible futures for American Sāmoa reveals scenarios that are bustling with new drivers of change. These scenarios provide hope and excitement in an era where politics seems to be the only instrument of change. As Wendell Bell suggests, scanning preferences and probable developments for the future will lay the groundwork necessary to arrive at the future we desire.

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580 Sāmoan proverb meaning, if the crown of thorns starfish (alamea) stings you, it is best to turn the alamea over and have the spongy feet touch around the area where you were stung. In other words, the alamea will heal by its own doing.

For American Sāmoa, researching the possible alternatives for the future helps to “inform perceptions, alternatives and choices about the future.” This paradigm pushes the discourse of possibilities beyond the current legislative system of American Sāmoa, which is, unfortunately, anchored by the language of western legalese. This chapter looks at researching futures, not as a prediction of what will come tomorrow, or in a decade, but rather in terms of articulating the possibilities for alternative futures of American Sāmoa. This includes my own preferred future, which is based on an understanding of historical drivers of change and founded on environmental scanning and an emerging issues analysis of possible trends and events.

Futures Framework

The emerging issues analysis methodology for this chapter is taken from the Hawai‘i Research Center for Futures Studies at University of Hawai‘i at Mānoa (known as the “Mānoa School”). Through environmental scanning of the past, present, and possible scenarios, this chapter will identify drivers, emerging issues, and scenarios of different futures that await American Sāmoa, all of which can challenge the present.

This chapter will utilize the Mānoa School scenario modeling method, in which images of the future are envisioned, realized, and re-envisioned by using four generic alternative futures. These four general alternatives differ from each other fundamentally in cosmology, epistemology, and often deontology, and are not variations on a common set of themes.” The Mānoa School sorts these archetypes into a framework that dissects various scenarios according to the specific data choices. This methodology includes the analysis of trends, drivers of change,

582 Ibid.
continuity, and emerging issues, and leads to a critical intersection of change and stability.\textsuperscript{585} These images are significant to both indigenous cultures and the human race as a whole.

It is important to note that the four generic images are empirically derived.\textsuperscript{586} They emerged from an early attempt to categorize the multitude of images of the future that exist in peoples’ minds, in their writings, and in their myths. Through repeated image-gathering and analysis, Dator and others have concluded that images of the future that are characteristic of so-called developing or developed societies all include one (or a combination) of the four generic images. While each image of the future is composed of unique elements that are appropriate for one time, place, and/or institution, the four generic images are always present. Table 9 describes the four alternative futures at play in designing a preferred future for American Sāmoa.

\textbf{Table 9: Futures Framework, the Mānoa School}

<table>
<thead>
<tr>
<th>Image</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Continued growth</td>
<td>The “official” view of the future of all modern governments, educational systems, and organizations. The purpose of government, education, and all aspects of life in the present and recent past, is to build a vibrant economy, and to develop the people, institutions, and technologies to keep the economy growing and changing, forever.</td>
</tr>
<tr>
<td>Collapse</td>
<td>Economic, environmental, resource, moral, or ideological failure, or a failure of will or imagination is the fear of collapse. Collapse may also rise “from the outside” by outer space (e.g. meteors) or foreign molecules and unknown matters. Collapse future is not and should not be portrayed as a “worst case scenario.” Collapse scenario is not to focus on the state of collapse, but to focus resources on how to grow and on preparing, planning, and moving towards something positive.</td>
</tr>
<tr>
<td>Disciplined Society</td>
<td>This image often arises when people feel that “continued economic growth” is either undesirable or unsustainable;” that “we should orient our lives around a set of fundamental values: natural,</td>
</tr>
</tbody>
</table>

\textsuperscript{585} Ibid.
spiritual, religious, political, or cultural and find a deeper purpose in life than the pursuit of endless wealth and consumerism;” that “life should be “disciplined” around these fundamental values of (for various examples) “aloha” “friendly people” or some other ideological/religious/cultural creed.”

<table>
<thead>
<tr>
<th>Transformation Society</th>
<th>This image “focuses on the powerfully transforming power of Technology, especially robotics and artificial intelligence, genetic engineering, nanotechnology, teleportation, space settlement, and the emergence of a “dream society”(^{587}) as the successor to the “information society.” It anticipates and welcomes the transformation of all life, including humanity from its present form into a new “post human” form, on an entirely artificial Earth, as part of the extension of intelligent life from Earth into the solar system and eventually beyond.”</th>
</tr>
</thead>
</table>

Source: Hawai‘i Research Center for Futures Studies at University of Hawai‘i at Mānoa.

This model allows us to contextualize various images of American Sāmoa. Specifically, it helps us to imagine ways to challenge the dominant image of unincorporated and unorganized political status so that alternative images can be created, shared, and discussed. Dator asserts that “decolonizing the future is an important part of futures studies, so questioning privileged futures and helping marginalized voices to speak and be heard is, and should always be, a central part of what Futures Studies is.”\(^{588}\) The use of emerging issues analysis for this dissertation involves more than scanning for trends and probable futures; it includes sharing and discussing these findings as tools for innovation, or what could be described as ‘purpose,’ in order for the preferred futures to materialize, hopefully based on the direct actions of the American Sāmoan people.

I will lay out here four alternative scenarios based on four generic alternative futures images, as well as a preferred future scenario taken from the Mānoa School’s scenario modeling.

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\(^{588}\) Sohail Inayatullah, “From who am I to when am I,” *Futures* 25, no. 3 (1993): 235-253.
method. These scenarios explore the question of what will happen to *American Sāmoa* if *American Sāmoa* shows continued governance growth (continued growth society); if *American Sāmoa* experiences environmental collapse (collapse society); if *American Sāmoa* takes an ecological stewardship approach; (disciplined society) and if *American Sāmoa* revolutionarily appropriates Moodle-like technology (transformational society).  

After analyzing the four generic alternative futures, I will describe my preferred future for *American Sāmoa*, “Commonwealth Landscape as an End to a New Beginning.” Table 10 depicts the five future scenarios.

**Table 10: Development of Five Alternative Scenarios for *American Sāmoa***

<table>
<thead>
<tr>
<th>Four Generic Images</th>
<th><em>American Sāmoa</em> Future Images</th>
<th>Scenarios</th>
<th>Main Driving Forces</th>
</tr>
</thead>
<tbody>
<tr>
<td>Continued Growth society</td>
<td>Continued governance growth society</td>
<td>Territorial Bail Out</td>
<td>Governance and Economics</td>
</tr>
<tr>
<td>Collapse society</td>
<td>Collapse of environment society</td>
<td>Climate Change Devastates Coasts, Refugee Status</td>
<td>Culture and Environment</td>
</tr>
<tr>
<td>Disciplined society</td>
<td>Ecological values Decentralized and Participatory society</td>
<td>Ecological Stewardship System</td>
<td>Socio-Cultural</td>
</tr>
<tr>
<td>Transformational society</td>
<td>Moodle-like Technology society</td>
<td>Open System</td>
<td>Technology</td>
</tr>
</tbody>
</table>


Preferred society | Commonwealth society | Commonwealth Landscape as an End to a New Beginning | Culture


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A theory of social change and continuity is needed both to forge the development of the scenario modeling method, and to give it meaning and contextualization. The theory of social change for images of American Sāmoa’s future entails cultural, environmental, and technological changes. Based on this theory, an emerging issues analysis was conducted to identify trends, drivers, opportunities, and challenges. This chapter will analyze the identified emerging issues that have not been prominent, noticeable, or widely recognized in the past, but that might be influential in the future.590

The qualitative framework uses deductive forecasting, allocating different values in each rubric for each historical and future driving force (drivers), and then incorporating the emerging issue scans. The result is various images of the futures based on data, deductive forecasting, and imagination. Drivers, or driving forces, are the factors that cause change, thereby affecting and shaping the futures. Drivers or trends analysis can also provide insight into historical patterns of the past; however, “trend analysis is seldom an accurate prediction because trends seldom continue,” which makes emerging issues scanning and analysis crucial to this framework.591

Scanning for emerging issues and emerging patterns was facilitated by analysis of issues, events, and developments that are just starting to be recognized or discussed. This scenario modeling methodology creates the opportunity to explore future images based on the Mānoa School Model, which is invaluable to American Sāmoa due to its unique experience of political visibility.592

The Mānoa School’s four major categories of future images exist beyond cultures, are broad enough to exercise the futures modeling with experienced depth and scope, and serve as a useful tool in analyzing the imaging of futures for American Sāmoa. While this framework

591 Ibid.
could be perceived as a discursive categorization that limits the imagining of futures, the flexibility of categorizing for this chapter has produced the opposite effect. The modeling approach and imagining futures scenarios entail a much more rigorous process of categorization because they include no prescriptions or structural limitations; the body of scans is conceptually ‘unfixed.’ This methodology has forced me to create boundaries out of my own values, perceptions, and ideologies.

This approach to scenario building “maximizes the degree of difference from the present, in order to obliterate blindspots [sic] created by stale assumptions.”\textsuperscript{593} As Graham Molitor explained in his seminal work on futures and policy, this kind of research should look for emerging issues in order to forecast what is plausible, possible, or probable.\textsuperscript{594}

\textit{Background on American Sāmoa}

The first step in applying the Mānoa School’s Futures Studies framework is to understand history; an analysis of the past of American Sāmoa is required in order to advance its future.

\textbf{American Samoa’s Past}

This sub-section will provide a general overview of American Sāmoa’s historical periods. Table 11 depicts these four stages in brief.

\textbf{Table 11: Historical Periods, American Sāmoa}

\begin{center}
\begin{tabular}{|l|l|}
\hline
\textit{Fa’asāmoa} & Descriptors  \\
\hline
Cultural identity  \\
Fa’amātai system of governance  \\
Communal land tenure system  \\
\hline
U.S. Naval Administration & A pattern of Naval government in power struggles with traditional indigenous leaders. New form of American values and social norms introduced with American government.  \\
\hline
U.S. Department of the Interior & Limited self-government  \\
& Heavily dependent on federal funding/grants  \\
\hline
\end{tabular}
\end{center}


\textsuperscript{594} Ibid.
Fa’asāmoa society predates American influence; before colonization the islanders were a completely self-sufficient people.\footnote{Irving Goldman, *Ancient Polynesian Society* (Chicago: University of Chicago, 1970).} In 1832, Williams described the fa’asāmoa and described as the cultural identity for the people.\footnote{The fundamental pillars to the faʻasāmoa way of life was based upon the social structure of the āiga, nuʻu in conjunction with the power of the mātai and fono. The hierarchical structure was fixed but the values, roles, practices, expressions, and goods exchanged varied amongst villages and counties. Sāmoan culture survives today because of these flexibilities.} This societal system balances egalitarianism principles by respecting the autonomy of the nuʻu (village) within the āiga (family), and rank within the fono (village council), with the collective authority of the mātai (chief) titled individuals over untitled individuals. Communal lands made of the subsistence economy sustainable, because resources were available and redistributed to all āiga.

One of the keys to understanding present-day American Sāmoa can be found in the Naval Administration era. Leibowitz notes that from the inception of Naval Administration in the territory, its dominance over all traditional leaders was strongly enforced. In his first meeting with Tui Manu’a, USN Commandant Tilley told the chief that, “But…whether you come or not, the authority of the United States is already proclaimed over this island.”\footnote{Ibid.} The power struggle between the traditional leaders and the U.S. military continued throughout the entire Navy’s administration in the territory, mostly targeting Manu’a and Tui Manu’a. This power struggle eventually led to the Navy enforcing social norms by way of Regulations, but the main driver for the introduction of American-style was economics. Regulations mandating monthly copra taxes and requiring all adults to weed public roads encouraged cultivation and farming for trade. Capitalism was encouraged by the prohibition on giving away any “free” food between villages or giving away boats for “free” to neighbors and family. Other rules reflected western values either explicitly or implicitly, including rules demanding the raising and salute of the American
flag, the placing of curtains in windows, the outlawing of illicit cohabitation, and the requirement that *i’e lavalava* (single rectangular cloth worn as a skirt by both men and women) be worn in baths.\textsuperscript{598}

In 1951, the Navy transferred administration of *American* Sāmoa to the U.S. Department of the Interior.\textsuperscript{599} In a major shift from the previous decades of economic growth, the end of WWII and the withdrawal of the Navy left *American* Sāmoa in economic distress, dependent upon federal grant and aid from the federal government in order to survive. Due to the territory’s economic plight, in 1952 approximately 1,000 Sāmoans left for Honolulu in search of a better life. The cash economy turned into a modern economy, facilitated in part by the Rockefeller Foundation, who financed the cannery infrastructure of Van Camp and StarKist Samoa in Atu’u village. The people of *American* Sāmoa desired greater self-government and autonomy, and this was achieved in limited degrees during this period, to the benefit of both the U.S. and the people of *American* Sāmoa. The U.S. wanted to legitimize itself on the geopolitical world stage by fulfilling the U.N. Mandate of formal decolonization while *American* Sāmoa society sought greater self-determination.

The differences in mandate between the Navy and the Interior meant that Americanization proceeded more aggressively in this period than it had during the Naval period. Under the Interior there was greater access to American television and radio programs, more flights between Pago Pago and Honolulu, access to MTV/BET music, and increased military enlistment. Americanization was also spread through military service, tradition, and military

\textsuperscript{598} Ibid.

\textsuperscript{599} J.V. Bewick, letter to all Department Heads, Naval Personnel of Naval Government American Samoa, 18 September 1950.
families, which helped to make American Sāmoa the top USACE Recruitment Center in the world.\textsuperscript{600}

\textbf{American Samoa’s Present}

Understanding today’s American Samoa also helps to interconnect current trends with past ones, and to identify patterns for mapping the present and future. This second step of the Mānoa School scenario modeling method isolates patterns, trends, or other phenomena that may shape the future for the next 20 – 50 years. Trends are seemingly unrelated phenomena that interact in a generalized trajectory and help us define the current and future development of society. Taken together, they can inform the present about the alternative futures. Table 12 depicts clusters of the significant trends that affect the four alternative scenarios and one preferred society.

\textbf{Table 12: Trends of American Sāmoa}

<table>
<thead>
<tr>
<th>Trends</th>
<th>Descriptors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Population</td>
<td>Foreign Immigration, Concentrated Urbanization</td>
</tr>
<tr>
<td>Economics</td>
<td>Dependent on U.S. for direct and indirect subsidies and grants, Greater need for communal lands</td>
</tr>
<tr>
<td>Environment</td>
<td>Decreased environmental quality, Significant adverse impacts of Climate Change</td>
</tr>
<tr>
<td>Culture</td>
<td>Television and canned foods challenging indigenous power systems, Communal land ownership valued, Reciprocity valued over individual accumulation</td>
</tr>
<tr>
<td>Technology</td>
<td>Led by Television: Moved to radio, internet-based systems, Facebook, texting, Ecological technologies, cultural re-productions for advancement\textsuperscript{601}</td>
</tr>
<tr>
<td>Governance</td>
<td>Greater U.S. federal government presence and mandates</td>
</tr>
</tbody>
</table>


\textsuperscript{600} B. Chen, “Am. Sāmoa Army Recruiting Station Ranked #1 In the World,” Sāmoa News, September 16, 2014.

\textsuperscript{601} Cultural reproductions will be elaborated under emerging issues, see pgs. 258 – 261.
Emerging issues are also important elements in scenario modeling, as they allow people to expand their choices in the process of considering alternative futures. Emerging issues are found in unconventional and unexpected places, but within this framework, they are an important part of designing a scanning process to recognize the present and reveal possibilities for the future.

**Trends: Population**

Historical population trends were discussed in Chapter 3, and the significance of population and migration is one of the most important factors to consider when thinking about future development, especially for an island jurisdiction. This is especially true for *American Sāmoa*, as it is the last jurisdiction to operate its own immigration and customs according to its own laws, independent of the U.S. When the Navy arrived in 1900, the population was 5,679. By 1970, due to the military and foreign personnel stationed in the Tutuila Naval Station, the population had grown to 27,207. This era also marked the beginning of the economic boom due to tuna cannery production, and in 2010, the population was reported to be 55,519. The population more than doubled between 1970 and 2015, due to local economic and U.S. Congressional tax incentives for tuna production, diversified air transportation carriers, and infrastructure improvements made by the Department of the Interior. In the last decade, though, growth rate has slowed due to the reduction to only two air transportation carriers, which has led to high air fare and fuel costs, a lack of hotel accommodations, and deteriorating infrastructure.

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602 The U.S. government operates the immigration functions in other insular areas, such as Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands; however, each of these insular areas operates under its own customs laws.
605 Ibid.
The rate of decennial population growth in American Sāmoa was 18 percent in 1970, 45 percent in 1980, 22 percent in 1990 and 27 percent in 2000. However, in the last fifteen years, the U.S. Census reported that the growth rate had dropped and even reversed to an average of -3.1 percent annually. The outflow of local residents was countered by inflow of foreigners in the 1980s, during the tuna canneries’ explosion of employment. The percentage of foreign-born individuals in the overall population has seen steady increases over the last two decades. Chart 8 represents the percentages of local and foreign-born residents from 1960 to 2008. It is worth noting that, of the foreign born residents, 45 percent are from the Independent State of Sāmoa.

**Chart 8: Percent of Local and Foreign-Born Residents, 1960 – 2008**

Given the trends over the last 45 years, it is likely that the population will face continued decline in natural increases, an aging population, and continued in-migration that will exceed local births by 2030. The *American* Sāmoa population is expected to reach 107,519 in 2065.

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606 See chart 6.
Dense, concentrated rural-to-urban migration has pushed most of the population to the Tafuna Plains (Tūalāuta County and Nu’uuli village), where most of the territory’s industrial and commercial infrastructure, as well as the only airport, is located. The Tafuna Plains also includes the majority of American Sāmoa’s developable land, which does not include vertical slopes. Approximately 950 acres of government land are in the Tafuna Plains area and represent 57 percent of the total government land holdings.

The population of Tūalāuta County rose by an average of 7.6 percent each year between 1980 and 1990, driven by the concentrated development of construction, wholesale, and rental market. Table 13 shows the rise of population in the Tūalāuta County from 1940 to 2000.

**Table 13: 1940 to 2000, Tūalāuta Population**

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Population</td>
<td>22,025</td>
<td>14,724</td>
<td>6,855</td>
<td>3,671</td>
<td>2,141</td>
<td>1,838</td>
<td>944</td>
</tr>
</tbody>
</table>

Source: American Sāmoa Government Department of Commerce Statistical Yearbook 2013, 8.

Foreign in-migration, rural-to-urban concentration, and targeted infrastructure development in Tūalāuta County suggests that in the future, communal lands will be needed to accommodate population growth. By 2040, the carrying capacity in the densest populated counties will be unsustainable; virgin communal lands in the outlying counties will be in high demand due to agricultural and residential expansion.

**Trends: Economic**

When the Navy arrived in 1900, the economy was entirely based on subsistence agriculture. The economic and socio-political system of *fa’asāmoa* were intertwined.
Leibowitz posits that “The Samoans channel this plenty into their prestige exchange system: Abundance nourished the status system, and in that sense was critical for Samoan social stability.”

Economic trends suggest that the American Sāmoan economy is in peril. Dependence on U.S. federal grants and aid, coupled with the fact that the largest private employers are foreign owned tuna canneries, means that the economy has seen no diversification since the 1950s. For the last 50 years, the economic structure has remained unchanged, and economic development has been either stagnant or retreating. In 2006, Deputy Assistant Secretary David Cohen of the U.S. Department of Interior testified to the U.S. Committee on Energy and Natural Resources that “American Samoa has the narrowest economic base” of the territories. Since the 1970s, the only export from American Sāmoa has been canned tuna. The tuna canneries and federal financial aid account for essentially all of the basic economic growth in the last 50 years; no other activity has played a substantial role during this period. American Sāmoa’s GDP was reported at $517 million for FY2010, reported in Table 14.

Table 14: 2003 – 2010 GDP, American Sāmoa ($ in millions)

<table>
<thead>
<tr>
<th>Year</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
<th>2010</th>
</tr>
</thead>
<tbody>
<tr>
<td>GDP</td>
<td>548</td>
<td>548</td>
<td>550</td>
<td>529</td>
<td>536</td>
<td>527</td>
<td>510</td>
<td>517</td>
</tr>
</tbody>
</table>


disaster, such as the destruction of crops and houses by a hurricane, is there poverty in the group. No one lives below a comfortable subsistence level; all have sufficient food and clothing and shelter. The large descent groups take care of temporary disasters to any of their members. The old, the imbecile, the blind, the sick, are easily provided for.” Leibowitz, Defining Status, 408.

610 Ibid.
Between 2003 and 2005, the economy was growing at a steady rate, but started to decline in 2007. In 2008, the economy contracted by 2.0 percent and by 4.7 percent the following year, in large part because of the increase of federal minimum wage and closure of canneries. Per capita GDP increased from $8,754 in 2003 to $9,315 in 2010.\textsuperscript{613} The dependence upon the low-wage labor-intensive cannery industry is directly correlated to the lagging increase in per capita income. Between 2005 and 2008, $250 million in federal grants and aid flowed into the territory yearly, and this amount increased to $515 million in 2010. The average rate of annual increase to federal expenditures was over 15 percent, which is more than double the rate of any other insular area. Table 15 shows the comparisons to other territories.

**Table 15: Federal Government Expenditures in Insular Areas, 2005 – 2010 ($ millions)**

<table>
<thead>
<tr>
<th></th>
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<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>American Samoa</strong></td>
<td>243</td>
<td>515</td>
<td>66,000</td>
<td>16.2</td>
</tr>
<tr>
<td><strong>Guam</strong></td>
<td>1,413</td>
<td>2,012</td>
<td>181,000</td>
<td>7.3</td>
</tr>
<tr>
<td><strong>CNMI</strong></td>
<td>167</td>
<td>250</td>
<td>48,000</td>
<td>8.4</td>
</tr>
<tr>
<td><strong>Puerto Rico</strong></td>
<td>15,448</td>
<td>21,118</td>
<td>3,725,789</td>
<td>6.5</td>
</tr>
<tr>
<td><strong>Virgin Islands</strong></td>
<td>625</td>
<td>842</td>
<td>110,000</td>
<td>5.6</td>
</tr>
<tr>
<td><strong>U.S.</strong></td>
<td>2,448,484</td>
<td>3,276,422</td>
<td>308,745,538</td>
<td>6.0</td>
</tr>
</tbody>
</table>

Source: U.S. Census Bureau Consolidated Federal Funds Report, FY2010, 23 and 26.\textsuperscript{614}

To show the magnitude of federal expenditures in the territory in relation to the GDP, Table 16 displays the ratio of federal expenditures to GDP.

**Table 16: Federal Expenditures and GDP, American Sāmoa, 2002-2010 ($ millions)**

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\textsuperscript{613} The last Housing and Expenditure Survey to account for remittances was conducted in 1995, remittances was valued at $5,670,230.00, see American Samoa Government Department of Commerce, *Statistical Yearbook 2013*, 145.

\textsuperscript{614} The per capita amounts for the Insular Areas (and Washington, D.C.) are excluded in this report, see U.S. Census Bureau Consolidated Federal Funds Report, FY2010, 32.
The 2009 worldwide economic downturn hit the same year that the federal minimum wage increased. This was followed by an 8.5 magnitude earthquake that struck 125 miles outside of American Sāmoa, which resulted in a tsunami that devastated the territory. The day after the tsunami, one of the two tuna canneries closed operations, leaving 4,430 people, or 26.1 percent of American Sāmoa’s total workforce, unemployed.

By 2020, the U.S. Congress’s changes to tax incentives and federal minimum wage rates for the states and territories will have a serious impact on American Sāmoa’s economic growth. American Sāmoa will lose jobs due to the increasingly competitive conditions in other larger low-wage regions of the world which are benefitting from freer trade negotiations. Economic circumstances over the last 70 years have demonstrated that liberalized trade will continue to flourish. Current trends in world trade point to the reduction of tariffs and non-tariff barriers that will directly impede American Sāmoa’s duty-free status and privileged access to the U.S.; as a result, the economic growth based on the low-wage, labor-intensive tuna industry will not be competitive or sustainable by 2040. The economy in American Sāmoa will be forced to diversify. By 2030, with liberalized trade expanding, American Sāmoa will be forced to move into higher productivity industries and can expect further out-migration without high paying jobs or industries. The U.S. will begin to reduce all Insular area funding by 2020 in anticipation of further Congressional budgetary social service reductions. The national debt has ballooned to the point where federal expenditures may not be made to the Insular areas by 2040. Without
industries, sector growth, or high paying jobs to retain the existing workforce, these events will only increase the future necessity of protecting the virgin communal lands for future food security and economic survival.

Trends: Environment

The environment of American Sāmoa has drastically changed from fa’asāmoa society to present day society, mostly due to modern economic infrastructure, growing population, and natural disasters.

Before the U.S. administration, the fa’asāmoa society used and distributed natural land and water-based environmental resources according to the cultural-political system. Traditionally, the village fono decided, according to season, when and what type of community fishing should take place. Marine resources are important to the reciprocal relations and communal exchanges that maintain the Sāmoan social and political structure. 615

Rainforests, wildlife, and wetland loss have been directly attributed to the growth of population. The lowland rainforests on the Tafuna plains have been almost entirely replaced by urban areas which threatens the survival of the plants endemic to the territory. The wetlands, which support habitats of fish and shellfish not found elsewhere, are also threatened. The wetlands in the Pago Pago harbor were completely wiped out by the time the Department of the Interior took over. 616 In some instances, invasive pest and weed species compete with the native species like the tamaligi trees, myna birds, toads, feral pigs, and African snails, all of which now populate the urbanized areas.

Urban development in the form of tuna canning plants, residential homes, and coastal infrastructural build-up also have led to degraded conditions of the environment. The tuna canneries in Atu’u have a long history of polluting the ocean and the ecosystem. In 1991, the Government issued a warning to all residents against eating any fish caught in the harbor, because the low-strength and high-strength wastes from the tuna canneries caused fish to be contaminated, and oily bubbles were often seen on the surface of the harbor. Starkist alone generated on average 76,000 gallons of high-strength waste from butchering and pre-cooking tuna daily, and for decades this waste was discharged in the inner harbor. The effects on the ecosystem were significant: coral, marine life, and ocean were contaminated and fish were unsafe to eat.

Natural disasters also have impacted the environment. Cyclones Olaf (1990) and Heta (1993) caused massive destruction to farmlands and wildlife. Birds and fruit bats were decimated. The small sheath-tailed bat, colored fruit dove, ground dove, and spotless crake have not been seen in the last decade. Furthermore, climate change and the severe weather patterns generated by it will lead to the destruction of coral reef ecosystems, and coral life is expected to end by 2050.

Trends: Culture

When the Navy arrived in American Sāmoa, the society was entirely decentralized. Power, status, and authority were distributed within the fa’amāta’i system. The socio-political

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618 Ibid., 10.
structure was organized around reciprocity exchanges, service, and obligation, not just to the immediate family but for the economic and social needs of the extended family and village.\footnote{John W. Coulter, \textit{Land Utilization in American Samoa} (Honolulu: Bernice P. Bishop Museum, 1941), 18.}

More than a century later, \textit{American} Sāmoa can be viewed as a hybrid society, with western influences and traits being appropriated every day within the cultural landscape. When the U.S. absorbed \textit{American} Sāmoa into the political union in 1900, Americanization became a continual process of balancing western values and material consumption with existing culture, and American-style governance with traditional systems. \textit{American} Sāmoa’s society is still largely based on subsistence agriculture within a western developing market economy. The 2010 \textit{American} Sāmoa Tourism Plan declares just how Americanized the territory is: “From a visitory’s perspective, American Samoa has become very ‘Americanized’ with fast food and chain restaurants, and has lost its native culinary culture.”\footnote{Resort Consulting Associates, \textit{American Samoa Tourism Master Plan 2010}, report prepared for the American Samoa Government Department of Commerce, June 2010, 21.}

Preserving cultural identity is complicated because identity changes as the culture adapts to the changing global system. The acculturation of American television and imported foods has challenged cultural identity and power. In the traditional village setting, land and food was distributed by the \textit{mātaï}. Communal lands provided agricultural surplus of coconut, breadfruit, taro, and giant taro that the Navy ultimately taxed for government operations in the early twentieth century. Piggeries and cattle were also allocated lands and re-distributed resources.\footnote{Kirch, \textit{Road of the Winds}, 11-12.} In the 1950s, the post-WWII territorial society evolved into a cash economy, which led to greater purchasing of American imported canned goods, because many had abandoned fishing and farming. The \textit{mātaï} attempted to retain the traditional forms of agricultural and fishing production, in part to resist consumption of imported foods in favor of a traditional diet and in
part to retain their power base. The role of the mātai and village fono within the traditional socio-political structure is to allocate duties to untitled and titled individuals and to distribute goods within the nu’u; these roles were challenged by the importation of goods. Between 1948 and 1980, imports of meat, fish, and rice increased more than 50-fold as the population grew.623 By 2030, the traditional diet will diminish, as agricultural production is deemphasized in favor of waged jobs. This will inevitably lead to further changes to the power structure within the fa’asāmoa distribution of goods.

By 2020, commercial development of virgin communal lands will be curtailed in favor of agricultural production in order to protect food security. The traditional leadership will also, by 2020, take a strong stance against the further deterioration of power, authority, and the return to a traditional diet.

Trends: Technology

Culture gives objects importance and provides the rituals within which these objects are appreciated. Kerry Lee suggests that “technology is not a good traveler unless it is culturally calibrated.”624 Before the introduction of metal, wooden tools were used in Sāmoan society. To plant agriculture, the oso (a long wooden long stick with a sharp point) was used dig into the ground and plant tiapula (taro top), and the fofo’e (wooden tool) was used to peel crops. Fishing was also vital in the fa’asāmoa society; gleaning, diving, rod and line, netting, trapping, and boat fishing were traditional technological forms for fishing.625

In 1919, when the Navy built the Fagatogo hydroelectric power plant, reservoir, and dam, and the railway for transportation of materials cut through and over the mountain, the behavior of

625 Krämer, Samoa Islands vol. 2, 198.
society changed. Clean drinking water became valuable because of the education, technology, and science that the Navy introduced to society; they attempted to prevent the spread of disease through unclean water systems. Picture 1 shows the Fagatogo power plant and railway.

**Picture 1: Fagatogo Power Plant and Railway, 1900s**

In 1948, AM radio also changed fa’asāmoa society. Traditionally, village fono meetings had been the space where information and decisions were made by leaders in the family and village. Radio transformed the society by sharing information outside of the traditional village fono meetings; what had been exclusive became inclusive through radio airwaves. The increased knowledge transformed the power structure. 2AP (later SBC Radio 1) was aired from Independent State of Sāmoa and was heard out of corned beef cans, colloquially described as
“pisupo radios.” News, music, and dignitaries were heard over the radio in the Sāmoan language. Entire villages would crowd around the “pisupo radios” to learn about deaths, politics, new music, and village affairs.

American Sāmoa was not introduced to television until on October 4, 1964. Clarence Hall published a 1961 scathing piece on the treatment of American Sāmoa by the federal government in Reader’s Digest,

While we have been doling out billions to underdeveloped nations, we have let our only South Pacific possession sink to the level of a slum. What the Sam Hill have we been doing in these islands for 60 years?” While squadrons of our foreign-aiders charge about the world loaded with largess for every underprivileged people who’ll take it, but look what we’ve let happen to these – our own nationals! 627

President Lyndon Johnson decided to utilize the medium of television to revolutionize American-Sāmoans through education. The technology at that time was avant-garde in U.S. territories; American Sāmoa had 6,000 televised education programs a year. Television was used for one-third of the classroom instruction. Picture 2 shows children watching television in Tutuila.

Picture 2: Television in American Sāmoa

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626 Alan Ah Mu, “Samoa’s oldest radio station has new home,” Talamua online.
627 Clarence Hall, “Samoa: America’s Shame in the South Seas,” Reader’s Digest (July 1961).
Traditional voyaging also changed with new introduced technologies. Navigator Islands was the name first given to the Sāmoan archipelago, and was used to describe its wayfaring skills. Picture 3 shows a traditional canoe in Sāmoa in the nineteenth century.

**Picture 3: Traditional Canoe**

Source: American Samoa Historic Preservation Office.
Traditional Sāmoan navigation was performed through knowledge of astrology, sea and wind patterns, sunrise/sunset as navigational direction, and seasons of change (rainy, dry, and stormy periods during the year). By 2035, ecological technologies will advance cultural re-productions of canoes and traditional navigation in American Sāmoa.

Trends: Governance

Pre-contact governance was strictly hierarchical within the Sāmoan socio-political system. Decisions for individuals and society were made within the fa’amātai system, and consensus among the leaders of the family, village, and village fono was the preferred form of decision making.

From 1900 to 1951, the U.S. Naval Commandants were authorized to lead a centralized governing system over the territory. From 1951 to 1977, governors were appointed by the U.S. Department of the Interior. Since 1978, governors have been popularly elected on democratic ballots.628

Currently, the governance system is based on consensus, which is encouraged and expected due to the cultural custom of bringing together high mātai from the Office of Sāmoan Affairs and senior mātai from the Fono to discuss important matters. This exemplifies the hybrid federal-territorial system and how customs are balanced within the western centralized governance system. This hybrid methodology framework solidifies power and authority within family-based blocs of authority in order to develop alliances. Infrastructure development, social welfare, education services, tourism, communications, and environment-related projects were once priorities mandated by non-elected decision-makers. Since 1978, the democratic system of voting both ushered in popular elections and allowed “family politics” to enter the landscape.

628 See chapter 2.
such that making political campaigns, family networking, and slogans for office became significant to political and social arrangements.

Although the new democratic republican form of governance model is appropriated, national political parties (e.g. Democrat, Republican, and Independent) are insignificant to island voting. Family politics, or what can be described as family-based networking, is still key to solidifying office and power within this centralized governance model. The growth of powerful family blocs in politics can be associated to the rise of family wealth in the private sector. There has also been an explosion of military enlistees in all branches of government to fight in Vietnam, the Gulf War, the War on Terror in Afghanistan, and the latest Iraq War. Military enlistment and part-time reservists has become a badge of family tradition.

There is no true class system in American Sāmoa. However, the entire territory is classified by federal thresholds as low-income, thus affording all public and private school-aged children free school breakfast and lunch. Due to the high level of low-income and no income individuals, college entrance is highly dependent on federal financial aid or the G.I. bill.

Diversification of its economy and becoming a stronger regional voice has been a priority since the first elected governor in 1978. Recognizing that economic development is necessary for a strong and robust economy and greater quality of life, the most important governing principle has been the preservation of the Sāmoan communal lands and culture. Each governor, from 1978 to the present, has reiterated this priority to ensure that the government protects these two pillars of Sāmoan society. Greater federal government presence has not changed these core values.

While consensus governance is effective, by 2040 American Sāmoa will face unprecedented federal mandates and economic impediments because of national political
agendas favoring conservation protections in conjunction with the national rising national debt. Without Senate representation or a voting delegate, the U.S. one non-voting Delegate in the U.S. Congress on behalf of American Sāmoa faces considerable challenges making the concerns of the territory visible to the Presidential and Congressional government branches. In the next 25 years, the consensus government will face insurmountable challenges to economic growth that the federal government imposes to the territory.

Emerging Issues and Emerging Patterns

Social Features

Throughout the last decade, the desire for greater self-autonomy has become a high priority. At the U.N. Decolonization meeting in May 2015, Governor Moliga declared that the current situation of unincorporated and unorganized territorial status is not sustainable or economically secure; something that no previous governor has declared on the global stage. Moliga cited that the recent federal mandates of high sea water closures surrounding the islands have jolted American Sāmoa into the realization that the territory is not sustainable under the present circumstances.629 In 2014, Moliga wrote an article in The Hill, describing the nature of the relationship between American Sāmoa and the federal machine. Moliga asserts:

It is not so much that American Samoa suffers from indifference in Congress, rather we suffer from the “tyranny of distance.” We are tethered to Mainland-based federal policies that work well in the lower forty-eight. After they travel the more than 7,000 miles to get to our shores, these policies become attenuated,

629 American Sāmoa had its access to high seas by all registered U.S. fishing vessels prohibited by NOAA last month due to conservation efforts; in 2014, Pacific Remote Islands Marine National Monument was expanded from 50 nautical miles to 200 nautical miles surrounding the U.S. Pacific possessions (Kingman Reef, Palmyra Atoll, Howland Island, Baker Island, Johnston Atoll, and Wake Atoll (Island) delimiting access for commercial or traditional fishing (I, myself wrote to NOAA to petition against the prohibition from fishing in high seas to NOAA and to President Barack Obama against the expansion of the Pacific Remote Islands National Marine Monument).
dissipated and oftentimes inflict more harm than good. Moreover, they preclude us from interacting more naturally within our regional ecosystem and often inhibit our economic development. When we “signed on” to the American team at the beginning of twentieth century, (we walked on, we were not drafted), through Deeds of Cession to the United States, we did so on an “all in” basis – since then sustaining the highest per capita casualty rates in our wars and military conflicts of any state or territory. We served as a strategic coaling station for our growing Navy at the turn of the last century, and we have the potential to become an even more viable strategic U.S. asset and presence in the region. That is, if Congress will do its part – by mitigating the tyranny of distance and untethering us from those continental based policies that are impractical, impede our economic development, and devalue our strategic location as the United States of America pivots and rebalances its presence in the Pacific.630

This is an emerging pattern in the last two years, created by the onslaught of perceived federal intrusion and impediments directed at American Sāmoa. This will change the old drivers by enlarging the discussion, opening it beyond what American Sāmoa currently is approved to do to what it can do. This emerging pattern may change the consciousness of society through openly challenging the legal and political status quo of over 100 years.

Introduced technologies such as television, Facebook, email, and Western Unions have built bridges to diasporic communities abroad, allowing them to communicate in family discussions in the home villages, participate in making decisions, and relay messages to others in the extended family. During natural disasters, transcorporations of kin come together within the Sāmoan communities, when telephone service providers go down and social media becomes the

sole communication line between families. George Haddow records that the U.S. Pacific Command (PACOM) relied upon Twitter, Facebook, and Flickr to communicate in and out of the territory when natural disasters hit in the remote island jurisdictions. Transnational and urban-to-rural linkages vis-à-vis internet, Facebook, and texting interconnect individuals and large groups of people that may stimulate action on the basis of familial and communal obligations, while reinforcing cultural identity and strength. By 2040, social media will drive communication patterns and dialogue during natural disasters.

**Technological Features**

Typically, technologies around the globe that are smaller or faster are based on wired technology that binds people together through the internet, while making people much more isolated in the interpersonal sense. Lives are changed. People are considered independent. Horizons are expanded. Technological advances to cultural art forms might bring people together and save them from cultural extinction, leading to a Polynesian renaissance of culture. The emerging pattern of cultural revival through ecological technologies has not yet been studied in *American* Sāmoa, but it is being talked about by local educators, select Government leaders, and children because of its importance and potential.

Ecological technologies have also had a renaissance in the wider Pacific Island community for economic and cultural navigation revival. In 2014 the *Hōkūle‘a* and *Hikianalia* canoes voyaged to *American* Sāmoa by traditional and non-instrumental navigation methods. The journey was undertaken to promote environmental sustainability and cultural harmony while adapting to modern canoe technologies. Chart 9 illustrates the traditional navigation methods used by the *Hōkūle‘a* and *Hikianalia* crews used.

**Chart 9: Nainoa Thompson’s Chart, Wayfinding**

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Dr. Sylvia Earle wrote of the experience meeting traditional *Hōkūle’a* and *Hikianalia* in a traditional Sāmoan *fautasi* (long canoe).  

During my stay, I had a chance to go out on a Samoan “Fautasi,” or long boat, with 32 oarsmen and 1 oarswoman. It’s traditional in Samoan culture to go out and meet voyaging canoes such as the *Hōkūle’a* and her sister vessel, *Hikianalia*, as they sail in. It was thrilling to sit and watch the strong backs and good minds work together to pull us quickly through the water to greet the vessels. On the way, we passed a huge tuna cannery and it was such a jarring contrast to see traditional vessels that were powered by wind and muscle juxtaposed to several sleek, fossil fuel-powered vessels that are outfitted like warships to fight against

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ocean organisms. It’s been thought of as an important part of the economy here, but when you really peel back the layers, you see that it’s taking from systems that, if properly cared for, could be an enduring element of the economy. But by taking so much in a matter of decades, it has contributed to the undermining of the integrity of these ocean systems.633

This adaptation of ecological technology was fondly received in the territory. The fautasi that met the two Hawaiian canoes can be seen in Picture 4.

**Picture 4: Sāmoan Fautasi, 2014**

Source: Dr. Sylvia Earle, August 2014, blog.

The Hōkūle’a and Hikianalia are examples of ecological technologies that were partially made with modern materials but designed to reinvigorate traditional Polynesian methods of navigation, and re-educate the youth on traditional methods of understanding astronomy, science, navigation, geography, teamwork, and environment. The project was also meant to create a sense of pride and cultural identity in art forms that are not always well remembered. These canoes have visited the shores of American Sāmoa with a few American Sāmoan crew members bonded with

633 Ibid.
villages that already have fautasi’s, and the strength of their stories moved people to want to mirror this kind of reimagining long navigation using modern materials in the island. The crew of the Hikianalia shared at the Tauese Ocean Center that each of the hulls contains an electric motor powered by onboard photovoltaic panels that convert sunlight to electric propulsive energy. The crew members taught the room filled with young children that one of their messages to every port of call was to share the message of “Mālama Honua,” roughly translated from Hawaiian into “caring for all of Planet earth.” The renaissance of Polynesian ecological technologies will change the way the territory imagines cultural knowledge and the appropriation of modern technology to magnify cultural identity and harmony.

Economic Features

Puerto Rico has been in a recession for 10 years and in 2014, reached financial crisis, with over $73 billion in debt and its debt-to-GDP ratio close to 70 percent. Puerto Ricans are U.S. citizens, but like in all Insular areas, its citizens do not vote for the U.S. President. They also do not have U.S. Congressional representation in the Senate and have only a non-voting delegate in the House. This situation makes Washington D.C. slow to address the lives of Americans living in the territories. Michelle Anderson wrote that

With a population larger than that of 22 states, Puerto Rico is “too big to fail.” But it has a fundamental problem in moving Washington to action: It lacks the clout there that comes with a voting voice in presidential elections or Congress. If Puerto Rico defaults next year, it will be because Washington has shirked its responsibility for the well-being of eight million American citizens who either live on the island or have strong ties to it. Washington will also be understood to be favoring the few hedge funds that own more than one-third of Puerto Rico’s
debt. Because they have the wherewithal for endless litigation, they are the only potential winners under the status quo.634

Javier Ortiz blogged:

Last week Puerto Rico Governor Alejandro Garcia Padilla painted a grim picture of the potential humanitarian crisis that could envelop the 3.5 American citizens on the island. Appearing before the U.S. Senate Judiciary Committee on Tuesday, Dec. 1 to testify about the island’s dire debt crisis, he urged Congress to act. “Let us be clear, we have no cash left,” he told Republican and Democratic Senators. The governor was unambiguous – Puerto Rico’s government can’t pay its creditors and provide basic services for the territory’s residents. […] Both Governor Padilla and Resident Commissioner Pedro Pierluisi testified that yes, Puerto Rico has mismanaged its finances and over-spent and over-borrowed. We all agree there is plenty of blame to go around. But to leave Americans with a government incapable of providing a basic quality of life for its people is immoral and unjust. Let’s not forget that a Puerto Rico default hurts mom and pop retirees, many of whom live in the 50 states of the union, who invested in Puerto Rico bonds. Total default is bad for everyone.635

This kind of financial crisis has never happened since the post-WWII era in the U.S. territories. Puerto Rico’s current situation and its path to recovery should be a wakeup call for all U.S. territories: try to diversify your economy and build up needed capital and infrastructure to compensate when tourism is pulled to other regions of the world. In the early twentieth century, the political dilemma regarding the admission of these territories into the American body-politic

was their perceived non-American behaviors, attitudes, and lifestyles. Today the dilemma has become instead the national obligation to bail out more remote and almost forgotten Americans. This is no different than the bailouts offered to the automotive industries by the U.S. Congress.

Puerto Rico’s $73 billion debt is unprecedented because bankruptcy protection is not available to the territories. This emerging pattern of economic catastrophe in the territories is difficult for territorial representatives to address on the national scene because the U.S. Congress has not contemtpated this kind of disaster and the potential financial bailout will impact the way that federal funders, investors, and banks view the territories. Puerto Rico’s economic cliff will directly change the economic future of American Sāmoa because the U.S. Congress will treat Puerto Rico as a territorial-financial issue that will have direct effects on future legislation for all territories.

Environmental Features

Sea surface temperatures in the tropics have increased by almost 1º C over the past 100 years. In the next 50 – 100 years, it is projected that these temperatures will increase another 1-3.5º C, sea levels will rise 0.1-0.9 meters, and El Niño weather events may become even more frequent than they are now. In 1998, when the last El Niño hit the South Pacific Islands, droughts devastated crops while higher water temperatures caused complete loss of live corals in other regions in Asia-Pacific. Most of the local water supply comes from underground freshwater aquifers. Any rise in ocean level will likely compromise the freshwater aquifers via seawater intrusion. American Sāmoa is located in the tropical cyclone belt of the South Pacific

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637 Ibid.
and is regularly hit by cyclones. The El Niño Southern Oscillation (ENSO) phenomenon coincides with American Sāmoa's long, dry summer season between December and February. There have been nine major storms hitting the Sāmoan archipelago between 1980 and 2009. Picture 5 shows the devastation of the last 2009 tsunami in American Sāmoa.

**Picture 5: 2009 Tsunami and Devastation, American Sāmoa**

![Image](figure1.png)  
![Image](figure2.png)  
![Image](figure3.png)


Cyclones Ofa (1990), Val (1991), and Heta (1993) caused immense economic and environmental devastation. Climate change is directly correlated to the frequency and intensity of these tropical storms. The more frequent cycles, caused in part by climate change and global warming, have costly and disastrous impacts to the surrounding ocean, marine and human life, crops, water, infrastructure, and environmental erosion, biodiversity loss, and invasive species.

The 2015 U.N. Climate Summit (COP 21) in Paris listened to what the Pacific Island Nations have been saying for 20 years about climate change and the insurmountable pressures it has on the people and islands. COP 21 marks the first time that U.N. countries reached a universal binding agreement on climate (which is particularly important to Pacific Island Nations) to limit the global warming to below two degrees Celsius by 2100. This event will

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639 Secretariat of the Pacific Regional Environmental Programme, “Pacific Islands Framework for Action.”
generate comprehensive changes into the territory, particularly through partnerships with Pacific Island Countries and regional organizations funded by U.N. member countries.

The emerging pattern, articulated by leaders of the Pacific Island Countries, is that climate change and global warming have resulted in mitigation planning being outmoded, and that international actions are needed in order to prevent further exodus of island populations. The leaders galvanized around the same messages during the COP 21 forum:

Prime Minister of Tuvalu, Enele Sopoaga, declared at COP 21:  

My country’s future is already bleak, additional warming will mean the total destruction of my country. Just imagine you are in my shoes. What would you do? I believe no leader in this room carries such a level of worry and responsibility. Our appeal is simply to ask that the future and the future of our children be assured…

Respect and peaceful resolution…

Survival…

Protect cultural rights…

Technological transfer of knowledge…

If we save Tuvalu, we will save the world…

President of Federated States of Micronesia, Peter Christian, declared at COP 21:  

Our planet cries out with pain, and wonders if anyone cares. We do care, but it is not enough that only those of us who are most threatened care. There must be a collective WE. And I am drawn to suspect that is why we are here. Someone

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United Nations Conference on Climate Change, Day 2, Before the Leaders Forum, (December 1, 2015) (statement of Enele Sopoaga, Prime Minister of Tuvalu).

asked me the other day, with genuine concern in his manner if the people know about Climate Change. For lack of a good thought out answer, I shot from the hip...that many of my people do not know the Earth as a planet among stars. They only know that their world is made up of islands and their surrounding seas. They only see that parts of their islands continue to wash away...and they wonder why we have lied to them that sea level rise is a gradual thing of the future.

Fiji’s Prime Minister Josaia Voreqe Banimarama declared at COP 21:

We in the Pacific face the prospect of losing three nations together – the low-lying Atolls of Kiribati, Tuvalu, and the Marshall Islands...In a worst case scenario, Fiji offered to explore the issue of ‘permanent refugee’ to the people of our closest neighbors, Kiribati and Tuvalu. These are issues of real and global concern that need the global community.

We know that future damages are not going to be simply large, but potentially be absolute in its wrath...Resulting in mass relocations of oceanic societies with the risk of losing social and cultural ways of life. [...] culminating in civil and social unrest, and possibly genocide of oceanic cultures. Our purpose here in Paris demonstrates our acknowledgement of the cause and effect climate change and global warming have on our Planet Earth.

Since environmental issues facing the Pacific Islands are much bigger than any nation-state can address, post-industrialized powerful economies become the global decision makers.

Blogs and the internet are electrifying small island jurisdictions, like American Sāmoa, to voice their concerns and comments on the issues of environment. These technological media are

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bringing together people across the oceans to discuss the global environmental issues facing all people and lands.

**Description of Five Alternative Futures for American Sāmoa**

The five alternative scenarios or futures of American Sāmoa lay out future images based on the drivers and emerging issues in this chapter, but these scenarios are not deterministic. As stated in the introduction of this chapter, this is not a crystal ball, but rather a scenario modeling framework to assist present and future leaders in facilitating toward the identified preferred future scenario. The framework used in this chapter to provide four images of the future has the potential to transform the American Sāmoa society. Skeptics and cynics may discount these alternative futures because they may seem unbelievable. Like Benedict Anderson and the “imagined community,” Hau’ofa quipped that “human reality is a human creation and that if we fail to create our own someone else will do it for us.”

Envisioning the five alternative scenarios with our own voice empowers Pacific Islanders to engage in the dialogue of our own future, our own memories, and our own perspectives.

**Continued Growth Scenario – “Territorial Bail-Out”**

The Continued growth scenario looks at the trends and dominant archetypes that presently establish society without any significant transformation. This particular scenario looks at American Sāmoa over the next 30 years with particular emphasis upon economic development.

Territorial bail-out is the first continued growth scenario for American Sāmoa. Due to the recent and past trends identified while examining emerging patterns to anticipate issues or events that change the course of linear projections, this scenario is based on American Sāmoa moving towards a plateau of economic re-integration once Bail Out is realized.

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In this alternative scenario, the *American* Sāmoa economy is dominated by a foreign fronted private sector (as opposed to a fiscally responsible government), by growth of unmonitored foreign immigration, and by $50 million in government bonds rated as Ba3 that demand repayment without revenue streams to repay the bond debt.\(^{644}\) The activity of businesses in the territory with no private banking institutions willing to set up shop significantly affects the *American* Sāmoan community. Economic deflation influences the behavior and lifestyles in the territory. It is a stark reality that in 30 years in *American* Sāmoa, foreigners will constitute a significant bloc of the population; family-based political networking and the changes of power may influence decisions. The population of millennials will decrease due to the lack of high-paying jobs, and as a result, out-migration will continue to increase rapidly. Table 17 describes the assumed drivers of this scenario.

Natural disasters and environmental impacts will grow in intensity and devastation due to climate change and global warming as more post-industrialized countries ignore the U.N.’s calls to action without financial or political consequences in its universal binding agreement. The economic and environmental elements will drive the culture towards more dependence on reciprocity redistribution within society. There will be less disposable income for procurement of imported goods, and virgin communal lands will be targeted for commercial and foreign investment to alleviate financial depression. Ecological technologies will not grow. Villages will be concerned with employment and food security. Extreme urbanization and rural out-migration will reduce the drive for political reorganization because of the financial dependence on U.S. federal funding.

**Table 17: Drivers, Continued Growth Society Scenario, “Territorial Bail Out”**

\(^{644}\) Ba3/BB- bonds are defined as speculative in nature and not considered to be investment-grade bonds suited for individuals wishing to avoid risk of losing their principle. Ba3/BB- are commonly referred to as ‘junk bonds,’ indicating that these set of bonds are on the higher end of stability of the junk-bond rating structure.
<table>
<thead>
<tr>
<th>Drivers</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic features</td>
<td>The main driving forces that will form American Sāmoa’s image in this Continued growth scenario. With Puerto Rico in economic devastation, American Sāmoa’s current $50 million in Ba3 market bonds cause serious financial concern about government’s ability to pay off without going into debt. The economy has also showed deflation without exporting of goods other than the foreign owned canneries producing canned tuna.</td>
</tr>
<tr>
<td>Population</td>
<td>Has decreased with out-migration (revealing a brain drain) and with in-migration of foreigners that continue to go unmonitored. The shrinking workforce is evident in the bell curve of the population, with more of the aging labor force retiring and the younger population becoming unhealthy, from child obesity and adult diabetes. Dense populations continue to grow without mitigation, further lessening the amount of lands to be preserved for future generations, mostly in the Tūalāuta County.</td>
</tr>
<tr>
<td>Culture</td>
<td>Is a considerable feature because of the desire to preserve the communal lands that limits the ability of lands to be used for commercialization or investment purposes.</td>
</tr>
<tr>
<td>Governance</td>
<td>Is a key feature in this scenario due to its control in society because of the family blocs of power and the political authority that comes with a small society.</td>
</tr>
<tr>
<td>Technology</td>
<td>Remains to be considered an important sector to grow, but it continues to be dormant even with recent investment in fiber optic telecommunication infrastructure. ICT courses and alignment between secondary and post-secondary education continue to be ignored leaving the economy without a driver in this arena.</td>
</tr>
<tr>
<td>Energy</td>
<td>Has received considerable attention and federal funding, but the local coffers are unable to pay its current bills. The government owes the local Power Authority $9.9 million, and the debt and interest continue to rise; adding to the government’s liabilities in addition to its</td>
</tr>
</tbody>
</table>
This scenario represents an alternative future image where trends continue without significant change.

Collapse Society Scenario – “Climate Change Devastates the Coasts, Refugee Status”

In the Climate Change Devastates the Coasts, Refugee Status scenario, American Sāmoa is hit with severe climate change pressures that affect all coasts and settlements along them. In this scenario, extreme sedimentation, sea level rise, plank fractures, and warming of ocean temperatures make coastlines uninhabitable in the next 30 years.

Patrick Nunn suggests that sea level data from climate change research predicts a substantial regional effect on Polynesian culture. Nunn argues that landscape changes are affected by climate-induced forces and the human response to ecosystem fluctuations, and he supports this assertion by applying geochronology from the Holocene geological record since fourteenth century A.D. and similar geoarchaeological data from similar social settings.

During the twentieth century, global sea level rose by roughly seven inches. Chart 10 shows the rise in global sea levels from 1880 and 2000.

**Chart 10: Global Mean, Sea Level (cm) Rise**

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647 Ibid., 48-50.
By 2040, *American* Sāmoa must relocate coastal habitant’s in-land. Out-migration continues to grow, while in-migration from other Pacific Countries intensifies as natural disasters sink neighboring atolls and creates food insecurity. In-migration is concentrated in the limited urbanized areas. Society is dependent on imported foodstuffs as wetlands and steam pollution drives the clean aquifers beyond carrying capacity.

The Government will be unable to provide basic services to the people. The continued clearing of mountaintops (to support relocation demands) generates landslides and downstream pollution, contributing to the potable water shortage. Shipping and overwater transportation between Sāmoa and *American* Sāmoa cease because coastal sedimentation causes the Pago Pago harbor to collapse into the sea. Reciprocity -- both values and behavior—contracts as society becomes congregated in limited arable lands. Ecological technologies will be domestically abandoned and replaced by new economic development initiatives, encouraged by U.S. funding initiatives and policies, and research and conservation with a non-local focus will be more aggressively pursued in the Pacific region, thus curtailing traditional access and rights to ocean and marine resources. The Pacific Island region will call for emergency relief. *American* Sāmoa will desire political re-organization, but there will be wide-spread territorial discontent following
from the COP 21 conference, when the U.S. Congress fails to implement climate change actions or worse, turns a blind eye to the need for imposing fines. Pacific Islanders will rally together using Facebook and websites to document this era; reality TV will initiate new programs on devastation, natural disasters, and loss of culture. Table 18 describes the assumed drivers for this Collapse scenario.

**Table 18: Drivers, Collapse Society Scenario, “Climate Change Devastates the Coasts, Refugee Status”**

<table>
<thead>
<tr>
<th>Drivers</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Environmental</td>
<td>Is the main driving force for this collapse scenario. Climate change, global warming, sea level rise and salination of agriculture, hotter temperatures, sedimentation and coastal erosion, loss of coastal lands, coral bleaching, plank fractures, and aquifer and reservoir pollution are causing the environment to break down and devastate the islands.</td>
</tr>
<tr>
<td>Population</td>
<td>Steadily decreasing because of out-migration, with more youth and educated locals not returning. The densest counties are coastal; cultural impacts are also severe because villages count on agricultural lands to provide food security. As coastal to in-land migration takes place without enough land to settle the new population, there is civil unrest.</td>
</tr>
<tr>
<td>Culture</td>
<td>Culture is a considerable feature because of the desire to preserve the communal lands and customs. Environmental pressures to the landscape directly affect the ability to practice and continue the culture and customs. Land and ocean are polluted. Birds, fish, seafood, fruit, vegetables, cultural staples are all rationed and present significant negative impacts for villages to feed their family and extended families, pushing people to leave the territory.</td>
</tr>
<tr>
<td>Governance</td>
<td>Federal agencies lead governance to address this kind of disaster. Government partners with regional bodies for intelligence, scientific labs, and medical assistance, and the U.S. military is</td>
</tr>
<tr>
<td>Technology</td>
<td>Hard wiring is devastated. Since no cloud technology used in the territory, back up information and depositories of data are lost.</td>
</tr>
<tr>
<td>---------------------</td>
<td>----------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Energy</td>
<td>Solar energy remains the only power available for outer islands. No grid integration.</td>
</tr>
</tbody>
</table>


**Discipline Society Scenario – “Ecological Stewardship System”**

In the Ecological Stewardship System scenario, *American* Sāmoa society transforms into a community that defines itself as not just cultural stewards of the land but ecological stewards of all aspects of life in society. This scenario values a balanced eco-system to prolong the life of the land, people, eco-system, and its life forms. The opportunities in this scenario include meeting the challenge of traditionalism with consensus and strengthening the socio-political dimensions of development to address population and environmental pressures. This scenario both embraces the cultural values of society through consensus and engages in the tenets of participatory democracy.

Ecological technologies will interact with the natural environment to minimize threats to the landscape and natural environment in sustainable ways, and desires for re-organizing the political relationship will be based on prioritizing cultural and ecological stewardship. Frederic Pearl suggests that the past 700 years of geoarchaeological data show correlations between coastal erosion, rising rates of deposition at A’asu, and regional climate changes, resulting in short term natural shocks such as “major storms and landslides.”

Pearl provides evidence that these changes correlate to landscape settlement within distinct periods. He writes that a millennium ago, “previous geological and archaeological studies in Sāmoa have also revealed rapid sedimentation in the last 1000 years […] in *Manu’a* and *Upolu*, [which] indicate that rapid sedimentation is

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648 Ibid., 62-63.
slope-eroded sedimentation in the late Holocene is widespread in the archipelago." Figure 2 shows the periods of sea level rise, change of radiocarbon results, and transitional periods of change.

**Figure 2: Sea-Level Curve with dates from A’asu**

![Sea-Level Curve](image)

Source: Pearl (2006), all ages in radiocarbon years (B.P.).

Figure 2 suggests a high-level sea rise of +1.5 meter during the glacial minimum 1,200 years ago, and these findings are consistent with the reef tops exposed at this elevation on the west and east sides of Tutuila. Pearl shows how landscape erosion between 650 and 350 years before the present, followed by the evolution of larger landscapes of regional rainfalls, sea level and temperature changes, and different weather patterns, culminated in regional environmental pressures that drove people and settlement patterns, which in turn impacted culture. The last geologic map compiled for Tutuila was created in 1942, and this geologic map must be updated by 2020 because volcanic erosional stage subsidence and flank collapse are part of the natural life cycle of volcanic islands. Map 2 is the last geologic map compiled for Tutuila in 1942.

**Map 2: Geologic Map of Tutuila, 1942**

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649 Ibid., 63-64.
In this scenario, the priorities for study and response will be immigration, urbanization, and impacts to carrying capacity, because the development of modernized canoes and the resurgence of traditional skills to travel between islands will expand sea transportation. Investing in renewable energy technology and in developing ecological techno-skills will absorb at least 40 percent of the General Fund annual budget, with a goal of being self-sustainable and off the main grid within 30 years. In the present, American Sāmoa is a highly import-dependent territory, and this future scenario will emphasize reducing food imports by 50 percent by reverting to ecological technologies in agriculture and harnessing natural resources for diversified renewable energy outputs. Dr. Karl-Henrik Robért’s backcasting is a concept that could be useful in this scenario to provide more strategically sustainable solutions in the future.\textsuperscript{650} The first 10 years of

\textsuperscript{650} Backcasting is an approach to sustainable (strategic) planning that begins with the end vision; based on the desired vision, the next step is to move backwards to the present; finally move step by step forward to the desired
this future be marked by continued out-migration, but it will be followed by a period of greater in-migration of baby boomers and millennials because of the efforts and positive results of self-sustainability, cultural harmony environment, and renewable energy reduction in utility costs.

Table 19 describes the assumed drivers for the Discipline Society Scenario.

**Table 19: Drivers, Discipline Society Scenario, “Ecological Stewardship Society”**

<table>
<thead>
<tr>
<th>Drivers</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governance</td>
<td>Is a feature in this scenario due to the value of decentralization. All human beings are included in the consideration of all living organisms.</td>
</tr>
<tr>
<td>Population</td>
<td>Is a considerable feature due to the growth of foreign-born residents. Multiculturism is enriched as individual and communal values converge in this scenario to protect not just human but all living organisms.</td>
</tr>
<tr>
<td>Economic</td>
<td>Growth is expanded due to the global attention paid to climate change and global warming. Research and development aid and grants are readily available to connect societies and villages.</td>
</tr>
<tr>
<td>Technology</td>
<td>Feature will grow in renewable energy efforts due to the demand for less dependence on fossil fuels.</td>
</tr>
<tr>
<td>Energy</td>
<td>Energy efficiency programs and regional efforts to reduce Pacific Island dependence on fossil fuel transportation methodologies will bring about decreased utility costs.</td>
</tr>
</tbody>
</table>


**Transformational Society Scenario – “Moodle-Like Technology Society”**

In the Moodle-Like Technology Society scenario, *American Sāmoa* goes through a transformation driven by the development and implementation of Moodle-technology to educate, govern, and create a more educated and responsive society. Utilizing the Pacific Island’s mobile vision. Backcasting is a strategy to move backwards from the desired vision and then forward based on sustainable principles within a whole-systems perspective to employ strategic futures-planning.
telephony mode of communication, Moodle-Technology is an internet-based software program designed to transform the educational system to support remote learning. Moodle offers a cost effective means to conduct trainings for faculty, to allow seamless communication between faculty, administration, and the central office, and to develop and offer various alternative learning programs for drop out students and juvenile detention inmates.

In this scenario, *American Sāmoa* can address the opportunities to be transnational in educational and government services within 30 years. *American Sāmoa* has the opportunity to also be part of the consortium of over 12 Pacific Island countries in the University of South Pacific, which awards bachelors, masters, doctorate, and law degrees through Moodle-platform technologies. The advancement of Moodle-Technology has the potential to increase the GDP due to increased investments by a more locally educated and locally upskilled workforce, which in return drives the economy for more technologically-based diversified areas for development and growth. This appropriation of Moodle-Like Technology may lead to new values of direct democracy that may also drive culture for more inclusiveness—for example, broadcasting village meetings through Facebook. Together with Pacific Island partnerships, Moodle-Like Technology has the potential to initiate and expand tele-medicine in the next 30 years—for example, remote monitoring of on island patients with off island partners or with medical students elsewhere on island. Moodle-Like Technology will transform culture by facilitating the use of traditional and ecological knowledge to provide traditional alternatives. The Moodle-Technology will also be equipped and integrated to address the continued cycle of natural disasters so it can be used to redirect settlement patterns in least impacted areas. The increased societal value of data, sharing, and integrating people will better prepare this society intra-regionally to respond to climate change and global warming.
In this scenario, population in-migration will decrease, driven by the attraction of state-of-the-art virtual networking for medicine, government, and cultural sharing across Moodle-like Technology platforms. The new opportunities for integrated arenas and workforce-competitive open markets in both private and public sectors may also stop the out-migration of educated younger workforce to continental America. Table 20 describes the drivers for this scenario.

**Table 20: Drivers, Transformational Society Scenario, “Moodle-Like Technology Society”**

<table>
<thead>
<tr>
<th>Drivers</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Economic</td>
<td>Pacific Moodle-Technology based societies have increased GDP, greater investment in infrastructure and health systems, increased new sectors and job markets, and stronger inter-regional partnerships.</td>
</tr>
<tr>
<td>Governance</td>
<td>Is a feature in this scenario because of the policies, investment, and international coordination and cooperation needed in the development of this scenario.</td>
</tr>
<tr>
<td>Culture</td>
<td>May appear to be lessened as this scenario flourishes; however, indigenous culture may be magnified and interwoven into medical fields, providing naturopathic and holistic healing to replace the allopathic, pharmaceutical-based medicine of western culture.</td>
</tr>
<tr>
<td>Population</td>
<td>Flourishes because American Sāmoa becomes a hub society in the region. The millennial investment is reinvested with the new technology-based entrepreneurial spirit of transnationalism.</td>
</tr>
<tr>
<td>Energy</td>
<td>With advancements in regional and international partnerships in commerce and education, energy platforms and partnerships are exponentially increased. Geologic drilling suggests that renewable energy profiles could become 100% renewable energy proficient.</td>
</tr>
</tbody>
</table>


**Preferred Future for American Sāmoa**

My own preferred future society for American Sāmoa is a Commonwealth Landscape as an End to a New Beginning. When the CNMI pursued Commonwealth status negotiations with
the U.S., it had different political and cultural agendas than the Joint Committee on Future Status of all Micronesians (JCFS) and similar bodies for the other Trust Territories. The CNMI wanted the U.S. to retain power over foreign affairs and defense, and it wanted a more closely affiliated relationship with the U.S. and greater economic development and assistance than the Trust Territorial status provided for, while also allowing CNMI to retain self-governing powers to guide land policies.

My preferred future scenario is inspired in part by CNMI. I imagine American Sāmoa, although not a former Trust Territory, encouraging the U.S. to retain power over defense. Unlike CNMI, though, and unlike Puerto Rico, American Sāmoa will not seek automatic citizenship through Commonwealth status. Historically, U.S. citizenship has been overwhelmingly opposed in American Sāmoa. Considering the emerging pattern of wanting greater domestic sovereignty without losing the culture and communal lands, this preferred future scenario will assume a Commonwealth Status to preserve the culture, communal land system, and greater self-autonomy from the federal bureaucracy. Any Commonwealth Status assumes the application of certain federal laws, and this will be one of the most challenging aspects of this scenario, because any territorial affiliation to the U.S. will be under the jurisdiction of federal law and courts. The opportunity and challenge in this scenario will be the negotiation of financial grants and aid; if American Sāmoa wants to pursue greater autonomy with less federal intrusion in

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652 Marianas Covenant, sec. 506; Draft Proposed by the U.S. Delegation (Dec. 1973); Draft Proposed by the Mariana Political Status Commission (May 1974); Working Draft of the Joint Drafting Committee (Nov. 1974); Draft Agreed to by the Parties (Dec. 1974); Marianas Covenant.
654 The Commonwealth status has legal consequences different from territorial status, although the nature of that difference is unclear. Puerto Rico was to be treated as a state for purposes of the Three Judge Court Act, 28 U.S.C. sec. 2281, in Examining Board v. Flores de Otero. 426 472 (1976) the court states, “We readily conceded that Puerto Rico occupies a relationship to the United States that has no parallel in our history.”
Commonwealth negotiations, then federal financial reductions and concessions would be anticipated in this scenario.

The greatest advantage for *American* Sāmoa, one that Guam, CNMI, and Puerto Rico did not have, is history. The U.S. Congress has experienced negotiations between the three other territories that resulted in Covenant status without distinct legal or bureaucratic differences to a territory. There is precedent, then, and an opportunity to accord *American* Sāmoa special stature over its existing unincorporated status, which has never been done before. If the U.S. Congress is open to creating a special stature differentiating a “Commonwealth” from other types of territorial status, then there are possibilities for *American* Sāmoa to conduct its own foreign trade, enter into bi/multi-lateral trade agreements, and partner with Pacific Island organizations as a distinct legal entity separate from the other U.S. territories, which are disallowed from this type of political engagement.

Technology, especially using internet-based social media, will also be enlarged in this preferred future scenario, possibly facilitating the inclusion of the larger diaspora population during the plebiscite and community dialogue on *American* Sāmoa’s political status. This dialogue is necessary for referendum voting on the issue and for the support of Commonwealth plebiscite; when CNMI solicited public comment on its political status change, it used internet websites and social media as a mode to solicit comments.655 The dialogue in turn, will drive participatory democracy to value all members of society, including the growing immigrant population blocs. In 30 years, this preferred future scenario will see transformation in values and basis of society. Drivers of this scenario are found in Table 21.

**Table 21: Drivers, Preferred Society Scenario, “Commonwealth Landscape as an End to a New Beginning”**

655 Leibowitz, *Defining Status*, 493-593.
The vision of this scenario is to negotiate a legal and bureaucratic relationship with the U.S., distinct from that which exists for any other American territory. *American Sāmoa* needs a revolutionary transformation of its existing political and legal situation because the last century has proven that the existing model will not be sustainable in the next 30 years. This vision derives from two basic priorities: legal transition from a territory to Commonwealth Status and preservation of the culture. This preferred scenario is based on three fundamental normative principles: participatory democracy, preservation of communal land tenure and *fa’asāmoa* culture, and greater sovereignty. Based on the last 2010 Constitutional Convention and referendum, the majority of *American* Sāmoans want to retain communal land tenure and *fa’asāmoa* culture, which, with vision and purpose, can be negotiated into the Commonwealth Status Covenant for greater land protections and sovereignty.
CONCLUSION

*I’a ulu’ulu mata-folau*656

In looking at the political and legal history of *American* Sāmoa over the last century, this study has tried to move beyond the usual categories of federal-territorialism as quasi-colonized and immobilized. The power of the federal-territorial legal structure within the U.S. body-politic affects the consciousness of being bound within this political relationship over the last 115 years, which has determined the strength and growth of the Sāmoan cultural identity. The socio-political history of *American* Sāmoa suggests that the usual presumptions regarding federal-territorialism—that people are simply satisfied or displeased about the territory’s status in the U.S. federal power-machine—are insufficient. The history of *American* Sāmoa is a much more intricate and intriguing history.

Over the first 50 years of U.S. Naval oversight over the territory, *American* Sāmoans displayed outward symbols of Americanness that were proscribed to them by the Naval Administration, thus facilitating their acceptance into the American body-politic. A large number of conservative traditionalists were concerned about the introduction of foreign culture, language, and geographic remoteness, and worried about the level of political acquiescence that would be required. A concrete political and legal relationship was required in order to delineate what and how *American* Sāmoa was to operate within this ambiguous relationship.

The absolute oversight by the Naval Administration inoculated domesticity and changes to customary land tenure suggest that the federal-territorial experience was not just about the national politics of geo-political aggrandizement or the opportunity to become part of the American family. It was not even about purely survival. Instead, America was seen as a vehicle of engagement in the wider world beyond the Pacific Ocean. Without an Organic Act or legal

656 Sāmoan proverb, it means to have a vision while on a journey.
instrument to guide the Navy in governing this unincorporated and unorganized territory, which was ceded to the U.S. through two Deeds of Cession, the Navy became the executive, legislative, and judicial overseer. This form of governance was undemocratic and unchecked; there was too much power vested in the Commandant and Governor. As Navy Captain Stephen V. Graham, the eighteenth Governor of American Sāmoa, wrote in the Honolulu Star Bulletin after two years serving in the territory,

I also felt that the governor as the sole legislative branch of the government was clothed with too much power under any form of government and more particularly under an American government.\(^\text{657}\)

C.S. Hannum, California judge, pleaded with President Warren Harding over the undemocratic rule in American Sāmoa in 1925,

The Naval governor has been permitted an absolute dictatorship. He has ordered, and from this order the civilian population has no redress…\(^\text{658}\)

The Navy introduced adverse land possession as a method for determining land rights and ownership according to western standards. In one of the first land cases heard by the High Court in the early 1900s, the oral tradition of claiming ownership to communal lands was determined to be inadequate by western standards. “In this world of uncertainty,” the Court wrote, “the gradual progress of civilization tends to eliminate uncertainties, and one of the blessings of civilization is stability of land titles.”\(^\text{659}\) The Navy was seen as promoting democracy and acceptable national idealism when it ruled that oral tradition without surveys or written land titles was discredited as uncivilized, and therefore undemocratic. Actual, hostile, open, notorious, exclusive, and continuous possession of land was defined by the Navy as the

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\(^{\text{658}}\) C.S. Hannum, letter to President Warren Harding, December 10, 1925.

\(^{\text{659}}\) Talala v. Logo, 1 A.S.R. 166, 189 (1907).
“method of acquisition of title by possession” to claim real property title. Oral tradition was
only credible within specific parameters. Virgin communal lands were legally reconstructed into
unowned property, thereby dispossessing the village from ownership rights.

Through the Navy’s adjudication of land disputes, it supported conceptions of property
based on the ideologies of social justice expressed in English common law—in other words,
western notions of law and society favoring the rights of individuals over the rights of groups
and inoculating the philosophical and moral justification of private property. M.D. Olson writes,

The Courts, which tended not to reflect upon the inconsistencies, tended to re-
interpret as ‘Samoan custom’ the conceptions of land rights which the colonial
state’s civilizing influence attempted to effect, promoting, in the process, a more
general acceptance of the concepts within Samoan societies.

Once Sāmoans realized that the Court recognized and conferred rights on individuals, claims of
individualized land through adverse possession began to surface. This was the window that
opened up individually owned land rights—a land tenure classification that was not in existence
before 1900. Today, individually owned lands compose 26 percent of land ownership in
American Sāmoa. Cluny Macpherson counsels that “It is the nature of political relations that
determines the strength of any right,” the abject neglect that the Court paid to the preservation of
custom and customary lands when it appropriated and applied English common law, and
particularly adverse land possession concepts, has led to what he describes as the “derogation of
Sāmoan custom.”

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By examining the federal-territorial relationship through the lens of land rights, with a particular interest in the preservation of Sāmoan culture and communally owned lands, this study offers practical future alternatives. Some of the historical texts throughout this study reveal that neither the Navy nor Congress conspired to abolish Sāmoan indigenous culture or destroy the communal land tenure when the islands were ceded to the U.S. Arguably, then, from the beginning, there was bureaucratic misgiving by the Navy to develop the Tutuila Naval Station and also to administer *American* Sāmoa; there was no vision, direction, guidance, funding, and integrated purpose aligned to the military mandates for *American* Sāmoa. The primary and secondary material explored in this paper, we can see how the introduction of adverse land possession evolved into the “Law of Convenience,” stripping away at communal land tenure. When interpreted in the historical context of the broader scheme of American expansionist strategies during the nineteenth century, this evolution reveals a great deal about *American* Sāmoa’s struggles within the federal-territorial status, and, more broadly, exposes the negotiations of *American* cultural and political identity in wider global contexts.

This study has demonstrated the undercurrents of the indeterminate relationship between the U.S. and *American* Sāmoa, and how these undercurrents define the federal-territorial experience. It has also elucidated how these complexities led to the deconstructing of communal land tenure by the Navy. Individualized land rights confer security of tenure against the āiga members. The traditional Sāmoan social norms are based on reciprocity and rights and obligations of kin have changed due to the creation of individualized land tenure from adverse possession. At this present time, the practice of traditional Sāmoan customs within a global market demands land tenure modifications to the existing structure. In *American* Sāmoa because more than 80 percent of all businesses have four employees or less, these small businesses more
often than not lack equity and access to bank lending to be able to provide a sustainable financing platform for its business. Customary communal ownership cannot be alienated either by sale or mortgage which businesses face insurmountable challenges to surviving much less diversifying. Customary lands oftentimes have leases as collateral that are legally uncertain which are not looked favorably upon by lending institutions, security of tenure may not be guaranteed even when leasehold title is obtained and the approval process within the customary structure can take years.

Unless the Fono stops the individualization of land that takes land from customary ownership, a balance of cultural protections and economic growth could be to re-define individual lands similar to freehold lands which allows the owner to freely transfer land (with or without American Sāmoan ancestry). If the Fono were to place a legislative ceiling on the individual land titles now, currently 2,029 registered acres and re-define these lands similar to freehold lands as freely transferable; this will spur the growth of economic decline since the 1990s. American Sāmoa could also approach this issue with a firm hand and move for the dissolution of individual land ownership through law, referendum by vote through legislation, or amendment to the Constitution.

American Sāmoa today, is a hybrid society of western and indigenous institutions and customs. Perhaps, this is the time to legislate this hybrid lifestyle into the land tenure classification system that could protect virgin and customary lands from further alienation while also allowing freehold and individual lands to be freely transferable. Thereby, only these specific lands could be used as acceptable security to lending institutions. In Independent State of Sāmoa, they amended the Limitation Amendment Act 1975 in 2012 that completely dissolved
adverse possession rights.\textsuperscript{663} Parliament recognized that adverse possession claims were an unfair practice that limited the right of a dispossessed owner of freehold (or government) land to recovery and also the complexity of these particular cases in the Supreme Court surrounding customary land and evidential issues.

\textit{American} Sāmoa, after looking at the process and results of changes in political status of other Insular Areas, may seek alternative political and legal arrangements that may strengthen the ability to further protect the \textit{fa’amātai} and communal land tenure systems, thus preserving the Sāmoan culture and identity. The Futures Studies modeling scenarios provide a framework to analyze historical trends and emerging issues to inform and anticipate opportunities of engagement in futuristic planning systems in \textit{American} Sāmoa. These issues and future planning models often go unrecognized in contemporary representations of U.S. territories.

There is relatively little scholarship of Sāmoan culture and the impacts that individually owned land has wrought upon it and upon communal land tenure. Attorneys from overseas have written about this, albeit through the prism and colored by their interests as foreigners. My sincere hope is that this dissertation will incite more examination and conversation in this area, and that my analysis highlights the need to address this historical and legal quandary by the people it actually impacts.

\textsuperscript{663} Limitation Act of Sāmoa1975, Part I(9): Actions to recover land or register title – (1) Subject to section 3(1) of the Limitation Amendment Act 2012 and to this Part, from 26 January 2012: (a) no right, title or interest in or to land adverse to or in derogation of the title of the registered owner shall be acquired by any length of possession by virtue of any adverse possession relating to real property; and (b) no right, title or interest in or to land adverse to or in derogation of the title of the registered owner shall be registered by virtue of a claim to title by adverse possession; and (c) no title of any such registered owner shall be extinguished by the operation of any statute of limitation. (2) Subject to section 3(1) of the Limitation Amendment Act 2012 and to this Part, from 26 January 2012: (a) no right, title or interest in or to land shall be acquired by adverse possession; and (b) no right, title or interest in or to land shall be registered by virtue of a claim to title by adverse possession; and (c) no party shall raise adverse possession to defend or resist any claim by a registered owner to—(i) recover land; or (ii) evict a party; or (iii) redefine boundaries of land.
GLOSSARY OF SĀMOAN WORDS

āiga  
Family, kin.

āiga potopoto  
Extended family, kin; Also, collective term for all the members of a lineage who have the right to be present at, and to take part in, the election of a new mātai.

Aufono o Ali‘i  
Council of Chiefs.

‘aumaga  
Untitled men.

‘ausaluma  
Girls and young women.

fa’asāmoa  
Customs and ways of behaving as well as words of deference and respect which every Sāmoan must practice each day.

fa’alavelave  
Cultural and family related events that require family members to contribute money and/or commodity items (fine mats) for weddings, funerals, mātai titles, and church activities, as well as providing financial assistance for basic family needs.

fa’amātai  
Complex configuration of mātai titles, all ordered relative to each other. Mātai titles are based upon kinship relations, mythology, and genealogical history, but are also influenced by one’s ability to garner loyalty and support within the āiga and āiga potopoto structure. Each nuclear household has a mātai title holder in traditional Sāmoan society and on communal lands within the village. Within the village there is a hierarchy of mātai title holders and each mātai title is ranked relative to the others.

Fa’asuaga  
Paramount Chief in American Sāmoa.

fono  
Meeting or Council.

Fono Aoao Faitulafono  
National Legislative Assembly.

itūmālō  
District.

malae-fono  
Meeting grounds.

malaga  
Ceremonial visit paid according to Sāmoan custom.
<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
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<tbody>
<tr>
<td>mālō</td>
<td>National government.</td>
</tr>
<tr>
<td>mātai</td>
<td>Titled head of a Sāmoan extended family; Also, the steward representing a family in communal land matters and before the local political councils (village council), as well as between families in discussions and disputes for possible arbitration and resolution.</td>
</tr>
<tr>
<td>nu'u</td>
<td>Village.</td>
</tr>
<tr>
<td>papālagi</td>
<td>All foreigners.</td>
</tr>
<tr>
<td>poumuli tree</td>
<td>Durable tree used as poles for traditional houses and cooking houses.</td>
</tr>
<tr>
<td>pule</td>
<td>Power or authority.</td>
</tr>
<tr>
<td>pulenu'u</td>
<td>Liaisons between the customary Sāmoan system of government and the central government.</td>
</tr>
<tr>
<td>sā</td>
<td>Taboo, forbidden.</td>
</tr>
<tr>
<td>Sa’o</td>
<td>Senior mātai title holder (out of several in a lineage).</td>
</tr>
<tr>
<td>suli moni</td>
<td>Individual connected through blood descent.</td>
</tr>
<tr>
<td>suli sili</td>
<td>Individual from different family who nonetheless lives with and renders service to Sa’o.</td>
</tr>
<tr>
<td>suli fa’i</td>
<td>Individual who is an adopted heir, not of blood descent, also considered to have rendered service to Sa’o.</td>
</tr>
<tr>
<td>ta’amū</td>
<td>Variety of giant taro.</td>
</tr>
<tr>
<td>Tama’āiga</td>
<td>Royal title.</td>
</tr>
<tr>
<td>Ta’imua</td>
<td>House of High Chiefs.</td>
</tr>
<tr>
<td>tautua</td>
<td>Service. For untitled individuals, service to mātai; Service as a means to gain authority as a mātai; Service as mātai to family and extended family as part of role and responsibility.</td>
</tr>
<tr>
<td>Tulafale mātai</td>
<td>Orator, Talking chief.</td>
</tr>
</tbody>
</table>
WORKS CITED


—“A Regulation Relating to Samoan Traveling Parties Between the Islands of Savaii and Upolu and the Islands of Tutuila and Manua.” No. 2, 1903. (March 30, 1903).


—“Historical Archaeology at Massacre Bay, American Sāmoa.” International Journal of Historical Archaeology 11, no.1 (March 2007).


—“Seward’s Ideas of Territorial Expansion.” *North American Review* 167 (July 1898).

—Territorial Organic Documents, Cession of Tutuila and Aunu’u April 17, 1900. Also available at http://www.asbar.org.


3 A.S.C. 12(c) and P.L. 15-23, Secretary’s Order No.3009 Amendment No.2, June 27, 1978.


A.S.C.A. § 1.0401(b) (1968).


1947 United Nations Trusteeship, art.3.

Ancient Statute of Merton, 1811; ch. 4, vol. 143, 262.

Commonwealth of the Northern Marianas Code, Tit. 7 § 3401.

Cook Islands Act 1915 (NZ), sec. 354.

Executive Order No. 10264, 3 C.F.R., 1949-1953 Comp. 765.


Northwest Territory Ordinance of 1787, Act of August 7, 1789, ch.8, 1 Stat. 50.

Palau National Code, Title I, §302.

Palau National Code, Title 39.


Public Law 56-191, 31 Stat.77, April 2, 1900.


Public Law 108-188, §104.

Regulation No. 2-1901, Provisional Regulation Regarding Titles to Land.

Regulation No. 6, 1921, Concerning Alienation of Native Lands.


Sāmoa Act 1921 (NZ), sec. 268.


United Nations Charter, chapt. XII, art. 77.


Constitution of Independent State of Sāmoa, art.1.

Constitution of Independent State of Sāmoa, art. IV, C(1) (c).


Constitution of Mariana Islands 1978, art. VI.

Constitution of Mariana Islands 1978, art. XI.

Constitution of Mariana Islands 1978, art. XII.

Constitution of Palau, art. IX.

Revised Constitution of American Sāmoa, art. 1, § 3.

Tokelau Amendment Act 1976 (NZ), s.20.

Tonga Constitution (1875) §104.
U.S. Const. amend. XIV, § 1.

U.S. Const. amend. XIV § 1-5.

U.S. Const. art. I, § 2, cl. 2.

U.S. Const. art. II, § 2, cl. 2.

U.S. Const. art. IV, § 2, secs. 2 and 3.

U.S. Const. art. IV, § 3, cl. 3.

U.S. Const. art. XIV, § 2.


Craddick v. Territorial Registrar of American Samoa, CA 61-78, slip op. (Trial Div. May 10, 1979) (Order Denying Motion for New Trial or Rehearing Civil Action No. 61-78).


Faaafe v. Unai, 2 A.S.R. 22 (1938).


Fanene v. Talio, LT 64-77, slip op. (Trial Div. April 22, 1980).


Fatialofa v. Fagamalo, LT. No. 5-1903.


Gi v. Taetaea, 2 A.S.R. 401, 403 (1948).


Gregorio Igartúa et al. v. United States of America et al. No.09-2189, United States Court of Appeals, First Circ., (Nov. 24, 2010).


Laapui v. Taua, 1 A.S.R. 24 (1901).

Leiato v. Howden, 1 A.S.R. 45 (1901).


Lacap v. INS, 138 F. 3d 518, 519 (3d Cir. 1998).


Lauvao v. Misipaga, 1 A.S.R. 105 (1907).

Leiato v. Howden, 1 A.S.R. 45 (1901).

Leiato v Howden, 1 A.S.R. 149 (1906).

Letuli v. Faaea, LT No. 8-1941.


Mauga v. Gaogao, LT 2-1905.


Mulu v. Taliutafa, 3 A.S.R. 82 (1953).


Pafuti v. Logo, 1 A.S.R. 166 (1907).


Plessy v. Ferguson, 163 U.S. 537 (1896).


Sakamoto v. Duty Free Shoppers, Ltd., 764 F.2d 1285 (9th Cir. 1985).

Salavea v. Ilaoa, 2 A.S.R. 16 (1938).


Sapela v. Mageo, 1 A.S.R. 125 (1905).


Talala v. Logo, 1 A.S.R. 165 (1907).


Tiumalu v. Fuimaono, 1 A.S.R. 17 (1901).


Tufaga v. Liufau, 1 A.S.R. 184 (1903).


Tufaga v. Liufau, 1 A.S.R. 184 (1903).

Tupuola v. Togia, 1 A.S.R. 270 (1912).

Valmonte v. INS, 136 F.3d 914, 920 (2d Cir. 1998).

Vili Siopitu Faatoa v. Faiivae, 1 A.S.R. 38 (1906).

Warbol v. Villacrusis, 958 F.2d 1450, 1462 (9th Cir. 1992).


Bestor, Arthur. “Constitutionalism and the Settlement of the West: The Attainment of


Bryan, H.F. Order Issued March 8, 1927.


C.S. Hannum, letter to President Warren Harding, December 10, 1925.


Commandant Uriel Sebree to U.S. Assistant Secretary of the Navy. June 30, 1902.


Coulter, John W. *Land Utilization in American Samoa*. Honolulu: Bernice P. Bishop Museum,
1941.


—“Trend Analysis vs. Emerging Issues Analysis.” (July 2009).


“Déclaration des droits de l’Homme et du Citoyenne or « Declaration of the Rights of Man »,

303
Yale Law School. Avalon Project. Also available at
http://avalon.law.yale.edu/eighteenth_century/rightsof.asp.

Deenon, Donald, ed. Emerging from Empire? Decolonization in the Pacific. Canberra:
Division of Pacific and Asian History, Research School of Pacific and Asian Studies,
Australian National University, 1997.

de Leon, Arnoldo. Racial Frontiers: Africans, Chinese and Mexicans in Western America,

Co., 1938.

Dunmore, John. French Explorers in the Pacific: Volume I: The Eighteenth Century, Volume II:

Ellison, Joseph. Opening and Penetration of Foreign Influence in Sāmoa to 1880. Corvalis:
Oregon State College, 1938.


Faleomavaega, Eni. “An unincorporated & unorganized American Territory-Is this what

—“Faleomavaega and people of American Samoa join Hawaii and the rest of
The nation in mourning the loss of a great man, Fofoga o Samoa Senator Daniel K.

—“Faleomavaega Introduces Legislation to Expedite Naturalization Process
http://www.house.gov/list/press/as00_faleomavaega/expeditenaturalizationforusnationals.h
ml.

—“Historical Documents, Laws, & Deeds Related to American Sāmoa.”
American Sāmoa Congressional Office, Washington, D.C. Also available at

—Navigating the Future: A Samoan Perspective on U.S.-Pacific Relations.

Government Print Office, 1907.


Hawaii Research Center for Futures Studies (Department of Political Science), University of Hawai’i at Mānoa website: [http://futures.hawaii.edu/](http://futures.hawaii.edu/).

Hay Papers, Box 26, Letterbook 1, Hay to Choate, 4/12/1899.


—*The Samoa Islands* vol. 2, 198.


Loi, James. Testimony before the House Foreign Affairs Committee, Subcommittee on Asia and


Marsack, C.C. Notes on the Practice of the Court and Principles Adopted in Hearing of Cases Affecting (1) Samoan Mātai Titles; and (2) Land Held According to Customs and Usages of Western Samoa. Apia: Land and Titles Court, 1958.


McKinley Papers, series 1, vol. 37, Hay to McKinley, 11/9/1899.


National Archives, Record Group 59, M-179, roll 1022, Navy Department to S.D., 30/12/1898, and Cridler memo of 18/1/1899.


Order Issued March 8, 1927, by H.F. Bryan, Captain, USN and Governor.


Ramos, Efrén R. “Deconstructing Colonialism: ‘The Unincorporated Territory’ as a Category of


Ryden, George H. The Foreign Policy of the United States in Relation to Sāmoa. New Haven:


Sebree to U.S. Assistant Secretary of the Navy, April 7, 1902.


So’o, Asofou, ed. “Changes in the Mātai System: O Suiga I le Fa’amātai.” Apia: Centre for


—“Fa’aSāmoa speaks to my heart and soul.” Keynote address to the Pasifika Medical Association Conference. Auckland, New Zealand, 2000.


U.S. Department of Navy General Order No. 540 (February 19, 1900); President William McKinley Executive Order February 19, 1900.


USN Commandant Uriel Sebree to U.S. Assistant Secretary of the Navy. June 30, 1902.


Wells, Henry. “The Modernization of Puerto Rico: A Political Study of Changing Values and


Yale Law School, Avalon Project. Continually updated.  
http://avalon.law.yale.edu/eighteenth_century/nworder.asp.
