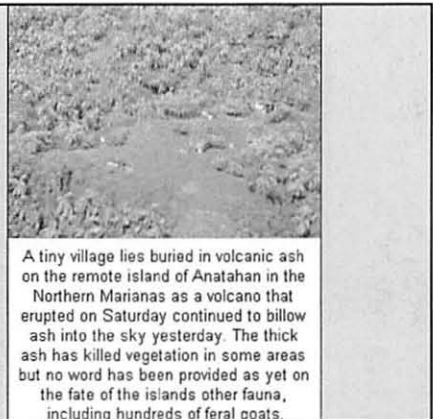
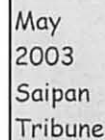
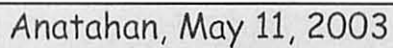
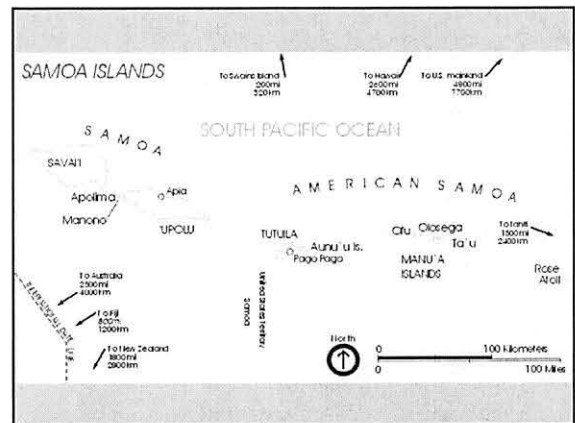
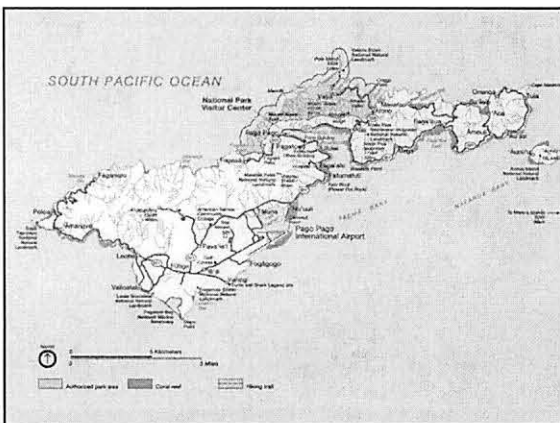
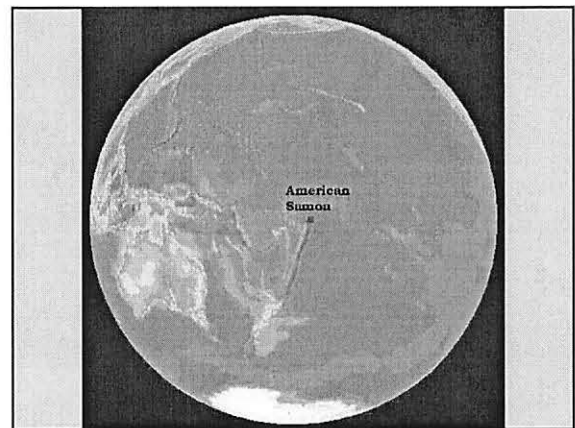
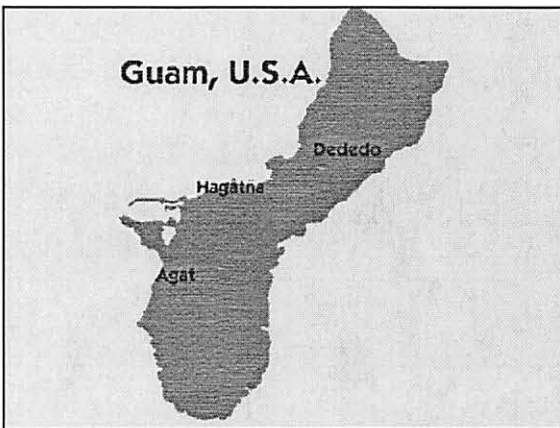
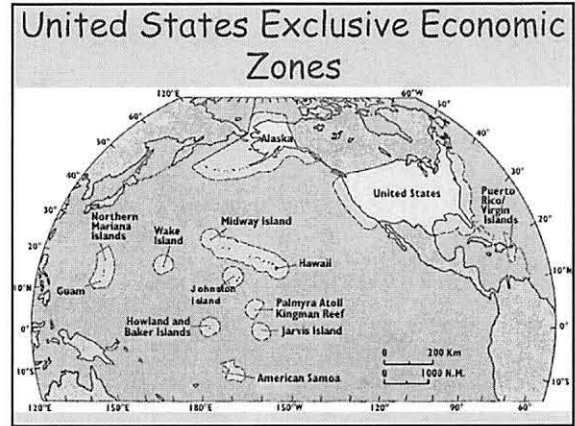


- \* Each side must have authority to modify the relationship unilaterally.
- \* Each side has complete self-governance.
- \* Larger country usually handles defense.
- \* Each country can enter treaties and join international organizations.

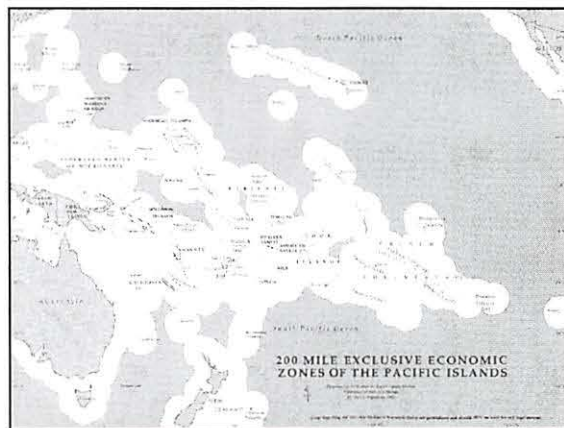
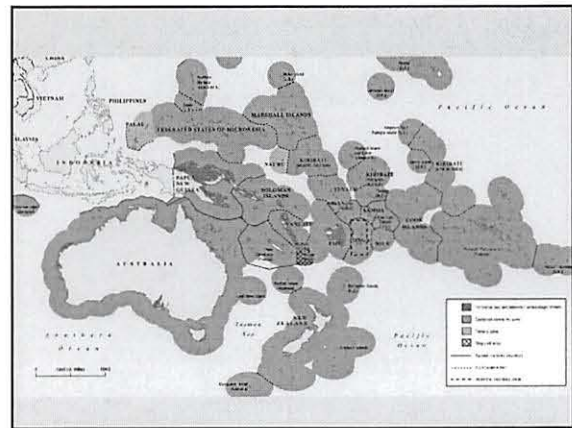
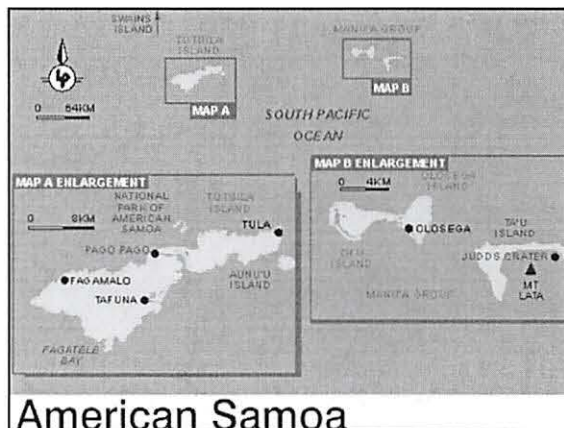
- \* Cook Islands & New Zealand
- \* Faroe Islands & Denmark
- \* Niue & New Zealand
- \* Netherlands Antilles & the Netherlands

A map of the Mariana Islands region. At the top, a scale bar shows distances in miles (0 to 200) and kilometers (0 to 200). The map labels several islands and geographical features: Farallon de Pajaros, Maug Islands, Asuncion Island, Agrihan, Pagan, North Pacific Ocean, Guguan, Sarigan, Anatahan, Farallon de Medinilla, Saipan, SAIPAN, Tinian, and Rota. The islands are represented by small circles or dots, with SAIPAN and Tinian marked with an asterisk. The North Pacific Ocean is labeled to the right of the island group.







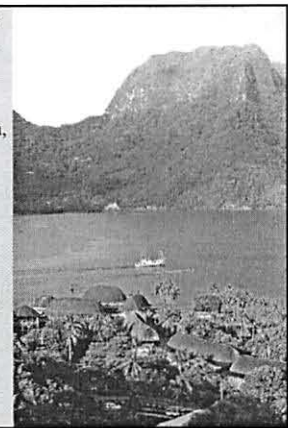


#### Colonial Struggle for Samoa

\* 1878-89 – Samoan chiefs engaged in bitter struggle to determine who would become king.

\* March 5, 1889 – 1 British, 3 German, and 3 US warships were in Apia Bay – horrendous hurricane destroyed all three of the German & US ships and killed 142 German and US sailors.

\* June 1889 – Britain, Germany and US met in Berlin and determined that Samoa would be an “independent and neutral” nation that they would jointly control.



#### Colonial Struggle for Samoa

\* December 1899 – The three powers gave the US what is now “American Samoa” and Germany what is now “Samoa”

\* April 17, 1900 -- The Samoan chiefs on Tutuila agreed to sign a deed of cession to the United States, granting “full powers and authority to enact proper legislation for and to control the said islands” but also specifying that the US shall respect the rights of the Samoans to their lands and property.

\* 1929 – The U.S. Congress accepted this cession



#### Micronesian Islands

\* 1800s -- Germany competed with Spain for the Caroline Islands in Micronesia, and finally the Pope mediated their dispute, awarding most of the islands to Spain in 1885 but allowing Germany to retain fishing and trading rights and to annex the Marshall Islands.

\* 1898 – After Spanish-American War, Spain ceded Guam to the United States.

\* 1899 -- Spain sold the Caroline Islands and the Mariana Islands (except Guam) to Germany.

\* 1918-45 -- Governed by Japan

\* 1945-86 – Trust Territory of the Pacific -- Governed by the United States

#### Article 73 -- United Nations Charter

Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a *sacred trust the obligation to promote* to the utmost, within the system of international peace and security established by the present Charter, *the well-being of the inhabitants of these territories*, and, to this end:

#### Article 73 -- United Nations Charter

a. to ensure, with due respect for the culture of the peoples concerned, their political, economic, social, and educational advancement, their just treatment, and their protection against abuses;

b. to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;

#### Article 76 - UN Charter

The basic objectives of the trusteeship system, in accordance with the Purposes of the United Nations laid down in Article 1 of the present Charter, shall be: ...

b. to promote the political, economic, social, and educational advancement of the inhabitants of the trust territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement; ...

Micro Beach, Saipan



Hyatt Hotel, Micro Beach, Saipan

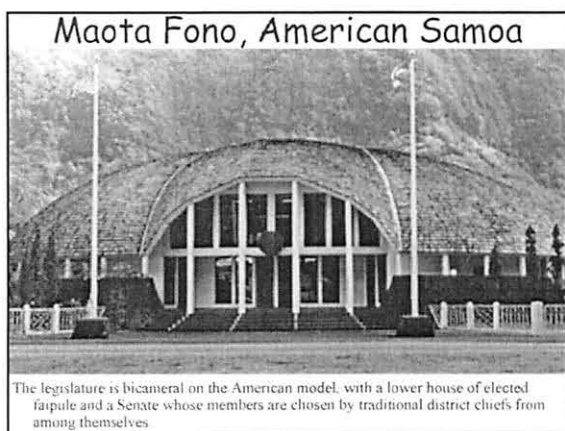


Micro Beach, Saipan






AMERICAN SAMOA GOVERNMENT DEPARTMENTS	
•	<a href="#">DEPARTMENT OF ADMINISTRATIVE SERVICES</a>
•	<a href="#">DEPARTMENT OF AGRICULTURE</a>
•	<a href="#">DEPARTMENT OF COMMERCE</a>
•	<a href="#">DEPARTMENT OF EDUCATION</a>
•	<a href="#">DEPARTMENT OF HEALTH</a>
•	<a href="#">DEPARTMENT OF HUMAN &amp; SOCIAL SERVICES</a>
•	<a href="#">DEPARTMENT OF HUMAN RESOURCES</a>
•	<a href="#">DEPARTMENT OF LEGAL AFFAIRS</a>
•	<a href="#">DEPARTMENT OF MARINE AND WILDLIFE RESOURCES</a>
•	<a href="#">DEPARTMENT OF PARKS AND RECREATION</a>
•	<a href="#">DEPARTMENT OF PORT ADMINISTRATION</a>
•	<a href="#">DEPARTMENT OF PUBLIC INFORMATION</a>
•	<a href="#">DEPARTMENT OF PUBLIC SAFETY</a>
•	<a href="#">DEPARTMENT OF PUBLIC WORKS</a>
•	<a href="#">DEPARTMENT OF TREASURY</a>



American Samoa -- COURT JUDGES	
NAME	TITLE
F. MICHAEL KRUSE	CHIEF JUSTICE
LYLE L. RICHMOND	ASSOCIATE JUSTICE
LOGOAI SIAKI	CHIEF ASSOCIATE JUDGE
ATIULAGI F. PESE	ASSOCIATE JUDGE
SAGAPOLUTELE MALAEOLA A.A.	ASSOCIATE JUDGE
TAPOPO M.E. VAIFANUA	ASSOCIATE JUDGE
MAMEA SALA, JR.	ASSOCIATE JUDGE
SAOLE MILA	ASSOCIATE JUDGE
SUAPAIA E. C. PEREIRA	ASSOCIATE JUDGE
JOHN L. WARD II	DISTRICT COURT JUDGE

**FALEOMAVAEGA REQUESTS HEARING ON FEDERAL DISTRICT COURT FOR AMERICAN SAMOA February 10, 2006**

Congressman Faleomavaega announced today that he has informed the Governor and the Fono that he has requested that the U.S. House Committee on the Judiciary conduct a hearing on H.R. 4711, a bill he introduced to provide a federal district court for American Samoa.




**Factory owner convicted in forced labor case (June 29, 2005)**

Kil Soo Lee, the former owner of an American Samoa garment factory was sentenced to 40 years in prison for his role in holding over 200 victims in forced servitude.

Lee, the owner of the Daewoosa garment factory, was convicted on February 21, 2003 of numerous federal criminal violations, including involuntary servitude, extortion and money laundering.

Lee was charged in 2001, in the U.S. District Court in Hawaii, with illegally confining and using as forced labor over 200 Vietnamese and Chinese garment workers.





Does the U.S. Constitution Apply in the Five U.S. Territories and Commonwealths?

- \* American Samoa
- \* Commonwealth of the Northern Mariana Islands
- \* Commonwealth of Puerto Rico
- \* Guam
- \* U.S. Virgin Islands

Does the U.S. Constitution Apply to the Five U.S. Commonwealths and Territories?

Entirely?

Partly?

Did the U.S. Constitution Apply to the Activities of the United States in the Trust Territory of the Pacific prior to the Compacts of Free Association?

Downes v. Bidwell (1901)

*Does the U.S. Constitution apply to the newly-acquired insular territories?*

Court distinguishes between "*certain natural rights*" that do apply, but rules that "what may be termed *artificial or remedial rights*, which are peculiar to our own system of jurisprudence" do not.

Those that apply:

- \* Rights to religious freedom
- \* Right to personal liberty and property
- \* Freedom of speech and of the press
- \* Free access to courts
- \* Due process of law
- \* Equal protection
- \* Immunities from unreasonable searches & seizures
- \* Immunity from cruel & unusual punishment

Hawaii v. Mankichi, 190 U.S. 197 (1903)

*Do the constitutional provisions on indictment by grand jury and trial by jury apply to the Territory of Hawai'i?*



No. The Court

affirmed a manslaughter conviction of a defendant who was convicted by a 9-3 jury vote (in accordance with the law of the Republic of Hawai'i).

Should Trial by Jury Be Viewed as a "Fundamental" Constitutional Right?

No:

*Territory of Hawaii v. Mankichi*, 190 U.S. 197 (1902) (affirming conviction, even though there had been no grand jury indictment and the verdict was not unanimous – 9 votes out of 12)

*Commonwealth of the Northern Mariana Islands v. Atalg*, 723 F.2d 682 (9th Cir. 1984) (upholding conviction without jury trial, out of respect for the traditions and culture of the insular community).



The Jury System

In the United States – a jury trial is available to a defendant in all criminal cases where the potential punishment is *six months imprisonment* or more.

In the Commonwealth of the Northern Mariana Islands – a jury trial is available to a defendant in all criminal cases where the potential punishment is *five years imprisonment* or more.





King v. Morton (DC Cir. 1975)

Instructed the District Court to determine whether the jury system was “practicable” in light of “the Samoan mores and *matai* culture with its strict societal distinctions.”

The district judge received testimony from eight Samoans, four U.S. government officials, and Margaret Mead. None said the jury system should be implemented immediately, but the judge ruled that – in light of the educational advancements in American Samoa – it should be implemented.

Juries are now available in American Samoa, and appear to be working properly.

Waboll v. Villacrusis (9th Cir. 1990)

*Can the CNMI restrict land ownership and long-term leases to “persons of Northern Marianas descent”?*

Ninth Circuit ruled that this provision in the 1975 Covenant was constitutional:

“The Bill of Rights was not intended to interfere with the performance of our international obligations. Nor was it intended to operate as a genocide pact for diverse native cultures....Its bold purpose was to protect minority, rights not to enforce homogeneity.”

Verdugo-Urquidez v. United States (1990)

“*the Insular Cases* ...held that not every constitutional provision applies to governmental activity even where the United States has sovereign power....And certainly, it is not open to us in light of the *Insular Cases* to endorse the view that every constitutional provision applies wherever the United States Government exercises its power.”

United States v. Verdugo-Urquidez (1990)

U.S. agents entered into the home of a Mexican in Mexico and seized some items. No judicial warrant had been issued to permit this entry. Can the items be introduced into evidence in a U.S. court?



Does the Constitution Govern the Activities of U.S. Officials Acting Outside the States in Dealing with Aliens?

In 1976, when the United States was negotiating the Compacts of Free Association with the Micronesians, the U. S. CIA *wiretapped* the Micronesian negotiators to determine their negotiating positions.

*Did this violate the U.S. Constitution? International law?*

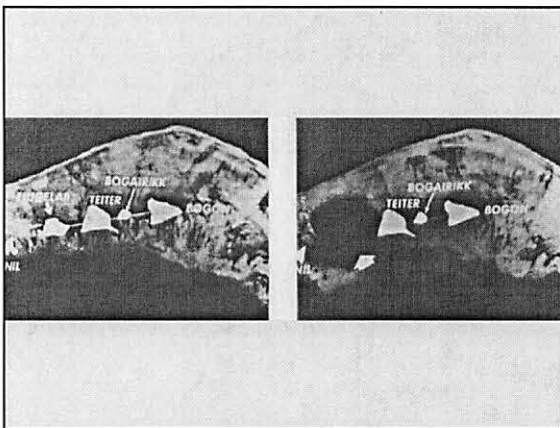
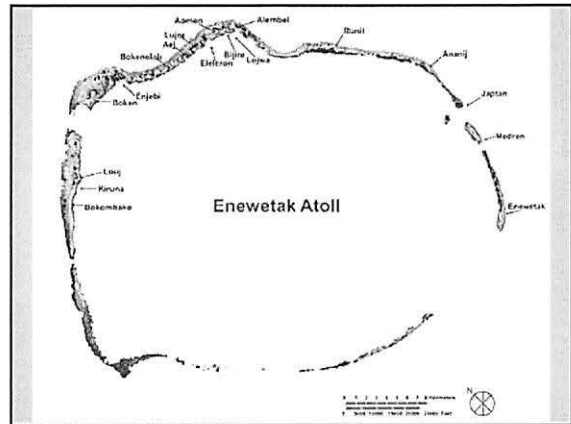
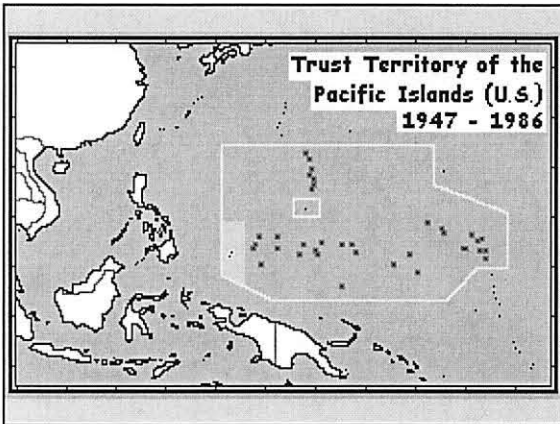
Did it violate the U.S. responsibilities under the Trusteeship Agreement?

Enewetak Nuclear Claims

*Did the U.S. Constitution apply to U.S. actions in the Trust Territory of the Pacific?*

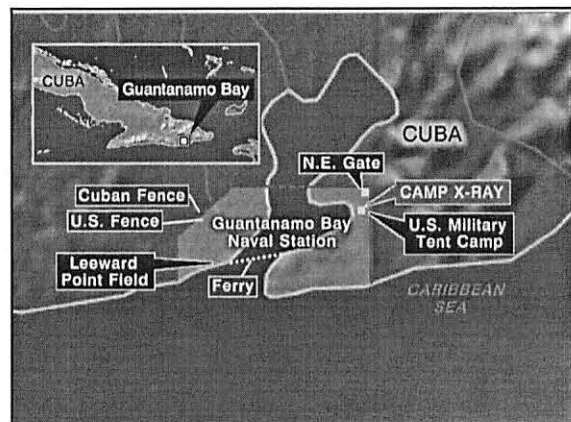
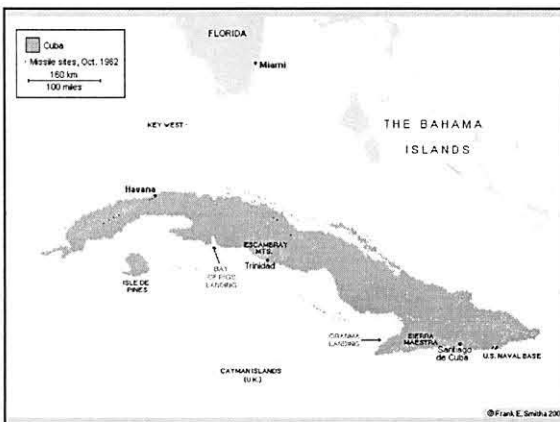
*Do the People of Enewetak have a Takings Claim under the Fifth Amendment for their loss of property?*





#### Nuclear Claims Tribunal (US-Marshall Islands)

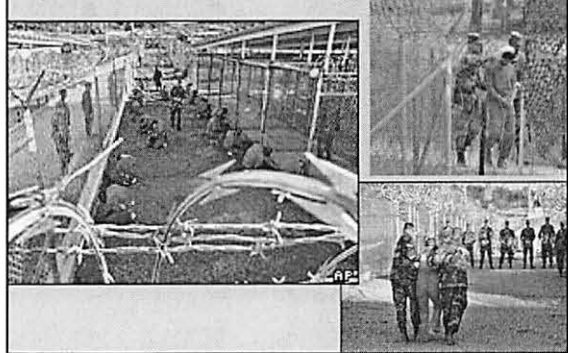
- \* Established in the 1986 Compact of Free Association
- \* Fund of \$185,000,000
- \* Tribunal found valid claims of between \$1.5 and \$2 billion
- \* Has there been a taking of property
- \* Did the U.S. Constitution apply to the Trust Territory?
- \* Can a claim now be brought in the U.S. Claims Court?



### Guantanamo Bay Naval Station



### Guantanamo Bay, Cuba



### Rasul v. Bush (2004) [121]

Ruling that that Guantanamo Bay Base was under U.S. control.

“Aliens at the base, like American citizens, are entitled to invoke the federal courts’ authority.... United States courts have traditionally been open to nonresident aliens.”

6-3 (Justice Stevens writing for the majority; Justices Rehnquist, Thomas & Scalia dissenting)



### Rasul v. Bush (2004) [121]

“By the express terms of its [1903 and 1934] agreements with Cuba, the United States exercises ‘complete jurisdiction and control’ over the Guantanamo Naval Base, and may continue to exercise such control permanently if it so chooses.”



### Employment Div., Dept. of Human Resources v. Smith (1990)

Smith and Black, members of Native American Church, were denied unemployment compensation after they were fired from a private drug rehabilitation organization for using peyote, because that was viewed as a discharge for work-related “misconduct.”



### Employment Div., Dept. of Human Resources v. Smith (1990)

Justice Scalia’s Test?

Generally applicable laws can be applied without regard to whether they burden religious beliefs?! As long as the burden is not the “object” of the law, but rather is only “incidental effect.”

Is this decision consistent with *Wisconsin v. Yoder* (1972)?

With *Sherbert v. Verner* (1963)?

Religious Freedom Restoration Act (1993)

FREE EXERCISE OF RELIGION PROTECTED

(a) In General. -- Government shall not *substantially burden* a person's exercise of religion even if the burden results from a rule of general applicability, except as provided in subsection (b).

(b) Exception. -- Government may substantially burden a person's exercise of religion only if it demonstrates that application of the burden to the person --

(1) is in furtherance of a *compelling governmental interest*; and

(2) is the *least restrictive means* of furthering that compelling governmental interest.

City of Boerne v. Flores (1997)

St. Peter's Church in Boerne, Texas

Can a historic landmark law be used to prevent a church from expanding to meet the needs of a growing congregation? Church was designed for 230 worshippers, and now 290 want to celebrate Mass on Sunday (and must do so in a local auditorium).



City of Boerne v. Flores (1997)

What are the Court's real concerns with RFRA?

\* It changes the substantive standard enunciated in *Employment Division v. Smith* (1990), by reversing the Court's rule that generally applicable laws that burden religious beliefs are unconstitutional only if their passage was "motivated by religious bigotry." It is "beyond congressional authority" to alter the meaning of a constitutional provision in this fashion.



\* It "imposes in every case a least restrictive means requirement" and thus "is broader than is appropriate if the goal is to prevent and remedy constitutional violations."

\* These changes impose a "heavy litigation burden on the States," because many regulations in the modern world impose burdens on persons who have certain religious beliefs.

# Does RFRA Still Apply to Federal Actions?

Guam v. Guerrero, 290 F.3d 1210 (9th Cir. 2002)

Benny Toves Guerrero was arrested at the Guam Airport for importing controlled substances after five ounces of marijuana were found in his belongings.

He moved to dismiss the indictment on the ground that Guam's prohibition on the importation of marijuana violated his right to exercise freely his religion – Rastafarianism – which was protected under the Religious Freedom Restoration Act.



Guam v. Guerrero, 290 F.3d 1210 (9th Cir. 2002)

Holdings:

\* Guam's statutes prohibiting the importation of marijuana were neutral rules of general applicability that could be enforced against religious users.

\* The Supreme Court of Guam lacked authority to interpret the Free Exercise Clause in the Guam Organic Act as conferring more religious freedom than the First Amendment.





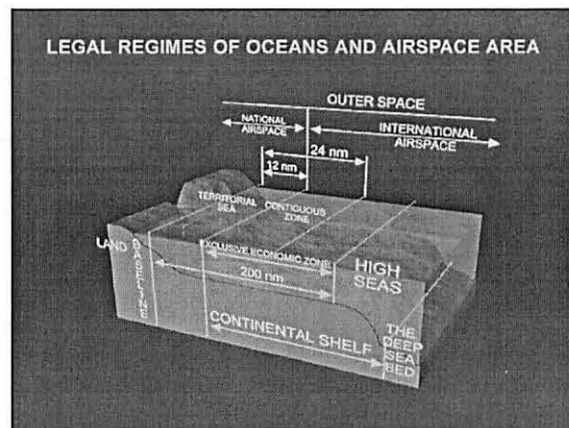
## Does RFRA Still Apply to Federal Actions?

Does it violate the Establishment Clause?

*Guam v. Guerrero*, 290 F.3d 1210 (9<sup>th</sup> Cir. 2002)

### Holdings:

- \* RFRA is constitutional as applied to federal actions and as applied to Guam
- \* Guam's statutes criminalizing the importation of marijuana did not substantially burden the practice of Rastafarianism within the meaning of RFRA (because he could grow his marijuana in Guam).



- \* Internal Waters
- Territorial Sea – 12 nautical miles
- Contiguous Zone – 12-24 nautical miles
- Exclusive Economic Zone – 12-200 nautical miles
- Archipelagic Waters
- High Seas

### Commonwealth of the Northern Mariana Islands v. United States (9<sup>th</sup> Cir. 2005)

The CNMI brought a quiet title action seeking a declaration that it holds title to the submerged lands “underlying the internal waters, archipelagic waters, and territorial waters adjacent to the northern Mariana Islands.”

The U.S. District Court rejected this claim and ruled that the “United States possesses paramount rights in and powers over the waters extending seaward of the ordinary low water mark of the “Commonwealth Coast and the lands, minerals, and other things of value underlying such waters.”

Commonwealth of the Northern Mariana Islands v. United States (9<sup>th</sup> Cir. 2005)

The CNMI argued that the 1975 Covenant creating the CNMI prevailed over the paramountcy doctrine because "federal law applies to the Commonwealth only to the extent that it is consistent with the Covenant."

The Ninth Circuit responded that the paramountcy doctrine was not inconsistent with the Covenant, because the Covenant gives the United States responsibility over foreign affairs, and paramount authority over ocean matters is necessary for foreign affairs.

Commonwealth of the Northern Mariana Islands v. United States (9<sup>th</sup> Cir. 2005)

"Pursuant to Article V [of the 1975 Covenant], only certain provisions within the United States Constitution and other federal laws are applicable to the Commonwealth."

"We do not dispute that 'the authority of the United States towards the CNMI arises solely under the Covenant.'"

But then the Ninth Circuit proceeded to apply the *paramountcy doctrine* to the CNMI and rule that the CNMI had no title to the submerged lands surrounding the islands in the Commonwealth.

Commonwealth of the Northern Mariana Islands v. United States (9<sup>th</sup> Cir. 2005)

Under the *paramountcy doctrine*, the United States has "paramount rights" over submerged lands.

"[T]he United States' foreign affairs obligations demand that the national government have authority to control areas of national concern."

And, under the *equal footing doctrine*, and the United States acquires such rights even if a state previously possessed ownership (*dominium*) and governmental powers and sovereignty (*imperium*) over its adjacent waters as an independent sovereign prior to entry into the Union.

The paramountcy doctrine also serves to eliminate any "claim of exclusive aboriginal title to submerged lands."

Commonwealth of the Northern Mariana Islands v. United States (9<sup>th</sup> Cir. 2005)

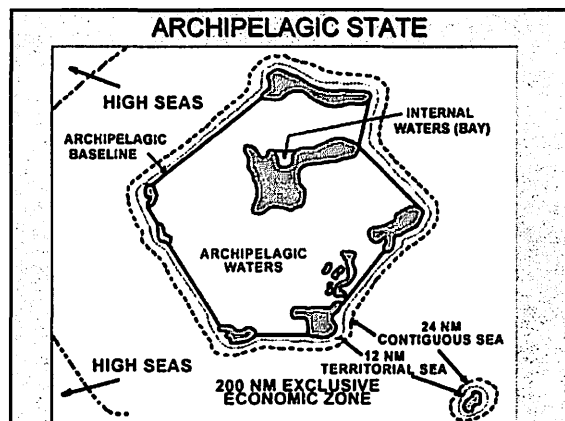
The CNMI argued that the United States had transferred title to the submerged lands in the 1975 Covenant, which transferred all real property of the Trust Territory of the Pacific Islands (TTPI) to the Commonwealth.

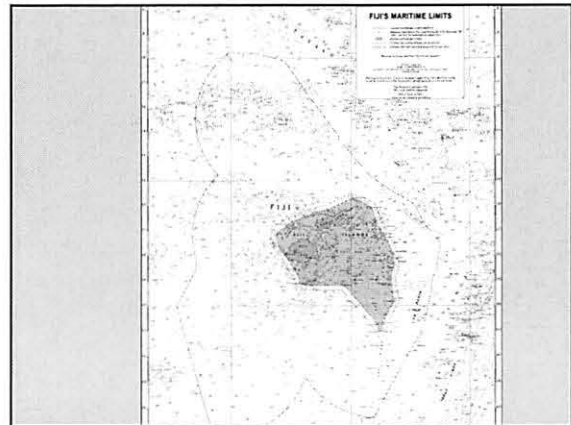
The Ninth Circuit refused to imply a transfer of submerged lands without clearer Congressional language.

And pointed out that the language and negotiating history of the 1975 Covenant make no mention of the submerged lands.

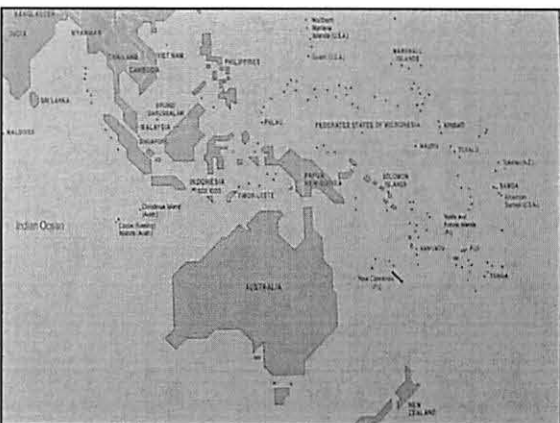
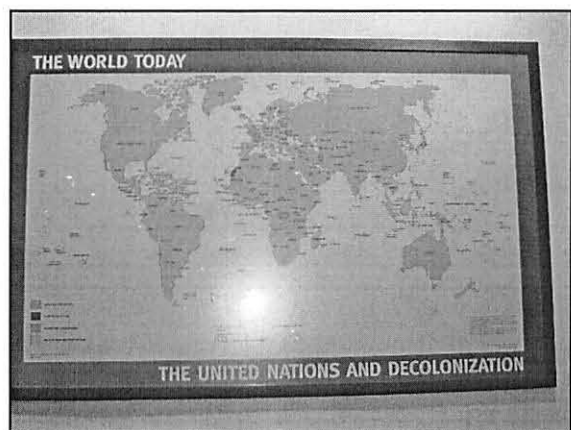
Law of the Sea Convention --  
Article 47 -- Archipelagic Baselines

1. An archipelagic State may draw straight archipelagic baselines joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1.





U.S. Customs Union:  
 Outside: American Samoa, Guam, CNMI, US Virgin Islands  
 In: Puerto Rico  
Immigration:  
 Controls: American Samoa, CNMI  
 Does Not Control: Guam, Puerto Rico, US Virgin Islands  
US Shipping Laws:  
 Apply: Guam, Puerto Rico  
 Do Not Apply: American Samoa, CNMI, US Virgin Islands  
US Minimum Wage Laws:  
 Apply: Guam, Puerto Rico, US Virgin Islands  
 Do Not Apply: American Samoa, CNMI



Decolonize Pacific, U.N. Chief Urges  
 (Honolulu Advertiser, March 29, 2001)  
 United Nations Secretary General Kofi Annan has urged administering powers in the Pacific to grant independence to their remaining territories, referring to New Caledonia and French Polynesia (France), Tokelau (New Zealand), *Guam and American Samoa (US).*



### Permissible Outcomes of a Self-Determination Process

- \* **Independence** (The Philippines)
- \* **Free Association** (Federated States of Micronesia, Marshall Islands, Palau)
- \* **Integration** (Hawai'i)



### Spanish-American War (1898)

United States acquired *Puerto Rico, Guam, and the Philippines.*

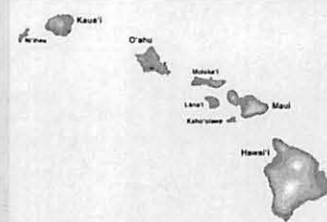
[And the United States also annexed *Hawaii* the same year.]

Was this acquisition of territory through the use of force legitimate?

Does it depend on the acquiescence of other countries?

### Hawaii Is the Last Country to Disappear Against Its Will, as a Result of the Use of Force

Should the annexation be viewed as “legal” as a result of the passage of time, or should the injustices of the annexation be continued to be challenged?



### Statehood -- June 27, 1959

The voters of Hawaii approved statehood by a margin of *17 to 1* (93%).

By a similar margin, the voters approved a separate question concerning an amendment to the Hawaiian Homes Commission Act.

The “*haves*” and those with close ties to Washington opposed statehood.

The “*have nots*” and those frustrated with the lack of local control supported statehood.





## The 1959 Statehood Vote

*Should other options have been on the ballot?*

- \* Independence
- \* Free Association
- \* Integration



*Should a residency requirement have been used to limit those who could vote?*

## What Should Be the Ultimate Political Status of the Five U.S.-Flag Territories and Commonwealths?

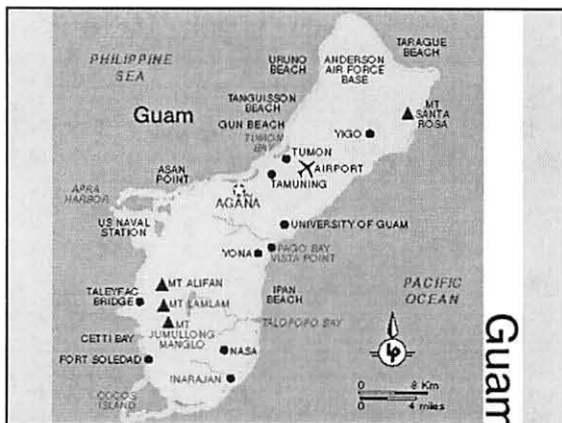
Could an amendment to the U.S. Constitution be enacted to give the people of the "Federation of Guam and the Northern Mariana Islands" the right to vote for U.S. President (one electoral vote) and the right to elect one voting member of the U.S. Congress?

## Who Are Indigenous Peoples?

1. *Preexistence* – the population is descended from persons who were in an area prior to the arrival of another population.
2. *Nondominance* – their cultural style does not dominate.
3. *Cultural difference* – their culture is different from the dominant culture.
4. *Self-identification as indigenous* – the people identify themselves and the group as indigenous.

## Two Types of Self-Determination

- \* For Non-Self-Governing Peoples
- \* For Indigenous Peoples



## Guam

\* The people of Guam, taken as a whole, are not self-governing, and have a right to self-determination.

\* The Chamorro people in Guam have a separate and distinct right to self-determination, and to control their lands and resources.



### Indigenous People in the Northern Marianas

- \* Chamorro, and
- \* Carolinians (who migrated to the Northern Marianas in the late 1800s)

*Legitimate?*

### International Covenant on Civil and Political Rights

**Article 27** In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

### Pacific Islands Forum

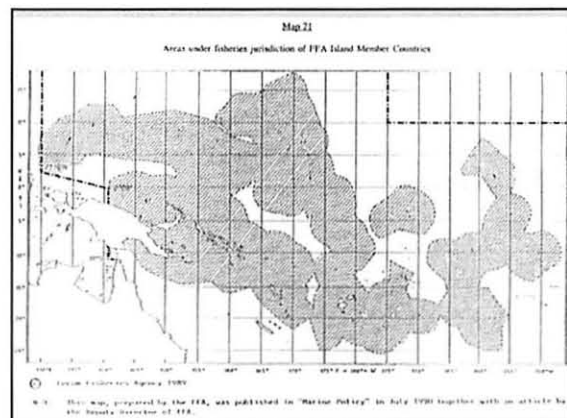
Includes all the independent island states including Australia and New Zealand.

Leaders meet once a year.

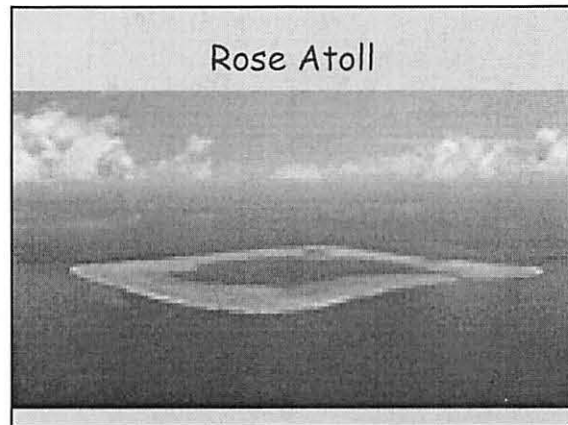
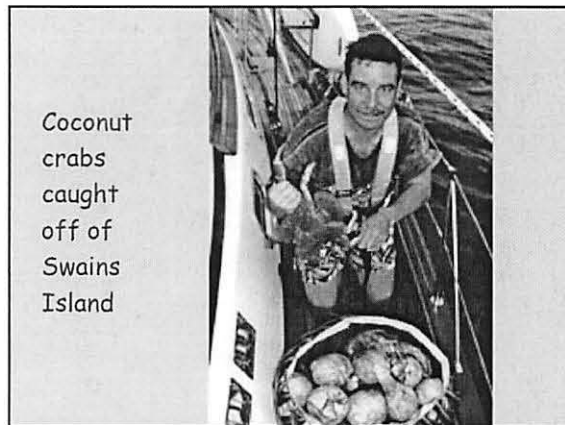
Meeting this week in Papua New Guinea.



### Forum Leaders, Apia, 2003







The Principles that Govern Maritime Boundary Delimitation

***\*\* The Equidistance or Median-Line Approach Can Be Used as an Aid to Analysis, But It Is Not to Be Used as a Binding or Mandatory Principle.***

***\*\* The Proportionality of Coasts Must Be Examined to Determine if a Maritime Boundary Delimitation Is "Equitable."***

***\*\* Islands Have a Limited Role in Resolving Maritime Boundary Disputes.***

Islands Have a Limited Role in Resolving Maritime Boundary Disputes [822]

Islands have been given a diminished role in generating maritime zones in:

- \* *North Sea Continental Shelf Case*
- \* *Anglo-French Arbitration*
- \* *Libya/Tunisia Case*
- \* *Libya/Malta Case*
- \* *Gulf of Maine Case*
- \* *Guinea/Guinea-Bissau Case*
- \* *Jan Mayen Case*
- \* *St. Pierre and Miquelon Arbitration*

Part VIII. Regime of Islands

Article 121

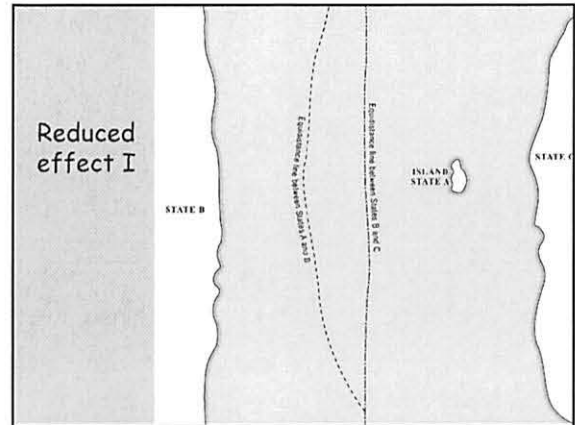
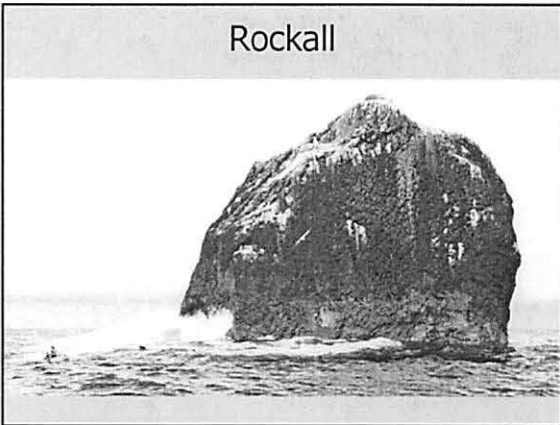
Regime of Islands

1. An island is a naturally formed area of land, surrounded by water, which is above water at high tide.

2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.

3. *Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf.*





Tiny Islets Are Frequently Ignored Altogether

\* As in the *North Sea Continental Shelf*, *Libya/Malta*, *Eritrea-Yemen*, and *Bahrain-Qatar Cases*.

But even substantial islands are given less power to generate zones than their location would warrant, as in the *Libya/Tunisia* and *Libya/Malta Cases*.

