

## AMERICAN SAMOA: DECLINE OF A CULTURE

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It is obvious that in the annexation of outlying and distant possessions grave questions will arise from 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 inhabited only by people of the same race, or by scattered bodies of native Indians.<sup>1</sup>

American Samoa is an unincorporated territory of the United States, located approximately 2,300 miles southeast of Hawaii, nearly halfway between Hawaii and Australia. American Samoa is comprised of seven islands: five volcanic islands — Tutuila, the main island where nearly eighty percent of the population lives, Aunu'u, and the Manu'a group of Ta'u, Olosega, and Ofu — and two coral islands, Swains Island<sup>2</sup> and the uninhabited Rose Island.<sup>3</sup> Western Samoa, an independent country since 1962, is racially and culturally tied to American Samoa. It lies eighty miles to the west and is considerably larger than American Samoa, with over five times the population and nearly fifteen times the land area.<sup>4</sup>

Despite United States recognition of the distinctive Samoan social structure and culture, Samoa is fighting a losing battle to re-

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1. *Downes v. Bidwell*, 182 U.S. 244, 282 (1901).

2. Swains Island is ethnically unrelated to American Samoa and also somewhat distant—280 miles away from the islands in the American Samoa group. The United States has treated it as part of American Samoa since 1925. 48 U.S.C. § 1662 (1976). Residents of Swains Island are represented in the American Samoa House of Representatives by a non-voting delegate. AM. SAMOA CONST. art. II, § 2.

3. In addition, there are six miniscule islands administered as part of American Samoa: Nu'u Island and Nu'u Silaelae Island lying adjacent to Ofu Island, Sand Island, Taputapu Island, Pola Island, and Nuusetoga Island. OFFICE OF SAMOAN INFORMATION, ANNUAL REPORT 46 (1973) [hereinafter cited as ANNUAL REPORT].

4. WEBSTER'S NEW GEOGRAPHICAL DICTIONARY 44, 1324 (1972) (American Samoa comprises 76 square miles of land with a population of about 28,000; Western Samoa comprises 1,133 square miles of land with a population of about 149,000).

tain its traditional way of life. This article examines the social, political, and economic aspects of traditional Samoan society — in particular, the *matai* system and the land tenure system — and discusses the deterioration of these institutions. The history of the American Samoa–United States relationship is reviewed to illustrate the problem and to document United States attempts to avoid contributing to the erosion of traditional Samoan customs. This article then discusses the “Americanization” of Samoan political institutions and recent judicial action contributing to this Americanization. A number of the factors that reinforce the United States influence in Samoa are then discussed to demonstrate the apparent irreversibility of the decline of traditional Samoan culture.

## I. TRADITIONAL SAMOAN SOCIETY

The traditional Samoan village was economically, socially, and politically self-sufficient.<sup>5</sup> There existed no higher jurisdiction. In the early nineteenth century, Samoa had a population of about 50,000,<sup>6</sup> and village size ranged from fifty to one hundred people; today there exist approximately fifty traditionally organized villages, each with an average population of 750 persons.<sup>7</sup> “Not only was every village economically self-sufficient, but so were most households within a village. Many activities which were formalized as village undertakings were really simply a combination of household enterprises.”<sup>8</sup>

### A. Social Structure

Traditional Samoan households extend beyond the nuclear family of parents and children. Ideally, the household *matai* (chief), his untitled brothers, their wives and children, his mother and father, his sons, their wives and children, and his unmarried

5. See generally I. GOLDMAN, ANCIENT POLYNESIAN SOCIETY 243-77 (1970).

6. This figure includes both Eastern (American) Samoa and Western Samoa. Ember, *Political Authority and the Structure of Kinship in Aboriginal Samoa*, 64 AM. ANTHROPOLOGIST 964, 964 (1962). At the time of the ratification of the Washington Convention of 1899, the population of American Samoa was 5,679. W. TANSILL, AMERICAN SAMOA: A DESCRIPTIVE AND HISTORICAL PROFILE 3 (Cong. Research Serv. 1974).

7. One source places the average population at 375 in 1950-1951, when there were about 70 villages. F. KEESING & M. KEESING, ELITE COMMUNICATION IN SAMOA: A STUDY OF LEADERSHIP 14 (1956) [hereinafter cited as KEESING].

8. M. MEAD, SOCIAL ORGANIZATION OF MANU'A 70 (Bernice P. Bishop Museum Bull. No. 76, 2d ed. 1969).

and widowed daughters live together.<sup>9</sup> While freedom of movement between households is allowed, there is a preference for patriarchal residence; the man lives with his father's family and the woman moves to her husband's home. Members of these extended families, eight to fifty people in a household,<sup>10</sup> can move at will to live in other households where they have relatives. However, in any given household, the residents are under the authority of the household *matai*. Each household is responsible for its economic and social needs; it also is responsible for producing goods for village use and maintaining village property.<sup>11</sup>

The pressures of a modern money economy have resulted in a trend toward greater household autonomy; however, the trend may be toward a nuclear household rather than an extended family household. In addition, the household is usurping some authority from the traditional *āiga* (extended family), to which each Samoan belongs. Theoretically, an individual belongs to many households, and in any one household, there may be a dozen of more *āiga* represented.<sup>12</sup> A Samoan lives a double life; one life is defined by his position in the village and household, the other life is defined by the multiplicity and inalienability of his kinship ties.<sup>13</sup> Kinship ties are all-important, because "a man's chance for social status, his property, his powers of manipulating any claims to rank or property, his choice of a wife, his choice of friends, his industrial education, and his god [depend] upon his claim on the descent group of his father and mother respectively . . ." <sup>14</sup>

Within the *āiga*, inheritance rights are recognized according to two descent lines: the male line and the female line.<sup>15</sup> With virilocal residence, the household consists primarily of members descended through the male line (*tamatāne*); however, members descended through the female line (*tama fafine*) are scattered in households where women have moved after marriage.<sup>16</sup> Traditionally, a man will inherit rights in land and titles through the male line; through the female he will have veto power over decisions

9. *Id.* at 23.

10. M. MEAD, COOPERATION AND COMPETITION AMONG PRIMITIVE PEOPLES 284 (1937).

11. MEAD, *supra* note 8, at 7.

12. L. HOLMES, SAMOAN VILLAGE 19 (1974).

13. See generally MEAD, *supra* note 10, at 282-312.

14. MEAD, *supra* note 8, at 20.

15. *Id.* at 18.

16. *Id.* at 25.

concerning land alienation and the awarding of titles within another family.<sup>17</sup> Today, however, there is a tendency for the male and female lines to have equal inheritance rights to land and titles.<sup>18</sup>

The *āiga* has often divided into smaller descent groups, creating new lines of land and title inheritance.<sup>19</sup> This is not simply the result of population increase; rather, it can be traced to the European abolition of Samoan warfare, the traditional means for settling title succession disputes.<sup>20</sup> Today, segmentation of the family, splitting of the title, and court disputes are the means by which such disputes are settled.<sup>21</sup>

The social structure of Samoa is a complicated hierarchy of status titles, each ranked relative to the other.<sup>22</sup> These titles are contingent upon kinship relations, genealogical and mythological history, and the ability to attract loyalty and support.<sup>23</sup> The characteristic differentiating the Samoan social structure from other Polynesian societies is its fluidity.<sup>24</sup> The hierarchy of ranks and titles, maintained by oral tradition, can be manipulated and molded to reflect changing political and social currents.<sup>25</sup>

In the Samoan village, the most important title is that of *matai*.<sup>26</sup> The *matai*s are mature, middle-aged men and, in some cases, women.<sup>27</sup> The titles are not hereditary, although lineage is one of the factors considered by the family in choosing its *matai*.<sup>28</sup> Every household has a *matai*, and higher-ranking *matai*s are pres-

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17. *Id.* at 18.

18. The author is indebted to I. F. Sunia, Resident Samoan Representative in Washington, D.C., for this information.

19. F. GRATTAN, AN INTRODUCTION TO SAMOAN CUSTOM 154 (1948).

20. KEESING, *supra* note 7, at 122.

21. *Id.*

22. GOLDMAN, *supra* note 5, at 270.

23. See M. SAHLINS, SOCIAL STRATIFICATION IN POLYNESIA (1958).

24. MEAD, *supra* note 8, at 79.

25. *Id.* at 64. Since the units of construction are the ranks and titles, not individuals, there is a constant circulation of people in this resilient and amenable social structure. The process of continual cultural change to which Margaret Mead first referred in her famous early work *Social Organization of Manu'a* (note 8 *supra*) has become an anthropological cliché. Almost every observer of the Samoan way (*fa'a Samoa*) has commented on the unique ability it has demonstrated to absorb change within its own cultural experience and yet resist the onslaught of change brought by invading European culture.

26. KEESING, *supra* note 7, at 39.

27. *Id.*

28. *Id.* For a discussion of the factors that determine the descent of the *matai* title in traditional Samoa, see Ember, *supra* note 6; Freeman, *Some Observations on Kinship and Political Authority in Samoa*, 66 AM. ANTHROPOLOGIST 553 (1964).

ent in each village as well.<sup>29</sup> These titles are intricately ranked relative to each other and are "owned" by the *āiga*.<sup>30</sup> The *āiga* has the right to divest titles from their holders or to manipulate the hierarchy to "depress the importance" of one title "and rearrange the small interrelationship between titles within a village *fono* [council] . . . . The Samoans preserve their sense of a fixed structure but do not permit it to trammel their activities."<sup>31</sup> In this way, troublesome individuals are removed, or technically ineligible ones are made eligible without damage to the system.<sup>32</sup>

In traditional society, the *matai* administered the household and the use of the *āiga* lands and titles.<sup>33</sup> He organized the work of the household, settled its disputes, and represented it in the village council.<sup>34</sup> The *matai's* most important function may have been his role in economic redistribution. In addition to managing the use of food and material products within his household, the *matai* supervised the collection of goods produced by his household which were presented to the village for exchange.<sup>35</sup> *Matai* efforts kept goods moving from one group of people to another and contributed to the economic flow of Samoan society.<sup>36</sup>

Although in theory the *matai's* power was enormous,<sup>37</sup> in practice, the opportunity for household members to leave the household, the conventions of Samoan society, and the communal character of decisionmaking restricted *matai* authority considerably.<sup>38</sup>

An oppressive *matai* found the members of his family taking up residence with kinsmen elsewhere; a tyrannical political leader found his supporters switching their allegiance. Samoan society provided adequate safeguards against an undue aggregation of

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29. KEESING, *supra* note 7, at 39. In 1950 there were 828 titleholders in a total population of 18,602, or about 10% of the population. This meant there was one *matai* for every 11 or 12 people, or a little less than an average of 12 per village. *Id.*

30. Holmes, *Ta'u: Stability and Change in a Samoan Village*, 66 J. POLYNESIAN SOC'Y 301, 326 (1957).

31. MEAD, *supra* note 10, at 287.

32. See generally D. PITT, TRADITION AND ECONOMIC PROGRESS IN SAMOA 77-89 (1970).

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. MEAD, *supra* note 10, at 284.

38. HOLMES, *supra* note 12, at 24.

power in the hands of any individual.<sup>39</sup>

Presently, *matai* control over food preparation and daily household activities has been reduced considerably as the nuclear family has been strengthened at the expense of the extended family.<sup>40</sup>

### B. Political System

Central to the traditional political system is the participation of every Samoan in some council of common interest. The household council, with the household *matai* presiding, meets informally on a daily basis, to plan work and discuss problems.<sup>41</sup> The village council traditionally has had jurisdiction over all communal activities.<sup>42</sup> "This organization of work involves the conscription of labor, materials, and food, but each of these is phrased as a privilege, not as enforced tasks."<sup>43</sup> The council also serves as a judiciary and court for the village.<sup>44</sup> Although the council is the official decision-making body of the village, the Samoans, in keeping with the tradition of doing things by committee, hold caucuses prior to a village meeting.<sup>45</sup> Prior to these meetings, plenty of time is allowed for each *matai* to consult his *āiga* about the stand he will take.<sup>46</sup>

### C. Economics: The Prestige Exchange System

Economic life was generated within this defined social structure and against a background of abundance. Every observer of Samoan life since Perouse, who visited Samoa in 1787, has remarked on the abundant resources of the islands and the great fertility of the soil.<sup>47</sup>

Economic conditions in Manua must be understood against a background of economic plenty. Only in times of great disaster, such as the destruction of crops and houses by a hurricane, is there poverty . . . . No one lives below a comfortable subsis-

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39. J. DAVIDSON, SAMOA MO SAMOA: THE EMERGENCE OF THE INDEPENDENT STATE OF WESTERN SAMOA 30 (1967).

40. PITT, *supra* note 32, at 68-77.

41. KEESING, *supra* note 7, at 49.

42. The village council supervised such activities as the building of a guest house, a communal fish trapping, a ceremonial visit, the search for a lost pig, the building of a wall, the organizing of feasts, and the setting of amounts to be contributed by the households. It also assigned the work and decided the time, manner, and place of activities. *Id.*

43. MEAD, *supra* note 8, at 15.

44. *Id.* at 169.

45. HOLMES, *supra* note 12, at 35.

46. *Id.*

47. F. KEESING, MODERN SAMOA 291 (1934) [hereinafter cited as MODERN SAMOA].

tence 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.<sup>48</sup>

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."<sup>49</sup> A modern-day money economy permits savings and can create a perception of poverty not there in the past; thus, it undercuts the basis of the social structure.

Samoan economic precepts accord prestige (*mamalu*) and authority (*pule*) to the generous distribution of wealth acquired through communal effort.<sup>50</sup> Samoans, like other traditional Polynesian societies,<sup>51</sup> engage in reciprocal exchanges of wealth at all levels of society. "That those with abundance should withhold from those lacking is an idea quite foreign to the great majority of Samoan minds."<sup>52</sup> Samoans with prestigious titles are expected to contribute greater amounts of goods on ceremonial occasions, and to contribute more when various other communal demands are required.<sup>53</sup> Thus, in Samoan society, wealth is a "dynamic, . . . fluid, rapidly circulating, [and] rapidly dissipated thing."<sup>54</sup> It is a factor that keeps the social system in a constant state of change.<sup>55</sup>

This circulation of wealth is not haphazard; it is structured by the form of property exchanged and the obligation to kin.<sup>56</sup> Ceremonial visits thus serve not only important social and political functions, but a significant economic function as well. Although a family may become temporarily poor, this economic state is soon amended following a ceremonial distribution of food and goods.<sup>57</sup> Families linked by marriage exchange gifts not only at the celebra-

48. MEAD, *supra* note 8, at 15.

49. GOLDMAN, *supra* note 5, at 247.

50. *Id.* at 270; MEAD, *supra* note 8, at 65-66.

51. "A man who owns a thing is naturally expected to share it, to distribute it, to be its trustee and dispenser. And the higher the rank the greater the obligation . . . . Thus the main symptom of being powerful is to be wealthy, and of wealth is to be generous." M. SAHLINS, *STONE AGE ECONOMICS* 253 (1972) (quoting Malinowski on the Tobriand Islanders).

52. MODERN SAMOA, *supra* note 47, at 323-24.

53. PITT, *supra* note 32, at 68.

54. MEAD, *supra* note 8, at 79.

55. *Id.*

56. *See generally id.* at 70-79.

57. *Id.* at 65-66.

tion of the marriage but for as long as the marriage lasts.<sup>58</sup> “In a society where divorce and remarriage are exceedingly common, . . . such relationships may become exceedingly complex . . . .”<sup>59</sup> In managing his household, a *matai* must consider all of the complex relationships of his household members, because their economic obligations have an impact upon his economic planning. However, under the prestige exchange system, different kinds of property are constantly flowing into and out of the household, “and temporary shortages of one kind of wealth are always made up by a ceremony involving the other kind of wealth.”<sup>60</sup> This constant redistribution of wealth enhances and validates the prestige exchange system.

An understanding of the prestige exchange system places in perspective the complaint voiced by many Americans and Europeans that Samoans are more devoted to ceremony than to hard work. Indeed, to work eight hours a day in traditional Samoa would have been a waste of time; subsistence could easily be maintained in their surplus economy on a few hours of work a day. Meanwhile, at least as much time must be devoted to preparation for and participation in ceremonies — where the true economic dynamics of Samoan society are found.

## II. UNITED STATES ACQUISITION OF SAMOA

United States interest in the Samoan Islands began in 1839, when American Navy Lieutenant Charles Wilkes came upon the islands during an exploratory expedition.<sup>61</sup> In 1872, the United States received the exclusive “privilege” of establishing a naval station in Pago Pago harbor.<sup>62</sup> The United States Senate, however, refused to ratify the Pago Pago harbor agreement.<sup>63</sup> Despite interest in the Pacific Islands, the Senate Committee on Foreign Relations felt that the United States was preoccupied with Civil War reconstruction and was disinterested in American involvement in a

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58. *Id.* at 75.

59. *Id.*

60. *Id.* at 77.

61. SENATE COMM. ON INTERIOR AND INSULAR AFFAIRS, STUDY MISSION TO EASTERN [AMERICAN] SAMOA, S. DOC. NO. 38, 87th Cong., 1st Sess. 3-4 (Comm. Print 1961) [hereinafter cited as STUDY MISSION]. See also G. RYDEN, THE FOREIGN POLICY OF THE UNITED STATES IN RELATION TO SAMOA (1928).

62. STUDY MISSION, *supra* note 61, at 2.

63. RYDEN, *supra* note 61, at 75, 517-18.

distant, alien land.<sup>64</sup>

Several months after the harbor agreement negotiation, a large number of the paramount *matais* wrote to President Grant asking him "to annex these our islands to the United States of America."<sup>65</sup> The request followed a series of inter-island struggles during 1869 and 1870 — struggles that continued intermittently throughout the next decade as chieftain rivalry was heightened due to foreign intervention.<sup>66</sup>

The annexation request, reiterated in subsequent letters to President Grant, was motivated by Samoan desire for the establishment of a stable local government, protected by the United States, which would prevent the alienation of Samoan land by foreign commercial interests.<sup>67</sup> The request was considered carefully for over a year by the United States. In late 1874, President Grant replied in a carefully worded, ambiguous response that "[i]t was his 'prayer' that Samoan 'unity and independence . . . may ever remain inviolable, *except by the general consent of your people.*'"<sup>68</sup>

In the years following the United States refusal to annex Samoa, the German government, recently established in Apia (Western Samoa), appeared to be considering establishing a protectorate over the islands.<sup>69</sup> When the Samoans again sought a union with the United States, the Executive was more receptive. The Senate, however, continued to be cautious; by 1878, all they could be persuaded to accept was a treaty of friendship and commerce.<sup>70</sup> The German government continued to seek formal sovereignty over Samoa, a frightening prospect to the United States and Great

64. *Id.* at 73.

65. Tansill, *supra* note 6, at 27.

66. *See id.* at 29-42.

67. *Id.* at 29.

68. *Id.* (emphasis added).

69. *Id.* at 33. *See generally* W. TANSILL, SAMOA AS AN INTERNATIONAL PAWN IN THE LATTER HALF OF THE NINETEENTH CENTURY: A STUDY OF THE BACKGROUND OF THE CONDOMINIUM OF 1889 AND THE PARTITION OF 1899 at 23-66 (Cong. Research Serv. 1974).

70. The treaty guaranteed to the United States the non-exclusive right to establish a coaling and supply station in and on the shores of Pago Pago harbor and freedom of commerce in all other Samoan ports. The United States, in return, promised to use "its good offices" to adjust any differences that might arise between the Samoan government and that of any other nation on friendly terms with the United States. This latter provision was the basis for all subsequent interventions by the United States to protect Samoan sovereignty. RYDEN, *supra* note 61, at 153-54, 166-67, 191-92; First Annual Message by President Rutherford B. Hayes (Dec. 3, 1877), *reprinted in* 10 MESSAGES & PAPERS OF THE PRESIDENTS 4421 (J. Richardson ed. 1897); 2 W. MALLOY, TREATIES, CONVENTIONS, INTERNATIONAL ACTS, PROTOCOLS AND AGREEMENTS 1776-1909 at 1574; S. DOC. NO. 357, 61st Cong., 2d Sess. 1574-76 (1910).

Britain. After a good deal of martial talk and action, and internal Samoan turmoil, the three major powers agreed at the Berlin Conference to "the imposition of tripartite foreign authority over any Samoan government" to be established under a new and freely chosen king.<sup>71</sup>

Ten years later it was easier for the major powers to partition the Pacific Islands than it was to cooperate. Under the Washington Convention of 1899,<sup>72</sup> Germany and Great Britain renounced "in favor of the United States of America all . . . rights and claims over and in respect to the Island of Tutuila and all other islands of the Samoan group east of longitude 171° west of Greenwich."<sup>73</sup> In return, the United States renounced "in respect to the Islands of Upolu and Savaii and all other Islands of the Samoan group west of Longitude 171° west of Greenwich."<sup>74</sup>

In 1900, six months after the Washington agreement had been reached, President McKinley placed the control of Eastern Samoa under the authority of the Department of the Navy.<sup>75</sup> Three months later Samoan *matais* formally ceded the islands of Tutuila and Aunu'u to the United States,<sup>76</sup> and in July 1904, a similar ces-

71. General Act Providing for the Neutrality and Autonomous Government of the Samoan Islands, June 14, 1889, 26 Stat. 1497, T.S. No. 313.

72. Convention between the United States, Germany, and Great Britain Governments in Respect to Samoa, Dec. 2, 1899, 31 Stat. 1878, T.S. No. 314.

73. *Id.* at 1879.

74. *Id.* Article III provided that all three powers were to continue to enjoy equal *commercial* privileges in all ports open to commerce anywhere within the Samoan archipelago.

75. Navy Department, February 19, 1900, General Order No. 540, *reprinted in* I A.S. CODE 13 (hist. doc. 1973).

The Island Of Tutuila of the Samoan Group and all other islands of the group east of Longitude 171 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.

I A.S. CODE 13 (hist. docs. 1973).

76. The operative paragraphs and key language, translated into English, are as follows:

CESSION OF TUTUILA AND AUNUU

Chief of Tutuila

to

United States Government

April 17, 1900

To all to whom these present shall come: Greeting. Whereas the Governments of Germany, Great Britain, and of the United States of America have on divers occasions recognized the sovereignty of the government and people of Samoa and the Samoan group of islands as an independent State; and whereas owing to dissensions, internal disturbances and civil war, the said governments have deemed it necessary to assume the control of the legislation and administration of said state of Samoa; and whereas the said governments have on the sixteenth day of February, by mutual agreement, determined to partition said State; . . . and whereas for the promotion of the peace and welfare of the people of said islands, for the establish-

sion was made by King Tuimanu'a of the Manu'a Islands of Ta'u, Olosega, Ofu, and Rose.<sup>77</sup>

The United States failed officially to recognize the cessions until 1929, when, by a joint resolution, the cessions were "accepted, ratified and confirmed . . ."<sup>78</sup> The resolution placed authority in the President of the United States, treating the Samoan Islands as a conquered, unorganized territory.

Until Congress shall provide for the government of such islands, all civil, judicial, and military powers shall be vested in such person or persons and shall be exercised in such manner as the President of the United States shall direct; and the President shall have power to remove said officers and fill the vacancies so occasioned.<sup>79</sup>

Congress has never acted.

ment 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 powers and authority to enact proper legislation for and to control the said islands, and are further desirous of removing all disabilities that may be existing in connection therewith and to ratify and to confirm the grant of the rule of said islands heretofore granted on the 2nd day of April, 1900.

Now know Ye:

1. That we, the Chiefs whose names are hereunder subscribed by virtue of our office as the hereditary representatives of the people of said islands, in consideration of the premises hereinbefore recited and for divers good considerations us hereunto moving, have ceded, transferred, and yielded up . . . the islands of Tutuila and Anuu and all other islands, rocks, reefs, foreshores and waters lying between the 13th degree and the 15th degree of south latitude and between the 171st degree and 167th degree of west longitude from the meridian of Greenwich, together with all sovereign rights thereunto belonging and possessed by us, to hold the said ceded territory unto the Government of the United States of America. . . .

2. The Government of the United States of America shall respect and protect the individual rights of all people dwelling in Tutuila to their lands and other property in said District. . . .

3. The Chiefs of the towns will be entitled to retain their individual control of the separate towns, if that control is in accordance with the laws of the United States of America concerning Tutuila. . . . But the enactment of legislation and the general control shall remain firm with the United States of America. . . .

5. We, whose names are subscribed below, do hereby declare with truth for ourselves, our heirs and representatives by Samoan Custom, that we will obey and owe allegiance to the Government of the United States of America. In witness whereof we have hereunto subscribed our names and affixed our seals on this 17th day of April, 1900 A.D.

I A.S. CODE 6-8 (hist. docs. 1973).

77. I A.S. CODE 9-11 (hist. docs. 1973). The seventh island, Swains Island, a privately owned coral atoll, was made part of American Samoa by a joint resolution of Congress, approved on March 4, 1925. H.R.J. Res. 244, 68th Cong., 2d Sess., 43 Stat. 1357 (1925).

78. S.J. Res. 110, 70th Cong., 2d Sess., 45 Stat. 1253 (1929). There is no clear explanation for the 25-year lag in congressional action.

79. *Id.*

### A. Christianity

In addition to the influence of the Samoan political tie with the United States, Christianity had a far-reaching impact on American Samoa. There is some difference of opinion among anthropologists as to the degree of religion practiced by the Samoans<sup>80</sup> prior to the coming of the London Missionary Society in 1830. The Society reduced the Samoan language to writing for the first time and began Samoa's rapid and almost total conversion to Christianity.<sup>81</sup> Even though there is considerable incorporation of Samoan custom and love of ceremony in the worship and service, the ideology of Christianity is now a major part of Samoan life — each village supports at least one pastor and a church.<sup>82</sup>

Samoan acceptance of Christianity was, to some degree, born of practical necessity, and perhaps, indicated a willingness to be receptive to Western ideas. The pragmatic aspect was emphasized in the following comment: "A polytheistic and practical people, the Samoans were tolerant of the gods of other men and inclined to judge a deity at least partly in terms of the favours he lavished upon the living."<sup>83</sup>

There has been little examination of the effect of this conversion on Samoan attitudes, but Christianity has demanded some compromising of Samoan customs and values.

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80. The opinions of Margaret Mead can be found in MEAD, *supra* note 10, at 84-86, 147-65, 304. She feels that religion played a very slight role in Samoa, as do Gilson and Gratton, who see traditional Samoa as embodying the panoply of Polynesian gods and ritual practices. R. GILSON, SAMOA 1830-1900: THE POLITICS OF A MULTI-CULTURAL COMMUNITY 14 (1970); *see generally* GRATTAN, *supra* note 19, at 126-44.

81. Pitt reports that the conversion took only a few weeks. PITT, *supra* note 32, at 56. "Although most Samoans . . . perpetuate some aspects of traditional spirit lore, nearly one hundred percent of modern Samoans would identify as both Christian and literate." HOLMES, *supra* note 12, at 12.

82. *See generally* HOLMES, *supra* note 12, at 58-74.

83. GILSON, *supra* note 80, at 72. The comment of a *matai* combines this pragmatism with the suggestion of broader elements:

Only look at the English people, they have strong beautiful clothes of various colors while we have only leaves, they have noble ships while we have only canoes, they have sharp knives while we have only bamboo to cut with, they have iron axes while we have only stones, they have scissors while we use the shark's teeth, what beautiful beads they have, looking glasses and all that is valuable. I therefore think that the God who gave them all these things must be good, and that his religion must be superior to ours. If we receive this God and worship Him, He will in time give us these things as well as them.

HOLMES, *supra* note 12, at 60.

### III. UNITED STATES INFLUENCE ON TRADITIONAL SAMOAN CULTURE

Samoa's great distance from the United States and the United States government's legal recognition of the distinctive Samoan way of life — in particular, the *matai* structure and land tenure system — initially insulated the Samoan people from the cultural impact of the United States–Samoa political relationship.

Both the original deed of cession (1900) and the 1904 deed addressed the impact that the political relationship could have upon traditional Samoan culture and attempted to shield the Samoan people from this possibility. The language of the two deeds is somewhat different; the 1900 deed states:

Whereas . . . for the preservation of the rights and property of the inhabitants of said islands . . .

. . . .

2. The Government of the United States of America shall respect and protect the individual rights of all people dwelling in Tutuila to their lands and other property in said District . . . .<sup>84</sup>

The 1904 deed sets forth more explicit guarantees:

It is intended and claimed by these Presents 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*.<sup>85</sup>

The protection of Samoan culture was emphasized by the United States from the commencement of the United States–Samoa relationship. Today, this protection is embodied in the Constitution of American Samoa,<sup>86</sup> which was approved by the Department of the Interior, the administrative agency supervising American Samoan affairs:

It shall be the policy of the Government of American Samoa to protect persons of Samoan ancestry against *alienation of their lands and the destruction of the Samoan way of life and language, contrary to their best interests*. Such legislation as may be necessary may be enacted to *protect the lands, customs, culture, and traditional Samoan family organization of persons of Samoan an-*

84. I A.S. CODE 6-8 (hist. docs. 1973).

85. I A.S. CODE 9-11 (hist. docs. 1973) (emphasis added).

86. See generally AM. SAMOA CONST., reprinted in I.A.S. CODE 19-42 (hist. docs. 1973).

cestry . . . .<sup>87</sup>

### A. Erosion of the Matai System

Although the United States has always recognized and supported the *matai* system, it has imposed some change in the structure.<sup>88</sup> The naval governors suppressed some titles, including that of Tuimanu'a (King of Manu'a), and transferred governmental recognition of authority from certain high ranking *matais* to lesser *matais*.<sup>89</sup> However, the basic Samoan leadership structure was incorporated into the naval government pattern, and it became customary for the naval governor to meet annually with the district governors whom he had appointed on the basis of their rank within the *matai* system.<sup>90</sup>

To facilitate resolution of the many title disputes and to reaffirm the *matai* system, the United States established the Land and Titles Division of the High Court of American Samoa.<sup>91</sup> The American Samoa Code limits membership in the Samoan Senate to persons who are *matais*.<sup>92</sup> The Code also provides for registration of the *matai* title.<sup>93</sup> These actions were permitted despite the United States constitutional ban on titles.<sup>94</sup> This legal recognition

87. AM. SAMOA CONST. art. I, § 3 (emphasis added).

88. Hunkin, Some Observations on the Matai System's Leadership Structure in Relation to the Administrative and Legislative Processes in American Samoa 1900-1951 (June 25, 1973) (unpublished manuscript) [copy of file with the *California Western International Law Journal*].

89. *Id.*

90. This annual meeting, or *fono*, eventually evolved into what is the American Samoan Legislature (*Fono*) of today.

91. Commentary has generally been favorable on the activities of the Court in this difficult area. Note, *The Application of the American Constitution to American Samoa*, 9 J. INT'L L. & ECON. 325, 329 (1974) [hereinafter cited as *American Samoa*]. Note, *Some Observations on the Judiciary in American Samoa*, 18 U.C.L.A. L. REV. 581 (1971) [hereinafter cited as *Samoan Judiciary*].

92. "A Senator shall . . . be the registered matai of a Samoan family who fulfills his obligations as required by Samoan custom in the county from which he is elected." AM. SAMOA CONST. art. III, § 3.

93. A.S. CODE tit. 1, §§ 701-804 (1973).

94. "No Title of Nobility shall be granted by the United States . . ." U.S. CONST. art. I, § 9. The United States constitutional provision has never been interpreted by the United States Supreme Court, but lower court definitions and commentary would seem to ban the *matai* in the states:

To confer a title of nobility, is to nominate to an order of persons to whom privileges are granted at the expense of the rest of the people. It is not necessarily hereditary, and the objection to it arises more from the privileges supposed to be attached, than to the otherwise empty title or order . . . . The prohibition is not affected by any consideration paid or rendered for the grant. Its purpose is to preserve the equality of the citizens in respect to their public and private rights.

of the *matai* title, combined with the mechanism for settlement of title disputes, while assuring the continuance of the *matai* system, ironically has eroded the authority of the *matai*. The criteria for the selection of *matais* has been made more complex, because the Samoan High Court has been given a great deal of discretion in deciding title disputes. Prior to November 1937, *matai* selection was based exclusively on heredity,<sup>95</sup> although the court frequently, despite the *Fono's* (*matai* Assembly) wishes,<sup>96</sup> brought in questions of fitness<sup>97</sup> or acceptability to the majority of family members.<sup>98</sup> In November 1937, the law was changed by *Fono* resolution, at the urging of the United States Governor of Samoa, to permit the court to look at fitness criteria.<sup>99</sup> The court, in resolving *matai* title disputes, was to be guided by the following considerations: (a) the best hereditary right; (b) the wish of the majority of the family; (c) the forcefulness, character, personality, and leadership of the candidate; and (d) the value of the holder of the *matai* title to the government of American Samoa.<sup>100</sup>

Although the American Samoa Code lists these considerations according to their priority,<sup>101</sup> the weight given these four criteria vary in individual cases.<sup>102</sup> This fact, coupled with the broad fourth consideration — the value of the holder of the *matai* title to

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Horst v. Moses, 48 Ala. 129, 142 (1872); see also An application of Jama, 272 N.Y.S.2d 677 (1966) (Civil Court of New York refused applicant permission to use "von" in his name because of the . . . prohibition of an identifiable class of citizens possessing quasi-vested rights to participate in the governance of the state, and secondarily important privileges *vis-à-vis* the general citizenry). See generally Note, *Titles of Nobility and the Preferential Treatment of Federally Employed Military Veterans*, 19 WAYNE L. REV. 1169 (1973).

The selection of the *matai* also does not follow procedures associated with democratic elections. The procedure in selecting a *matai* is based on unanimity of feeling among *aiga* (family) members, rather than through any sort of balloting or casting of lots among the representatives of each branch. Decisions may be arrived at in a matter of hours, while others may take weeks, months, and even years.

Hunkin, *supra* note 88, at 8. See FUTURE POLITICAL STATUS STUDY COMM'N, 2D REG. SESS., REPORT TO THE ELEVENTH LEGISLATURE OF SAMOA (1970), reprinted in *Samoan Elected Governor: Hearing Before the Subcomm. on Territorial and Insular Affairs on H.R. 11523 and H.R. 12493*, 92d Cong., 2d Sess. 129 (1972) [hereinafter cited as POLITICAL STATUS COMM'N REPRINT].

95. Taofi v. Foster, 1 A.S. 464 (H.C.T.D. 1932); Teutusi v. Faga, 1 A.S. 543 (H.C.T.D. 1937).

96. Foleni v. Faatelepuia, 1 A.S. 541 (H.C.T.D. 1936).

97. Fia v. Pine, 1 A.S. 387 (H.C.T.D. 1926), Sami v. Semara, 1 A.S. 481 (H.C.T.D. 1933); Fonoti v. Galo, 1 A.S. 442 (H.C.T.D. 1931).

98. Mulivai v. Atofau, 1 A.S. 409 (H.C.T.D. 1928).

99. Elekana v. Sefe, 1 A.S. 573, 574 (H.C.T.D. 1938).

100. *Id.*

101. A.S. CODE tit. 5, § 757 (1973).

102. Malaga v. Mase, 3 A.S. 518 (H.C.T.D. 1957).

the government of American Samoa — means the Samoan High Court has considerable discretion to choose the *matai* irrespective of family wishes<sup>103</sup> or Samoan custom. “Value to the government” can embrace government employment over private employment,<sup>104</sup> capacity for leadership,<sup>105</sup> age,<sup>106</sup> ability to speak English,<sup>107</sup> bringing in funds to American Samoa,<sup>108</sup> and potential to unify family.<sup>109</sup>

The court’s discretion is, however, limited by the statutory eligibility requirements for the *matai* title:

Any person not possessing all of the following qualifications shall be ineligible to succeed to any matai title:

- (1) He must be of at least one-half Samoan blood;
- (2) He must have been born on American soil; Provided, That a person born of parents who were inhabitants of American Samoa, but temporarily residing outside of American Samoa or engaged in foreign travel, at the date of birth of such child, may, for the purposes of this paragraph, be considered as having been born on American soil if,

(A) while actually residing in American Samoa, and at any time within one year after he attains the age of 18 years, he files with the territorial registrar a renunciation, under oath, of allegiance to the country of his birth, or

(B) he has resided in American Samoa for a continuous period of not less than 10 years prior to the time of filing his application to be registered as the holder of a matai title;

- (3) He must be chosen by his family for the title;
- (4) He must live with Samoans as a Samoan.<sup>110</sup>

These requirements give the court a greater role in deciding title disputes, allowing the court to focus on the technical definitions of residency and lineage rather than employing the informal, traditional mechanisms utilized in the past, where problems of this kind could be relaxed or on occasion ignored.<sup>111</sup>

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103. The court has had occasion to interpret who is a member of the family and has included non-blood relations. *Asuega v. Mauga*, 3 A.S. 578 (H.C.T.D. 1953).

104. *Aigamaua v. Malama*, 3 A.S. 414 (H.C.T.D. 1960).

105. *Betham v. Faumuina*, 3 A.S. 537 (H.C.T.D. 1960).

106. *Tiumalu v. Tiumalu*, 3 A.S. 502 (H.C.T.D. 1956).

107. *Tuinei v. Ieliko*, 2 A.S. 117 (H.C.T.D. 1940).

108. *Id.*

109. *Id.*

110. A.S. CODE tit. 1, § 751 (1973).

111. *Hunkin v. Pio*, 2 A.S. 233, 235 (H.C.T.D. 1947) (United States Naval officer who was not living continuously in American Samoa prior to vacancy not eligible). For anthropological commentary on the changing criteria based on observation rather than case exami-

The erosion of the *matai* system results not only from the powers given to the High Court to interpret and enforce the selection criteria, but in the court's presence as an institution to question the appropriate exercise of authority of the *matai*. Examining all reported cases of the High Court from 1900 to 1975, there is a judicial trend, since 1938, to question more frequently the *matai* exercise of power and to often rule against the *matai*.<sup>112</sup> In ten cases questioning *matai* action from 1900 to 1938, six were in favor of the *matai*,<sup>113</sup> four were against him,<sup>114</sup> and one resulted in the *matai's* removal.<sup>115</sup> From 1938 to 1961, there were twenty-four cases that questioned *matai* authority; the court ruled in favor of the *matai* in seven cases<sup>116</sup> and against him in seventeen cases.<sup>117</sup> From 1961 to

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nation, see HOLMES, *supra* note 12, at 20; KEESING, *supra* note 7, at 45; PITT, *supra* note 32, at 71; Fairbairn, *Review of David Pitt*, in OCEANIA at xlv, 161 (1973); HOLMES, *supra* note 30, at 301.

112. While the statement in the text concerning the frequency of the challenge to the *matai* authority is clearly correct, answers to questions concerning the affirmation of *matai* authority are less clear, because each case represents a different set of circumstances. Frequently one *matai* is challenging another. The numbers on this latter point in the text are at best suggestive.

113. *Mailo v. Fanene*, 1 A.S. 191 (H.C.T.D. 1907) (a *matai* may parcel out land for use of family members who may not dispose of it without the consent of the *matai*; if the family abandons the land, the property reverts back to possession of the *matai* who may reallocate it to other family members). *Mauga Family v. Mauga*, 1 A.S. 587 (H.C.T.D. 1938) (unsuccessful candidates for title of *matai* brought an action for the removal of the designated *matai*. Judgment was in favor of the *matai*). *Tupua v. Aumavae*, 1 A.S. 231 (H.C.T.D. 1910) (a family must give the choice of successor to the *matai* title by the former *matai* due consideration). *Aumavae v. Moefaauo*, 1 A.S. 38 (H.C.T.D. 1902) (a *matai* may use any rent from land as he wishes; the family may not claim an interest in anything bought with such profits). *Sapela v. Veevalu*, 1 A.S. 124 (H.C.T.D. 1905) (family members cannot preempt the *matai's* possession of the family lands according to Samoan custom). *Sagapolu v. Tanielu*, 1 A.S. 331 (H.C.T.D. 1922) (a change in the custom of choosing a *matai's* successor — before American influence, according to Samoan custom, a *matai* named his successor; the power to select the *matai* was gradually transferred to the family members, who should consider descendants of the former *matai*).

114. *Tiumalu v. Fuimaono*, 1 A.S. 17 (H.C.T.D. 1901) (plaintiff claimed lands which *matai* wished to sell; held for plaintiff). “[The] day of arbitrary rule is passed.” *Id.* at 19. *Villi v. Faiivae*, 1 A.S. 138 (H.C.T.D. 1906) (holding for the *matai* would result in injury and injustice). *Levu v. Maluia*, 1 A.S. 197 (H.C.T.D. 1909) (cultivation and continued use of lands vests right in family to continue to use lands subject to *pule* of *matai*). *Asuega Family v. Asuega*, 1 A.S. 581 (H.C.T.D. 1938) (family members successfully petitioned for the removal of their *matai* because he did not promote family harmony, nor did he have the respect of family members).

115. *Asuega Family v. Asuega*, 1 A.S. 581 (H.C.T.D. 1938).

116. *Fano Family v. Faatiliga*, 2 A.S. 125 (H.C.T.D. 1940) (Fano family filed an unsuccessful petition for removal of the *matai* title). *Mauga Family v. Mauga*, 2 A.S. 213 (H.C.T.D. 1945) (an unsuccessful petition for the removal of the *matai* title). *Fao Family v. Fao V.*, 2 A.S. 299 (H.C.T.D. 1947) (a petition for removal of the *matai* title from Fao V. dismissed, because it lacked three-quarters of the family's signatures, offered no concrete

1975, twenty-six cases challenged *matai* action; twelve affirmed *matai* authority<sup>118</sup> and fourteen did not,<sup>119</sup> including two cases

evidence to support the majority of charges, and failed to show serious flaws in Fao's leadership in family affairs). *Asuega v. Mauga*, 3 A.S. 70 (H.C.T.D. 1953) (petition for removal of *matai* title from Mauga; dismissed; requirement that three-quarters of adult family members sign petition was not met). *Fano v. Teleuli*, 3 A.S. 154 (H.C.T.D. 1955) (a *matai* petition granted to evict the defendant from the family for failure to render service). *Aumavae v. Tuitele*, 3 A.S. 341 (H.C.T.D. 1958) (court sustained *matai* action to evict occupant who had been formerly granted oral license by the *matai*). *Malaetia v. Velega*, 3 A.S. 265 (H.C.T.D. 1956) (plaintiff's petition for an injunction to prevent *matai* from determining boundaries between communal lands dismissed).

117. *Pulu v. Te'o*, 2 A.S. 201 (H.C.T.D. 1945) (the *matai* of a family cannot convey communal land to any one member without the approval of the Governor of American Samoa). *Taliuitafa v. Toaga*, 2 A.S. 218 (H.C.T.D. 1945) (a petition to reverse a previous decision, grant a new trial, and permit the petitioner to intervene as *matai* of a family to represent the interests of that family; dismissed). *Faagata Family v. Faagata*, 2 A.S. 273 (H.C.T.D. 1947) (petition for removal of *matai* granted on the basis of criminal acts, insulting other family members, and lack of leadership). *Teo v. Totoa*, 2 A.S. 243 (H.C.T.D. 1947) (Totoa (descendant of *matai*) could not claim land as individual property when it belonged to the Teo family as communal land). *Atofau v. Tuufuli*, 2 A.S. 414 (H.C.T.D. 1948) (defendant attempting to register land claimed he had been given land by the plaintiff's *matai* in return for services; court held that the *matai* was a "trustee" of family lands and not authorized to alienate land). *Leasiolagi v. Fao*, 2 A.S. 451 (H.C.T.D. 1949) (application to register lands as individually owned was brought by the *matai*; court held that the lands were registered communally in recognition of Samoan custom — that "lands occupied by *matai* are held for benefit of family"). *Letele Family v. Lafoga*, 2 A.S. 466 (H.C.T.D. 1949) (application to register land as individual property of *matai* denied; land held by the *matai* is considered communal land). *Ifopo v. Vaiao*, 2 A.S. 472 (H.C.T.D. 1949) (defendants wished to register land as individually owned by claiming the land had been conveyed to their parents by the *matai* of the Ifopo clan; court held *matai* did not have the consent of the family to convey the land, and that all land administered by the *matai* is family land). *Government of American Samoa v. Si'u*, 3 A.S. 479 (H.C.T.D. 1952) (defendant not excused from statutory duty although ignorant of law). *Mulitauaoepele v. Paleafei*, 3 A.S. 93 (H.C.T.D. 1953) (family petitioned the court to prevent the defendant, the *matai*, from giving land to church; injunction granted). *Mauga v. Soliai*, 3 A.S. 108 (H.C.T.D. 1954) (defendant applied to have land registered as individually owned; application denied; the *matai* has no authority to mortgage or deed lands without the consent of family and approval of governor). *Vaotuaa Family v. Puletele*, 3 A.S. 145 (H.C.T.D. 1955) (petition by the *matai* to evict a family member for failure to render service; denied). *Tuileata v. Talivaa*, 3 A.S. 201 (H.C.T.D. 1956) (petition of the *matai* seeking eviction of the defendant dismissed where the defendant's right to hold and use the land was granted by the former *matai*). *Tasali v. Samuela*, 3 A.S. 359 (H.C.T.D. 1958) (petition by the *matai* for an order to restrain the defendant from erecting a house on family land; denied). *Siu v. Maisu*, 3 A.S. 336 (H.C.T.D. 1958) (petition by the *matai* for eviction denied, branches of a family may give consent to a family member for use of communal land without the *matai*'s approval). *Tago v. Faleulu*, 3 A.S. 370 (H.C.T.D. 1958) (petition of the *matai* to evict a family member rendering service; denied where the family member had cut a coconut tree and rebuilt and improved a house without the *matai*'s permission). *Fanene Family v. Fanene*, 3 A.S. 425 (H.C.T.D. 1960) (petition to remove *matai* granted).

118. *Malaga v. Alaga*, 4 A.S. 735 (H.C.T.D. 1966) (when a *matai* title is vacant, family members do not have the right to revoke the occupancy rights of a person residing on communal land at the request of the former *matai*; only a *matai* has the power to evict). *Tuliau*

where the *matai* was removed.<sup>120</sup>

v. Sunia, 4 A.S. 858 (H.C.A.D. 1962) (a *matai* must live in the village to which his title is attached). Leapaga v. Leapaga, 4 A.S. 470 (H.C.T.D. 1964) (although petitioner personally repaid mortgage on land bought by the *matai* for the family, the land remains communal). Tiumalu v. Scanlan, 4 A.S. 194 (H.C.T.D. 1961) (leader of one of five clans of the Tiumalu family petitioned to halt construction of a bakery on family land; defendants had been assigned the land by the *matai*, for the purpose of building a bakery. The court held that sole authority for control over family land is held by the *matai*). Masalosalo v. Isumu, 4 A.S. 309 (H.C.T.D. 1962) (*matai* has the authority to evict a person married into his family from family lands where land has not been assigned him). Paopaoailua v. Betham, 4 A.S. 705 (H.C.T.D. 1965) (a *matai* may sign a separation of structure agreement on behalf of the family without first consulting other members of the family). Leapaga v. Masalosalo, 4 A.S. 868 (H.C.T.D. 1962) (a *matai* may evict a person from family lands when he refuses to render services). Lolo v. Heirs of Sekio, 4 A.S. 477 (H.C.T.D. 1964) (the court reaffirmed the Samoan custom whereby family lands are under the jurisdiction of the *matai*, and a young man in the family has no authority to permit strangers to live on communal lands). Talagu v. Te'o, 4 A.S. 121 (H.C.L. & T.D. 1974) (the court affirmed the power of the *matai* as "ultimate reversioner" for all parcels of communal land; although a succeeding *matai* may not revoke an assignment of communal land, he may reassign the land if the occupant surrenders the land). Fe'a v. Sisipeni, 4 A.S. 320 (H.C.T.D. 1963) (the *matai* objected to the defendant's registration of land as individually owned; court ruled that the evidence indicated the land was communally owned). Lefao v. Malepei, 4 A.S. 111 (H.C.L. & T.D. 1973) (the land in question was found in part to be within the village *matai* and therefore could not be claimed as communal or individually owned). Senui v. Mata'afa, 4 A.S. 333 (H.C.T.D. 1963) (the court granted the *matai*'s petition which required the defendant to construct his house in compliance with custom).

119. Lualenaru v. Chiefs of Aitulagi, 4 A.S. 383 (H.C.T.D. 1963) (chiefs of the village are entitled to register land as communal after showing adverse possession; individual ownership claim by the *matai* was invalid). Fanene v. Fanene, 4 A.S. 603 (H.C.T.D. 1965) (where the register of *matai* titleholders shows that two persons have been registered for the same *matai* title, and the applicant has qualifications, the court may make him *matai*). Tali v. Tupeona, 4 A.S. 199 (H.C.T.D. 1961) (the court is not authorized to evict a family member who is willing to render service to the *matai* and has done so in the past when the *matai* is merely angry with that family member; *matai*'s petition dismissed). Faga v. Olive, 4 A.S. 283 (H.C.T.D. 1962) (petition of *matai* to require defendant to vacate family land denied; defendant cannot be forced to leave land if upon learning of his obligation, he renders services to the *matai*; *matai* petition was denied). Atualevao v. Masaniai, 4 A.S. 644 (H.C.T.D. 1965) (a person assigned communal lands may enter into a separation of structure from communal land agreement with the *matai* in order to procure a loan for home construction). Coffin v. Mageo, 4 A.S. 14 (H.C.L. & T.D. 1970) (as long as they served the *matai*, petitioners could remain in and repair the house on communal land, and have use of immediately adjoining land). Heirs of Sagiario v. Mamae, 4 A.S. 64 (H.C.L. & T.D. 1972) (a *matai* living outside of American Samoa for a substantial period (in this case nine years in the United States) forfeits his power over family land). Fau v. Wilson, 4 A.S. 443 (H.C.T.D. 1964) (a *matai* may not alienate communal property without written approval by the governor). Foster v. Fa'amuli, 4 A.S. 3 (H.C.L. & T.D. 1969) (the *matai* denied the right of possession of communal lands to descendants of former, deceased occupant; deceased had cleared, improved, and occupied the land for 20 years with the approval of the former *matai*; the court ruled that these circumstances do not create life tenancy). Maututia v. Faimalo, 4 A.S. 237 (H.C.T.D. 1962) (the defendant filed an application to register land as his own individually owned property; during the proceedings, the *matai* said he had filed a war damage claim, describing himself as owner in the capacity of *matai*, supporting the fact that the land indeed

### B. *Erosion of the Samoan Land Tenure System*

Linked to the *matai* structure is the land ownership system. The annexation of American Samoa did not change the land ownership situation which permitted three types of land tenure: freehold land, individually owned land, and communal land.

Freehold land, which comprises an infinitesimal portion of the total land area in American Samoa, is land included in court grants prior to 1900 that has not been returned to communal status.<sup>121</sup> Individually owned land may be owned only by an individual, who, acting in his individual capacity, has cleared the land from virgin bush.<sup>122</sup>

The communal-land system, which includes approximately ninety-two percent of the land area of American Samoa,<sup>123</sup> is the key to the land tenure system and is relatively unique compared to land ownership in the Pacific Islands and the United States.<sup>124</sup> Communal land is owned by the extended family and controlled by the *matai*.<sup>125</sup> A feudal relationship exists between the *matai* and the land and its occupants. The *matai* assigns communal land to a family member by showing him a certain area in the village and

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was communal and not individually owned; application for registration was denied). *Nua v. Leomiti*, 4 A.S. 404 (H.C.T.D. 1963) (a *matai's* daughter has no authority to transfer family lands to anyone, but may give license to live on the land; registration for filing of lands as individually owned denied). *Leapaga v. Westbrook*, 4 A.S. 748 (H.C.T.D. 1967) (defendant had been assigned the land by the former *matai*, and the present *matai* could not evict her).

120. *Tuiteleleapaga Family v. Filioali'i*, 4 A.S. 24 (H.C.L. & T.D. 1971) (the *matai* was removed on grounds that he has not served the Tuiteleleapaga family since leaving American Samoa one year before without proper reason for his absence). *Ativalu v. Mana*, 4 A.S. 518 (H.C.T.D. 1964) (Evidence presented justified removal of the *matai*).

121. A total of 66 parcels of freehold land was granted prior to 1900, primarily in the village of Leone, near the western end of Tutuila. There are considerably less than 66 parcels of freehold land available today, however, as much of the land has been transferred into communal land. Speech of High Chief Lutali Lolo A.P. Lauvao, Land, Fine Mats and Dollars (May 26, 1972) [hereinafter cited as Lutali] [copy of file with the *California Western International Law Journal*].

122. *Id.*

123. *Id.*

124. "With few and partial exceptions (of which Samoa is one) subsistence cultivation by Pacific islanders was traditionally at least as 'individual' as in Europe or Asia . . . . What were often thought to be 'communal gardens' were in practice numbers of individuals working at the same time in adjacent individual gardens." Crocombe, Customary Tenures and Incentives to Produce (August 1974) (paper delivered at the Seminar on the Subsistence Sector in the South Pacific, Univ. of South Pacific, Suva, Fiji) [copy on file with the *California Western International Law Journal*].

125. *Fesagaiga v. Alo-Pepe*, 3 A.S. 118 (H.C.T.D. 1954); *Tufele v. Velega*, 3 A.S. 265 (H.C.T.D. 1956). In both cases, the cession of islands of Samoa to the United States government did not affect private land titles.

giving him permission to build his house there.<sup>126</sup> In return for permission to use communal land, the occupier of the land is expected to render service to the *matai*.<sup>127</sup> Failure to render service can result in eviction.<sup>128</sup>

*I. Requirement of Gubernatorial Consent.* United States policy has attempted to "stabilize and protect the Samoan economy."<sup>129</sup> The Native Land Regulations have not only recognized Samoan land distinctions but restricted the alienation of all but freehold land to anyone with less than one-half Samoan blood.<sup>130</sup> This restriction was enforced by requiring approval of any land transfer by the Secretary of the Navy, and after 1941, by the federally appointed Samoan governor.<sup>131</sup>

The High Court of American Samoa upheld the constitutionality of this restriction finding that it was a valid exercise of police power.<sup>132</sup> The court gave a broad reading to the regulations holding that "the regulations of the Naval Station prohibit the sale of native lands to a foreigner and *a fortiori* there can be no . . . equitable or legal mortgage [in native lands] . . ."<sup>133</sup>

The effect has been to erode Samoan custom. The requirement of gubernatorial consent has inhibited the *matai's* power. The land regulations and the establishment of the Samoan High Court have resulted in the adjudication of a series of cases where *matai* actions in relation to communal land have been questioned. In recent years, the court has begun to ease the prohibition against alienation. Thus, the court has held that naval regulations permitted a grant of land to a trust for a son or daughter legally married to a non-native,<sup>134</sup> a grant of land to a child of a mixed marriage,<sup>135</sup> and a conveyance of a life estate to a grandson where the father was a

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126. Lutali & Stewart, *A Chieftal System in Twentieth Century America: Legal Aspects of the Matai System in the Territory of American Samoa*, 4 GA. J. INT'L & COMP. L. 387, 391 (1974).

127. *Id.* at 392.

128. *Id.* at 393.

129. GOVERNMENT OF AMERICAN SAMOA, OFF. OF THE DELEGATE-AT-LARGE, MEMORANDUM IN SUPPORT OF APPROPRIATE ORGANIC ACT FOR AMERICAN SAMOA 5 (June 30, 1975) [hereinafter cited as MEMORANDUM].

130. A.S. CODE tit. 27 § 204(b) (1973).

131. A.S. CODE tit. 27 § 204 (1973).

132. *Haleck v. Tiualu*, 3 A.S. 380 (H.C.T.D. 1959).

133. *Sapela v. Veevalu*, 1 A.S. 124, 132 (H.C.T.D. 1905).

134. *Atufil Mageo v. Timoteo*, 3 A.S. 395 (H.C.T.D. 1959).

135. *Sapela v. Veevalu*, 1 A.S. 124 (H.C.T.D. 1905).

non-native.<sup>136</sup>

2. *American Samoan Study Commission.* This conflict between Samoan custom and United States political institutions was addressed by Congress. After congressional recognition in 1929, an American Samoa Study Commission visited American Samoa and conducted extensive public hearings on the issue of American governance of the islands.

The Commission recommended the continuance of Samoa's anomalous existence outside the normal United States constitutional structure,<sup>137</sup> but suggested some movement toward the inclusion of Samoa within the United States body-politic. The Commission sought the establishment of an American-style separation of powers in government and the establishment of a relationship between Samoan citizens and the United States government, while continuing to recognize the unique status given to Samoan land, recommending

[t]hat the islands described in the said acts of Congress of 1925 and 1929 be not erected into an organized Territory at the present time but be given a provincial status as a body politic under the name of "American Samoa" with its own bill of rights and not the United States Constitution as its guaranty of personal liberties, and with the continuation of its present organization of government changed only in two important matters — first, by removing from the governor all judicial power and legislative authority except the veto and the initiation of legislation, and second, by abolishing the office of the secretary of native affairs and providing for a chief justice, independent of the governor, to perform all the judicial functions of that former office, and for an attorney general to perform the other duties thereof.

. . . .

That the inhabitants of American Samoa on February 20, 1929, and their children born subsequently be made citizens of the United States.<sup>138</sup>

The Commission supported formalizing the naval policy on land alienation, recommending

[t]hat the public lands shall not be sold but be administered for the benefit of the people of American Samoa for educational

136. *Atufil Mageo v. Timateo*, 3 A.S. 395 (H.C.T.D. 1959).

137. See McBride, *The Application of the American Constitution to American Samoa*, 4 SAMOAN PAC. L.J. 9 (1977); note 158 *infra*.

138. AMERICAN SAMOAN COMM'N, REPORT 7, S. DOC. NO. 249, 71st Cong., 3d Sess. 7 (Comm. Print 1931).

and other purposes. This provision is consonant with the pertinent paragraph in the joint resolution of Congress accepting the cessions.

That the ownership of private land be confined to persons who are citizens of American Samoa and that leasehold interests for a longer term than 20 years be prohibited. The present law of Samoa makes 40 years the limit of leaseholds. It is believed that such is too long a term, as it amounts to a virtual alienation for the remainder of the lessor's life in most cases.

The restriction regarding the ownership of land is calculated to protect the inhabitants from exploitation by outsiders and at the same time to do away with the arbitrary discrimination against persons of the half blood who, since 1900, have been denied land ownership in land of their birth.<sup>139</sup>

The Commission appears to have recognized the conflict in their recommendations and assumed that the *matai* system and communal land pattern would eventually conform to American standards. "The people of American Samoa are changing from the aboriginal system of social organization and property in which ownership was communal. These changes began a generation ago and are the inevitable result of contact with the so-called Western civilization. They cannot be stopped or obliterated."<sup>140</sup> The Commission's recommendations were not acted upon. Between 1930 and 1936 a number of proposed organic acts died in Congress and naval rule continued relatively unchanged.

By 1948, Samoans had become uneasy over the policies, foreshadowed by the Commission Report, that Congress might establish for the islands to replace naval governance. In February, approximately ninety *matais* asked that all congressional bills dealing with American Samoa, including organic act and citizenship legislation, be tabled for ten years. The *matais* were distrustful of the application to Samoa's social and cultural structure of United States constitutional protections, including the equal protection clause, the right to travel, and particularly the constitutional prohibition of involuntary servitude, which they felt might deprive them of their traditional authority over the extended family members.<sup>141</sup>

As a result of *matai* apprehension, when governance of Samoa was transferred from the United States Navy to the Department of the Interior in 1950, there was no accompanying grant of citizen-

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139. *Id.* at 12.

140. *Id.* at 9.

141. W. PERKINS, DENIAL OF EMPIRE 287 (1964).

ship, acquisition of territorial status, or local civil governing authority for the Samoans. The administration of the islands by the Department of the Interior has continued to the present. The Department of the Interior has adhered to a policy of political, economic, and social development of the Samoans in accordance with United States democratic traditions, while trying, simultaneously, to remain sensitive to the protection of the traditional *matai* role and land tenure system.

### C. *Racial Aspects of Samoa's Land Tenure System*

The most controversial aspects of Samoa's land tenure system is not its feudal aspects but its racial overtones. Neither individually owned land nor communal land may be owned or inherited by "any person who has less than one-half native blood."<sup>142</sup> Individually owned land is limited to persons of *one hundred percent* Samoan blood, unless the person was born in American Samoa.<sup>143</sup> In addition, gubernatorial approval is required of any sale or lease.<sup>144</sup> These restrictions on land ownership have precluded all sales of land in American Samoa.<sup>145</sup> The limitation prevents modern communal land financing, because banks and other lending institutions cannot hold mortgages (where the legal title is in the mortgagee) in individual or communal land. The restriction also limits sharply the application of common law concepts which divide the ownership of land (reversionary or remainder interests) or provide for an objected-to transfer of ownership (adverse possession).<sup>146</sup>

This racial restriction on land ownership has parallels in Hawaii,<sup>147</sup> Guam,<sup>148</sup> and the Marianas,<sup>149</sup> although the latter's

142. A.S. CODE tit. 27, § 204(b) (1973).

143. *Id.*

144. A.S. CODE tit. 27, § 204 (1973).

145. The last sale of communal land took place 30 years ago. Lutali, *supra* note 121, at 30.

146. Adverse possession may be operative by one Samoan against another but not otherwise. *Id.* at 31.

147. *E.g.*, Hawaiian Homes Commission Act of 1920, ch. 42, 42 Stat. 108 (1921). Section 208(1) restricts leases to a "native Hawaiian," defined in section 201(7) as "any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778."

148. GUAM GOV'T CODE § 13901 (1974 Supp.) establishes the Chamorro Land Trust Commission, which has authority to administer certain government lands to establish homesteads for "native chamorros," defined as "any person[s] who the Commission determines to be of at least one-fourth part of the blood of any person who inhabited the island prior to 1898." *Id.*

149. Section 805 of the Covenant to Establish a Commonwealth of the Northern Mari-

constitutional provision is more subtle in character, suggesting a geographical rather than a lineal restriction.<sup>150</sup> The Hawaii provisions have never been adjudicated and its practical value has been small, in part because the land area is modest and the implementation has been half-hearted.<sup>151</sup> The Guam provisions have not been administratively enforced.<sup>152</sup>

#### *D. Sustaining the Constitutionality of the Samoan Land Tenure System*

A number of arguments have been marshalled to sustain the constitutionality of the American Samoan legal system which supports the native born land ownership restrictions under the United States Constitution:<sup>153</sup> (1) it is in fact a residency, not a racial requirement; (2) it is one of the exceptions envisioned by the incorporated-unincorporated territories doctrine and therefore a valid exercise of the police power; (3) the issue is *de minimus*; and (4) it is permitted under the foreign affairs and war powers clause.

The first argument has appeal because of the recent holding in *Morton v. Mancari*,<sup>154</sup> where the United States Supreme Court sustained a federal policy of giving employment preference to Indians on Indian reservations, stating that the requirement was not a racial preference but a residential preference "tied rationally to the fulfillment of Congress' unique obligation toward the Indians . . ."<sup>155</sup> The Court noted the constitutional reference to Indian tribes and feared that if the federal law were declared unconstitutional, then many laws "derived from historical relationships and explicitly

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ana Islands in Political Union with the United States of America, Pub. L. No. 94-241, 90 Stat. 263, 275 (1976), permits the Northern Marianas to restrict acquisition of real property to "persons of Northern Marianas descent."

150. NORTHERN MARIANAS CONST. art. XII, § 1.

151. See generally L. FUCHS, HAWAII PONO: A SOCIAL HISTORY 226-59 (1961). See also *Hawaiian Native Claims Settlement Study Commission: Joint Hearings Before the Subcomm. on Public Lands and Resources and the Subcomm. on Indian Affairs and Public Lands of the House Comm. on Interior and Insular Affairs*, 95th Cong., 1st Sess. (1977).

152. The Guam Commission has never been appointed at least in part because the restriction would lessen land values in some areas of the island.

153. There is remarkably little commentary on the Samoan land tenure system; that which exists is generally favorable to its constitutionality. See *American Samoa*, *supra* note 91, at 347; Stewart, *Land Tenure in American Samoa*, 10 HAWAII B.J. 52 (1973).

154. 417 U.S. 535 (1973).

155. *Morton v. Mancari*, 417 U.S. 535, 555 (1973). The policy was set forth in blood terms: "To be eligible for preference in appointment, promotion, and training, an individual must be one-fourth or more degree Indian blood and be a member of a Federally-recognized tribe." *Id.* at 533 n.24 (quoting 44 BUREAU INDIAN AFF. MANUAL 335 (1972)).

designed to help only Indians, [would be] deemed invidious racial discrimination, [and] an entire Title of the United States Code (25 U.S.C.) would be effectively erased . . . .”<sup>156</sup>

The Samoan provisions could, by analogy, be so rationalized. They *are* place-related, although Samoan blood has been interpreted to include Western Samoans as well, and the “Territories,” like the Indian tribes, are mentioned in the United States Constitution.<sup>157</sup> To construe a racial restriction as a geographical one on expedient grounds may be acceptable as a necessary rationalization to justify an aberrant in assisting Indian tribal developments, but to build upon this precedent outside the Indian context would appear to promote racism in the legal system. Further, it appears inappropriate to bring to bear upon the “Territories” the special character of the Indian reservations.

Justice White’s lengthy *Insular Cases*<sup>158</sup> concurring opinion, does suggest a willingness to accept differences in development, especially in areas of land use and control. He noted that in general when an area is transferred to a new sovereignty, “[a]ll laws, ordinances, and regulations in conflict with the political character, institutions, and constitution of the new government are at once displaced.”<sup>159</sup> However, he specifically excepted property rights:

But with respect to other laws affecting the possession, use and transfer of property, and designed to secure good order and peace in the community, and promote its health and prosperity, which are strictly of a municipal character, the rule is general that a change of government leaves them in force until, by direct

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156. *Id.* at 552.

157. U.S. CONST. art IV, § 3.

158. *DeLima v. Bidwell*, 182 U.S. 1 (1901); *Dooley v. United States*, 182 U.S. 222 (1901); *Armstrong v. United States*, 182 U.S. 243 (1901); *Downes v. Bidwell*, 182 U.S. 244 (1901). The *Insular Cases* raised the issue of whether the “constitutional restrictions on congressional authority applicable to the states serves as a check on the exercise of federal power with respect to the territories.” Leibowitz, *United States Federalism: The States and the Territories*, 28 AM. U.L. REV. 449, 459 (1979). Justice White stated that “every function of government is derived from the Constitution, and, therefore, the Constitution is applicable to the territories.” *Downes v. Bidwell*, 182 U.S. 244, 289 (1901) (White, J. concurring). *Id.* Whether a territory was incorporated or unincorporated “determined the constitutional status of the territories and the restrictions imposed upon Congress’ authority to govern them.” Leibowitz, *supra*, at 459-60. “Although the Constitution was not fully applicable to unincorporated territories, certain fundamental prohibitions contained therein restricted federal power irrespective of the status of the territory.” *Id.* at 460.

159. *Downes v. Bidwell*, 182 U.S. 244, 298 (1901) (quoting *Chicago, Rock Island & Pacific Ry. v. McGlinn*, 114 U.S. 542, 546 (1885)).

action of the new government, they are altered or repealed.<sup>160</sup>

However, the language above refers to the time of the initial transfer. To sustain the discrimination much later would require a holding that the Territorial Clause permits a suspension of due process or equal protection rights in the territories — that unincorporated territories do not have equal protection rights. The situation is by no means clear. Although argument can be made for this position based on holdings sustaining federal actions against Mormon polygamy in the Utah Territory,<sup>161</sup> two recent cases of the United States Supreme Court concerning Puerto Rico give unclear indications — *Examining Board of Engineers v. Flores de Otero*<sup>162</sup> and *Califano v. Gautier Torres*.<sup>163</sup>

In *Examining Board of Engineers v. Flores de Otero*, Puerto Rico passed a statute requiring citizenship status as a prerequisite to holding the position of an air conditioning engineer.<sup>164</sup> The Court, although paying tribute to the unique status of the Commonwealth and remaining unclear on whether the Fourteenth or Fifth Amendment applied, struck down the statute on traditional due process and equal protection grounds.

[T]he statutory restriction on the ability of aliens to engage in the otherwise lawful private practice of civil engineering is plainly unconstitutional. If the Fourteenth Amendment is applicable, the Equal Protection Clause nullifies the statutory exclusion. If, on the other hand, it is the Fifth Amendment and its Due Process Clause that apply, the statute's discrimination is so egregious that it falls within the rule of *Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).<sup>165</sup>

On the other hand, where *federal* government action was involved pursuant to the Territorial Clause, the Court at least in part relied on the Commonwealth status of Puerto Rico to permit discrimination in Social Security Insurance (SSI) payments to United States citizens moving to Puerto Rico. In *Califano v. Gautier Torres*, the Court dismissed the equal protection argument in the following way in a footnote in the opinion:

The complaint had also relied on the equal protection compo-

160. *Id.* The restriction on the alienation of Samoan land was not a local law prior to the cession of the islands. See A.S. CODE tit. 27, § 201(2) (1973).

161. *The Late Corporation of Latter Day Saints v. United States*, 136 U.S. 1 (1889); *Murphy v. Ramsey*, 114 U.S. 15 (1885).

162. 426 U.S. 572 (1976).

163. 435 U.S. 1 (1978).

164. See 426 U.S. 572, 572-77 (1976).

165. *Id.* at 601.

ment of the Due Process Clause of the Fifth Amendment in attacking the exclusion of Puerto Rico from the SSI program. Acceptance of that claim would have meant that all otherwise qualified persons in Puerto Rico are entitled to SSI benefits, not just those who receive such benefits before moving to Puerto Rico. But the District Court apparently acknowledged that Congress has the power to treat Puerto Rico differently, and that every federal program does not have to be extended to it. Puerto Rico has a relationship to the United States "that has no parallel in our history."<sup>166</sup>

To rely on the *Insular Cases* is to revivify a case whose basic doctrine continues of necessity and which the Court itself has indicated should not be expanded.<sup>167</sup> The premise behind the *Insular Cases* reasoning was an imperial grandeur, an omnipotent Congress dealing with culturally and geographically distant territories.<sup>168</sup> This premise deserves no further support. The American Samoa case upheld the related restrictions on alienation as a valid exercise of the police power, without analyzing the *Insular Cases*.

The *de minimus* argument has some appeal. It eliminates the need to rationalize the Samoan case with others and adopts a common law rather than a public law approach to this constitutional issue. However, being treated specially has not been to a territory's advantage. The impact of a Supreme Court or federal court decision on the actions of executive officials is diluted significantly or perhaps eliminated altogether if Samoan precedent is unique.

The best reasoning is that the Samoan land tenure system is legally required because it was established pursuant to the Treaty of Cession. The United States made a commitment in the treaty and has acted on that basis. The United States capacity to make such a commitment and continue a racial discrimination under its war powers has been sustained. Thus, in *Hirabayashi v. United States*,<sup>169</sup> the Supreme Court sustained a curfew imposed on United States citizens of Japanese ancestry residing within certain specified geographic limits. It did so by interpreting the war powers extremely broadly:

Since the Constitution commits to the Executive and to Congress the exercise of the war power in all the vicissitudes and condi-

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166. 435 U.S. 1, 3 n.4 (1978).

167. *Reid v. Covert*, 354 U.S. 1 (1956).

168. *Haleck v. Tiimalu*, 3 A.S. 380 (H.C.T.D. 1959).

169. *Hirabayashi v. United States*, 320 U.S. 81 (1943). For the other World War II Japanese exclusion cases, see *Korematsu v. United States*, 323 U.S. 214 (1944), *rehearing denied*, 324 U.S. 885 (1945); *Ex Parte Endo*, 323 U.S. 283 (1944).

tions of warfare, it has necessarily given them wide scope for the exercise of judgment and discretion in determining the nature and extent of the threatened injury or danger and in the selection of the means for resisting it . . . . Where, as they did here, the conditions call for the exercise of judgment and discretion and for the choice of means by those branches of the Government on which the Constitution has placed the responsibility of war-making, it is not for any court to sit in review of the wisdom of their action or substitute its judgment for theirs.<sup>170</sup>

The Court specifically addressed the issue of racial discrimination: Legislative classification or discrimination based on race alone has often been held to be a denial of equal protection . . . . Because racial discriminations are in most circumstances irrelevant and therefore prohibited, it by no means follows that, in dealing with the perils of war, Congress and the Executive are wholly precluded from taking into account those facts and circumstances which are relevant to measures for our national defense and for the successful prosecution of the war, and which may in fact place citizens of one ancestry in a different category from others.<sup>171</sup>

If this is the basis for sustaining the Samoan land tenure system, then the legal situation would change should American Samoa obtain an organic act or become an incorporated territory. On the other hand, until that time, the Samoan case would be distinguishable from that of the other United States territories.

#### IV. SAMOAN IMMIGRATION POLICY

Samoan immigration policy is a unique feature of the American Samoa–United States relationship. The United States has permitted special immigration restrictions, administered by American Samoans, to apply to the islands. To some extent it is part of the federal government’s general policy of supporting local customs by relieving pressures on development of local property and local institutions. The Samoan legislature finding that “there are limited land resources, water, sewage facilities and economic opportunities in American Samoa,” enacted strict immigration legislation.<sup>172</sup> Under the American Samoan legislation, no person — even a

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170. *Hirabayashi v. United States*, 320 U.S. 81, 93 (1943).

171. *Id.* at 100. In *Korematsu v. United States*, 323 U.S. 214, 217-18 (1944), the Court states: “[W]e are unable to conclude that it was beyond the war power of Congress and the Executive to exclude those of Japanese ancestry from the West Coast war area at the time they did.”

172. A.S. CODE tit. 9, § 201(a) (1973).

United States citizen — may enter American Samoa unless “[i]f a tourist, he possesses a valid passport . . . . If a permanent resident, he possesses proof of residence and such forms as the local board requires . . . . If any other person, he furnishes such documents as the local board requires.”<sup>173</sup> Once physical entry has been legally obtained, the entrant is still severely limited in his ability to engage in commercial activities. Only persons who qualify as “permanent residents” or have been previously approved by the local board can be employed; otherwise, the employer is subject to fines of up to \$500 per offense.<sup>174</sup> To apply for permanent resident status, applicants must either have been born in American Samoa, have continuously resided therein for the last ten years, or have been legally adopted by a permanent resident of American Samoa.<sup>175</sup> Thus, unless the local board approves the initial temporary employment and succeeding reviews for at least a ten-year period, no immigrant would ever become eligible for permanent resident status. Only permanent residents are exempt from possible deportation for reasons short of criminal offenses.<sup>176</sup> Furthermore, the local board may exclude from residence on the islands any person who does not qualify as an American Samoan or who does not establish that he offers a needed skill not readily available in the community and that he has a local sponsor.<sup>177</sup>

All American Samoans are entitled to permanent resident status.<sup>178</sup> American Samoans include only those lineal descendants of the inhabitants of the islands who have permanently resided in American Samoa for at least twenty years and whose status has been approved by the local board.<sup>179</sup> In all of these provisions regulating immigration to American Samoa, United States citizens are treated no differently than are aliens from other countries. All non-Samoans face the same rigid restrictions.

The American Samoan immigration provisions have two unique features: the delegation of the authority to grant visas and quotas to American Samoan officials<sup>180</sup> and the inclusion of United

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173. A.S. CODE tit. 9, § 203 (1973).

174. A.S. CODE tit. 9, § 208 (1973).

175. A.S. CODE tit. 9, § 373 (1973).

176. A.S. CODE tit. 9, § 377(18) (1973).

177. A.S. CODE tit. 9, § 371 (1973).

178. A.S. CODE tit. 9, § 372 (1973).

179. A.S. CODE tit. 9, §§ 202(2), (3) (1973).

180. There is no formal act of delegation from the federal government to American Samoa. The creation of the immigration board of American Samoa consisting of the Attorney General, chief immigration officer, President of the Senate, Speaker of the House of Repre-

States citizens within the American Samoan ban.<sup>181</sup>

The delegation of authority to territorial officials, although common in certain areas, has been much less frequent in other areas, such as commercial regulation.<sup>182</sup> Congress and the Executive remain most cautious in delegating authority to territorial governments in matters that affect the movement of people.

The most unique feature of Samoan immigration is the apparent capacity of the territorial government to exclude United States citizens and the acquiescence in that action by Congress and the Executive. In *Torres v. Puerto Rico*,<sup>183</sup> the Supreme Court rejected Puerto Rico's justification for conducting a search and seizure within its borders without probable cause. Puerto Rico based its argument on its Commonwealth status and its geographical character.

Puerto Rico then asks us to recognize an "intermediate border" between the Commonwealth and the rest of the United States. In support of this proposal it points to its unique political status, and to the fact that its borders as an island are in fact international borders with respect to all countries except the United States. Finally, Puerto Rico urges that because of the seriousness of the problems created by an influx of weapons and

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sentatives, and Secretary of Samoan Affairs by A.S. CODE tit. 9, § 261 (1973) is pursuant to Article 1, section 3 of the American Samoa Constitution (approved by the Secretary of Interior) "authorizing enactment of such legislation as may be necessary to protect [Samoan] lands, customs, culture. . . ." A.S. CODE tit. 9, § 201 (1973).

181. A.S. CODE tit. 9, § 201(b) (1973). Note that American Samoa is not included as a part of the United States in the Immigration and Nationality Act of 1952. 8 U.S.C. § 1101(a)(38)(1976). The exclusion of territories from the definition of the United States for the purposes of the United States immigration laws and the special treatment of the territorial immigration has been frequent. Guam, for example, was not considered part of the United States under the Immigration Act of 1924. Immigration Act of 1924, ch. 190, § 28, 43 Stat. 153 (1924). Therefore, provisions regulating visas and quotas for immigration into the United States were not applicable to Guam. American citizenship has not been extended to American Samoans (8 U.S.C. §§ 1101(a)(29), 1408 (1976)), and Congress appears to consider this the critical element of distinction between American Samoa and other territories. 89 U.S.C. § 1407 (1976). But whether the residents of American Samoa are nationals or citizens is irrelevant to their ability to travel freely throughout the United States. Although technically American Samoans are nationals, many have traveled to the United States (which they have the legal right to do freely), obtained United States citizenship, and returned to American Samoa. A few years ago, one knowledgeable observer estimated that 10% of the population of American Samoa were United States citizens. R. VAN CLEVE, *THE OFFICE OF TERRITORIAL AFFAIRS* 60-61 (1974).

182. That it is within the power of the Congress to delegate such authority to a territory was established in the case of *Tiaco v. Forbes*, 228 U.S. 549 (1913). See also *Porto Rico Brokerage Co. v. United States*, 76 F.2d 605 (C.C.P.A. 1935) (affirming 71 F.2d 469 (C.C.P.A. 1934)), *cert. denied*, 298 U.S. 671 (1936).

183. 442 U.S. 465 (1979).

narcotics, it should have the same freedom to search persons crossing its "intermediate border" as does the United States with respect to incoming international travellers.

. . . .  
 . . . Puerto Rico has no sovereign authority to prohibit entry into its territory; as with all international ports of entry border and customs control for Puerto Rico are conducted by federal officers. Congress has provided by statute that Puerto Rico must accord to all citizens of the United States the privileges and immunities of its own residents . . . .

. . . In any event, Puerto Rico's law enforcement needs are indistinguishable from those of many states. Puerto Rico is not unique because it is an island . . . .<sup>184</sup>

Although Puerto Rico's factual circumstance is considerably different than American Samoa's (being much closer to the United States with considerably more migration back and forth), the language of the Court indicates that neither status nor geographical separation may be sufficient to uphold the special restrictions on immigration that American Samoa now enjoys.

The original cession agreement does not suggest this power to limit an American citizen's access to American Samoa. The better legal rule is that the right of United States citizens to travel to American Samoa is unrestricted even if their capacity to own land is limited.

## V. "AMERICANIZATION" OF SAMOAN POLITICAL INSTITUTIONS

The greatest danger to Samoan custom and culture is not formal incorporation into the United States but the impact of United States political institutions.

For many years *all* authority in American Samoa — executive, legislative, and judicial — was combined in the person of the naval officer serving as Governor of the islands. Beginning in 1905, a *Fono* (assembly) of *matais* was convened annually; its role was solely advisory.<sup>185</sup> In 1948, the *Fono* became a bicameral "legislature," consisting of a House of *Ali'i* containing twelve *matais* of the highest order and a House of Representatives comprising fifty-four members, two of whom, in a major break from tradition, were elected by secret ballot.<sup>186</sup>

184. *Id.* at 472, 473.

185. PERKINS, *supra* note 141, at 277-80.

186. TANSILL, *supra* note 6, at 69.

Judicial power was institutionalized in a High Court, presided over by a Chief Justice appointed by the Secretary of the Navy (since 1950 by the Secretary of the Interior) and assisted by from two to four associate judges selected by the Chief Justice from among the district court judges.<sup>187</sup> The islands have six district courts, each presided over by a Samoan judge, and numerous village courts, each with a Samoan magistrate.<sup>188</sup>

A Bill of Rights, promulgated by the naval governor in 1931, has been an integral part of the American Samoa Constitution.<sup>189</sup> The Bill of Rights follows the unincorporated territorial guarantees set forth by the United States Supreme Court: freedom of religion, speech, press, assembly, and petition; protection against unreasonable searches and seizures; and protection against deprivation of life, liberty, or property without due process of law.<sup>190</sup> There is no provision for trial by jury.

The Interior Department, which has been responsible for the governance of American Samoa since 1950, has insisted on being the intermediary between territorial officials and federal government officials. Communications between insular authorities and foreign governments are to be cleared through the Interior Department for transmittal by the Secretary of State, "unless some other procedure is approved by the Secretary of the Interior."<sup>191</sup>

Early in 1953, the legislature and the judiciary underwent reorganization. The House of *Ali'i* became a Senate of fifteen *matais* chosen in open meeting according to Samoan custom.<sup>192</sup> The House of Representatives was reduced to a membership of eighteen Samoans elected by secret ballot — the first secret-ballot general election in Samoan history.<sup>193</sup> Five representatives were elected "from each of the three political districts, one from Swains Island, and two from those permanent residents *not living under the matai system . . .*"<sup>194</sup> The election marked the beginning of the open conflict between the *matai* system and United States principles of democratic institutions.

The judicial system continued approximately as before. The

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187. *Id.*

188. *Id.*

189. AM. SAMOA CONST. art. I.

190. AM. SAMOA CONST. art. I, §§ 1, 2, 5.

191. 16 Fed. Reg. 9,052, 9,053 (1951).

192. TANSILL, *supra* note 6, at 70.

193. *Id.*

194. *Id.* (emphasis added).

Chief Justice, appointed by the Secretary of the Interior, was again the only "statesider" serving on any of the courts.<sup>195</sup> The associate judges were appointed by the Governor of Samoa, upon recommendation by the Chief Justice.<sup>196</sup> The High Court had three divisions: trial, probate, and appellate.<sup>197</sup> The only appeal allowed from the appellate division was from an appellate court decision affirming the death sentence. The appeal went directly to the Secretary of the Interior.<sup>198</sup>

The institutionalization of judicial power has replaced the *matais'* judicial functions in the *Fono* with the district court system. The restrictions placed on *matai* authority by the United States government is partly responsible for the usurpation of *matai* judicial authority. The traditional Samoan system of levying fines through the village council was forbidden in American Samoa, removing the *matais'* coercive power and thus eroding their judicial authority.<sup>199</sup> Furthermore, the United States government assumed direct authority to sanction and punish the *matai*:

If any Samoan chief by reason of his rank or title, shall injure, oppress, threaten, subject to indignities, or intimidate any person in the free exercise or enjoyment of any right or privilege secured to him by any law of American Samoa, or because of his having so exercised the same, he shall, upon conviction, be fined not more than \$500.00 or imprisoned not more than three years or both.<sup>200</sup>

Under United States governance, new village officials were appointed. The village mayor soon became peripheral to Samoan village organization.<sup>201</sup> The mayor's intended role was as a local functionary, but the position became converted into one of front man for the United States government, and it was occupied by elderly *matais*, women, or people of lesser rank.<sup>202</sup> In addition to the mayor, other village positions were established, including a

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195. *Id.* at 71.

196. The role of the judiciary is discussed in *Samoan Judiciary*, *supra* note 91, at 581. The article suggests a more supportive role of the *matai* structure than is suggested here.

197. TANSILL, *supra* note 6, at 71.

198. *Id.*

199. HOLMES, *supra* note 12, at 102.

200. KEESING, *supra* note 7, at 44.

201. *Id.*

202. Official attempts to transmute such meager-salaried individuals into efficient government servants run up against the fact that inevitably they are first and foremost representatives of their communities and gear their work to local wishes, notably those of the higher titleholders who avoid entangling themselves in this government-paid position.

*Id.*

mayor's secretary, a village magistrate, and a policeman.<sup>203</sup>

In 1953, at the initiative of the United States Governor of Samoa, Richard B. Lowe, a constitution committee was created. In June 1954, the committee began work on the fashioning of Samoa's first constitution.<sup>204</sup> The constitution was ratified and approved by Secretary of the Interior Seaton on April 27, 1960, was adopted by the Constitutional Convention of the Samoan people that same day, and went into effect October 17, 1960.<sup>205</sup> However, the constitution was of little consequence. Relations between the parties remained relatively unchanged. A dominant Department of Interior continued to appoint a strong governor with the power to promulgate legislation upon a passive populace.<sup>206</sup> The legislature continued to function in an advisory capacity. If it passed a law over the governor's veto twice in two separate sessions, the law was to be referred to the Secretary of the Interior who would decide whether the law would go into effect.<sup>207</sup>

The membership of the legislature under the 1960 Constitution consisted of sixteen senators, all of whom were to be "elected in accordance with Samoan custom by the county council of the county he is to represent," and representatives not to "exceed twenty-four" who were to be elected by secret ballot of the "qualified electors."<sup>208</sup> Swains Island was accorded the option of having a delegate in the House, elected in open meeting, who would be afforded all privileges except that of voting.<sup>209</sup> Each senator was to serve for a term of four years, except the additional senator from the Western District, whose term, like that of the representatives and the delegate from Swains Island, was limited to two years.<sup>210</sup>

In 1966, a Constitutional Convention of the Samoan people

203. *Id.*

204. GOVERNOR OF AMERICAN SAMOA, ANNUAL REPORT 2-3 (1954).

205. AM. SAMOA CONST. OF 1960, *reprinted in* COMMITTEE ON INTERIOR AND INSULAR AFF., 87TH CONG., 1ST SESS., TEXTS OF THE ORGANIC ACT OF GUAM, REVISED ORGANIC ACT OF THE VIRGIN ISLANDS, CONSTITUTION OF AMERICAN SAMOA 50 (Comm. Print 1961).

206. When the governor submitted

to the Legislature proposed legislation which he [had] designated as urgent, and the Legislature [had] failed to pass the same in its original form or an amended form acceptable to the Governor at the session in which it was submitted, the Governor [might] himself, with the approval of the Secretary of the Interior, promulgate such proposed legislation as a law.

AM. SAMOA CONST. OF 1960, art. II, § 9.

207. *Id.*

208. *Id.* art. II, §§ 2, 4.

209. *Id.* art II, § 2.

210. *Id.* art. II, §§ 2, 4.

drafted a revision of the 1960 Constitution, reactivating the locally selected legislature and limiting the powers of the federally appointed governor.<sup>211</sup> The Senate was expanded to eighteen members, “three from the Manu’a District, six from the Western District, and nine from the Eastern District,” and the secret-ballot elected House membership was decreased to twenty.<sup>212</sup> In addition, the governor could no longer promulgate into law any of his “urgent” proposals that the legislature had ignored. He was only allowed to “designate any such proposed legislation as urgent, if he so consider[ed] it.”<sup>213</sup> The ultimate authority remained with the Secretary of the Interior.

The office of American Samoa Delegate-at-Large, created in 1970, provided the islands with its first official representative in Washington. The representative was entrusted with presenting “the view of the Samoan people before all branches and agencies of the Federal government including the Interior Department and Congress.”<sup>214</sup>

The election of the first Samoan Delegate-at-Large in November 1970 was the island’s first territory-wide election. Initially, the Samoa delegate was, in effect, an elected lobbyist without any official status in the Congress. In 1978, Congress recognized the Samoan delegate,<sup>215</sup> upgrading his status, effective in 1980, and according him all congressional privileges (including committee seniority), with the exception of the right to vote on legislation.<sup>216</sup> These are the same representative privileges enjoyed by Guam, the Virgin Islands, Puerto Rico, and the District of Columbia.

From 1972 to 1977, the Samoan people rejected, on three different occasions, proposals to elect a governor and a lieutenant governor.<sup>217</sup> In 1977, however, the Samoans reversed their position and the first election of the islands’ governor and lieutenant gover-

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211. A.S. CODE 21 (hist. doc. 1973). It was ratified in the general election of that year, approved by the Secretary of the Interior on June 2, 1967, and went into effect on July 1, 1976.

212. AM. SAMOA CONST. art. II, § 2.

213. AM. SAMOA CONST. art. II, § 9.

214. A.S. Code tit. 19, § 2(a) (1973).

215. Act of Oct. 31, 1978, Pub. L. No. 95-556, 92 Stat. 2078 (1978).

216. *Id.*

217. In 1972, the proposition was defeated by a four-to-one margin. N.Y. Times, Aug. 11, 1974, § 1, at 18, col. 4. In 1973, it was turned down by a vote of 2,097 to 1,097. ANNUAL REPORT, *supra* note 3, at ix. In 1974, the affirmative vote was 2,112 to 2,265 in opposition. N.Y. Times, Aug. 11, 1974, at 18, col. 1.

nor was held.<sup>218</sup> This about-face may reflect a continuing "Americanization" of the Samoan political consciousness during the period from 1972 to 1977;<sup>219</sup> the referenda pursuing gubernatorial elections that were presented to the Samoan people during this period show a decrease in the number of Samoans opposed to the election.<sup>220</sup>

Irrespective of the reasons for the Samoan decision to elect their governor, the decision represents an important development in the relationship of the United States and American Samoa. The control over the appointment of the chief executive officers of the Samoan government was transferred from the Secretary of the Interior to the Samoan people. An additional consequence, as the older Samoans feared, was the further deterioration of *matai* authority. The younger Samoans, during hearings on the local statute governing the election, insisted that there be no *matai* prerequisite for holding office.<sup>221</sup> In the election, Peter Coleman, a non-*matai*, defeated A.P. Lutali, a high *matai*, in a run-off for governor. These respective positions reflect the basic progressive versus traditional positions of their campaigns.<sup>222</sup>

## VI. THE EASTERN SAMOA STUDY MISSION

The enactment of the 1960 Constitution provided Congress with an impetus to re-evaluate the administration of Samoa and to study the future for United States involvement in the development of the islands. The Eastern Samoa Study Mission (Study Mission) concluded with an optimistic appraisal of the vitality of the *matai* system while recognizing some of the forces for change.

The "traditional leadership" is a vital force in Samoan life today. It must be, and should be, taken into consideration in any action taken by the Federal Government affecting Eastern Samoa.

There are, to be sure, countervailing influences. The election by secret ballot and universal suffrage of members of the house of representatives of the legislature from among Samoans in all strata of the social order, in contrast to the senate, which is

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218. N.Y. Times, Nov. 22, 1977, at 13, col. 3; N.Y. Times, Nov. 24, 1977, § 2, at 18, col. 4.

219. Such a view finds expression in *King v. Andrus*, 452 F. Supp. 11 (D.D.C. 1977).

220. TANSILL, *supra* note 6, at 76.

221. The author is indebted to A.S. Lutali, formerly Residential Delegate from Samoa, for this information.

222. J. BISHOP, SAMOA COMES OF AGE 11 (19th Sess., Senior Seminar in Foreign Policy, Dep't of State, 1977).

composed of persons elected by the county councils from local chiefs who have been chosen in the traditional way, is inevitably bringing about a shift in political power. Another such influence is the greater ease of travel, with more and more Samoans coming in contact with the outside world, as is the developing wage economy spurred by the establishment of the fish-packing company.<sup>223</sup>

The Study Mission recommended an organic act perhaps embracing within it the 1960 Constitution<sup>224</sup> and addressed the issue of whether Congress should provide, in that organic legislation, a grant of United States citizenship.<sup>225</sup> The members of the Study Mission believed that the legal ramifications of an application of citizenship to the Samoans were too difficult to appraise. Like the Samoan *matais*, they were not only uncertain of judicial response but what legislation would come out of Congress.

It is highly probable that a majority of the American Samoans desire citizenship, yet many are gravely troubled as to whether the "equal protection of laws" doctrine implicit in citizenship would not conflict with the "Samoan land for Samoans" doctrine and the *matai* system. That is, if the Samoans were U.S. citizens, could they prevent other U.S. citizens who were non-Samoans from acquiring land in American Samoa and engaging in business, the professions, or agriculture there?<sup>226</sup>

. . . Transference or leasing of . . . *matai* lands may occur only under governmental limitations, and direct alienation to a non-Samoan is prohibited. Similarly, the right to engage in economic activity is reserved for Samoans, and the entry and residence of non-Samoans, and their engaging in business, is regulated by the government.

. . . The request for enactment of an organic act or Federal legislation conferring U.S. citizenship on all American Samoans raises two related problems: (a) Would Congress when enacting such legislation incorporate [a] provision to retain present safeguards protecting the Samoan way of life; and (b) if it does, would such limitations be constitutional? . . . Both problems are of considerable consequence to the people of American Samoa, for with the area opened to unrestricted economic exploitation and Samoans able to sell their land to papalagi to hold in fee-simple ownership, it is the consensus of opinion that it would only be a matter of time before the Samoan way of life would

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223. STUDY MISSION, *supra* note 61, at 3-4.

224. *Id.* at 130.

225. *Id.* at 9.

226. *Id.* at 130.

disappear.<sup>227</sup>

The Study Mission recommended that "until the authoritative opinion can be obtained, and, based upon it, a comprehensive expression of the views of the Samoan people heard, it is recommended that the matter be held in abeyance."<sup>228</sup>

The American Samoan desire for citizenship was based on both symbolic and practical considerations. They wished to gain a sense of equality and full participation to cement the relationship with the United States, and to assist Samoan migrants to the United States.<sup>229</sup>

Initially, the unincorporated, unorganized status of the islands was due to a lack of congressional interest in the governance of Samoa. Since 1961, however, there has been a growing awareness by the United States that the status of the islands preserves a tension between Samoan tradition and American-aided economic, political, and social development. A solution to these problems has been difficult, and the *status quo* has been consistently recommended. Thus, in 1961, Congress, on the basis of its Eastern Samoa Study Mission's recommendations, concluded that a change in the status of the islands should not be undertaken.<sup>230</sup>

In 1969, an American Political Status Commission, consisting of United States legislators and "concerned citizens," recommended that American Samoa remain an unincorporated and unorganized territory.<sup>231</sup> The Commission rejected (1) independence,

227. *Id.* at 124-25.

228. *Id.* at 10.

229. The explanation for the action of the general assembly in requesting organic legislation and citizenship is complex; it rests upon no single reason. Unquestionably, the approaching independence of Western Samoa was the factor which served as the catalyst for the adoption of these resolutions. American Samoans fear that American Samoa will be separated from the United States and, against their wishes, made a part of this new nation. U.S. citizenship and incorporated territorial status will forestall such a move, and they are advocated for this reason, if for no other.

. . . .

Economics is also a factor underlying the request for citizenship. With limited opportunities available in American Samoa, many of Samoa's high school graduates leave the islands. As they tend to represent Samoa's brightest youth, literally American Samoa is exporting its brains. However, once in Hawaii or on the mainland United States, they report difficulty in obtaining positions of responsibility, and attribute this to their lack of citizenship. Thus, not alone will the improved economic conditions which it is believed will result from organic legislation help to slow this emigration, but citizenship is looked to as the means for improving the lot of those who do leave.

*Id.* at 126.

230. *Id.*

231. POLITICAL STATUS COMM'N REPRINT, *supra* note 94, at 124.

(2) union with Western Samoa, (3) "incorporated" status, with an organic act (similar to Guam or the Virgin Islands), (4) commonwealth status (similar to that of Puerto Rico), and (5) becoming a county of the State of Hawaii.<sup>232</sup> The Commission noted that the present situation

honors and protects the traditional social structure. Thus, Samoans have been able to retain control over their communal lands and the "Matai" system has been preserved. If the political status of American Samoa became such that the United States Constitution had full force and effect, these two bases of traditional Samoan society might well be undercut.<sup>233</sup>

After listing its opinions concerning the advantages and disadvantages<sup>234</sup> of the Samoan *status quo*, the Commission recommended, in spite of all other possible courses of action, the retention of the existing Samoan system.

What American Samoa needs most at this moment is to maintain its traditional culture, which is embodied in its communal-land and matai systems. Major change in the political and social order would abruptly deprive Samoa of its strong traditional foundation and thrust it into a position it is not yet ready

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232. *Id.* at 10, 14, 17, 15, 282.

233. *Id.* at 30.

234. *Advantages*

1. The present system has the great advantage of familiarity . . . .
2. The present system honors and protects the traditional social order structure. Thus, Samoans have been able to retain control over their communal lands and the "Matai" system has been preserved. If the political status of American Samoa became such that the United States Constitution had full force and effect, these two bases of traditional Samoan society might well be undercut . . . .
3. The present system allows Samoans to incorporate their traditional method of government into the framework of democratic institutions. Members of the Senate are chosen by "Samoan custom by the County Councils" . . . and many local officials are appointed with an eye towards Samoan custom.
4. While not U.S. citizens by birth, American Samoans are still entitled to a number of privileges as members of the American family . . . .

*Disadvantages*

1. [I]t is not truly democratic. The Senate is chosen from the ranks of registered Matais, and a number of other officials, from the Governor and Chief Justice on down, are appointed by persons not responsible to the Samoan electorate . . . .
2. At this time, "All civil, judicial, and military" power in American Samoa is vested in the Secretary of the Interior . . . .
3. . . . .
4. The present system is essentially "colonial" . . . .
5. Under the present system neither the Governor nor the judges are truly independent. The Secretary of the Interior may hire and fire without consulting the very people whose daily lives are affected by his decision.
6. The present practice of appointing top officials gives rise to many potential abuses of the principle that power should be separated, checked and balanced . . . .

*Id.* at 123.

to occupy.<sup>235</sup>

In 1976, when Congress considered legislation providing for the popular election of American Samoa's governor and lieutenant governor, it again faced the broader issue of organic legislation for the territory and urged increased autonomy if nothing else.<sup>236</sup>

Presently, the confusion over the consequences of organic legislation for American Samoa appears to be the dominant congressional state of mind. Samoan authorities, however, seem to be becoming more supportive of organic legislation. A 1975 memorandum from the Office of the Samoan Delegate-at-Large urged enactment of organic legislation, although part of the rationale for American Samoa's support was to achieve congressional delegate status for its Washington representative which has, in the interim, been achieved.<sup>237</sup>

#### VII. *KING V. ANDRUS*: JUDICIAL CONTRIBUTION TO THE AMERICANIZATION OF SAMOAN CULTURE

Recently, for the first time, a direct legal attack on the recognition of Samoan culture took place in *King v. Andrus*.<sup>238</sup> This case arose from a criminal action brought by the Samoan government against King for his "willful failure to pay Samoan income tax and to file an income tax return in violation of pertinent sections of the U.S. Internal Revenue Code of 1954."<sup>239</sup> The High Court of

235. *Id.*

236. *Election of Samoan Governor and Lieutenant Governor: Hearings on H.R. 13523 Before the Subcomm. on Territorial and Insular Affairs of the House Comm. on Interior and Insular Affairs*, 94th Cong., 2d Sess. 28-29 (1975).

237. The 1975 memorandum of the Samoan government also raised the constitutional issues without answering them definitely.

American Samoa is now preparing for an organic act, but the chiefs and people fear that our lands and matai system will not receive the continued protection they deserve, under the provisions of the Constitution of the United States. Accordingly, we propound the following questions with an optimistic view and a fairly based belief that Congress will give our cause scrupulous consideration in the light of justice and compassion. The questions are:

1. Whether legislation restraining alienation of our communal or family lands to non-Samoans and maintaining our matai system (culture) on which our daily social, political and economic life is based, violates the Fifth Amendment of the Constitution, and, since our land and matai systems have been successful and beneficial to both the government and people for seventy-five years, should they be maintained?
2. What would be the effect of abolition of these two traditional principles on our culture, or way of life and happiness, and the matai system embodied in the Constitution and Code of American Samoa?

MEMORANDUM, *supra* note 129, at 1.

238. 452 F. Supp. 11 (D.D.C. 1977).

239. *Id.*

American Samoa found King guilty of the charge in a trial in which King was not afforded a jury.

King appealed to the district court, alleging that the Secretary of the Interior's failure to apply the United States constitutional right of trial by jury to Samoan criminal proceedings represented a constitutionally impermissible extension of the Secretary's governing authority over the islands.<sup>240</sup>

The district court agreed. The court examined the holding of *Downes v. Bidwell*, where the Supreme Court held that the right to trial by jury was not applicable to the unincorporated territory of Puerto Rico, reasoning that only the fundamental rights of the constitution apply on their own initiation to United States territories.<sup>241</sup> The right of a jury trial is not such a fundamental constitutional right; therefore, it did not apply to the unincorporated territory of Puerto Rico. Following this precedent, trial by jury had not been required in American Samoa.<sup>242</sup>

King, in appealing his conviction, cited *Duncan v. Louisiana*,<sup>243</sup> as overruling the earlier *Downes* decision in holding that a state may not withhold the right to a jury trial in "serious" criminal cases.<sup>244</sup> The court in *Duncan* reached its decision by finding that the right to trial by jury in such criminal cases was a fundamental right of the United States Constitution, which was embraced by the due process clause of the Fourteenth Amendment.<sup>245</sup>

The government in the *King* appeal contended that *Duncan* related to Fourteenth Amendment due process requirements and was inapplicable to the case of an unorganized, unincorporated territory such as American Samoa.<sup>246</sup> Although Fourteenth Amendment due process requirements and the rights accorded citizens of unincorporated territories are both spoken of in terms of "fundamental rights," no court up to that date had specifically applied the precedents of one to the other.

The district court in *King* specifically rejected this government argument. It found that *Duncan* had, in fact, overruled *Downes sub silentio*, and therefore trial by jury was now required in criminal

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240. *Id.*

241. *King v. Morton*, 520 F.2d 1140, 1143 (D.C. Cir. 1975). See note 158 *supra*.

242. *American Samoa v. Willis*, 1 A.S. 635 (H.C.A.D. 1911).

243. 391 U.S. 145 (1968).

244. *Id.* at 162.

245. *Id.* at 149.

246. *King v. Morton*, 520 F.2d 1140, 1147 (D.C. Cir. 1975).

prosecutions in American Samoa.<sup>247</sup>

The United States Circuit Court of Appeals for the District of Columbia reversed the district court decision, accepting the government's contention that Congress had granted the Secretary of the Interior the power to ensure the preservation of Samoan culture.<sup>248</sup> It remanded the case to the district court, narrowing the issue to the question of whether American Samoa had become sufficiently "Americanized" to support a system of jurisprudence which included the right of trial by jury in criminal cases.<sup>249</sup>

The district court heard testimony on the issue. The court, in investigating the components of traditional Samoan culture that would be most resistant to the application of jury trials, focused on the *ifoga* and the *matai*. The *ifoga* was the customary practice "whereby one family render[ed] formal apology to another for a serious offense committed by one of its members."<sup>250</sup> The Secretary of the Interior contended that under the *ifoga* system, if a formal apology "were accepted by the family of a victim of the crime [in question] no jury [of Samoans] would convict the accused."<sup>251</sup>

The Secretary of the Interior also argued that the control exercised by the *matai* over their families prevented the obtaining of an impartial jury of peers. Two witnesses, Barbara Sena, a former public defender of American Samoa and A.P. Lutali, a *matai* and Samoa's Washington Representative, testified that despite *matai* customs, an impartial jury could be obtained, although they did not recommend its use.<sup>252</sup>

A number of Samoan officials and Margaret Mead believed the jury trial system could not be effectively adopted to aspects of traditional Samoan culture, especially to the customary functions of the *matai* and *ifoga*.<sup>253</sup> Some emphasized the unfortunate timing of such a decision, when traditional culture was being threatened.<sup>254</sup> Other Samoan officials were more moderate, testifying that trial by

247. *Id.*

248. *Id.* at 1140.

249. *Id.* at 1161.

250. King v. Andrus, 452 F. Supp. 11, 13 (D.D.C. 1977).

251. *Id.*

252. See Record at 2-90 (statement of Barbara A. Sena), King v. Andrus, 452 F. Supp. 11 (D.D.C. 1977); Record at 629-61 (statement of A.P. Lutali).

253. Record at 96-169 (statement of Salenoa S.P. Aumelogo, Pres. of the Senate); Record at 229-97 (statement of Ifau Maigututia Tuia, Speaker of the House); Record at 170-226 (statement of Dr. Margaret Mead).

254. *E.g.*, Record at 170-226 (statement of Dr. Margaret Mead); Record at 591-628 (statement of High Chief Napoleone Tuitelelapaga).

jury was feasible in the near future, in five to ten years, when education would be greater and the older generation would be less influential.<sup>255</sup> *No one* supported the immediate institution of jury trials. The district court, contrary to the almost unanimous views of the experts and other witnesses it had heard,<sup>256</sup> held for King, finding that American Samoa had become sufficiently “Americanized” to adopt the United States system of jurisprudence based upon a right of trial by jury.<sup>257</sup> The court not only created new law but made a finding contrary to the weight of the evidence, preferring “uniformity” and “Americanization” over continued cultural differences. The district court’s opinion implicitly reinforced the views of judges<sup>258</sup> and congressmen<sup>259</sup> that democratization requires an anti-*matai* position.

### VIII. FACTORS REINFORCING THE UNITED STATES INFLUENCE IN AMERICAN SAMOA

The United States legal and political impact on Samoan culture is being reinforced by educational and economic changes brought about by the federal relationship.

#### A. Education

American education policymakers, after an initial lack of concern, have been seriously searching for an appropriate policy to foster English language skills and to prepare Samoans for a technological world as well as preserve Samoan language skills and maintain traditional values and attitudes.

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255. Record at 591-628 (statement of High Chief Tuiteleleapaga).

256. The court heard the testimony of 13 witnesses: eight native Samoan officials, two continentals in positions of authority in Samoa, two continentals based in the United States but with authority over these issues in Samoa, and Margaret Mead, the anthropologist who had done significant work on Samoan customs. See Record 11, 17.

257. *Id.*

258. [T]he people of Samoa, as their constitution indicates, cling with remarkable tenacity to their ancient customs and their communal family land holdings and way of life with its Matai system of titled and privileged heads of families set above the untitled people of the community. For 60 years the United States has recognized and supported these customs. But they are wholly inconsistent with our American system of individual enterprise and property rights, and would appear, therefore, be doomed to ultimate destruction . . . .

STUDY MISSION, *supra* note 61, at 169 (statement of Judge Albert Maris), *quoted in Samoan Judiciary*, *supra* note 91, at 586.

259. See also the statement of the House Committee on Public Lands that the *matai* system was “undemocratic and inconsistent with American principles.” Report to the House Committee on Public Lands in the Pacific Islands 7-9 (an undated, unpublished report filed in the National Archives with H.R. 4500, 81st Cong., 1st Sess. (1949)).

Compulsory schooling was instituted, from 1903 to 1932, to require that Samoans develop an adequate command of English. In 1932, an education commission representing the Barstow Foundation inspected the Samoan education situation and recommended a policy that would promote both English language competency and the preservation of Samoan culture.<sup>260</sup> A dual objective for education was formulated, which served as the ostensible guide for the Samoan curriculum over the 1932 to 1961 period.<sup>261</sup> It was designed (1) to give all children of American Samoa an elementary education in the English language; (2) to expose them to the vast field of knowledge which literacy in English would allow; and (3) to make them increasingly conscious and proud of their Samoan heritage.<sup>262</sup> Beginning in 1963, educational television became a critical component of American Samoan education. Secondary education was extended to all children in the islands and a new concern was placed on vocational education.

The educational system remains controversial. The continued emigration from the islands — sixty-five percent of all 1976 high school graduates left the islands<sup>263</sup> — the continued inadequacy in English skills,<sup>264</sup> and the continued dearth of employment opportunities have caused concern.<sup>265</sup> The problems with the education system have elicited a variety of responses including the elimination of educational television, a return to fundamentals of education,<sup>266</sup> a concentration on Samoan values,<sup>267</sup> and the development of a higher education system.<sup>268</sup>

It is most difficult to demonstrate the precise relationship between Western education and the deterioration of Samoan culture. It is important to note, however, that United States policy on Samoan education has been directed toward preserving Samoan cul-

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260. ECONOMIC DEVELOPMENT ADMINISTRATION, U.S. DEPT. OF COM., ECONOMIC DEVELOPMENT PROGRAM FOR AMERICAN SAMOA 67 (1969) [hereinafter cited as ECONOMIC DEVELOPMENT PROGRAM].

261. *Id.*

262. The history of educational development in American Samoa is found in *id.* at ch. 4.

263. COMPTROLLER GENERAL, U.S. GENERAL ACCOUNTING OFF., AMERICAN SAMOA NEEDS EFFECTIVE AIDS TO IMPROVE GOVERNMENT OPERATIONS AND BECOME A SELF-SUPPORTING TERRITORY 13 (1978) [hereinafter cited as COMPTROLLER GENERAL].

264. *Id.* at 30.

265. *Id.* at 12. Even the Samoan immigrants to Hawaii have not been particularly successful at finding jobs. *Id.* at 13.

266. This was the approach advocated by High Chief A.U. Fuimaono, former Samoan Delegate to Washington, in his 1977 gubernatorial campaign. BISHOP, *supra* note 222, at 11.

267. This was almost a consensus position among the 1977 gubernatorial candidates. *Id.*

268. COMPTROLLER GENERAL, *supra* note 263, at 16-17, 29.

ture while simultaneously stressing English language and vocational education, elements that are obviously not in concert with the preservation theme and most likely in conflict with the goal of preserving Samoan culture.

### B. Economic Participation

The debate surrounding the Samoan education system centers on the desire to retain a traditional culture while simultaneously permitting Samoans to manage more effectively their economy. There has been a gradual change from an abundant agrarian subsistence economy<sup>269</sup> to an economy dependent upon the public sector for income, employment, and imports to feed and clothe itself.<sup>270</sup> Unemployment has remained high, between eighteen and twenty percent, a figure roughly the same as in 1970.<sup>271</sup> Some discount the high rate of unemployment, recognizing that many Samoans reject paid employment and prefer to engage in traditional subsistence agriculture to provide for their families.<sup>272</sup> This view is reinforced by the fact that as of November 1977, out of an estimated population of 30,000, 16,000 persons were aliens, approximately 7,000 of which were illegal aliens.<sup>273</sup> Aliens dominate the tuna canneries, the principle industry in the islands; they are employed in large numbers by the Samoan government, and receive local social service and transfer payments.<sup>274</sup> More than half of Samoa's high school graduates leave the islands each year,<sup>275</sup> a clear indication that Samoa's cash economy is unable to compete with those of Hawaii and the Western United States.

These economic pressures have forced the Samoan government to rely more heavily on the federal system for financial assistance. The amount and type of participation by American Samoa in the financial aspects of the federal system has aroused debate among island officials concerned with the maintenance of Samoan

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269. *Id.* at 11.

270. The government of American Samoa now employs over 45% of the total labor force. *Id.* at 11-12.

271. DEVELOPMENT PLANNING OFF., GOVERNMENT OF AMERICAN SAMOA, A SEMI-ANNUAL REPORT ON ECONOMIC INDICATORS 7 (1978) [hereinafter cited as ECONOMIC INDICATORS].

272. *Id.*

273. COMPTROLLER GENERAL, *supra* note 263, at 12.

274. Aliens comprise 50% of the tuna industry's labor force and 25% of the government's employment positions. *Id.*

275. ECONOMIC INDICATORS, *supra* note 271, at 7.

culture. Gradually, despite a continuing self-doubt, the participation has increased.

1. *Taxation.* In 1963, the Samoan legislature passed its first income tax legislation, "The Samoan Income Tax Act,"<sup>276</sup> in the hope that vesting greater responsibility in the government would allow American Samoa to become less dependent on the United States for its financial needs. The Act provides, in part:

(a) The income tax laws in force in the United States of America and those which may hereafter be enacted, where not clearly inapplicable or incompatible with the intent of this section, are hereby adopted by American Samoa, and shall be deemed to impose a separate territorial income tax, payable to the Government of American Samoa.<sup>277</sup>

This adoption of United States income tax law transpired because of American Samoa's need to raise local funds, yet the wholesale adoption of the tax statute is indicative of Samoan discomfort with taxing themselves. In his testimony before a House subcommittee, the Honorable Tima Ma'o of the Samoan House of Representatives said:

[W]e always depend on our Governor and our Director of the Office of Territories for helping us, and not only that, we in Samoa try our best to work, tax ourselves, even though it is a hard thing to try to get in the minds of Samoans, taxation. We [have been] afraid of taxation in the past.

Three years ago we adopted your Internal Revenue Code of 1954 because we wanted to be taxed ourselves.<sup>278</sup>

United States officials, who had urged this tax, hoped that funds raised under the statute would grow and that eventually local resources would play a greater role in the Samoan economy.<sup>279</sup> Al-

276. The Samoan tax differs from the federal tax by exempting estate and gift taxes and by providing a minimum tax of 2½% of adjusted gross income.

277. A.S. CODE tit. 34, § 203 (1973); Legislature of American Samoa, P.L. 8-1, 1st Spec. Sess., 8th Legis. (Jan. 1963).

278. *Department of the Interior and Related Agencies — Appropriations for 1968: Hearings Before a Subcomm. of the House Comm. on Appropriations, pt. 1*, 90th Cong., 1st Sess. 1013 (1968).

279. As you know, last January, we adopted the U.S. tax. The Samoans did this voluntarily. All the other territories have had them imposed by Congress. We wanted local people to do this to show they wanted to be part of America and assume the burdens of citizenship, which they did.

. . . We did not have estimated tax the first year because in our law we wanted to give the people of Samoa a chance to build up a history of what their taxes would be in order to assist them on estimating in the future. I think in the future these [revenues] will go up. As those industries that have had tax exemptions get under the income tax the tax is going up very substantially. I think this is our big hope.

*Department of the Interior and Related Agencies — Appropriations for 1965: Hearings Before a*

though there has been some increase in locally raised revenues, the amounts have not yet fulfilled those expectations.<sup>280</sup>

2. *Tariffs & Trade.* American Samoa, like other offshore areas, with the exception of Puerto Rico, is outside the common market of the United States. It may, if fifty percent of a product's value is added, and if a substantial transformation in the product results in American Samoa, transship without tariff to the United States. Although there have been studies of the potential utilization of this statutory benefit, as well as an effort to implement it,<sup>281</sup> American Samoa has been unable to capitalize on the statute.

Approximately ninety percent of the territory's exports and approximately one-half of its total private sector employment are the result of the two tuna canneries on Tutuila. Development of the industry has been dependent upon the benefits of federal law. In 1948, the Secretary of the Navy, in a directive to the Governor of American Samoa, authorized the development of a tuna cannery if it were not inimical to the public interest or to that of the local inhabitants.<sup>282</sup> In May 1953, the Commissioner of Customs ruled that tuna caught in foreign waters could be loaded and processed in American Samoa and could enter the American market duty free, rather than pay the thirty-five percent tariff on imported tuna.<sup>283</sup> The next year, Van Camps tuna cannery opened on Tutuila, followed a decade later by a second tuna cannery, Star Kist.<sup>284</sup> A third private company, American Can, opened a plant to produce the cans for the other two.<sup>285</sup>

The government of American Samoa has been concerned that changing federal policy may prevent the continued operation of these plants. Bills have been introduced which would change radically the structure of the United States tuna industry and eliminate the benefits now granted to the Samoan plants.<sup>286</sup> Furthermore, the United States has paid little attention to the economic impact of its

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*Subcomm. of the House Comm. on Appropriations*, 88th Cong., 2d Sess. 1426 (1964) (statement of Hon. Rex Lee).

280. In fiscal year 1977, Samoan income taxes comprised \$5.6 million dollars, 10% of the authorized receipts and approximately 50% of the locally generated funds. About two-thirds of these taxes were paid by the two tuna canneries on the island. COMPTROLLER GENERAL, *supra* note 263, at 9-11.

281. ECONOMIC DEVELOPMENT PROGRAM, *supra* note 260, at 292-96.

282. *Id.* at 234.

283. *Id.*

284. *Id.* at 235.

285. *Id.*

286. *See, e.g.*, H.R. 18456, 90th Cong., 2d Sess. (1968), which would have prohibited

foreign policies on American Samoa. A good example of this inattention is the United States position on the question of the ownership of approximately twenty-five uninhabited islands in the South Pacific. New Zealand, Great Britain, and the United States have for some time claimed one or more of them based either on initial discovery, treaty recognition, or occupation.<sup>287</sup>

The issue was of little concern until coastal states began asserting jurisdiction over 200-mile exclusive economic zones (EEZs) and until the independence of the Gilbert Islands and Tuvalu brought the matter to a head. The Samoan position was that abandonment of United States claims to the disputed islands would be tantamount to a major retreat from the traditional United States assertion of the principle of international management of highly migratory species. The vast areas of tuna fishing grounds involved would revert to the undisputed jurisdiction of countries which are unlikely to agree with our highly migratory species position, and the economic viability of Samoa's tuna industry could come to depend solely on whatever arrangements may be reached in the South Pacific Regional Fishery Agency. Unless the United States succeeded in participating in an acceptable joint management scheme under that agency, the declaration of 200-mile EEZs by such mini-states as the Gilbert Islands, Tuvalu, and New Zealand (in respect to Danger Island, near American Samoa) could deal a severe and perhaps fatal blow to the Samoan economy.

The United States, however, saw little security interest in the atolls and islands in question, and, eager to withdraw from an image of an imperial power, formally abandoned its claim, despite the American Samoan protests.<sup>288</sup>

3. *Federal Programs.* American Samoan participation in the federal grant programs has increased sharply in recent years. By January 1978, the government of American Samoa was participating in 167 or thirty-one percent of the 533 federal grant programs available to the territory. Together with direct congressional ap-

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certain vessels from landing, in the United States, fish or fish products taken on board such vessels on the high seas from any foreign flag vessel.

287. The disputed islands claimed by the United States and the United Kingdom are the six islands and atolls of the Niue Islands, the four atolls of the Ellice Islands, and the eight islands and atolls of the Phoenix Islands. The islands claimed by both the United States and New Zealand were the three atolls of the Tokelau Islands and the four atolls of the Northern Cook Islands.

288. See Memorandum from the Government of American Samoa to the United States Government (Oct. 1978) (copy on file with the *California Western International Law Journal*).

propriations, federal funds contribute to seventy-five percent of American Samoa's budget. Twenty-five years ago, the ratio was one-to-one.<sup>289</sup>

The impact of these programs has been twofold: to tie the economy more closely to the United States and to weaken further the traditional culture.<sup>290</sup> The result has been a commercial link whereby two-thirds of American Samoa's imports come from the United States and their exports are directed almost exclusively toward United States markets.<sup>291</sup> Even Samoa's tourism comes predominately from the United States.<sup>292</sup>

Samoa's economy should, however, also be linked to its South Pacific neighbors. At this time, the work in the private sector is filled by aliens, legal and illegal. Even with an exception to the Fair Labor Standards Act, Samoan wages are much higher than those of Western Samoa or Tonga, and this has attracted thousands of aliens, both legal and illegal, to Samoa.<sup>293</sup> However, other economic linkages have not resulted from this immigration. Union with Western Samoa is periodically discussed and rejected.<sup>294</sup> Without going to that extreme, economic relations with Western Samoa and other South Pacific islands should be fostered.

4. *Institutional Developments.* The management demands of federal funds and the rising economic expectations of American Samoans have forced the creation of institutions in American Samoa based on standard industrial attraction models. The Samoans have initiated two developmental institutions. The Bank of American Samoa was originally a wholly owned government corporation and performed both developmental and commercial banking functions. It was the only local depository and the major single source of borrowed funds within the territory, but it had no status outside the territory.<sup>295</sup> In recent years, this situation has changed. It is

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289. In 1952, the United States contributed \$668,000 to American Samoa's \$648,000. COMPTROLLER GENERAL, *supra* note 263, at 7-8. Federal financial assistance to Samoa and other territories was subject to recent interagency review. See White House Interagency Committee on Territories, Questions 3, 4 & 5 (Feb. 14, 1980) (copy on file with the *California Western International Law Journal*).

290. COMPTROLLER GENERAL, *supra* note 263, at 19-20.

291. ECONOMIC DEVELOPMENT PROGRAM, *supra* note 260, at 121.

292. An estimated 70% of Samoa's tourists come from the United States. *Id.* at 196.

293. COMPTROLLER GENERAL, *supra* note 263, at 12.

294. POLITICAL STATUS COMM'N REPRINT, *supra* note 94, at 118-19.

295. The Bank of American Samoa was not governed by the Federal Reserve Board, it was not covered by the Federal Deposit Insurance Corporation, and its checks were not accepted outside of American Samoa. *Id.* at 173.

now only a development bank with the commercial banking functions being undertaken by branch banks of the Bank of Hawaii.<sup>296</sup>

The American Samoan Development Corporation (ASDC) was founded in 1962 as a "growth investment fund" under a broad charter permitting it to invest "in progressively diversified ventures for the enhancement of the American Samoan economy."<sup>297</sup> Under the rubric of a "Samoa for Samoans" and strong government pressure, the corporation obtained almost 1400 subscribers and over \$360,000 of local equity. Unfortunately, failure to meet the subscriptions and a large investment in the Pago Pago Inter-Continental Hotel has resulted in the ASDC being in constant financial difficulty. Studies had indicated a promising tourist potential for American Samoa, but the hotel has had troubles resulting from the vicissitudes of airline routes to the Pacific and management difficulties.<sup>298</sup>

To meet the personnel demands of the federally funded programs, the Samoan government has been forced to employ a variety of program experts under special contract, most of whom were recruited from the United States. This is expensive and deprives the grant programs of a continuity of direction, because there is a high turnover rate among these contract employees.<sup>299</sup>

## IX. CONCLUSION

From the commencement of the American Samoa-United States relationship, the United States has, as part of its policy toward American Samoa, sought to protect Samoans from the alienation of their land and to preserve the Samoan way of life and language. This policy has had a deterrent effect on the speed at which Samoan traditions are deteriorating, but has been unsuccessful in preventing the deterioration. The subtle influences that are a part of a political-economic relationship with the United States have taken their toll. The adoption of an American political structure, increased education, economic dependency, and participation in the federal grant programs all have served to undermine the traditional Samoan way of life. A weakened *matai* system has resulted from recent political events — an elected governor and lieutenant governor, and elected representatives who need not be

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296. ECONOMIC INDICATORS, *supra* note 271, at 10.

297. ECONOMIC DEVELOPMENT PROGRAM, *supra* note 260, at 179.

298. *Id.* at 181-85.

299. *See generally id.* at 194-232.

*matai*. Recent court decisions have further eroded the *matai* authority. In addition, characteristics of land ownership in American Samoa are vulnerable to United States constitutional attack should the political relationship between American Samoa and the United States change due to organic act legislation. The gradual erosion of the traditional Samoan culture and customs has accelerated, change has been institutionalized, and the demise of American Samoan culture appears to be unavoidable.