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Constitutional Ambiguity as Policy: The U.S. Federal Framework and American Samoa

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For *Noah*.

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Abstract

United States territorial policy represents an alternative constitutional framework in the relationship between the federal government and the nation's constituent political units. It departs from the uniform tug and pull aspect of the debate over the extent of federal powers versus states' rights, yet the existing structural tensions between the federal government and individual territories are separate and contextually unique in each instance. Furthermore, the Constitution of 1787 is explicit in the dispensing of federal responsibility and authority over U.S. territory. At some point, this provision served as a springboard for an evolution of a discrete relationship for each insular area with the U.S., forcing us to re-examine republican ideals inherited in a participatory citizenship and constitutional order. This differentiation is particularly evident with American Samoa. This research is a case study importing evidence from primary textual sources, critical analyses, and reports from multi-disciplinary sources, an exposition on the institutionalization of policies and structures that buttress the islands' territorial relationship with the U.S.

Chapter I — the Policy Problem

The United States is a federal republic composed of fifty states of the union and the District of Columbia. We often forget that the U.S. also has within its jurisdiction eight outlying insular territories—three *freely associated* states (Federated States of Micronesia, Federal Republic of the Marshall Islands, and the Republic of Palau), four *unincorporated* and *organized* territories (Guam, Puerto Rico, the U.S. Virgin Islands, and the Northern Marianas Islands), and one *unincorporated* and *unorganized* territory. The last classification is a political status that characterizes the relationship of American Samoa to the U.S. It is this group of islands that are the focus of the following study. The type of relationship for American Samoa is constitutionally construed such that fundamental rights enumerated in the Bill of Rights are granted as a matter of law; that specific provisions of the Constitution are exempted in their otherwise compulsory application in the fifty states; and that American Samoans are the only territorial residents who are not accorded rights to a naturalized citizenship, but instead are considered U.S. nationals. American Samoans are eligible to become U.S. citizens once they meet residency requirements in the U.S.

Out of these political conditions arose a gradual concern over the *constitutionality* of the piece-meal suitability of the nation's supreme law of the land, e.g. a waiver in the Sixth Amendment guaranteeing the right to a trial by jury of one's peers; the Fourteenth Amendment's equal protection clause, and the citizenship clause of the Fifteenth Amendment. These are in addition to the territory's vested policy powers to regulate immigration, collect excise taxes and tariffs and the territory participation in regional bodies of international cooperation. The merits of these differentiated powers elicit from an evolved treaty relationship between the U.S. and

American Samoa that has transmuted into the territory's exclusive organic body of laws. In a sense, the treaty assured federal recognition and protection of the cultural lives of Samoans, both the federal and territorial governments have sought to conserve the traditional cultural constructions that govern daily life in the local villages and family units.

In a comment in *The University of Chicago Law Review*, Robert A. Katz asserted that the United States' authority over its overseas territories "has always proved morally problematic" (1992, p. 780). There continues to be no reasonable expectation for U.S. insular possessions acceding into the union as states themselves, and thus become co-sovereign governments with the other fifty states, to that of the federal government. This is tantamount to saying that these territorial communities will not "ordain and establish" the Constitution of 1787 as the supreme law of their lands (*ibid.*). Likewise, Joseph E. Fallon argued that both the legislative and executive branches of the U.S. government have unconstitutionally conspired to end-run around the Constitution in acquiring island territories, thereby creating a hierarchical federal framework that went against the spirit of a "well-defined political union, whose member states possessed equal powers" (1991, p. 23). Similarly, E Robert Statham, Jr. was more censorious when he said that the "United States has lost its way; it has deviated from its core animating principles. This is evident in the way in which the nation deals with its territories" (2002, p. 2). The title of Statham's book contains the word *tyranny*, obliquely suggesting the irony of a present injustice emanating from our current government, as compared to the oppression from which the U.S. Constitution emerged to vanquish 227 years ago. Katz, Fallon, and Statham identify a constitutional dilemma sufficiently large enough perhaps to warrant re-examining the intents and purposes envisaged in the nation's governing document.

Of course, the nation's expansion during its nearly 240 years of existence was not a sudden event. Each incorporation of new territory brought with it its own unique set of circumstances. Before the promulgation of the Constitution of 1787, the country already faced the prospect of dispensing good governance for newly acquired territory west of the original thirteen states. The Continental Congress thus devised the Northwest Ordinance of 1787. This document conveyed not only the political *constitution* of territorial self-government for lands north of the Ohio, but the philosophy underlying the creation of successive co-sovereign states in relation to one another and to that of the federal government (Stayman 2009, p. 3). Hence, Section XIII reads,

“... to provide also for the establishment of States, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest.”

During the course of its development, the Northwest Territories came into the union as five states that—along with twenty-six others entering into the union from acquired territories—added geographic features and natural resources to a burgeoning nation in search for strategic assets. A largely unsettled North American continent in the nineteenth century found the United States confronting other powers with established regional suzerainties. Other territories came under the aegis of U.S. control after war, e.g. the Mexican-American and Spanish-American Wars; while other territories were absorbed through treaty instruments, such as the Louisiana Purchase, the Oregon territories, and Alaska. Yet it was the Spanish-American War at the end of the nineteenth century that found a victorious U.S. more than just a nation expanding across the continent, but as a world power. As a concession from Spain, the U.S. came swiftly into possession of four of its overseas island colonies, two of which were granted independence

(Cuba in 1903 and the Philippines in 1946). It marked the end of one empire, and the feasible beginning of another.

U.S. insular possessions posed an immediate policy problem for the federal government. It introduced a new political classification into the federal hierarchy, the *unincorporated* territory. An unincorporated territory was a juridical expediency formulated by the U.S. Supreme Court in decisions coming under the heading of the Insular Cases. These cases created a body of jurisprudence allowing the federal government to depart from the path to co-sovereignty spelled out in the Northwest Ordinance, allowing Congress to administer the territories on a case by case basis under the territorial clause of the U.S. Constitution. The narrowly-decided 1901 *Downes v. Bidwell* case was the keystone decision allowing Congress to delimit specific constitutional provisions from having effect in the territories. Thus, under the territory clause, Congress could establish statutory exemptions in accordance to the political exigencies of that territory. Territorial residents were accorded U.S. citizenship (except in the case of the Philippines and American Samoa), and fundamental liberties guaranteed in the Constitution were granted to inhabitants as a matter of law. Another definitive Insular Case was *Balzac v. Porto Rico* (258 U.S. 298, 1922), decided whether territorial residents—U.S. citizens notwithstanding—could claim their rights inhered in the Sixth Amendment. Again, it was decided that the right to a trial of one's peers was superseded by an existing judicial framework in the territory. Jesús Balzac's appeal demonstrated that Puerto Rico did not have to grant him a jury trial, owing to the extant constitutional traditions of the territory *in situ*.

Furthermore, as an *unorganized* island territory, American Samoa lacks an organic act, a necessary step toward statehood. Organic laws form the original basis of permanent government in the U.S. They enshrine the founding documents of this country in addition to the territory's

own, as the source from which all laws derive their authority. They supersede ordinary legislation and executive decisions, so long as the constitution developed out of this process called for a republican form of government with three co-equal branches of government.

Why should territorial policies as an extension of the U.S.'s federal political structure matter? One approach in responding to this question was to illustrate the 'unconstitutionality' of this development, to show the precariousness of representative and republican traditions. The philosophy elucidated in the preamble of the Constitution is subservient to the affairs of state to our own peril. These are the positions essentially taken by Katz, Fallon, and Statham above.

Another approach is to illustrate that national and world events were circumstantial, producing executive and legislative branch territorial policies that were not designed to circumvent the Constitution in the short or long run. Rather, the territorial policies that *did* evolve were contingent upon a scattering of in place social constructions in the acquired insular areas. Not only were U.S. envoys, ministers, and military personnel sensitive to the cultural practices of those peoples inhabiting the territories, they were also custodial purveyors of good local government. To the extent the federal government preserved U.S. law and perpetuated a traditional local order, law and order was a statutory compromise.

The case of American Samoa serves as an exemplar illustrating this latter thesis. Control of local village and district affairs was devolved to an existing and ancient network of chiefly authority, while formal authority was invested in a military and later civilian government. While the argument is not to rebut the constructivist and perhaps libertarian arguments posited by Katz, Fallon, and Statham, nor is the following a manifesto to continue an unjust, unconstitutional, and undemocratic political association between the U.S. and American Samoa. The purpose here is to

extend the discussion over the characteristic social constructions that buttress the federal-territorial relationship.

Therefore, this study will survey the development of U.S. territorial policy in the case of American Samoa since 1900. It will elaborate upon cultural and political issues borne out of these policies as a direct result of its constitutional status as an unincorporated and unorganized island territory. It will take up a discussion of the policy ambiguities inherent in the federal-territorial relationship and expand the understanding of formal and informal insular social and political institutions prevailing as American Samoa's current constitutional framework. By the end of the analysis, the study will show the significance of social construction in policy design, a theoretical framework hewn along these propositions: that territorial policy structures benefits *and* burdens upon American Samoans. This is contextually specific to the residents, thereby aligning 'political orientation' and 'participation patterns' of territorial residents mobilized along "material (resource) and symbolic (interpretive) purposes" (Ingram *et al.*, in Sabatier 2007, p. 98). Relating this proposition to territorial policy, it will demonstrate the inequalities of the policy in correlation to usual constitutional practice in the U.S., and not necessarily the unequal application of the U.S. Constitution to the territorial policy.

However, this paper uses specific nomenclature that are defined in this section. The following study grapples with Samoan cultural phenomena, and they are briefly treated here, in addition to brief definitions in the varying gradients of legal types of U.S. territorial policy. A fundamental attribution of Samoan society is that it is organized along traditional aspects of family and communal life, centered on observing *fa'asāmoa*. Translated as "the way of Samoa," it is a way of life dedicated to fulfilling an individual's commitment to their commonly-held traditions, and to an informal system of rules and institutions regulating the relations between

members of society. As a philosophy, *fa'asāmoa* continues to be a powerful *weltanschauung* of island life, divided into components that are critical in their relational valences to each other—the *'āiga*, the extended family that is the constituent unit of Samoan society; the language of the islands, *tautala Sāmoa*; *gafa*, the genealogy and oral history of the family; the chiefly *matai*, or the head of the *'āiga*, the head of the village, and the district *matais*; the church, or *lotu* (Samoans were heavily proselytized by Christian missionaries in the nineteenth century); and ceremonial commitments, or *fa'alavelave*. Out of *fa'amatai*—the system of chiefs with ranked titles that are conferred by their extended kinship networks through election—is the political-kinship network vested with the leadership and authority of the family and community. Located in this strata is the responsibility of overseeing the welfare of the *matai*'s family and community. Out of these definitions, a sense of the informal is obtained in the chiefdom typology of social organization, that all resources—including land—are communally owned and redistributed by the elites, to the commoners.

In the U.S. federal constitutional repertoire of territorial rule, there evolved two distinct legal classifications: *incorporated* and *organized*. The *Insular Cases* of the Supreme Court interpreted the legal architecture that continues to structure federal-territorial political relations, and out of the keystone case *Downes v. Bidwell* came the “unincorporated” condition of political association to the U.S. This classification permitted the federal government to administer through the plenary powers of the Constitution, and in accordance to the contextual social and economic conditions of the territory. It also carried with it the likelihood that the territory will *not* accede to the union as a state, however. An *unorganized* territory has yet to receive a legislative act from Congress authorizing the territory to incorporate the *organic laws* of the United States, which accepts these principles as the first order of constitutional government.

Chapter II — Literature Review

A discussion of American Samoa's territorial association with the United States territory must develop from exploring conceptual linkages interlaced through constructions of political and cultural institutions, both in American Samoa and in the U.S. John Connell's discourse of development in Pacific Island communities is relevant to the political development discussion of American Samoa's territorial association with the U.S., and aptly pointed to the "counterpoise" of such constructions like "*culture and development*," *good governance*, as opposed to "*culture and tradition*" (2007, pp. 116-7). The following review of the literature portrays a continuing political ambiguity of constitutional order for the islands' political status, and that these oppositions were remedied not accidentally or forcefully, but rather conveniently and provisionally.

What is a territory? The answer to this question is inherently a political one. As a matter of policy, the administration of territory was first and foremost on the agenda of the federal government, promulgating the Northwest Ordinance prior to the adoption of the Constitution of 1787. The document pronounced upon the vision of the early republic's enlargement, a *fait accompli* for a union of states with vast territory awarded to the new country, west of the original thirteen former British colonies, and north of the Ohio River. These territories were at the time both unorganized and unincorporated, and the overall vision in the Ordinance was a hope that through settlement and good governance, they would come to join the republic as free, equal, and sovereign states. The disposition of territory not coming under the control of a state in the union, according to Article IV, Section 3, Clause 2, came under control of Congress, who "shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other

Property belonging to the United States” (McKibben 1990). However, as the republic expanded beyond the Mississippi River, and settled by treaty its borders with British North America to the north and Spain in Florida to the south, federal control was a function of establishing a military presence in addition to installing nominal civilian governments across the continent with tacit Congressional oversight, e.g. the Louisiana Purchase, the Mexican Cession, and Oregon Country. By 1912, all territories in the contiguous U.S. were admitted as states of the union, leaving two outlying territories in Alaska and Hawai’i, which were admitted later as states themselves by 1959. Hence, by the height of the Cold War, the U.S. was comprised of fifty constituent republics, states admitted into a federal union that were former colonies and territories themselves. These last dates represented the end of the so-called “first phase” of territorial expansion in the U.S., the accession of *incorporated* territories beyond the thirteen original states of the union (Stayman 2009, p. 1).

The “second phase,” according to Stayman’s model, was the acquisition of insular areas, islands and island groups with both extant, autochthonous populations and established communities with traditions of interethnic socialization. These territories came under U.S. rule through diplomatic means, and with particular emphasis to the 1898 Treaty of Paris ending the Spanish Empire in the Western Hemisphere and the Pacific, marked the beginning of the U.S. as a world power. The Spanish-American War yielded the U.S. with new territory in its acquisition of Cuba, Guam, the Philippines, and Puerto Rico. Shortly afterwards, Cuba was granted immediate independence in 1902, and the Commonwealth of the Philippines was granted the same in 1947. In addition to the U.S. Virgin Islands and American Samoa—themselves coming under U.S. control via treaty instruments—Guam and Puerto Rico were accorded unincorporated

political association with the U.S. as outlying territories with “no expectation of statehood” (Ibid).

Stayman identified a third classification of U.S. territorial rule, calling this phase the “U.N. Trusteeship of the Pacific Islands” phase. This period followed World War II and was distinguished by the conveying of several formerly Japanese-occupied Micronesian archipelagoes into a U.S. administrative receivership under United Nations auspices, for the purposes of political tutelage, economic development, and decolonization (Ibid.). However, these trust territories’ political association with the U.S. were less ambiguous than those islands acquired during the second phase of expansion. This distinction was borne out by a trust condition which conferred upon the U.S. federal government an obligation to negotiate a path toward independence. Only one grouping, the Commonwealth of the Northern Mariana Islands, entered into a permanent political association with the U.S (p. 8). The other island groupings elected different paths forward with varying degrees of relationships (Federated States of Micronesia, the Federal Republic of the Marshall Islands, and the Republic of Palau), with each still having their respective yet undetermined political settlements with the U.S. regarding specific domestic policies, i.e. economic aid, drug trafficking and interdiction, and status of forces agreements.

These territorial typologies were thus contingent on the national historical circumstances that were fundamentally political questions. The expansion of the United States immediately after the Revolutionary War required a constitutional provision for the disposal of territory beyond the borders of state jurisdictions, necessitating a political hierarchy of U.S. lands delineated between federal from state powers, and vice versa (Fallon 1991). The expansionary nation-building period, as noted above, did not stop at the shores and borders of the North

American continent. Historian Ernest Paolino's discussion on the origins of an imperialist U.S. foreign policy was one not for the expressed purpose of territorial aggrandizement and military adventurism, but a policy driven primarily out of commercial interests. His political account of William Henry Seward's term as Abraham Lincoln's Secretary of State illustrated a public career of a man committing himself to establishing American economic suzerainty around the globe. Paolino described Seward as a *proto*-imperialist, advocating expansionist policies in both the Senate and as the country's top diplomat during the Civil War (and whose ideas were hamstrung by the disruptive effects of the War). His "views on commercial expansion were clear, logical, and supported by well-conceived programs, which, if they did not entirely succeed in achieving their objectives, nonetheless laid a solid foundation for his successors to build upon" (1973, p. 25). Stayman's "second phase" of territorial acquisition was premised on Seward's foundation for a global American economic hegemony. In fact, Paolino cited an 1854 address made at Yale in which Seward asserted that the U.S. Constitution was a governing document permitting the unabashed advancement of economic prosperity, saying that the federal government must primarily see to "the protection of commerce that they pass laws, make treaties, build fortifications, and maintain navies upon all the seas" (*in* Paolino, p. 26). Furthermore, Seward's doctrine led to the U.S. purchasing Alaska from Russia in 1867, and the rather dramatic annexation of Hawai'i in 1898; in addition to furnishing the rationale for acquiring the islands of eastern Samoa in 1900 and 1904 by treaty with the Samoans themselves.

These categorical definitions of what a territory is and what it is not do not mutually exclude other possible definitions. Extending this discussion on definitions, Joseph W. Ellison wrote in *Opening and Penetration of Influence of Samoa to 1880*, that modern imperialism developed out of industrialism and nationalism. In relation to the nation's rapid industrialization,

an incipient arrogance formed in an American exceptionalism, propped up by a gilded ideology hewn along political populism and Protestant evangelism. It was predicated in part on pseudo-Darwinian theories of survival, and Herbert Spencer's adaptation of the latter into social evolution. Of course, the U.S. was not the only power whose intelligentsia, political, and economic elites were besieged with lofty notions of superiority. The historian Paul Johnson described an iron triangle between the nation's business elites, an emergent mass journalism that tended to influence public opinion, and political party machines in both Republicans and Democrats, whose leadership saw potential dividends in an expansionist foreign policy laden with its own discrete jingoism and nationalism (2001, pp. 610-12). Big businesses found themselves on par as citizens in the evolving order of a progressive American civil society (Moore 2011), lauded by print media venerating industry as the superlative of success in the West, headed by political leadership with a stake in both the process and the outcome. It suggested an embrace of what Palen identified as "Anglophobia, economic nationalism, agricultural subsidization and colonial expansionism" (2014, p. 180); in addition to raising tariffs and imposing trade quotas—hedged by an American suspicion of overseas powers. Hence, the political discourse was suggestive of a U.S. ascendancy through global commercial hegemony.

The distinction implied by British, German, French, and American strains of this triumphalist ideology was not much different from a "second-order social Darwinism" according to Edward Said (1979, p. 206), driving the impetus for colonial expansions elsewhere in the world: Africa, South Asia, China, the Middle East, and in the Pacific. The U.S.'s second-phase territorial acquisitions were arguably manifestations of the *Manifest Destiny* ideology. The inhabitants of these islands were in need of the beneficent and tempered rule of American

republican and constitutional government. This characterization of U.S. insular areas can contribute to our evolving understanding of what a territory continues to be.

These definitions of colonial-periphery were (and are) artifacts of macro-processes fermenting within the imperial metropolises. These observations were counseled by a besieged intelligentsia, whose worldviews followed closely to vogueish unilineal notions of human social development. It is helpful to induce a critical anthropological perspective on the development of an ideology emanating from an American, British, or German exceptionalism as it related to their respective colonization of outlying territories, for example. A significant contribution of the nineteenth-century to world history was its bridging of temporal life away from matters of faith as teleological interpretation, to a temporal life accommodating secular, scientific and rational understanding of natural phenomena (Goldschmidt 2000, p. 791). Charles Darwin's *On the Origin of Species* set in motion a dizzying number of discussions on the development of the human species, injecting biology as much as an explanation to human social development insofar as it reified the evolution of the species itself. The above discussion of William Henry Seward's corollaries of an American commercial hegemony beyond North America, therefore, found substantial currency in divining U.S. imperialist rhetoric in view of these developing ideas.

By the time Franz Boas founded the American branch of cultural anthropology, "anthropologists had been in the business of trying to explain the diversity of human behavior, including of course why some people were 'primitive.' The nineteenth-century explanations were of two persuasions: *biological determinist* or *cultural evolutionist*" (Ibid. *emphasis mine*). Boasians were engaged in an overall effort to expunge the ideological, racist, and unilineal ideas from an expanding catalogue detailing the vastness of human social variation. Boasians espoused such explanations as something they perceived as *a priori* culturally deterministic, and

that biology had nothing to do with cultural artifacts. Seward's fetishizing of U.S. overseas outposts necessitated the subjugation of existing communities in the territories under the U.S. flag. Yet the cultural determinists were marginal in preventing a "system of cultural evolution" from exerting too much of an effect on a national political discourse. Thus, expansionists drew heavily from what Edward Said termed *a second-order Social Darwinism*, for "it drew on pre-existing ethnic prejudice and xenophobia and justified the hegemony over 'savages' and other exploitable people. . . . This also effectively put native people 'in their place'" (Goldschmidt 2000, p. 791).

This applies to the unincorporated and unorganized U.S. territory of American Samoa as it continues to indict against perceived ideo-political excesses of the progressive era empire-building at the end of the nineteenth-century. The eastern half of the volcanic archipelago was an *outpost* since the harbor at Pago Pago was a natural, deep-water anchorage for ocean-going vessels. President William McKinley directed the U.S. Navy to assume administrative control of the islands shortly after the Deed of Cession in 1900. The 'outpost' aspect was ostensible in the initial name of the U.S. presence, officially calling it the *United States Naval Station, Tutuila* (James 1949, p. 96).

Indeed, the diffusion of power and authority from Samoa's new territorial masters were for all intents and purposes a manifestation of logistical practicality, particularly since the domestic governance of the island's inhabitants was devolved to them by the station's naval authorities. This meant that the territory's traditional cultural forms were tacitly allowed to continue organizing Samoan society in their villages; and through the institution of *fa'amatai*, the Samoans continued to structure relations along *fa'asamoa* behavioral prescriptions underlying kinship and distributive institutions. Moreover, the Deeds nonetheless granted total

jurisdiction of the territory to the U.S., which included the Constitution and the laws of the U.S. As the territory's executive, the naval commandant was also its governor, and regarded the welfare of the islands' inhabitants as one of his first duties, up to and including the legislating and adjudicating on local matters that may come before his administration (Ibid. p. 97).

The historiography of the U.S. Navy in American Samoa depicted the "territorial (vs *colonial*) practices" of the service in its rule of the area as characterized primarily by its indifference to the internal affairs of the residents. The territorial regime was unconcerned about improving upon or altering existing Samoan institutions, particularly with regard to the Samoan communal land tenure system (Croese 1913, p. 10). To Samoans, land was considered to be without title in the traditional Western sense, or that it was not to be individually owned, but rather held in common. It was tended to as it was allotted to members of small local clans by heads of families, or *matai* (McMullin 2005, pp. 110-7), to cultivate. 'Title' in the traditional Samoan conception of the idea conveyed not individual ownership through fee-simple title in common-law traditions, but rather as a resource managed by the Samoan *matai* through "the transitive or impermanent nature of 'custom' and conceptions of 'custom' in Samoa (leaving) of the islands customary land open to the influence of those political and social dynamics shaping customary norms" (Olson 1997, p. 156).

Roy James' asserted that American Samoa was a group of islands bereft of any real natural resources save for its land. This supports George Steinmetz's contention that the U.S. pursued different insular policies that were adjusted on a case by case basis. They were policies reflecting the distinct differences between one insular territory and another. The federal government Influenced to the extent in which it invested itself toward instilling civic values through a modern and progressive democratic pupilage. Thus, "modern overseas colonial

practices flowed partly from colonizers' racial/ethnographic pre-conceptions of the people they were colonizing—images that preexisted colonial context and were often quite resilient in the face of countervailing evidence” (Steinmetz 2005, p. 341). The communalization of land in American Samoa, for example, effectively continued to prevent a turn toward neoliberal economic development of the territory's economy. This was anathema to the sale and alienation of land in a common-law society like the U.S., undercutting capital investment. It appeared as though the U.S. portion of the islands were separate from American society along the same principle lines excluding American Indian tribes from the liberalizing effects of development.

McKibben argued along these deliberate and differentiated constitutional categories. She posited that the federal government's continued administration of territories like American Samoa, Guam, and the U.S. Virgin Islands via the plenary clause of the Constitution will prohibit the equalization of these territories on par with states (1990, pp. 257-93), so long as the federal system implied a hierarchical political stratification of the republic's constituent political units. It is not enough for Congress to legislate and the President to determine policies for island territories, but “with no reciprocal federal responsibility to move (these territories) into statehood,” such policies maintain a holding pattern, “(distorting) the original meaning of the territorial clause and may further the exploitation of the territories at the expense of their development” (p. 264). E. Robert Statham adopted a more poignant argument with respect to the U.S.'s acquisition of island territories as one of the country's greatest and unaddressed injustices. He referred to the marginal integration of the individual territories as an inherently unconstitutional enterprise. Statham questioned both the applicability of the U.S. Constitution outside the federal and state framework. He dispatched perceived expectations for territories like American Samoa to continue adhering to traditional modalities governing the social lives of its

inhabitants, while remaining within the American republic as both unincorporated and unorganized constituencies (2002, p. 87).

Leibowitz pointed to the *fa'amatai, fa'asamoa*, the *'aiga* and land tenure traditions constituting territorial culture. It combined with the territory's distance from the mainland, serving to insulate "the Samoan people from the cultural impact of the U.S. political leadership" (1989, p. 423). Citing from a developing body of federal territorial jurisprudence, a wide latitude of power was initially granted to the President by Congress. It allowed the discretion of the executive branch to "let be" the internal political development of the Samoans. Later, barring any threat to the national security of the U.S. or the territory, forcing the President to exercise war powers, the Secretary of the Interior thus should not assume any material interest to interfere in the regular orders of local territorial government exercised lawfully under local constitution (Ibid.).

Likewise, Robert Katz posited that U.S. insular policy is bifurcated by circuit splits in which cases coming from American Samoa are situated in the D.C. Circuit Court, while other Pacific territorial cases are heard in the Ninth Circuit Court, two federal courts with separate interpretive traditions that, Katz argues, injected a considerable degree of federal policy dissonance as it related to the insular areas. The courts' development of jurisprudence around the insular cases reflected their contemplative perspective of U.S. authority over its territories, "to reinforce the legitimacy of the United States," and to begin to ameliorate the "morally problematic" issues emanating from their annexation (Katz 1992, p. 780). So long as territories remained unincorporated, the courts thus acknowledged the proposition that these insular areas were "not expected to join the Union as states, (and) for this reason, their inhabitants will never

‘ordain and establish’ the federal constitution (and the government it created) in the manner anticipated by the document itself” (Ibid.).

Departing from political matters, the material upshots of *territoriality* in American Samoa on the lives of its inhabitants have nevertheless maintained its own accumulation of societal effects. Similar to other colonized societies, American Samoa’s pre-colonial state of socio-economic self-sufficiency experienced fundamental changes after coming under the aegis of the U.S. Navy in 1900, and then later under the U.S. Department of the Interior in 1951. An economic equilibrium was disturbed at the level of the village and subsequent generations of American Samoans became increasingly alienated from earlier seasons of resource abundance. Stuart takes up this discussion, declaring “the capacity of these areas to stand on their own feet economically has (changed) under American rule. Traditional sources of economic viability have been lost. New ones, in some cases, have been found. Some territories have grown less self-reliant” (Stuart 1999, p. 133).

The starchy tuber taro root, a staple in the Samoans’ diet and once grown in sufficient quantities, must now be imported from independent Samoa. Conversion of what little cultivable land from growing staple crops to growing instead commodity crops for export may bring in hard currency, but at the expense of forgoing native nutrition (Ibid.).

Another aspect of socioeconomic change is the attraction of American Samoans to greater economic opportunities on both the continental U.S. and Hawai’i (Bishop 1977, McGarvey and Seiden 2010). This signifies a demand-pull type of emigration from the territory. The evidence indicate the exacerbating of the immigrant experience as cultural dissonance patterns warps individual agency from family-based to individually-centered identities. Bishop identified these factors as correlates of neglectful administration of the territory. Chief among

them were effects from out-migration, in-migration, an education system in need of reform; growth devoid of long-running capital investments; bloated government bureaucracy, and cultural disorientation. Samoan immigrants to Hawai'i find themselves working alongside *native* Hawaiians in tourist service occupations, and both are thus adversely affected by social stratification, resulting in cultural adaptability among them to “survive in a capitalist society” (Mayeda *et al.* 2005, p. 106). The acculturative strain forced by a “a competitive, individualistic, and capitalistic culture severely deepens role strain” for both Hawaiian and Samoan individuals, putting pressures on families as these groups show higher incidence rates with incarceration, dropping out of school, health problems, and alcohol consumption (Ibid.).

In sum, American Samoans living in the diaspora lead lives in societies driven by a neoliberal political economy structured around commodification and individuation. It overturns previously held cultural paradigms where individuals move from a colonial to a postcolonial condition. According to Boerhringer and Giles, this state of suppression is found in “exploitative employment patterns, rural depopulation, chaotic urbanization, poor health and housing conditions, a competitive and destructive educational system and other repressive ideological institutions” (1977, p. 61). The following analysis seeks to contribute to a growing concern over the institutionalized and systemic disparities that accrue between American Samoa and the U.S. through their exclusive political association.

Chapter III — Methodology

In a scathing attack on academic research, Linda Tuhiwai Smith in *Decolonizing Methodologies* argued that any product borne out of ‘academic’ or ‘research’ activities, as applied to an investigative scholarship of indigenous peoples, are foregone perversions of the truth. Her assertion is an indictment against the Western system of scientific inquiry. More specifically, any attempt to empirically discern fact and phenomena from communities’ alien to the ‘academic research(er)’ not only distort interpreted artifacts beyond any reasonable expectation for a subjective hope of recovery, but that they continue to buttress a prevailing colonial paradigm between paternalistic metropolitan cores and subaltern colonial peripheries. Smith’s thesis efficiently dispatched the process of research as an endeavor to understand the colonized individual; or that research in and of itself was in fact a method for passively continuing coercive hegemonic policies. Therefore, how can *academic research* possibly reflect any reality of the colonized?

Short of an indigenous scholarship representing themselves through active research, there is no other means to escape a research methods hamstrung by Heisenberg’s *uncertainty principle*, if we accept Smith’s version of the ethical argument on academic research.

Smith’s diagnosis for a continued academic research methods which render the subject silent or distorts the *weltanschauung* of colonial communities in the case of social science research, presents an irreconcilable crisis to a post-positivist representation, if it is to speak to an authoritative and reflexive body politic. This study is an exploration of a specific and relatively homogeneous community, whose facets of daily life is affected in some form or fashion by a territorial constitutionalism heavily embedded with endogenous cultural constructions, or the

legal technologies of colonial government policy. It will fail to resolve the issue of an “indigenous” scholarship as described above given the *etic* perspective with which the research question has no choice in assuming. Yet the research question does not set out to further endanger the ethical shortcomings of representing the evidence as such, nor will a claim be made as to an interpretation of the historical record and corresponding cultural facts of the case, no matter Smith’s charge of an unavoidable violence done via an inconspicuous ideological recklessness. In fact, this study does not envision encompassing colonial life in totality in relation to a colonial policy, but rather the project is taken from the evidence that an evolution of a colonial policy took and continues to take place. In order to undertake this work, an interpretation of an assembled historical record *and* a corresponding assemblage of cultural artifacts must be made subjectively with a view to render as much of an objective analysis as possible from the text, insofar as the text is able to speak to policy impacts for the making of an analysis.

Case study research requires the researcher to meet this imperative, considering the whole of the effect of colonial policy, which we may never know in totality. Therefore, the onus is to dissect the case into its constituent units as rationally as possible and along disciplinary boundaries, using established expository conventions of academic inquiry as the modicum of exchange in disseminating research results. This is not to say that Smith’s argument is turned upside down, since it is a valid criticism of the institutionalized garnering of knowledge. The latter is not in dispute, although it calls into question the methods, ere the conclusions, if this research were on a grander scale. But it isn’t. The scope of this study is the size of which to render the thesis in *Deconstructing Methodologies* a preposterous proposition given the research question’s limitations. In fact, the methodology employed is benign to the extent that it

considers the evidence from texts that speaks to the research question, and in spite of a separation in terms of space from the community under consideration in the research question.

A Discussion of Methods

First, the research question asks, how can we characterize the federal-territorial association between the United States and American Samoa as an exclusive—yet ambiguous—constitutional arrangement? Second, the research question is specific enough to say that the subject is a geopolitical area, American Samoa; that the issue is its territorial relationship with the United States; and that the time-specific aspect of the research question spans the period of American Samoa's territorial control by the United States, from 1900 to the present. The research seeks to further understand the unique federal territorial arrangement between American Samoa and the United States, developing out of the U.S. constitutional framework, via policies that separate the territory from other outlying insular areas. In other words, drawing from the island's territorial experience, what can be demonstrated in an analysis of policy that separates American Samoa from the United States in the distance covered by being an unincorporated and unorganized territory? Furthermore, what historical influences served as drivers for this political disparity? Thus, the logic underlying the rationale for using the case study design is evident in the exclusivity of the community, the policy, and the timeframe, foreclosing on other designs that are empirically quantitative and inductive-based. The case study design allows a more efficient explication of qualitative questioning and deduction and facilitates the discussion of abstractions. Of course, the design permits the researcher to accomplish the main purpose: description. Description will allow the research to pose two fundamental questions: (a) *what* is going on (with American Samoa)? And, (b) *why* is it going on (with American Samoa)?

Hence, it is the *wholeness* of the policy issue for the territory, and through description will a fuller understanding of the problem develop from the assemblage of textual evidence. David de Vaus wrote “(t)he case also must be seen within the context in which it exists. By examining this context fully the researcher can gain a fuller and more rounded picture of the causal processes surrounding a particular phenomenon” (2001, p. 235). The case study will necessarily adopt an interdisciplinary approach to meet de Vaus’s condition of a *full context* of the *particular* (policy problem) under consideration. The material analyzed for this case study supports the two themes as listed in the abstract of the research proposal:

- Differentiated federal policies as applied to the island territory in particular; and
- Indigenous cultural influences that effect local governance structures.

The textual assemblage will allow an interdisciplinary discussion of policy analysis starting from the first theme, derived from primary source materials, e.g. federal and territorial government publications reporting on the federal-territorial political status or any topic of consequence to the territory’s association to the U.S., up to and including Congressional hearings. Also included will be general reports written by naval governors during American Samoa’s rule by the U.S. Navy. It includes court decisions effecting the territory’s association with the U.S., as well as press accounts of American Samoa as they relate to government. The second theme is a discussion of a political anthropology of the islands’ extant social institutions which ultimately govern the allocation of resources, i.e. land holdings, marriage, familial alliances, etc. within and among kinship structures. The Samoan *fa’amatai* system is the crux of the analysis that lends itself to materially explain the territory’s continuing policy of association with the U.S. These relationships have underlying political connotations at the village, district, and territorial level, and this will necessarily draw from a body of ethnographies and ethnologies

written by anthropologists and other observer-sources. This will tease out the structural webbing that undergirds territorial governance.

When writing on an interdisciplinary research problem, the goal is to honor and follow as much as possible, the argumentative and rhetorical modes of the respective disciplines to which the research question takes up. These disciplines in the text are: political science, cultural anthropology, and history. In each mode, their respective uptake deserves the due diligence required in their respective instruction in the analysis of American Samoa's territorial relationship. The analytical strategy is the contextual analysis of *all* primary and secondary sources for evidence that triangulate the drivers of a salient federal preference for this particular insular case's administration, *and* a salient territorial preference for the island's continued political association with the federal government.

In sum, the inherent shortcomings are closely aligned with Smith's criticism of academic research of a community removed from immediate observation for analysis. No interviews were conducted as a part of the method elaborating further on the contextual policy problem. But for the purposes of this study, these are insurmountable logistical issues limiting the project, and the alternative is that of a robust audit of the literature to account for text supporting a novel interpretation of American Samoa's government-to-government relationship with the U.S. In this case, Smith's argument is defused since it draws from a litany of texts discussing the island's historical, political, cultural and economic context. But we still cannot expunge Smith's contention as we may never wholly know from an *emic* perspective, the beliefs, desires, sentiments, and attitudes held in common by a Samoan body politic that may or may not reinforce the territory's political association.

Chapter IV — Results and Discussion

Alexis de Tocqueville in *Democracy in America* was possibly one of the earliest commentators of the significance of the role of “social” power in the interrelations of a democratic citizenry. He understood power as a fluid thing. It can be transacted, expended, acquired, diluted, and invested. As a political construction, social power was best used for beneficial purposes, a thing used in the interest of the common welfare. Used for any other purposes, social power was thought to exist outside the good offices of the commonwealth, and therefore represented an endangering of the democratic order, a threatening tyranny, or an unresolved “vehemence” of unchecked social passion. De Tocqueville observed that the democratic traditions of the United States were susceptible to the absolute strength of the combined efforts of organized individuals. He captured in his discussion a national temperament for political balance, a feature De Tocqueville linked to the checks and balances role of constitutional government serving as a counterbalance to the occasional tyranny of the majority, for “human beings are not competent to exercise (unlimited power) with discretion” (1835, p. 260). As long as the legislature is not held hostage by the slavish affectations of a social majority; and the executive exercises the powers of that office properly; and the courts maintain their independence from the other two national powers of government, then a tyrannical influence of the majority stands less of a chance to arrest the deliberation of civic and public discourse in the constitutional fabric of democracy, insofar as social power is constitutionally constrained (*ibid.*, p. 261).

But this is not a discussion about tyranny. It is a discussion of a topic that skirts around the edges of a policy whose history is flush with social influences. The policy “ambiguity”

concerning U.S. territorial matters should not connote that a hole exists in the policy design connecting American Samoa to the U.S. legally. Instead, the “ambiguity” flows from the normative effects of the U.S. policy, which in turn become the *causal* preposition in which the policy question is re-examined (Pierson 1993). This is where the question lies, in the liminal state of territorial affairs that seems to situate American Samoa as a challenge to constitutional equity—a deeply political problem for both the federal and territorial governments. As Pierson noted, a constitutional ambiguity is not the end result of a policy needing further attenuation, but rather the beginning, as the following will hopefully illustrate. All in all, the policy design of a U.S. relationship to American Samoa is institutional in scope. This analysis approaches the policy as an evolving institution with historical precepts heavily endowed by social constructions—both cultural and political institutions whose hegemonic agencies are *a priori* accepted *ipso facto*.

This study surveyed the development of U.S. territorial policy in the case of American Samoa since 1900. Cultural and political issues borne out of these policies were a direct result of its political status as an unincorporated and unorganized island territory. As a case study taking up a discussion of the policy ambiguities inherent in the federal-territorial relationship, it focused on expanding the understanding of formal and informal insular socio-political institutions prevailing as American Samoa’s current constitutional framework. The research question, therefore, asks what policies and institutions continue to buttress American Samoa’s political association with the U.S. Conversely, the question will consider the conspicuous absence of federal policies in this case that allow for the continuation of these territorial policies.

This analysis flowed in two parts. The first part covered the half-century of American Samoa’s rule under the U.S. Navy from 1900 to 1951. It assumed two discussions on what

qualified as an account of how (a) a complex of state-level authority was hierarchically imposed on a chiefdom level society by fiat through an instrument of U.S. power; (b) the pragmatic stratification between American Samoa's traditional *fa'amatai* as the structure of village authority; and on the polar opposite end, the proconsular apparatus in the duly appointed territorial government personified in the naval station's commanding officer. The second part took up two discussions on the federal-territorial relationship as it evolved since President Truman issued his Executive Order transferring the responsibility of American Samoa's government from the U.S. Navy to the Secretary of the Interior in 1951. This section was divided into two arguments on (a) that an updating of its federal association, American Samoa moved toward deepening its institutionalized peripheral relationship with the U.S., despite the diminution of the islands' strategic geographic importance due in large part to technology; and, (b) what emerged was an asymmetric dependence of American Samoans upon a neoliberal model of economic development.

This study was a re-appraisal of a federal policy that sought to initially (and temporarily, perhaps) resolve what it meant for an estimable American constitutionalism and an equitable citizenship in its overseas territories. The subduing of islands and peoples into a discrete, peripheral, and dependent political category, potentially undermines these social and political constructions. Rhetorically the connection is metonymical in nature. It draws out these distinctions in their proximal relationships and is an extension on what it means for both the United States and for American Samoans in their relationship to a reflexive national (and cultural) identity.

In the 114 years as a United States territory, American Samoa's political association with the U.S. is necessarily a multi-disciplinary interpretation. The territory's political status is not

just strictly a discussion of governing relationships, legal arrangements, and civil institutions. A study of American Samoa's relationship with the federal government must be derived from historical sources, cultural ethnographies, government reports, political and philosophical commentaries, and other substantive social research conducted in the territory that contribute in a practical manner toward an illustration of the tensions of this political relationship under review. The following is therefore a composite case study that aims to offer perhaps a slightly different perspective without upending previously made insights and observations on this particularly perplexing territorial question.

A body of literature expounded upon these inherently political issues as a postcolonial conversation emerged about the self-determination and sovereign agencies of peoples under the yoke of imperial powers. The U.S. was not spared from these imperialist and colonialist accusations. Sociologist George Steinmetz distinguished between a *non-territorial* 'imperialism' and 'colonialism,' and argued that American Samoa gradually moved from the former to the latter as political conditions in the U.S. warranted the transition.

The progressive and manifest ideology of the late nineteenth century influenced how U.S. policy actions—and perhaps inaction—ensconced the legal status of American Samoa. The stylistic and pragmatic approach of the federal government of the day was provisioning the islands with a local government and enjoining it under the non-negotiable and unassailable territorial clause of the Constitution, which some have argued rendered the territories inferior to the rest of the Union since they were *unincorporated* lands. The latter inference is particularly instructive. The delimiting authority in Article IV, Section 3, Clause 2 of the Constitution, empowered Congress “to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States,” which, in so doing, also subsumed a

territory's autochthonous population under the plenary powers of Congress. However, this was to come later in America Samoa's case. In fact, Article II, Section 2, Clauses 1 and 2 of the Constitution were the initial grants of constitutional authority that brought the territory under U.S. control. The first clause granted the President the disposal of the nation's armed forces as Commander in Chief, and the second clause granted the ability to conclude treaties and conduct the nation's foreign policy.

In December of 1899, plenipotentiaries from the United States, Great Britain, and Germany concluded a Tripartite Convention. The agreement demarcated the Samoan archipelago at the 171° West, with the U.S. acquiring those islands east of that longitude and Germany acquiring those Samoan islands west of it. President McKinley immediately issued an executive order placing those islands under the direct control of the Department of the Navy in February 1900, whose naval officers subsequently negotiated a 'Deed of Cession' with 21 Samoan chiefs, that "ceded, transferred, and yielded up" Tutuila and Aunu'u "unto the Government of the United States of America" (James 1949, p. 96). The same was done four years later for the Manu'a group of Samoan islands located 70 miles east of Tutuila. Not until 1929—a quarter of a century later after the 1904 Deed of Cession relinquishing the Manu'a group to the U.S.—did Congress exercise its authority to legislate a government for American Samoa. The lack of expediency in which Congress exercised its Article IV powers to give ascent to these treaties, in addition to vesting the President with full powers to govern the territory as he saw fit, remains unknown. Hence, "There is no clear explanation for the 25-year lag in Congressional action [...] It treated the area as a conquered, unorganized territory awaiting further Congressional action. Congress *never acted*" (Leibowitz 1989, pp. 416-7; emphasis mine).

It became apparent to the federal government of the challenges involved after the U.S. acquired eastern Samoa, for it did not have a sizable population, nor was it under the process of being settled by Americans. In addition, the islands' inhabitants did not initially speak English, and they followed cultural customs that Americans at the time considered *uncivilized*. These factors combined to preclude American Samoa as a territory from embarking on a developmentally political path toward eventual statehood (Stayman 2009, p. 6). Furthermore, American Samoa's acquisition—along with other island possessions in the Pacific and the Caribbean—represented a new phase in the expansionary program of the United States. It was a departure from the philosophy of equality espoused in the *Northwest Ordinance of 1787*, a law pre-dating the U.S. Constitution, as well as a document preserving any notion of the expectation for territorial areas accession as states of the Union. This second period began, characterized by the 'unincorporated' status of the territories. It effectively turned the U.S. into a colonizing power itself, since these new possessions were under the direct purview of the U.S. government, and on lower rungs of a federal political hierarchy of subnational polities.

South Pacific Preludes

The territorial question that came out of the regular course of exercising these federal powers was, and continues to be, a vexing issue. Previous literatures point to the abruptness with which the U.S. found itself as a world power at the end of the Spanish-American War, wresting away from a former world empire what was left of her possessions in the New World and in the Pacific. These propositions are true to an extent, but acquiring former Spanish dependencies and adding them to U.S. territory did not represent a new trend in the country's geographical expansion. The U.S. continued to add new lands as an expanding nation-state going back to the

Treaty of Paris that ended the Revolutionary War. However, these insular areas represented an alien concept to a distinctly nationalist American ideal, the latter embracing an Anglo-Saxon and Protestant worldview and ideology. Puerto Rico, Cuba, the Philippines and Guam were for centuries under the rule of an undemocratic monarch, represented by royalist Spanish-speaking governors-general, governing over a predominantly Spanish-speaking population, and tended to by a parochial Roman Catholic clergy. Although, Cuba and the Philippines were tentatively granted their entry into the community of nations, Puerto Rico and Guam continued to remain as territorial artifacts of an imperialist and colonialist past.

Likewise, the commercial contacts and *entente cordiale* policy the U.S. government maintained with a number of Samoan chiefly elites since William Henry Seward's days as Secretary of State during the 1860s, preserved a medium-term interest in the South Pacific in lieu of establishing a coaling station and waypoint for oceangoing ships in Samoa (Ellison 1938, pp. 89-98). President Rutherford B. Hayes' Secretary of the Navy, Richard Thompson, supported an American protectorate over the archipelago for the primary purpose of establishing a naval outpost in Pago Pago's desirable deep water port (p. 90). Before their 1900 cession as U.S. territories, the federal government in the personages of the military and diplomatic envoys—and to a certain degree through commercial merchants—were in positions to exert authority and influence in the Samoan islands; so much so that in January 1878, Samoans concluded a treaty with the U.S. This was a significant development in the affairs of the islanders, which “granted American citizens extraterritorial rights and all the privileges that might hereafter be granted to the citizens of any other nation,” (p. 91). Furthermore, the treaty's Article II declared that,

“Naval vessels of the United States shall have the privilege of entering and using the port of Pago Pago, and establishing therein and on the shores thereof a station for coal and other naval supplies for their naval and commercial marine, and the Samoan Government will hereafter neither exercise nor authorize any jurisdiction

within said port adverse to such rights of the United States or restrictive thereof. The same vessels shall also have the privilege of entering other ports of the Samoan Islands” (I A.S.C. 6, 1973).

Ellison recounted a Congress that was initially reluctant to go down the road of establishing a *protectorate* with the Samoans, quoting former Assistant Secretary of State Frederick W. Seward (son of W. H. Seward, who served in this capacity concurrently with his father as Secretary of State) from his memoirs, “the times were inauspicious for the consideration of any such project,” that the Senate would not “consent to any treaty that involved expense or obligation [...] It seemed to be considered a mark of patriotism to oppose any addition to our own country” (*in* Ellison, p. 91). The treaty was subsequently augmented by the State Department, such that it was made palatable to a Senate averse to committing the U.S. to “entangling alliances” (p. 90).

Despite the seemingly benign political pretense and commercial character of the treaty, making the islands a part of the transoceanic network of American shipping, the policy consequences were nonetheless irrevocably imperial and colonial in nature. The contradictions in policy between an unassuming Congress as mentioned above—and in line with an apprehensive American public dubious of any nascent colonial enterprise—concluded a treaty along strategic compromises. It was a variation on prolonging an ‘isolationist’ sensibility. Thus, no U.S. protectorate was established, but the Navy and U.S. business interests got their harbor at Pago Pago, and the Samoans got their friendship treaty. Although the conduct of American foreign relations in the south Pacific was thought to preclude the U.S. from consorting with other powers, the absolute effect of the treaty established the Americans as a formidable presence in Samoa, whose island delegation to Washington D.C. entreated Presidents Grant and Hayes to look kindly upon the islands as an extension of American territory (*Ibid.*). The executive branch was receptive to both domestic and foreign overtures for an expansionary foreign policy in the

last half of the nineteenth century. Domestic influences materialized from a wellspring of economic interests with an eye toward establishing an overseas economic hegemony as envisioned by William H. Seward (Paolino 1973, p. 25). Whereas foreign influences were largely indirect, they signaled the more mercurial executive branch on the allocation of military force and the application of diplomacy, as it did in the Samoa context.

This particular projection of power after the U.S. Senate gave its consent to the treaty with the Samoans in February 1878, informs us of two significant conclusions. First, the treaty occurred two decades *before* the U.S. was a *bona fide* world power at the conclusion of the Spanish-American War. This is significant in the fact that while Germany, Great Britain, France, and Japan advanced their imperialist programs in China through acquiring treaty ports along its coast line, the U.S. followed the same rubric with its negotiations with the Samoans as it established itself at Pago Pago. Furthermore, as these colonial powers secured rights of *extraterritoriality* from the Qing regime in Beijing, the U.S., too, desired sovereign agency for American citizens quartered in Samoa as if it were U.S. territory proper, with all rights and responsibilities thereto. The U.S. exhibited a shrewdness that allowed for a foothold in the scramble for colonial hegemony in the south Pacific, a strategy pursued by both the British and the Germans, for the last open toehold in the region. However, since the Americans did not pursue *de jure* jurisdiction of the island group, the British and Germans continued to exercise their economic and maritime suzerainty in the Samoan chain. It had the effect of extending a period of liminality for the *de facto* governance of the island group, which classified the archipelago as a condominium of sorts between the U.S. and the two other imperial powers. This jurisdictional ambiguity continued until the Tripartite Convention mentioned above was concluded in 1900.

Second, is the fact that the U.S. negotiated an agreement at all with the Samoan government, and that an American outpost at Pago Pago was the position the federal government took primarily out of commercial and strategic concerns. Again, Steinmetz is instructive on this point, saying the

“forms of overseas imperialism do change over time, however, and these changes reflect—among other things—ongoing developments in the metropole [...] Activity at the outposts of empire is thus shaped in various ways by processes occurring in the metropole, by interests that quite exceed the search for markets, raw materials, and cheaper labor forces” (Steinmetz 2005, p. 341).

With a legally established base for American commerce, the Samoan archipelago represented what Steinmetz labeled as a non-territorial ‘imperialist’ economic intervention. This was in contrast to the ‘colonial empire’ envisaged in the acceding of the islands as a protectorate. However, the American experience in Samoa deviated from Steinmetz’s above proposition. While he may be correct asserting other imperial powers *with interests that quite exceed the search*, imperial expansion was more than just an economic justification. Yet, in the Samoan context, it seems U.S. actions were precisely an economic enterprise since the Americans were not interested in *reproducing* a social order upon the Samoans. Neither was the U.S. interested in obtaining a singular and collective allegiance to the federal government from the islands’ inhabitants. Furthermore, the American exception in the separation of religion from matters of state rejected any notion of Christianizing the Samoans away from ‘heathen’ spiritual practices, as if Christianity represented a necessary evolutionary step toward an eventual civilized condition.

Instead, the U.S. position was undergirded by a drive to assert economic dominion in competition with other imperial powers (Ellison 1938, pp. 8-9). Ellison may be forgiven for over-romanticizing in his historiographical account in *Opening and Penetration of Foreign*

Influence in Samoa to 1880, by saying “Even the United States, with her extensive domestic markets, her vast variety of raw materials, her numerous channels for *profitable investment of surplus capital*, her wide open-spaces for a growing population, her inherent traditions of democracy, was beginning to embark” on an expansionary foreign policy that led to a U.S. footprint (p. 9, *emphasis mine*). Overlooking the apologist undertones, the reference to a surplus of American capital is crucial to behold, since a developing capitalist class looked to overseas markets not only in a scramble to gain overseas access to raw natural materials, but the consumption of their finished goods. The rise in the specialization of different economic sectors segregated their growing industrial intensifications, leading to vertical integrations and trusts. This led to international trade quotas and tariffs against foreign-made goods. Capital surplus, or manufacturing excess, coupled with nationalist ideals beholden by other colonial competitors, proposed “an escape from this dilemma, the industrialists began to demand the acquisition of colonies for the exclusive control of their markets” (*Ibid.*, p. 7).

American protectionism became a concomitant policy with a program of national expansion, and the heterodox response to the Cobdenist line advanced by British laissez-faire notions of anti-imperialist free trade (Palen 2014, p. 181). Hence, these protectionist tendencies in the U.S. “and other parts of the globe in turn came to view transnational Cobdenite efforts with great trepidation. Such advocacy was frequently viewed as part of a vast British free trade conspiracy that sought to deluge foreign markets with excess British exports, a conspiratorial view” compelling rising imperial powers Germany, France in addition to the U.S., to prevent harm from coming to their domestic industries (*Ibid.*). The outcome of these arrangements between the gilded capitalist class and sympathetic administrations, sought to circumvent the Germans and the British in the island chain who, through their own commercial machinations

with the Samoan islanders, desired to plant their national standard on lands that were the last place in the Pacific unallocated as colonies.

Not all shared in both secretary and assistant secretary of state Seward's, Presidents Grant's or Hayes's hopeful views of an American outpost in the Pacific Ocean. In a letter to then Massachusetts Congressman Henry Cabot Lodge, Henry Adams lamented that

“As financial investments, none of the Pacific Islands, except the Sandwiches, are worth touching . . . In fact they are worth less than nothing, for they require large expenditures. Nevertheless Germany, France, Australia, New Zealand and the Lord knows what other countries and governments, are squabbling for the possession of these wretched little lava-heaps” (*in* Ellison 1938, p. 10).

Adams' atavistic pronouncement was a hearkening of republican anxieties during the founding of the United States, about a Hamiltonian conviction over a sound public ways and means, or that an additional section of colonial accounts to the nation's public appropriations would invite a domestic disruption of commercial activities from which income tax collections must inevitably flow from. This was another suspicion held by members of Congress, who cared not much to appropriate from the national treasury on a perceptibly overseas adventure that both seemed constitutionally chancy and economically unproven. Alexander Hamilton's *Federalist No. 12* instructs on this point, on both the general equity and manner of the nation's collection of taxation and its general equity and manner of its use in the welfare of the republic, writing

“As far as this would be conducive to the interests of commerce, so far as it must tend to the extension of the revenue to be drawn from that source. As far as it would contribute to rendering regulations for the collection of the duties more simple and efficacious, so far it must serve to answer the purposes of making the same rate of duties more productive, and of putting it into the power of the government to increase the rate without prejudice to trade” (*in* Wright, *ed.* 2004, p. 144).

If possessing the Samoan islands by the U.S. government, (or by any other foreign government with the same auspices and intent), and the subsequent *requirement for large expenditures* to maintain these possessions—as Adams believed would happen as a result—then Congress, (expressing its adherence to the original orthodoxy on fiscal discretion), withheld its support for legislation authorizing the accession of the islands as a ‘protectorate’. The U.S.’s agreement with the Samoan delegation eviscerated any quality or character of the treaty distinguishing the U.S. as a colonial power. Congress’ intent later rebounded in both form and fashion as the U.S. came into possession of the eastern half of the archipelago noted above 20 years later; and American Samoa was indeed the embodiment of a proper territory of the U.S. in 1900, requiring at a minimum a policy from which the national government must transmit. The islands—among some other former colonial dependencies—found themselves compartmentalized by continental predilections and sacerdotal prejudices of a federal government. American interests in the south Pacific were constrained by a legacy and collective loyalty to constitutionalism an imperfect system which conveyed the country from a colonial past of being possessed itself.

The Deeds of Cession and the Early Phase of U.S. Rule

Several decades leading up to the Tripartite Convention between Germany, Great Britain, and the U.S. in 1899 resulted in a cast of merchants, naval officers and shipmen, as well as an assemblage of factious Samoan chiefs. They were all involved in melodramatic Machiavellian schemes to obtain advantage and supremacy over another and amongst themselves, with tradesmen looking to profit from the chaos however they could. Historical accounts recorded that these machinations and internecine civil warfare among the Samoans unfolded for the good

part of the last half of the nineteenth century in the Samoan archipelago, and that it nearly came to armed conflict between the three powers in Apia harbor, with the islands fast “becoming a zone of international rivalry and friction” (Ellison 1938, p. 29; Blakeslee 1928, p. 139; Leibowitz 1989, p. 414). According to James, “for a time the three nations made appearances of preserving the Samoan Kingdom as a sovereign nation, but in 1899 all pretenses were dropped and a tripartite deal for the division of the islands was worked out” (1949, p. 95).

The friendship treaty the Samoans signed with the Americans prompted the dispatch of the heavy cruisers *Trenton* and *Nipsic* to the islands to protect U.S. interests and demonstrate an American presence (Leibowitz 1989, p. 414). Later, there were two attempts to diplomatically defuse bellicose escalations, with conferences between the three powers in Washington in 1887 and another in Berlin in 1889, however, both ended in producing no accord. War almost broke out between the variously aligned native Samoan rivals and their European, and American patrons. But, then a meteorological act-of-God in the form of a robust tropical cyclone swept over the islands in 1899 on a particular day of heightened tensions—sinking all but one of the seven naval vessels from the assembled powers in Apia’s harbor. It precluded from ever knowing what would have been an alternative political and/or historical outcome if hostilities had broken out against Germany on one side and the U.S. and Britain on the other. Instead, the impasse was resolved as described above, with the British exiting the Samoan scene for colonial concessions elsewhere in the Pacific and Africa. The *protectorate* status of the islands was finally obtained as an achievement of the Samoan chiefly elites, the latter whom considered the Americans the best alternative to either of the other two colonial powers.

Article I of the Berlin agreement struck down all previously concluded treaties between the islanders and outside powers, in favor of promulgating a new agreement providing for a definitive government to establish law and order in the two divided halves, effective upon the exchange of ratified copies of the treaties between the U.S. and Germany. The form and fashion in which the U.S. came into possession was evident in the verbiage of the Deeds of Cession, but that 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 for the promotion of the peace and welfare of the people of said islands, for the establishment of a good and sound government, and for the *preservation of the rights and property of the inhabitants of said islands*, the Chiefs, rulers and people thereof are desirous of granting unto said government of the United States full powers and authority to enact proper legislation for and to control the said islands Now know Ye: — (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 . . . will obey and owe allegiance to the Government of the United States of America” (I A.S.C. 6, 1937; *emphasis mine*).

In February of 1900, President McKinley issued his executive order to the Navy Department, saying “the Secretary of the Navy shall take steps as are necessary to establish the authority of the United States and to give to the islands the necessary protection,” and on that same day the Secretary of the Navy issued an order, that “the island of Tutuila, of the Samoan group, and all other islands of the group east of longitude 171° west of Greenwich, are hereby established into a naval station, to be known as the (United States) Naval Station, Tutuila, and to be under the command of a commandant” (Croze 1913, p. 10). The first territorial intendant was Commander Benjamin Franklin Tilley, USN, which is to say that upon following up on orders to become the

station's commandant, was also the island's first acting governor. "While your position as commandant will invest you with authority over the islands in the group embraced within the limits of the station, you will at all times exercise care to conciliate and cultivate friendly relations with the natives" (*Ibid.*). Likewise, the accord agreed upon by the assemblage of Samoan chiefs and the naval officers in the Deed of Cession undergirded what is arguably the formative constitutional backdrop tying the communal system of Samoan *matai* to a rationalized apparatus of formal state authority.

As an extension of the institutional effect of the Deeds on the eastern half of the island chain is perhaps the mitigating against any further activities that occurred 75 years up to the year 1900 (Leibowitz 1989, p. 415). It was an exposure to "new religions and standards of morality; new legal systems; [...] modern weapons; threats to their lands by speculators; and Great Power politics which tended to promote Samoan leaders favorable to them, provoking or intensifying the frequent civil wars" (Leibowitz 1989, p. 415). To their credit, the Deeds settled these relatively chaotic inter-island struggles between themselves and ended the so-called great power machinations.

A naval officer dispatched to command the post at Tutuila should wince at the shrewdness of what was required of him in the execution of his duties as commandant, for not only was he the executive officer of the naval station proper, but he was also the American half of the islands' ultimate civil authority. He was chief executive, the lawmaking authority, in addition to being the highest judicial official in the land. The naval governor figuratively represented all three branches of government, and exercised those different functions in the literal sense as he exercised those duties in their respective offices. The territory's naval governor was to personify upright American governance. He must have required an

indispensably artful combination of intellectual ardor, emotional temperament, and perhaps a forthright and magnanimous personality, essential leadership traits so as to project respectability, integrity, and allegiance from the Samoans under his watch and rule. At no other time before in the nation's history was there an office created to exercise both military duties and oversee the regular day-to-day affairs of any one population. Peter Stuart wrote

“For the fledgling imperial power, it was a position virtually without historical antecedent. The only forerunner, the naval governor of Guam, had been on the job just six months. Tilley, with three decades of experience in leading men under varied conditions, was chosen to introduce American rule to Samoa” (2007, p. 90).

And that he did, beginning immediately to issue regulations forming the basis of naval rule for the station (which was at the time considered the entire territory, in addition to the ‘naval station;’ *American Samoa* as the official title for the area was not acquired until 1911 [*ibid.* p. 91]). Thus, the commandant-governor exhibited characteristics reminiscent of the proconsuls scattered throughout the peripheral provincial seats of power, promulgating the rule of Rome. Military governors exhibited a wide latitude of discretion due to the geographical distance of the peripheral-territory from the metropole-republic, since the Navy Department did not give approval to regulatory decisions rendered by the governor in the administration of his territorial duties. The institutionalizing of the new territory's government as strictly a navy matter did not receive any Congressional acquiescence, which led to the President relying on his delegated powers as Commander-in-Chief to provide for the civil authority through the military. It was necessary to obtain a general legal opinion of the U.S. Attorney General, who remarked that “neither the Constitution nor the laws of the United States have been extended to them, and the only administrative authority existing in them is that derived mediately and immediately from the President as Commander in Chief of the Army and Navy of the United States” (*in* Crose

1913, p. 11). Clarifications like these were made by the various executive departments in Washington D.C. almost on an ad hoc basis, rendering decisions on whether American Samoa was domestic and not foreign territory; whether duties may be collected on goods from the islands in the U.S. and vice versa; ruling that Samoans were *not* citizens of the United States, but still ‘owed’ allegiance to the flag; and that vessels were *not* entitled to a U.S. registry, but were entitled to fly the flag (*Ibid.*), etc.

Whether these foundations for a juridical settlement on American Samoa’s territorial association with the federal government were a result of overcoming the constitutional hurdles built in the U.S. Constitution, or if it represented a foreign policy adaptation overcoming the “limitations of administrative capacity” (Moore 2011, p. 28)—or both—in the end, the territorial government ordained for the islands confounded and frustrated theoretical frameworks; models that perhaps strained to explain the macro-practices of imperialist state expansion during the nineteenth and early twentieth centuries.

To illustrate, in his thesis concerning *state-building via private capital and political partnership* in American expansionism, Moore is dissatisfied by the classical interpretations of historical materialism in Marx, Engels and Lenin. For example, these sagacious political economists explain that their dialectic argues for capitalist society to undergo requisite stages of development before achieving an attuned state of perfect communism. It applies uniformly across all bourgeois societies with a proletarian underclass. At a certain point society will necessarily channel a national surplus of capital and commodities into imperialistic endeavors. As an alternative, overseas imperial expansion—at least in the American example—included significant conveyances and interests from the elite capitalist caste upon the federal government to look overseas. This contrasted from the federal government as an agent for the owners of the

means of production, using strictly Marxian terms. Accordingly, historic materialism failed to factor the role of the state as it was composed of those individual partnerships with office-holders with private capital concerns in the search for additional markets and territories. Furthermore, Moore dispatched theories on the aggregation of raw resources by weak states maneuvering autonomously, advanced by Krasner; in addition to Zakaria's "state-centered realism" model of centralized-state authority in bureaucratic government, and levelled to exert economic or national policies overseas independent of the social movement constraints within the state (*ibid.* p. 31). None of these theories satisfied explaining the projection of U.S. political and commercial hegemony overseas. Instead, Moore postulated that the combined influences from the industrial and financial sectors during this period were such that they engaged both capacity and autonomy in relation to Congress, through the executive, in the expansion of American overseas interests, allowing for the "possibility that the interests of American finance capital and state actors became *aligned*; one that acknowledges these activities as a partnership, rather than a relationship of capture or coercion" (*ibid.*).

American Samoa's acquisition was an anomaly to both U.S. policies for overseas expansion at the turn of the twentieth century and presented with difficulty a legal technology for its governance. If Moore's thesis is accepted, the U.S. acquired American Samoa through an alignment of business interests and captivated policy entrepreneurs in the executive branch vis-à-vis Congress, then how does it reconcile with the attraction of the Americans to an archipelago bereft of natural resources (James 1949, p. 95) save the copra crop; an undeveloped market (ASEAC 2002, p. I-19), and an alien system of social organization that was hostile to individual agency (Sahlins 1958), and thus to a liberalized consumerism?

The evidence suggests that American Samoa was just as much a chapter in the tale of this partnership between the private sector and the federal government, as a policy modification around a skittish U.S. Congress. As a method of expanding dominion, *Dollar Diplomacy* as a policy was doctrinal in its effect. The Germans had the tacit support of the powerful central government under Bismarck, backing the Goddeffroy conglomerate in its profitable operations into expanding German commerce in East Asia and the Pacific. In comparison Americans were attracted to land speculation in the Pacific, with James McKee and other investors from San Francisco forming the Polynesian Land Company (Ellison 1938, p. 38). Another example was a shipbuilder from New York, William H. Webb, who became interested in Samoa as a waypoint and coaling station. He saw Pago Pago harbor as an indispensable opportunity to expand his shipping business in the growing Pacific trade. Webb applied for subsidies from the federal government, and a bill introduced in the Senate had the backing of then President Grant in his address to Congress in 1871. Congress, however, “seemed to be little interested in expansion and ship subsidies, with the result that again no action was taken” (*Ibid*).

The Matai System and Early Territorial Government

Capitalists like McKee and Webb needed to exercise a great deal of patience before the Navy planted the U.S. flag on Tutuila. As mentioned previously, a panoply of power plots and subplots with naval officers and ministers from distant empires consorting with Samoan chiefs against other Samoan chiefs, had yet to reach some denouement. Similarly, multiple petitions from a bloc of Samoan chiefs for annexation by Great Britain and other blocs petitioning the United States for the same were refused, went unanswered, or kept under advisement by policy makers. The realpolitik of usurping, preempting, and aggrandizing for superior positions over

the other actors for hegemonic supremacy, had yet to resolve their respective tensions before officials' anxieties reached the point of hostilities. At the risk of overextending the cliché of the geopolitical drama in this region, the outcome eventually yielded losers. But first, like poorly composed ancient Greek plays with character plots and entanglements hopelessly beyond any reasonable satisfying resolution, a *deus ex machina* event swooped down upon the Samoan islands in the form of a powerful hurricane, foundering six naval vessels anchored at Apia, killing over 150 personnel from both German, American, and British ships (Croese 1913, p. 8). It was unmitigated disaster, compelling the powers to find a peaceful solution as all three nations were in a *de facto* state of hostilities through their Samoan proxies, instigating civil warfare over a dispute of a high chief's succession.

The losers—as there are always those groups who are side-stepped in the promulgation of any policy or adversely affected by their application—were the individual and corporate interests who had commercial stakes in the outright American annexation of at least the eastern portion of the Samoan islands. It was an unusual twist of irony for the investor-capitalists, and for reasons perhaps more in line with Zakaria's theory on "state-centered rationalism" than Morris's "private partnership for imperial expansion" thesis. If this group were the so-called *aligned stakeholders* Morris identified, or those entreating the policy entrepreneurs in Grant's, Hayes', McKinley's, and Roosevelt's cabinets, then these investor-capitalists were effectively locked out of any real notion of economic development in the American half of the island territories. Coulter observed that "the majority of the people of the (West) who elect governments to formulate new laws are imbued with commercial motives, but there is no indication that American Samoa possesses economic potentialities" (1941, p. 6).

This happened as a result of both the 1900 and 1904 Deeds of Cession, with their respective legal constructions outlining judiciously a framework producing a formal territorial government *while* preserving the endogenous Samoan *matai* chief-type social organization. The Deeds sought to perpetuate this structure as the form for local control at the district and village level of aggregation. Therefore, it seemed as though Morris' model of national expansion ceased to satisfy as a proposition for overseas territorial expansion when the agreements were made, and Zakaria's consideration of the strong nation, weak state argument prevailed more as a plausible model befitting the outcome of what came after the Tripartite Convention. The language in the agreements were unmistakable, as recounted above. Since the Deeds incorporated the privileges and responsibilities of the chiefs, it meant that indeed "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 The Chiefs of the towns will be entitled to retain their individual control of the separate towns," and that their control should not abridge U.S. laws and regulations (Leibowitz 1989, p. 415). Leibowitz noted a greater precision in the use of language in the 1904 Deed of Cession for the Manuan group of islands, guaranteeing "the rights of the Chief in each village and of all people concerning their property according to their customs shall be recognized" (p. 424). If private interests in the U.S. possessed designs to develop industry or agriculture in the territory, the Deeds precluded that from happening since these provisions foreclosed on the ownership of property by non-Samoans.

It followed that the American governor, through Regulation No. 5, which provided that the "laws of the United States be in force unless expressly modified; that the Samoan customs, not in conflict with the law, shall be preserved; that the Samoans shall retain their village, county, and district councils who meet to recommend laws," among a long list of other

ordinances, the collection serving as a local organic law (Croese 1913, p. 14). It further stipulated that “the alienation of native land is prohibited,” and that “foreigners may lease land for a period not exceeding 40 years, (and that) the lease must be approved by the governor” (*ibid.*).

Naturally, due to the volcanic nature of the islands’ soil and the swiftness of the land’s rise from beneath the ocean, only a fraction of the territory was available to cultivate crops. Even if tracts of land were conveyed through title like it did in the states, not much in the way of harvesting cash crops was possible without risking depleting the topsoil. This was therefore an essential condition in the evolution of American Samoa’s political association with the federal government—that a proscription against alienating land in Samoa was not only a prominent sociocultural cornerstone of the island *gemeinschaft*, but that it was treated as such in the onset of U.S. regulations for the islands *and* instilled in the *matai* as stewards of both land and society.

In any case, with the inability to sell and buy land solidly undercut any expectation of economic development. This was the *raison d’être* of the German imperialists in the western half of the Samoan Islands, and the motives for the American business elites looking for investments in acquired islands and other adventurist campaigns in the Western hemisphere. The *matai* institution was commensurate but subservient to the U.S. naval administration of the territory, appropriating a chiefdom-type political organization as an endogenous network of traditional authority for local government. It continued to structure island life and preserve Samoan subsistence practices far into the Navy’s rule of American Samoa. Under these political circumstances, the Navy-*matai* complementarity would later undergo friction, as well as to begin diluting the agency of the *matai* as somewhat less of a locus of village authority.

A prehistoric presence of human habitation was continuous upon arrival, making Samoa the easternmost extension of the Lapita cultural complex, a cultural tradition characterized by

distinct dentate-stamped ceramics that place humans in the archipelago to at least ~3,000 cal. BP (Rieth *et al.* 2008, pp. 215-6). In prehistory, transoceanic migrations throughout the Pacific from east and Southeast Asia required an egalitarian—or segmental—ethos of cooperation with an enterprising sense of purpose marrying oceangoing technology to a mastery of navigation (Barcham *et al.* 2009, p. 324). Additionally, resource access and supply were causal factors that increased sociocultural variation in the relations of Samoan political economy (Sahlins 1958, p. ix), yet even this was affected by geomorphological processes and marine conditions.

Anthropologist Elman Service noted over the centuries before European contact developed, a salutary *matai* practice of governing the islands sprang up from an endowment of the social to the environment, cultivating a systematic praxis toward the symbolic as organizational eventualities. He theorized societies' transit from contingent, pragmatic, and reciprocal political relations, to a political organization with increasing complexity and specialization. These transits occurred from simple to complex systems, as in band level to tribal society, tribal to chiefdom level society, chiefdoms to a state level society.

They were qualitative manifestations of power in terms of “leadership, reinforcements, and mediation in the maintenance of society—(that) leadership clearly seems to have had a causal priority, with economic and sacred reinforcements developing in turn as the nascent bureaucracy increased its services and autonomy” (Service 1975, p. xiii). Likewise, a transition occurred in Samoa, from a segmented tribal social organization to a system of concentrated power. Samoan society then reflected a scaling of interpersonal relationships, a chiefly type hierarchical distribution of authority that in the Samoan context was reciprocal with each other (Laughlin 1982, p. 29). These social passages occurred when subsistence strategies switched from foraging to food storage activities; social units began to grow and become sedentary;

households assumed a distinct corporate character; resource rights developed among high-ranking *matai*; increased labor specialization developed; and, a ‘chiefdom’-level society included a shift away from an “achieved status” to an “ascribed status” of social organization. The tracing of a particular family’s descent to a common ancestor, for example, continues as a condition for the conferral of ancestral titles in Samoa. This characteristic is more prevalent in tribal societies as a means to establish intra-group identity, yet is just as fundamentally symbolic in the retention of earlier traditions, to Samoan *matai* in the course of their chiefly duties.

Before Western intrusions intensified social displacement pressures, both the *matai* and the untitled Samoan social strata enjoyed an abundant endowment of vegetation and marine resources in this region of the south Pacific. Margaret Mead elaborated further,

“Daily life is peaceful [...] All are fed and sheltered [...] No one lives below a comfortable subsistence level; all have sufficient food and clothing [...] The old, the imbecile, the blind, the sick, are easily provided for. Conditions (all the year in Samoa) approximate to those in a prosperous farming district (on the mainland of the United States) in summer, when the gardens are bearing and a few more mouths to feed make very little difference. In Samoa *there is no winter, no lean season, no period when scrimping and saving are necessary*” (Mead 1930, pp. 52 & 65; *emphasis mine*).

Moreover, Samoan village society was highly ordered. Daily life centered on the extended family as the basic communal unit, and with it an implied expectation for cooperation and selfless service to the kinship group as a whole—for the benefit of both the family and the community with which it was a part. Prescriptive group behavior were customary practices transmitted through their long-standing usage. Mead further instructs on this point, saying “Those who care greatly in love or friendship, who flout any social convention for a private, unsanctioned whim, are the social misfits in Samoa” (*ibid.* p. 84). Personal aggrandizement or individuation was antithetical to a generalized Samoan *gemeinschaft*. The ideal *matai* policy was

generally to *over*produce foodstuffs, to not only insure enough for the group to consume, but also to redistribute to the community. Although, a surplus of resources was not too difficult to garner, communal labor was essential to realize the surplus, since the chief's "prestige demands the giving away of food on ceremonial occasions. In Samoa, a man's social prestige is measured not by what he has, but by what he gives" (Coulter 1941, p. 34). Former Governor W. M. Crose added in his report about the people,

"The Samoan does not like to work. For this trait he has been severely criticized, but the critics do not take into consideration his life and environment. His wants are few; the climate demands that little clothing be worn; nature is prodigal of her favors; and the heat of the day is not conducive to exertion [...] There is no desire to amass wealth. By the simple communistic system under which the Samoans live, each person contributes the profits of his industry to the family fund, and there is no incentive for one person to work harder than his fellow laborer [...] Energy and ambition must be manifested in the head of the family in order to produce any increase in prosperity" (1913, p. 23).

The Samoan *matai* system continues to be the foundation in which traditional interpersonal relations are observed, supporting the 'āiga—or extended family—as the constituent unit of a potentially vast kinship network (Poblete-Cross 2010, p. 504). The system stratified Samoan society into two status levels, those with *matai* titles and those without, with each 'āiga headed by a *matai* chief who is elected by adult members of the family (Sahlins 1958, p. 29).

Initial government reports and historiography, however, referred to such characterizations of the Samoan as "communistic." This was perhaps not too far off the mark, since the "land belongs to the entire 'āiga [...] instead of the *matai* or any one person. The *matai* gain their position from election [...] All political, social, and economic decisions are filtered through the leaders of each 'āiga" (Poblete-Cross 2010, p. 504). As head of their 'āiga, and in a broader sense, the representative of the kinship group in the village council—or *fono*—those with *matai* titles "held the highest prerogatives of control of land and sea resources" (Sahlins 1958, p. 30).

Decisions reached by the *fono* were consensus-based. Thus, through the *fono*, *matai* chiefs oversaw economic production within and among individual ‘*āiga*, controlling allocations of pigs for breeding purposes, for example, and deciding what crops to cultivate and where. The *fono* also directed communal labor projects, while individually, titled *matai* chiefs initiated specialized labor projects (*Ibid.* p. 31). Samoan stratified society also meant that there was “differential access to tools of production, especially to fishing equipment” (*Ibid.*), which implied proscriptions against accessing resources without the approval of the *matai* chief or the village *fono*. The *matai* also observed the spiritual, physical, emotional, economic, and educational well-being of all members of his (or her) family, in addition to preserving a sense of purpose and harmony (Shaffer 2000, p. 42).

Additionally, traditional Samoan society is based on an oral cosmogony, and chiefly titles were in large part derived from this worldview. Without including an expansive discussion on the ethnological descriptions of Samoan chiefly titles and their elaborate derivations, *matai* chiefs formed the village council, or the *fono*. It was largely an egalitarian body with the exception of those titled chiefs who were directly descended from deities, and those whose religious functions accorded prestige, interpersonal taboos, and tributary requirements for ritualistic ceremonies. Anthropologist Marshall Sahlins had this to say in *Social Stratification in Polynesia*, that the *fono* was primarily an instrument of political consensus making, such that

“The village council exercised authority in economic matters, nominated candidates for titles, created titles, deposed title holders, settled disputes, imposed punishments, regulated the conduct of the villages in warfare, and held ceremonies to avert various types of catastrophes. Decisions were not arrived at by vote, but by debate until unanimity was reached [...] The balance of power in councils varied. The village chief may have carried supreme veto power, the rights of final say may have belonged to a particular title, or a small caucus or set of chiefs may have held control” (p. 34).

The *fono* behaved as a consultative assembly for village leadership. With regard to matters tabled for discussion with pending votes by the body, those issues were foregone conclusions. This meant that *fono* decisions were unanimous. All sitting *matai* chiefs expected themselves to be in line with one another on a particular course of action that was an agreed upon consensus, reached “through private discussion” (*ibid.*). Unanimity conveyed unity, and unity demonstrated the conviction and strength of the village leadership, which thus trickled down to the community as normatively ascribed policy. Through the *fono*, *matai* chiefs oversaw mitigative functions for offensive conduct. It sanctioned ‘untitled men’ of the community to carry out proscriptive punishments to members of the community whose transgressions offended the chief, the village, or violated taboo. According to degree and kind, punishments were usually scaled according to severity, up to and including drowning, beating to death, banishment, destruction of personal property, payment of fines, or hard labor; but retribution also included measures coinciding in kind with the violation, especially if they were offensive to the community or degraded the chief or his family. The village *fono* stepped in whenever retributory actions were carried too far between private parties, but usually private party transgressions were ameliorated through gifting or physical retaliation by the injured party or their kin (p. 35).

Immediately after the transfer of overall political authority of the territory from the Samoan chiefs to the U.S. Navy, the period was short enough to allow a collision of traditional Samoan judicial practices as described above, with American conceptions of appropriate judicial process; the latter which was by right of treaty exercised by and inhered in the territorial government provided by the Navy. Then Governor, Commander Benjamin F. Tilley, quickly moved to resolve an incident that tested the new naval administration, following a case about a man on Tutuila who violated a taboo that offended a local high chief. As recounted by Stuart,

“A man named Fagiema had gone fishing and caught a skipjack, a fish reserved solely for high chiefs. He kept the forbidden fish. His family was grilling it for dinner when the high chief improvidently happened by and witnessed the offense. His response was swift and harsh. He ordered Fagiema’s house burnt to the ground, his banana and taro patches uprooted, and the entire family evicted from the village” (Stuart 2007, p. 93).

The news of this episode reached the naval station and the Commandant’s Office. Tilley resolved to set a precedent, believing that this account offended the auspices of good order and civilized conduct under American rule. The Governor did the “unthinkable,” having the “high chief arrested and hustled into court at the naval station [... where] a judge convicted him of violating U.S. law. He was sentenced to make restitution to Fagiema, and suspended as high chief for a year” (*ibid.*).

Ripples of the government’s actions reverberated across the territory, but the effect was substantial, if not permanent. The high chief could not have anticipated the irony of the events set in motion by Fagiema’s family grilling a skipjack fish for dinner, but the impact was a public shaming upon one of the island’s high chiefs. Furthermore, his trial and conviction by the territorial government “undermined the traditional authority of chiefs throughout the territory” (*ibid.*), to say nothing of non-*matai* Samoans circumventing taboos without fear of *matai*-meted traditional reprisals.

In his analysis of the Samoan *Mau* (Samoan word for opinion), Campbell noted that the reverberations of the “diminution in the status and authority” fostered “an undercurrent opposition movement which was easily activated whenever anything occurred to stimulate discontent” (2009, p. 43). It was a poignant observation. Campbell, in considering a section of text in the annual report to the Secretary of the Navy written by the then Governor, Captain Stephen Graham, who noted the subsequent *Mau* movement was a response to the weakening of

the *matai* structure as a result of the imposition of U.S. jurisdiction. In the report, Captain Graham

“(a)sserted the belief that at the present time the activities of the leaders of the Mau were really directed more against the high chiefs who were officials of the government than against the American governor or the government. They agreed with me and (Chief) Mauga stated that that had been the case since the Mau was born as a result of the ‘skipjack incident.’ This may not be the exact cause of the birth of the Mau, but I believe that it has sufficient bearing on the matter to be worthy of consideration” (Graham 1928, *in* Campbell, p. 43).

Hence, Campbell’s proposition rested on grounds that the *Mau* during the 1920s, developed as a groundswell of both *matai* and untitled commoner factions frustrated against a clique of collaborator *matai* chiefs, thought to cooperate with the naval government for what the former perceived as the latter’s own personal and material motives. The territory’s experience with the *Mau*, was therefore, a backlash to the undercutting of the *matai* system over the years of naval rule, resulting in a disorientation of political agency in a collective societal sense. Or, more figuratively, as centrifugal the affect was in relation to upending of extant traditional structures, the *Mau* was thus a search for a new and meaningful social constitution to supplant a now apparently debased traditional *matai* system. It was social movement that sought a civil government and citizenship for American Samoans, as well as a drive for an as yet undefined sense of *civility*. However, it was backed by a nebulous network composed of an unidentified cast of off-island agitators, disaffected chiefs, or mixed-blooded Samoans who worked in the shadows; but this dynamic fizzled as island life changed through generational shifts (Campbell 2009, pp. 44-7).

Tilley’s response to the Fagiema case tested his own apparent metric for beneficent government, which was “one of respectful restraint” (Stuart 2007, p. 93), measured by how Tilley “considered that the best way to govern these people was to let them, as far as possible,

govern themselves, but continuing their good and time-honored customs and gradually abolishing the bad ones” (Tilley 1901, p. 85). Having the distinction of chairing the territory’s first American administration, Governor Tilley set about “improving” the welfare of the Samoans. He built roads in and around Pago Pago. With the help of the *Abarenda*’s chief medical officer (the station ship), Tilley established the islands’ first health clinic in Fagatoga. The Governor also attempted to implement economic reforms for the territory’s only cash crop, copra, from the meat of the coconut. Tilley made the territorial government a monopsony by purchasing all Samoan copra producers’ crop at what were then considered fair prices, and selling the copra to the traders (Stuart 2007, pp. 95-6). One of his more memorable attempts was his wish for the building of a school in American Samoa, although this was hitherto the province of Christian missionaries. Tilley expressed a specific anxiety over a dearth of security in the territory beyond the naval force quartered at the station, feeling that the local police department in Pago Pago and naval personnel was not enough to confront either a foreign or domestic threat. It led him to establish a constabulary-like military police contingent called the *Fita Fita Guard*, and placed on the payroll of the federal government through the Navy. The *Fita Fita Guard* precluded any necessity for the stationing of U.S. Marines before the advent of World War II (Stuart 2007, p. 95).

Respectful restraint and beneficent government required resources. Tilley and subsequent territorial governors found themselves on the receiving end of an indifferent federal government unconcerned about the finer details of military administration of the territory. Likewise, federal officials were hard pressed to appropriate funds for the construction of a school for the islanders, for example, believing instead that administering the territory was tantamount to preventing the inhabitants from endangering the military operation. The need for a

government was not lost on Tilley and met the challenge to administer the islands in spite of the lack of any backing from his superiors. It was a policy whose “disregard (was) reflected financially. Early requests from naval governors in Samoa for federal money to improve education and shipping services elicited from Washington a stiff reply that the Navy had no responsibility to improve conditions beyond the gates of the base” (Stuart 1999, p. 366).

Campbell was less generous in his assessment, saying that

“(A) naval officer was dispatched to secure the agreement of the Samoans and to establish a naval station, but it was the naval station that was the object of interest, not a government for Samoans, nor a colony for the United States. It was incidental that the naval station and its surrounds happened to be inhabited. The U.S. thereby acquired responsibility for about 5,700 Samoans without any *commensurate interest in their future, usefulness or welfare*” (2009, pp. 44-5; *emphasis mine*).”

Other palpable manifestations of national disinterest in American Samoa during its initial decades of U.S. rule was gross procrastination, or “chronic inaction” (Stuart 1999, pp. 363-4).

Tilley’s brief tenure was characterized by his ‘hands-on’ approach to leadership, showcasing to the Samoans a respectable and compassionate practice of territorial statecraft that was believed capable of the U.S. When his year-and-a-half term came to a close, Samoan *matai* chiefs became apprehensive about the brief tenure of the Governor’s post, petitioning the Department to extend Tilley’s term, urging

“that the term of service of the Naval Governors be lengthened from eighteen months [...] so that the executive who had the sole power to make laws, judge of their observance and punish their infraction, might be more familiar with Samoan customs. They said they were at the mercy of his whims” (Bingham 1946).

The chiefs were gladdened that this initial administration did not run roughshod over traditional Samoan ways, or *fā’asāmoa*, as well as stewarding the *fā’amatai* system for the benefit of Samoans. With its demonstrated “preference for a type of ‘low intensity hegemony,’

enacted wherever possible by local elites” (Berman Santana 2000, p. 13), Washington, D.C. brushed off chiefs’ concerns, allowing the navy to continue its force deployments, which included allocations of unexperienced bureaucratic management of the territory from its commissioned ranks for the next half century. Therefore, a more or less ‘disinterested,’ distant, and detached territorial regime embodied a rotational organization of naval officers, continuing to servilely fulfill the orders during the initial decades of the twentieth century. At a minimum, the monolithic and disparate statecraft of U.S. rule via the military did not confer to the Samoans a Jacksonian civic tradition of open deliberation and democratic practice. Additionally, U.S. rule did not grant privileges of U.S. citizenship and constitutional protections, warning the status-conscious Samoans to ideas informing them that they were subjacent to a republican political order marginalizing them allegorically as ‘colonial subjects.’

Fleeting Citizenship

Shortly after World War II, former U.S. Senator from Connecticut, Hiram Bingham III, wrote a letter to the editor of the *New York Times* reflecting his views about citizenship for American Samoans. After an eventful career as a congressman, he spoke authoritatively on territorial issues, Bingham sat as the chairman of the American Samoan Commission that was convened in 1930. In writing his letter in November 1946, Senator Bingham spoke from his knowledge gathered from hearing testimonies from Samoan chiefs and other witnesses. But he also drew from a decade and a half of contemplative reflection—a sensitivity to what he resolutely sensed as a just and rightful policy in the fate of the affairs that particular U.S. outlying territory. Bingham felt it incumbent upon Congress to right an error in the neglect of its responsibilities enumerated in the territorial clause of the U.S. Constitution. It was time,

according to the Senator, to devise an Organic Act for American Samoa and to confer citizenship to its inhabitants.

The letter referenced the Samoans and their chiefs as courteous, churchgoing Christians, ‘civilized,’ and typically hospitable Polynesians, to invoke in the readership an association to the people of Hawai’i. Nevertheless, Bingham had these points to make about American Samoa:

“We know that the Samoans are of the same race as the Hawaiians, whom we had accepted as full-fledged American citizens before the Samoan chiefs invited us to Pago Pago, and who naturally thought they would be treated as fairly as their cousins in Hawai’i. Yet we have denied the Samoans American citizenship. We rule them as the subjects of a benevolent despotism and not as they deserve to be treated [...] On their (American Samoan Commission’s) recommendation, a bill carrying these privileges was laid before the Congress. Twice it passed the Senate unanimously. Each time it failed to pass the House of Representatives. So the Samoans are still ‘subjects,’ but not ‘citizens,’ of the United States. It is a blot on our record for fair dealing and democracy” (Bingham 1946).

Sounding as though he were giving a speech on the floor of the Senate, Bingham went on further, deploring that the Commission’s recommendations were not taken up seriously by the federal government. Accordingly, the Senator did not see any reason why Congress could not follow up on the Senate’s bill granting the territory an American-style system of government. The Commission’s original proposal would do away with governing the territory by “rules, regulations and naval orders.” Hence, it confined the powers of the Governor as an executive and not a proconsular potentate; the bill drew up an independent judiciary, and of course called for a legislature vested with the authority of the people. “But the House did not see it that way,” the Senator lamented (*ibid.*).

What the House of Representatives *did not see*, what the Senator saw fifteen years ago, were perhaps occluded by Congressional concerns over matters of political equity in the American Samoan Commission’s testimonial record. Members of Congress did not quibble over

specific matters pertaining to the territory in particular, especially with regard to the land tenure issue in the territory. The Commission proceeded on three main points: the character to which the native Samoan related to real property; the treatment of Samoans with mixed ancestry by native Samoans; and the character to which a civilian government that might comport well to the territory's inhabitants. Senator Bingham's galvanizing exhortation in the op-ed article presented as an unworkable proposition from the House's standpoint about the constitutionality of the recommendations granting the territory an Organic Act and U.S. citizenship.

As it convened in Honolulu, the Commission heard testimony first from Mr. Bruce Cartwright, a researcher from the Bernice P. Bishop Museum of Hawai'i who briefly studied the Samoans, with Senator Robinson inquiring about the Samoan land allocation practices as a matter of record. The panel drove straightaway to their slight unease over the territorial government's prohibition on the alienating of lands into fee-simple freeholds by native Samoans to non-natives, of native-held lands through any type of acquisition and conveyance of title. A larger question lingered in the minds of the legislators, and that was how to piece together legislation for an organic act providing for a civilian and republican form of government, while honoring the U.S.'s treaty commitments in the Deeds of Cession, *and* faithfully insuring the Fourteenth Amendment's form and function in the act providing for such a government. The Commission and its witnesses grappled with this quandary with considerable difficulty. The reconciliation the naval government's regulation with the system of U.S. *common law* tradition became a technical problem which the Commission was unequipped to resolve. In Cartwright's case where testimony given to the effect of property relations of the Samoans were hopelessly embedded in their social institutions, with the accumulation of surplus flowing toward the top. Thus, 'real property' as such was a thing to be held by the *individual* and not by the *'āiga*,

according to the witness. With futility, Cartwright attempted to divorce the social from the resource, further illustrating his incomplete understanding of the communally redistributive economy of the Samoans of the time:

“Mr. CARTWRIGHT— I believe that some provision should be made for the personal ownership of personal property. At the present time personal property is subject to division among the people of the community. The chief can come in and give it to anybody else that he wants to. That idea can be broken down by allowing the people to accumulate wealth. As it is now, as soon as he has anything, the Matai steps in and takes charge of it.

“Senator ROBINSON— Is that suggestion based on your general regard of the right of the individual to own private property or the particular conditions in Samoa?

“Mr. CARTWRIGHT— It strikes me as being the reason why there is no real ambition to save among the Samoans. There is no object in it; because, if they did, (someone) would step in and take it away from him” (USASC 1931. p. 10).

The recommendations represented a reordering of Samoan society by virtue of redefining property relations.

Yet, both Senators Bingham and Robinson were concerned not just with land tenure and real property. Both touched upon the treatment of so-called “*half-castes*” (sic), or those island inhabitants who were a product of miscegenation—the offspring of Samoan with a non-Samoan. Members of the Commission expressed a heightened degree of concern over a palpable practice of discrimination on this point as well, against a small segment of the territorial population. Again, Cartwright’s testimony obfuscated an understanding of a socially complex issue, and didn’t appear to assist the Commission at arriving at an agreeable course of action. On one hand, after pointing out the ways in which mixed-blooded Samoans were regarded no differently in the distribution of resources and land tenure by *matai* chiefs in relation to all other members of the village, Cartwright observed that mixed-blooded Samoans were restricted from participating in

ceremonial activities of the *'āiga* and/or the village. On the other hand, however, when the Commission pressed for his views on a policy they might adopt as a remedy to such differentiating social practices, Cartwright was unwavering in his belief about the ability and agency of the *'āiga, matai*, and individual Samoans, to sift through their own internal affairs.

In response to Congressman Beedy's question over recommending a law that contravened Samoan *matai*'s authority over their villages in favor of the rule of law, Cartwright said "I think the Samoans can handle their own problems better than any outsider. Their social organization is something that they alone can take care of" (*ibid.*). It suggested a *laissez-faire* perspective of the role in the formulation of any government for American Samoa. An excerpt from the hearing's transcript assists us to discern the matter the Commission was confronting:

"Congressman BEEDY— Aren't we at an impasse? You came away from the islands feeling that something ought to be done to help the half-caste, to put him on equal rights with the native population and yet you don't think it would be advisable for us to do anything that would interfere with the rights of those natives, knowing that according to their tribal customs and traditions they can do whatever they want to with respect to social and other rights. Isn't it unwise by law for this commission to do anything to put the half-caste on an equality with the native unless the natives themselves wish to do so? Unless we break down those rights?"

"Mr. CARTWRIGHT— I feel that as far as the law is concerned I don't think the half-caste should be discriminated against. He should have the right to own personal property as well as the Samoan. As you give them the right to own real property, they should have the same rights" (USASC 1931, p. 11).

Not only was his reply a tepid synthesis over the befuddling legal abstractions of property ownership and customary traditions of the Samoans (in addition to concerns over an emergent discrimination), but it also surmised a federal predicament that seemed to be both the antidote and the poison to one and the other, in view of what Cartwright believed as a consequence of his contingent observations of the Samoans. The Congressman's examination of the witness ended

shortly afterwards, with Beedy asking, “Shouldn’t you be frank about it and say, ‘*There’s nothing that can be done in this respect?*’” To which Cartwright replied, “Perhaps there is not” (*ibid.*). This motif was repeated in testimony given by other witnesses called to appear in front of the Commission. The exchange pronounced upon the conspicuous political circumstances for both American Samoa and the U.S. was a continuation of a ‘practical constitutional politics’ via the status quo, coming out of the failure of Congress to follow through on the Commission’s proposals when the bill came up for a House vote in 1933.

Even though this exchange was but a small snippet of information gathered by the Commission in its investigation, the dialectical end result was a vertical discovery of irreconcilable differences between alienating real property and land from native Samoans without wholesomely alienating the native Samoans from their social traditions.

The assemblage of testifying witnesses produced a sizable report and transcript coming out of the Commission’s work. The body also considered views from Samoan *matai* chiefs. Some of whom were decidedly in favor of continuing the naval administration of the territory since there was an insufficient educated segment to efficiently carry on a civilian government. However, others were in favor of a civilian type of government since these *matai* chiefs were disenchanted with the authoritarian nature of naval rule. Some views of the chiefs as witnesses were laudatory and full of approbation for the naval government; while others were circumspect and critical of the naval officers and governor in particular.

Moreover, the Commission admitted into the report as an exhibit, a letter written by Lorrin A. Thurston of Hawai’i. Thurston was an influential agent in the overthrow of the Hawaiian monarchy, which was followed up by a role as a progenitor of the subsequent founding of the Republic of Hawai’i; and then as an intercessor between the new Hawaiian regime and the

McKinley Administration for the island's annexation to the U.S. The letter—an exhibition of ostentatious pomposity rife with a distended *noblesse oblige*—if, after looking past a layman's colloquial vernacular, pointed to astute rationales for extending the use of the navy as the administrator in American Samoa, arguing

“that the Navy personnel, which administers the government, is better educated and of a higher class, both intellectually and from a business and moral standpoint, than are the permanent residents of the country (American Samoa). Again, it is argued that the financial resources of the country are so limited that it is practically impossible to secure from among the civilian population persons intelligent enough, with sufficient education and who can afford to devote their time to governmental affairs, to make it possible to fill the government positions if the Navy personnel is eliminated” (USASC 1931, p. 43).

Thurston's letter continued on, discussing the advantages he believed were possible through a conversion of the government to civilian rule. Likewise, Thurston speculated the disadvantages of continuing the naval government, basing his view primarily on the fact that “The training of naval officers is primarily to fit the personnel for handling naval questions. The problems of Samoa are not naval, but civil pure and simple [...] the principal problems incident to the Samoan government are the development of industries, more particularly, agricultural industries” (*ibid.* p. 45).

After looking back on the last thirty years of Samoa as an unincorporated territory, Thurston's appraisal translated to a lack of both the human and technical resources from which to form a civilian government of and by the territorial residents. Samoans made similar assertions. In his testimony before the Commission, Nelson Tuitele of the Samoan Civic Society in Hawai'i not only advocated that the territory's government move from unitary military rule to a government run by civilians, but that the U.S. Constitution and citizenship should also apply to American Samoans. Tuitele's assessment echoed Thurston's in that the islands lacked the

developed technical expertise to administer the territory. The admonition pointed to a deficit in educational institutions, a nonexistent resource of instructors to cultivate vocational pedagogies, or any expressed government policies to improve upon these provisions at secondary or post-secondary levels of schooling. As Tuitele saw it, it was therefore necessary that administrators come from outside Samoa with their requisite skill-sets for a proper government. He expressed a desire “to rule ourselves as nearly as possible under the advice and guidance of a proper governor and such department heads as must necessarily be named from outside the Samoan race,” and that a majority of public posts involving technical training for “teaching, expert agriculture, judiciary, civil engineering and medicine” must be filled from outside the territory (*Ibid.* p. 60).

The testimonial record revealed that the 1920s was a decade of agitation and contention between the naval regime and segments of Samoan society. The tensions were evident in the Commission’s report, culled from the textual assemblage of written statements and verbatim testimony from Samoans chiefs, civic leaders, naval personnel, and other witnesses with unique insights of the territorial life under U.S. rule, selectively called before the Commission. Although, the tensions during this decade in American Samoa were not nearly as much of an armed conflagration as they were in the western section of the New Zealand-administered archipelago, nor did they reach the level of civil disobedience to mount serious opposition to the U.S. naval authorities at Pago Pago. Instead, Tuitele hinted in his presentation an alignment of concerned Samoan chiefs organized to express their desire to move the territory into a civil and representative government, referring to these popular formations in all but name only. The *Mau* movement represented the frustrated desires for a progressive society that was not occurring on the navy’s watch, in addition to the perceived ill-effects of a co-opted clique of Samoan chiefs

working with the naval administration in the governance of the territory (Campbell 2009, p. 42). The latter's cooperation with naval government disrupted the customary deliberations and protocols of the chiefly-*matai*, according to members of the movement. It arrayed members of the *Mau* against a system they believed opposed measures of Samoan development not unlike the ways Tuitele identified in his testimony to the Commission.

Nonetheless, other social issues were attached to a growing sense of disenchantment with the naval government. One particular problem that received a significant amount of attention by the witnesses were the 'amoral' liberties taken by members from the naval station who carried on illicit relationships with native Samoan women. This was such a topic in statements presented by Faia'oga Tufele and Napoleon Tuileleleapaga, who advised the Commission of the Navy's wanton disregard of the material and social consequences of miscegenation upon the women and their families. Writing that there was a "considerable" amount of sexual promiscuity between naval personnel and native women of the islands, Samoan chiefs were loathe to wholly blame the naval personnel for their 'indiscretions', but rather the naval government that did not attach any fiduciary responsibility upon those fathering mixed-blooded children (USASC 1931, pp. 75-6, p. 281). Two-and-a-half years earlier, Mrs. Samuel Ripley (wife of the alleged leader of the *Mau* movement in American Samoa) testified in a joint U.S. Senate and House hearing investigating the conditions of American Samoa, affirming that there were "many illegitimate half-caste children who are left to the Samoans to support," born from Samoan and American service-men, and that "they are a burden on the Samoan population [... having] no claim upon their fathers for support" (U.S. Congress 1928, pp. 10-1). Later, this social question inserted itself as a political question in the drawing up of legal blood quantum limits identifying who was Samoan and who was not which determined eligibility for social participation in the *'āiga*.

To the Samoans, the American Samoan Commission represented in large part an opportunity to present a case for the federal government to deliver the territory from a naval administration by recommending that Congress pass an organic act for the territory, and bestowing citizenship on its inhabitants. The consensus that emerged from those yielding their views—including the senators and congressman sitting on the Commission—was to bring American Samoa closer to the U.S. in political association. The ancillary effect of the U.S. moving American Samoa into the *organized* column of its insular territories would have been the considerable economic undertaking involved in passing an organic act through Congress. As a program of development (Campbell 2009, p. 44), it entailed bringing island society under subsidization on such a scale that it would have drastically and irreparably altered life in the territory for the purposes of attaining a theoretical stage of insular sophistication, made sustainable by developing an infrastructure of bureaucratic expertise.

Toward the end of his statement to the American Samoan Commission of 1930, Napoleon Tuitelepeaga, a native Samoan, expressed his wholehearted opinion about the U.S. Navy. According to this witness, the administrators of his homeland represented an institution that was essentially an out-of-touch, disrespectful, and itinerant cabal of autocrats; whose terms in office came and went rather quickly, rotating governors who vacillated between tolerance in one and tyranny in the other. Tuitelepeaga's lengthy monologue in response to Senators Robinson and Bingham's questions read as an unassuming indictment of offenses by a removed despot, a detached sovereign not unlike the characterizations illustrated in the Declaration of Independence. Despite his lamentable testimony, he and other witnesses shared their approbation of the United States, and urged the Commission to proceed with legislating for a liberalized civilian government for the islands. Anything less, Tuitelepeaga equated as an

injustice, proclaiming “that if the people don’t get what they want, the government will be messed up. In fact, (it will show) that Washington doesn’t care about us” (USASC 1930, p. 80).

Against this backdrop were positional aspirations of some to promulgate democratic values for a territorial government. This was juxtaposed almost in opposition to the federal government’s treaty commitments sponsoring the Samoans to preserve their endogenous social constructions. In addition, there seemed to exist other frustrating factors flummoxing the relative importance of the issue under consideration. This was the relative strategic importance of the territory of American Samoa to the U.S. itself. Political leadership in Washington were hard-pressed to concern themselves with the affairs of an island community numbering barely over 10,000 inhabitants at the time of the American Samoan Commission’s visit to the territory, according to the 1930 U.S. Census Report (Coulter 1941, p. 16). Also, the island possession’s total land area was not more than three-and-a-half times the size of Manhattan, with 77 square miles. As the only possession in the south Pacific, the islands’ distance from the west coast of the U.S. was separated by 4,800 miles of Pacific Ocean, and 2,600 miles from Hawai’i, “which may explain the federal government’s tendency to overlook American Samoa” (Morrison 2013, p.77). In a frank assessment of the islands’ strategic value, James wrote,

“Except for the harbor of Pago Pago and the lesser harbor of Leone, these small and mountainous tropical islands have no value to the United States. Their total land area is small and the mountains rise steeply from the sea. There are no natural resources and no minerals or oil” (James 1949, p. 95).

From the perspective of Congress, Senator Hiram Bingham surmised that this was indeed the case in January 1928, affirming to Senator Frank Willis chairing the Joint Committee on Territories and Insular Possession of the Senate and Committee on Insular Affairs of the House, that

“the situation in American Samoa is quite different [...] In fact, it is on such a small scale that it is hard to find words properly to characterize it [...] It is a minute speck on the map; it is so small that Congress has overlooked it during the entire period of its connection with the United States. So far as I can recollect, there has been no action by the Congress to put it on a regular status. It has no organic act” (U.S. Congress 1928, pp. 2-3).

Senator Bingham’s argument was to elucidate the situation of American Samoa for members of Congress to acquaint themselves of their plenary responsibilities to this territory. In fact, in sponsoring the resolution to do just that, Bingham hoped that by visiting the islands and studying “the situation very much as was done when the Hawaiian Islands came in by annexation [...] and recommended an organic act for the government” for the Samoan Islands (*ibid.*, p. 3).

The American Samoan Commission failed to overcome these geographic encumbrances. In 1933, the House of Representatives did not marshal a majority of votes to approve the Commission’s recommendations, with evidence that the measure in the House was influenced by opposition from the U.S. Navy (Morrison 2013, p. 82; McGovney 1934, p. 63). Civilian government did not materialize for the territory until another twenty years.

In the intervening period, the nation and the world experienced the Great Depression and World War II, drawing the attention of the country’s lawmakers away from matters concerning insular affairs. Nonetheless, the territory’s political association with the U.S. continued unabated. In fact, the relationship strengthened especially upon the outbreak of war in the Pacific. Since the navy maintained a permanent outpost on Tutuila, the harbor’s deep-water station served naturally as a strategic staging facility for U.S. Marines and naval personnel, materiel, and other supplies. James expounded further on the military’s perspective of American Samoa’s geographic balancing act in regard to strategic value, asserting that its “strategic value in warfare is doubtful [...] Any fleet caught at anchor inside its relatively narrow confines would

be hopelessly bottled up and subject to destruction at one blow” (James 1949, p. 95). The fact that the U.S. did not fortify the harbor in and around its environs, or convert the naval facility into a full-fledged military base, alluded to a national policy preference to forego further U.S. entrenchment in the territory.

Yet, along with the onset of World War II came a flurry of military activity. Over the forty years preceding the war, naval officials labored to establish a separate treasury for the territory’s civil accounts, keeping funds from the appropriations marked for naval station activities. Since the naval administration ranged territory-wide in its authority, it was seemed difficult to distinguish what public engagements were justifiably navy-related from others that were not. The last naval commandant of the territory remarked in his report “that the outbreak of hostilities in 1941 did a great deal to make the distinction more difficult due to the fact that during the war there resulted an almost complete cessation of Island Government activities” (Darden 1952, p. 24). Nevertheless, as a major theater of operations, the south Pacific received the requisite investments and infrastructure to execute the U.S. war effort. In American Samoa, the navy and Marines utilized almost all government facilities and buildings on Tutuila. Additionally, the road system on Tutuila, which up to that point was the object naval governors solicited federal appropriations to build and maintain since Commander B. F. Tilley’s term, did the navy and Marines extend and widen to accommodate the increased military traffic in the territory (*ibid.*). Governor C. B. T. Moore wrote in a letter to the Navy Department in 1905 that the “roads are an important factor in the advance of the people by reason of increased facility of bringing the outlying villages under the civilizing influences of the government” (*ibid.* p. 25). Whether Governor Moore realized the wisdom of his written words or not, his sentiments were completely in line with a tradition of diffusing imperial authority through a road system, a civil

practice cultivated and perfected from the earliest beginnings starting with an incipient Roman republic.

In the course of these world events, American Samoa was employed as a demesne of the U.S., in the capacity with which the territory registered a utility in the overall war strategy. As soon as the war ended, the military presence in American Samoa declined as precipitously as it proliferated at the beginning of the war, and in the wake of the military buildup, the territory was transformed. The effects ranged from increased miscegenation between U.S. military personnel and Samoan natives (Leibowitz 1989, p. 417), to an improvement of island health, medical services, and a hospital; from an expanded road system, to a surplus of government tax receipts and a permanent government accounting staff for the civil side of the ledger (Darden 1952, pp. 13-24). The territory returned to a relative provincial state of obscurity, helped along by technological shifts and innovations in transportation and logistics. The postwar Pacific region experienced a realignment of power centers that emanated in the north, especially from Hawai'i, and in the western Pacific from Japan, Guam, and the Philippines. It left American Samoa and its once vaunted natural harbor at Pago Pago on the periphery, again (Blackford 2007, p. 197).

Civilian Government and Constitutionalism

Referring back to the beginning, Governor Tilley issued Regulation 4 codifying the traditional land tenure system of the Samoans, forbidding the alienation of their own land in the islands through fee-simple conveyances of title, except through provisions approved by the governor. This was later incorporated as a basic tenet of the territory's governing constitutional framework, although it was modified accordingly to accommodate 40-year leases to businesses and church organizations. More elaboration on this further below.

For better or worse, one of Tilley's other significant keystone naval regulations—Regulation 5—was the overlaying of U.S. law upon the territory, not as a means to supplant the ancient forms, but to complement it at the *state*-level of territorial government. However, the U.S. common-law tradition came to contend with an *in situ* body of normative Samoan retributive practices. Earlier in this discussion, the *Skipjack* incident illustrated how an aberrant act produced another aberration in relation to these two worldviews, inevitably disrupting the fabric of relations between the *state* and *chiefly* society—as the *chiefly* substrate existed under the aegis of the *state* apparatus in which the new territory came to formatively rest at that time. Thus, it was a collision between two worldviews, but the ensuing decades were not hopelessly bound to a struggle between two interpretive visions of justice and authority. Rather, it was a negotiation of “legal association” between *fa'asāmoa* and *fa'amatai* social constructions, and the American system of jurisprudence through military auspices. Out of these confluences evolved a juridical syncretism, discharging new formulations of practice and procedure along structural, substantive, and operational dimensions (Roughan 2009, p. 136). It was an interaction of functions and values afforded by the legal pluralism levied in the Articles of Cession. The evolving territorial jurisprudence attended to “inter-systemic relationships that are deliberate, involving the integrations, incorporations, or other formal interactions that occur between legal systems” (*ibid.*). The *Skipjack* case elicited a provocation of unwritten Samoan prescriptions to that of the U.S. principle of due process, beginning the integration and incorporation of the two systems. Anthropologist Felix Keesing had this to say about this negotiation as a start:

“The native Samoans can be pictured as in a considerable state of bewilderment and disturbance as the shadow of western law loomed over their lives. The *old judicial ideas and institutions had to be modified so as to allow for the new codes and courts*, for the impersonal machine of white justice with its traditional mummery and fixed precedents [...] Two kinds of delinquency emerged, the one comprising deviations from the correct patterns of Samoan behavior [...] the other

deviations from the alien and superimposed rules of conduct” (*in* Darden 1952, p. 12; *emphasis mine*).

On the other hand, almost immediately, Governor Tilley and his successors faced a barrage of land and *matai* title disputes between Samoan chiefs. This required the commandant to attend to their resolutions. Governor Parker in 1909 recommended that a chief justice be appointed for the territory’s High Court (*ibid.*) so as to divorce the adjudicatory role of the commandant from the rest of his proconsular powers. As *legal association* came to further define the coexistence of traditional modes and formal common-law conceptions, both the secretary of native affairs and the chief justice leading up to the navy’s handover of administration in 1951, encouraged litigants to arrive at a settlement outside of the High Court, preferring that an arrived-at solution “by the Samoan parties themselves would be more readily acceptable in Samoan society than one imposed by American-made law” (*ibid.*). The anticipated benefit was to adjust for a proportional equanimity between the *matai* authority over local matters and the “enforcement of the new (American) codes so as to *bring Samoan behavior increasingly in line with that of western society*” (*ibid. emphasis mine*).

The land issue remained a central concern for both the naval administration, and later for the civilian government after taking over territorial affairs in 1951. Land represented the nexus upon which the Samoan way of life depended, and in the American Samoa High Court case *Haleck v. Lee*, the trial court’s ruling cited people relating to “land as life itself” (4 A.S.R. 519, 551 1964). The *land as life* analogy continues to illustrate the importance of this first element, that the communal ownership of land is the thread weaving together the social, economic, traditional and political patterning of island society. Once this “thread” is pulled, it will unknit the fabric that is *fa’asāmoa*, forever destroying the constructions identifying Samoans as a society in and of itself.

These values formed the bedrock of society, and this was so recognized by the U.S. government in its dealings with the Samoan chiefs in the eastern half of the archipelago leading up to the signing of the Deeds of Cession in 1900 and 1904. Governor Tilley consecrated these customs through issuing Regulation 5—as described above—prohibiting the alienation of Samoan lands from themselves. In retrospect, the ramifications of the regulation were practical in their immediate effects in two ways. First, to preclude any German agricultural interests on Tutuila, and more importantly, the “perceived obligation to conserve the traditional Samoan cultural system” (Laughlin 1982, p. 30). Second, the U.S. sought to endear the *matai* chiefs to U.S. sovereignty through securing “indigenous consent,” given through the Deeds of Cession (*ibid.*). Nonetheless, the governor’s Regulations 4 and 5, along with the Deeds, manifested as vital parts of a developing territorial jurisprudence, a unique superimposing body of *organic law* in the territory’s constitutional structure. They were elevated constitutionally in the Bill of Rights of American Samoa’s 1967 Constitution. Hence, in plain language, Article I, Section 3, Clause A spells out the constitutional successor of Naval Regulation 5, in that

“It shall be the policy of the American Samoa Government to protect persons of American Samoa ancestry *against alienation of their communal lands* and the destruction of the Samoan way of life, 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 organizations of persons of American Samoa ancestry, and to encourage business enterprises by such persons” (*emphasis mine*).

The constitutional language obligated the territorial government in its primary political duty as a guardian of tradition. A deeper inspection of this section, for example, reveals a *conservative* orientation by politically institutionalizing *fa’asāmoa*. The language expresses a propensity to confer political advantage to American Samoans in the territory. On the surface, however, there appears to be a *prima facie* argument in U.S. federal case law supporting the

preferential agency of American Samoans if only outside the doctrinal framework of the Insular Cases. Hence, *Morton v. Mancari* (417 U.S. 535, 1974) was a case decided over an affirmative action hiring of an enrolled member from a Federally-recognized tribe over non-Indian applicants, in the U.S. Department of the Interior's Bureau of Indian Affairs. The ruling followed along a federal recognition of the government's *guardian ward relationship* to American Indians sustaining the trust compact between indigenous groups in the U.S. and arguably perhaps to American Samoans.

Yet, if the citizens of American Samoa direct their local government to seek a closer political union with the U.S., this would prompt Congress to legislate for the islands to transit to another form of political relationship. Then these legal constructions would appear to debase and endanger the meaning and spirit of the U.S. Constitution *only* if the territory were *incorporated* or *organized*. The latter legal categories were an endowment of a judicial interpretation to supplement U.S. expansionary policies of the late nineteenth century, contriving autonomous political units due to the existing social, political, traditional, and economic structures in American Samoa and other acquired insular areas. The existing conditions prior to affirming American sovereignty rationalized the necessity for autonomy in a federal association with the U.S. While the U.S. Supreme Court's *Insular Cases* (e.g. *Downes v. Bidwell* 182 U.S. 244, 1901) created a new juridical environment in which American Samoa could exist in a limited political capacity in association with the U.S., the ostensible foregone opportunity for the territory was statehood and citizenship. Accordingly, outside the doctrinal legal framework isolating the uniqueness of American Samoa from the expectation of statehood, *Mancari* exhibits a specious and inaccurate standard to support the provisions of Article I, Section 3 in the territory's Bill of Rights, when testing against the Equal Protection

provisions of the Fourteenth Amendment. In other words, the U.S. Constitution does *not* apply *in full* (Fallon, 1991).

As a treaty instrument, the Deeds reflected a grand bargain of explicit rights and responsibilities between each party. The Deeds of Cession translated to a calibrated policy for a new constituent political category. The instruments inaugurated an associational and dependent political union that continues to distinctly separate American Samoa from the co-sovereign and co-equal government-to-government relationship enjoined between the states and the federal government. What resulted was the formation of a new jurisdiction in which the federal government must commit its familiar responsibilities *to instill domestic tranquility* and to *promote the general welfare*. In this unincorporated and unorganized “political space,” American Samoa recovered for itself particular powers not allocated to the states, but reserved to the federal government in the original national context. They included territorial control over immigration policies; territorial control over duties and other tariffs; and to a certain degree, some territorial participation in international bodies of cooperation. In continuing to accord the social constructions a clear recognition and protection articulated in the Deeds, naval regulations and the territorial constitution, these ordinary federal policies were commensurate with “territory-specific modifications designed to respond to unique circumstances of the islands” (Stayman 2009, p. 12). Article I, Section 14, Clause B states, for example, states

“In concurrence with the Cessions of the people of the Islands of American Samoa with the United States, no federal laws shall be enforced in the Territory of American Samoa which diminishes the ability of the American Samoa people to survive economically, or arrests its economic development, or causes consequences of degrading or damaging the safety and general welfare of its people ...”

In addition, Article IV, Section 14 of the American Samoa constitution enacted in 1967, states that “In order to protect the Samoan culture, lands and way of life, the Executive Branch shall enforce immigration laws enacted by the Legislature to restrict the entry of foreign nationals into American Samoa.” In like manner, Article II, Section 3, a “Senator shall [...] (d) be a leading registered matai of a Samoan family who fulfills his obligations as required by Samoan custom in the county from which he is elected.” Especially with regard to the unique cultural facility enumerated in the last provision, these articles spell out the range of the legal liberties accorded by the unique status and history of the territory before and after the Deeds of Cession were signed. The federal government’s role in the beneficent trust relationship it maintains with American Samoa is further supported by Congress’ acceptance, ratification, and confirmation of the “Instruments of Cession,” declaring “Until Congress shall provide for the government of such islands, all civil, judicial and military power shall be vested in such person or persons and shall be exercised in such manner as the President of the United States shall direct ...” (Chapter 281, 45 Stat. 1253). In addition to Executive Order 10264, which transferred administrative authority from the U.S. Navy to the Secretary of the Interior (48 U.S.C. §1661, 16 F.R. 6419), these foregoing constitutional provisions sprang from these authorities.

Article II, Section 3, stated above, furthers this point about the separate distinction of American Samoa in its unique federal association with the U.S., that these unequivocal territorial privileges to hoist exclusive political benefit to American Samoans within the juridical boundaries of the territory. Again, the *unincorporated* and *unorganized* status of the territory serves as a bulwark against an evolving U.S. constitutional court view delimiting equality for all citizens, except American Samoans are not U.S. citizens, but rather U.S. nationals. If, in an event Congress legislated a change in the status of natural born persons in American Samoa from

U.S. nationals to U.S. citizens and placed the territory on a track toward statehood, then in the words of Justice Kennedy writing for the Supreme Court in *Rice v. Cayetano* (528 U.S. 495, 2000), American Samoans will have then accepted the necessary “political consensus that begins with a sense of purpose,” that this purpose must begin with the principle of accepting the Constitution of the United States as “the heritage of all citizens” of American Samoa.

The *Rice* case centered on a challenge to the government of Hawai’i accused of denying the right to vote for the trustees of the Office of Hawaiian Affairs, the Supreme Court found that the state abridged Mr. Rice’s fundamental freedom to vote as enshrined in the Fifteenth Amendment. Mr. Rice contested the state law that only Hawaiians who were able to genealogically demonstrate their ancestry in 1778 were the only lot to vote for OHA trustees. On the basis of race, the Court ruled that the “National Government and the States may not deny or abridge the right to vote on account of race [...] The design of the (Fifteenth) Amendment is to reaffirm the equality of races at the most basic level of the democratic process, the exercise of the voting franchise” (*ibid.*). The national government and the states may not deprive or mutilate the “basic” civil element of democratic action—voting—in other words. If Article II, Section 3 of American Samoa’s constitution is worded such that “A Senator (and Representative) shall (a) be United States National of American Samoan ancestry”, then it can be construed that “ancestry can be a proxy for race” (*ibid.*). For American Samoa to move beyond the unincorporated and unorganized classification in relation to the U.S., will tend to represent a wholesale reformulation of the constitutional framework of American Samoa to align with both the U.S. Constitution and its accompanying federal case law. The slightest territorial reformulation in this regard is tantamount to unhinging the traditional social constructions that are settled firmly in American Samoa’s organic law, and by extension, the island’s ability to protect its social, traditional,

economic and political life from the alienating effects of non-Samoan influences, cultural and ethnic homogeneity of the territory notwithstanding.

In sum, the register of positions arguing the lawfulness of U.S. policy with American Samoa express a palpable anxiety over the constitutionality of the federal-territorial connection. None appreciated the social constructions and historical circumstances in which those social influences steered national (and territorial) policies. The execution of these policies then became the springboard from which further policy problems took form.

Statham's argument criticized U.S. territorial policy toward American Samoa as a hold-over relic of a tyrannical U.S. unconstitutionality. His analysis perverted the interpretive intent of U.S. government policies toward the territory specifically. From signing the Deeds, to the American Samoan Commission holding hearings 30 years later; from transferring administrative authority from the navy, to the Interior Department 51 years later; or when the territory devised its constitution in 1960 and adopted it as its own supreme law of the territory in 1967. Statham failed to account that these and other significant events were political acts to overcome an inherent ambiguity in the relations between Samoans and the U.S. government. The good offices of democratic government facilitates the sovereign province of both polities to resolve these policy ambiguities. From the beginning, American sovereignty over the eastern islands had the tacit support of the principal Samoan chiefs. Out of the naval government's territorial oversight emerged a unique relationship between the U.S. and this local leadership, although it was fraught with misunderstanding (the skipjack incident, the *Mau* movement, for example) and unfulfilled expectations (Samoans as U.S. nationals and not U.S. citizens, as an example). Nonetheless, a relationship congealed as a cultivated respect yielded an association between the "traditional"

and “modern” regimes in the form of the chiefly *matai* elites, and a governing the islands, using Statham’s imprecise wording.

Fallon admonished the federal government for extra-constitutional policies at the turn of the nineteenth century by creating a hierarchical, non-statehood component to the federal framework. But Fallon can be faulted for not including in his discussion the vehicle which continues to drive policies governing the differentiated federal-territorial connection. *Downes v. Bidwell*, decided in 1901, embraced Article IV, Section 3, Clause 2 of the U.S. Constitution, endowing Congress the authority to legislate for unincorporated possessions. The latter was thus an outcome of a Congressional declaration of war and a President’s execution of his war and foreign policy powers. After 114 years as a U.S. territory, American Samoa’s association to the U.S. is, therefore, constitutional via settled federal case law in *Downes*, for better or worse. The quality of being “foreign in a domestic sense” was the distinction that allowed for constitutional exemptions “to permit some special arrangement that a territory considers vital to the preservation of its cultural or social system [... and that] the Constitution does not necessarily require or warrant identical interpretation in its application to the territories” (Laughlin 1980-1, p. 340). Laughlin appropriately countered that, because of the binding treaty-like instrument inherited in both the Deeds of Cession, the U.S. “may be morally and legally” (*ibid.*, p. 337) bound by the Constitution to observe and protect their treaty provisions in perpetuity, so long as the islands are an unincorporated and unorganized territory of the U.S.

Chapter V — *Conclusions*

The foregoing was a case study that explored the historical context that brought American Samoa within a unique political orbit of the United States. As the only unincorporated and unorganized U.S. territorial possession, the political relationship is a constitutional matter of substantial social and political significance. The literature surrounding the policy problem positions the discussion around the idea that American Samoa's association with the U.S. is an artifact of a bygone era, and the motives for which resulted in the islands' coming under American sovereignty have since long passed. With this score in mind, inquiry centered on the constitutionality of the federal-territorial relationship as scholars, policymakers, and social leaders questioned the legality of such an arrangement. Their implication colored the apparent tenuousness of the legal rationale underlying this connection.

But the conversation has ignored the social constructions that are in large part responsible for enjoining American Samoa's political status as a U.S. territory as defined in chapter one.. The cultural values of the Samoans were accorded constitutional status in the outset by their resolute naval administrators, and have since intrinsically remained there as indispensable political principles in American Samoa's continued local government. However, *fa'asāmoa* and *fa'amatai*—as complex cultural systems that organize interpersonal and familial relations in Samoa—in their superlative position of traditional hegemony, are not reconcilable to a U.S. constitutional order. The result is a federal-territorial political relationship based on statutory law, not constitutionally-endowed rights (*Tuaua v. United States*, D.D.C., 2013). This fact must be conceded, in addition to the inherent asymmetric dependency of the territory upon the U.S. with regard to its political predicament. But identifying the American Samoa-U.S. territorial relationship as a policy problem *is* a political exercise, and emanates from American notions of

constitutional government, as well as from a virtuous civic and democratic heritage. Changes in that relationship must evolve out of a civic and democratic discourse arising not from Congress, but from the American Samoans themselves.

There are limitations to this study. First, as a qualitative case study analysis, description is paramount. The research question relied on the *interpretive* reading of the textual assemblage as evidence supporting the proposition that the policy “problem” abounds with subjective meanings. It is extremely difficult to capture these meanings in a straightforward manner other from that which is conveyed through the written text. In addition, after over more than a century of U.S. rule, the ideal research outcome was to pour over the extensive public record in primary materials that existed mainly from government documents and newspapers. A limited time constraint forbade this endeavor, making it necessary to choose the critical points of significant supporting materials. This analysis ran roughshod over the sinewy threads that coursed through the evolution of the policy ambiguity under consideration.

Second, and related to this last point, the topic was too broad to consider other significant criteria. For example, the evidence suggested that the eastern Samoan islands’ version of the *Mau* movement during the 1920s was not a culmination of both agitation and contention against the U.S. Navy in principle. Instead, it was a progression in the form of passive organization for citizenship and civil government; and against the arbitrary nature of unrepresentative, proconsular rule. It did not affect the constitutional character of American Samoa, nor did it exert any considerable influence against the political position of the navy. It nonetheless provided a glimpse of the social realignments that were underway among Samoan *matai* against other domestic elements associated with the naval administration. Last point on this study’s limitations is that this analysis did not take up latter-day political developments that have

emerged since the period of civilian government that was firmly entrenched under the 1967 territorial constitution.

Future investigative efforts should consider examining in detail reports issued from the American Samoa Political Status Study Commission. This commission is a government board that periodically convenes on behalf of the territorial government to examine residents' orientations toward their government's political status via hearings and plebiscites. Access to these materials was not available for the purposes of this investigation, however. Also, a research paper into the question over what legislatures—territorial and Congressional—must do to prepare the territory to move into another political relationship with the U.S., if it is not to be an independent nation. The question should attempt to ascertain what statutory measures and institutions should be in place or eliminated—if they are not already—to facilitate American Samoa moving into a less dependent political association with the U.S., without compromising their respective constitutional traditions. Will a new relationship resemble, for example, a status of *free association* with the U.S., an arrangement that accords the privileges of an independent country in all but name only? Or *commonwealth* status similar to Puerto Rico and the Northern Mariana Islands?

The implication of the study is the reaffirmation of the importance of American Samoa's cultural constructions in the governance of the islands. These constructs were firmly embedded in the Deeds of Cession that ceded sovereign authority of the islands to the United States, obligating the U.S. to honor the legal provisions outlined, such that the “The Government of the United States of America shall respect and protect the individual rights of all people [...] to their lands and other property in said District (Tutuila and Manu‘a Islands); [and that] The Chiefs of

the towns will be entitled to retain their individual control of the separate towns.” (I A.S.C. 6 & 9, 1973).

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