

**LEGAL PLURALISM, FA’AMATAI, AND THE ADMINISTRATIVE STATE IN AMERICAN SAMOA**

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*American Samoa, an "unincorporated territory" of the United States situated thousands of miles from the nearest U.S. coastline, presents a unique case study of indigenous governance amidst colonial influences. This paper explores the historical dynamics of American Samoan governance, focusing on the resilience and persistence of the indigenous fa’amatai system despite the presence of the U.S. federal administrative state. Unlike other U.S. territories where indigenous systems were supplanted by colonial regimes, American Samoa has maintained its traditional governance structures alongside the imposition of certain aspects of U.S. administrative rule. Through a multidisciplinary approach drawing from Global Legal History, Legal Pluralism, Administrative State History, Federal Indian Law, and Federalism Legal Theory, this paper investigates the negotiation of sovereignty between the fa’amatai system and the U.S. Administrative State over time.*

*The paper examines into the historical context of Samoa in the age of imperialism, tracing the evolution of fa’amatai governance amidst colonization efforts by German, British, and American powers. Despite external pressures, the fa’amatai system persisted, negotiating with colonial authorities to preserve indigenous culture and governance. Furthermore, the essay discusses American Samoa's resistance to the traditional model of legal pluralism, wherein indigenous legal systems are gradually absorbed or marginalized by colonial legal regimes. Unlike the anticipated dominance of the U.S. legal system, American Samoa has retained recognition of fa’amatai law and legal actors, with the U.S. administrative state gradually returning power to indigenous leaders.*

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## INTRODUCTION

American Samoa is an “unincorporated territory”<sup>1</sup> of the United States. Sitting three thousand miles from the nearest U.S. coastline of Hawaii. American Samoa has a history of colonialism from German, British, and American powers. American Samoa also has maintained its historic indigenous form of government: *fa'amatai*. The contemporary status of American Samoa as the only U.S. territory exercising an uninterrupted, federally-recognized indigenous government raises questions of how and why *fa'amatai* persisted and succeeded despite U.S. imperialism, while other U.S. territorial natives lost their systems. Likewise, Legal Pluralist literature produces trends which predict a path toward legal systems largely resembling the colonizers taking hold throughout colonized places, and integrating elements of indigenous law into the larger colonial system. This is not the case in American Samoa, where the indigenous system remained largely independent, and the U.S. colonial system was largely operated by the federal administrative state rather than courts.

In American Samoa, certain parts of governance were imposed while other areas of law were roped off for indigenous customs and law jurisdiction since the nineteenth century. Over time, the U.S. administrative state in American Samoa returned more spheres of governance to Samoans, which cuts against most pluralist literature. Third, the case of American Samoa raises questions about democratic accountability of the U.S. government via the administrative state. Despite being largely ignored the Federal Congress, American Samoans resisted undesired government action by lobbying the administrative state, and they succeeded. Over the last

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<sup>1</sup> The U.S. Congress has not yet recognized Native Hawaiians in this capacity.<sup>1</sup> Nor are there any federally recognized tribes in any U.S. territory managed by the Office of Insular Affairs. Putting aside normative discussions, certain concepts from Federal Indian Law may be helpful in understanding the legal pluralistic relationship between the U.S. Federal Government and American Samoa. For more, see Cecily Hilleary, *Native Hawaiians Divided on Federal Recognition*, VOA (Feb. 7, 2019, 8:43 AM), <https://www.voanews.com/a/native-hawaiians-divided-on-federal-recognition/4775275.html>.

century, American Samoa has continued to experience the U.S. Federal Government via administrative fixtures on the islands. This adds a new dimension to the discussion of pluralism, which often focuses on imperial judicial actors and institutions.

American Samoa does not fit the traditional model of legal pluralism. What is particularly puzzling about the negotiation of sovereignty in Samoa is the decisions by *matai* to fighting the terms of pluralism through corresponding with the administrative state hierarchy, and requesting greater control over the personnel composing of the Naval administration of their Island. The colonizer's actions in this case also differ from the legal pluralist model. Despite a period of stronger legal dominance by the American administrative state, the locus of legal authority returned to the indigenous community in the mid-twentieth century.

#### **PART I: SAMOA IN THE AGE OF IMPERIALISM**

*Fa'amatai* is an indigenous Samoan system of governance which structures political leadership through familial-based political units who select representatives to participate in regional and national *fonos* (council) with other leaders. This system relies on the consent of each *'aiga* (family network) to select their *matai* (chief), who then join a regional council with other *matai* to address larger governance questions. This comprehensive governance system includes a specific landholding tradition, and is indelibly intertwined with Samoan heritage and tradition. Despite the growing presence of non-Samoans from the eighteenth century through today, this political system persists in both American and independent Samoa.

White settlement in the Samoan Islands was initially dominated by traders and missionaries. In the mid-nineteenth century, British, German, and American imperialists took

notice of Samoa.<sup>2</sup> In 1865, a German businessman, Theodor Weber, established the first international commercial coconut plantation in Samoa, which fueled German presence in the region.<sup>3</sup> British actors in New Zealand also took note of the commercial possibilities of the Samoan islands and increased trade relations in the 1860s.<sup>4</sup> The United States took initial interest in Samoa for military and commercial interests, and began establishing trade links and coaling stations at ports and signed a treaty in 1872 creating exclusive privileges for the United States to have a naval station in Pago Pago harbor and consular jurisdiction in American Samoa.<sup>5</sup> Over this time, Western entrepreneurs and governments acquired significant landholdings, which undercut fundamental aspect of Samoan governance and jurisdiction, thereby threatening to splinter political relations among *matai*. After resisting British and German attempts to subvert Samoan sovereignty, the Ta'imua and Faipule *matai* requested support from the United States in exchange for ceding further rights to the Pago-Pago harbor and first among nations status.<sup>6</sup>

In an effort to settle the imperial dispute, the three outside nations signed the Berlin Treaty in 1899, which promised neutrality and affirmed autonomy of the indigenous government of Samoa, and included a provision for indigenous succession should the King of Samoa die.<sup>7</sup> When this occurred, *matai* factions split, and Germany backed one *matai* against the United States and Britain.<sup>8</sup> The arbitration record includes German allegations that American and British

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<sup>2</sup> PAUL M. KENNEDY, *THE SAMOAN TANGLE: A STUDY IN ANGLO-GERMAN-AMERICAN RELATIONS, 1878-1900*, (1974) at 5.

<sup>3</sup> *Id.* at 6.

<sup>4</sup> *Id.* at 7-8.

<sup>5</sup> *Id.* at 9 (citing Ryden, U.S. Policy in Samoa, pp. 42-48 (covering the details of Meade's treaty)); {JM: could not find this... is it *The Foreign Policy of the US in relation to Samoa?*} see also Rear Admiral Montgomery Sicard, President, Naval War Board, to Secretary of the Navy John D. Long, 13 to 30 August 1898,

<sup>6</sup> Kennedy, *supra* note 2, at 13-14 (citing C. G. Bowers and H. D. Reid, 'William M. Evarts' in *The American Secretaries of State and their Diplomacy*, ed. S. F. Bemis vol. 7 (New York, 1963), p. 246 ; F. R. Dulles, *Prelude to World Power* (New York, 1965), pp. 98102); see also Ryden, *supra* note **Error! Bookmark not defined.**

<sup>7</sup> Reports of International Arbitration Awards, Samoan Claims (Germany, Great Britain, United States) 14 October 1902, Volume IX pp. 15-27, efaidnbmnnnibpcajpcglefindmkaj/https://legal.un.org/riaa/cases/vol\_IX/15-27.pdf at 19.

<sup>8</sup> *Id.*

ships in the Apia harbor fired against the German-backed High Chief Mataafa.<sup>9</sup> The United States and British governments were held in violation of the Berlin Treaty. In Response, the three nations entered a new agreement in which the United States and Great Britain released claims to the western islands, and Germany and Great Britain released claims in the east.<sup>10</sup>

In 1900, the two leading chiefs, the *matai* of Tutuila and Manu'a<sup>11</sup>, signed a cession of American Samoa to American control in exchange for the promise that *fa'amatai* governance and culture would be preserved.<sup>12</sup> Naval Commander Benjamin F. Tilley's initial vision proposed "a government of the chiefs who are to receive additional appointments by the commandant."<sup>13</sup> Tilley established that U.S. law would take effect in American Samoa, but any Samoan law or custom not preempted by conflict with the American law would remain in place.<sup>14</sup> Commander Tilley enjoyed unfettered discretion over the Naval government in American Samoa. Apart from the need of appropriated funds from Congress and his chain of command to the Secretary of the Navy, Tilley had virtually no oversight from the mainland federal government. In fact, Naval Historian Gray identified several occasions where Commander Tilley acted in the absence of funds and in violation of the Anti-Deficiency Act for civil servants.<sup>15</sup> This lack of federal oversight of Naval administrators came to a head two decades later, when The Committee of Samoan Chiefs took public opposition to Governor Terhune.

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<sup>9</sup> *Id.* at 24.

<sup>10</sup> Ian Falefuafua Tapu, *Who Really Is a Noble?: The Constitutionality of American Samoa's Matai System*, 24 ASIAN PAC. AM. L. J. 61 (2020).

<sup>11</sup> Tutuila and Manu'a are two Samoan island groups. Tutuila is the largest, main island where the U.S. Naval base was placed. Manu'a is a group of islands sixty miles east, with a smaller population than Tutuila.

<sup>12</sup> Original document reproduced in Gray, J.A.C. *Amerika Samoa: A History of American Samoa and Its United States Naval Administration*. Annapolis: Naval Institute Press, 1960, at 113).

<sup>13</sup> *Id.* at 125.

<sup>14</sup> *A Declaration concerning the Form of Government for the United States Naval Station Tutuila*, May 1<sup>st</sup>, 1900 (Regulation No. 5), <https://historyhub.history.gov/b/researchers-help-blog/posts/records-of-the-government-of-american-samoa-record-group-284> .

<sup>15</sup> Gray, *supra* note 10, at 129.

In the summer of 1920, the 178 Chiefs of the Samoan people gathered to discuss a political threat to their sovereignty. The *matai* felt the American administration unjustly overruled indigenous laws and policies, posing a serious danger for the Samoan People and their culture. Those political appointees, the Governor, who was a Naval Commander selected by the Secretary of the Navy, and the Secretary of Native Affairs appointed by Congress, had the power to overrule the *matai*.<sup>16</sup> The *matai* drafted a list of demands and sent them to the Governor.<sup>17</sup> They demanded personnel replacements to the four most powerful administrative positions. They demanded an abolition of laws prohibiting intermarriage between Samoans and whites; changes in property law; the expulsion from British persons from administrative roles, to be replaced with Samoans or Americans; the publication of all laws in English and Samoan; road building programs; adequate education; an indigenous council with power to advise the Governor; and the “end of tyranny, falsehood and petty revenge as part of government’s policy as practiced by Governor Terhune, Judge Noble and other officers of the present government.”<sup>18</sup>

In a time before the Administrative Procedures Act and “arbitrary and capricious review,” the Samoan people experienced an unresponsive administrative state yielding immense power, with no democratic accountability. Despite being chosen from among their people, the Chiefs lacked legal authority to override the administrators appointed to American Samoa in 1920.

This movement is an example of governance negotiation in a legal pluralist society. What is unique to this document, and the *matai* approach to American administrators in Samoa, is the

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<sup>16</sup>Art. 8, List of Grievances of the Samoan People, 16 September 1920, From series *Subject Files, 1900-1958* (NAID 1392347) <https://historyhub.history.gov/b/researchers-help-blog/posts/records-of-the-government-of-american-samoa-record-group-284>

<sup>17</sup> *Id.*

<sup>18</sup>*List of Grievances*, supra note 16.

simultaneous calls for Samoan jurisdiction over property rights, Samoan as a language of law, and more indigenous roles in the government alongside calls for increased U.S. Federal Administrative action in Samoa.

This letter was part of what is known as the *Mau*, a period of Samoan protest to the way the Navy had been governing, including increased land acquisitions, miscegenation laws, and the removal of prominent Samoans from office.<sup>19</sup> Resistance took the form of tax evasion on *copra*, political gatherings among the *fono*, and grievance letters such as this.<sup>20</sup> Many of the demands in their letter involve greater administrative action and oversight over public programs like road, regulatory change, and *replaced* personnel rather than removing billets. After the letter was received in September 1920, formal charges were filed by U.S. Navy Lieutenant Commander C.H. Boucher, the Secretary of the Navy Josephus Daniels launched an investigation into Governor Commander Terhune. He was immediately removed him from duty.<sup>21</sup> On November 5<sup>th</sup>, 1920, Terhune committed suicide.<sup>22</sup>

This incident demonstrates the influence which the power retained by the *matai* had in negotiating legal authority with the U.S. administrative state. Despite the Navy's U.S.-Heavy pluralism in the early twentieth century, the *fa'amatai* successfully advocated for the Samoan people and held enough leverage, in large part due to their sophisticated political organization and strong treaties they signed for U.S. cession, to prompt an investigation into the alleged bad behavior of Naval administrators.<sup>23</sup>

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<sup>19</sup> I. C. Campbellini, CHIEFS, AGITATORS AND THE NAVY: THE MAU IN AMERICAN SAMOA, 1920–29, *The Journal of Pacific History*, Vol. 44, No. 1 (2009) at 46-48.

<sup>20</sup> *Id.*

<sup>21</sup> *List of Grievances, supra* note 6; *Naval Commander Terhune of Hackensack, N.J., Shoots Himself When Suspended. WAS TO FACE AN INQUIRY* Troubles with Natives Led to Charges Against His Administration There, <https://timesmachine.nytimes.com/timesmachine/1920/11/06/103483149.html?pageNumber=1>

<sup>22</sup> *Id.*

<sup>23</sup> Gray, *supra* note 10, at 129.

## PART II: LEGAL PLURALISM THEORY

The concept of *legal pluralism*, proliferated in Global Legal History literature, is a helpful posture for understanding the relationship between the *fa'amatai* and the Federal administrative state in American Samoa. Lauren Benton describes legal pluralism as the perspective of multiple fonts of law in one place, typically stemming from the introduction of a colonizer and colonial legal regime into a pre-existing indigenous system.<sup>24</sup> Under this theory, upon the initial introduction of a colonial authority, there is implicit mutual recognition of the other legal authority but no formal power arrangement within the jurisdiction. She calls this “weak legal pluralism.” Over time, one of the fonts dominates the other to legitimize their own legal playing field as a superior forum. This hierarchy includes formally assigned roles for the respective regimes, where indigenous persons typically play the role of legal intermediaries who facilitate communication between the indigenous people and the colonial system. The final step is the centralization of this legal hybrid into a strong system legitimized by the colonial state. Benton’s framework imposes a natural expectation that modern post-colonial states are “strong legal pluralist societies”, or have become are fully controlled by the colonizing legal system.

American Samoa resists this model in several ways. First, during the early years where German, British, and American imperials appeared in Samoa, the *fa'amatai* made treaties and agreements which affirmed their jurisdiction, and ceded minimal rights including port use and some small land transfers. Rather than a “weak” pluralism of peer-recognition, the Samoans were seen as the legitimate dominant government. This power had to be challenged through military force in order to change the status quo into a colonial arrangement some thirty years after the treaty period began.

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<sup>24</sup> LAUREN BENTON, *LAW AND COLONIAL CULTURES: LEGAL REGIMES IN WORLD HISTORY, 1400-1900* (2000).



Second, American Samoa has not, and never was, fully controlled by the U.S. legal system. The U.S. policy toward American Samoa has conceived of it as both an “unincorporated territory” and a nation of a distinct people. *Fa’amatai* has remained recognized law, and the U.S. governance on the island has not absorbed those forms or functions.

Third, over time, the U.S. administrative state has returned power back to the *matai*, and has voluntarily reduced the colonial powers held by the U.S. in the territory.

Since 2002, dozens of scholars have utilized and built on Benton’s theory which is now a staple feature in Global Legal Histories. In the intervening twenty years, hundreds of historians and political scientists have engaged with the model. Its wide application and adaptation has produced a variety of alternative frameworks for understanding legal pluralism. Historian Geoffrey Swenson’s recent work examines legal pluralism between a state and domestic non-state actor.<sup>25</sup> Swenson proposes viewing legal pluralism from four archetypes: combative; competitive; cooperative; and complementary. Although his work is especially concerned with non-state actors, which differ from *fa’amatai* who are legally-legitimate local government actors, his lenses to view legal pluralism can be adapted to better understand phases of pluralism in American Samoan history.

Swenson defines “competitive legal pluralism” as pluralism with unchallenged state authority but substantial spheres of autonomy remain in the hands of non-state actors.<sup>26</sup> He describes this arrangement as containing strong tensions between the two systems, and norm divergence between their practices. The two also recognize the other’s existence and jurisdiction over particular people or subjects. Next, “combative legal pluralism” describes when the state

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<sup>25</sup> BRIAN Z. TAMANAHA ET AL., LEGAL PLURALISM AND DEVELOPMENT: SCHOLARS AND PRACTITIONERS IN DIALOGUE 438 (Brian Z. Tamanaha, et al. eds., 2012); GEOFFREY J. SWENSON, CONTENDING ORDERS: LEGAL PLURALISM AND THE RULE OF LAW (2022).

<sup>26</sup> Swenson, *Legal Pluralism in Theory*, *supra* note 24 at 444.

and nonstate institutions are “overly hostile” to each other. In this situation, the two legal systems do not acknowledge each other, and are constantly engaged in campaigns to discredit the other.<sup>27</sup> Swenson’s third pluralism is “cooperative legal pluralism”, in which the non-state actors have generally accepted state legitimacy, have a willingness to work toward common objectives, and the non-state actors retain substantial autonomy and legitimacy over their prescribed jurisdiction.<sup>28</sup> Swenson argues this stage often occurs during a process toward consolidation by the state of their legitimacy, often toward democratic governance or the rule of law. Lastly, “complementary legal pluralism” occurs where the non-state actor is “subordinated and structured” by the state because the state has legitimacy and uncontested sovereignty to enforce its rule of law.<sup>29</sup>

Although *fa’amatai* is a recognized governance structure holding legitimacy and sovereignty among the people, we can apply Swenson’s categories to American Samoa, which reveals shifting U.S. policy over time. In the early years of U.S. presence on the island, the Naval gubernatorial regime clashed with the *fa’amatai*, climaxing in the chief’s letter to the Naval administration. In some respects, this time period is similar to Swenson’s combative legal pluralism category. The *matai* letter expresses feelings among the Samoan people that the U.S. government was hostile toward their indigenous leadership and governments through policies of “tyranny, falsehood, and petty revenge” against them.<sup>30</sup> However, the Samoan situation diverged from the prototype because the *matai* explicitly did not seek to destroy the sovereignty of the Naval Governor. Instead, they requested changes in the administrative framework of the government to better involve indigenous advisors and actors and increase representation among

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<sup>27</sup> *Id.* at 443.

<sup>28</sup> *Id.* at 445.

<sup>29</sup> *Id.* at 445.

<sup>30</sup> Kennedy, *supra* note 2.

the decisionmakers. This conforms more to the “competitive legal pluralism” category, where the non-state (or in our case, the *matai*) do not contest the overarching authority of the U.S. government, but retain substantial autonomy and use that to make demands on the Naval government, and make law in all spheres not already regulated by federal law. After the transition away from U.S. Naval governance, the relationship between the U.S. administrative state and American Samoa has been characterized by “cooperative legal pluralism”, but with more nuanced subject-matter jurisdictional boundaries.

The post-WWII era of U.S.-Samoan relations has also deviated from the Swenson model in the policy change toward facilitating local self-determination of indigenous persons within the American empire. The Kennedy, Johnson, and Nixon administrations each rejected former policies targeted at dissolving tribal identity and sovereignty, and pushed forward policies of redistributing political power back to tribal leaders.<sup>31</sup> This shift infiltrated policies of the Department of the Interior’s Bureau of Indian Affairs. Although territories were placed within the Department of Interior’s Office of Insular Affairs, the policy shift similarly impacted how Congress and the Executive conceptualized legal pluralism between the administrative state and American Samoa.<sup>32</sup> The result of this shift manifested in the ways Congressional and administrative actors discussed American Samoa and the rise of a new normative vision of greater self-determination for the territory. This devolution represents further collaboration with increasing respect from the larger, federal sovereign for the smaller, indigenous counterpart—including policy moves toward returning powers to subsidiaries. This goes beyond what is captured in Swenson’s cooperative legal pluralism.

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<sup>31</sup> American Indian Law Cases & Commentary, Anderson et. al. (4<sup>th</sup> ed.), at 149.

<sup>32</sup> See Ross Dardani, Citizenship in Empire: The Legal History of U.S. Citizenship in American Samoa, 1899-1960, 60 Am. Journal of Legal History 311-356 at 311 (2020).  
L.J. 220, 227 (1980) at 228; see also Dardani, *supra* note 48, at 317.

The role of organizational accountability in the American Administrative State is a key check on its power. In Benton's typical colonial model, accountability can be found through indigenous persons participating (when permitted to do so) in governance, generally through the judicial system. Given the legal legacy of sovereign immunity and advantages for the larger, imperialistic power, the checks on imperial power are often not enough to attain the desired reforms. The lack of power controls is part of why Benton's model progresses toward a consolidated power structure, informed by historic systems of local governance, but generally retaining the legal structures of the colonial state. However, the existing domestic expectation for criticism of the U.S. administrative state by outsiders created more room for indigenous political resistance to the Naval administration, and later administrative actions taken on the islands.

This paper proposes an alternative model of legal pluralism for the case of American Samoa. The beginning of pluralism in American Samoa deviated from the ontological archetype put forth in the literature. These contrasting models are illustrated below:

### American Samoan Legal Pluralism



Fa'amatai Indigenous Law    Multinational LP    U.S.-Heavy LP    A.S.-Heavy LP

- (1) *Fa'amatai Indigenous Law*: Fa'amatai dominance/economic colonists
- (2) *Multinational Legal Pluralism*: contested legal power among Samoan/German/UK/US governments
- (3) *U.S.-Heavy Legal Pluralism*: US Navy Administrative State overpowers present but sidestepped fa'amatai
- (4) *American Samoan Heavy Legal Pluralism*: formal fa'amatai dominance, regressive US administrative state power

\*Dual arrow heads—noting the potential for further changes in the nature of pluralism, as well as noting the contested pluralism between *matai* in the centuries before European contact

### Lauren Benton's Legal Pluralism



Weak LP

Strong LP

- (1) *Weak Legal Pluralism: Indigenous/colonizer contested legal power*
- (2) *Strong Legal Pluralism: Colonizer legal dominance in an integrated system*

\* Single directional arrow—noting the one-way nature of power consolidation toward the primarily colonial system

Although Benton's model does not explicitly engage with indigenous legal systems as "primitive," the "weak" to "strong" terminology implies a lack of sophistication, which does not become "strong" until the imperial power asserts further controls over indigenous norms in a formal arrangement. American Samoa was far from weak on the eve of the eighteenth century. Samoa flourished with self-sustaining agriculture, produced through the stable *fa'amatai governance* which maintained social order, building from smaller families up to a national network of neighboring clans.

The second deviation from the typical model in *Law and Colonial Cultures* comes from the "colonizer": the United States. American administration in the region was highly removed from Washington, and was executive and quasi-legislative in function. The United States did not engage judicially in American Samoa. Although American courts became a forum for Samoans

to bring suit in the twentieth century, this was fundamentally different from the typical judicial fusion discussed in legal pluralism.<sup>33</sup> Second, instead of jockeying for complete dominance over the 19<sup>th</sup> and 20<sup>th</sup> centuries, the U.S. administrators submitted to *matai* governance on property law and most local disputes. The U.S. largely carved out jurisdictions in administrative realms like infrastructure, health, agriculture, and industrialization rather than spaces of traditional law.

As a result, the fight for legal domination present in Benton's model, and the inevitable result of an overarching legal hierarchy dismantling indigenous systems, did not emerge in American Samoa. Instead, the *fa'amatai* exerts immense power over most aspects of life, while the U.S. administrative state governs peripheral issues which can still be challenged by Samoan objectors through administrative and judicial forums.

This shared allocation of responsibility within a jurisdiction which American Samoa enjoys now is what I call balanced legal pluralism. Balanced legal pluralism shares some similarities with Swenson's cooperative pluralism, but incorporates an elevated sovereign-to-sovereign relationship in which the U.S. government recognizes *fa'amatai* legitimacy, and Samoans recognize the United States as a broader national sovereign with particular rights and responsibilities. Despite having significant vestiges from the "competitive" legal pluralism experienced in the early 20<sup>th</sup> century, the U.S. administrative state has grown to recognize Samoan sovereignty and self-determination and seemingly avoids the legal turf wars observed during the Naval administration. This arrangement of mutual recognition, and a conscious effort by the U.S. administrative state in the late 20<sup>th</sup> century to defer to subsidiarity in large portions of governance encompasses a balancing between sovereignties that is less competitive and contentious than Swenson and other pluralist scholars typically describe.

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<sup>33</sup> Benton, *supra* note 23.

This model also accommodates for the flow of power back and forth between sovereigns over time. Benton's model results in a monopoly of power which is consolidated and maintained by the colonial power. Balanced legal pluralism describes a stable relationship between sovereigns which is dynamic and renegotiates jurisdiction continuously. The stability in spite of the responsiveness to indigenous resistance contrasts previous models. The ability to change legal structures and policies is in part due to the administrative nature of governance on the islands. Domestically, the U.S. administrative state is often changing policies to respond to new executive administrations, to accommodate concerns in notice and comment rulemaking, or to respond to judicial injunctions on agency action. The flexible nature of the administrative state created more room for indigenous negotiation than in other historic U.S. territories.

American Samoa demonstrates a pluralist equilibrium which can occur without legal domination of indigenous people and institutions. Perhaps driven by the executive and legislative, rather than judicial, nature of federal actors in American Samoa, this "balanced pluralism" allowed flexibility and increasing deference to Samoan desires over time. This arrangement better provided for indigenous needs and self-governance than judicial legal pluralism during de-colonization because colonial law was not engrained long-term into indigenous case law and local ordinances.

#### *A Note on Other Theoretical Authorities*

A keystone Federal Indian Law case discussing the relationship between the U.S. government and Indian tribes is *Cherokee Nation v. Georgia*.<sup>34</sup> This 1831 Marshall decision infamously declared indigenous Tribes as "domestic dependent nations," whose relationship with the United States "resemble that of a ward to his guardian."<sup>35</sup> Although Federal Indian Law does

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<sup>34</sup> *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831).

<sup>35</sup> *Id.* at 30.

not legally apply to American Samoans, it has shaped larger federal policies and conceptions of territories and the people therein. The language used in the 19<sup>th</sup> century to describe Indian nations as “domestic dependents” is mirrored in language during the Spanish American War describing Puerto Rican, Cuban, Filipino, and Samoan subjects. Likewise, descriptions of American Samoans even through the 1970s are overwhelmingly paternalistic toward Samoans and describe the U.S. governance as a guardianship to protect naïve indigenous persons from dubious foreign nations vying for dominance in the Pacific region. Trustee and “wardship” discussions in Indian law are especially relevant in studying the role of social and economic programs in American Samoa, namely Medicaid, CHIP, and infrastructure programs.

Post-colonial studies is an additional resource for examining the relationship between the U.S. administrative state and American Samoa. American Samoa has not experienced as vigorous movements for independence. Taulapapa McMullin wrote a postcolonial history of American Samoan resistance movements featured in a 2005 edited collection on sovereignty and indigenous self-determination.<sup>36</sup> Taulapapa McMullin explains the silence of independence movements or reunification movements between American Samoa and independent Samoa as the result of Samoan identity residing in traditions, language, culture, and *fa'amatai* rather than “Western Institution.”<sup>37</sup> He identifies points of resistance by *matai* throughout the 20<sup>th</sup> century which are especially driven by concerns of losing indigenous landholding practices. Such advocacy took place through lobbying Congress and the Department of the Interior.<sup>38</sup> Further, Taulapapa McMullin’s research highlighted instances where Samoan leaders intentionally

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<sup>36</sup> See Dan Taulapapa McMullin, *The Passive Resistance of Samoans to U.S. and Other Colonialisms*, in JOANNE BARKER, SOVEREIGNTY MATTERS: LOCATIONS OF CONTESTATION AND POSSIBILITY IN INDIGENOUS STRUGGLES FOR SELF-DETERMINATION 110 (Devon Abbott Mihesuah eds., 2005).

<sup>37</sup> *Id.* at 110.

<sup>38</sup> *Id.* at 112.



denounced moving toward independence out of fear it would cause unnecessary ““internal strife and human suffering”” for American Samoans. According to Taulapapa McMullin, American Samoans ““view themselves as an integral part of the U.S. family of states and territories enjoying individual rights and freedoms under an evolutionary political process,”” which permits Samoan agency in the current territorial framework.<sup>39</sup>

Samoan leaders, citing the will of the Samoan people, have chosen to view their relationship with the United States and domestic policy goals as outside the scope of traditional decolonization.<sup>40</sup> Beginning in the 2020s, more academic articles have engaged with territorial subjects through a humanitarian law and post-colonialist approach.

Lastly, a niche area at the intersection of global legal history and administrative state history is Global Administrative Law.<sup>41</sup> Primarily concerned with the impacts of administrative law in the interconnectedness of the 21<sup>st</sup> century and actors subject to multijurisdictional administration, this paper contributes historical depth to the field. Most histories in this field focus on economic actors in the neoliberal era, or on the impact of an international world on domestic actors in the administrative state.<sup>42</sup> This paper examines the role of the administrative state in colonialism, and the forging of an eventual international federalistic relationship between dual sovereigns: the United States and American Samoa. This paper reveals the distinct nature of imperialism when conducted by the administrative state (in contrast to historic U.S. territories in the mainland where indigenous places and governments were settled by private citizens; or the colonization of Hawaii by private business actors and corporations; or Puerto Rico, which was

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<sup>39</sup> Taulapapa McMullin, *supra* note **Error! Bookmark not defined.**, at 115 (citing UN working paper on American Samoa, A/AC.1009/2002/12) .

<sup>40</sup> Tapu, *supra* note 11, at 75.

<sup>41</sup> Kingsbury et. al, *The Emergence of Global Administrative Law* in LAW AND CONTEMPORARY PROBLEMS (2005).

<sup>42</sup> Barak-Erez, D., & Perez, O., *The Administrative State Goes Global* in NEGOTIATING STATE AND NON-STATE LAW: THE CHALLENGE OF GLOBAL AND LOCAL LEGAL PLURALISM (M. A. Helfand Ed.) at 134.

acquired through conquest from the Spanish, then governed by a formal tripartite entity created in the image of the U.S. federal government). Global Administrative History as a category, can also incorporate the stories of territorial acquisition through the administrative state, and serve as a legal analysis tool for existing places with the multijurisdictional, global legacies like American Samoa which lack firm footing within area studies or traditional post-colonial theory. Such applications broaden the scope of administrative law studies, which often overlook the historical role of executive administration in colonialism.

### **PART III: FA'AMATAI**

The *matai* are family leaders who are chosen to lead their families, and as a collective lead Samoa. Referred to by European and American observers as “chiefs”, the *matai* swerved (and continue to serve) as leaders within large extended family networks and villages, and served as leaders in executive, judicial and legislative capacities.<sup>43</sup> The role of the *matai* is beyond comparison to American law. The American Samoa High Court of Appeals described them as “more than chiefs”; a *matai* “has an awesome responsibility to his family.”<sup>44</sup> In Samoa, households have historically included large extended families, and serve as the basis for land utilization and possession. The communal ownership system still present today relies on an extended family who is familiar with the needs of one another, and administer resources accordingly.

These families, *aiga*, serve as the basis for political organization and democratic accountability in the *fa'amatai*. Each *aiga* may have one or more *matai* who take responsibility for representing the family politically among other *matai*, provide personal and communal

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<sup>43</sup> Tapu, *supra* note 11, at 75.

<sup>44</sup> Poumele v. Ma'ae, 2 A.S.R.2d 4, 5 (App. Div. 1984).

guidance to the family, allocate land and determine household economics, and serve as the most local form of governance.<sup>45</sup> In each village, the leading *matai* of each family participate in the *fono*, similar to a village council. When a new *matai* is needed, the *fono* unanimously select a man or woman as the new leader, and that title has the force of law.<sup>46</sup> In 1990, this system was statutorily recognized as equivalent to common law in American Samoa.<sup>47</sup>

This governance structure was common across Samoa—containing present-day (Western) Samoa and American Samoa (Eastern Samoa). Samoa’s *fa’amatai* met its first external challenger during the Age of Imperialism.<sup>48</sup> First, German and Dutch traders visited Samoa to purchase coconut products for sale in Europe.<sup>49</sup> A major Samoan export was coconut cultivation and processing, in which they grew, harvested, and dried coconut to produce *copra* which was then sold to merchants in the eighteenth and nineteenth centuries. The United States first expressed territorial interest in Samoa in the mid nineteenth century, eyeing the main island of Tutuila as a commercial and defensive asset in the Pacific.<sup>50</sup> Congress declined any formal action, but continued sending ministers to Samoa at the behest of the Navy and State Department.<sup>51</sup> What began as a U.S. trading post in Pago Pago developed into a strategic

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<sup>45</sup> *Id.*

<sup>46</sup> Craig Land, *ONE BOAT, TWO CAPTAINS: IMPLICATIONS OF THE 2020 SAMOAN LAND AND TITLES COURT REFORMS FOR CUSTOMARY LAW AND HUMAN RIGHTS*, 52 VICT. UNIV. OF WELLINGTON L. REV. 507, 512 (2021).

<sup>47</sup> Village Fono Act 1990 (VFA).

<sup>48</sup> The historiography of Samoa and other Pacific nations is tainted by Orientalism and colonialism. Much of the English language histories were written in the 19<sup>th</sup> and 20<sup>th</sup> centuries, and carry with them the expected editorializations by the authors. Given the limitations of this research, I am relying on secondary literature written in English. A few noteworthy law articles are by Samoan academics, and in journals which preference Samoan voices and sources. However, even those papers rely on historical information from 19<sup>th</sup> and 20<sup>th</sup> century Western sources. I try to mitigate the impact of applying Orientalized and racially biased judgments made in these histories by engaging only with the dates, persons, and locations described. Nonetheless, I acknowledge that Samoan historians, oral histories, and unpublished records may remember the history differently, and regrettably am unable to capture those histories in this project.

<sup>49</sup> Kennedy, *supra* note 2, at 8.

<sup>50</sup> Ross Dardani, *Citizenship In Empire: The Legal History of U.S. Citizenship In American Samoa, 1899-1960*, 60 AM. J. OF LEGAL HIST. 311 (2020) at 314.

<sup>51</sup> *Id.* at 316.

relationship when the *matai* wrote a letter to President Grant in 1873 proposing a formal annexation in response to rising British and German imperialism in the region.<sup>52</sup>

In the eighteenth and nineteenth centuries, most domestic Samoan law was conserved and administered within the historic *matai* governance structure. Despite a changing Pacific arena, and the growth of foreign policy with European and American imperialists, *fa'amatai* maintained the historic communal land system, and *matai* from villages across the archipelagos united to produce foreign policy strategies. It was not until the late nineteenth century where those foreign influences began to impact domestic policy and make claims of legitimacy across Samoa.

American Samoa challenges Benton's argument that colonial governance is equivalent to modernity and strength. It also challenges the finality of a colonial regime and power arrangements. Rather than accepting a weak to strong, one-way ratchet, we should conceptualize political power is always being negotiated between different groups. It ebbs and flows between groups, and even within a single system can change from "weak" to "strong" depending on enforcement and external factors. It also challenges the beginning of Benton's timeline with weak. This "timeline" fails to recognize existing formal legal regimes of indigenous peoples which predate the introduction of imperialistic law in legal pluralism.

The *fa'amatai* is a manifestation of strong legal pluralism, which developed in Samoa over centuries and existed at the time of contact. Upon the arrival of European merchants and emissaries, *fa'amatai* remained the strong legal pluralist force. Although new legal customs and notions were being introduced in contract law and international law by imperialists, the traditional Samoan system maintained legitimacy among the people and as a representative of Samoa in international for a. In the late nineteenth centuries, through the use of force, colonial

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<sup>52</sup> *Id.* at 315; The Samoan Tangle at 10.

powers carved out more spaces to exercise their legal traditions and make claims to legal jurisdiction in Samoa. Consequently, the *matai* made alliances with different colonial powers which resulted in partition on largely European legal form, which was accepted by Samoans. This ushered in a period of weak legal pluralism, where both Samoan and colonial law were being used, though the lines between which system had jurisdiction over a particular subject matter was contested.

Next, a new era of U.S.-Heavy legal pluralism began with the Naval administration exercising executive power over American Samoa. Under this arrangement, the *matai* and the United States recognized Department of the Navy's hierarchy in establishing new law in American Samoa. However, the *fa'amatai* maintained legitimacy and legal control over a number of domestic issues, and used their power to challenge poor governance from the U.S. Naval administrators. Their continued resistance against the "strong" legal force resulted in the U.S. changing administrators in 1951, as they replaced the Department of the Navy's jurisdiction with the State Department. Over the mid to late nineteenth century, American Samoa transitioned from a strong legal pluralist society with dominance by the U.S. administrative state to a strong legal pluralist rule with dominance by the indigenous *fa'amatai* and supplemental assistance and limited jurisdiction for the U.S. administrative state. In the 20<sup>th</sup> and 21<sup>st</sup> century "post-colonial" era, the U.S. administrative state has taken a conscious position of the dangers of colonizing the territories, and has repeatedly taken a position of deferring to *matai* legal traditions. That being said, the American Samoan government has requested the presence of administrative state policies to assist in a variety of societal programs on the islands.

This deferential strong pluralism, similar to "cooperative federalism" in the domestic context, should be a model for post-colonial spaces who continue to contest the boundaries of

multiple fonts of law. This process of legal pluralism, as described in the diagram, does not end. It continues infinitely in theory, and the process of strong, to weak, to strong, and potentially changing hands between the dominant legal source, is more sustainable than the Benton model which reflects a forced, colonized legal code which is destined to hijack indigenous forms of governance. Further, this model better represents the global phenomenon of the Administrative State. American Samoa is an early example of U.S. administrative agencies acting as dynamic fonts of law capable of interacting with other legal authorities on the ground to produce legal pluralism. As agencies continue to be utilized by the U.S. government for social and economic policies, this type of legal pluralism will only become more popular. Administrative legal action, which tends to be restrained to a particular subject matter of each individual agency at work, is also less coercive than the colonial legal forces at work in Benton's original model. This may be an explanation of the model's failure to describe American Samoa.

#### **PART IV: US NAVAL ADMINISTRATION**

By the time the East/West Samoan partition occurred, the United States was engulfed by naval ambitions in the Caribbean and Pacific. Intellectually, the political and military elite were enamored with Mahan's vision for American dominance of the seas. Manifestations of a drive within the political and military elite toward maritime expansion is visible in the contour of the Department of the Navy appropriations from 1890-1898. In 1890, the United States Congress appropriated \$14,082,000 to the Navy.<sup>53</sup> In 1891 (one year after Mahan published *The Influence*

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<sup>53</sup> Statistics taken from the "Amount appropriated" column of Statement 8, "Expenditures of the Navy, 1794 through 30 June 1930, in the 1960 edition of *Financial Report Fiscal Year 1960* by the Department of the Navy, Office of the Comptroller (Washington, DC: US Government Printing Office, 1960), at 43-44.  
<https://www.history.Navy.mil/research/library/online-reading-room/title-list-alphabetically/b/budget-of-the-us->

of *Sea Power Upon History*), the appropriation almost doubled to \$27,345,000. It plateaued around 27 million dollars until 1898—one year after Mahan published a subsequent influential work, *The Interests of America in Sea Power, Present and Future*—when the budget quadrupled to \$121,847,000. In 1900, President McKinley vested responsibility for American interests in Samoa in the Department of the Navy.<sup>54</sup>

On April 17, 1900, the twenty *matai* of Tutuila signed an Instrument of Cession to the United States.<sup>55</sup> The document, signed in Samoan and translated into English, recognized certain American claims in Samoa, and arranged a hierarchy of authority, in exchange for American protection of individual Samoan rights. It proclaimed:

“we, the Chiefs...by virtue of our office as the hereditary representatives of the people of said island...have CEDED, TRANSFERRED AND YIELDED UP, unto Commander B. F. Tilley of the U.S. “Abarenda” the duly accredited representative of the Government...ALL THOSE the ISLANDS of TUTUILA and AUNUU...to be annexed to the said Government to be known and designated as the district of “Tutuila”.”<sup>56</sup>

This text reveals the role of the administrative state, in this case, Commander Tilley of the Department of the Navy, in symbolizing the U.S. government in American Samoa. The treaty recognized Commander Tilley as the proper representative with the legal authority to sign a treaty, as well as the person with legal authority to uphold the obligations in Samoa and the United States. This instance of administrative diplomacy highlights the extent of power delegated

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[Navy-1794-to-2004.html](https://www.history.Navy.mil/research/library/online-reading-room/title-list-alphabetically/b/budget-of-the-us-Navy-1794-to-2004.html) <https://www.history.Navy.mil/research/library/online-reading-room/title-list-alphabetically/b/budget-of-the-us-Navy-1794-to-2004.html>

<sup>54</sup> Ross Dardani, *supra* note 48, at 321.

<sup>55</sup> Instrument of Cession Chiefs of Tutuila to United States Government. Translated in English Language with Deed in Samoan Language Dated April 17, 1900, Edwin, W. Gurr. Solicitor Samoa. Office of the Historian, Department of State <https://history.state.gov/historicaldocuments/frus1929v01/d853>.

<sup>56</sup> *Id.*, at 2.

to the Navy, and the legal reality of that power being recognized by the *matai*. This formal ceding of jurisdiction to the United States also marks a point of strong legal pluralism, where the boundaries between powers are enumerated in formal power sharing arrangements.

The treaty also provided “the Government of the United States of America shall respect and protect the individual rights of all people dwelling in Tutuila and their lands and other property,”<sup>57</sup> The treaty allows for the U.S. Government (referred to merely as “Government”) to purchase land it requires for “a fair consideration.”<sup>58</sup> This form of eminent domain marked a bold deviation from the historical communal land system which the *fa’amatai* entrenched to prevent non-communal land ownership.

In exchange for these concessions, the *matai* secured that they would “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.”<sup>59</sup> However, it provides that the “enactment of legislation and the General Control shall remain firm with the United States of America.”<sup>60</sup>

Among the English sources preserved on this Instrument of Cession, nothing indicates per se coercion of the *matai* to compel signatures for the agreement. That being said, the historical record indicates this decision by the chiefs was a defense mechanism against the German colonists who indicated a desire to annex all of Samoa, and had been identified on multiple occasions as committing atrocities against Western Samoans.<sup>61</sup> The *matai* decision to recognize United States jurisdiction and legislative powers can be understood as a decision to accept a form of strong pluralism dominated by a foreign power in order to prevent a strong

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<sup>57</sup> *Id.*

<sup>58</sup> *Id.* at 3.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> See Arnold H. Leibowitz, American Samoa: Decline of a Culture, 10 Cal. W. Int’l L.J. 220, 227 (1980) at 228; see also Dardani, *supra* note 48, at 317.



pluralism which fully extinguished indigenous governance from Eastern Samoa. It also injects previous graphic showing legal pluralism in Samoa with *matai* agency, even in periods “dominated” by the U.S. Administrative State.

The Instrument of Cession by the Chiefs of Tutuila was recognized by the Department of the Navy in the May 1900 Declaration.<sup>62</sup> It detailed the appointment structure for governance within Navy billets governing Samoa. It also affirmed that “the customs of the Samoans not in conflict with the laws of the United States concerning the Naval Station shall be preserved unless otherwise requested by the representatives of the people.”<sup>63</sup> The retention of some *matai* power even in this U.S.-Heavy legal pluralism through a Naval administrator allowed for the eventual transition to strong legal pluralism dominated by American Samoan *matai*.<sup>64</sup>

In his first month, Commander Tilley imposed customs duties to produce a stream of revenue distinct for civil functions of the government, rather than source it from his appropriated Department of the Navy funds.<sup>65</sup> He also passed regulations which affirmed the governance boundaries set in the cession document. He passed the Native Lands Ordinance, which wrote into naval regulations the prohibition on the alienation of Samoan lands.<sup>66</sup> During early Naval governance, the administrative state began intruding on Samoan lifestyles through issuing ordinances. Prohibitions on the sale of alcohol to Samoans, the formation of a police department, mandating registration of marriages, births, and deaths, and further regulating taxation, firearm possession, and compliance with blue laws marked efforts to impose American cultural norms on

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<sup>62</sup> A Declaration concerning the Form of Government for the United States Naval Station Tutuila, 1 May 1900, [https://historyhub.history.gov/cfs-file/\\_key/communityserver-blogs-components-weblogfiles/00-00-00-00-11/Regulation\\_2B00\\_4\\_2500\\_265.jpg](https://historyhub.history.gov/cfs-file/_key/communityserver-blogs-components-weblogfiles/00-00-00-00-11/Regulation_2B00_4_2500_265.jpg)

<sup>63</sup> *Id.* at 1.

<sup>64</sup> For an unknown reason, the U.S. Senate did not legally recognize the cession until 1929. S.J. Res. 110, 70th Cong., 2d Sess., 45 Stat. 1253 (1929).

<sup>65</sup> Gray, *supra* note 12, at 125.

<sup>66</sup> *Id.*

islanders.<sup>67</sup> This is one element of what I call a U.S.-Heavy legal pluralism present under Naval administrative governance.

By using Naval Commanders as judges on the High Court of Samoa in the early 1900s, the Naval administration consolidated power and exerted influence even in the jurisdictions reserved for indigenous governance under the cession. This consolidation is prototypical of legal pluralism in the Benton model, and has manifested itself in dozens of colonial situations.

Although the court, by virtue of having naval commanders sit as judges, was impacted by U.S. interests, it affirmed Samoan rights in relation to the Federal government in multiple instances.

In a series of 1902 eminent domain cases, The High Court of Samoa, presided by Naval Captain Urial Sebree, reviewed taking of Samoan lands by the U.S. government from 1901. These taking occurred in parcels of land in the Fagatogo region, which became part of the United States Naval Station, Tutuila. In these cases, Captain Sebree was tasked with deciding just compensation for a taking under Naval Regulation No. 20-1900, which enabled the U.S. Government to acquire lands for public purposes. On December 15<sup>th</sup>, 1902, the court heard U.S. Government v. Afoa.<sup>68</sup> In this case, the U.S. Government claimed a parcel of Samoan land belonging to the Afoa family on March 7<sup>th</sup>, 1901. Despite claiming the land, the government did not offer any compensation for the taking. Capt. Sabree affirmed the legality of the land transfer upon payment of \$500.00 plus eight per-cent interest tolling from the date of confiscation, and all court fees to be paid by the government.

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<sup>67</sup> *Id.* at 122-127.

<sup>68</sup> *Government of the United States v. Afoa*, a Samoan No. 42-1902 (No. 13-1901), High Court of American Samoa Civil Jurisdiction, December 12, 1902.

In December of 1902, the court heard 16 total cases involving land takings in Fagatogo.<sup>69</sup> In *Government of the United States Naval Station, Tutuila, v. Lutu, a Samoan, Respondent*, the court held the government liable for \$1,003.03, using the same calculation of land value, eight per-cent interest, and court fees.<sup>70</sup> There were fourteen other cases involving takings of land to create the U.S. Naval Base, Tutuila. All of these cases heard in the 1902 session were presided over by Captain Sebree, who was identified in the opinion as both U.S. Navy Captain and President of the High Court. In nine of the cases, the respondent's name was followed by the identifier "a Samoan." Another two cases likely involved Samoan respondents. The remaining five cases involved landowners of European descent. A respondent in two cases, W. (William) Groves is identified in an unrelated civil case as a "British Subject" married to a Sunui Groves, who was likely a Samoan woman.<sup>71</sup>

In both land takings from Samoans and European landholders, the court administered the same just compensation formula: land value, plus eight per-cent interest incurred between March 7, 1901 and the judgment day, plus costs of "Attorney, Arbitration, Registrar's and High court

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<sup>69</sup> *Government of the United States v. Samia* December 10, 1902 No. 13-1901, December 10, 1902; *Government of the United States Naval Station, Tutuila v. Faagata, Afoa and Taesali, Samoana*, No. 41-1902 December 10, 1902; *Government of the United States Naval Station, Tutuila v. Tufue, a Samoan* December 13, 1902, High Court of American Samoa No. 43-1902; *Government of the United States Naval Station, Tutuila v. Taamu, a Samoan Respondent*, No. 44-1902 December 13, 1902; *Government of the United States v. Ifopo, a Samoan*, No. 45-1902 December 15, 1902; *Government of the United States v. Tiumalu, a Samoan* No. 48-1902, December 15, 1902; *Government of the United States v. Taulago, a Samoan*, No. 50-1902 December 15, 1902; *Government of the United States v. E. Ripley* No. 51-1902 December 15, 1902; *Government of the United States v. Fanene, a Samoan* No. 52-1902, December 15, 1902 (incomplete)--Complete case found in *U.S. v. Fanene, a Samoan*, No. 53-1902; *Government of the United States v. Mailo* No. 54-1902, December 15, 1902; *Government of the United States v. Mele Meredith*, No. 58-1902, December 15, 1902; *Government of the United States v. Lisiate* No. 59-1902 December 15, 1902; *Government of the United States v. W. Groves* Nos. 36-1902, 3-1903, June 30, 1903, E.B. Underwood, Commander, U.S. Navy, Commandant, President of the High Court; *Government of the United States v. Estate of J. Ryan (deceased)—W. Groves, Administrator* No. 4-1903, June 30, 1903.

<sup>70</sup> *Government of the United States Naval Station, Tutuila v. Lutu, a Samoan*, No. 40-1902. High Court of American Samoa Civil Jurisdiction, Trial Division. December 10, 1902.

<sup>71</sup> *Sunui Groves v. Mrs. J.S. Pike, et al.*, No. 26-1902, July 21, 1903 Judge E.W. Gurr.

costs.”<sup>72</sup> Although the formula was the same, two unique differences appeared in 1903 cases involving non-Samoan plaintiffs, heard by a new judge, Commander E.B. Underwood, President of the High Court. In a June 30, 1903 case, the Estate of a J. Ryan received compensation for their land, prescribed to be paid in “U.S. Gold Coin,” and the Estate received permission to remain on the premises for six months after June 1, 1903.<sup>73</sup> Similarly in *Government of the United States v. W. Groves*, the court ordered payment in U.S. Gold Coin, and allowed the respondent six months before required vacation of the property.<sup>74</sup>

The ability of the U.S. Naval administration to take land for the Tutuila base, then have a naval officer preside over adjudication in the matter illustrates the extent of their administrative power. During this peak of administrative power, where Naval commanders had broad discretion to regulate, enforce, and adjudicate law, U.S. federal power outweighed that of the *fa'amatai*. However, this specie of federal power, the Department of the Navy as an administrative agency, was unique. Typical mainland federalism and federal structure in Puerto Rico and the U.S. Virgin Islands established a network of independent local, state, and federal courts. In American Samoa, a High Court of Samoa was created outside the Article III judiciary framework, but with adjudicators from the administrative agencies in addition to Samoans. During the U.S.-Heavy period, the administrative state yielded power over adjudication by nature of agency involvement with the High Court. However, this power was redistributed in the mid-twentieth century which weakened agency involvement in American Samoan appellate cases.

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<sup>72</sup> *Id.*

<sup>73</sup> *Government of the United States v. Estate of J. Ryan (deceased)—W. Groves*, Administrator No. 4-1903, June 30, 1903.

<sup>74</sup> *Government of the United States v. W. Groves* Nos. 36-1902, 3-1903, June 30, 1903, E.B. Underwood, Commander, U.S. Navy, Commandant, President of the High Court.

#### PART IV: ADMINISTRATIVE ACCOUNTABILITY IN WASHINGTON

The 1920 Terhune incident and the *Mau* movement undoubtedly diminished the Navy's credibility as a territorial administration. Over the next decade, six different Naval governors occupied the Samoan Governorship. After the removal of Terhune, Samoans continued expressing grievances and formed various commissions to respond to concerns. In 1926, *matai* sent a letter to President Coolidge requesting a representative legislature, courts, and economic development programs proportional to those in the States.<sup>75</sup> However, their requests were denied on the grounds that Samoans lacked the capacity for legislative representation. Thus, the administrative state remained the locus of U.S. governance in Samoa.

Although the *matai* ceded the American Samoan islands to the United States in 1900, the U.S. Congress did not officially recognize the cede in legislation until 1920. In a Joint Resolution, Congress ratified the cession of Tutuila and Manua and other identified islands, identifying them as unincorporated territories since the initial date of the cessions, 1900 and 1904 respectively.<sup>76</sup> The resolution provided that no U.S. law "relative to public lands," shall apply to American Samoa.<sup>77</sup> This provision codifies the agreement in the original cession that the *matai* system and accompanying property laws remain in effect. The resolution also required that all U.S. revenue from the islands not used for U.S. civil, military, or naval purposes, and not assigned to the local government, can only be used "for the benefit of the inhabitants...for education and other public purposes."<sup>78</sup>

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<sup>75</sup> David Chappell, *The Forgotten Mau: Anti-Navy Protest in American Samoa, 1920-1935*, 69 PAC. HIST. REV. 217, 249 (2000).

<sup>76</sup> 48 USC 1661: Islands of eastern Samoa, Feb. 20, 1929, ch. 281, 45 Stat. 1253 ; May 22, 1929, ch. 6, 46 Stat. 4 [https://uscode.house.gov/view.xhtml?req=\(title:48%20section:1661%20edition:prelim\);](https://uscode.house.gov/view.xhtml?req=(title:48%20section:1661%20edition:prelim);) *Id.*, at 256.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.*

Sections C and D of the resolution discussed U.S. governance in American Samoa. The resolution provided that until Congress established a different model for the governance of American Samoa, civil, judicial, and military powers are vested in the person and manner which the U.S. President directs. These persons are also subject to removal by the President. This provision bolstered the previous largely pragmatic power of governing American Samoa with the administrative state. By enshrining the President's appointment and removal power, and vesting civil, judicial, and military powers in that office, Congress created a framework for future governing administrations. Although they did not require the Department of Defense or the Department of the Navy to be the administrator, Congress codified the status quo of the administrative agency exercising civil, judicial, and military powers within the United States' jurisdiction in American Samoa. Although Congress reaffirmed the administrative nature of governance in the islands, they created a new board of oversight to recommend legislation to Congress. Section D requires the President to appoint six "commissioners" tasked with recommending any legislation governing American Samoa which they find necessary or proper, and sharing that recommendation with congress. The panel's composition must include two members from the U.S. House, two from the U.S. Senate, and two *matai*.

This provision is the first instance of Congress inserting itself into an oversight role over the administration in American Samoa. Also, the composition of 1/3 of the legislative proposal committee must be *matai*. The inclusion of required, although in minority, indigenous participation in the committee marks a narrow departure from US-Heavy legal pluralism in American Samoa.

A four-department committee chaired by the Secretary of State, Secretary of War, Secretary of the Navy, and Secretary of the Interior investigated the governance situation of the

territories after the war. The committee decided a civilian agency would be best suited to govern.<sup>79</sup> In 1951, President Truman issued Executive Order 10264 which transferred administrative jurisdiction over American Samoa and Guam from the Department of the Navy to the Department of the Interior.<sup>80</sup> The transfer was governed by a memorandum of understanding between the Navy and Interior departments. The Executive Order granted the Secretary of Interior power to “take such action as may be necessary and appropriate...for the administration of civil government in American Samoa.”<sup>81</sup> This charge is much narrower than the 1900 Executive Order granting the Department of the Navy

Increased federal oversight in American Samoa brings to light several tensions present in the governance structure. Often times, government interest in a people, subject, or problem often brings greater government action in that region. However, in this case, the government action produced new boundaries around federal action and more roles for indigenous actors. Second, the transition of the power to control governance structures in American Samoa from an administrative agency to Congress marked renewed attentiveness by the federal government to Samoa. Greater oversight resulted in new reviews of agency action, and congressional discussions over normative governance on the islands. This transition marked a period of greater federal oversight for the purpose of devolving more responsibilities back to *fa'amatai* to govern.

In the Second World War, the Department of the Navy increasingly relied on Tutuila as a navy yard for the Pacific fleet. This increased jobs available to Samoans and rose wages across

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<sup>79</sup> Darden, T. F., HISTORICAL SKETCH OF THE NAVAL ADMINISTRATION OF THE GOVERNMENT OF AMERICAN SAMOA, - JULY 1, 1951. Retrieved from the Library of Congress, <https://www.loc.gov/item/52061504/> at ix (1952).

<sup>80</sup> Exec. No. 10264 16 FR 6417, 3 CFR, 1949-1953 Comp., p. 765; United Nations General Assembly Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries (2011) <chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://documents.un.org/doc/undoc/gen/n11/253/54/pdf/n1125354.pdf?token=VvOplZbQseYM6Jes05&fe=true> .

<sup>81</sup> *Id.*

the island.<sup>82</sup> The role of the islands and people in fighting the Pacific campaign gained new awareness among Americans and legislators of the Samoan people. After the Second World War, the U.S. Navy launched a committee investigation into the governance of Guam and American Samoa.<sup>83</sup> The committee was launched at a time of global scrutiny for encumbrances on self-determination, dovetailed with increased awareness of governance abuses in Guam and American Samoa by the Department of the Navy. Known as the Hopkins Report, the report produced a number of findings that led to the transfer of command from the Navy to the Department of the Interior. First, that administrative and judicial billets should be filled by indigenous persons as often as possible. Second, that naval personnel, for however long the navy maintains control, should be stationed for a minimum of two to three years. Third, that officers stationed in Guam and American Samoa should preferably have prior Pacific Island experience. Fourth, to the extent possible, positions in education, administration, and law should be filled by civilians, not military personnel.<sup>84</sup> These recommendations indicate the committee's reservations with the previous naval administration. It also indicates a policy shift toward having civilians staffing the administrative state. The transition from Naval administration to the Department of the Interior was a substantial reduction in the power which the U.S. government exercised in the Samoan Islands. Inherent to naval governance is the presence of ships, weapons, and sailors on the ground. The reduction of the physical might of the United States was both a symbolic and tangible shift in policy. This is a moment of power flowing back to *fa'amatai*, despite years of that governing space being exercised by the U.S. Navy. This transition was possible because the

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<sup>82</sup> David Chappell, *supra* note 73, at 256.

<sup>83</sup> Hopkins Committee. [Hopkins Committee Report for the Secretary of the Civil Government of Guam and American Samoa](#). By Ernest M. Hopkins, Maurice J. Tobin, and Knowles A. Ryerson. Moffett Field: Naval Air Station, 1947.

<sup>84</sup> *Id.* at 1-2.



administrative nature of governance from the start allows for a transition of regulation between agencies, rather than other colonial holdings where governance was entrenched in a tripartite judiciary, legislative, and executive regime.

The Congressional report also found that Samoans were capable and deserving of full American citizenship, despite the repeated failures of Congress to grant an Organic Act and citizenship.<sup>85</sup> The report even drafted a Proposed “Samoan Organic Act” which declared the citizens of American Samoa a recognized “body politic” with its own government under the supervision of “such executive department or agency of the Government of the United States as the President may direct.”<sup>86</sup>

The proposal to require agency supervision of a Samoan Government demonstrates the U.S. commitment to governing American Samoa via executive agency. There is no explicit statement as to why this approach is reaffirmed in 1947, instead of a proto-state territorial approach. Racialized paternalism is a common explanation applied to the non-statehood approaches applied to governance in Puerto Rico, the Virgin Islands, and Guam, and is equally compelling in this situation. However, it is also consistent with the cession by the *matai* to the Department of the Navy in 1900. The *matai* exercised agency in ceding certain governance to the U.S. Navy rather than losing it by force to the German colonial regime, and as a result, set a governance precedent of executive agency rather than territorial governorship.

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<sup>85</sup> *Id.* at 43.

<sup>86</sup> Separate section within the Hopkins Committee Report, A Bill To Provide A Government for American Samoa, and to Confer United States Citizenship Upon Certain of the Inhabitants Thereof. [Hopkins Committee Report for the Secretary of the Civil Government of Guam and American Samoa.](#)

The Hopkins Report's proposed bill never came to be. However, on June 29, 1951, President Truman signed Executive Order 10264 which transferred the administrative agency of American Samoa from the Department of the Navy to the Department of the Interior.<sup>87</sup>

In 1961, the Senate Committee on Interior and Insular Affairs wrote a report on American Samoa's economic, health, and development status.<sup>88</sup> The report found a domino effect caused by the introduction of American personnel and wealth into American Samoa. When U.S. governance entered the island, did the American dollar.<sup>89</sup> Although it was initially limited to areas with U.S. military personnel, they soon used dollars in the common Samoan market, which threatened the customary exchange-based economy, and dollarized all of Samoa.<sup>90</sup> The report found a resulting degradation of culture and custom across all fronts. Once a wage market emerges in one industry and cash becomes preferred, there is an incentive for employers to pay wages instead of exchange goods for labor, and these wage jobs became more desirable. As observed by Koenig, as people flock to the cities for employment, the traditional living in rural villages becomes inadequate.<sup>91</sup> "Slum conditions have already developed in the Pago Pago Bay area. The inadequacy and lack of housing pose a serious problem for the government itself."<sup>92</sup> As soon as cities become the economic and living centers, other infrastructure is required. New housing and residential spaces must go up. Then commercial garbage, trash, water, and sewage infrastructure must follow.<sup>93</sup> All of these require construction, maintenance, and oversight. All of these require administration, and grow the administrative state footprint in American Samoa.

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<sup>87</sup> Exec. Order *supra* note 78.

<sup>88</sup> Koenig, The Economic Needs of American Samoa: Study made for the Committee on Interior and Insular Affairs United States Senate, 87<sup>th</sup> Congress 1<sup>st</sup> Session, 1961.

<sup>89</sup> Koenig, The Economic Needs of American Samoa: Study made for the Committee on Interior and Insular Affairs United States Senate, 87<sup>th</sup> Congress 1<sup>st</sup> Session, 1961.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.* at 21.

<sup>92</sup> *Id.*

<sup>93</sup> *Id.* at 39.

The Koenig Report represents a new distribution of U.S. legal territory in mid-century strong pluralism. Though the U.S. maintained a dominant administrative role in providing for public welfare, the Senate recommendation in the report was to limit administrative agency action to public works enumerated in the report. This jurisdictional boundary was intended to make space for American Samoans to articulate policy plans and maintain their culture and lifestyle. This marked the beginning of the end of a U.S. dominant strong legal pluralism in American Samoa.

### **PART V: A PLURALIST CONSTITUTION**

American Samoa's first Constitution was adopted in 1960.<sup>94</sup> It reflects influences from the U.S. Constitution and the years of administrative presence in American Samoa. In 1953, the U.S. Governor of American Samoa launched a committee to draft a constitution.<sup>95</sup> This committee spent almost a decade researching and drafting a constitution. After approval from the Secretary of the Interior, the Constitution was voted on by a convention comprised of sixteen indigenous Samoans, elected through the *fa'amatai* process, and adopted on April 27, 1960.<sup>96</sup>

It is a pluralist Constitution, to the extent it integrates *fa'amatai* and Samoan cultural governance with American legal form and English common law. The American Samoa Constitution is modeled after the U.S. Constitution. It begins with a Bill of Rights, largely overlapping with the U.S. Bill of rights. However, it includes notable unique provisions. Bill of Rights §3 "Policy protecting legislation" states "It shall be the policy of the Government of American Samoa to protect persons of Samoan ancestry against alienation of their lands and the

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<sup>94</sup> AM. SAMOA, THE CONSTITUTION OF THE GOVERNMENT OF AMERICAN SAMOA (1960).  
<https://llmc.com/searchResultVolumes2.aspx?ext=true&catalogSet=59070>.

<sup>95</sup> GOVERNOR OF AMERICAN SAMOA, ANNUAL REPORT 2-3 (1954).

<sup>96</sup> Liebowitz *supra* note 59 at 254.

destruction of the Samoan way of life and language.”<sup>97</sup> It continues, “such legislation as may be necessary may be enacted to protect the lands, customs, culture, and traditional Samoan family organization of persons.”<sup>98</sup> This provision is a direct response to the presence of the American Administrative state on the island which may pose a threat to traditional governance and culture. The American Samoan Constitution directly confronts the administrative legal system by inserting a necessary and proper standard for such cultural protections. Notably, this includes protection of the lands, and reinforces the *fa’amatai* in American Samoan legal pluralism.

Article I § 4 “Dignity of the individual,” provides entitlement to protection of the law “against malicious and unjustifiable public attacks on the name, reputation, or honor of himself or his family.”<sup>99</sup> This right to one, or one’s family’s reputation is another incorporation traditional Samoa legal rights into 20<sup>th</sup> century governance. Article I § 10 explicitly prohibits slavery in almost the exact language of the 13<sup>th</sup> Amendment to the U.S. Constitution. Article I § 14 creates explicit police powers, stating that “Laws may be enacted for the protection of the health, safety, morals and general welfare.”<sup>100</sup> This provision is another safeguard of Samoan culture against U.S. administrative influences. On its face, it provides for a legislative role in protecting people for safety and health threats, similar to the U.S. reserve powers for states to do so. However, the inclusion of “morals and general welfare” is a check on the erosion of Samoan values in society.

Article I § 15 “Education” provides that the Government will operate “free and non-sectarian public education,” and will “encouraged qualified persons of good character to acquire further education...and thereafter to return to American Samoa.”<sup>101</sup> Securing the right to Samoan

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<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

<sup>99</sup> American Samoa Constitution Article I § 4.

<sup>100</sup> American Samoa Constitution Article I § 14.

<sup>101</sup> American Samoa Constitution Article I § 15.

education is especially important for securing cultural and civic independence from the United States. In several other instances, the U.S. administrative state used education as a way to “Americanize” citizens of the territories, or to force compliance with intellectual curricula through federal funds withholding. In Puerto Rico, for example, The U.S. Department of Education force English learning through sending Dept. of Education sponsored teachers and curricula and forced physical activity to promote participation in the U.S. military.<sup>102</sup> The second aspect of this section, sponsoring American Samoans to pursue education at home or abroad, on the conditional goal they return and benefit Samoa, is another safeguard for sustainable *matai* governance in the pursuit of strong *fa’amatai* legal pluralism.

Article II provides for the Legislature, and outlines the technical boundaries of U.S. legislative jurisdiction. It confers on the Legislature, composed of a Senate and House of Representatives, the power to pass any laws for local application except which: “may be inconsistent with this Constitution or the laws of the United States applicable in American Samoa;” or conflicts with United States treaties or international agreements; or which exceed the fiscal capacities of the American Samoan government, or budgets imposed by the Department of the Interior.<sup>103</sup>

Article II § 3 requires a Senator, among age and residency requirements, “be the registered *matai* of a Samoan family who fulfills his obligations as required by Samoan custom in the county from which he is elected.”<sup>104</sup> This requirement enshrines *fa’amatai* in the American Samoan Constitution as a binding authority. It is the keystone of American Samoan influence in the pluralist constitution. It is supplemented by Article II § 4, which mandates that “Senators

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<sup>102</sup> Solsiree, Del Moral, COLONIAL CITIZENS OF A MODERN EMPIRE: WAR, ILLITERACY, AND PHYSICAL EDUCATION IN PUERTO RICO, 1917-1930 at 36-39.

<sup>103</sup> American Samoa Constitution Article II § 1.

<sup>104</sup> American Samoa Constitution Article II § 3.

shall be elected in accordance with Samoan custom by the county councils of the counties they are to represent.”<sup>105</sup> These provisions ensure that the American Samoan local government will have one house elected through the traditional *fa’amatai*, with only such persons eligible to hold office. Despite the prominence of the American administrative state on the island, part of the law will always retain its traditional Samoan qualities.

Article III provides for the courts. The American Samoan constitution vests subject matter jurisdiction for senatorial elections in the High Court. The Constitution declares the judicial branch independent of the executive and legislative branches. However, Article III § 3 provides that the Secretary of the Interior shall appoint the Chief Justice of American Samoa “and such Associate Justices as he may deem necessary.”<sup>106</sup> This provision maintained substantial agency control over the local government. In the Original American Samoa Constitution, the Governor and lieutenant governor were also appointed by the Secretary of the Interior. However, in 1977 and 1978, The Secretary of the Interior issued orders delegating the election of Governor and Lieutenant governor to popular vote.<sup>107</sup> During these years, the Secretary of the Interior, at the request of the American Samoa Legislature, created the Attorney General and Comptroller General of Samoa offices, which he appoints.<sup>108</sup> The Secretary’s changes additions to the constitution in the late 1970s reflect a shift by both the American Samoan legislature and the U.S. Department of the Interior toward a Samoan-dominant strong legal pluralism. This legal pluralism creates a space for vibrant and traditional American Samoan

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<sup>105</sup> American Samoa Constitution Article II § 4.

<sup>106</sup> American Samoa Constitution Article III § 3.

<sup>107</sup> Secretary's Order No. 3009, §§ 2, 4, Sept. 13, 1977, as amended by U.S. Dept. of the Int. Secretary's Order No. 3009, Amendment No. 1, Nov. 3, 1977, eff. Nov. 3, 1977. chrome-

extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.doi.gov/sites/doi.gov/files/uploads/Secretary-s-Order-3009-Elected-Governor-and-Lt-Governor-of-American-Samoa.pdf

<sup>108</sup> *Id.*

governance within the larger framework of the U.S. to provide fiscal and security support, as envisioned by the *matai* who chose to cede jurisdiction to the U.S. The Constitutional Oaths for all Samoan officers include a swear of allegiance to the Constitution of the United States, a promise to “faithfully uphold the laws of the United States applicable to American Samoa, and the Constitution and laws of American Samoa.”<sup>109</sup>

What does it mean that American Samoa adopted the structure of the U.S. Constitution, but created unique provisions, specifically for Samoan culture and certain social rights like education, and general welfare? And what is the significance of American Samoan officers taking an oath to both the U.S. and American Samoan constitutions? In the case of late 20<sup>th</sup> century American Samoa, the indigenous *matai* legal system regained its footing, but without having to denounce the benefits secured from the nation’s relationship with the United States. This creative constitution integrates the legal traditions and objectives of the two nations into one framework for local governance. And as demonstrated by the Secretary of the Interior’s aggrandizement of power back to the American Samoan government in the 1970s, this constitution has the capacity to be anti-colonialist. This shatters the Benton model for the formalization of legal power in post-colonial spaces. What Benton correctly identifies as the undesired monopoly of colonial legal legitimacy can be rerouted through constitutional measures which reaffirm indigenous governance structures, and rely on indigenous means for selecting electors, which are then used to fill the democratic roles borrowed from the U.S. constitutional framework.

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<sup>109</sup> American Samoa Constitution Article V § 6.

## CONCLUSION

In their letter of grievances to the Governor in September of 1920, the *matai* made ten demands.<sup>110</sup> Looking back, each of those demands has been met over the course of the twentieth century. Through the work of *matai*, American Samoa reclaimed its role in legal pluralism. First, it negotiated with the strong U.S. Navy legal regime, and over time influenced the U.S. government to change its governance structure. Then, through producing its own Constitution, American Samoans revived *fa'amatai* into the written legal codes recognized at home and by the United States. This victory helped influence the actions of the U.S. administrative state, who over time began granting power back to the American Samoan government, while maintaining performance on the public works which *matai* desired American contributions on.

The first demand was a new governor; new Judge; new secretary; and new captain.<sup>111</sup> In response to the petition, the Navy suspended Governor Terhune and adjacent personnel, and the first *matai* wish was granted. The second demand was for an end to the anti-miscegenation laws preventing white men from marrying Samoan women. This was granted in the American Samoan Constitution, which recognized freedom of association. The third demand, the restoration of two *matai* as governors, was not directly remedied, but the American Samoan Constitution enshrined the independence of *matai* offices from any U.S. administrative law authority. The fourth demand, the discharge of British subjects, and the replacement with indigenous or American personnel, was achieved after the 1947 Hopkins report. The fifth demand, a complete itemized statement of all administrative island funds, was achieved through the fiscal laws requiring the Department of the Navy, Department of the Interior, and all other federal agencies to keep

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<sup>110</sup> List of Grievances, *supra* note 16.

<sup>111</sup> *Id.*



records of funds and publish them for public access, including for the Territories.<sup>112</sup> The sixth demand, adequate schools, was achieved in the American Samoan Bill of Rights' guarantee that the American Samoan government will provide free, non-sectarian public education. The seventh demand was "consistent and scientific road building" by the administrative state. The Office of Insular Affairs has carried this out throughout the 20<sup>th</sup> century. In Fiscal Year 2023, federal programs for American Samoa (including infrastructure, health and human services, education, etc.) totaled \$489 million, with an additional \$49.7 million appropriation for extra infrastructure projects.<sup>113</sup>

The eighth demand was the right of chiefs to hold meetings freely. This was achieved, and is now enshrined in the American Samoan Constitution. The ninth demand was an "end of tyranny" by the Terhune administration. This ended with the Secretary's removal of Terhune upon receiving the grievances, and the Naval governance structure predisposed to tyranny was ended in 1951, supplemented with American Samoan home governance in 1960. The final demand, a council of advisors to the Governor, with the ability to suggest improvements in laws, education, agriculture, taxation, commerce, morals, and religion, was also achieved through the American Samoan Constitution.

Although these demands were not met immediately, the letter served as an important exercise in *matai* agency which challenged the U.S. administrative state to reevaluate its strong legal pluralism. The Secretary of the Navy responded by replacing personnel, and decades-long discussions continued about the best governance relationship between the United States and

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<sup>112</sup> GAO U.S. Insular Areas (1991) COMMITTEE ON U.S. INTERIOR AND INSULAR AFFAIRS, chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.gao.gov/assets/hrd-91-18.pdf .

<sup>113</sup> *President Biden's Bipartisan Infrastructure Law is Delivering in American Samoa*, chrome-extension://efaidnbmnnnibpcajpcgclefindmkaj/https://www.whitehouse.gov/wp-content/uploads/2023/02/American-Samoa-Fact-Sheet-E3-1.pdf ; <https://www.usaspending.gov/state/american-samoa/latest?section=transactions-over-time> .

American Samoa. This letter, and the various legislative and judicial actions taken by American Samoans and *matai* are the motion which produces and renegotiates legal pluralism. The legal pluralism present in American Samoa today, exemplified in the Constitution and contemporary federal fiscal contributions to the island, indicate a “balanced” legal pluralism which allows for *fa’amatai* to prosper and take center stage at the local level, while maintain the advantages of a federal administrative state. The history of American Samoa demonstrates the capacity of “balanced” legal pluralism to aggrandize power to indigenous communities within the context of a globalized, imperialist history.

What do we learn about American legal pluralism from examining American Samoa? First, legal pluralism is not contested in the same manner across an empire. Despite sharing territorial status with the other “Insular” islands, American Samoa has a unique history of silence with regards to independence, post-American settlement. Despite not receiving legal citizenship, Army Recruiting Station Pago Pago is ranked first of 885 Army recruiting centers in the U.S.<sup>114</sup> American Samoans have also, since the 1950s, consistently immigrated to American States in large numbers, and experienced the permeability of place as if within the nation.

The mobility of Samoans and the agency of Samoans through indigenous *fa’amatai* political power breaks the mold of legal pluralism traditional in the imperial literature. American Samoa demonstrates that legal pluralism is capable of producing two side-by-side systems with limited erosion of indigenous governance tradition. Second, a sovereign can willingly recede power to the indigenous governments over time without undermining its role in other jurisdictions. Indigenous communities have the agency to shape how outside legal power is

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<sup>114</sup> U.S. Army, *American Samoa At a Glance*, at chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.usar.army.mil/Portals/98/Documents/At%20A%20Glance%20Prints/Samoa\_ataglance.pdf .

exercised, and can make changes in the larger nation's policy through collaboration. Even in the void of congressional oversight, legal pluralism provides opportunities for resistance to agency action which can produce changes in favor of the governed population. Legal pluralism in American Samoa transformed what in many places became kinetic decolonization. Instead, over the twentieth century, American Samoa underwent a process of administrative action, *fa'amatai* comment and political responses, responsive changes in administrative action, and reallocation of political power adapting to changing needs of Samoans.

The dimensions of this balanced pluralism continue to be formed by litigation and administrative action today. In 2022 Federal District Court case, *Terr. of Am. Samoa v. Nat'l Marine Fisheries Serv.*, the Attorney General of American Samoa challenged an agency interpretation fishing right regulations around the islands.<sup>115</sup> He argued that American Samoa's original cession document is controlling law, which would require agency action to consider a regulation's impact on retained Samoan cultural rights, among which he argues is fishing beyond the regulatory zone.<sup>116</sup> Although the agency action was upheld on the merits, this case exhibited the validity of indigenous cessions and original Samoan law in contemporary law. The ability of Samoans to challenge agency action in both administrative forums and federal court provides a course for balanced pluralism to proceed. This forward-looking approach adds depth to legal pluralism as a historical model which maintains its descriptive accuracy into the twenty-first century. Further, it better describes the experience of American Samoa in the twentieth-century post-colonial moment, where indigenous persons and governments gained greater independence through sovereign negotiations rather than physical resistance.

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<sup>115</sup> *Terr. of Am. Samoa v. Nat'l Marine Fisheries Serv.*, 2022 U.S. Dist. LEXIS 221227.

<sup>116</sup> 17-17081 Territory of American Samoa v. NMFS Appellate Oral Argument, 5 February 2020. Available at [https://www.youtube.com/watch?v=W1jGI8yDwwI&list=PLoK0oGJ1D7Ht8q75\\_w2CmvD74VIOAzJYy&index=16](https://www.youtube.com/watch?v=W1jGI8yDwwI&list=PLoK0oGJ1D7Ht8q75_w2CmvD74VIOAzJYy&index=16).