

# INTERSECTIONS

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## **BIRTHRIGHT CITIZENSHIP FOR AMERICAN SAMOANS: TRADITION VERSUS NATIONALISM?**

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This paper critically examines the legal history of American Samoa as the only United States (U.S.) territory where residents hold the political status of U.S. nationals rather than citizens. The territory faces a contentious struggle between individualistic legal attempts within the continental United States vying for a changed status from U.S. nationals to citizens by birth for American Samoans. The fundamental collectivistic cultural systems of the fa‘amatai and fa‘asamoa based on the customary land tenure system are interwoven into the socio-cultural fabric of the modern American Samoan hybrid system of governance. This paper explores these systems and the legal protections within the contemporary identity of national status for American Samoans. This work argues that conferred automatic birthright citizenship is detrimental to the fa‘amatai and fa‘asamoa systems based on the customary land tenure system and denial of political autonomy for American Samoans.

### **Introduction**

American Samoa is one of the five inhabited territories of the United States, and yet most U.S. Americans wouldn't be able to locate this territory on a map. The Samoan archipelago is divided into two geographical areas, partitioned by foreign powers into eastern and western domains. The eastern division, known today as American Samoa, is an official territory of the United States; the

western region presently stands as the Independent State of Samoa, formerly Western Samoa under British rule, and prior to that, Deutsch-Samoa controlled by Germany. Both maintain the same culture and language but are unique and distinct in their political status as a consequence of colonial occupation by foreign states. American Samoa has a population of roughly 50,000 and consists of the main inhabited islands of Tutuila, Ta'u, Olosega, Ofu, and Aunu'u.<sup>1</sup>

American Samoa was ceded to the United States as a territory at the start of the twentieth century. The cession was executed as a strategic component of economic and military imperialistic expansion through island territory acquisition to secure itself as a global superpower.<sup>2</sup> American Samoa is the only unincorporated and unorganized U.S. territory. American Samoans are distinctively identified by Congress as U.S. nationals, not citizens. The status of American Samoans as U.S. nationals instead of citizens currently allows for the existence of a hybrid legal system to serve as the official system of quasi-self-governance. This amalgamated system is founded upon the Samoan fa'amatai system, based on the customary land tenure system, in conjunction with an American system of governance. This is represented in the American Samoan Fono—the House of Representatives<sup>3</sup>—and exists due to the legal protections of the traditional Samoan systems outlined in the American Samoan Deeds of Cession and Revised American Samoan Constitution.

However, this status has become a legal issue for federal lawsuits, as litigants cite the status of American Samoans as U.S. nationals rather than citizens by birth to be the result of upheld racist and discriminatory American ideals, which designate American Samoans as “second class” to continental American citizens by birth.<sup>4</sup> This backlash is overwhelmingly within the continental United States, taking the form of legal federal court cases attempting to overturn the existing political classification of American Samoans.<sup>5</sup> Therefore, there is increasingly mounting support for the notion of conferred birthright citizenship for American Samoans by continental Americans.

American Samoa has an extensive history with the United States. American Samoa is a critical part of U.S. economic and naval expansion in building the American empire through strategic territorial acquisition in the Pacific. The issue framed today by continental American Samoans is the perception of “second class national status,” this status of American Samoans perceived to be a quasi-designation inferior to continental Americans, who receive citizenship by birth. Federal lawsuits filed thousands of miles away in different district and circuit courts on the continent are increasingly manufactured with individuals seeking judicial overturn of the Congressional conferral of statutory citizenship. Despite American Samoan resistance to birthright citizenship in the protection of the fa'amatai and traditional land tenure system, federal lawsuits supported by the U.S. American continental legal actors rooted in ethnocentric Western ideals of American nationalism continue to rage on.

I am an American citizen by birth. However, I am also Samoan and of American Samoan descent. Growing up in Las Vegas, Nevada, in the continental United States, has afforded me a lived experience of cultural duality, which offers me a particular vantage point to critically examine this issue of Samoan citizenship—specifically within both an American and Samoan context. Currently, I am studying at BYU–Hawai‘i on the island of O‘ahu. Throughout the United States’ initial contact with and colonization of the Hawaiian Islands in the 1800s, U.S. American citizens demanded the same rights in Hawai‘i to be equally applied to everyone. U.S. citizenship erased all Kanaka Maoli political identity. U.S. citizenship does not recognize native status or customary traditions, and the majority of native Hawaiian lands evolved into fee simple tenure, allowing all U.S. citizens access to ownership. Therefore, what would prevent a U.S. citizen non-Samoan living in American Samoa from suing in federal courts for ownership of customary land once everyone becomes U.S. citizens? The implications of imposed birthright citizenship for American Samoans are multifaceted, contextualized in colonial Pacific history of native land dispossession, and that may threaten the status and Samoan lifestyle of the territorial residents today. These issues are critically examined in this paper, particularly through an exploration of the legal history of American imperialistic expansion in the Pacific region and, thus, the historical creation of the contemporary status of American Samoa today.

This paper addresses the issues confronting American Samoans that threaten the fa‘amatai and fa‘asamoa systems based on the customary land tenure system and prohibit avenues for self-autonomy and determination of the American Samoan people. The first section provides an overview of the history of American imperialism and expansionism, mainly through U.S. navalism starting in the late 1800s. The second section explores the current manufactured dilemma of U.S. citizenship to outpost territories, particularly American Samoa, and some consequential recent legal actions brought within the continental United States. The third section highlights the centrality of the existing Samoan cultural systems of fa‘amatai and fa‘asamoa based on the customary land system and their overlooked role within the current legal battles. Finally, the last section examines the role of these Samoan systems in a transnational sense, situating them within a western concept of citizenship that is seen as the fallback standard for the current legal conceptions of U.S. citizenship.

### **American Imperialism and Expansionism**

American expansionism in the 1890s marked a new form of post–Civil War United States expansion and the high point of modern imperialism based on the imperialist movement of strategic advances focused on conquest

overseas.<sup>6</sup> Domestic social and economic unrest fueled many U.S. Americans to support a regenerated era of imperialism that would lift the daily lives of Americans from the economic depression in 1893. Imperial strategies focused on island outposts in the Pacific and Caribbean directly resulted from Congressional policies to establish economic strategies and colonial acquisitions such as the America-first protectionism. A national economic crisis in 1893 gave rise to a severe depression in the United States. At that time Americans elected President William McKinley in 1896 to build a strong military with protective tariffs to secure economic prosperity through foreign acquisitions of land, like Hawai'i. Notably, the McKinley Administration of this era was committed to hawkish American expansionism. This was a position widely supported by Americans to expand economic opportunity for the trade of raw materials and cheap labor that would propel America as a superpower nation. While America attempted to recover from the economic depression, growing violent conflicts between Spain and its Cuban colony continued to intensify, as did calls for American involvement to curtail Spanish influence in the region.

#### *Foreign Economic Policy*

In 1897, as a revival of the American economy began, many businessmen believed that the key to industry recovery was domestic and foreign stability, even if that meant warfare and colonialism.<sup>7</sup> Protectionism also reigned supreme in the minds of American politicians at that time, as a protectionist economic strategy was employed to help build the American economy through high tariffs on imports to encourage domestic industry. U.S. protectionism is “based on mercantilist principles which regard world trade as a game with winners and losers measured in terms of their trade balances.”<sup>8</sup> At the beginning of 1898, industrial and financial optimism strengthened, sourced from the expansion of the American export trade as businesses began to assess the gains of foreign markets, mainly secured through the acquisition of colonies.<sup>9</sup> Calls for needed imperialistic strategies in the interest of industrial and commercial development followed this.<sup>10</sup>

#### *American Empire: Colonization of Sovereign Hawai'i*

In April 1898, President William McKinley declared war on Spain, entering the Spanish-American War to secure America's geopolitical exercise of military dominance in international politics. A notable impact of this increasingly pressured notion of American expansion is in the 1898 annexation of the Kingdom of Hawai'i.<sup>11</sup> The McKinley Administration used the war as a pretext to annex

the sovereign Kingdom of Hawai'i after American businessmen led a coup against the reigning Queen Lili'uokalani and established a covert government.<sup>12</sup> Annexation of Hawai'i was previously proposed to former president Grover Cleveland; however, all attempts were officially rejected. The Spanish-American War legitimized calls for annexation in Congress. It strengthened proannexation favorability, citing the economic importance and strategic Pacific positioning for a naval base in Hawai'i to expand into "new frontiers" that were argued to be the foundation of a great nation. Proexpansionist Admiral Alfred Thayer Mahan argued that America could not be great without a powerful navy and overseas colonies.<sup>13</sup> This echoed growing American support for expansion by imperialistic means.

At McKinley's request, a joint resolution of Congress made Hawai'i a U.S. territory on August 12, 1898.<sup>14</sup> The United States seized the opportunity to fortify and expand the Navy in Hawai'i and began its military domination by conquest in the Pacific. The annexation of Hawai'i during the Spanish-American war increased American expansionism in the Pacific. This historic event also hails mounting backlash as the imperialistic pursuits of the United States and the contested legal basis upon which annexation occurred resulted in the colonization of the sovereign Kingdom of Hawai'i. Ultimately, the United States, through the McKinley Administration, strategically used the political environment of the time to advance the agenda of expansionism through the conquest of Hawai'i in the Pacific to gain the upper hand in the international race for territory acquisition and establishment as a superpower.

### *American Empire in Oceania*

The Spanish-American War ended in December 1898 with the United States victorious. It relinquished Spanish claims on Cuba (which became independent as a U.S. protectorate) in the 1898 Treaty of Paris, where Spain ceded sovereignty of Puerto Rico, Guam, and the Philippines to the United States.<sup>15</sup> The war ended Spain's historical colonial empire in the western hemisphere and vitally secured the United States' position as a Pacific power. The American spoils of this war enabled the start of its domination in the Pacific and its strategic pursuit of interests in Asia.<sup>16</sup>

The gain of Pacific Island territories set the stage for the United States to increasingly gain global power and influence and strengthen its military strategy in what is termed the "Indo-Pacific," encompassing both the Indian and Pacific oceans. However, the gain of sovereign Hawai'i and the spoils of the Spanish-American War were only the beginning, as the United States began its pursuit of naval bases in the Pacific, such as American Samoa for the Pago Pago harbor.<sup>17</sup>

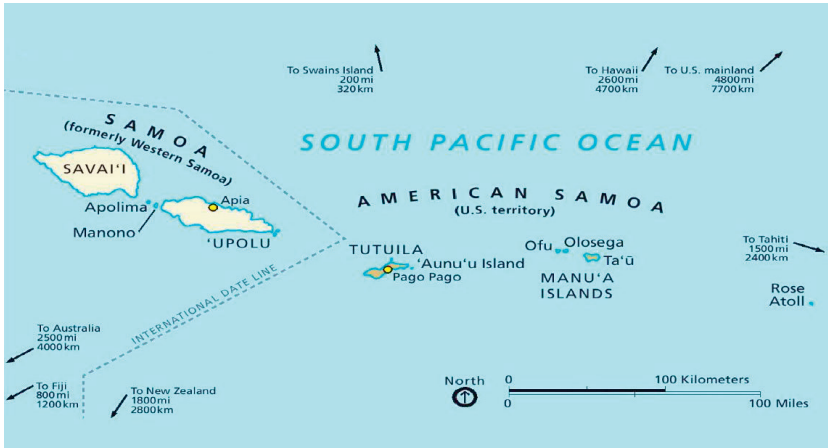


FIGURE 1. *American Samoa Map. National Parks Maps. Accessed 2022.*

### *U.S. Navy in American Samoa*

What was most notable about the Samoan Islands for western continental states was their strategic position in the heart of the Pacific and, therefore, their valuable shipment outpost and naval assets. British, Americans, and Germans each continued to explore, colonize, and expand trade and commerce in the Pacific throughout the mid to late 1800s.<sup>18</sup> With these powers came the beginning of an increased foreign consular presence in the islands of Samoa, with little authority to limit them to the outlined terms of their appointments. Each of these foreign powers increasingly grew their interests, influence, and competitive venture for political control over the islands. This was steadily established through relations and involvement with local matai (chiefs) throughout civil conflicts. The main island of Tutuila in the eastern part of the archipelago has a natural harbor in the capital Pago Pago, one of the deepest and most sheltered harbors throughout the Pacific.<sup>19</sup> The harbor's potential for use as a strategic naval and commercial shipment outpost and coaling refueling station was particularly valuable to the United States in its expansionist efforts in the Pacific and resulted in more direct and combative action to establish a secure foothold.<sup>20</sup>

### *Partition of Samoan Islands*

As a result of an explosive battle for power between the foreign actors and mounting political pressures from civil wars and conflict, Germany, Britain,

and the United States carved up the islands of Samoa (see Fig. 1). This was done while balkanizing Africa, implementing the demarcation of the two main groups standing today under the 1899 Treaty of Berlin. Thus, Samoa was partitioned with the preserved rights and interests of each sovereign country.<sup>21</sup> As the United States was actively expanding its grip on the Pacific region, it ensured possession of the eastern Samoan islands and atolls, encompassing Tutuila and its harbor.

Similarly, the Germans held their interest in protecting their large plantations in Upolu and Savai'i in the west. The British were persuaded to retain German rights in Tonga, the Solomon Islands to the southeast of Bougainville, territories in West Africa, and eventually Zanzibar upon renunciation of all rights and interests in Samoa.<sup>22</sup>

During this 1899 convention, no Samoans were present or included in any decision-making, effectively being pushed to the periphery of the plans for their own futures. However, there seemed to be an overall consensus among Samoans in the newly created eastern territory that, particularly, a relationship with the United States was a beneficial one that would prove to be prosperous for the people. In 1900, an Executive Order was enacted that placed the then "Samoan Group" under the control of the U.S. Navy, where the first institution of American laws was introduced alongside the traditional Samoan system: one that revolves explicitly around land.<sup>23</sup>

The official Deeds of Cession were signed separately in 1900 and 1904.<sup>24</sup> However, the drafting matai of the Deeds were united and clear in their intentions: keeping their people at the forefront of their minds, the decision was cited to be:

[T]he promotion of peace and welfare of the people of the islands, the establishment of a sound government, and the preservation of the rights and property of the people of the islands.<sup>25</sup>

The Deeds of Cession are treaties but minimized by the U.S. Congress to their benefit. American Samoans gave allegiance in exchange for the conditions of protection of fa'asamoa and native lands.<sup>26</sup> Consequently, American Samoans now exist today in an official classification of unincorporated and unorganized territory; American Samoans are U.S. nationals, not U.S. citizens. U.S. citizenship is not conferred as a birthright.

### **U.S. Citizenship Dilemma to Outpost Territories**

Currently, the United States has five inhabited territories: Guam, Commonwealth of Northern Mariana Islands (CNMI), Puerto Rico, Virgin Islands, and

American Samoa. All territories are unincorporated; they are not destined for statehood (see Table 1). U.S. Constitution Art. IV, section 3 states:

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.<sup>27</sup>

Under this constitutional provision, the U.S. Congress authorized the organic acts organizing Guam, CNMI, Puerto Rico, and Virgin Islands. These organizing organic acts are usually a body of laws that consist of a bill of rights and establishment and conditions of the insular territory's tripartite government enacted by U.S. Congress.<sup>28</sup> However, only one of these territories holds the status of unincorporated and unorganized: American Samoa. An incorporated territory is a United States insular territory in which Congress has applied the full corpus of the U.S. Constitution; once incorporated, a territory cannot be unincorporated.<sup>29</sup> An organized territory describes a U.S. insular territory where Congress has enacted an organic act. Therefore, as the only U.S. territory both unincorporated and unorganized, American Samoa is a territory where the U.S. Congress has determined that only part of the U.S. Constitution applies, and no organizing organic act has been enacted. Table 1 outlines each of the U.S. outpost territories and their individual political and legal status, where the unique status of American Samoa can be compared.

#### *U.S. Nationals versus Citizens*

As residents of an unincorporated and unorganized territory, American Samoans hold the political identity of an American national rather than an American citizen.<sup>30</sup> This has been a source of contention for many, and now more than ever, there is rising protest coming from both American Samoans and outsiders alike for American Samoans to be granted citizenship by birthright.

U.S. nationals cannot vote for the U.S. president or in federal elections. However, nationals can work and live anywhere in the United States and are eligible to apply for a U.S. passport or U.S. citizenship through the naturalization process.<sup>31</sup> U.S. citizenship is available via naturalization upon compliance with the requirements of either: living in any outlying U.S. territory for a minimum of five years immediately preceding their application or moving to the continental United States and establishing domicile there for at least three months.<sup>32</sup> Those opposing citizenship, however, firmly resist, mainly citing the need to protect the fa'amatai and, subsequently, the traditional land tenure system.

TABLE 1. Kruse, *Insular Case American Sāmoa*, 37.

Name	Location	Area size (sq. miles)	Population	Political and legal status
American Sāmoa	South Pacific Ocean	76	62,117	Unincorporated and unorganized territory (per 1900 and 1904 Deeds of Cession)
Guam	North Pacific Ocean	210	159,358	Unincorporated and organized territory (1898 Treaty of Paris—Spain ceded Guam to U.S.)
Commonwealth of Northern Mariana Islands	North Pacific Ocean	179	53,883	Covenant as commonwealth—1976 (formerly a United Nations Trust Territory placed under the U.S. administration)
Puerto Rico	North Atlantic Ocean	3,515	3,725,788	Unincorporated, organized commonwealth (1952)—Territory (1898 Treaty of Paris—Spain ceded Puerto Rico to U.S.)
Virgin Islands	North Atlantic Ocean	134	106,405	Unincorporated and organized territory (U.S. purchased from Denmark for \$25,000,000 in gold—1917)

*Birthright Citizenship Impacts on Custom Samoan Systems*

Birthright citizenship would mean the full application of the U.S. Constitution, which outlines certain rights and privileges such as the Equal Protection Clause in the Fourteenth Amendment that states “[N]o state should deny any person

within its jurisdiction the equal protection of the laws” and in the Due Process Clause asserting that “all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”<sup>33</sup> Protections against the alienation of lands and harm to the fa’amatai system are outlined in the Revised Constitution of American Samoa. Statutory citizenship has been enacted for every other insular territory, including Puerto Rico, CNMI, Guam, and the Virgin Islands.<sup>34</sup> Therefore, the conferment of birthright citizenship would mean that the currently established protections for American Samoa may be challenged.

### *Federal Lawsuits*

With a heightened push in recent years, some territorial and nonterritorial residents and organizations with assistance from nonterritorial actors have been trying to sidestep the U.S. Congress and obtain citizenship in the federal courts. Birthright citizenship is also part of the legal argument that addresses America’s colonial history and how the U.S. Congress discriminated against people denying citizenship, rights, and privileges to non-white people.

In 2012, a lawsuit was brought against the United States, the State Department, the secretary of state, and the assistant secretary of state for consular affairs by the Constitutional Accountability Center (CAC) on behalf of five individual plaintiffs and a California-based nonprofit.<sup>35</sup> The case, *Tuaua v. United States*, was dismissed and received backlash from many American Samoans, outraged that the litigants were pursuing these claims in U.S. district and circuit courts to unilaterally make a decision of citizenship for the people in American Samoa. This additionally raised questions as to who the supporting and funding organizations were, such as the CAC, and what purpose they serve. The CAC is a Washington, DC-based liberal nonprofit think-tank, law firm, and action center. They are a special interest group that ultimately has no ties or connections with Samoan systems or land, something at the heart of this issue.

After plaintiff appeals were submitted in June 2015, the DC Circuit ruled in *Tuaua v. United States* that “the United States” in the Fourteenth Amendment’s Citizenship Clause does *not* extend to unincorporated territories.<sup>36</sup> This solely impacted the territory of American Samoa, as Congress has already extended birthright citizenship by statute to the residents of most territories. Persons born in American Samoa are designated under the Immigration and Nationality Act of 1952 (INA) as “noncitizen nationals.”<sup>37</sup> In the case dismissal, the court stated:

At base Appellants ask that we forcibly impose a compact of citizenship—with its concomitant rights, obligations, and implications for cultural identity—on a distinct and unincorporated territory of

people, in the absence of evidence that a majority of the territory's inhabitants endorse such a tie and where the territory's democratically elected representatives actively oppose such a compact.<sup>38</sup>

Another federal lawsuit that garnered international attention in recent years has been *Fitisemanu v. United States*. In 2019, three American Samoan nationals with permanent residence in Utah, continental United States, asked the Utah District Court to declare American Samoans U.S. citizens. One of the plaintiffs, John Fitisemanu, an American Samoan-born national, moved to Utah decades ago and did not choose to naturalize. Judge Clark Waddoups of the Utah district court ruled in favor of the plaintiffs and declared that American Samoans should indeed be U.S. citizens by birth.<sup>39</sup> Soon after the ruling, the United States federal government and the American Samoan government appealed to the Tenth Circuit Court of Appeals to reverse the decision, after an outpour of backlash, stating American Samoans' and the government's belief that it is not the place of a Utah-based judge to decide the fate of all territorial residents of American Samoa. The Tenth Circuit Court agreed and upheld the federal law classifying American Samoans as U.S. nationals, not citizens, by birth. The Circuit court concluded that the district court decision was based on an invalid interpretation of the Citizenship Clause of the Fourteenth Amendment.<sup>40</sup> The district court, like the court that decided *Tuaua v. United States*, concluded:

It is evident that the wishes of the territory's democratically elected representatives, who remind us that their people have not formed a consensus in favor of American citizenship and urge us not to impose citizenship on an unwilling people from a courthouse thousands of miles away, have not been taken into adequate consideration.<sup>41</sup>

Fitisemanu and the original plaintiffs of this case appealed to the U.S. Supreme Court. The Supreme Court rejected review after advisement from the Biden Administration due to failure to address self-determination in American Samoa.<sup>42</sup>

Through legal cases such as these, there is a continued battle taking place in the continental American courts led by people vying for birthright citizenship for territorial residents. However, this goal is not one shared by all. Instead, it seems as though this propelled movement is composed not of the majority of territorial residents but rather of individuals creating large legal waves within the continental United States supported by shadow political organizations. These recent court cases do not hold the interests of all American Samoan territorial residents. Although the acquisition of automatic citizenship may be convenient or beneficial for some, it likewise can be detrimental for others.

These posed threats to the protections of traditional Samoan systems have been continuously recognized by the U.S. federal courts as reflected in the dismissal of each case brought contending for birthright citizenship.

### **Protection and Survival of Samoan Cultural Systems**

The fa'amatai is the Samoan chiefly title system that exists in relation to and as a larger part of fa'asamoa.<sup>43</sup> Fa'asamoa is largely defined as the "Samoan way of life" and pertains to everyday means of conducting oneself in Samoan culture.<sup>44</sup> Samoans created the fa'asamoa as a framework for action built on the social structure of the aiga (family) and nu'u (village) and the authority of matai (chief) and fono (governing council of a nu'u).<sup>45</sup> Because of this system, as time passes and social, cultural, and political norms change, the fa'asamoa and, subsequently, the fa'amatai system are adaptable and are able to thrive.

#### *Fa'amatai: Chiefly System*

In traditional Samoan society, each household has a matai title holder who exists within a ranked hierarchy of matai title holders in the village.

The traditional fa'amatai system is a complex configuration of matai titles, all ordered relative to each other. Matai titles are based upon kinship relations, mythology, and genealogical history, but also upon one's ability to garner loyalty and support within the aiga and aiga potopoto structure.<sup>46</sup>

The word matai itself comes from "mata i ai" which has connotations of "being set apart or consecrated."<sup>47</sup> As a result of the divided and colonized Samoas, the fa'amatai system today exists with specific distinctions between American Samoa and Independent Samoa. A few significant differences in the systems dictate the sociopolitical organization of society in two separate territories today. Unique to American Samoa, there is a matai title registry administered by the government, which only recognizes matai titles registered before January 1, 1969, and only allows one person to be assigned to each registered title.<sup>48</sup> Fa'amatai also extends beyond the geographic region of Samoa to all Samoans abroad as well. Samoans in the diaspora continue to actively participate in Samoan cultural activities or still exist (to varying degrees) within the sphere of influence of the fa'amatai system.<sup>49</sup>

#### *Fa'amatai and Traditional Land Tenure*

At the core of Samoan culture, genealogy, and traditional governance is customary land. The five existing classifications of land organization today are (1)

free hold, (2) government owned, (3) church owned, (4) individually owned, and (5) communal or native lands<sup>50</sup> (see Table 2).<sup>51</sup> Customary land is traditionally under the authority of the fa'amatai, used for the entire family's benefit, providing the means for Samoan traditions to survive.<sup>52</sup> The authority of matai leadership over communal lands is balanced between the state and local governance in the villages and districts.<sup>53</sup> Individually owned land is a land tenure created by the naval papalagi (foreigners) in the High Court. In American Samoa, the High Court under the judicial jurisdiction of the navy and president of the High Court was the commandant of the naval fleet. Prior to western contact, all land was customarily owned and organized by Samoans.<sup>54</sup>

The two core protections outlined in both Deeds of Cession are customary lands and the matai system. These are intertwined with one another and are at the heart of the existence of Samoan culture and people. The matai title holder controls communal land holdings, resources, and land distributions to members of the aiga traditionally passed down generationally.<sup>55</sup>

The relationship between American Samoa and the United States in terms of securing customary land tenure is a double-edged sword within the territorial flag islands. Samoans have always enjoyed the fruits of customary land tenure and the enrichment the culture gets from the matai system and access to and use of lands for traditional living.<sup>56</sup>

The Samoan political structure is rooted in communal lands. The fa'amatai is a fundamental organizing aspect of Samoa's political structure. The fa'amatai system exists both with and because of the existence of communal lands, as the role of aiga (family) members is to protect the communal lands and familial interests accordingly. Family organization exists on the basis of land, and the matai oversees control and stewardship of this organization. Land is also considered the most important tangible asset of the Samoan people and serves as a central mechanism for sustaining villages in a subsistence society.<sup>57</sup> The power and centrality of the fa'amatai system to Samoan existence cannot be overstated.

### *Hybrid Legal System*

The American Samoan Fono is the bicameral legislature created under the Revised Constitution of American Samoa. Senate eligibility in the Fono requires an individual to be a matai title holder. Article II, § 3 (d) of the Revised American Constitution states senators must "be the registered matai of a Samoan family who fulfills his obligations as required by Samoan custom in the district from which he is elected."<sup>58</sup> It is important to note the language here; while "traditional duties and responsibilities" are explicitly required, what exactly those obligations are is not clearly defined. Traditional customs and

TABLE 2. Kruse, Insular Case American Sāmoa, 53.

Designation	±	Total registered land in American Sāmoa											
		2003–2013	2013	2012	2011	2010	2009	2008	2007	2006	2005	2004	2003
Total registered land (Acreage)	+277	7,888	7,875	7,863	7,862	7,794	7,746	7,705	7,693	7,670	7,649	7,611	
Freehold	-53	1,072	1,072	1,072	1,072	1,018	1,018	1,018	1,018	1,018	1,019	1,019	
Government owned	—	1,651	1,651	1,651	1,651	1,651	1,651	1,651	1,651	1,651	1,651	1,651	
Church owned	+26	1,030	1,030	1,030	1,030	1,028	1,018	1,013	1,013	1,013	1,005	1,004	
Individually owned	+126	2,029	2,027	2,016	2,015	2,006	1,971	1,962	1,955	1,942	1,935	1,903	
Communal	+72	2,106	2,095	2,094	2,093	2,091	2,088	2,061	2,056	2,046	2,039	2,034	
Percent total	100		100	100	100	100	100	100	100	100	100	100	
Freehold	13.6		13.6	13.6	13.6	13.1	13.1	13.2	13.2	13.3	13.3	13.4	
Government owned	21.9		21.0	21.0	21.0	21.2	21.3	21.4	21.5	21.5	21.6	21.7	
Church owned	13.1		13.1	13.1	13.1	13.2	13.1	13.1	13.2	13.2	13.1	13.2	
Individually owned	25.7		25.7	25.6	25.6	25.7	25.4	25.5	25.4	25.3	25.3	25.0	
Communal	26.7		26.6	26.6	26.6	26.8	27.0	26.7	26.7	26.7	26.7	26.7	

practices can vary in different villages and counties, this allows for the individual will of people from district to district to determine what exactly the provisions are for Senate eligibility. Overall, this flexibility is essential to the survival of the fa'amatai system through modernization and in conjunction with the American political system, creating a hybrid system unique to this territory. This general adaptability accounts for the success of the continued existence through the evolution of the fa'amatai system.

The first Constitution of American Samoa was adopted in 1960, marking a new milestone for the territory toward self-governance.<sup>59</sup> There is no legislative or plebiscite push for American Samoan sovereignty. Instead, many are looking toward political alternatives that would incorporate a shift of self-governance toward autonomy. With a long and complicated relationship with the United States, many American Samoans are rightfully asking if the current integrated system of governance fully serves their best interests.

### **Fa'amatai: Traditional to Transnational**

Fa'amatai was an institution situated primarily in Samoa. However, the fa'amatai as an institution has, over the past sixty years, expanded outside of Samoa and is commonly referred to as the transnational matai. Transnational matai are matai that live outside of Samoa. Studies have shown that over 80 percent of registered matai now live overseas.<sup>60</sup> Currently, much of the literature on fa'amatai is polarized. On one side,

Advocates of transnational fa'amatai view Samoans as Samoa's comparative advantage and competitive edge, founded on the acculturation of mobility, and remaining true to the key tenets of Samoa—the welfare of the collective.<sup>61</sup>

The opposing side argues,

The perception that transnational matai “lack the proper cultural grooming to become proper matai who know their stuff—oratory language, genealogy, and esoteric matters, and many subtle nuances associated with the fa'amatai.”<sup>62</sup>

The discourse surrounding opposing positions on the role of transnational fa'amatai is an ever-increasing reality for Samoans today. The strength of the fa'asamoa and fa'amatai systems lies within their flexible natures to survive.

For American Samoans, the notion of transnational matai is convoluted due to their political status as American nationals. The difficulty, however, comes in finding an appropriate balance of the two for American Samoans and in determining—according to one of the main tenets of fa’asamoa—what is best for the collective of American Samoans. Must American Samoans become American citizens in order to survive within the American domestic political sphere? I argue strongly against this, because American Samoans in American Samoa must decide what their political future is and what that will look like considering they have cultural political institutions like customary land, fa’asamoa, and fa’amatai to consider.

#### *American/Western Context of Citizenship*

The concept of citizenship is one held in high regard by continental Americans. Citizenship is oftentimes seen as a marker of identity. In 2023, American citizenship tends to be awarded gold-star status. But how exactly does the social importance that Americans place on citizenship impact the current situation for American Samoans? Law professor Linda Bosniak explores the conventional notions of the concept of citizenship itself:

Sometimes we view citizenship from an internal or endogenous perspective. From this vantage, citizenship is understood to designate the nature and quality of relations among presumed members of an already established society. As a normative matter, citizenship in this internal sense is understood to stand for a universalist ethic—for the inclusion and incorporation of “everyone.”<sup>63</sup>

Bosniak dives into widespread perceptions of citizenship for Americans and perhaps a broader western perspective in general, where she examines a lens of citizenship that is largely influenced by an individualistic understanding that is normative of American society. Widely accepted is the notion of presumed desirability of citizenship for all those on the outside looking in. Americans treat U.S. citizenship as a prize, as the ultimate end goal that everyone involved either is or should be working toward.

#### *American Context of Citizenship: A Samoan Perspective*

A Samoan perspective of governance and individual responsibility is not seen by a social contract from government to individual but within the fa’asamoa and fa’amatai institutions. Within fa’asamoa, there are important values and belief systems that enable the ability to make decisions and choices for the collective

family. These include *pule* (authority or power), *soālaupule* (joint decision-making), *‘autasi* (consensus), *alofa* (love, compassion, care), *fa’aaloalo* (respect), *mamalu* (dignity), *fa’autaga*, *tōfā*, and *moe* (all refer to wisdom).<sup>64</sup> These aspects are similarly present in the *fa’amatai* system, and their role must be understood while considering a Samoan view of gaining U.S. citizenship. While the transnational *matai* has access to increased socio-economic and political opportunities for success; they can, in fact, continue to be rooted by serving the Samoan village family. Therefore, U.S. citizenship may be seen as beneficial in the context of both American individualities as well as traditional Samoan collectivism.

### Conclusions

The importance of the Samoan *fa’asamoa* encompassing the *fa’amatai* and the customary land tenure systems cannot be understated. The *fa’amatai* system is intertwined with the traditional land tenure system; land exists at the core of Samoan culture, genealogy, and traditional governance. Ultimately, the *fa’amatai* system, and therefore *fa’asamoa* as a whole, could not exist without customary land, as the structure and authority of the *fa’amatai* lie within leadership over communal lands. Samoan culture begins and ends with Samoan customary land. The protections outlined through the Deeds of Cession and Revised American Samoan Constitution ensure that the *fa’amatai* system, protecting customary Samoan land, may exist in conjunction with the current U.S. system of governance through the American Samoan Fono. These protections may exist due to the status of American Samoans as U.S. nationals rather than citizens, since an application of the full U.S. Constitution, such as the due process and equal protection clauses in the Fourteenth Amendment, is not mandatorily applied, as it would be if Samoans were conferred automatic birthright citizenship.

Those advocating for the conferment of automatic birthright citizenship for American Samoans do so through an individualistic American nationalist view that denies full self-autonomy to American Samoans. This article recognizes the limited benefits that could be gained through obtaining birthright citizenship for American Samoans, which has always been available through the expedited naturalization process. Yet, the inclination to fear automatic birthright citizenship because of the risks to preserving the *fa’amatai* and the traditional land tenure system is not unreasonable given the history of the United States with other indigenous populations, such as the Native Hawaiians. Automatic birthright citizenship is detrimental to the continued survival of American Samoans, and the current legal push within the continental United States to judicially impose this on American Samoans goes directly against their rights to self-determination.

## NOTES

<sup>1</sup>For further information, please refer to Census Bureau Releases 2020 Census Population and Housing Unit Counts for American Samoa. United States Census Bureau, October 28, 2021.

<sup>2</sup>Dardani, Ross. 2020. Citizenship in empire: The legal history of US citizenship in American Samoa, 1899-1960. *American Journal of Legal History* 60 (3): 311–356.

<sup>3</sup>Kruse, Line-Nowe Memea. 2018. *The Pacific insular case of American Sāmoa: Land rights and law in unincorporated US territories*. Cham, Switzerland: Palgrave Macmillan, 6.

<sup>4</sup>McCloskey, Brendan. 2017. Granting Samoans American citizenship while protecting Samoan land and culture. *Drexel Law Review* 10: 497.

<sup>5</sup>I am limited by the time and space within this paper in providing an in-depth or comprehensive explanation and analysis of all relevant court cases. However, in the section entitled “Federal Lawsuits,” the *Tuaua v. United States* and *Fitisemanu v. United States* cases are examined further.

<sup>6</sup>David Healy. 1970. *US expansionism: The imperialist urge in the 1890s*. Madison, WI: Univ. of Wisconsin Press.

<sup>7</sup>Pratt, Julius W. 1934. American business and the Spanish-American War. *The Hispanic American Historical Review* 14 (2): 163–201, 166.

<sup>8</sup>Park, Sang-Chul. 2018. US protectionism and trade imbalance between the US and North-east Asian countries. *International Organisations Research Journal* 13 (2): 76–100, 78.

<sup>9</sup>Pratt, American Business Spanish-American War: 166, 179.

<sup>10</sup>*Ibid.*, 80.

<sup>11</sup>For further information please refer to The 1897 Petition Against the Annexation of Hawaii. National Archives and Records Administration. National Archives and Records Administration, 2021. <https://www.archives.gov/education/lessons/hawaii-petition>.

<sup>12</sup>*Ibid.*

<sup>13</sup>Sumida, Jon. 1999. Alfred Thayer Mahan, geopolitician, *The Journal of Strategic Studies*, 22:2–3, 39–62, DOI: 10.1080/01402399908437753.

<sup>14</sup>The Spanish-American War, 1898. U.S. Department of State Archive, Foreign Service Institute, 2016. <https://history.state.gov/milestones/1866-1898/spanish-american-war>.

<sup>15</sup>*Ibid.*

<sup>16</sup>*Ibid.*

<sup>17</sup>Kruse, Line-Nowe Memea. 2018. *The Pacific insular case of American Sāmoa: Land rights and law in unincorporated US territories*. Cham, Switzerland: Palgrave Macmillan, 6.

<sup>18</sup>Ripine, Muliaumasealii Aleni. 2008. *A history of Amerika Samoa: An annotated timeline*. Malaeimi: American Samoa Community College, 167.

<sup>19</sup>Kruse, *Insular case American Sāmoa*, 6.

<sup>20</sup>Ripine, *Amerika Samoa: Annotated timeline*, 222.

<sup>21</sup>Kruse, *Insular case American Sāmoa*, 20.

<sup>22</sup>Ripine, *Amerika Samoa: Annotated timeline*, 374.

<sup>23</sup>Kruse, *Insular case American Sāmoa*, 1.

<sup>24</sup>*Ibid.*, 6.

<sup>25</sup>Cession of Tutuila and Aunu'u. American Samoa Bar Association, April 13, 2013. <https://asbar.org/cession-of-tutuila-and-aunu/>.

<sup>26</sup>Faleomavaega, Eni Faauaa Hunkin. 1995. *Navigating the future: A Samoan perspective on U.S.-Pacific relations*. Suva: KIN Publications in association with the Institute of Pacific Studies, University of the South Pacific; and Honolulu: Pacific Islands Development Program.

<sup>27</sup>U.S. Const., IV, § 3.

<sup>28</sup>Definitions of insular area political organizations. U.S. Department of the Interior. Office of Insular Affairs, November 30, 2020. <https://www.doi.gov/oia/islands/politicatypes>.

<sup>29</sup>*Ibid.*

<sup>30</sup>8 U.S.C. § 1101(22) (b).

<sup>31</sup>Kruse, *Insular case American Sāmoa*, 80.

<sup>32</sup>8 U.S.C. § 1436, 8 U.S.C. § 1427.

<sup>33</sup>U.S. Const., amend. XIV § 1.

<sup>34</sup>Kruse, *Insular case American Sāmoa*, 80.

<sup>35</sup>*Ibid.*, 82.

<sup>36</sup>788 F.3d 300 (DC Cir. 2015).

<sup>37</sup>8 U.S.C. § 1408.

<sup>38</sup>*Tuaua v. United States*, 788 F.3d 300, 21 (DC Cir. 2015).

<sup>39</sup>*Fitisemanu v. United States*, 426 F. Supp. 3d 1155 (D. Utah 2019).

<sup>40</sup>*Fitisemanu v. United States*, No 20-4017 (10th Cir. 2021).

<sup>41</sup>*Ibid.*

<sup>42</sup>Robert Barnes, Biden administration urges Supreme Court not to take citizenship case, *The Washington Post*, 2022, <https://www.washingtonpost.com/national-security/2022/08/29/insular-cases-samoa-supreme-court/>; *Fitisemanu v. United States* 21-1394 U.S. (2021).

<sup>43</sup>Vaai, Saleimoa. 1999. *Samoa Faamatai and the Rule of Law*. To'omatagi, Samoa: National University of Samoa.

<sup>44</sup>Meleisea, Malama. 1987. *The making of modern Samoa: Traditional authority and colonial administration in the history of Western Samoa*. Suva: Institute of Pacific Studies of the University of the South Pacific, 16.

<sup>45</sup>*Ibid.*

<sup>46</sup>Kruse, *Insular case American Sāmoa*, 13.

<sup>47</sup>Meleisea, *Making of modern Samoa*, 7.

<sup>48</sup>A.S.C.A. § 1.0401 et seq., 1968.

<sup>49</sup>Va'ai, *Samoa Faamatai Rule of Law*, 1.

<sup>50</sup>Kruse, *Insular case American Sāmoa*, 53.

<sup>51</sup>In American Samoa there are five classifications of land ownership titles. Freehold title refers to land that was alienated from customary land by the International Claims Commission in Apia (Independent Samoa) before 1900. Freehold land may be sold or transferred (Lutali and Stewart 1974, 124). Author: Please supply reference information for Lutali and Stewart 1974. Government-owned land refers to land that was alienated from customary land and is owned by the American Samoa Government. Church-owned land refers to land that was alienated from customary land and is owned by a church entity. Individually owned land is defined in Public Law 7-19 as, "owned by a person in one of the first two categories name in Sec. 9.01012, or that is owned by an individual or individuals, except lands included in court grants prior to 1900. Such land may be conveyed only to a person or family in the categories mentioned in Sec. 9.0102, except that it may be inherited by devise or descent under the laws of intestate succession, by natural lineal descendants of the owner. If no person is qualified to inherit, the title shall revert to the family from which the title was derived. Communal land is land is protected by the American Samoa Revised Constitution and caselaw for the 'customs and usage' of the people of American Samoa. Communal land is held in a particular title-holder (matai) who has authority (pule) over the land. Communal land cannot be conveyed or mortgaged."

<sup>52</sup>*Ibid.*, 61, 124.

<sup>53</sup>*Ibid.*, 108.

<sup>54</sup>Kruse, *Insular case American Sāmoa*; Arutangai, Selwyn, and R. G. Crocombe. 1987. *Land Tenure in the Pacific*. 3rd ed. Edited by R. G. Crocombe. Suva: University of the South Pacific.

<sup>55</sup>Va'ai, *Samoa Faamatai rule of law*.

<sup>56</sup>Kruse, *Insular case American Sāmoa*, 38.

<sup>57</sup>*Ibid.*, 59.

<sup>58</sup>Revised Constitution of American Samoa, art.II. § 3(d)

<sup>59</sup>Kruse, *Insular case American Sāmoa*, 89.

<sup>60</sup>Anae, Melani, and Ingrid Peterson. 2020. *A handbook for transnational Samoan Matai (chiefs): Tusifaitau o Matai Fafo o Samoa*. *Pacific Dynamics*. Christchurch, NZ: Macmillan Brown Centre for Pacific Studies, University of Canterbury. [http://pacificdynamics.nz/wp-content/uploads/2020/09/Final\\_proof\\_RM\\_N\\_2020-008.pdf](http://pacificdynamics.nz/wp-content/uploads/2020/09/Final_proof_RM_N_2020-008.pdf).

<sup>61</sup>*Ibid.*

<sup>62</sup>*Ibid.*

<sup>63</sup>Bosniak, Linda. 2006. *The citizen and the alien: Dilemmas of contemporary membership*. Princeton, NJ: Princeton Univ. Press.

<sup>64</sup>Huffer, Elise, and Asofou So'o. 2005. Beyond governance in Sāmoa: Understanding Samoan political thought. *The Contemporary Pacific* 17 (2): 311–333.