

Citizenship in Empire: The Legal History of U.S. Citizenship in American Samoa, 1899-1960

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ABSTRACT

This article analyzes the legal history of U.S. citizenship for American Samoa and examines why American Samoa remains the only U.S. unincorporated territory that U.S. citizenship has not been extended to by Congress. The article examines legislation from the 1930s that would have extended U.S. citizenship to Samoans, but failed to pass in Congress due to opposition from the U.S. Navy, the effects of the Great Depression, and the racism of some U.S. lawmakers. The last parts of the article explore hearings that were held in the immediate years after World War II in which naval leaders and U.S. lawmakers expressed a willingness to extend citizenship to American Samoa for Cold War propaganda imperatives. These hearings ultimately did not lead to the extension of U.S. citizenship. By the early years of the Cold War some Samoan leaders had petitioned Congress against the extension of citizenship to American Samoa for fear that citizenship would lead to the destruction of Samoan cultural autonomy. The legal history of U.S. citizenship for American Samoa from 1899 to 1960 illuminates the various meanings citizenship can have and the disparate ways citizenship can be used by different people in the context of empire. In American Samoa, citizenship was a powerful concept that colonized people used to make claims for equal inclusion and full membership within a political community; it was a tool that the U.S. government used in strategic ways to legitimate imperialism; and it was a status with the power to destroy cultural autonomy.

I. INTRODUCTION

Despite having the same subordinate position in relation to the U.S. federal government, why are the residents of American Samoa categorized as non-citizen nationals while the colonized people in each of the other U.S. unincorporated territories are

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U.S. citizens?¹ This article explores this question by examining the legal history of congressional legislation dealing with the possible extension of U.S. citizenship to American Samoa between 1899-1960. In the early 1930s, Congress considered extending U.S. citizenship to American Samoa due to pressure from a decade-long political and cultural autonomy movement which demanded, among other things, Samoans become U.S. citizens.² This article highlights transcripts from congressional hearings, the congressional record, and newspaper articles to show that the United States chose not to make Samoans citizens during this time period due to naval opposition and the weakening of the Samoan autonomy movement after Congress made other reforms, besides the extension of citizenship, to its governance of American Samoa. In the early years of the Cold War, however, naval leaders and U.S. lawmakers recognized the propaganda value of extending citizenship to American Samoa to demonstrate, in particular to developing nations that the United States was seeking to influence, the superiority of American democracy and capitalism in comparison to Soviet authoritarianism and communism. In the years immediately following World War II (WWII),³ however, Congress had come to believe that Samoans were now resistant to the idea of becoming U.S. citizens. U.S. lawmakers were under the impression that Samoans associated the extension of citizenship with the destruction of their culture, which helps explain why Congress ultimately did not pass legislation extending citizenship to American Samoa in the early years of the Cold War.⁴

The contribution this article makes is to existing and emerging scholarship on the complicated and multifarious meanings of the substance of citizenship through its examination of the debates Congress had regarding the possible extension of U.S. citizenship to American Samoa in the early 1930s and in the aftermath of WWII. Similar to what Sam Erman has written about in the context of the legal history of U.S. citizenship in Puerto Rico, the legal history of citizenship in American Samoa demonstrates that citizenship can mean different things to different people in different historical contexts. For Samoans in the 1930s, citizenship was a powerful concept

- 1 The United States has five unincorporated territories: Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. Through legislation, Congress has extended U.S. citizenship to each of its unincorporated territories, excluding American Samoa, at various times: 1917 for Puerto Rico (Puerto Rican Federal Relations Act of 1917, Pub. L. No. 64-368, § 5, 39 Stat. 951, 953) [1917]), 1927 for the U.S. Virgin Islands (An Act to confer United States citizenship upon certain inhabitants of the Virgin Islands and to extend the naturalization laws thereto, Pub. L. 69-640, 44 Stat. 1234, 1234-1235 [1927]), 1950 for Guam (An Act to provide a civil government for Guam, and for other purposes, Pub. L. No. 630, § 4, 64 Stat. 384, 384 [1950]), and 1976 for the Commonwealth of the Northern Mariana Islands (To approve the "Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America," and for other purposes, Pub. L. No. 94-241, § 301, 90 Stat. 264, 265-266 [1976]).
- 2 I use autonomy/resistance movement to describe the Mau movement in American Samoa in the 1920s, as part of a long history of indigenous autonomous movements throughout the history of the Pacific that were linked and attempted to enact cultural, social, or economic change for colonized people. See TRACEY BANIVANUA MAR, *DECOLONISATION and the PACIFIC: INDIGENOUS GLOBALISATION and the ENDS of EMPIRE* 138 (2016).
- 3 Hereinafter WWII.
- 4 My argument here is that Congress was given clear messages by representatives from American Samoa in the immediate years after WWII that Samoans no longer sought to become U.S. citizens. I do not attempt to make a larger claim about the true desires of American Samoans regarding the desirability of citizenship as a whole during this time period.

to claim in their resistance to U.S. imperialism to assert a right to be equal members of the U.S. polity. In this way, “citizenship retained vibrancy, even in the context of empire. It was a font of rights, a basis for claims . . . and a powerful symbol of membership.”⁵ In the early years of the Cold War, however, members of Congress recognized that it could extend an “all-but-rightsless” and “empty” form of citizenship to American Samoa that would serve two functions.⁶ First, making Samoans citizens could help to legitimate and normalize U.S. imperialism in the Pacific by further incorporating American Samoa into the United States without forcing Congress to then fully incorporate the islands as full members of the U.S. polity. Put differently, U.S. lawmakers recognized that American Samoa could gain citizenship without automatically becoming a state and without gaining independence from U.S. rule in the midst of a worldwide decolonization movement.⁷ Second, the extension of citizenship to American Samoa could serve as valuable propaganda for the United States in its ideological struggle with the Soviet Union, which would help to counter international criticism of U.S. imperialism in the Pacific.⁸ By the early 1950s, however, Samoans viewed U.S. citizenship as a status with the power to destroy Samoan cultural autonomy. The legal history of citizenship in American Samoa thus demonstrates that “[c]itizenship [has] . . . revealed itself to be all things—or nothing—to all people, too valuable to grant and yet too inconsequential to withhold . . . [and it] remain[s] a contested and unstable construct that [can] be deployed for competing ends.”⁹

This article proceeds as follows. The first section provides an overview of the history of European and U.S. imperialism in American Samoa. The second section offers a brief overview of the history of U.S. citizenship in its territories by focusing on the Supreme Court’s rulings in the *Insular Cases*, a set of cases in the early 1900s that establish the United States’ territorial policy after 1898. The third section

5 SAM ERMAN, *ALMOST CITIZENS: PUERTO RICO, THE U.S. CONSTITUTION AND EMPIRE* 3 (2019).

6 *Id.* at 120.

7 This is because of the legal and constitutional precedents set in the *Insular Cases*, discussed later in the article.

8 I do not mean that the extension of U.S. citizenship to an unincorporated territory exists only in this form, as citizenship can indeed be an important, meaningful, and significant aspect of any political system. What I argue, similar to Erman, is that a hollowed out form of citizenship is *one* of the ways U.S. policymakers thought about citizenship in American Samoa. Thus, one of the contributions this article makes is highlighting how members of Congress thought a limited form of citizenship could be used as U.S. political propaganda in the Cold War. Citizenship can also exist as a status that allows for historically marginalized and oppressed people to make powerful claims for their equality within a political community, as Samoans would use citizenship in the 1930s. Similarly, Martha Jones has written about how black Americans in the antebellum period demanded and asserted their rights by making novel claims regarding birthright citizenship, see MARTHA JONES, *BIRTHRIGHT CITIZENS: A HISTORY OF RACE AND RIGHTS IN ANTEBELLUM AMERICA* (2018). The history of indigenous populations in the United States offers another example of the different meanings and purposes citizenship can take. In this context, citizenship was violently forced upon indigenous populations living in the United States in an attempt to eradicate indigenous culture and sovereignty. See, e.g., FREDERICK HOXIE, *A FINAL PROMISE: THE CAMPAIGN TO ASSIMILATE THE INDIANS, 1880-1920* (1984); DAVID WALLACE ADAMS, *EDUCATION FOR EXTINCTION: AMERICAN INDIANS AND THE BOARDING SCHOOL EXPERIENCE, 1875-1928* (1995); JACQUELINE FEAR-SEGAL, *WHITE MAN’S CLUB: SCHOOLS, RACE AND THE STRUGGLE OF INDIAN ACCULTURATION* (2007); ROXANNE DUNBAR-ORTIZ, *AN INDIGENOUS PEOPLES’ HISTORY OF THE UNITED STATES 169-70* (2014). For a brief discussion of how the citizenship extended to indigenous people in 1924 was a second-class version, see DAVID TREUER, *THE HEARTBEAT OF WOUNDED KNEE: NATIVE AMERICA FROM 1890 TO THE PRESENT* 199-221 (2019).

9 ERMAN, *supra* note 5, at 142.

provides an overview of the local resistance movement that emerged in American Samoa throughout the 1920s, known as the Mau movement, in which, among other demands, Samoans mobilized to express their desire to become U.S. citizens. The last two sections explore the legal history of citizenship legislation for American Samoa in two main time periods: the early 1930s and during the early years of the Cold War. Moreover, the different reasons why citizenship was not extended to Samoans during each of these historical moments will be explained. In response to the Mau movement, legislation that would have extended citizenship to American Samoa was presented in Congress in the early 1930s. However, it failed due to naval opposition and reforms implemented by U.S. policymakers to U.S. rule in American Samoa that was designed to undermine the Samoan mobilization. Hearings were held in the immediate years after WWII in which naval leaders and U.S. lawmakers expressed a willingness to extend citizenship to American Samoa for Cold War propaganda imperatives. These hearings, however, did not lead to legislation that would have extended U.S. citizenship to American Samoa. This had to do with the fact that, as the Cold War was starting, Congress was operating under the belief that Samoans no longer wanted to become U.S. citizens.

II. HISTORY OF WESTERN AND U.S. IMPERIALISM IN SAMOA

European interest in Samoa¹⁰ goes back to the early eighteenth century with the Dutch East India Company in 1721, when three ships landed on Samoan shores and brought aboard some members of the local population.¹¹ Europeans would first explore the islands in 1787, beginning a history of invasion, violence, and colonization in Samoa. A group led by Jean-Francois Galaup killed a Samoan for climbing aboard one of their ships, which created a situation in which “early friendly contacts between Westerners and Samoans quickly degenerated into violent episodes that left lasting impressions on both sides.”¹² Based on these early colonial interactions, Europeans would view Samoans as “savages,” “thieving, treacherous giants.”¹³

European and U.S. colonizers would attempt to dismantle the complicated political and social structures that had existed in Samoa since the thirteenth century. Samoa has a long history of decentralized political authority, with the *nu'u* (village or polity) existing as the basic political unit. Each *nu'u* consists of a few hundred people and is an autonomous political community with its own leadership structure. *Aiga*

10 Samoa is now divided between Western and Eastern (American) Samoa. Western Samoa consists of two main islands, Savai'i and Upolu, and four smaller islands, Manono, Apolima, Fanuatapu, and Namua. American Samoa contains seven islands, with Tutuila as the main island, and includes Aunu'u, the Manu'a group of Ta'u, Olosega and Ofu, along with two coral islands (Swains Island and Rose Island). The Polynesian islands are located about halfway between Hawaii and Australia. This article uses “Eastern Samoa” and “American Samoa” interchangeably.

11 For a thorough accounting of the history of Samoa and its complicated relationship with European powers and the United States, see RICHARD P. GILSON, *SAMOA, 1830-1900: THE POLITICS OF A MULTI-CULTURAL COMMUNITY* (1970); MALAMA MELEISEA, *THE MAKING OF MODERN SAMOA: TRADITIONAL AUTHORITY AND COLONIAL ADMINISTRATION IN THE HISTORY OF WESTERN SAMOA* (1987); FEATUNA'I BEN LIUAANA, *SAMOA TULA'I: ECCLESIASTICAL AND POLITICAL FACE OF SAMOA'S INDEPENDENCE, 1900-1962* (2001); JOSEPH KENNEDY, *THE TROPICAL FRONTIER: AMERICA'S SOUTH SEA COLONY* (2009).

12 KENNEDY, *supra* note 11, at 2.

13 MELEISEA, *supra* note 11, at 12.

refers to “family” or “extended kin-group,” with groups of *aiga* forming a *nu’u* and groups of *nu’u* forming an *itu malo* (district or alliance). The *matai* was the custodian of the *aiga* and decided how land would be divided among members of the *aiga*. Each *nu’u* was led by a council of *matai*, or *fono*, which was responsible for making decisions on communal issues that involved more than one *aiga*. As Meleisea explains, “each *aiga* was associated with a particular *matai* title, and the standing of the *matai* in his *aiga* was that of its leader and the trustee of its land and property . . . all *matai* were heads of families.”¹⁴ A *matai* was expected to act selflessly, to show wisdom and respect for proper protocol, which included an oratorical mastery of mythological events.¹⁵

Samoaan leaders attempted to maintain a system that protected their cultural autonomy, land rights, and political sovereignty as Germany, Great Britain, and the United States attempted to establish a unified, centralized rule over Samoa led by a single king who they could manipulate for their own strategic interests.¹⁶ As Droessler argues, however, it was the decentralized nature of Samoa’s political structure and Samoans refusal to recognize a single king with power to rule over all of Samoa that frustrated colonial rule and made it more challenging for colonial powers to assert their control over the islands.¹⁷

The initial interest in Samoa by the United States began in the middle of the nineteenth century due to the strategic and logistical value of Pago Pago Bay, located on the main island of Tutuila, when a U.S. whaling expedition in 1838 reported back on its commercial value in the Pacific.¹⁸ While the United States was not looking to annex or acquire territory in the Pacific in the 1830s, it did have commercial and capitalistic interests in seeking to gain access to Samoa’s resources, mainly coconut oil and copra. The United States would initially establish a trading post at Pago Pago and attempt to influence how the island was governed, but not through formal annexation. In what would become the dominant theme of U.S. involvement in Samoa, there was a desire to maintain control over the islands without fully including Samoans into the U.S. polity. After initially being interested in Samoa’s resources, U.S. interest would shift to Samoa’s value as a Pacific port for global shipping.

Samoans had an interest in U.S. annexation for protection from German and British imperialism in the area—for example, Samoan chiefs wrote to President Grant in 1873 asking him to formally annex Samoa—but Congress was not committed to formally acquiring islands outside of the contiguous United States that were inhabited by majority non-white populations.¹⁹ The reason for Congress’ reluctance

14 *Id.* at 7. An entire description of Samoa’s intricate political structure is beyond the scope of this article. See *Id.* at 7-8 for a much richer explanation of the complexities of Samoa’s political apparatus.

15 *Id.* at 7-8.

16 MELEISEA, *supra* note 11, at 21-47; Holger Droessler, *Colonialism by Deferral: Samoa Under the Tridominium, 1889-1899*, in 33 *POLITICAL POWER AND SOCIAL THEORY* 203, 207 (Søren Rud & Søren Ivarsson eds., 2017).

17 Droessler, *supra* note 16, at 207.

18 For a fuller discussion of the Wilkes expedition, see GEORGE HERBERT RYDEN, *THE FOREIGN POLICY OF THE UNITED STATES IN RELATION TO SAMOA* 12 (1975); KENNEDY, *supra* note 11, at 9-11.

19 FOSTER RHEA DULLES, *AMERICA IN THE PACIFIC* 106 (1932); RYDEN, *supra* note 18, at 75, 517-18; ARNOLD LEIBOWITZ, *DEFINING STATUS: A COMPREHENSIVE ANALYSIS OF U.S. TERRITORIAL POLICY* 396 (1989); MELEISEA, *supra* note 11, at 37. During the 1870s, when Germany, Great Britain, and the United States

to formally annex islands was rooted in white supremacy, as Congress was operating under the belief that the Constitution would require that any new territory that the federal government acquired would eventually have to be incorporated into the United States as a state; this would also mean that any non-white people living in Pacific island territories would become equal members of the U.S. polity.²⁰ U.S. lawmakers did not intend, however, to apply the traditional model of U.S. white-settler colonialism, in which the United States would admit new territories as states once they had established a majority white population, to a Pacific island territory such as American Samoa.²¹ As Eric T.L. Love explains, the United States has a “tradition of avoiding territories that were too densely occupied by ‘alien’ [non-white] races that could not be assimilated into the country.”²² Thus, Congress was initially not supportive of the new expansionist ideology being developed by the Navy and executive branch during the 1870s for racist reasons.²³ Another part of this white supremacist thought that worked against U.S. expansion to territories outside of the contiguous United States was the idea that the white race was not suited for tropical climates.²⁴ This racist theory argued that members of the white race would become physically and morally contaminated when exposed to tropical climates—similar to the racist idea of “going native.”²⁵ For these reasons rooted in white supremacy, while the Navy and Department of State were initially trying to establish strategic coaling and military bases in the Pacific, Congress was not supportive of formally annexing Samoa.²⁶

In 1872, the U.S. minister to Hawaii sent Commander Richard Meade to negotiate a treaty with Samoan chiefs, with the backing of the U.S. Navy and the Department of State. This was done without congressional approval and was meant

were attempting to exert control over Samoa, Samoans viewed the United States as a relatively neutral force that could establish a stable local government.

- 20 ERIC T.L. LOVE, *RACE OF EMPIRE: RACISM AND U.S. IMPERIALISM, 1865-1900*, at 18-31 (2004); COLIN MOORE, *AMERICAN IMPERIALISM AND THE STATE, 1893-1921*, at 68-71 (2017); ERMAN, *supra* note 5, at 8-26.
- 21 A major exception to the traditional model of U.S. white-settler colonialism of how a territory becomes a state is Hawaii. In the case of Hawaii, Congress felt that while there was not a majority white population, it had become “Americanized,” i.e. white, enough by 1959 to become a state, due to white control of the island government, significant U.S. investment and commercialization in agriculture, and the establishment of U.S.-style public institutions (i.e. schools). U.S. policymakers also viewed the Hawaiian people as being capable of self-government after a period of tutelage, unlike the people living in the former Spanish colonies. For a short overview of the history of U.S. white-settler colonialism and Hawaii’s incorporation as a state in 1959, see LANNY THOMPSON, *IMPERIAL ARCHIPELAGO: REPRESENTATION AND RULE IN THE INSULAR TERRITORIES UNDER U.S. DOMINION AFTER 1898*, at 105-18, 147-51, 186-87, 248-49 (2010); MOORE, *supra* note 20, at 34-64. Congress’ reluctance to formally annex island territories with majority non-white populations that would not have the necessary influx of white settlers to make them majority white, and thus deemed eligible for statehood, would lead to the rulings in the *Insular Cases* at the turn of the twentieth century. These rulings allowed the United States to maintain indefinite sovereignty over territories without having to “incorporate” them as states.
- 22 LOVE, *supra* note 20, at 23.
- 23 *Id.* at 18-31.
- 24 *Id.* at 24-25.
- 25 See, e.g., Ann Laura Stoler, *Making Empire Respectable: The Politics of Race and Sexual Morality in 20th-Century Colonial Cultures*, 16 *AM. ETHNOLOGIST* 634, 646, 649-51 (1989); RICHARD SLOTKIN, *GUNFIGHTER NATION: THE MYTH OF THE FRONTIER IN TWENTIETH CENTURY AMERICA* 578-623 (1998).
- 26 RYDEN, *supra* note 18, at 14-24, 28.

to purposely bypass “all legal and proper means.”²⁷ With Germany, Britain, and the United States attempting “to create a puppet ‘king’” of Samoa during this time, “whom they could agree to manipulate . . . [,] outsider meddling had helped to destabilize Samoa, providing a pretext for colonial partition.”²⁸ As Germany and Britain were considering establishing a protectorate over Samoa, due to internecine conflicts between Samoan chiefs, a treaty of friendship and commerce was signed between the United States and Samoa, in which the United States gained the exclusive right to establish a naval coaling station at Pago Pago and freedom of commerce at all other Samoan ports. While this first treaty in 1872 was not ratified by Congress, a similar one in 1878 was.²⁹ Samoans hoped a treaty would secure U.S. protection of Samoan sovereignty against Germany and Britain and prevent their land from being exploited by foreign commercial interests.³⁰ The treaty signed in 1878 set the stage for all future U.S. intervention in Samoa rooted in the Navy’s perceived threats to Samoan sovereignty by other imperial powers.³¹ The United States was concerned that it would lose the islands of Samoa to a rival global empire, which helps explain why Congress became more willing to consider some type of formal relationship to the island by the late 1870s.³² The treaty of friendship the United States signed with Samoan leaders in 1878 secured the rights for the United States to establish a coaling station at Pago Pago Harbor, established freedom of commerce in other Samoan ports, and guaranteed perpetual friendship.³³ In September 1879, the three powers entered into a Tripartite Convention, establishing the municipality of Apia, which would now be under control of the United States, Britain, and Germany together. While “the U.S. Senate never formally ratified the Convention, the United States and its imperial competitors thus assumed de facto legal sovereignty over the most important port [Apia] in Samoa.”³⁴

The 1880s marked a period of civil wars in Samoa, the causes of which can be traced back to outside foreign interference rooted in the imperial rivalry playing out between the United States, Germany, and Britain. This external interference destabilized Samoan civil society and ultimately led to its formal partition in the late nineteenth century.³⁵ Backed by Germany, Tamasese Titimaea was deemed the new

27 KENNEDY, *supra* note 11, at 16.

28 David A. Chappell, *The Forgotten Mau: Anti-Navy Protest in American Samoa, 1920-1935*, 69 PAC. HIST. REV. 217, at 220.

29 Arnold Leibowitz, *American Samoa: Decline of a Culture*, 10 CAL. W. INT’L L.J. 220, 227-28 (1980); David A. Chappell, *supra* note 28, at 220.

30 For a longer explanation of why Samoans favored a formal treaty with the United States or Britain and not Germany, see MELEISEA, *supra* note 11, at 37. Samoans believed that the United States did not have the same level of influence or interest in Samoa as Great Britain did through the London Missionary Society or as Germany did through its commercial plantation interests.

31 LEIBOWITZ, *supra* note 19, at 396-97.

32 Fear that a lack of immediate action might result in the United States losing Samoa, just like in the case of the British annexation of Fiji, helps explain this urgency.

33 LEIBOWITZ, *supra* note 19, at 397; Droessler, *supra* note 16, at 207-208.

34 Droessler, *supra* note 16, at 208.

35 KENNEDY, *supra* note 11, at 32-37; Droessler, *supra* note 16, at 208. Germany, Great Britain, and the United States became increasingly involved in Samoan conflicts between 1830-1900, which centered around both the succession of chiefly titles and European and U.S. land claims on the islands. See MELEISEA, *supra* note 11, at 21-45, for a chronicling of the history of Samoan wars during this time period.

“king” of all Samoa in the late 1880s. Most Samoans, however, did not view Titimaea as the legitimate ruler of Samoa because he had failed to claim all four paramount titles.³⁶ Samoans supported Titimaea’s main rivals, Malietoa and Mata’afa Iosefa, which led to a protracted war between Germany and the western part of Samoa. The conflict escalated because Germans had established large plantations there, and Germany feared that it was going to suffer commercial losses due to Samoan resistance.³⁷ The attacks by Germany on parts of the Western Samoan population were covered by major U.S. news outlets, which made the U.S. public more aware of the United States’ involvement in Samoa. The press reported that U.S. property holdings in Eastern Samoa were threatened and that German naval forces had been disrespecting the U.S. flag. These news reports framed the issue such that the dignity of the United States was being threatened by German aggression.³⁸ In January 1889, the United States would send three battleships to Apia harbor to counter increased German militarism in Samoa. As Kennedy explains, “the bravado of the times dictated that true Americans needed to become indignant . . . and thrust American interests in Samoa to the forefront.”³⁹

The aggressive reaction and mood of the U.S. public to German expansionism in the Pacific in the 1880s and early 1890s was connected to larger cultural forces influencing U.S. society. As the Civil War generation aged and its veterans died, there was a fear that the current generation of U.S. citizens had become “unmanly,” corrupt, and weak, and that a war would provide “an opportunity to shore up the manly character of American politics.”⁴⁰ This fear of loss of “manliness” in the political sphere was also due to the belief that women were “encroaching” into the political sphere.⁴¹ The idea that U.S. civic virtue was dependent on manly character and that such a virtue is forged through righteous violence and war was widespread. As a result, the United States simply could not ignore German expansion and aggression in the Pacific, which made the islands of Samoa more salient to the U.S. public.

The events that occurred on Samoa in the late 1880s and early 1890s also coincide with another change in U.S. political thought, which was now shifting to more expansionist and imperialist policies in the aftermath of Reconstruction. Central to this new expansionist tradition was the annexation of strategically situated territories that could enable the U.S. military to build coaling stations and bases.⁴² With the growth of manufacturing in the United States after the Civil War leading to saturated domestic markets and the production of surplus goods, there was a need to expand

36 Droessler, *supra* note 16, at 208.

37 MELEISEA, *supra* note 11, at 35-38; Droessler, *supra* note 16, at 208.

38 KENNEDY, *supra* note 11, at 46-47; Droessler, *supra* note 16, at 208-09.

39 KENNEDY, *supra* note 11, at 47-48.

40 KRISTIN L. HOGANSON, FIGHTING FOR AMERICAN MANHOOD: HOW GENDER POLITICS PROVOKED THE SPANISH-AMERICAN AND PHILIPPINE-AMERICAN WARS 11 (1998).

41 *Id.* at 10.

42 BARTHOLOMEW H. SPARROW, THE INSULAR CASES AND THE EMERGENCE OF AMERICAN EMPIRE 57-59 (2006).

to other overseas markets, especially in China and Asia.⁴³ Pacific ports would thus be valuable as coal refueling stops in securing these new shipping lanes. Drawing on the emerging navalist discourse, which grew out of the work of A.T. Mahan and the global expansionists within the administration of President William McKinley, this new imperialist territorial policy advocated the permanent acquisition of territories that could be used to build strategic coaling stations and military bases with no intention of admitting them as states.⁴⁴ This differed from previous U.S. territorial policy, which “had been to eventually admit new territories as states of the Union.”⁴⁵ These bases enabled the United States to expand its influence and military borders in the Pacific, and they created more secure trade routes with Asian markets.⁴⁶ What made Samoa so valuable in the latter third of the nineteenth century was its prime location for commerce through the Pacific to access Asian markets.⁴⁷ In sum, after Reconstruction’s collapse in the late 1880s, the United States renewed its interest in global expansion in the Pacific for several reasons: the search for new markets, the increase in competition for imperial dominance between European nations, Japan, and Russia, and to secure military and strategic interests.⁴⁸

U.S. policymakers in the later part of the nineteenth century were also influenced by the ascendance of formal empire by European powers, when empire was viewed as morally good and as part of a “civilizing mission” in which “the West would Christianize the heathens, introduce commerce, and improve their lives.”⁴⁹ In this Age of New Imperialism and the “Scramble for Africa,”⁵⁰ the United States emulated

- 43 THOMAS McCORMICK, *CHINA MARKET: AMERICA’S QUEST FOR INFORMAL EMPIRE, 1893-1901* (1990); WALTER LAFEBER, *THE NEW EMPIRE: AN INTERPRETATION OF AMERICAN EXPANSION, 1860-1898* (1998). McCormick and LaFaber demonstrate how the interests of U.S. policymakers and those of the business community converged in the period between the 1860s and 1890s. Both groups increasingly came to view the expansion of U.S. commerce into Latin American and Asian markets as the key to increased economic productivity and as a way to prevent future economic depressions. Especially as the effects of the Industrial Revolution became more pronounced in the 1890s (labor strife and an economic depression from 1893-1897), U.S. lawmakers and the business community believed that access to new markets was the way to solve the economic, social, and political problems caused by industrialization. The Asian market was deemed particularly important to help counter continued social unrest rooted in industrialization and an economic depression in the 1890s.
- 44 Charles Venator-Santiago, *Extending Citizenship to Puerto Rico: Three Traditions of Inclusive Exclusion*, 25 *CENTRO J.* 1, 9-10 (2013); Charles R. Venator-Santiago et al., *Citizens and Nationals: A Note On The Federal Citizenship Legislation for the United States Pacific Island Territories, 1898 to the Present*, 10 *CHARLESTON L. REV.* 244, 247.
- 45 EFREN RIVERA RAMOS, *AMERICAN COLONIALISM IN PUERTO RICO: THE JUDICIAL AND SOCIAL LEGACY* 73 (2007). For more of a historical overview of U.S. territorial policy before 1898, which was premised on white-settler colonialism and eventual statehood for annexed territories, see Leibowitz, *supra* note 19, at 3-16; SPARROW, *supra* note 42, at 14-50.
- 46 Venator-Santiago et al., *supra* note 44, at 247. See RAMOS, *supra* note 45, at 25-44.
- 47 LAFEBER, *supra* note 43, at 35-36, 55-56.
- 48 RAMOS, *supra* note 45, at 29-32.
- 49 KAL RAUSTIALA, *DOES THE CONSTITUTION FOLLOW THE FLAG? THE EVOLUTION OF TERRITORIALITY IN AMERICAN LAW* 73 (2011).
- 50 This was during the time after Reconstruction, the Gilded Age, when the United States experienced the immense growth of corporate power, was focused on transitioning to a global industrial power, and had largely moved on from egalitarian federal Reconstruction policies that had attempted to secure civil rights for black U.S. citizens. For example, the *Civil Rights Cases* (1883) returned the issue of enforcement of racial equality and protection of black Americans against violent white terrorism to state governments, with the federal government emphasizing industrial development and establishing the United States as a global

European empires, acquiring initial overseas territories in Puerto Rico, Guam, and the Philippines with its victory in the Spanish-American War of 1898. Gerald Neuman outlines this era of imperial expansion as the third phase in his delineation of U.S. territorial policy, in which “the United States [sought] to become a great colonial power on the European model” by acquiring island territories.⁵¹

As these new cultural forces influenced U.S. policy, a conference between Germany, Britain, and the United States to discuss each power’s rule over Samoa was held in Berlin in 1889.⁵² Germany was worried about increasing tensions with the United States, which led to a tripartite agreement (the tridominium) with the United States and Britain over how to rule Samoa in order to avoid a possible war between the three powers.⁵³ The Berlin Agreement prohibited Samoans from determining their leaders, at least ones who the colonial powers would recognize as legitimate. The agreement led to another period of discontent, instability, and violence in Samoa caused by increased interference in local Samoan affairs from Germany and the United States, especially regarding the legitimacy of Samoa’s king. The Berlin Act forced Samoans to recognize a European-style king chosen by the imperial powers, but Samoans resisted these attempts to centralize Samoa’s political structure.⁵⁴ In the late 1890s, Samoan resistance to these attempts to change Samoa’s decentralized political system led to another agreement signed in 1899 that formally partitioned Samoa between the United States and Germany and abolished the imposed kingship.

Pursuant to the Washington Convention of 1899 Germany and Britain relinquished any claims to Tutuila and all other islands in Eastern Samoa, while the United States ceased any claims in Western Samoa, which would be under German control. Since the United States’ primary strategic concern in Samoa was Pago Pago Harbor, U.S. policymakers were willing to give up any claims to Samoa’s western islands.⁵⁵ President McKinley officially situated Eastern Samoa under the governance

power. For a good historical overview of this era in U.S. history, see ERIC FONER, *RECONSTRUCTION: AMERICA’S UNFINISHED REVOLUTION, 1863-77* (1988); ROGERS SMITH, *CIVIC IDEALS: CONFLICTING VISIONS OF CITIZENSHIP IN U.S. HISTORY* 286-409 (1997); RICHARD WHITE, *THE REPUBLIC FOR WHICH IT STANDS: THE UNITED STATES DURING RECONSTRUCTION AND THE GILDED AGE, 1865-1896* (2017).

- 51 Gerald Neuman, *The Extraterritorial Constitution After Boumediene v. Bush*, 82 S.C. L. REV. 259, 287 (2009).
- 52 One of the reasons Germany and the United States were willing to attempt another negotiation over Samoa was due to a typhoon that occurred on March 14, 1889, which sank most of the European and U.S. battleships that had been sent to Apia harbor.
- 53 It should be noted that Samoans were not included in any of these meetings and the results of the conference were not translated into Samoan. Reflecting the prevailing racist-imperialist thought of the era, U.S. Secretary of State Thomas Bayard would call Samoans “a remote and feeble community of semi-civilized people” and argue that it was “the duty of the powerful nations of Christendom to deal with these people in a spirit of magnanimity and benevolence.” See RYDEN, *supra* note 18, at 425.
- 54 For a more comprehensive examination of how Samoa under the tridominium was an incomplete form of colonial rule that allowed Samoans to exercise forms of political autonomy, see Droessler, *supra* note 16, at 209-23. Despite attempts by Germany and the United States to establish a more formal, centralized colonial state on the islands, Samoans were able to maintain economic and political power outside of Apia.
- 55 See KENNEDY, *supra* note 11, at 12, 14, 47-52; Droessler, *supra* note 16, at 222. Germany was still invested in its plantation holdings on the islands, while Great Britain was willing to give up its claims in Samoa in exchange for concessions from Germany. These included: Germany relinquishing Tonga, shifting the line

of the Navy in February of 1900. While Samoans living in Eastern Samoa were able to maintain their local political and cultural institutions, including the Samoan *fono* (legislative assembly), the Navy was granted broad authority to govern over Eastern Samoa and had veto power over legislation passed by the Samoan *fono*.⁵⁶ In April of 1900, Samoan high chiefs officially ceded the islands of Tutuila and Annu'u to the United States. It is important to remember that cessions by Samoan leaders were the result of external pressures from European and U.S. colonizers, as:

[o]ver a period of three quarters of a century, Samoan society had been subjected to: new religions and standards of morality; new legal systems (to ensure that Samoans were punished for offenses against whites and to ensure that whites were able to deal with their own expatriates); modern weapons; threats to their lands by speculators; and Great Power politics which tended to promote Samoan leaders favorable to them, provoking or intensifying the frequent civil wars.⁵⁷

Since McKinley's administration claimed that Samoan territory was already under the control of the Navy before the Deed of Cession was even signed, the president did not consider the official acts of cession as necessary. Emphasizing this point, the U.S. Navy said to one Samoan leader that "whether you come or not, the authority of the United States is already proclaimed over this island."⁵⁸

Developments around the turn of the twentieth century decreased the commercial and military value of Samoa in the eyes of U.S. policymakers. After the Spanish-American War in 1898, with the United States formally annexing the Philippines,

of demarcation in the Solomon Islands, and moving the neutral zones in West Africa, Togo and Zanzibar. (KENNEDY, *supra* note 11, at 52) Since Great Britain was not as invested in commercial holdings in Samoa and had gained a foothold in Fiji in 1874, it did not view Samoa as essential for military and strategic purposes when compared to Germany and the United States.

56 Chappell, *supra* note 28, at 230. The pre-colonial *fono* refers to the council of matai that governs each nu'u through a process of debate, negotiation and compromise. See MELEISEA, *supra* note 11, at 16. The modern Samoan Fono was established in Upolu by colonial administrators, and consisted of a two-chamber legislature. The upper house was made up of seven paramount matai chiefs and the lower house consisted of 30 representatives who held prominent title in districts across Samoa. After the partition of Samoa, a Fono for Eastern Samoa was established in 1905, but existed as an annual meeting (called a "Colonial" meeting) of Samoan chiefs. In American Samoa, the Fono could be overridden by the naval government, as the naval administration had the power to exert strict control over the Fono and its agenda and could veto any resolution Samoan representatives passed. The first resolution by Samoan representatives to establish a more formal local legislature that would meet regularly was drafted during the 1924 Fono meeting. The Fono would not become a formal Legislative Assembly until 1948, when the naval administration approved the formation of the local Samoan assembly, after a decades-long movement by leaders of the Samoan Fono to establish an official legislative body; see AMERIKA SAMOA HUMANITIES COUNCIL, A HISTORY OF AMERICAN SAMOA 251-52 (2009). It is important to note that while the Samoan Fono has existed as legislative assembly since 1948, the Department of Interior and ultimately Congress maintain control over the governance of American Samoa and have the power to override or veto any legislation passed by the Fono. That is not to dismiss the way that Samoans were able to resist and protest U.S. imperialism in the Pacific by petitioning for a legislative assembly, but to highlight how ultimate plenary authority over American Samoa still resides with the federal government and Congress based on the ruling of the *Insular Cases*.

57 LEIBOWITZ, *supra* note 19, at 399.

58 J.A.C. GRAY, AMERIKA SAMOA: A HISTORY OF AMERICAN SAMOA AND ITS UNITED STATES NAVAL ADMINISTRATION 108-10 (1960). See LEIBOWITZ, *supra* note 19, at 399.

Puerto Rico, and Guam, U.S. ships were no longer as dependent on Samoa to access Asian markets as the new Hawaii-Wake-Guam-Philippines trade route emerged.⁵⁹ The Boxer Rebellion in China, which started around this time, also resulted in a Chinese boycott of U.S. goods over recent deportations carried out by U.S. immigration authorities, which had the effect of decreasing U.S. commercial interests in China.⁶⁰ Another development that occurred in the aftermath of the Spanish-American War, which again reduced Samoa's strategic value, was the rise of oil and subsequent decline of coal as an energy source for ships.⁶¹ Since the United States, up to that point, was primarily interested in Samoa as a Pacific coaling station, this change only intensified U.S. policymakers' disinterest in the islands. Individually, any of these would have negatively impacted U.S. interest in the islands. Taken together, these developments led to a stark change in the Navy and U.S. lawmakers' willingness to pursue further steps in Eastern Samoa. By the early 1900s, Congress had little interest in creating a civil government in Eastern Samoa and allowing Samoans to become democratic participants in the U.S. polity. They seemed content allowing President McKinley to delegate authority of the island to the Navy. This made the relationship between the United States and Eastern Samoa "one of distance, control, obedience and indifference bordering on neglect."⁶² U.S. naval forces were thus tasked with the governing of Eastern Samoa, which included having the final say in all Samoan political decisions via the naval governor's veto power.

For the next thirty years, no major legislation aimed at establishing a civil government for American Samoa was undertaken, as Congress did not officially ratify the cessions of the Samoan chiefs until 1929. During this time period, Congress did not feel a need to establish any form of local, civilian control over American Samoa and was comfortable deferring to Naval rule over the island indefinitely. The reason why Congress finally decided to officially recognize the cessions of the Samoan chiefs was largely due to the emergence of the Mau movement during the 1920s, with its slogan "citizenship and civil government for the Samoans." This political and cultural resistance movement in Western and Eastern Samoa against German and U.S. empire would force Congress to finally formally establish the relationship between the United States and American Samoa. The third section of this article provides an overview of the history of the Mau resistance and the responses by naval officers and Congress to the Samoan autonomy movement in the 1920s. The next section offers a brief summary of the *Insular Cases*, in which the Supreme Court constitutionally legitimized the U.S. territorial policy that military and naval leaders developed over the course of the late nineteenth century—a legal foundation that enabled the United States to maintain governance over American Samoa without fully incorporating it into the U.S. polity.

59 KENNEDY, *supra* note 11, at 55-56.

60 MCCORMICK, *supra* note 43, at 156-78, 181-84.

61 KENNEDY, *supra* note 11, at 56-57.

62 *Id.* at 66.

III. THE INSULAR CASES AND THE CONSTITUTIONAL LEGITIMATION OF U.S. EMPIRE

The initial decisions of the *Insular Cases*⁶³ were decided at the turn of the twentieth century. They materialized in a society in which white supremacy was ascendant and Jim Crow's "separate but equal" policy had been deemed constitutional by the Supreme Court, yet they remain the seminal decisions informing U.S. territorial doctrine both in the unincorporated areas and beyond.⁶⁴ During this time period, policymakers and legal elites argued that the people living in Puerto Rico, Guam, and the Philippines were inferior races and cultures, thus ineligible for inclusion in the U.S. polity and unfit to rule themselves with a republican form of government without proper Anglo-Saxon tutelage.⁶⁵ The Supreme Court granted Congress plenary authority over the U.S. unincorporated territories, which are able to be treated differently than states.⁶⁶ For example, while states and Native American tribes are understood to have an autonomous and distinct sovereignty from the federal government, unincorporated territories have a different type of relationship to the federal government compared to states and indigenous groups.⁶⁷

63 I refer to the *Insular Cases* as a series of decisions by the U.S. Supreme Court issued from 1901-1922, which provided the framework for U.S. territorial policy after the Spanish-American War of 1898. The main cases include: *DeLima v. Bidwell*, 182 U.S. 1 (1901); *Goetze v. United States*, 182 U.S. 221 (1901); *Armstrong v. United States*, 182 U.S. 243 (1901); *Downes v. Bidwell*, 182 U.S. 244 (1901); *Huus v. New York & Porto Rico S.S. Co.*, 182 U.S. 392 (1901); *Dooley v. United States*, 183 U.S. 151 (1901); *Fourteen Diamond Rings v. United States*, 183 U.S. 176 (1901); *Hawaii v. Mankichi*, 190 U.S. 197 (1903); *Kepner v. United States*, 195 U.S. 100 (1904); *Dorr v. United States*, 195 U.S. 138 (1904); *Rasmussen v. United States*, 197 U.S. 516 (1905); *Balzac v. Porto Rico*, 258 U.S. 298 (1922). The academic literature on the *Insular Cases* is extensive. A few influential works include: FOREIGN IN A DOMESTIC SENSE: PUERTO RICO, AMERICAN EXPANSION AND THE CONSTITUTION (Christina Duffy Burnett & Burke Marshall eds., 2001); SPARROW, *supra* note 42; EDIBERTO ROMAN, THE OTHER AMERICAN COLONIES: AN INTERNATIONAL AND CONSTITUTIONAL LAW EXAMINATION OF THE UNITED STATES' NINETEENTH AND TWENTIETH CENTURY ISLAND CONQUESTS (2006); RAMOS, *supra* note 45, at 71-142; JUAN R. TORRUELLA, *The Insular Cases: The Establishment of a Regime of Political Apartheid*, 29 U. PA. J. INT'L. L. 283 (2007); RAUSTIALA, *supra* note 49.

64 For example, the *Insular Cases* were cited in *Boumediene v. Bush*, 553 U.S. 723 (2008). This demonstrates the Supreme Court's continued reliance on the fundamental holdings of the *Insular Cases* in cases that involve U.S. territorial policy after 1898.

65 AMY KAPLAN, THE ANARCHY OF EMPIRE IN THE MAKING OF U.S. CULTURE 7-10 (2002).

66 SPARROW, *supra* note 42, at 72.

67 See the court's recent decisions in *Puerto Rico v. Sanchez Valle*, 136 S. Ct. 1863 (2016) and *Puerto Rico v. Franklin California Tax-Free Trust*, 136 S. Ct. 1938 (2016). In the *Sanchez Valle* decision, the court held that the governments of unincorporated territories are not able to pursue a criminal case that has already been pursued by the federal government, since this would violate the Double Jeopardy Clause of the Constitution. The court argued that unincorporated territories have only one, and not separate, sovereignty: that of the U.S. federal government. *Franklin California* upheld the constitutionality of the Puerto Rico Oversight, Management, and Economic Stability Act (PROMESA), which allowed Congress, through the Fiscal Control Board (FCB), to control Puerto Rico's debt restructuring, implementing fiscal austerity measures by reducing spending on health care, education, and pensions. *Franklin California* also ruled that unincorporated territories do not have access to the same forms of bankruptcy proceedings that states have. A full discussion of the differences between the relationship of the federal government and states, the federal government and the unincorporated territories, and the federal government and Native American tribal territory is beyond the scope of this article, however. The main point is that the unincorporated territories do not enjoy the same type of separate sovereignty (from the federal government) that states and tribal territories do. It should also be noted that these recent Roberts Court

Between 1898 and 1901, immediately after Puerto Rico and the Philippines were brought under the sovereign control of the United States as possessions, U.S. legal actors developed a new territorial law that offered a fundamental break with previous policy to govern all territories acquired in the aftermath of the Spanish-American War of 1898. This new territorial policy, which was initially developed by the U.S. Navy and then adopted by Congress, would be constitutionally legitimated by the Supreme Court in a series of rulings known as the *Insular Cases*.⁶⁸ The main strategy of this new territorial policy would be for the United States to shift “from absorbing new territories into the domestic space of the nation to acquiring foreign colonies and protectorates abroad.”⁶⁹

The *Insular Cases* created an entirely new territorial policy by merging U.S. imperialist and colonialist traditions.⁷⁰ Venator-Santiago explains the key differences between these two territorial traditions in the following passage:

In 1898, U.S. colonialism could be differentiated from imperialism in ... important ways. First, whereas the colonialist tradition was premised on the annexation of territories, the imperialist tradition sought to acquire new territories through mere occupation. Second, whereas the colonialist tradition governed annexed territories as a constitutional part of the definition of the U.S., the imperialist tradition selectively treated occupied territories as locations situated outside of the jurisdiction of the U.S. Third, while U.S. colonialism was anchored on interpretations of the Territories (U.S. Constitution, Art. IV, §3, cl. 2) and Admissions (U.S. Constitution, Art. IV, §3, cl. 1) Clauses of the Constitution, U.S. imperialism was grounded on other constitutional provisions that granted Congress and the President more expansive powers. Fourth, while the bill of rights extended to territories subject to colonial annexation, the imperialist tradition recognized the power of the administrative state apparatus to determine which rights could be withheld or extended to an occupied territory.⁷¹

The main difference between U.S. colonialism and imperialism before 1898 was the intent the United States had for the territory in question. U.S. colonialism was premised on acquiring territory that was understood to be on a path toward statehood, while U.S. imperialism was based on *temporary* occupation of a territory, which establishes U.S. sovereignty over an area but with no intention of having that territory become a state. The *Insular Cases* combined elements of both of these traditions, creating a new form of U.S. territorial policy after 1898.

The key principles of the emerging territorial tradition were first developed by the War Department in the aftermath of the Spanish-American War, although these

decisions are controversial and go against decades of federal court decisions that granted Puerto Rico the exception given to states and Native American tribes for protection against double jeopardy.

68 CHARLES R. VENATOR-SANTIAGO, *PUERTO RICO AND THE ORIGINS OF U.S. GLOBAL EMPIRE: THE DISEMBODIED SHADE* (2015).

69 KAPLAN, *supra* note 65, at 2.

70 Venator-Santiago, *supra* note 44, at 10, 11.

71 Venator-Santiago, *supra* note 44, at 5-6.

principles were also debated in leading academic journals in the 1890s.⁷² Congress began to normalize the military's territorial policies in the Foraker Act of 1900,⁷³ which established a civilian government for Puerto Rico. "The ensuing constitutional interpretation, also known as the doctrine of territorial incorporation, has since been used to rule all territories acquired (annexed, occupied, and/or leased) after 1898, including Puerto Rico, the Virgin Islands, and the Pacific Island territories of Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (CNMI)."⁷⁴

Based on this new global expansionist ideology, the main aim of U.S. territorial policy was not to acquire territory for eventual statehood once there was a sufficient white population—i.e. traditional U.S. white-settler colonial territorial policy⁷⁵—but to instead maintain indefinite sovereignty over a territory that was viewed as beneficial to U.S. military and naval interests without having U.S. governance in the territory constrained by constitutional protections or provisions. There was no intention to fully include the people living in these newly acquired territories within the American polity, as the people living in the territories acquired by the United States after 1898 were never meant to become U.S. citizens with full and equal constitutional protections and guarantees. The fear that the United States, by acquiring island territories with majority non-white populations that would never be settled by whites, would be forced to absorb racial groups deemed inferior into the U.S. polity and would have to grant citizenship to Puerto Rico and the Philippines led to the need for U.S. imperialists and policymakers to create a new form of territorial status: the unincorporated territory.⁷⁶ This new territorial policy would allow for the permanent occupation of a territory for military and naval purposes, while ensuring that Congress would have the maximum flexibility the Constitution allowed while governing these strategically valuable areas.

Furthermore, the creation of the unincorporated territory through the rulings in the *Insular Cases* enabled U.S. legal actors to selectively treat these areas as a foreign location for domestic, constitutional, or citizenship purposes, while claiming sovereignty over the territory for international purposes.⁷⁷ During the debates over the Foraker Act, Senator John C. Spooner summarized the philosophy of the new territorial policy in the following way:

I will not quibble about words. Territory belonging to the United States, as I think Puerto Rico and the Philippine Archipelago do, becomes a part of the

72 VENATOR-SANTIAGO, *supra* note 68; Venator-Santiago et al., *supra* note 44, at 246. For a summary of these debates, which are framed in terms of three camps (imperial, anti-imperial, and a third, hybrid view that ultimately prevailed in the *Insular Cases*), see SPARROW, *supra* note 42, at 31-56. The crux of these debates was whether the "United States" included both states and territories, or if territories could be considered outside of the United States for constitutional purposes.

73 The Foraker Act of 1900, Pub. L. No. 56-191, 31 Stat. 77 (1900). Venator-Santiago et al., *supra* note 44, at 246-247.

74 Venator-Santiago et al., *supra* note 44, at 246-247.

75 LEIBOWITZ, *supra* note 19, at 6-16; SPARROW, *supra* note 42, at 31-56; THOMPSON, *supra* note 21, at 37-44.

76 U.S. policymakers feared that past territorial precedents would require the majority non-white populations of Puerto Rico and the Philippines to be incorporated into the United States. See KAPLAN, *supra* note 65, at 6; ERMAN, *supra* note 5, at 39-42, 51.

77 Venator-Santiago et al., *supra* note 44, at 247-248.

United States in the *international sense*, while not being at all a part of the United States in the *constitutional sense*. [emphasis added]⁷⁸

This legal conception of Puerto Rico's status, eventually adopted as the fundamental principle in the *Insular Cases*, meant that the federal government could selectively enact legislation or create policies that treated unincorporated territories as foreign spaces permanently situated outside of the United States for domestic and constitutional purposes.⁷⁹ According to this logic, while these territories still fell under the sovereignty of the United States, there was never any intention of incorporating these areas as states. As Amy Kaplan describes the paradox of the United States' new territorial policy, "[t]his new doctrine positioned [the unincorporated territories] in a liminal space both inside and outside the boundaries of the Constitution, both 'belonging to' but 'not a part' of the United States."⁸⁰

Downes v. Bidwell (1901),⁸¹ the first of the *Insular Cases*, established the new legal category of the unincorporated territory, reflected the novel argument that these newly acquired territories were possessions of the United States but did not exist fully within the U.S. polity; this imperialist ideology would enable the United States to expand without incorporating the territory it acquired. *Downes* established the fundamental legal framework for the rest of the rulings and ultimately for U.S. territorial policy after 1898.

Downes initially focused on whether territorial tariffs would have to follow the Uniformity Clause of the Constitution, which states that "all Duties, Imports and Excises shall be uniform throughout the United States."⁸² If Puerto Rico was considered a "foreign country," despite being under the sovereignty of the United States, then any tariffs applied to it could diverge from tariffs that existed in the states for the same goods. At a broader level, the issue in *Downes* was whether the Constitution mandated that congressional governance over the territories had the same constitutional restrictions in the territories that it did in relation to the states. The *Insular Cases* thus centered on what, if any, constitutional provisions and rights limited Congress in its sovereignty over territories, or put in terms of a common phrase at the time, "whether the Constitution follows the flag?"

Justice Henry Billings Brown, who three years previously wrote the opinion in *Plessy v. Ferguson*,⁸³ constitutionally legitimizing Jim Crow's system of segregation ("separate but equal"), was the author of the majority opinion in *Downes*. Brown asserted that Congress had plenary power over the territories and that the Constitution only applied in new territories if Congress explicitly extended it, and only those provisions that Congress specifically designated.

Justice Edward Douglas White's concurring and precedent-setting opinion in *Downes* "is still cited in territorial matters as the authoritative answer to the question

78 33 CONG. REC. 3629 (1900) (statement of Sen. Spooner). Venator-Santiago et al., *supra* note 44, at 248.

79 Venator-Santiago et al., *supra* note 44, at 248.

80 KAPLAN, *supra* note 65, at 3.

81 182 U.S. 244 (1901).

82 U.S. CONST. art. I, § 8, cl. 1.

83 163 U.S. 537 (1898).

of the Constitutional status of the territories.⁸⁴ White created the distinction between incorporated and unincorporated territories, in which an incorporated territory is “in all respects a part of the United States,” while the unincorporated territory is not “an integral part.”⁸⁵ Linked with the United States’ power to expand its territory, White believed, was Congress’ ability to determine the status of the regions the United States was claiming sovereignty over. Thus, incorporation was neither assumed nor automatic; instead, it was a matter left to Congress to decide. He wrote that “incorporation does not arise until in the wisdom of Congress it is deemed that the acquired territory has reached that state where it is proper that it should enter into and form a part of the American family.”⁸⁶ This logic would serve “White’s primary goal . . . to sanction empire and guard the mainland from purportedly savage Filipinos.”⁸⁷ Moreover, it meant that an unincorporated territory existed in a liminal state of abeyance—a status opening up the possibility of becoming a full-fledged state in the future, should Congress decide to do so, yet still under the auspices of the United States.

Unincorporated territories were thus considered foreign compared to how states were treated, but they were domestic relative to other countries in the international realm. Justice Brown explained this distinction by emphasizing that the unincorporated territories were within the United States’ sphere of sovereignty but not within the United States, and instead were located somewhere “*between the extremes*.”⁸⁸ As Duffy Burnett notes, the novelty of the *Insular Cases* is that they established that a territory can be “domestic,” or under U.S. sovereignty, without being a “part” of the United States in a constitutional sense.⁸⁹

The *Insular Cases* further established that “[a]bsent Congressional action, none of the Articles of the Constitution had to be applicable to the territories.”⁹⁰ As Leibowitz notes, one of the major themes of Brown’s opinion that is still operative today is “the idea that the islands may be part of the United States for certain purposes but not for others.”⁹¹ This explains how U.S. territories can be considered “foreign in a domestic sense,” since they “had not been incorporated into the United States, but [were] merely appurtenant thereto as a possession.”⁹² The *Insular Cases* thus allowed for the creation and maintenance of an ambiguous status, the unincorporated territory, that served as the constitutional legitimation

84 LEIBOWITZ, *supra* note 19, at 23.

85 *Downes*, 182 U.S. at 312-321 (White, J., concurring).

86 *Downes*, 182 U.S. at 339 (White, J., concurring.).

87 ERMAN, *supra* note 5, at 54.

88 Christina Duffy Burnett & Burke Marshall, *Between the Foreign and the Domestic: The Doctrine of Territorial Incorporation, Invented and Reinvented*, in *FOREIGN IN A DOMESTIC SENSE: PUERTO RICO, AMERICAN EXPANSION AND THE CONSTITUTION* 1, 14-15 (Christina Duffy Burnett & Burke Marshall eds., 2001).

89 Christina Duffy Burnett, *A Note on the Insular Cases*, in *FOREIGN IN A DOMESTIC SENSE: PUERTO RICO, AMERICAN EXPANSION AND THE CONSTITUTION* 389, 390 (Christina Duffy Burnett & Burke Marshall eds., 2001).

90 LEIBOWITZ, *supra* note 19, at 22.

91 *Id.* at 22.

92 *Downes*, 182 U.S. at 341-342 (White, J., concurring).

of the U.S. imperial project and U.S. global expansionism at the turn of the twentieth century.

Regarding U.S. citizenship, the rulings in the *Insular Cases* also departed from established precedents that existed before the Spanish-American War. In 1898, the U.S. colonialist tradition had established the precedent that birth in a territory was the equivalent of being born within the United States, while the imperialist tradition equated birth in an occupied territory to birth outside of the country.⁹³ This meant that before 1898, eligible persons⁹⁴ born in a colonial territory automatically acquired birthright citizenship, while persons born in an occupied territory could only access U.S. citizenship through the naturalization process.⁹⁵

The new territorial precedent established by the *Insular Cases* enabled Congress to choose when and how to treat unincorporated territories as a part of the United States for citizenship purposes. U.S. lawmakers have thus “used the doctrine of territorial incorporation to legitimate the extension of an array of membership statuses to annexed unincorporated territories without binding Congress to past territorial citizenship precedents, creating another broad form of authority for Congress to take advantage of when deciding on citizenship legislation in the unincorporated territories.”⁹⁶ Thus, the *Insular Cases* established a new precedent that birth in the unincorporated territories did not automatically confer birthright citizenship, unless Congress explicitly extended it.

After the first few rulings of the *Insular Cases*, Congress initially enacted legislation describing the inhabitants of all unincorporated territories as non-citizen nationals.⁹⁷ While U.S. citizenship in different forms was eventually extended to the other unincorporated territories through various means, the inhabitants of American Samoa at present only receive a non-citizen nationality at birth, and thus are not automatically U.S. citizens.

The rulings from the *Insular Cases* meant that citizenship did not apply automatically to territories acquired after 1898; instead, Congress could decide to explicitly extend citizenship or withhold it indefinitely. The creation of the unincorporated territory allowed Congress to govern territories acquired after 1898 as permanent colonies by not being forced to place them on a trajectory ending with eventual statehood. Instead, the fate of the unincorporated territories remained ambiguous, as

93 Venator-Santiago, *supra* note 44, at 5-6, 8; Venator-Santiago et al., *supra* note 44, at 251.

94 This excluded both Native Americans and foreign ambassadors and dignitaries. For a discussion on the history, origins, and purposes of the Fourteenth Amendment’s Citizenship Clause (U.S. CONST. amend. XIV, § 1, cl. 1), which established that birth within the jurisdiction of the United States automatically conferred U.S. citizenship and was designed to overrule the Court’s decision in *Dred Scott v. Sandford* (60 U.S. 393 [1857]) that held black Americans were permanently ineligible for national citizenship, see LUELLA GETTYS, *THE LAW OF CITIZENSHIP IN THE UNITED STATES* (1934); SMITH, *supra* note 50, at 286-346; GARRET EPPS, *DEMOCRACY REBORN: THE FOURTEENTH AMENDMENT AND THE FIGHT FOR EQUAL RIGHTS IN POST-CIVIL WAR AMERICA* (2006); ERIC FONER, *THE SECOND FOUNDING: HOW THE CIVIL WAR AND RECONSTRUCTION REMADE THE CONSTITUTION* 55-92 (2019). Native Americans and foreign ambassadors and dignitaries born within U.S. territory belonged to a jurisdiction and sovereignty other than that of the United States. As such, they were considered ineligible for birthright citizenship.

95 Venator-Santiago, *supra* note 44, at 5-6, 8; Venator-Santiago et al., *supra* note 44, at 251.

96 Venator-Santiago et al., *supra* note 44, at 252.

97 The first evidence of this status in the unincorporated territories can be found in *Gonzalez v. Williams*, 192 U.S. 1 (1904), in which the Court determined that residents of Puerto Rico were not aliens or U.S. citizens, but something in between: non-citizen nationals. See ERMAN, *supra* note 5, at 74-96.

Congress could postpone any decision on statehood indefinitely. As Chief Justice Fuller wrote in his dissent in *Downes*:

[T]he contention seems to be that, if an organized and settled province of another sovereignty is acquired by the United States, Congress has the power to keep it, like a disembodied shade, in an indeterminate state of ambiguous existence for an indefinite period.⁹⁸

The reason why Congress and the Supreme Court decided to keep the territories acquired after 1898 in a state “like a disembodied shade,” that is, “in a zone outside of statehood,”⁹⁹ was because the United States abandoned its territorial policy that had applied up until 1898. In the post-Civil War era, this earlier policy established that U.S. citizenship would be automatically granted to non-whites living in newly acquired U.S. territories and that such territories would eventually become a state.¹⁰⁰ The *Insular Cases* established a new territorial policy that allowed for the United States to acquire territories as permanent possessions, without having to include the non-white people living in U.S. territories as full members in the U.S. polity. Furthermore, these decisions enabled Congress to extend an inferior form of citizenship to the non-white people living in the unincorporated territories, who could become U.S. citizens but not have access to key constitutional and legal rights.¹⁰¹

The next section of the article provides an overview of the Mau movement in Samoa, which emerged in the 1920s due to Samoan anger and dissatisfaction with U.S. rule largely stemming from the rulings in the *Insular Cases*. This liminal state of abeyance that American Samoa would find itself in in the first two decades of the twentieth century under naval rule set the stage for the Mau resistance movement that emerged in the 1920s.

IV. THE MAU MOVEMENT: SAMOAN RESISTANCE TO U.S. EMPIRE

The Mau movement in American Samoa was connected to the long history of indigenous anti-colonial autonomy movements throughout the Pacific going back to the late 1800s that centered around land rights, self-determination, sovereignty, and cultural identity.¹⁰² While the Mau movement was distinct and unique, it is important to recognize its “historical connectivity and transnational links” to other autonomy movements in the Pacific: “[T]hese movements had deep roots that tapped into the transnationalism and mobility that was a definitive feature of the Pacific’s colonial world.”¹⁰³ The Mau movement¹⁰⁴ in Eastern Samoa is generally thought to have

98 *Downes*, 182 U.S. at 372 (Fuller, J., dissenting).

99 KAPLAN, *supra* note 65, at 5.

100 Sam Erman refers to the territorial tradition that emerged in the aftermath of the Civil War as being rooted in the Reconstruction Constitution. See ERMAN, *supra* note 5, at 2-3.

101 *Id.* at 53-55.

102 BANIVANUA MAR, *supra* note 2, at 182, 223.

103 *Id.* at 138-39.

104 There was both a Western (then under New Zealand control) and Eastern (in American Samoa) Samoan Mau movement that interacted and coordinated with one another by the late 1920s, both of which were connected to the long history of transnational indigenous autonomy movements in the Pacific that Banivanua Mar writes about. It is important to recognize that while the Mau movement in Western and Eastern Samoa were linked transnationally and to each other, they should be regarded as

started in February 1920, but the factors leading to widespread protest and resistance across Samoa had existed for years.¹⁰⁵ The movement became known as “*O le Mau*,” which translates to “hold fast, to stick firmly to an opinion.”¹⁰⁶

The first decades of naval rule in American Samoa that established the root causes of the Mau movement can be described as a “policy of hesitation, abeyance, and . . . fiscal restraint.”¹⁰⁷ The federal government’s refusal to meaningfully invest in American Samoa led to increasing frustration amongst Samoans seeking substantial development of the island’s transportation infrastructure,¹⁰⁸ healthcare,¹⁰⁹ and education;¹¹⁰ Congress continued to refuse to appropriate money for American Samoa despite funding requests by the Navy.¹¹¹ The United States decided not to develop American Samoa commercially as the Germans had done in Western Samoa, and instead monopolized the island’s main export, copra.¹¹² There was a long history of people from European nations exploiting Samoa’s copra crop, which led Samoans to be distrustful of outsiders well before U.S. naval governance.¹¹³ Samoans began to protest taxation on copra that the Navy had instituted after funds from the tax went missing in 1905.¹¹⁴ U.S. policy in the first few decades of naval rule over American Samoa was thus designed to keep private commercial interests and capital out to ensure that American Samoa remained as a strategic base under the Navy’s authoritarian control.¹¹⁵

In sum, the first few decades of U.S. Navy rule over American Samoa caused Samoans to increasingly view this centralized form of rule and policies as despotic, abusive, and disrespectful toward Samoan culture. By the 1920s, “indigenous chiefs

autonomous movements with significant differences. One narrative that emerged after the Mau movement in American Samoa was that the Mau simply spread from west to east, which removes the agency of Eastern Samoans (Chappell, *supra* note 28, at 232). For a history of the connections between Western Samoa and American Samoa during the Mau movement, see GRAY, *supra* note 58; MELEISEA, *supra* note 11, at 126-54; BANIVANUA MAR, *supra* note 2, at 96-101.

105 For a more detailed history of the first two decades of U.S. naval rule in American Samoa, which contributed to the discontent that led to the spread of the Mau movement to Eastern Samoa, see FELIX KEESING, *MODERN SAMOA* (1934); T.F. DARDEN, *HISTORICAL SKETCH OF THE NAVAL ADMINISTRATION OF THE GOVERNMENT OF AMERICAN SAMOA, APRIL 17, 1900-JULY 1, 1951* (1951); GRAY, *supra* note 58; AMERIKA SAMOA HUMANITIES COUNCIL, *supra* note 56.

106 Chappell, *supra* note 28, at 217.

107 *Id.* at 237-38.

108 *Id.* at 238. During the first decades of naval rule, the United States did hire Samoan laborers to construct some roads, but these had fallen into disrepair by the 1920s. For an examination of how the Navy relied on Samoan laborers for infrastructure projects on the island, see KENNEDY, *supra* note 11, at 82-90.

109 Chappell, *supra* note 28, at 238-39; KENNEDY, *supra* note 11, at 92.

110 Chappell, *supra* note 28, at 238-39; KENNEDY, *supra* note 11, at 90.

111 Chappell, *supra* note 28, at 238-39; KENNEDY, *supra* note 11, at 92.

112 Chappell, *supra* note 28, at 240.

113 KENNEDY, *supra* note 11, at 94-95; Holger Droessler, *Copra World: Coconuts, Plantations, and Cooperatives in German Samoa*, 53 J. PAC. HIST. 417 (2018).

114 Chappell, *supra* note 28, at 229.

115 The main reasons why the federal government decided not to provide meaningful funding to Samoa was explained in greater detail earlier in this article. These factors included the securing of a more efficient route to Asia after the Spanish-American War, coal being replaced by oil as a fuel source for ships, and increasing hostility and instability of the Asian markets.

and [Samoans] protested against the lack of fit between their version of civilization and that of military colonizers.”¹¹⁶ A series of racist, ineffectual governors and high-level naval administrators, who intimidated and arbitrarily arrested Samoan protesters and chiefs, increased taxes, enacted a customs duty on imports paid mostly by Samoans shopping in local stores, and naval corruption leading up to the 1920s, especially the embezzlement of the monies generated by the Navy’s own copra tax, helped mobilize Samoans against the naval administration.¹¹⁷

One policy that motivated Samoans to protest naval rule came in November 1919. Governor Warren Jay Terhune created a regulation that prohibited interracial marriages between Navy personnel serving in Eastern Samoa and Samoan women, citing similar miscegenation laws passed in various U.S. states.¹¹⁸ The reasoning behind this, according to Terhune, was that the children of these mixed marriages would “demand European houses, clothes and food . . . The native Samoans are a most charming people: the most magnificent specimens of the Polynesians extant. The Governor urges that we do not permit it to be blended out of existence.”¹¹⁹

The miscegenation law that the Navy implemented in American Samoa demonstrates the polyvalent nature of U.S. white supremacist thought in the Pacific. Julian Go has written about the heterogeneity and nature of the racism that undergirded U.S. imperialism in the late nineteenth and early twentieth centuries.¹²⁰ As Go explains, the racial meanings of U.S. empire were not homogenous, but rather varied across contexts within the same time periods, as each territory had a specific type of racial and cultural “othering”¹²¹ applied to it by U.S. actors and media outlets.¹²² Similarly, Lanny Thompson explains how the populations of Cuba, Guam, Hawaii, the Philippines, and Puerto Rico were each thought of as racially distinct from one another (i.e. some of the non-white populations living in U.S. territories were deemed to be closer to the white race than others), as demonstrated by the way the U.S. media and government publications depicted the indigenous people living in these areas through texts and images intended for the U.S. populace.¹²³ Like Go, Thompson illuminates how U.S. policymakers did not view the residents in the unincorporated territories as a single, homogenous racial other, which provides insights into why distinct types of governing systems were established in each of the United States’ territories. Stated differently, the form U.S. imperial rule would take in any

116 Chappell, *supra* note 28, at 231.

117 GRAY, *supra* note 58, at 150-57; Chappell, *supra* note 28, at 228, 232-33, 241; Droessler, *supra* note 113.

118 For a more detailed account of the history of anti-miscegenation laws in Samoa, see MELEISEA, *supra* note 11, at 155-82; Damon Salesa, *Half-castes between the Wars: Colonial Categories in New Zealand and Samoa*, 1 NEW ZEAL. J. HIST. 98 (2000); Paul Shankman, *Interethnic Unions and the Regulation of Sex in Colonial Samoa, 1830-1945*, 110 J. POLYNESIAN SOC. 119 (2001); KENNEDY, *supra* note 11, at 117-122..

119 Terhune to CNO (May 20, 1920), cited in KENNEDY, *supra* note 11, at 118.

120 Julian Go, “Racism” and Colonialism: Meanings of Difference and Ruling Practices in America’s Pacific Empire, 27 QUAL. SOCIOLOG. 35 (2004); JULIAN GO, PATTERNS OF EMPIRE: THE BRITISH AND AMERICAN EMPIRES: 1688 TO THE PRESENT 85-88 (2011).

121 TZVETAN TODOROV, THE CONQUEST OF AMERICA: THE QUESTION OF THE OTHER (1999).

122 Go, *supra* note 114, at 36.

123 THOMPSON, *supra* note 21.

one of its island territories was dependent on how U.S. actors imagined the people living in the areas the United States was exerting power over.

Naval leaders and U.S. actors romanticized Samoans, for example, as “peaceful and docile,”¹²⁴ “picturesque, kindly, polite, and hospitable,”¹²⁵ “good natured and generous,”¹²⁶ “the happiest people in the world,”¹²⁷ and “amongst the happiest human beings ... around the world.”¹²⁸ U.S. policymakers thus thought of Samoans as existing at one of the lowest levels of a scale of racial hierarchy,¹²⁹ as a peaceful example of the primitive “noble savage.” As an example of this white supremacist thought, based on the hearings held in 1930 to discuss the findings of the Samoan commission led by Senator Bingham, the report published by the members of the commission concluded that:

[t]he people of American Samoa are changing from the aboriginal system of social organization and property in which ownership was communal. These changes began a generation ago and are the inevitable result of contact with the so-called western civilization. They cannot be stopped or obliterated.¹³⁰

U.S. policymakers in American Samoa believed that Samoans would be happier if they remained in this “pre-civilization” state and were influenced by arguments against the “Americanization” of Samoans.¹³¹ Governor Terhune wrote in a letter to the Secretary of the Navy that “The natives [Samoans] are very charming people, but very childish . . . [They] are of the STONE AGE and are not capable of managing their affairs with wisdom.”¹³² The first governor of American Samoa, Benjamin Franklin Tilley described Samoans as a “simple-minded race . . . easily governed”¹³³ and “in a most happy and peaceful state.”¹³⁴

Further evidence of how U.S. actors in the first few decades of naval rule over American Samoa thought that the Samoan population was primitive and that they would only become unhappy through contact with “civilized” races can be found in newspaper articles about American Samoa in the 1920s. For example, an article from *The New York Times* in 1929 concludes:

124 Go, *supra* note 114, at 86.

125 Henry C. Ide, *Our Interest in Samoa*, 165 N. AM. REV. 163 (1897).

126 UNITED STATES NAVY DEPARTMENT, DATA RELATING TO THE ISLAND OF GUAM (1904).

127 *American Samoa: Hearing on P.R. No. 89 and P.R. No. 3 Before the American Samoa Commission of the Comm. on Territories and Insular Possessions*, 71st Cong. 335 (1930).

128 *Id.* at 362.

129 For an overview of the hegemonic racist thought of the Progressive Era, rooted in theories of scientific racism and racial hierarchies, see THOMAS MCCARTHY, RACE, EMPIRE AND THE IDEA OF HUMAN DEVELOPMENT (2009).

130 The American Samoa Comm’n, 71st Cong., The American Samoa Commission Rep., 9 (1931).

131 *American Samoa: Hearing on P.R. 89 and P.R. No. 3 Before the American Samoa Commission of the Comm. on Territories and Insular Possessions*, 71st Cong. 297 (1930).

132 Terhune to Secretary of the Navy (July 27, 1920), cited in Chappell, *supra* note 28, at 234.

133 UNITED STATES NAVY DEPARTMENT, ANNUAL REPORTS OF THE NAVY DEPARTMENT FOR THE YEAR 1901. REPORT OF THE SECRETARY OF THE NAVY 86 (1901).

134 UNITED STATES NAVY DEPARTMENT, ANNUAL REPORTS OF THE NAVY DEPARTMENT FOR THE YEAR 1900. REPORT OF THE SECRETARY OF THE NAVY 100 (1900).

It is only fair to the [U.S. Navy] to state that with very few exceptions the men whom it has stationed in Samoa have done their work well . . . The real grievance of Samoans is that the progress of the modern world has made itself felt through Americans, and that gradually the old customs are disappearing. This is the tragedy of the conflict of civilizations. Even before our government stepped in, American missionaries throughout the Pacific Islands had been ‘civilizing’ the natives. The change is now too far advanced to be undone. Only the future can tell whether, in the long run, it will have helped or hurt the Samoans.¹³⁵

Another article describes Samoans as “virtually aboriginal” and argues that:

[t]he manner in which self-government reached Hawaii cannot be taken as a criterion since these islands for many years prior to coming under protection of the United States, existed under monarchical rule based upon . . . European states. Hawaii was modern at the time it became a territory. Samoa, on the other hand, is markedly primitive . . . The problem is to formulate a wise system of civil administration which will confer all the benefits of civilization upon the Samoan people and at the same time will force upon them none of the defects of modern life.¹³⁶

The white supremacist ideology that was influential during the Navy’s first few decades of governance over American Samoa thus led naval officers to believe that the industrialization and modernization of the islands of American Samoa would only cause the Samoan population to become miserable when exposed to the conditions of “modern,” “civilized” life. Thus, the dominant ideology of white supremacist thought in the first decades of the Navy’s governance over American Samoa helps explain why naval officers thought that their policies should *preserve* and *protect* Samoa from the negative effects of “Western civilization”; the Navy’s form of white supremacy toward Samoans explains the concerns the administration had about the possible destruction of Samoan culture.¹³⁷

The miscegenation law implemented by the Navy amplified Samoans’ beliefs that white U.S. actors thought of Samoans as a primitive, inferior people. There is also evidence that Terhune’s advisors referred to and thought of Samoans as black, and it is also likely that the order against miscegenation came from some of Terhune’s advisors, among them A.M. Noble and Luther Cartwright.¹³⁸ Naval leaders placed Samoans in the racial hierarchy of the time period on the same inferior level that black people occupied in comparison to the descendants of the Anglo-Saxon race. The Navy’s belief in the racial inferiority of Samoans was one of the main factors that contributed to Samoans’ mobilization during the Mau movement.

135 *American Demands Samoan Autonomy*, N.Y. TIMES, Feb. 23, 1929, at 7.

136 *Samoan Commission Faces Difficult Task*, N.Y. TIMES, May 26, 1929, § E, at 2.

137 GEORGE STEINMETZ, *THE DEVIL’S HANDWRITING: PRECOLONIALITY AND THE GERMAN COLONIAL STATE IN QINGDAO, SAMOA, AND SOUTHWEST AFRICA* (2007); GO, *supra* note 114, at 81-82.

138 See KENNEDY, *supra* note 11, at 117–122 for an overview of Samoans’ reaction to the Navy’s miscegenation law.

Connected to the Navy's miscegenation law, Samoans also mobilized during the Mau movement to assert self-determination of their identity. There was a struggle between Samoans and colonial powers to determine the contours of Samoan identity, which centered around the Samoan term for half-caste, *afakasi*.¹³⁹ Samoans had a genealogical theory of their identity and determined who was "Samoan" based on social relations and connections.¹⁴⁰ Colonial powers, including the United States, thought about Samoan identity taxonomically; U.S. actors understood *afakasi* to be a category based not on social connections, as in Samoan culture, but on colonial theories of race based on hypodescent.¹⁴¹ As Banivanua Mar explains, "[d]etermining who was 'Samoan' was an integral element of the Mau movement's wider exercise of self-determination."¹⁴² Thus, during the Mau movement in Western and Eastern Samoa, Samoans resisted colonial powers and exercised self-determination by asserting the right to establish the necessary components of Samoan identity and making claim to the power to decide who would be considered a Samoan.¹⁴³

In the immediate aftermath of the miscegenation law, Samoans began boycotting the cutting of copra, which marked the beginning of the Mau movement in the 1920s.¹⁴⁴ The initial demands of the Samoan resistance movement were the removal of the naval leadership, "an end to the ban on Samoan-American marriages, itemized financial statements, better roads, better schools, laws printed in the Samoan language, a *fono* (local Samoan assembly) with lawmaking powers,"¹⁴⁵ "and the creation of a chiefly executive council to advise the governor."¹⁴⁶ These demands illuminate the dissatisfaction Samoans felt toward what they viewed as arbitrary and ineffectual naval rule over American Samoa and, along with the racist ideology undergirding other naval policies, represent some of the fundamental causes of the Mau movement.

In December 1926, Samoan chiefs sent a petition to President Calvin Coolidge, "asking for 'civil government' with a representative legislature, plus courts, schools, and economic development equal to those enjoyed by citizens of the United States."¹⁴⁷ By 1927, Samoan mobilization in western and American Samoa had organized into the "Committee of the Samoan League" and expressed a demand for "better roads, more schools, equal representation, a civilian government under the Americans, complete autonomy, and American citizenship."¹⁴⁸ The Samoan League organized another copra boycott in 1927, demanded Congress make Samoans U.S.

139 BANIVANUA MAR, *supra* note 2, at 106-07.

140 Salesa, *supra* note 112.

141 *Id.*

142 BANIVANUA MAR, *supra* note 2, at 107.

143 Being able to determine who qualifies as Samoan was one of the demands Samoans petitioned Congress over during the congressional hearings discussed in the next section of the article.

144 For a thorough accounting of the major events and key figures in the Mau movement, see Chappell, *supra* note 28, at 231-57.

145 KENNEDY, *supra* note 11, at 132. As discussed earlier in the article, there was a Fono that existed in American Samoa beginning in 1905, but it existed as an annual meeting. The Mau movement would demand that the Fono be changed to a legislative assembly that met on a regular basis and would have the power to enact laws and not just serve as an advisory committee.

146 Chappell, *supra* note 28, at 238.

147 *Id.* at 239.

148 KENNEDY, *supra* note 11, at 136.

citizens, and “above all they wanted a clarification of their relationship to the United States, because they felt ‘humiliated in the eyes of the world.’”¹⁴⁹ In sum, the Mau movement was a resistance movement against U.S. imperialism, during which Samoans demanded more political autonomy through their *fono*, asserted self-determination of their identity, and demanded the extension of U.S. citizenship. As Chappell puts it, “[The Mau] was a struggle, ultimately, to regain Samoan self-respect. The *Mau* became a watchdog, questioning the Navy’s every move, and by 1930 its executive committee asked to advise the governor ‘in every matter, so that everything will run smoothly.’”¹⁵⁰

V. PROPOSED ORGANIC ACT¹⁵¹ AND U.S. CITIZENSHIP LEGISLATION FOR AMERICAN SAMOA IN THE 1930S

In January 1928, in response to the Mau movement, the United States created a commission¹⁵² made up of members of Congress and Samoan chiefs.¹⁵³ This commission traveled throughout American Samoa to interview Samoan leaders and members of the Mau,¹⁵⁴ to research the resistance movement, and to offer recommendations for how to best proceed with governing the territory.¹⁵⁵ Congress decided to address U.S. policy in American Samoa in 1928 as a response to the Mau movement’s effectiveness against U.S. rule, especially Samoans’ *copra* boycotts, due to the numerous petitions Samoan leaders sent to naval governors and the President, and because U.S. actors involved in Samoan affairs published articles in mainstream newspapers that described what they viewed as the despotism of naval rule over the islands. Some of these people were *afakasi* with capitalistic motives, as they hoped to establish civilian rule over American Samoa to end the Navy’s monopoly and allow them access to the islands’ *copra* market and land.¹⁵⁶ U.S. political leaders and the general U.S. populace were thus becoming increasingly aware of the authoritarian nature of naval rule in American Samoa and Samoans’ growing dissatisfaction with the ambiguous relationship between the federal government and the islands. Before the Mau movement, as discussed earlier in the article, American Samoa was largely forgotten and neglected by U.S. presidents and the U.S. population. Fittingly, several members of the House’s Insular Affairs Committee had to consult a map to figure

149 Chappell, *supra* note 28, at 249-251.

150 *Id.* at 251.

151 An organic act, in the context of U.S. territorial government, is legislation that creates a civil government for a territory.

152 Pub. Res. 89, 70th Congress (1928) (enacted).

153 The members of the Samoan commission were Hiram Bingham (Sen., CT, Chair), Joe Robinson (Sen., AK), Carroll Beedy (Rep., ME), Guinn Williams (Rep., TX), High Chief Mauga (District Governor, Eastern District, American Samoa), High Chief Tufele (District Governor, Manua District, American Samoa) and Chief Magalei (Tutuila, American Samoa).

154 Magalei, a Samoan chief, represented the Mau.

155 The commission embarked on the U.S.S. Omaha from San Pedro, California on September 11, 1930, and held hearings in Honolulu, Hawaii on September 18, 19, and 20, and then traveled to Pago Pago, Tutuila, American Samoa, on September 26, 1930, where it held meetings on September 26, 27, 30, and October 1 and 4. The commission also held hearings in Leone, Tutuila on September 29, in Tau, Manua where hearings were held on October 2 and in Nuu’uli, Tutuila on October 3.

156 For a full accounting of the individuals publicizing the Mau movement in U.S. news outlets, see KENNEDY, *supra* note 11, at 150-80.

out where Eastern Samoa was, how many islands made up Samoa, and to determine which ones were under U.S. control.¹⁵⁷

The commission was led by Hiram Bingham, a U.S. Senator from Connecticut, who was the child of missionaries born in Hawaii. As Senator Bingham explained, the commission was formed “to investigate conditions in Samoa and to make recommendations for legislation to be passed by the Congress of the United States.”¹⁵⁸ The main concern of the hearings focused on how the Navy had governed American Samoa and whether there was a genuine desire by Samoans to change the governmental arrangement and structure. The Deed of Cession of American Samoa would be signed in 1929 (delayed since 1900), and now that American Samoa was formally a part of the United States, President Hoover and Congress attempted to determine what form of civil government would satisfy Samoans and end the Mau movement. This is how Senator Bingham described the purpose of the commission:

The high chiefs and chiefs of Manua made a cession of their islands—Tau, Olosega, and Ofu—to the United States in 1904. The President instructed the Navy Department to take charge of the islands and give them such a government as seemed best to the governor appointed by the Secretary of the Navy. For nearly 30 years the Navy ruled the islands under the direction of the President without the Congress of the United States, the law-making body, taking any notice of the kind of offer from the chiefs. It has not been the custom or the practice of the United States to annex or secure groups of islands as has been the practice of Great Britain and Germany, and it has only been done in two or three cases. By act of Congress we annexed the Hawaiian Islands, the Philippine Islands, the Virgin Islands and Porto Rico. After the war with Spain we secured Guam, the Philippines, and Porto Rico as a result of that war; however, although we have possessed as a result of conquest, the Philippine Islands and annexed them for more than 30 years, we have never given to the natives of the Philippine Islands citizenship—they are not American citizens. We annexed Guam but we did not make the people of Guam, of whom there are twenty-five or twenty-six thousand, American citizens. Last year [1929] the Congress finally decided that they would accept Islands of Samoa and they passed an act agreeing to the cession and formally annexing the Islands of Samoa. In this act the President was authorized to continue to rule Samoa as he had done in the past, until such time as the Congress should pass an organic act. By this same act this commission was created to recommend to the Congress the necessary legislature for American Samoa. The act of Congress, however, did not change any of the laws and did not give American citizenship to any of the people. I have taken this much of the very limited time we have here in order that there may be no misunderstanding of the present situation, of why we are here.¹⁵⁹

157 *Id.* at 170.

158 *American Samoa: Hearing on P.R. No. 89 and P.R. No. 3 Before the American Samoa Commission of the Comm. on Territories and Insular Possessions*, 71st Cong. 3 (1930).

159 *Id.* at 216.

Many of the Samoans who were questioned by the commission thought that they had been U.S. citizens since the United States' initial acquisition of Eastern Samoa in 1900, which was one of the reasons why Senator Bingham felt it was necessary to clarify that they were in fact non-citizen nationals. Senator Bingham also wanted to be clear that the commission itself had no authority to alter the relationship between the United States and American Samoa or grant Samoans citizenship, as only the full Congress had such power.

While there are numerous themes and issues that emerge from reading the texts of these hearings,¹⁶⁰ this article focuses on the protests of numerous Samoans who expressed a desire for an equal form of U.S. citizenship to the congressional members of the commission. These Samoan petitioners are an example of the “performances and expressions [of indigenous self-determination and self-government] that opened up a stage for the ideological work of decolonization” and helped to delegitimize empire in the Pacific.¹⁶¹ A statement from Napoleon Tuiteleapaga expressed thoughts on U.S. citizenship that were similar to many of the other Samoans who were interviewed:

I know the Samoan people are in favor of civil government. I am in favor of civil government, and I will vindicate the rights of my own people if I can do anything. To finish up with my statement, I appeal to the commission to give those people what they want. Give them American citizenship. Give them the privilege of other people of the United States. If they don't get it after the investigation of this commission, if the people don't get what they want, the government is going to be messed up. In fact, Washington doesn't care about us. Here we are 10 years straight we try to do this and that and they don't hear us. So I ask the commission to give a fair decision. Please ask the opinions of different people and try your best to give us American citizenship. Let us, the young Samoans who are far away from here, let us share the privilege and the happiness of the great American people of the United States.¹⁶²

160 Other Samoan demands and petitions to the commission include a civilian government and governor (to appeal court cases beyond the territory), an assembly led by Samoan chiefs that was allowed to legislate, freedom of trade between Western and Eastern Samoa, the ability of Samoans to elect government officials, and increased federal funding. Overall, Samoans expressed a clear desire for more governing authority for their leaders, more efficacy in the governance of their islands, and an end to naval rule with the establishment of a civilian government. These hearings also featured fascinating debates about racial classifications, guidelines created by the United States for land ownership based on percentage of “pure” Samoan blood, conspiracy theories regarding the Mau movement, the natural inability of Samoans to participate in the jury system, and descriptions of the Polynesian and Samoan race. Another grievance that some Samoans highlighted during the hearings was that there were members of the U.S. Navy who were violating the miscegenation law with no punishment and had abandoned children they had fathered with Samoan women without providing any type of support. This illicit sexual activity between U.S. naval officers and Samoan officers was also responsible for spreading sexually transmitted diseases to Samoans. See *American Samoa: Hearing on P.R. No. 89 and P.R. No. 3 Before the American Samoa Commission of the Comm. on Territories and Insular Possessions*, 70th Cong. 3 (1930), at 75-76, 122, 281-282.

161 BANIVANUA MAR, *supra* note 2, at 134.

162 *American Samoa: Hearing on P.R. No. 89 and P.R. No. 3 Before the American Samoa Commission of the Comm. on Territories and Insular Possessions*, 71st Cong. 80 (1930).

This speech by Tuiteleapaga demonstrates how citizenship can be a powerful concept for historically marginalized and excluded groups and individuals to make claims for full inclusion within a political community.¹⁶³ Chief Nua offers an example of a Samoan who was in favor of the Navy maintaining authority over American Samoa, “[b]ut that the people of American Samoa should be true American citizens; receive American citizenship, to be equal with the true American.”¹⁶⁴ The hearings thus illuminate how citizenship can maintain a “vibrancy, even in the context of empire,”¹⁶⁵ as Samoans used the status of U.S. citizenship to make a claim for their equal membership in the U.S. polity.

Another example from the hearings that highlights how citizenship can take on various meanings and be used to achieve multiple purposes comes from Suega Suega, a Samoan who worked for the U.S. Naval Reserve. Suega Suega expressed a desire to be an equal member in the U.S. polity by seeking to enlist in the general service of the Navy beyond Samoa:

Mr. Suega: I wish to request to the honorable commission about Samoan people who enlisted here in the Navy to become a general enlistment instead of enlisting only in Samoa.

Chairman Bingham: Do you mean that you would like to see it made possible for Samoans to enlist in the Navy for general service in the Navy outside of Samoa?

Mr. Suega: Exactly.

Chairman Bingham: If the commission should secure from the Congress an act which would make all Samoans American citizens then they would then have the right to enlist if the Navy should desire them just like any other American citizens.¹⁶⁶

In this dialogue, in which Suega Suega sought the ability to serve the United States in the same way as the other members of the U.S. political community, Senator Bingham explains how citizenship would make that possible. Here, citizenship exists as both a claim to equality and a status used by a U.S. policymaker to incorporate Samoans into the U.S. military.

Another one of the main themes of these hearings is the commission requesting information on the causes of the Mau movement. Here is a telling exchange:

Senator Robinson: The principal request of the mau is that citizenship be given to American Samoa, wasn't it?

Mr. Galeai: Yes

163 JONES, *supra* note 8.

164 *American Samoa: Hearing on P.R. No. 89 and P.R. No. 3 Before the American Samoa Commission of the Comm. on Territories and Insular Possessions*, 71st Cong. 221 (1930).

165 ERMAN, *supra* note 5, at 7.

166 *American Samoa: Hearing on P.R. No. 89 and P.R. No. 3 Before the American Samoa Commission of the Comm. on Territories and Insular Possessions*, 71st Cong. 262 (1930).

Senator Robinson: If this commission should report to Congress and Congress pass the act granting citizenship to American Samoa and in case it should become law, does he think that the mau would then become disorganized and cease its activities?

Mr. Galeai: Yes.¹⁶⁷

This conversation demonstrates that one of the main reasons U.S. lawmakers were thinking of extending citizenship to American Samoa is because they thought it would be a way to undermine the Samoan resistance movement. In this example, a U.S. lawmaker believes that citizenship can be used in a strategic manner, to dismantle the Mau movement while still maintaining U.S. sovereignty over American Samoa and preserving the legitimacy of U.S. empire in the Pacific.

Due to the Samoans who expressed their desire for U.S. citizenship, two of the recommendations¹⁶⁸ made by the commission were the following:

2. That full American citizenship be granted to the inhabitants of Tutuila-Manua as of February 20, 1929, and to their children; and also to those inhabitants of Tutuila-Manua who were then residing on the mainland of the United States or in the Territory of Hawaii. This latter class of inhabitants of Tutuila-Manua shall, in order to record their citizenship, file an application in a district court of the United States to show their desire to become citizens.

3. That there be two kinds of citizenship: American citizenship and Samoan citizenship. In addition to the first recommendations, the commission will recommend that the legislative power in Tutuila-Manua, namely, the fono shall determine the qualifications necessary for Samoan citizenship, but that the fono, in exercising this power, shall not deny Samoan citizenship to any person of full or part Polynesian blood otherwise qualified.¹⁶⁹

These recommendations for a separate U.S. and Samoan citizenship were included in organic acts Congress drafted based on the finding of the commission, which were debated in the early 1930s.¹⁷⁰ These organic acts, however, were never ratified by

¹⁶⁷ *Id.* at 242.

¹⁶⁸ Other recommendations made by the commission included: Congress should legislate an Organic Act for American Samoa that would establish civilian rule with a bill of rights, allow only Samoans to hold land on the island, allow the Samoan assembly to determine what “Samoan” meant, allow Samoans to appeal court decisions to the District Court in Hawaii, and give the Samoan assembly the power to override the veto of the civilian governor with a two-thirds vote. See Chappell, *supra* note 28, at 255.

¹⁶⁹ *American Samoa: Hearing on P.R. No. 89 and P.R. No. 3 Before the American Samoa Commission of the Comm. on Territories and Insular Possessions*, 71st Cong. 268 (1930). The inclusion of a separate form of Samoan citizenship demonstrates how effective the Samoan demand to the right of self-determination was by claiming the sole power to decide who qualifies as Samoan.

¹⁷⁰ These organic acts would have collectively naturalized all Samoans as U.S. citizens so that only U.S. citizens would then be eligible for Samoan citizenship. It is unclear as to the type of U.S. citizenship that Samoans would be entitled to, however. It is doubtful whether it would have been a full 14th Amendment Citizenship that would have guaranteed voting rights in U.S. elections, for example. In all likelihood it would have been a qualified form of U.S. citizenship that did not possess the full array of rights U.S. citizens living in a state have access to, similar to the citizenship available to residents of the other U.S. unincorporated territories. Hence, this would be a form of the empty citizenship Erman highlights in his work.

Congress. The reasons why this never happened include naval opposition; the onset of the Great Depression, which made members of Congress reluctant to increase any federal funding (especially to a “foreign” land) during a time of domestic hardship; the racism of some U.S. lawmakers who did not believe that Samoans were deserving of or ready for citizenship; and the removal of pressure coming from the Mau movement, which led naval governors and U.S. lawmakers to make other reforms to U.S. governance over American Samoa that did not include the extension of citizenship. The United States’ decision to formally recognize the Deed of Cessions from 1900, along with other reforms to naval rule in the early 1930s, was enough to undermine the Mau movement without having Congress grant citizenship to Samoans.¹⁷¹

The Navy was divided on whether to extend citizenship to American Samoa in the 1930s because of the link between citizenship and land rights. Since the inception of naval rule over American Samoa, the Navy had implemented laws that restricted land ownership on the island to Samoans.¹⁷² The purpose of these restrictions was to prevent non-Samoans from being able to settle on the island and claim individual land rights. These land ownership restrictions were thus designed to preserve Samoan cultural autonomy, which depended on Samoan districts and groups of families being able to maintain a communal right to their land. An opinion from the High Court of Samoa explains that:

[t]he whole fiber of the social economic, traditional and political pattern in American Samoa is woven fully by the strong thread which the American Samoan places in the ownership of the land. Once this protection for the benefit of American Samoa is broken, once this thread signifying the ownership of land is pulled, the whole fiber, the whole patterns of the American Samoan way of life will be forever destroyed.¹⁷³

Governor Stephen Victor Graham, for example, while in favor of extending citizenship to American Samoa, argued that if citizenship was granted to Samoans, non-Samoans would have a right to be able to own land on the islands, and that Samoans would have to be willing to risk losing the land alienation laws that the Navy had

171 Chappell, *supra* note 28, at 255-56; KENNEDY, *supra* note 11, at 255.

172 The Navy created the Native Land Ordinance of 1900, which prohibited non-Samoans from owning lands in American Samoa. The Navy implemented draconian rules regarding land rights and ownership in Eastern Samoa, which were meant to prevent non-Samoans from owning land in American Samoa. This is why Samoan law prohibits anyone with less than fifty percent Samoan ancestry to own land on the island. See Am. Samoa Code Ann. § 37.0204(a-b). These land ownership policies were designed to protect and preserve Samoan cultural autonomy. For a detailed explanation of the importance of land to Samoan cultural identity, see MELEISEA, *supra* note 11, at 9-10, 21-45; LEIBOWITZ, *supra* note 19, at 406-24; LINE-NOUE MEMEA KRUSE, THE PACIFIC INSULAR CASE OF AMERICAN SĀMOA: LAND RIGHTS AND LAW IN UNINCORPORATED U.S. TERRITORIES, at 5-21, 49-62, 105-71 (2018). Land in pre-colonial society was divided by the *nu’u*, but only where land had been cultivated or settled. Uncultivated and uninhabited land belonged to the districts (comprised of groups of *nu’u*), the use of which was determined between the *nu’u* that made up a district or was used communally. Land held by the *nu’u* belonged to either the *aiga*, which was controlled by the *matiai* of that *aiga*, or was held in common by the *nu’u*. Samoans feared that non-Samoans would make individual property claims to land in Samoa, which would lead to the destruction of Samoan culture and identity.

173 Haleck v. Lee, 4 A.S.R. 519, 551 (Tr. Div. High Ct. Amer. Samoa, 1964).

been enforcing for decades.¹⁷⁴ Similarly, former Governors Henry Francis Bryan and Edward Stanley Kellogg were adamantly against the extension of citizenship because they feared that making Samoans U.S. citizens would grant non-Samoans the right to land ownership on the islands.¹⁷⁵ There were thus members of the naval administration who were opposed to the extension of citizenship to American Samoa in the 1930s because they feared it would lead to an increase in white-settler colonialism and white land ownership on the islands, which they believed would lead to the destruction of Samoan culture.¹⁷⁶

Other factors that help explain why citizenship was not extended to American Samoa in the 1930s was the onset of the Great Depression coupled with the racism of some members of Congress. When one of the organic acts drafted for American Samoa was introduced in Congress in the early 1930s, some lawmakers complained about even considering legislation that would force the United States to “take care” of people from a “foreign land” while millions of Americans remain unemployed and in precarious economic situations.¹⁷⁷ Members of Congress also became concerned about the foreign policy consequences of making Samoans U.S. citizens, fearing that the United States would become “responsible” for Samoans.¹⁷⁸ These worries that some U.S. lawmakers had about Samoans becoming dependent, especially militarily and fiscally, on the U.S. government if they were to become citizens were rooted in racism. Members of the House in 1933 described Samoans as “unsophisticated,” not “responsible” enough to “appreciate the privilege” of citizenship, and “unqualified” to receive it.¹⁷⁹

Another reason why Congress failed to pass legislation that would have extended citizenship to American Samoa in the 1930s involved other reforms implemented by the Navy designed to undermine the Mau movement, which led to “almost a

174 KENNEDY, *supra* note 11, at 191.

175 *Id.* at 191.

176 The main concern over the possible loss of Samoan culture would be that if citizenship were extended to American Samoa, there would be the possibility of white-settler colonialism in the form of non-Samoans moving to the island and having the ability to acquire and own land. There were strict laws banning land ownership of non-Samoan natives in order to preserve Samoans’ communal land tenure system and overall culture, so the fear is that these would be deemed an unconstitutional form of racial discrimination with the extension of citizenship. Whether or not these laws restricting land ownership through racial classifications would violate the Equal Protection Clause of the 14th Amendment, and whether the Equal Protection Clause would apply to American Samoa if Samoans became U.S. citizens, is not the focus of this paper. For a discussion on federal court cases dealing with laws in American Samoa that prohibit non-Samoans from owning land on the islands, i.e. that discriminate based on race, see Sean Morrison, *Foreign in a Domestic Sense: American Samoa and the Last U.S. Nationals*, 41 HASTINGS CONST. L.Q. 71 (2013); Leibowitz, *supra* note 28, at 232-48. Although some lower federal courts have upheld these land laws while applying equal protection principles (i.e. strict scrutiny), the Supreme Court has yet to provide a definitive precedent as to whether Samoan land laws would be constitutional if Congress extended citizenship. The point of this article is that the members of the naval administration expressed these concerns in the 1930s, and Samoans harbored similar fears in the early years of the Cold War.

177 Frederick H. Olsen, *The Navy and The White Man’s Burden: Naval Administration of Samoa 137* (1976) (unpublished Ph.D. dissertation, Washington University, St. Louis). See KENNEDY, *supra* note 11, at 190.

178 Olsen, *supra* note 177, See KENNEDY, *supra* note 11, at 190.

179 Brief for Samoan Federation of America, Inc. as Amici Curiae Supporting Plaintiffs at 20, *United States et al. v. Fitisemanu et al.*, Nos. 20-4017 and 20-4019 (10th Cir. 2020).

complete cessation of political agitation on the islands.”¹⁸⁰ The tangible successes that stemmed from the Mau movement led to the demobilization of Samoan resistance, which in turn relieved the pressure on the Navy and U.S. lawmakers to make further reforms, including the extension of citizenship. For example, the naval administration in the 1920s built more schools and health clinics, consulted more often with Samoan leaders, and established a board that included Samoan chiefs to audit federal spending.¹⁸¹ Furthermore, as already mentioned in this article, in 1929 Congress finally signed the Deeds of Cession that had been drafted in 1900, and a bill of rights was added to the Code of American Samoa in the early 1930s. Also in the 1930s, Governor Gatewood S. Lincoln restructured parts of the naval government that ruled American Samoa to create greater separation between the Chief Justice of the Samoan High Court and the Attorney General. In addition to this, he created a judicial commission led by Samoan chiefs that would deal with land ownership cases, which granted more autonomy to Samoan leaders over local affairs.¹⁸² As Kennedy notes, “The lesson [of the Mau movement] was that the Americans would respond if subjected to a certain brand of pressure.”¹⁸³ These various reforms to naval rule, however, would cause the Mau movement to weaken, removing pressure on Congress to establish civil rule and extend citizenship to American Samoa as the 1930s progressed.

During the hearings held on the proposed organic act for American Samoa in 1930, Senator Bingham explained why he believed Congress had failed to pass organic legislation in the first few decades of naval rule over the islands. Despite U.S. lawmakers being conscious of Samoans’ desire for reforms to the naval government and petitioning for the extension of citizenship, Senator Bingham offers this explanation for Congress’ inaction:

In 1927 I made a journey to the Philippines and to China, and when I came back I stopped at my old home in Honolulu. In Honolulu I had a talk with my old friend Albert Judd [the translator of the hearings] . . . he told me that the people of Tutuila and Manua were dissatisfied because they had not been given any definitive form of government. It had merely been placed under Navy rule. He urged upon me that I introduce into the Congress of the United States legislation which would satisfy their desires and give them a permanent form of government. I told him that there were only 9,000 or 10,000 people in Samoa and that the Congress of the United States was very busy because it had to deal with the affairs of 120,000,000 people. I told him there would be hundreds of cities in the United States of 10,000 people and many more that could not possibly get the Congress to pay attention to their individual wishes and desires.¹⁸⁴

It was because of Samoans’ resistance to U.S. empire through the pressure the Mau autonomy movement exerted on U.S. lawmakers in the 1920s and early 1930s that

180 GATEWOOD S. LINCOLN, ANNUAL GOVERNOR’S REPORT (1931).

181 Chappell, *supra* note 28, at 255; KENNEDY, *supra* note 11, at 173.

182 KENNEDY, *supra* note 11, at 190; MEMEA KRUSE, *supra* note 165, at 141-45.

183 KENNEDY, *supra* note 11, at 190.

184 *American Samoa: Hearing on P.R. No. 89 and P.R. No. 3 Before the American Samoa Commission of the Comm. on Territories and Insular Possessions*, 71st Cong. 226 (1930).

Congress decided to formalize American Samoa's relationship to the federal government and considered reforming naval rule over the islands in the 1930s. The petering out of the Mau movement removed the pressure that had led U.S. lawmakers to create a commission to study the state of naval rule in American Samoa and to hold hearings in the early 1930s that centered on proposed organic acts and the extension of citizenship for Samoans. Congress shifted its focus to countering the devastating economic effects of the Great Depression with New Deal legislation, and U.S. lawmakers no longer had "to pay attention" to [Samoans'] wishes and desires."

While Senator Bingham first introduced the organic acts that would have established a civil government for American Samoa in 1931, they were never passed by Congress. A transcript from the congressional record from 1936, after the organic acts for American Samoa had passed the Senate three times but failed to be ratified by the House, captures how Congress was able to return to disregarding U.S. governance over American Samoa after the Mau movement had waned:

Mr. Tydings: This [an organic act to provide a government for American Samoa] is not a very extensive bill. The Senate passed identical measures on three occasions. All it proposes to do is to give the small population which makes up American Samoa the right of local self-government, namely, to try their own petty offenders . . . This bill will give the 12,000 people who live in American Samoa the right to regulate their own tribal matters. This bill comes before the Senate as the result of the investigation of the Commission which went out to the islands . . . This measure of local self-government has been promised to the people of American Samoa for a number of years . . . The bill has the unanimous backing of the Committee on Territories and Insular Affairs. Every angle of the question that I know of has been examined. The bill was originally prepared while former Senator Bingham was chairman of the committee, and passed while he was still a senator.

Mr. Copeland: . . . I became very interested in the method of acquisition for American Samoa. I have a number of doubts in my mind about it . . . I have no doubt the bill is meritorious. I have no doubt the bill is properly and comprehensively prepared, provided it be applied to our own territory. I should dislike to build a splendid house, a great palace, on land which did not belong to me. I do not know that I shall take that view when the time comes to consider the measure . . .

Mr. Tydings: No question at all of sovereignty is involved in the bill. As the matter now stands, the inhabitants of American Samoa have no voice in the government which they make up. There are about 12,000 of them in the islands. Matters pertaining to discipline are in the hands of the Naval governor . . . All the bill seeks to do is give to the people who compose American Samoa the right to have control over their own intertribal matters. Whether or not the bill becomes law is a matter of no concern to me, except that for 5 years, through representative sent out there, we have promised to the people of the islands its enactment. I am a little sorry that the Senator from New York

desires further to deny those people the right of local self-government. It will be the only place beneath the American flag where that right has been denied.

Mr. Copeland: . . . I am not sure that these islands have a right to be under the American flag, and I wish to be sure that we are not building a government on islands to which we have no title. I may fully agree with the Senator from Maryland when I shall have reviewed the rather fragmentary recollections I have of the serious study I made of the subject a long time ago . . . I am not asking that the 12,000 persons in American Samoa be deprived of government. I assume they have some kind of government or they would not stay there. But in due time . . . I shall look into the matter . . . For the moment, however, I desire further information. I ask that the bill be passed over.

The Presiding Officer: The bill will be passed over.¹⁸⁵

This passage from the congressional record highlights the lack of urgency on the part of U.S. lawmakers to pass legislation regarding the government of American Samoa or to extend U.S. citizenship to the Samoan people, as demonstrated by Senator Copeland asking for more time to review the drafted organic acts and the documents attached to them, even though they had initially been introduced by Senator Bingham four years earlier. The pressure created by the Mau movement, which just a few years earlier had compelled U.S. lawmakers to hold hearings regarding the governance and citizenship status of Samoans, weakened as the 1930s progressed. Furthermore, there was not yet the same level of international disapproval with the United States maintaining sovereignty over territories as there would be in the aftermath of WWII, which would provide an incentive for U.S. lawmakers to extend citizenship to American Samoa in the early years of the Cold War.

A similar exchange can be found in the congressional record one year later, in 1937, and it further demonstrates how U.S. lawmakers no longer felt much pressure to address U.S. governance in American Samoa as time went on:

The bill (S. 1095) to provide for a government for American Samoa was announced as next in order.

Mr. Vandenberg and Mr. Copeland: Over.

The Vice President: The bill will be passed over.

Mr. Tydings: I ask what objection was raised to Senate bill 1095, to provide a government for American Samoa.

Mr. Vandenberg: Mr. President, I made an objection in the absence of the Senator from Maryland. I am awaiting some information respecting the bill, and I know he will give it to us.

Mr. Tydings: My purpose in rising was to bring on debate now, for I wished to find out from the Senator objecting what the objection was, in the hope that we could discuss the matter and clear up any obstacle there might be.

Mr. Copeland: So far as I am concerned, I think this is a very important measure, which ought to receive the attention of the Senate at some future time. The bill deals with a controversial question, at least so far as I am concerned, and I interpose now the same objection I raised last year. In due time, and on appropriate occasion, I am perfectly willing to go into the merits of the bill; but I wish to have a little time to reprepare myself regarding the objections I had last year.

Mr. Tydings: Mr. President, I will state that there are very ample and extensive hearings and information upon this bill, and a copy of the document embodying them has already been sent to each Member of the Senate . . . I may further say that on three occasions the Senate has passed similar bills which were the result of the labors of a commission which went to American Samoa . . . I have no personal interest in the measure, except that from reading the hearings I received the definite impression that the commission felt that a larger measure of self-government ought to be given to the natives of Samoa, and that this bill was the result of their visit . . . My whole purpose in speaking now is to inform Senators that the hearings are available, and I shall be delighted to supply a copy to them to anyone who desires it.

Mr. Copeland: Mr. President, I shall be very happy to receive any material the Senator has. I hope to approach the consideration of the matter with an open mind, but I do wish to be informed about it.¹⁸⁶

While an organic act that would have extended citizenship to American Samoa was introduced in Congress at multiple points between 1931 and 1937, each attempt was passed over by the House. Citizenship legislation stalled during this time period due to a removal of the pressure the Mau movement had exerted on U.S. policymakers after naval leaders implemented some of the reforms Samoans had demanded. This, combined with the onset of the Great Depression, shifted Congress' focus to domestic concerns through the passage of New Deal legislation. While the Mau movement did not lead to civil government in American Samoa or the extension of citizenship to Samoans, it did generate meaningful concessions from the naval administration. Its significance should not be measured just by the political changes that it caused, however, "but in the fact that [it] existed at all," as the Mau autonomy movement represents "[i]ndigenous peoples' engagement with a diasporic global ferment . . . against the powerfully centripetal tides of colonial borders and governmentality."¹⁸⁷ The Mau autonomy movement and its resistance to U.S. empire in the Pacific should thus be understood as an "example[] of locally defined decolonisation, people *doing* independence, rather than waiting for it to be granted."¹⁸⁸

186 83 CONG. REC. 2105-06 (1937).

187 BANIVANUA MAR, *supra* note 2, at 111.

188 *Id.* at 134.

VI. U.S. POLICY IN AMERICAN SAMOA POST WWII: THE HOPKINS COMMITTEE

After WWII,¹⁸⁹ the Hopkins Committee was formed in 1947 to investigate and report on the status of Guam and American Samoa. In its report, the committee recommended a transfer from naval rule to a federal civilian government and to extend U.S. citizenship to American Samoa, based on what the members of the committee believed to be were the policy changes sought by Samoans.¹⁹⁰ U.S. lawmakers recognized the extension of citizenship as a valuable form of propaganda to use against the Soviet Union and now had the Navy's support to extend citizenship to American Samoa. The form of citizenship and way that U.S. policymakers attempted to use citizenship in American Samoa in the early years of the Cold War is an example of what Sam Erman has explained as an "all-but-rightsless" and "empty" form of citizenship.¹⁹¹ U.S. lawmakers recognized that they could extend a form of citizenship to Samoans that would neither confer many key rights (e.g. the right to vote in federal elections or the ability to hold federal office) nor offer an eventual path to statehood for American Samoa, while simultaneously portraying the United States as fulfilling its democratic and egalitarian ideals despite maintaining territories.¹⁹² Congress ultimately decided not to extend citizenship to American Samoa in the early years of the Cold War. This decision was connected with the desire expressed on the part of

189 The U.S. military viewed American Samoa as a valuable strategic location during the war, which led to a large buildup of infrastructure and an influx of U.S. military personnel in American Samoa during WWII. For a history of American Samoa under control of the Navy during WWII, including reports of U.S. soldiers serving on the islands and their racism toward Samoans, Samoans joining the Marines and serving as soldiers with U.S. troops, providing labor for U.S. infrastructure projects, and sexual relations between members of the U.S. military and Samoan women that led to "mixed race" children on the islands, see ROBERT PARSON, *MOB 3: NAVAL HOSPITAL IN A SOUTH SEA JUNGLE* (1945); T.S. TANNER, *HISTORY OF THE PUBLIC WORKS DEPARTMENT, U.S. NAVAL STATION TUTUILA, AMERICAN SAMOA* (1945); ROBERT OWENS, *BAREFOOT MARINES* (1948); COLT DENFELD, *AMERICAN SAMOA: FROM COALING STATION TO WORLD WAR II OUTPOST* (1951); JOHN BURKE, *U.S. NAVAL HISTORY OF THE SAMOAN DEFENSE GROUP* (1958); ORMOND SIMPSON, *MARINE CORPS ORAL HISTORY PROGRAM* (1981); Leibowitz, *supra* note 28, at 256-60; Robert Franco, *Samoans, World War II, and Military Work*, in *REMEMBERING THE PACIFIC WAR* 173, 173-77 (Geoffrey White ed., 1991); Tuala Sevaaetasi, *The Fitafita Guard and Samoan Military Experience*, in *REMEMBERING THE PACIFIC WAR* 181, 181-84 (Geoffrey White ed., 1991); KENNEDY, *supra* note 11, at 195-222. For an analysis of how colonized people in the Pacific have largely been removed from U.S. remembrances of WWII or portrayed as the stereotypical loyal and heroic native in the U.S. imagination, see LAMONT LINDSTORM & GEOFFREY WHITE, *ISLAND ENCOUNTERS: BLACK AND WHITE MEMORIES OF THE PACIFIC WAR* (1990); KEITH CAMACHO, *CULTURES OF COMMEMORATION: THE POLITICS OF WAR, MEMORY, AND HISTORY IN THE MARIANA ISLANDS* (2011); *HERITAGE AND MEMORY OF WAR: RESPONSES FROM SMALL ISLANDS* (Gilly Carr & Keir Reeves eds., 2015).

190 ERNEST HOPKINS, MAURICE TIBIN & KNOWLES RYERSON, SECRETARY OF THE NAVY, *HOPKINS COMMITTEE REPORT FOR THE SECRETARY ON THE CIVIL GOVERNMENTS OF GUAM AND AMERICAN SAMOA* (1947). While members of the Hopkins Committee found evidence that Samoans were in favor of citizenship as late as 1947, by 1948 some Samoan leaders had started to petition Congress against the immediate extension of citizenship.

191 ERMAN, *supra* note 5, at 26, 120, 142.

192 Erman argues that the development of this empty form of citizenship was made possible because the type of inclusive citizenship that could have emerged with the passage of the 14th Amendment's Citizenship Clause ended with the collapse of Reconstruction and the dominance of U.S. imperialist ideology in the 1890s. Thus, even after the passage of the 14th Amendment, "citizenship . . . remained a contested and unstable construct that could be deployed for competing ends" (ERMAN, *supra* note 5, at 142).

some Samoan leaders by the 1950s for Congress to delay the extension of citizenship to a later date, as they had become much more wary—when compared to the Mau movement in the 1920s and early 1930s—of what the effects of citizenship would mean for their *matai* land system and culture.

Two influential developments that caused a shift in U.S. thinking regarding its Pacific unincorporated territories was the creation of the United Nations Organization in 1945 and the worldwide decolonization movement that would emerge in the aftermath of WWII.¹⁹³ Newspaper articles from this time demonstrate the international pressure these two developments exerted on the United States and motivated Congress to consider extending citizenship to American Samoa. As a result, U.S. rule over its Pacific territories shifted in the early years of the Cold War and was now viewed as imperialistic in nature and incompatible with the values of democracy and freedom the United States wanted attached to its global image. One newspaper article outlines both the new guidelines for nations holding territories and the increasing scrutiny the United States encountered in relation to its territorial possession.¹⁹⁴ The article highlights the “Declaration Regarding Non-Self-Governing Territories” of the United Nations Charter, which established a trusteeship system. There was fear that the United States would be forced to place its Pacific territories, including American Samoa, under the international trusteeship system. This would mean that a U.S. territory could be subject to interference by the U.N. Security Council. The article notes that:

[a]lready, however, the government of New Zealand has formally offered to place its mandate over [Eastern] Samoa under UNO trusteeship, and Great Britain, France and Belgium are reported to have reached fairly complete agreement to do likewise with their mandates in Africa . . . Great Britain has also indicated her readiness to do the same with respect to Palestine and Trans-Jordan.¹⁹⁵

The article makes it clear that the United States made sure the language of the U.N. Charter included a provision for territories deemed “strategic areas,” which created a category in which no provisions regarding the administering of such a territory could be changed without U.S. consent. This was a strategy the United States used after WWII to legitimize U.S. imperialism in the Pacific, as U.S. policymakers would frame the continued military occupation of its Pacific unincorporated territories as essential for global security and peace.¹⁹⁶ The conclusion of the article nicely captures the international pressure acting on the United States at this time:

The clamor for outright ownership of conquered islands . . . has certainly weakened our moral position . . . we let Russia take the leadership in this regard. But at the very least, we ought to accept UNO trusteeship for any territory we continue to occupy . . . At a time when the entire world is seething with great ferment there should be more emphasis on trusteeship and less of a

193 ODD ARNE WESTAD, *THE GLOBAL COLD WAR* 110-57 (2007); BANIVANUA MAR, *supra* note 2, at 114-46.

194 *Trusteeship Again: U.S. and the Pacific Islands*, WASH. POST, Jan. 17, 1946, at 5.

195 *Id.* at 5.

196 See BANIVANUA MAR, *supra* note 2, at 124-25.

disposition to pursue a course of strategic imperialism. The latter is neither in our long-run interest nor the world's.¹⁹⁷

This passage captures the transformation in thought regarding U.S. territorial holdings in the Pacific after WWII, both at the international and domestic levels. The post-WWII decolonization movement put pressure on the United States to rethink its relationship to American Samoa. Both the international community and the U.S. populace in general considered it more an undemocratic, imperialistic relationship than a benevolent form of despotism—one not all that different from Soviet rule of the nations under its sphere of influence.

Another article notes that if the United States was to simply annex the territory it had conquered from Japan during WWII and create the same type of relationship with these areas as it had with its Pacific unincorporated territories, “after all its protestations about the necessity of establishing a system of international responsibility for backward areas, the United States will certainly be accused of hypocrisy in every corner of the world.”¹⁹⁸ Another article demands that Congress create a long-term policy regarding the United States’ colonial policy “that would be more in tune with our principles as a nation.”¹⁹⁹ It argues that:

if [the United States is] to live up to its ideals as a nation and to [its] responsibilities as a member of the United Nations, this Government should formulate without delay a policy that will express those ideals and responsibilities, and rescue our colonials from the neglect to which they have been so long subjected.²⁰⁰

An article from *The Chicago Tribune* insists that:

[t]he colonial outlook and the imperialist methods alike are abhorrent to all republican principles. Our mission in the Pacific dependencies should be to let the natives meet their own problems and govern themselves with a minimum of interference . . . The last thing to be desired is a class of colonial rulers imitating the British model.²⁰¹

These articles demonstrate that in the immediate aftermath of WWII, the United States was subject to international and domestic pressure to alter its relationship to its Pacific unincorporated territories, including American Samoa.²⁰² While in the early 1930s U.S.

197 *Trusteeship Again: U.S. and the Pacific Islands*, WASH. POST, Jan. 17, 1946, at 5.

198 *Trustee Solution Seen in British Idea*, N.Y. TIMES, Jan. 28, 1946, at 3.

199 *Wanted – A Colonial Policy*, N.Y. TIMES, Jun. 18, 1946, at 24.

200 *Id.* at 24.

201 CHI. DAILY TRIB., May 17, 1947, at 10.

202 For more on the interconnected relationship between the global currents of international relations and the U.S. domestic sphere during the Cold War, see Derrick Bell, *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 (1980); MARY DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* (2000). Bell and Dudziak explain the connection between foreign affairs and domestic legal change by arguing that one of the factors that influenced the emergence of progressive advances for black Americans and other oppressed races during the Civil Rights movement (e.g. the Court’s decision in *Brown v. Board of Education*, the passage of the Civil Rights Act of 1964) was that these domestic reforms could be used as propaganda by the United States in its ideological struggle against the Soviet Union during the Cold War. Dudziak and Bell argue that international criticism of the United States’ treatment of black Americans (i.e. state-sanctioned white supremacy in

rule over American Samoa was viewed as a positive, natural form of benevolent despotism, by 1947 U.S. sovereignty over its Pacific unincorporated territories had come to be viewed as imperialistic and antithetical to American ideals of democracy and freedom. The United States and European powers would thus be forced to develop strategies to control the narrative surrounding the decolonization movement in order to maintain control over their Pacific territories while not granting them independence. As Banivanua Mar explains, this pushed European powers and the United States to develop strategies to reconfigure the decolonization movement after WWII “as a means of getting off the United Nations ‘hook’ without delivering independence.”²⁰³

One strategy that the United States used to justify its continued control over Pacific territories and resist the forces of decolonization was to assert that its military occupation of American Samoa was necessary to global peace.²⁰⁴ Another strategy that U.S. policymakers would attempt to use to reframe the narrative of its military rule in the Pacific was for Congress to extend citizenship to American Samoa, since this could help the United States undermine criticism of U.S. imperialism in the face of a worldwide decolonization movement and serve as a valuable piece of propaganda in the Cold War. Through the extension of a form of citizenship that lacked meaningful constitutional rights and protections, Congress could further incorporate Samoans into its political system and mitigate U.N. and global criticism that called for increased self-determination and independence in territories while not threatening U.S. control over American Samoa.

The members of the Hopkins Committee, in hearings before Congress in 1947, believed that extending U.S. citizenship to American Samoa and Guam could be used as a valuable piece of propaganda during the Cold War. For example, Representative Robert H. Grant notes that the bill drafted by the committee that would extend citizenship to Guam and American Samoa “were commented fully and favorably by the press, and by many individuals and organizations concerned with the extension of American democracy into all areas under the American flag.”²⁰⁵ He concludes that:

considering this legislation . . . will be giving the world a clearcut [sic] example of the manner in which American democracy works with dependent people. It will show the world, and particularly the Communist-dominated world, that the American way is a way of fairness and decency, and that dependent peoples will receive considerate and just treatment at our hands. It will be a far more

the form of Jim Crow and systemic discrimination in voting rights, education, housing, employment, segregation) provided U.S. policymakers and legal actors with an incentive to pursue and enact civil rights reform. These “progressive” reforms could be used as a powerful propaganda tool to demonstrate the superiority of U.S. capitalism and American democratic values against the Soviet Union while the United States was trying to influence developing nations and contain the spread of communism throughout the world.

203 BANIVANUA MAR, *supra* note 2, at 158-59.

204 *Id.* at 124-25.

205 *Hearings on the Hopkins Committee Report for the Secretary on the Civil Governments of Guam and American Samoa: Hearing on H.J. Res. 70, H.J. Res. 80, H.R. 2753, H.R. 3044, H.R. 3563 and H.R. 3564 Before the Subcomm. on Territorial and Insular Possessions of the H. Comm. On Public Lands, 80th Cong. 7 (1947) [hereinafter cited HOPKINS COMMITTEE HEARINGS].*

effective demonstration of the intrinsic worth of the American way than the squandering of millions of dollars in Communist-dominated areas.²⁰⁶

In this passage, it is clear that one of the motivations for Congress to extend citizenship to American Samoa in the early years of the Cold War was based on how U.S. lawmakers believed such legislation could be used to demonstrate the morality of U.S. democracy to the international community. Members of the Hopkins Committee thought that granting U.S. citizenship to Samoans would advance the United States' strategic interest in being perceived as the leader of democracy and human rights in contrast to the Soviet Union and its communist, totalitarian ideology, and in a much more efficient, cost-effective manner than other means of promoting American democracy in areas under Soviet control or where the United States was competing with the Soviets to influence nations. After being asked whether it is as important to "fortify" areas under U.S. control by treating the people living there decently as it is to fortify these same areas militarily in times of war, Rep. Grant notes that he "cannot understand how we can propose to spread our wealth around the world . . . and to wave the flag for free government for free peoples, and at the same time deny it to those dependent peoples who look to us for some relief."²⁰⁷ This again demonstrates that one of the motives for U.S. lawmakers and naval leaders to extend citizenship to American Samoa in the immediate years after WWII was to counter claims of U.S. hypocrisy, as U.S. military imperialism in the Pacific did not align with alleged U.S. democratic values. Another passage that highlights how U.S. lawmakers were cognizant of the potential for the international community to make claims of U.S. hypocrisy based on its imperialist policies in the Pacific comes from Senator Butler, as he states:

I think . . . the eyes of the people all over the Pacific at least, if not elsewhere, are on America today to see how we treat the people who are immediately under our control. I may say also . . . that I think of late we appear more concerned about how certain people are to be settled with, in various European areas, and we are demanding more for those people than we are extending voluntarily to the people that are immediately under our control . . . We are asking a lot more, perhaps, for the others in an European area today [than] we are for the people of Samoa and many other small islands of the Pacific, where they have not been one iota independent under the regime under which they have been held.²⁰⁸

The members of Congress questioning those who created the Hopkins Committee Report were also aware of the propaganda value of extending citizenship to American Samoa. Rep. Paulson notes:

that what we do there [in the Pacific island territories] certainly can be used as a talking point, or a pattern for other countries when we discuss the idea of democracy. In other words, if we still hold restraints on them to the military, we

206 *Id.* at 12.

207 *Id.* at 20-21.

208 *Id.* at 33-34.

are not in a position, then, are we, to criticize some of the totalitarian governments such as Russia and the like, if we do not practice what we preach?²⁰⁹

Besides aiding the United States' democratic image abroad, another concern throughout the hearings regarding the Hopkins Committee stresses that any legislation Congress passed should not negatively impact the ability of the U.S. Navy to respond to a threat in the Pacific. U.S. lawmakers sought assurances from naval leaders that any legislation Congress enacted that altered the status of American Samoa or extended citizenship to its residents must be sure to not interfere or endanger the U.S. military's sovereignty over the territory. One member of Congress reminds Rep. Grant that:

any legislation that the Congress might pass, giving some additional independence or freedom to Samoa or Guam, should be predicated upon any emergency which might develop, which would cause the military end to step in and take over as they did in Hawaii, or they might have to do in another area of defense.²¹⁰

Senator Crawford stressed that he was only willing to consider extending U.S. citizenship to American Samoa because the Navy had ensured him that such legislation would not ultimately interfere with its operations in the Pacific unincorporated territories.²¹¹ These exchanges highlight how the United States still valued the strategic importance of its Pacific unincorporated territories but also recognized the criticism of U.S. imperialism coming from the global community during the decolonization movement. The Hopkins Committee hearings thus illuminate one of the strategies that Congress used during the decolonization movement "to control and sequester" indigenous independence and self-determination in the Pacific and to avoid being attacked internationally.²¹² In the immediate aftermath of WWII, Congress viewed the extension of citizenship to Samoans as *one* of the ways to allow the U.S. federal government to maintain sovereignty over American Samoa while helping the United States to "avoid being a target of international anticolonial hostility" and be seen as taking steps towards independence" with "[a]pppearances of progress."²¹³ In this context, citizenship existed as a tool Congress sought to use to counter international criticism of U.S. imperialism by providing valuable propaganda in the United States' ideological struggle with the Soviet Union. U.S. lawmakers thus utilized citizenship to legitimate U.S. empire during the global decolonization movement after WWII.

209 *Id.* at 33.

210 *Id.* at 18.

211 *Id.* at 19.

212 BANIVANUA MAR, *supra* note 2, at 154-55.

213 *Id.* at 153-54. Another strategy the United States would use to avoid international criticism of its control over American Samoa would be to shift authority of the islands from the Navy to the Department of Interior in 1951, i.e. shifting governance from naval to civilian rule. This allowed for the United States to continue to possess American Samoa by further incorporating the islands and counter criticism of U.S. imperialism. Despite the shift to civilian control, however, the United States would maintain ultimate sovereignty over American Samoa and the Navy would still have a base at Pago Pago harbor. For an example of how U.S. policymakers used the creation of a local constitution for Puerto Rico in 1950 for similar purposes, see Charles R. Venator-Santiago, *Cold War Civil Rights: The Puerto Rican Dimension*, 42 CAL. W. INT'L L.J. 2 (2012).

After the congressional hearings on the Hopkins Committee established that the Navy and Congress were supportive of extending citizenship to American Samoa, some Samoans were concerned about the possible effects of such legislation on their cultural autonomy and self-determination. By 1948, some Samoans were worried about potential legislation Congress may implement once naval rule over the territory was shifted to civil governance.²¹⁴ In February of 1948, approximately 90 Samoan chiefs asked that all bills before Congress that would extend citizenship to American Samoa be postponed for ten years; by the early years of the Cold War many Samoans became concerned that the extension of citizenship would dismantle protections to their social and cultural structures.²¹⁵ In particular, at least some Samoan chiefs worried that citizenship would make laws that prohibited non-Samoans from owning land unconstitutional and would deprive them of their traditional authority over their extended family's members.²¹⁶ In October 1948, for example, Tuiasosopo Mariota²¹⁷ argued against an organic act that would extend citizenship to Samoans, due to the belief that this would lead to a loss of Samoan land to non-Samoans, by telling Congress and members of the Department of the Interior that "Washington should not force anything down the Samoans throat."²¹⁸

In 1950, Congress held hearings with the purpose of passing organic acts that would extend citizenship to American Samoa and Guam.²¹⁹ After Congress passed

214 *Samoans Ask That Action on Samoan Bills Be Tabled '10 Years or More*, GUAM ECHO, Mar. 31, 1948.

215 Leibowitz, *supra* note 28, at 242; Chappell, *supra* note 28, at 255-56; KENNEDY, *supra* note 11, at 222-23.

216 Leibowitz, *supra* note 28, at 232-48. There is much controversy that surrounds why Samoans altered their views on the desirability of U.S. citizenship. For example, one still very influential narrative, argued by John Collier, a founding member of the Institute of Ethnic Affairs (see Shannon J. Murphy, *Institute of Ethnic Affairs*, GUAMPEDIA (last visited Apr. 14, 2020), <https://www.guampedia.com/institute-of-ethnic-affairs/>) claims that Samoans were manipulated by the U.S. Navy into thinking that the establishment of a civilian government and the extension of U.S. citizenship would lead to the destruction of Samoan culture. Collier argued that the Navy had deceived Samoans by convincing them that the extension of citizenship would make laws that had prohibited non-Samoans from owning land on the islands unconstitutional and would cause the discontinuation of medical aid, schooling, and other public services provided by the Navy. See DOLORIS COULTER COGAN, *WE FOUGHT THE NAVY AND WON: GUAM'S QUEST FOR DEMOCRACY* 31-38, 111-12, 118-19, 131 (2008). The danger with this colonialist narrative and discourse that emphasizes nefarious interference (or elite manipulation) by the Navy is that it removes Samoans' agency in this history of citizenship legislation and frames Samoans' concerns about the extension of citizenship as unsophisticated and naïve, especially considering there are legitimate concerns about what the extension of U.S. citizenship to American Samoa would mean for Samoan land rights and culture.

217 Tuiasosopo was a longtime and prominent delegate in the Samoan Fono beginning in the early 1930s. He was a major figure in the movement led by representatives in the Fono to establish itself as a sovereign legislative assembly that met on a regular basis and could pass laws and regulations instead of serving as an advisory committee to the naval administration. He would be elected to the first session of the Samoan House of Representatives and unanimously elected as House Speaker in October of 1948.

218 AMERIKA SAMOA HUMANITIES COUNCIL, *supra* note 56, at 251-52.

219 For an explanation of why Congress decided to have these hearings in 1950, see Anne Perez Hattorim, *Righting Civil Wrongs: The Guam Congress Walkout of 1949*, 3 J. MICRONESIAN STUD. 1, 24 (1995). Guamanians staged a walkout of the Guam Congress in 1949, which the United States viewed as an embarrassment to its desired global democratic image. This act of protest and resistance by Guamanians to U.S. colonial rule in the Pacific was a crucial factor in why Congress was motivated to extend citizenship to both Guam and American Samoa in 1950. U.S. administrators thought that it would be easier to govern Guam and American Samoa if they both were operating under the same type of political systems, which explains why Congress attempted to create organic acts for both territories in 1950. There is a

organic legislation that extended U.S. citizenship to Guam without providing explicit protection of “safeguarding ‘Guam for the Guamanians,’” “Samoan leaders acted to stop further congressional consideration on a draft organic act for Samoa” due to their concern of what the extension of citizenship would mean for their culture.²²⁰ Samoans “were keenly aware” that the organic legislation Congress passed for Guam in 1950 that extended citizenship to Guamanians had removed a provision that stated that it would be a governmental policy to protect persons of Guamanian ancestry against alienation of their lands and the destruction of the Guamanian culture.²²¹ Congress was thus operating with the understanding that, based on the actions of Samoan representatives during the congressional debates over organic legislation in 1950, Samoan leaders were genuinely worried that were they to become U.S. citizens they would no longer be able to prohibit non-Samoans from owning land in Samoa and were concerned about the effects the extension of citizenship would have on their ability to maintain their cultural autonomy.²²² Samoan High Chief Tufele-Faia’oga expressed these worries to Congress in 1950 when U.S. lawmakers were debating whether to extend citizenship to Samoans:

I have a little feeling of sadness in my heart when I have failed to find in the [Interior and Insular Affairs] report some comment regarding the overwhelming *desire of the people of Samoa not to make any change of their government at this time*. To us, *the idea of making the change* at this time seems to have been already formulated before the committee visited Samoa. As a result, the Samoans will have to swallow it with grief, believing Washington might have disregarded our own fundamental reasons and our own needs and wants, or otherwise; but rather making such change *because of exterior reasons and needs*. As one of the leaders of Samoa, it is always my sincere desire to see Samoa continuing to live up to her fine, loyal and patriotic support of government, or any agency of the Federal Government to administer the affairs of Samoa for her own good. Yet, I cannot help expressing here the fear that is behind my own mind that *the coming too soon of change* will only sow the seed of an unhappy and *vanishing Samoa*. Something our people haven’t anticipated in this generation. It should be remembered the Samoan people, like in other branches of the Polynesian race, in its own environment and way of life, is a people with very little patience to wait too long to see the reward of its wants

separate and distinct legal history of U.S. citizenship in Guam that is beyond the scope of this article that I hope to explore in future research. Guamanians had a much different experience with U.S. citizenship and believed that they would best be able to protect their land rights by becoming U.S. citizens, as opposed to many Samoans at this time who believed that the extension of U.S. citizenship would destroy their culture. The point I make here is that the legal history of U.S. citizenship in American Samoa and Guam are both separate and distinct, but also connected. Without Guamanians protesting for the extension of U.S. citizenship in 1949 with a walkout of the Guam Congress, U.S. lawmakers would not have been debating whether to extend citizenship to Samoans in 1950.

220 S. COMM. ON INTERIOR AND INSULAR AFFAIRS, 86TH CONG., STUDY MISSION TO EASTERN (AMERICAN) SAMOA, REPORT OF SENATORS OREN E. LONG, OF HAWAII, AND ERNEST GRUENING, OF ALASKA, 125 (Comm. Print 1961) (hereinafter cited S. COMM. ON INTERIOR AND INSULAR AFFAIRS, STUDY MISSION TO EASTERN [AMERICAN] SAMOA).

221 *Id.* at 9-10.

222 *Id.*; Leibowitz, *supra* note 28, at 256-60.

and desire. It only glads [sic] to appreciate the things they see today, but very easily discouraged when he fails to have it next day. *In my true personal belief Washington and the United States Government will have very little to lose—if any at all—if the change in government at this time would be temporarily postponed until Samoa is well educated in American ways of business and governmental affairs. But I am afraid the change would give the Samoan people some serious effects in their morale, in their economic as well as their social and political life. And the reason why Samoa is uncertain in its own future, or in knowing precisely what course she should take is because she is not educated enough to know and to feel the ideas and the experience of western life.*²²³ [emphasis added]

This protest by High Chief Tufele-Faia’oga, designed to block any congressional action that would extend citizenship to American Samoa, is an example of a colonized people using the U.S. Congress as “a stage for the ideological work of decolonization” by airing grievances and performing an act against colonial rule in the Pacific.²²⁴ The point this article emphasizes is that by 1950 various Samoan leaders had petitioned Congress since 1948 and argued against the extension of citizenship, with U.S. lawmakers concluding that it was Samoans’ desire to not become U.S. citizens at the time.²²⁵

Further evidence of congressional motivation to withhold the extension of citizenship to American Samoa comes from a congressional report published in 1960. This report is based on a study mission sent to American Samoa in 1958 that asked various Samoan leaders about their thoughts on U.S. citizenship.²²⁶ Their report concluded that while it was “highly probable” that a majority of Samoans desire citizenship, they were concerned that the Equal Protection Clause would conflict with the “Samoan land for Samoans” doctrine and Samoa’s *matai* system.²²⁷ The report further explains:

As a result . . . in 1958 [when the members of the commission were conducting research in American Samoa] . . . attention was given to the question of citizenship and organized territorial status. It was found that there was a divergence of opinion on Tutuila, with many informants opposed to such legislation. *The latter tended to be somewhat indefinite as to how destruction of the*

223 *Civil Government for Guam: Hearing on S. 185, S. 1892 and H.R. 7273 Before the Subcomm. of the Committee on Interior and Insular Affairs, 81st Cong.* 64-65 (1950).

224 BANIVANUA MAR, *supra* note 2, at 92, 102.

225 Whether there was a genuine consensus for Samoans on the question of citizenship in 1950 is beyond the scope of this article. My argument is that Congress was given clear messages by representatives from American Samoa in the immediate years after WWII that Samoans no longer sought to become U.S. citizens.

226 S. COMM. ON INTERIOR AND INSULAR AFFAIRS, STUDY MISSION TO EASTERN [AMERICAN] SAMOA.

227 *Id.* at 130. One possible explanation for this concern is that familial ancestry is a requirement for a Samoan to become a *matai*. If Samoans became U.S. citizens, equal protection jurisprudence *could* make it unconstitutional for Samoans to prohibit non-Samoans with no Samoan family ancestry from becoming *matai* and members of the Fono. See Brief for Intervenor American Samoa and the Hon. Aumua Amata at 17-20, *United States et al. v. Fitsemanu et al.*, Nos. 20-4017 and 20-4019 (10th Cir. 2020).

*Samoan way of life would result from the Federal action, but they were positive in their views as to the causal relationship.*²²⁸ (emphasis added)

The report recommends that because the question of whether the extension of citizenship to American Samoa would continue to allow Samoans to prohibit non-Samoans from owning land is “a complex one legally,” the committee has asked the Attorney General and the Department of the Interior to research the issue.²²⁹ The report concludes:

[Until] authoritative opinion can be obtained, and, based upon it, a comprehensive expression of the views of the Samoan people heard, it is recommended that the matter be held in abeyance.²³⁰

By the time U.S. lawmakers were debating whether to extend citizenship to American Samoa in 1950 (in the early years of the Cold War) and 1960 (as the worldwide decolonization movement intensified), some Samoan leaders had expressed to Congress a clear desire to delay any organic legislation that would make Samoans U.S. citizens; for these Samoans, including High Chief Tufele-Faia’oga, citizenship now existed as a status with the power to destroy Samoan cultural autonomy.²³¹

In sum, congressional hearings held in 1947 regarding legislation based on the recommendations of the Hopkins Committee demonstrate that one of the reasons the United States considered extending citizenship to American Samoa was because U.S. lawmakers thought such legislation could provide meaningful propaganda material in the United States’ ideological struggle with the Soviet Union in the early years of the Cold War. After 1947, however, some Samoan leaders expressed to Congress, naval administrators, and members of the Department of the Interior that their preference was to delay the extension of citizenship, demonstrated by the petition sent

228 *Id.* at 125.

229 *Id.* at 10.

230 *Id.* at 10.

231 A potentially important factor that helps explain why there was a noticeable shift in Samoans’ thinking about citizenship from the Mau movement (1920s and early 1930s) to the Hopkins Committee (late 1940s) is that land rights in Samoa were changing significantly; see MEMEA KRUSE, *supra* note 165, at 138-47. Through a thorough examination of Samoan court cases dealing with land disputes, Memea Kruse demonstrates the decades-long shifts that took place in the Samoan legal system that transformed communal land rights based on the *matāi* system to individual land rights. In particular, there was significant change during the time period as the court system increasingly established an individual right to land ownership in American Samoa. Memea Kruse writes that “[t]he 20-year period between 1940 and 1960 was a time of *immense* change to traditional customary land tenure in American Samoa. The previous three decades under the Naval Administration had provided the building blocks, but it was this period that the concept of individually owned land was cemented” (MEMEA KRUSE, *supra* note 165, at 144) [emphasis added]. The increasing incorporation of individual land and property rights into the Samoan legal system, especially between 1940-1960, could have influenced Samoans thinking about the possible effects of the extension of U.S. citizenship, as Samoans worried about the loss of their cultural autonomy and self-identity. It seems that some Samoans believed that becoming U.S. citizens would hasten the long-term trends that they believed were leading to the destruction of Samoan culture. The transformation from the 1920s to the 1960s toward individual land ownership rights, combined with the extension of U.S. citizenship, thus led some Samoans to be concerned about the danger of those they considered to be non-Samoan to have the right to make individual claims to land.

in 1948 by ninety Samoan chiefs to the naval administration asking for the tabling of any potential legislation that would have made Samoans U.S. citizens and by other Samoan representatives arguing against the extension of citizenship during congressional debates over enacting an organic act for American Samoa in 1950. A congressional report filed in 1960 demonstrates that by the late 1950s Samoans had ambiguous feelings about the desirability of U.S. citizenship; by this time, some Samoan representatives believed that the extension of citizenship would lead to the destruction of the Samoan way of life. The legal history of citizenship in American Samoa thus highlights how in the context of empire, “[citizenship] remain[s] a contested and unstable construct that [can] be deployed for competing ends.”²³²

VII. CONCLUSION

The legal history of U.S. citizenship for American Samoa from 1899 to 1960 illuminates the various meanings citizenship can have and the disparate ways citizenship can be used by different people in different contexts. Citizenship can be a powerful concept that colonized people can use to make claims for equal inclusion and full membership within a political community, as demonstrated by Samoans asserting their right to U.S. citizenship to members of Congress in the 1920s and 1930s during the Mau movement. Citizenship can also be used in strategic ways by governments, as evidenced by the U.S. lawmakers attempting to use the extension of an “all-but-rightsless” form of citizenship to American Samoa during the early years of the Cold War as propaganda to maintain and legitimate the United States’ colonial system of governance in the Pacific. The legal history of U.S. citizenship in American Samoa thus forces scholars to think critically about the widely accepted normative values associated with citizenship,²³³ the reasons why different colonized populations in different contexts have both resisted and embraced U.S. citizenship, and the ways the United States has used citizenship to legitimate its empire without fundamentally threatening its rule.

232 ERMAN, *supra* note 5, at 142.

233 For a critical take on citizenship as an inherently exclusionary and oppressive status in society, see AMY BRANDZEL, *AGAINST CITIZENSHIP: THE VIOLENCE OF THE NORMATIVE* (2016).