

UCLA

UCLA Pacific Basin Law Journal

Title

Taaloga Faitupe: Gambling in American Samoa

Permalink

<https://escholarship.org/uc/item/8w89x321>

Journal

UCLA Pacific Basin Law Journal, 41(1)

Author

Jarvis, Robert M.

Publication Date

2024-12-12

DOI

10.5070/P8.61623

Peer reviewed

TAALOGA FAITUPE: GAMBLING IN AMERICAN SAMOA

Robert M. Jarvis

ABSTRACT

This Article provides the first detailed description of gambling in American Samoa. In addition to being one of just five inhabited U.S. territories, American Samoa is one of only four U.S. jurisdictions that bans all forms of commercial gambling. As such, it offers a rare opportunity to examine gambling in an anti-gambling society. The fact that American Samoa is located thousands of miles from the U.S. mainland; relies heavily on customs that are quite foreign to most Americans; lacks any sort of system for reporting judicial decisions despite having courts that are precedent-based; and permits charitable gaming (even though it has become a cover for large-scale gambling operators) makes studying the territory even more valuable.

Keywords: American Samoa, Gambling, U.S. Territories

ABOUT THE AUTHOR

Professor of Law, Nova Southeastern University (jarvisb@nova.edu). The assistance of Thomas B. Jones, Esq., of the Pago Pago law firm of Jones & Associates; Lornalei C. Meredith, Esq., of the Pago Pago law firm of Meredith Sunia Law; and Tarica C. LaBossiere, Esq., of the NSU Panza Maurer Law Library is acknowledged with gratitude.

TABLE OF CONTENTS

I.	AMERICAN SAMOA BASICS	126
II.	AMERICAN SAMOA'S GAMBLING LAWS	137
III.	AMERICAN SAMOA'S GAMBLING CASES	142
	A. <i>Prohibited Activities</i>	144
	B. <i>Bingo and Raffles Exception</i>	146
	C. <i>Penalties</i>	149
IV.	CONCLUSION	151

INTRODUCTION

The United States currently has five inhabited and nine uninhabited overseas territories (all of which are referred to as insular possessions).¹ In alphabetical order, the inhabited territories are as follows: American Samoa,² Guam,³ the Northern Mariana Islands (NMI),⁴ Puerto Rico,⁵ and the U.S. Virgin Islands.⁶ Of this group, the one that is likely to be the least familiar to most Americans—unless they studied Margaret Mead in college⁷ or are fans of the TV series *Better Call Saul*⁸—is American

1. See ALVITA AKIBOH, *IMPERIAL MATERIAL: NATIONAL SYMBOLS IN THE US COLONIAL EMPIRE* (2023); DANIEL IMMERWAHR, *HOW TO HIDE AN EMPIRE: A HISTORY OF THE GREATER UNITED STATES* (2019); DOUG MACK, *THE NOT-QUITE STATES OF AMERICA: DISPATCHES FROM THE TERRITORIES AND OTHER FAR-FLUNG OUTPOSTS OF THE USA* (2017). Congress exercises plenary power over these areas pursuant to Article IV, section 3, clause 2 of the U.S. Constitution, better known as the Territorial Clause: “The Congress shall have Power to . . . make all needful Rules and Regulations respecting . . . Territory . . . belonging to the United States[.]” In addition, a series of cases decided early in the 20th century by the U.S. Supreme Court, and now collectively known as “The Insular Cases,” form the basis of modern territorial jurisprudence even as their validity has come under attack in recent years. See, e.g., *United States v. Vaello Madero*, 596 U.S. 159, 180 (2022) (Gorsuch, J., concurring) (“It is past time to acknowledge the gravity of this error and admit what we know to be true: The Insular Cases have no foundation in the Constitution and rest instead on racial stereotypes. They deserve no place in our law”). For a further discussion, see BARTHOLOMEW H. SPARROW, *THE INSULAR CASES AND THE EMERGENCE OF AMERICAN EMPIRE* (2006). As Sparrow explains, “Almost every writer on the *Insular Cases* has his or her own particular list of cases, from as few as three to as many as twenty-three.” *Id.* at 257. For a further look at the Insular Cases and their present-day effect, see, e.g., STANLEY K. LAUGHLIN, *THE LAW OF UNITED STATES TERRITORIES AND AFFILIATED JURISDICTIONS* (1995 & 1997 Supp.); ARNOLD H. LEIBOWITZ, *DEFINING STATUS: A COMPREHENSIVE ANALYSIS OF UNITED STATES TERRITORIAL RELATIONS* (1989 & 2014 Supp.); Helen Phillips, *The United States Has Left Children in the Territories Behind: Why the United States Should Extend the Supplemental Nutrition Assistance Program to Puerto Rico, American Samoa, and the Northern Mariana Islands*, 32 KAN. J.L. & PUB. POL’Y 119 (2022); Gretchen C.F. Shappert & Adam F. Sleeper, *International & Territorial Border Searches: The Border-Search Exception as Applied in the U.S. Territories of the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, & Puerto Rico*, 69 DEP’T OF JUST. J. FED. L. & PRAC. 205 (2021).

2. See 48 U.S.C. §§ 1661–1670.

3. See 48 U.S.C. §§ 1421–1428e.

4. See 48 U.S.C. §§ 1801–1846.

5. See 48 U.S.C. §§ 731–916 and §§ 2101–2241.

6. See 48 U.S.C. §§ 1541–1645.

7. Margaret Mead (1901–78), the famed American anthropologist, public intellectual, and women’s rights advocate, first achieved prominence with the publication of her book *Coming of Age in Samoa: A Psychological Study of Primitive Youth for Western Civilisation* (1928). The book is based on field work Mead conducted from 1925 to 1926 in American Samoa. For a further look at Mead’s career, see NANCY C. LUTKEHAUS, *MARGARET MEAD: THE MAKING OF AN AMERICAN ICON* (2008).

8. *Better Call Saul* (AMC, 2015–22) is the latter-day prequel to the hit TV series *Breaking Bad* (AMC, 2008–13). Together, the two shows chart the rise and fall of Jimmy McGill (played by Bob Odenkirk), a former con artist who becomes an unethical criminal defense attorney in Albuquerque, New Mexico, named Saul

Samoa. “American Samoa is [situated] in the South Pacific Ocean [and lies] almost exactly halfway between Hawai’i and New Zealand. . . . The total land area . . . is 76 square miles . . . approximately the same size as Washington, D.C.”⁹

In addition to its territorial status, American Samoa is one of only four U.S. jurisdictions that bans all forms of commercial gambling—the others are Guam,¹⁰ Hawaii,¹¹ and Utah.¹² American Samoa does make an exception for “occasional” bingo games and raffles when such activities are conducted for charitable purposes.¹³ Similar exceptions for

Goodman. See Laszlo Erdodi, *The Finale of Better Call Saul: A Psychologist Explains How Jimmy McGill Became Saul Goodman*, THE CONVERSATION (Aug. 15, 2022), <https://theconversation.com/the-finale-of-better-call-saul-a-psychologist-explains-how-jimmy-mcgill-became-saul-goodman-188713>. [<https://perma.cc/GH9S-GEH6>]. In the *Better Call Saul* episode “RICO” (Mar. 23, 2015), viewers learn that McGill’s law degree is from the University of American Samoa (described in the show as a correspondence law school whose mascot is the land crab). See Rachel Paige, *Jimmy Gets His Fake Degree on ‘Better Call Saul,’* BUSTLE (Mar. 23, 2015), <https://www.bustle.com/articles/71535-latest-breaking-bad-easter-egg-on-better-call-saul-jimmys-fake-law-degree> [<https://perma.cc/7XUG-TUHG>]. In real life, American Samoa lacks both a university and a law school but is home to American Samoa Community College (<https://www.amsamoa.edu/>). Nevertheless, numerous websites now offer University of American Samoa School of Law apparel. See, e.g., *Better Call Saul Shop—The Official Better Call Saul Merch*, https://bettercallsaulmerch.com/?s=american+samoa&post_type=product (last visited Oct. 1, 2023) [<https://perma.cc/F3XH-PUXL>].

9. MELINDA CLAYVILLE, EXPLORE AMERICAN SAMOA: THE COMPLETE GUIDE TO TUTUILA, AUNU’U, AND MANU’A ISLANDS 6 (2021).

10. See 9 GUAM CODE ANN. §§ 64.10–64.23.

11. See HAW. REV. STAT. §§ 712–1220 to 712–1230.

12. See UTAH CODE §§ 76–10–1101 to 76–10–1113.

13. See *infra* note 71 and accompanying text. For a blog post describing what it is like to play bingo in American Samoa, see Marcela Trocha, *BINGO! So, WHERE’S AMERICAN SAMOA?* (Feb. 15, 2017), <https://sowheresamericansamoa.weebly.com/home/bingo> (“In a country where gambling is illegal, bingo is the biggest form of entertainment. On my way home each day, I see lines of cars along the street outside of churches, where a diversity of Samoan people sit stamping away at the 9 bingo sheets in front of them with the monotonous voice of the bingo caller holding the players’ destinies”) [<https://perma.cc/8MZV-CZTR>]. For another such blog post, see Mitch Robitaille, *Bingo—The Ultimate Source of Samoan Entertainment*, TEACHINGAMSAM (Mar. 18, 2012), <https://teachingamsam.wordpress.com/2012/03/18/bingo-the-ultimate-source-of-samoan-entertainment> [<https://perma.cc/DWE2-TUNB>]. During COVID, American Samoa’s government temporarily shut down the territory’s bingo games. See Fili Sagapolutele, *Gov’s Office Clarifies to Public—BINGO Banned During Pandemic*, SAMOA NEWS (Aug. 19, 2020), <https://samoanews.com/local-news/govs-office-clarifies-public-bingo-banned-during-pandemic> [<https://perma.cc/R95Z-W9HU>]. According to numerous experts, the popularity of bingo in American Samoa has led to high rates of teenage pregnancy and sexual abuse due to parents spending their free time playing bingo instead of being at home supervising their children. See *Sexual Abuse & Assault Cases Take Place While Parents at Bingo*, TALANEI (Nov. 18, 2016), <https://www.talanei.com/2016/11/18/sexual-abuse-assault-cases-take-place-while-parents-at-bingo> [<https://perma.cc/E28M-PJDZ>].

charitable gambling exist in all other U.S. jurisdictions except Hawaii, Tennessee, and Utah.¹⁴

To date, there has not been an extended examination of gambling, or *taaloga faitupe*, in American Samoa,¹⁵ and even gambling scholars routinely overlook the territory.¹⁶ As such, this article seeks to fill the existing gap. To do so, Part I provides a thumbnail sketch of the territory and its government, formally known as the American Samoa Government (ASG). Part II then reproduces its gambling laws. Lastly, Part III collects, categorizes, and summarizes American Samoa's judicial gambling decisions. As will be seen, the courts in American Samoa have issued very few opinions on gambling. Those that do exist, however, have strictly enforced the territory's ban on gambling.

I. AMERICAN SAMOA BASICS

It generally is believed that the Samoan islands were settled in 1000 B.C. by the seafaring Lapita people of Southeast Asia.¹⁷ The first Europeans to reach the islands were the Dutch explorer Jacob Roggeveen in

14. See Adam Mace, *Is Gambling Illegal in the US? What You Need to Know*, GAMBLERS DAILY DIGEST, <https://gamblersdailydigest.com/is-gambling-illegal> (last visited Oct. 1, 2023) [<https://perma.cc/VUJ9-E8PZ>]. While Hawaii and Utah's bans are absolute, *id.*, Tennessee does allow charitable organizations to hold one annual "game of chance" fundraising event. See Tennessee Secretary of State, *Charitable Gaming Guide & FAQs*, <https://sos.tn.gov/charities/guides/charitable-gaming-guide-faqs> (last visited Oct. 1, 2023) [<https://perma.cc/HJX5-D4VA>].

15. In the Samoan language the formal word for gambling is "taaloga faitupe," but in everyday conversation gambling is referred to as "poka," which literally means poker. See E-mail from Lornalei C. Meredith, Esq., of Meredith Sunia Law (Pago Pago, American Samoa), to the author (Oct. 3, 2023, 10:25 PM) (on file with the author).

16. A similar neglect has occurred with respect to Guam and the NMI, the United States's two other inhabited Pacific territories. In response, in 2022 the author published an article about the NMI. See Robert M. Jarvis, *Gambling in the Northern Mariana Islands*, 26 GAMING L. REV. 316 (2022). With the publication of the present article, only Guam still lacks such a study, although this gap soon will be remedied. See Robert M. Jarvis, *Gambling in Guam*, 29 GAMING L. REV. (forthcoming 2025). In the meantime, see Jon Friedl, *Guam Slot Machine Casino Gambling*, PROFESSOR SLOTS (Apr. 2, 2022), <https://professorslots.com/guam-slot-machine-casino-gambling> [<https://perma.cc/KN9M-4STR>]. While the NMI has embraced legalized gambling enthusiastically, Guam has followed essentially the same path as American Samoa. In the Caribbean, both Puerto Rico and the U.S. Virgin Islands have legalized casino gambling. See Robert M. Jarvis & Jane E. Cross, *Casino Gambling in the Caribbean*, 24 GAMING L. REV. 337, 352–54 (2020).

17. See MALAMA MELEISEA, LAGAGA: A SHORT HISTORY OF WESTERN SAMOA 11–23 (1987). Based on the success of his 1947 *Kon Tiki* rafting expedition, the Norwegian adventurer Thor Heyerdahl famously claimed that Polynesia (including Samoa) was settled by South American Indians. As Meleisea points out, "No scientifically trained prehistorians accept Heyerdahl's theories entirely, but they do not deny the possibility that some American Indians may have reached the central Pacific or that Polynesians could have made voyages to South America." *Id.* at 18. For a further discussion of what has come to be known as the "Problem of Polynesian Origins," see CHRISTINA THOMPSON, SEA PEOPLE: IN SEARCH OF THE ANCIENT NAVIGATORS OF THE PACIFIC (2019).

1722¹⁸ and the French explorer Louis-Antoine de Bougainville in 1768.¹⁹ The first American to visit the islands was Lieutenant Charles Wilkes, the commander of a U.S. exploring expedition, in 1839.²⁰ These early contacts gave rise to substantial misunderstandings of the native population, which would negatively affect how Westerners viewed the islands for generations.²¹

By the 1870s, Australia, Germany, Great Britain, New Zealand, and the United States had begun to vie for control of the Samoan Islands.²² In 1887, Malietoa Laupepa, Samoa's king, was exiled at the behest of Germany.²³ This action triggered the First Samoan Civil War, with rival factions supporting Mata'afa Iosefo (backed by the United States) and

18. See *THE JOURNAL OF JACOB ROGGEVEEN* (Andrew Sharp ed., 1970).

19. For a profile of Bougainville, see VICTOR SUTHREN, *THE SEA HAS NO END: THE LIFE OF LOUIS-ANTOINE DE BOUGAINVILLE* (2004).

20. See *A Bill to Provide that the President of the U.S. Shall Designate as Governor and Lieutenant Governor of Am. Sam. the Individual Who is Nominated by the Electors of Am. Sam. for Each Such Position, and for Other Purposes: Hearing on H.R. 11523 and H.R. 12493 Before the Subcomm. on Territorial and Insular Affs. of the H. Comm. on Interior and Insular Affs.*, 92d Cong. 65 (1972) (statement of Charles W. Harris, Div. Chief of the Gov't and Gen. Rsch. Div.).

21. For a further discussion, see SERGE TCHERKÉZOFF, 'FIRST CONTACTS' IN POLYNESIA: THE SAMOAN CASE (1722–1848)—WESTERN MISUNDERSTANDINGS ABOUT SEXUALITY AND DIVINITY (2004). Even today, Samoan and U.S. cultural practices often clash, although the United States' official policy is to protect and preserve *fa'a Samoa* (the "Samoan way" of doing things). See Jeffrey B. Teichert, *Resisting Temptation in the Garden of Paradise: Preserving the Role of Samoan Custom in the Law of American Samoa*, 3 GONZ. J. INT'L L. 35 (1999–2000); Sean Morrison, *Preserving Cultural Traditions in Modern Legal Institutions in American Samoa*, TYL [American Bar Association/Young Lawyer Division], Summer 2016, at 5. For a further discussion, see, e.g., Christopher R. Leslie, *The America Without Marriage Equality: Fa'afafine, the Insular Cases, and Marriage Inequality in American Samoa*, 122 COLUM. L. REV. 1769 (2022) (clash over gay marriage); Kamaile A.N. Turčan, *Fisheries Management in American Samoa and the Expanding Application of Parens Patriae Standing to Challenge Federal Administrative Action*, 33 NOTRE DAME J.L. ETHICS & PUB. POL'Y 1 (2019) (clash over fishing rights). See also CLAYVILLE, *supra* note 9, at 35 ("[D]ifferences [between the U.S. mainland and American Samoa] include rights regarding gun control, separation of church and state, land ownership, and discrimination").

22. In 1873, for example, President Ulysses S. Grant sent Albert B. Steinberger to Samoa to promote America's interests. In 1875, however, Steinberger resigned his position as U.S. special agent and accepted the premiership of Samoa. His subsequent support of the local population ignited an international crisis and led to his arrest and removal from the islands. See Stephen W. Stathis, *Albert B. Steinberger: President Grant's Man in Samoa*, 16 HAW. J. HIST. 86 (1982). See also Barry Rigby, *Private Interests and the Origins of American Involvement in Samoa, 1872–1877*, 8 J. PAC. HIST. 75 (1973).

23. For a description of Laupepa, see WILLIAM BROWN CHURCHWARD, *MY CONSULATE IN SAMOA: A RECORD OF FOUR YEARS SOJOURN IN THE NAVIGATORS ISLANDS, WITH PERSONAL EXPERIENCES OF KING MALIETOA LAUPEPA, HIS COUNTRY AND HIS MEN* (1887). From 1882 to 1885, Churchward served as the British consul in Samoa. Today, he is chiefly remembered for helping introduce Samoans to cricket. See BENJAMIN SACKS, *CRICKET, KIRIKITI AND IMPERIALISM IN SAMOA, 1879–1939*, at 28, 51–53 (2019).

Tupua Tamasese Titimaea (backed by Germany) as Laupepa's replacement.²⁴ In 1889, however, Germany, Great Britain, and the United States, having come to view Laupepa as the least objectionable option, returned him to power pursuant to the Treaty of Berlin.²⁵

When Laupepa died in 1898, Iosefo again sought the throne but was opposed by Laupepa's son Mālietoa Tanumafili, thereby touching off the Second Samoan Civil War.²⁶ Alarmed by this new round of violence, and even more so by the threat it posed to their respective interests,²⁷ Germany, Great Britain, and the United States again took matters into their own hands. This time, however, they acted much more decisively.

First, they abolished the position of King of Samoa.²⁸ Second, they agreed to partition the islands.²⁹ As a result, Germany took possession of Western Samoa; the United States took possession of Eastern Samoa; and Great Britain, in exchange for renouncing its claims to both, received various concessions regarding its interests in the Solomon Islands, Tonga, West Africa, and Zanzibar.³⁰

24. See A. MORGAN TUIMALEALI'IFANO, *O TAMA A 'AIGA: THE POLITICS OF SUCCESSION TO SĀMOA'S PARAMOUNT TITLES* 41 (2006).

25. See *Multilateral Neutrality and Autonomous Government in Samoa* (General Act of Berlin), June 14, 1889, 26 Stat. 1497, T.S. No. 313, 1 Bevans 116. Following Laupepa's return, Robert Louis Stevenson (1850–94), the acclaimed Scottish author who had settled in Samoa in 1890 and died there in 1894, interviewed Laupepa and later published a book decrying the machinations of Germany, Great Britain, and the United States. See ROBERT LOUIS STEVENSON, *A FOOTNOTE TO HISTORY: EIGHT YEARS OF TROUBLE IN SAMOA* (1892). For a further discussion of Stevenson's involvement in Samoan politics, see JOSEPH FARRELL, *ROBERT LOUIS STEVENSON IN SAMOA* (2017).

26. In recounting these events, one commentator has written: Malietoa Laupepa, King of Samoa, died August 22, 1898. Immediately following the ensuing election, a dispute arose as to whether one Mataafa or one Tamamafili had been elected king, and, on submission of the issue, the Supreme Justice of Samoa, Honorable William L. Chambers, an American citizen, on December 31, 1898, decided in favor of Tamamafili. The Mataafa party rejected the decision, and strife and confusion ensued, in which the people and officials of German origin were partisans on one side, and those of United States and British nativity partisans on the other.

Walter Scott Penfield, *Settlement of the Samoan Cases*, 7 AM. J. INT'L L. 767, 768 (1913).

27. See HOLGER DROESSLER, *COCONUT COLONIALISM: WORKERS AND THE GLOBALIZATION OF SAMOA* (2022). For Germany and Great Britain, these interests mainly were commercial and involved Samoa's cocoa, coconut, and rubber plantations. *Id.* In contrast, the United States was eager to protect its naval coaling station at Pago Pago on the island of Tutuila. See *Treaty of Friendship and Commerce Between the United States and the Samoan Islands*, Feb. 17, 1878, 20 Stat. 704, T.S. No. 312, 1 Bevans 437. Under Article II of this treaty, "Naval vessels of the United States [were granted] the privilege of entering and using the port of Pagopago [sic], and establishing therein and on the shores thereof a station for coal and other naval supplies for their naval and commercial marine. . . ."

28. See TUIMALEALI'IFANO, *supra* note 24, at 13–14.

29. See *id.* at 14.

30. See *Convention to Adjust Amicably Questions Between the United States,*

Germany's reign over Western Samoa proved short-lived—in August 1914, one month after the start of World War I, troops from New Zealand seized control of the colony upon orders to do so from Great Britain.³¹ For the next forty-seven years, New Zealand ruled Samoa, first

Germany, and the United Kingdom in Respect of the Samoan Group of Islands, Dec. 2, 1899, 31 Stat. 1878, T.S. No. 314, 1 Bevans 276. For a further discussion, see, e.g., ERIC GRYNIVSKI, *AMERICA'S MIDDLEMEN: POWER AT THE EDGE OF EMPIRE* 144–91 (2018); CEES VAN DIJK, *PACIFIC STRIFE: THE GREAT POWERS AND THEIR POLITICAL AND ECONOMIC RIVALRIES IN ASIA AND THE WESTERN PACIFIC 1870–1914*, at 401–16 (2015); PAUL M. KENNEDY, *THE SAMOAN TANGLE: A STUDY IN ANGLO-GERMAN-AMERICAN RELATIONS 1878–1900* (1974); Joseph Waldo Ellison, *The Partition of Samoa: A Study in Imperialism and Diplomacy*, 8 PAC. HIST. REV. 259 (1939). Following the United States' ratification of the treaty, the U.S. Navy was placed in charge of Eastern Samoa:

On February 19, 1900, . . . Executive order [125A] was signed by the President, reading as follows:

The island of Tutuila, of the Samoan group, and all other islands of the group east of longitude 171° west of Greenwich, are hereby placed under the control of the Department of the Navy for a naval station. The Secretary of the Navy shall take such steps as are necessary to establish the authority of the United States and to give to the islands the necessary protection.

The Secretary of the Navy, on the same date, issued an order as follows: the island of Tutuila, of the Samoan group, and all other islands of the group east of longitude 171° west of Greenwich, are hereby established into a naval station, to be known as the Naval Station, Tutuila, and to be under the command of a commandant.

W[aldo] Evans, *Report for Information of the General Public on American Samoa* 10 (1921), <https://books.google.com/books?id=WYpJAAAMAAMAJ> [<https://perma.cc/G3ED-UUR2>].

Subsequently, cession agreements were signed by the various chiefs of Eastern Samoa. See Instrument of Cession by the Chiefs of Tutuila Islands to the United States Government, Apr. 17, 1900, and Instrument of Cession by the Chiefs of Manu'a Islands to the United States Government, July 16, 1904, *reprinted in* 1 PAPERS RELATING TO THE FOREIGN RELATIONS OF THE UNITED STATES, 1929, Doc. Nos. 853 and 855 (Joseph V. Fuller & Tyler Dennett eds., 1943). In 1929, the United States formally ratified both agreements. See Pub. Resol. 70–89, 45 Stat. 1253 (Feb. 20, 1929), *codified at* 48 U.S.C. § 1661. Prior to 1929, U.S. officials had considered these agreements to be largely superfluous. Shortly before the signing of the 1900 agreement, for example, a U.S. Navy official advised the Tutuila chiefs: “Whether you come or not, the authority of the United States is already proclaimed over this island.” LEIBOWITZ, *supra* note 1, at 399. Nevertheless, modern sources typically describe American Samoa's cession to the United States as having been voluntary, see, e.g., *Fitisemanu v. United States*, 1 F.4th 862, 866 (10th Cir. 2021), *reh'g en banc denied*, 20 F.4th 1325 (10th Cir. 2021), *cert. denied*, 143 S. Ct. 362 (2022), and April 17 now is celebrated annually as “Flag Day” to mark the first raising of the U.S. flag in American Samoa. See CLAYVILLE, *supra* note 9, at 36.

31. See STEPHEN JOHN SMITH, *THE SAMOA (N.Z.) EXPEDITIONARY FORCE: 1914–1915—AN ACCOUNT BASED ON OFFICIAL RECORDS OF THE SEIZURE AND OCCUPATION BY NEW ZEALAND OF THE GERMAN ISLANDS OF WESTERN SAMOA* (1924). See also KARL HANSEN'S SAMOAN WAR DIARIES, AUGUST 1914–MAY 1915: A GERMAN PERSPECTIVE ON NEW ZEALAND'S MILITARY OCCUPATION OF GERMAN SAMOA (James N. Bade ed., 2011). For examinations of Germany's brief rule in Western Samoa, see, e.g., KASIA RENAE COOK, *GERMANS IN SAMOA: 1860–1914* (2023); HERMANN JOSEPH HIERY, *FA'A SIAMANI*,

under a “Class C” mandate issued by the League of Nations in 1920³² and then as a United Nations trust territory after 1946.³³ Western Samoans objected to New Zealand’s rule, however, and an opposition movement known as the Mau soon became a potent political force.³⁴ As a result, on January 1, 1962, Western Samoa became the first Pacific trust territory to gain its independence.³⁵ In 1997, the country officially changed its name from Western Samoa to Samoa.³⁶

GERMANY IN MICRONESIA, NEW GUINEA AND SAMOA 1884–1914 (2020); GEORGE STEINMETZ, *THE DEVIL’S HANDWRITING: PRECOLONIALITY AND THE GERMAN COLONIAL STATE IN QINGDAO, SAMOA, AND SOUTHWEST AFRICA* (2007).

32. See Mandate for German Samoa, Dec. 17, 1920, 2 L.O.N. O.J. 91 (1922), 17 AM. J. INT’L L. SUPP. 173 (1923). For a comprehensive look at the mandate system, which was established pursuant to Article 22 of the Covenant of the League of Nations, see QUINCY WRIGHT, *MANDATES UNDER THE LEAGUE OF NATIONS* (1930). There were 16 mandates, classified from “A” to “C,” with “C” indicating “least developed.” Each of the mandated territories was a former colony of either Germany or the Ottoman Empire. See also SUSAN PEDERSEN, *THE GUARDIANS: THE LEAGUE OF NATIONS AND THE CRISIS OF EMPIRE* 410–13 (2015).

33. See Trusteeship Agreement for the Territory of Western Samoa (with Annex), approved Dec. 13, 1946, 8 U.N.T.S. 71 (1947). For a comprehensive look at the U.N. trust territory system, see GRAHAM HASSALL, *THE UNITED NATIONS AND THE PACIFIC ISLANDS* 28–44 (2023).

34. See Patricia O’Brien, *From Sudan to Sāmoa: Imperial Legacies and Cultures in New Zealand’s Rule Over the Mandated Territory of Western Samoa*, in *NEW ZEALAND’S EMPIRE* 127–46 (Katie Pickles & Catharine Coleborne eds., 2016). See also *NEW ZEALAND’S RECORD IN THE PACIFIC ISLANDS IN THE TWENTIETH CENTURY* (Angus Ross ed., 1969). For a detailed look at the Mau movement, see MICHAEL FIELD, *MAU: SAMOA’S STRUGGLE FOR FREEDOM* (rev. ed. 1991). See also PATRICIA O’BRIEN, *TAUTAI: SĀMOA, WORLD HISTORY, AND THE LIFE OF TA’ISI O. F. NELSON* (2017) (biography of Olaf F. Nelson (1883–1944), leader of the Mau movement).

35. Independence was granted following the holding of a plebiscite organized by New Zealand and overseen by the United Nations. See An Act to Make Provision in Connection with the Attainment of Independence by the People of Western Samoa, Pub. Act 1961 No. 68, Nov. 24, 1961 (N.Z.); G.A. Res. 1569, 15 U.N. GAOR Supp. (No. 16) at 33, U.N. Doc. A/4684 (1961). See also MALAMA MELEISEA, *THE MAKING OF MODERN SAMOA: TRADITIONAL AUTHORITY AND COLONIAL ADMINISTRATION IN THE MODERN HISTORY OF WESTERN SAMOA* 208–35 (1987). In August 1962, New Zealand and Western Samoa agreed that New Zealand would remain responsible for Western Samoa’s defense and foreign affairs. See Treaty of Friendship Between the Government of New Zealand and the Government of Western Samoa—Signed at Apia, on 1 August 1962, 453 U.N.T.S. 3 (1963).

36. See *Western Samoa No More*, INDEP. (London), July 5, 1997, at 14. This change greatly rankled the residents of American Samoa, who believed it made them less Samoan. See *Name Change Splits Samoan Islands*, GUARDIAN (London), Oct. 13, 1997, at 14 (quoting American Samoa Representative Seti Lopa as saying, “For Western Samoa to be known as Samoa makes it look like it is the only Samoa, when both countries are Samoan by right.”). For a further discussion, see John Falaniko Pātū, *Sāmoana as Atunu’u: The Samoan Nation Beyond the Mālō and State-Centric Nationalism* 138–40 (unpublished M.A. thesis, University of Hawaii, May 2020), <https://scholarspace.manoa.hawaii.edu/server/api/core/bitstreams/65969ee8-6876-4c14-8728-28bbfbc48965/content> [https://perma.cc/E32U-GG4R].

In contrast, matters proceeded much more smoothly in Eastern Samoa.³⁷ Upon taking possession of its half of the islands,³⁸ the United States renamed them “United States Naval Station Tutuila.”³⁹ Tutuila is the largest of Eastern Samoa’s seven islands⁴⁰ and the location of Pago Pago, a natural deepwater harbor that by now had been an important refueling stop for the U.S. Navy for some two decades.⁴¹

In 1911, the name of U.S. Naval Station Tutuila was changed (at local request) to “American Samoa.”⁴² In 1951, with the outpost’s military importance having declined, responsibility for administering the territory was transferred from the U.S. Navy to the U.S. Department of the Interior.⁴³ Although it now has its own constitution (effective July 1, 1967),⁴⁴ a popularly elected governor (since 1978),⁴⁵ and a bicameral

37. For an interesting discussion of the reasons for the differences, see I.C. Campbell, *Resistance and Colonial Government: A Comparative Study of Samoa*, 40 J. PAC. HIST. 45 (2005). According to Campbell, native resistance arose in Western Samoa, but not in Eastern Samoa, because the New Zealand colonial administrators tolerated greater expression of freedom than their American counterparts. For a contrasting view, see David A. Chappell, *The Forgotten Mau: Anti-Navy Protest in American Samoa, 1920–1935*, 69 PAC. HIST. REV. 217 (2000).

38. This phrasing is meant merely as a figure of speech, for Western Samoa (1,133 square miles) is nearly 15 times the size of Eastern Samoa (76 square miles). See Arnold H. Leibowitz, *American Samoa: Decline of a Culture*, 10 CAL. W. INT’L L.J. 220, 220 n.4 (1980).

39. See *Evans*, *supra* note 30.

40. Technically, American Samoa consists of five volcanic islands (Aunu’u, Tutuila, and the Manu’a group of Ofu, Olosega, and Ta’u) and two coral atolls (Rose Island and Swains Island). See CLAYVILLE, *supra* note 9, at 6. Although Swains Island, in the Tokelau islands (some 200 miles from American Samoa), is not part of the Samoan islands, see *id.*, in 1925, for the sake of bureaucratic convenience, it was made part of them. See 48 U.S.C. § 1662 (“The sovereignty of the United States over American Samoa is extended over Swains Island, which is made a part of American Samoa and placed under the jurisdiction of the administrative and judicial authorities of the government established therein by the United States.”). Since 1856, Swains Island has been owned by the Jennings family. For a further discussion, see ST. JOHN’S SCHOOL, OCEANIA IN THE 21ST CENTURY: A STUDENT’S GUIDE TO THE PACIFIC ISLES 55–56 (4th ed. 2010).

41. See Treaty of Friendship and Commerce Between the United States and the Samoan Islands, *supra* note 27.

42. This request was made by the chiefs of the Manu’a group of islands, who felt slighted by the omission of their islands’ names, and was supported by Governor William M. Crose. See J.A.C. GRAY, AMERIKA SAMOA: A HISTORY OF AMERICAN SAMOA AND ITS UNITED STATES NAVAL ADMINISTRATION 163 (1960).

43. See Exec. Order No. 10,264, 3 C.F.R. 765 (1949–1953).

44. For a copy of American Samoa’s constitution, see Secretary of American Samoa, *Revised Constitution of American Samoa*, <https://asbar.org/revised-constitution-of-american-samoa> [<https://perma.cc/4LJG-AWNH>]. This constitution supersedes the territory’s first constitution, which was adopted in 1960. See Edward W. Johnson, *Samoa Approves New Constitution*, SUN. STAR-BULL. (Honolulu), May 8, 1960, at 15 (“After five days of debate with 68 delegates to the constitutional convention, Governor Peter T. Coleman drew unanimous approval of the new American Samoa Constitution.”).

45. See *Governor is Elected in American Samoa*, N.Y. TIMES, Nov. 24, 1977,

legislature (known as the “Fono,” and consisting of a House of Representatives and a Senate),⁴⁶ American Samoa remains an unincorporated U.S. territory.⁴⁷ As such, local decisions are subject to review and reversal by the U.S. Secretary of the Interior;⁴⁸ islanders are U.S. nationals but not U.S. citizens;⁴⁹ and the territory is represented by a single non-voting delegate in the U.S. House of Representatives.⁵⁰ In addition, American

at 38 (“Peter T. Coleman will become the first elected Governor of American Samoa next January, ending 77 years of leadership appointed by the United States Government . . . Mr. Coleman will serve a three-year term. After that, the term will be four years to coincide with the Presidential elections in the United States”).

46. Although the Fono first met in 1905, it remained an advisory body until 1960, when it gained limited law-making power. See KENNETH J. PANTON, *HISTORICAL DICTIONARY OF THE UNITED STATES* 33 (2022). It was granted full law-making power in 1971. *Id.* at 33–34.

47. See Riley J. Gutierrez, Comment, *Unincorporated: A Case for American Samoa Through the Fog of the Insular Cases*, 18 LIBERTY UNIV. L. REV. 641, 645 (2024) (“For over a century, American Samoa has been an unincorporated territory of the United States. Due to its ‘unincorporated’ status, its inhabitants lack U.S. constitutional citizenship under the Fourteenth Amendment.”). At one time, American Samoa also was an “unorganized” territory because it lacked an organic act. In 1983, however, Congress passed a law providing that American Samoa’s constitution cannot be amended without Congress’s consent. See Act of Dec. 8, 1983, Pub. L. No. 98–213, § 12, 97 Stat. 1459. This law effectively makes American Samoa’s constitution its organic act. Nevertheless, many sources still refer to American Samoa as an unorganized territory. See, e.g., CLAYVILLE, *supra* note 9, at 35.

48. In 2022, American Samoans overwhelmingly rejected three amendments to the territory’s constitution that would have stripped the Secretary of the Interior of much of his/her power. See Joyetter Feagaimaalii, *American Samoa Voters Reject Proposals to Gain Autonomy from US*, BENAR NEWS, Nov. 9, 2022, <https://www.benarnews.org/english/news/pacific/election-update-11092022225919.html> [<https://perma.cc/U3L8-QN48>] (“Logoitino Fonoti, a resident of Tualauta County, said the results showed a lack of faith in American Samoa Gov. Lemanu Mauga. ‘The result sends a strong message against removing these powers from the secretary,’ she said. ‘Maybe in the future we will have a governor we can trust and our people will be confident to remove those powers from the secretary.’”).

49. See 8 U.S.C. § 1408. This anomaly is discussed at length in Jason Buhi, *Citizenship, Assimilation, and the Insular Cases: Reversing the Tide of Cultural Protectionism at American Samoa*, 53 SETON HALL L. REV. 779 (2023); Deanna Salem, *Birtheright Citizenship and the Plight of American Samoa*, 56 UNIV. ILL. CHI. L. REV. 783 (2023); Guy C. Charlton & Tim Fadgen, *Case Note: Fitusemanu v. United States: U.S. Citizenship in American Samoa and the Insular Cases*, 39 UCLA PAC. BASIN L.J. 25 (2022); Ross Dardani, *Citizenship in Empire: The Legal History of U.S. Citizenship in American Samoa, 1899–1960*, 60 AM. J. LEGAL HIST. 311 (2020); Sean Morrison, *Foreign in a Domestic Sense: American Samoa and the Last U.S. Nationals*, 41 HASTINGS CONST. L.Q. 71 (2013). See also *American Samoa and the Citizenship Clause: A Study in Insular Cases Revisionism*, 130 HARV. L. REV. 1680 (2017) (case note on *Tuaua v. United States*, 788 F.3d 300 (D.C. Cir. 2015), *cert. denied*, 579 U.S. 902 (2016), which rejected birtheright citizenship for American Samoans).

50. This position was created by Pub. L. No. 95–556, 92 Stat. 2078 (1978). For a further discussion of American Samoa’s place in the American polity, see, e.g., JOSEPH KENNEDY, *THE TROPICAL FRONTIER: AMERICA’S SOUTH SEA COLONY* (2009); J. ROBERT SHAFFER, *AMERICAN SĀMOA: 100 YEARS UNDER THE UNITED STATES FLAG* (2000); Adam Clanton, *Born to Run: Can an American Samoan Become President?*, 29 UCLA PAC.

Samoa operates its own immigration system;⁵¹ has a minimum wage that is below that of the federal minimum wage;⁵² and severely restricts private land ownership.⁵³

American Samoa's three-tier court system—consisting of a high court, district court, and village courts—operates as follows:

The Chief Justice, and an Associate Justice, are appointed by the Secretary of the Interior. A panel of ten Samoan judges sit with and assist the Chief and Associate Justice in deciding the wide range of cases before the High Court. Court proceedings are conducted, insofar as applicable, in accordance with U.S. Federal Rules of Civil and Criminal Procedure and the Revised Code of American Samoa. Proceedings are conducted in Samoan and English, unless the presiding judge stipulates that the hearing be conducted in one language only.

High Court (Trial and Appellate Divisions)

The High Court consists of four divisions: the trial division; the probate division; the land and titles division; and the appellate division. The trial division, which consists of the Chief Justice, the Associate Justice, and associate judges, is a court of general jurisdiction, empowered to hear, among other things, felony cases and civil cases in which the amount in controversy exceeds \$5,000.

District Court

The district court hears matters such as misdemeanor criminal offenses and civil cases in which the matter in controversy does not exceed \$5,000.

Village Court

Except for retrials before the District Court, the Village Courts . . . have exclusive jurisdiction to impose penalties for violations of village regulations.⁵⁴

BASIN L.J. 135 (2012).

51. See CLAYVILLE, *supra* note 9, at 88 (“[American Samoa] is the only US territory to protect and regulate its own borders . . . [Thus, in] addition to [a valid] passport, all visitors, regardless of their nationality (including US citizens) must also have an OK to Board [certificate], obtained through the Department of Legal Affairs’ . . . website.”). For a further discussion, see U.S. GOV’T ACCOUNTABILITY OFF., *American Samoa: Performing a Risk Assessment Would Better Inform U.S. Agencies of the Risks Related to Acceptance of Certificates of Identity*, GAO–10–638, July 12, 2010, <https://www.gao.gov/assets/a305412.html> [<https://perma.cc/V3MA-GDUE>].

52. In 2015, Congress passed legislation that eventually will bring American Samoa’s minimum wage (currently a sliding scale by industry) up to the federal minimum wage. See An Act to Amend the Fair Minimum Wage Act of 2007, Pub. L. No. 114–61, 129 Stat. 545 (2015) (codified at 29 U.S.C. § 206).

53. See CLAYVILLE, *supra* note 9, at 19, 22 (“The first governor [of American Samoa], B.F. Tilley, saw what had happened in Hawai’i and the Philippines, where wealthy foreigners had grabbed land, [causing] the [local] culture [to be] all but stamped out. One of the first laws he passed stated that no outsiders could buy land [in American Samoa]. This and other laws set the stage for the traditional and culturally rich place that [American Samoa] has remained to this day.”).

54. University of Hawaii at Manoa William S. Richardson School of Law, *Laws of South Pacific Island Nations: American Samoa—Court Structure*, last updated July 13, 2023, <https://law-hawaii.libguides.com/pacificislands> [<https://perma.cc/84J5-ENRK>] (paragraphing slightly altered for improved readability; bold as in original). For a further discussion of American Samoa’s court system, see, e.g., Adam

Unlike other U.S. territories, there is no federal district court in American Samoa.⁵⁵

American Samoa has a population of 44,620, 83.2% of whom are ethnically Samoan.⁵⁶ Christianity is practiced by 98.3% of the population,⁵⁷ with most residents belonging to the Catholic, Congregationalist, Methodist, or Mormon church.⁵⁸ Both English and Samoan are

C. Clanton, *How to Transfer Venue When You Only Have One: The Problem of High Profile Criminal Jury Trials in American Samoa*, 29 U. HAW. L. REV. 325 (2007); Stanley K. Laughlin, Jr., *The Constitutional Structure of the Courts of the United States Territories: The Case of American Samoa*, 13 U. HAW. L. REV. 379 (1991); Charles Timothy Morgan, Comment, *Some Observations on the Judiciary in American Samoa*, 18 UCLA L. REV. 581 (1971). See also John Cook, *Book Review*, 12 ELON L. REV. 202, 212 (2020) (lamenting the lack of discussion about the American Samoa High Court in an otherwise laudatory book about the territory's land laws). It should be noted that at the present time, there are no functioning village courts. See E-mail from Thomas B. Jones, Esq., of Jones & Assoc. (Pago Pago, American Samoa), to the author (Oct. 10, 2023, 5:37 PM) (on file with the author).

55. See Uilisone Falemanu Tua, *A Native's Call for Justice: The Call for the Establishment of a Federal District Court in American Samoa*, 11 ASIAN-PAC. L. & POL'Y J. 246 (2010); Michael W. Weaver, *The Territory Federal Jurisdiction Forgot: The Question of Greater Federal Jurisdiction in American Samoa*, 17 PAC. RIM L. & POL'Y J. 325 (2008). Due to the lack of such a court, federal cases involving American Samoa normally are brought either in the District of Columbia or the District of Hawaii. See U.S. GOV'T ACCOUNTABILITY OFF., *American Samoa: Issues Associated with Some Federal Court Options*, GAO-08-1124T, Sept. 18, 2008, <https://www.gao.gov/assets/a121193.html> [<https://perma.cc/8T5R-Q63M>]. See also Molly R. Case, Note, *Status-Differentiated Access to Federal Habeas Relief for U.S. Citizens and Noncitizen Nationals Detained in American Samoa*, 66 ARIZ. L. REV. 233 (2024). In certain instances (such as in admiralty cases), Congress has authorized the territorial courts in American Samoa to exercise federal jurisdiction. See Paul Myburgh, *Admiralty Jurisdiction in American Samoa: Le Va'a Lagoa*, 23 J. MAR. L. & COM. 73 (1992).

56. See *American Samoa*, CIA WORLD FACTBOOK, <https://www.cia.gov/the-world-factbook/countries/american-samoa/summaries> [<https://perma.cc/U94X-KK3K>].

57. *Id.* For a further discussion on the importance of religion in present-day American Samoa, see FUIMAONO FINI AITAOTO, *PROGRESS AND DEVELOPMENTS OF THE CHURCHES IN THE SAMOAN ISLANDS: EARLY 21ST CENTURY* (2021). See also CLAYVILLE, *supra* note 9, at 27, 99 ("Due to the vast majority of the population being Christian, their values and practices seep into almost all aspects of life [and] they put a high priority on keeping the Sabbath holy.").

58. Christianity was introduced in the Samoan islands by 19th century missionaries. See Andrew Robson, *Factors in the Conversion in Samoa, Then and Now*, in RELIGIOUS DYNAMICS IN THE PACIFIC 45-56 (Gabriele Weichart & Françoise Douaire-Marsaudon eds., 2010). See also Erik Tryggestad, *Island Living: Sharing the Gospel in American Samoa*, CHRISTIAN CHRON., Sept. 6, 2016, <https://christianchronicle.org/island-living-sharing-the-gospel-in-american-samoa> [<https://perma.cc/HYM6-HTQS>]. Prior to the introduction of Christianity, Samoans were polytheistic. See CLAYVILLE, *supra* note 9, at 26-27. The first missionary in the islands (1830) was John Williams (1796-1839) of the London Missionary Society. *Id.* at 18. For a biography of Williams, see JOHN GUTCH, *BEYOND THE REEFS: THE LIFE OF JOHN WILLIAMS, MISSIONARY* (1974). As Gutch reports, Williams was killed by cannibals during a visit to New Hebrides. See *id.* at 150.

While visiting American Samoa in 1916, the British writer W. Somerset Maugham got the idea for what became his famous short story *Rain* (1921) (text available at <https://>

used in everyday conversation, and both are official languages, although English is the language of business, education, and government.⁵⁹ The capital of American Samoa is Pago Pago, which is located on the island of Tutuila, where the majority of the population lives.⁶⁰ The two most important local employers are the federal government and the tuna canning industry.⁶¹ Good-paying jobs, however, are scarce, and this fact, combined with the high cost of living, has resulted in one in six residents living in poverty.⁶² Due to the islands' high unemployment rate (9.5%), many younger American Samoans enlist in the military⁶³ or immigrate to the U.S. mainland to look for work.⁶⁴ Due to the popularity of football in the islands, American Samoa also has become a wellspring of talent for the National Football League.⁶⁵

American Samoa is the United States' southernmost territory and the only inhabited U.S. territory south of the Equator.⁶⁶ It is seven

www.lonestar.edu/departments/english/maugham_rain.pdf [<https://perma.cc/8SSU-TB6L>]). In the tale, a missionary named "Davidson" tries to save Sadie Thompson, a Honolulu prostitute, when the ship on which they are both traveling is delayed at Pago Pago. The story ends in tragedy, with Davidson, who is married, killing himself after making a pass at Thompson and Thompson, who had forsaken her previous ways under Davidson's tutelage, again becoming a prostitute and telling another passenger, "You men! You filthy, dirty pigs! You're all the same, all of you. Pigs! Pigs!" Since its publication, the story has been adapted numerous times for both the screen and stage, while Sadie Thompson, who was based on a real prostitute that Maugham met during his trip, has become a revered figure in American Samoa. For a further discussion, see DIANA LOOSER, *MOVING ISLANDS: CONTEMPORARY PERFORMANCE AND THE GLOBAL PACIFIC* 205–08 (2021). See also David Ellis, *Samoan Hotel Hooked on History*, TRAVLAR, May 5, 2008, <https://www.travlar.com/2008/05/samoan-hotel-hooked-on-history.html> [<https://perma.cc/WG6Z-9TSA>].

59. See GILAD JAMES, INTRODUCTION TO AMERICAN SAMOA 58–59 (2023).

60. *Id.* at 19.

61. *Id.* at 96–97. Agriculture, clothing manufacturing, and tourism also contribute to the territory's economy. *Id.* at 97–100.

62. *Id.* at 115–16.

63. See *Military Service 'Part of Our Makeup as a Warrior People,' RES. & NAT'L GUARD MAG.*, June 10, 2022, <https://reservenationalguard.com/reserve-guard-deployment/guardsman-from-samoa-carries-on-warrior-tradition> ("American Samoa has consistently enlisted more soldiers per capita than any other U.S. territory or state and was ranked No. 1 out of 800 [military] recruiting stations in 2021[.]") [<https://perma.cc/8XM6-HJB6>].

64. JAMES, *supra* note 59, at 133–34.

65. See Rob Ruck, *Why Samoans Are 40 Times More Likely to Play in the NFL*, GVWIRE, Aug. 15, 2019, <https://gvwire.com/2019/08/15/why-samoans-are-40-times-more-likely-to-play-in-the-nfl> ("Samoans have become the most overrepresented group, per capita, in the NFL. About 180,000 people of Samoans descent live stateside, while another 55,000 live in American Samoa, a U.S. territory. Over the past few seasons, roughly 50 players of Samoan descent have been on NFL rosters—about 3 percent of the league, and nearly 40 times their proportional share of the U.S. population. The 200-plus Samoans playing Division I collegiate football are similarly overrepresented.") [<https://perma.cc/5HN9-KQT4>]. See also Fa'anofa Lisaclaire (Lisa) Uperesa, *Fabled Futures: Migration and Mobility for Samoans in American Football*, 26 CONTEMP. PAC. 281 (2014).

66. Jarvis Island, an uninhabited coral atoll, is the United States' only other

hours behind the Eastern time zone; can be reached by air from the U.S. mainland only from Hawaii (a five-hour flight); and, since a time change in Samoa in 2011, now has the distinction (along with the island state of Niue) of being the last inhabited place on Earth to see the sun set every day.⁶⁷

American Samoa's most notable characteristic is its continuing use of chiefly titles and their importance in daily life.⁶⁸ As has been explained elsewhere, these titles are critical to understanding American Samoa's complicated relationship with both Samoa and the United States:

The basic unit of social organization in Samoa is the village (nu'u), and within the village the basic unit of organization is the 'aiga, an extended family group with a wide membership based on descent, adoption, and marriage. At the head of each 'aiga is the matai, whose title or name carries with it authority over land and resources used by the 'aiga. . . .

Control over the land and communal resources of the 'aiga remain important and any change towards private property is resisted. Authority over land is the particular symbol of authority of the matai, and weakening of any symbol of the 'aiga's status affects the entire social structure. Therefore, authority over the land is a very closely guarded right of the matai title.

possession south of the Equator. *See* MARK J. RAUZON, ISLES OF AMNESIA: THE HISTORY, GEOGRAPHY, AND RESTORATION OF AMERICA'S FORGOTTEN PACIFIC ISLANDS 38–57 (2016). As has been explained elsewhere, Jarvis Island is

named after three brothers [named] JARVIS, the owners of the British ship from which the island was discovered in 1821

[T]he uninhabited island was annexed by the US in 1858 but abandoned in 1879 after tons of guano deposits had been removed for use in producing fertilizer. The UK annexed the island in 1889 but never carried out plans for further exploitation. The US occupied and reclaimed the island in 1935. Abandoned after World War II, the island is currently a National Wildlife Refuge administered by the US Department of the Interior.

Jarvis Island, WORLD FACTBOOK, https://relief.unboundmedicine.com/relief/view/The-World-Factbook/563285/all/Jarvis_Island (last visited Oct. 1, 2023) (paragraphing slightly altered for improved readability) [<https://perma.cc/UA55-HMYF>].

67. *See* “Mar,” *Guide to American Samoa—Volcanic Islands in the South Pacific*, ONCE IN A LIFETIME JOURNEYS, <https://www.onceinalifetimejourney.com/once-in-a-lifetime-journeys/pacific/guide-to-american-samoa> (last visited Oct. 1, 2023) [<https://perma.cc/EC6G-8266>]. *See also* CLAYVILLE, *supra* note 9, at 83–84, 90; Yasu Shimizu, *In Which Country Does the Sun Rise Last in the World?*, JAPAN LUGGAGE EXPRESS (May 31, 2022), <https://www.jluggage.com/blog/country/in-which-the-sun-rises-last-in-the-world> [<https://perma.cc/7NJ2-SMVN>].

68. *See generally* A.P. Lutali & William J. Stewart, *A Chieftal System in Twentieth Century America: Legal Aspects of the Matai System in the Territory of American Samoa*, 4 GA. J. INT'L & COMP. L. 387 (1974); Ian Falefuafua Tapu, Comment, *Who Really is a Noble?: The Constitutionality of American Samoa's Matai System*, 24 UCLA ASIAN PAC. AM. L.J. 61 (2020). *See also* JAMES, *supra* note 59, at 12 (“One unique aspect of the American Samoa government is the importance of traditional leaders. Each village has a traditional leader, called a matai, who is responsible for maintaining the customs and traditions of the village. The matai have significant power in the government, as they elect the members of the Senate and serve as advisors to the Governor.”).

Before the advent of colonial rule, which placed all the villages more or less at the same level, there was a difference between local matai, as heads of families, and *supra*-local ali'i, as chiefs, and tulāfale. The ali'i, a sacred chief, was the embodiment of the founding ancestors and part of a class recognized across Polynesia. . . .

The position of the ali'i and high ranking tulāfale changed between 1890 and 1920 when the colonial governments in both Samoas began to refer to everyone as matai. . . .

Titles in American Samoa are connected to titles in independent Samoa. However, after 1900, the chiefs of Tutuila were in a new and ambiguous position within the pan-Samoan polity, as the hierarchy of titles shifted when some chiefs increased their status through interactions with the Americans. In the 1950s, as Western Samoa was moving toward independence, there were discussions about reuniting the Samoan islands as an independent state. The title holders in Tutuila, however, were not willing to do so because they held junior titles. During these discussions, Western Samoa did not negotiate or reconsider the rank of Tutuila's titles. . . .

The chiefs of American Samoa do not try to unite with independent Samoa because of the ranking of titles, and they do not move for full incorporation into the United States for fear that their communal land will become privatized and alienated. American Samoa may prefer an independent status in association with the United States, as has happened with other American Pacific territories, but money [in the form of federal assistance grants provides] strong incentive to maintain ties with the U.S. Nonetheless, there are always fears about the loss of autonomy. . . .⁶⁹

II. AMERICAN SAMOA'S GAMBLING LAWS

As has been explained elsewhere, the first gambling laws were introduced in American Samoa in 1903 by the U.S. Navy:

American Samoa was administered by the United States Navy until July 1, 1951. [During this period, the] commandant of the Navy was empowered to enact regulations for the government of the islands. [On March 21,] 1903, Commander E[dmund] B. Underwood enacted a regulation [1–1903] which comprehensively outlawed all gambling wherein the professional gambling entrepreneur and the amateur player were accorded identical treatment under the law. The maximum penalty for gambling was a \$250 fine and imprisonment at hard labor for 6 months. Persons convicted of cheating at any game were subject to a similar sanction.⁷⁰

69. Karen V. Armstrong, *The Weight of Names in American Samoa*, 48 *ETHNOLOGY* 53, 55–58 (2009) (citations omitted and paragraphing slightly altered for improved readability). See also CLAYVILLE, *supra* note 9, at 24–26; LINE-NOUE MEMEA KRUSE, *THE PACIFIC INSULAR CASE OF AMERICAN SĀMOA: LAND RIGHTS AND LAW IN UNINCORPORATED US TERRITORIES* (2018); Edward J. Michal, *American Samoa or Eastern Samoa? The Potential for American Samoa to Become Freely Associated with the United States*, 4 *CONTEMP. PAC.* 137 (1992).

70. Commission on the Review of the National Policy Toward Gambling, *Gambling in America: Appendix 1—Staff and Consultant Papers, Model Statutes*,

In 1961, American Samoa's gambling laws were amended to allow occasional bingo games and raffles to be held so long as the profits were used for charitable, educational, or religious purposes.⁷¹ When asked

Bibliography, [and] Correspondence 955 (Oct. 1976) (footnotes omitted), [https://books.google.com/books?id=ogHE8hmvHJMC&pg=PP1&lpg=PP1&dq=\[https://perma.cc/NK65-JB5Z\]](https://books.google.com/books?id=ogHE8hmvHJMC&pg=PP1&lpg=PP1&dq=[https://perma.cc/NK65-JB5Z]). In full, Regulation 1–1903 read:

1. Every person who deals, plays, or carries on, opens, or causes to be opened, or who conducts, either as owner or employee, whether for hire or not, any game of faro, monte, roulette, lansquenet, rouge et noire, rondo, fantan, poker, seven and a half, 21, hokey-pokey, lottery, raffle, or any banking or percentage game played with coin, cards, dice, tokens, or any device or instruments, for money, checks, credit, or other thing of or representing value, and every person who plays or bets at or against any of said games or pretended games of chance is guilty of an offense against this regulation, and shall, upon conviction, be liable to be fined in a sum not exceeding \$250, or, to be imprisoned for a term not exceeding six months, with or without hard labor, or to both such fine and imprisonment, in the discretion of the court.
2. Every person who knowingly permits any of the games mentioned in the preceding subsection to be played, conducted, or dealt in any house owned or rented by such person in whole or in part, is guilty of an offense against this regulation, and liable to be punished as provided in the preceding subsection of this regulation.
3. Every person, who by means of any pretended game of cards, sleight of hand, fortune telling, or any other game, trick or device whatever, whether like or unlike those specifically named, or who by betting on such game, trick or device, obtains from any other person money or property of any description, shall be guilty of an offense against this regulation, and shall be liable to be punished as provided in subsection 1 of this regulation.

CODIFICATION OF THE REGULATIONS AND ORDERS FOR THE GOVERNMENT OF AMERICAN SAMOA § 42, at 29 (1931), <https://catalog.hathitrust.org/Record/006176013> [<https://perma.cc/28NK-R2C2>].

71. See *Gambling in America*, *supra* note 70, at 956. To get around the territory's prohibition on gambling, such games are deemed not to constitute gambling. See *Online Casinos Accepting Players from American Samoa*, WORLD CASINO DIRECTORY, <https://online.worldcasinodirectory.com/american-samoa> (last visited Oct. 1, 2023) [<https://perma.cc/WVD3-GPVL>] (“[B]ingo events in American Samoa are not considered gambling, but charity events, and are therefore permitted in the territory.”). Of course, throughout the world bingo enjoys a similar reputation as being an innocent game that has nothing to do with gambling. See further KATE BEDFORD, *BINGO CAPITALISM: THE LAW AND POLITICAL ECONOMY OF EVERYDAY GAMBLING* 41 (2019) (“Bingo . . . fits awkwardly, if at all, in academics’ and lawmakers’ discussions of gambling, blurring the distinctions that have been invoked to explain why exemptions from criminal prohibitions against gambling should apply. . . . Intriguingly, bingo players frequently say that there are not really gambling. Some people who work in the commercial bingo sector say the same. . .”).

In comparison to bingo, raffles are less common in American Samoa. But see Adria Orr, *Costco, Tiny Villages, and Making it Rain: American Samoa*, Part 2, TALO TIME, Apr. 10, 2012, <https://talotime.wordpress.com/2012/04/10/costco-tiny-villages-and-making-it-rain-american-samoa-part-2> (describing a raffle held during a church's youth talent program) [<https://perma.cc/8ARX-3QU6>]. During COVID, the territorial government held raffles as a means of encouraging residents to get vaccinated. See *ASG Sets Up Big Money Raffles to Encourage People to Get Vaccinated*, SAMOA NEWS,

in 1975 about the possibility of a further expansion, American Samoa Senate President Salanoa Aumoeualogo made it clear that there would be none in order to protect “our people [from] run[ning] out of money.”⁷²

The territory’s current gambling laws, passed in 1979, are codified in Chapter 43 (“Gambling”) of Title 46 (“Criminal Justice”) of the *American Samoa Code Annotated*.⁷³ Consisting of three sections, they are as short as they are straightforward:

46.4301 Definition.

A person commits the crime of gambling if he engages in gambling in any form with cards, dice, or other implements or devices of any kind, where anything of value is wagered upon the outcome, or who keeps any establishment, place, equipment, or apparatus for gambling, or any agents or employees for that purpose, or who knowingly lets any establishment, structure, place, equipment, or apparatus be used for gambling.

46.4302 Exception for Bingo and Raffles.

Nothing contained in this chapter prohibits the occasional playing of bingo or the selling of chances for the raffling of an item of value when the profits from the bingo game or raffle are used for religious, educational or charitable purposes.

46.4303 Misdemeanor.

Gambling is a class A misdemeanor.⁷⁴

Opposition from church and community leaders has made change impossible. In 1999, for example, American Samoa Representative Sala Samiu introduced a bill that would have authorized casino gambling, but later reversed his position after being persuaded that casinos would “harm the Samoan culture.”⁷⁵ Subsequent attempts to legalize casinos

July 2, 2021, <https://samoanews.com/local-news/asg-sets-big-money-raffles-encourage-people-get-vaccinated> [https://perma.cc/4FBF-UJ4M].

72. Pat McElroy, *Gambling Panel Reveals Little, Allows Opinions*, PAC. DAILY NEWS (Agana Heights, Guam), July 26, 1975, at 5.

73. See AM. SAMOA CODE ANN. §§ 46.4301–46.4303 (codifying Pub. L. No. 16–43, § 2 (1979)). Previously, they comprised the only section of Chapter 45 (“Gambling”) of Title 15 (“Crimes and Criminal Procedure”). See AM. SAMOA CODE ANN. § 521 (1973).

74. AM. SAMOA CODE ANN. §§ 46.4301–46.4303.

75. *Lawmaker Retracts Support for Casino*, HONOLULU ADVERT., Dec. 23, 1999, at A2.

have met a similar fate.⁷⁶ Likewise, efforts to delete the word “occasional” from the bingo and raffles exception have failed to gain traction.⁷⁷

Because of the broad scope of American Samoa’s anti-gambling laws, betting on cockfights (a staple in many Polynesian societies) is illegal in American Samoa.⁷⁸ Also illegal is internet betting, although such

76. See WORLD CASINO DIRECTORY, *supra* note 71 (“[N]o land-based casinos have ever existed in the territory It is strange, because in most tourist destinations, gambling is legal, at least for the tourists, and while American Samoa is a paradise island really appealing to tourists, it has not ever granted these tourists the chance to participate in casino gambling. And even though many propositions for cruise ship casinos and land-based [casinos] have been made, to date, all have been rejected.”). See also I. Nelson Rose, *Status of Gaming Enabling Laws*, GAMBLING AND THE LAW (June 27, 2017), <https://www.gamblingandthelaw.com/article/status-of-gaming-enabling-laws> (same) [https://perma.cc/SQL4-VVBS]; *American Samoa Governor Against Any Move to Set Up Casinos in the Territory*, RNZ (Radio New Zealand) (July 2, 2007), <https://www.rnz.co.nz/international/pacific-news/170959/american-samoa-governor-against-any-move-to-set-up-casinos-in-the-territory> [https://perma.cc/389W-GXD6].

77. See, e.g., *Bill Introduced in American Samoa to Allow Bingo and Raffles to be Held at Any Time*, RNZ (Radio New Zealand) (July 24, 2006), <https://www.rnz.co.nz/international/pacific-news/163530/bill-introduced-in-american-samoa-to-allow-bingo-and-raftes-to-be-held-at-any-time> [https://perma.cc/CZH7-79CL]. As this source explains:

A bill that would allow bingo and raffle games to be conducted at any time, including daily, for religious, educational or charitable purposes has been introduced into the House of Representatives in American Samoa.

The Samoa News reports that the measure seeks to delete the word “occasional” from the anti-gambling statute which now says that all gambling activity is criminal except for the occasional playing of bingo or the selling of chances for the raffling of an item of value.

If this new bill passes, any time an organization wants to conduct a bingo or a raffle for religious, educational and charitable purposes, even daily, then it would be allowed.

Id. For a further discussion, see *infra* note 131 and accompanying text.

78. In 2018, Congress made cockfighting illegal in all U.S. territories. See Agriculture Improvement Act of 2018, Pub. L. No. 115–334, § 12616, 132 Stat. 4490, 5015–16 (codified as amended at 7 U.S.C. § 2156). In 2019, Puerto Rico’s resident commissioner introduced legislation in Congress to overturn this ban. The bill was co-sponsored by all of Congress’s territorial delegates, including Aumua Amata Coleman Radewagen (R-Am. Samoa). See Jenniffer González-Colón, *Press Release—Defending the Cockfighting Industry in the U.S. Territories* (Feb. 13, 2019), <https://gonzalez-colon.house.gov/media/press-releases/defending-cockfighting-industry-us-territories> [https://perma.cc/G2DK-JNSX].

In the meantime, challenges to the ban have been rejected by the federal courts in Guam and the NMI because of the Territorial Clause. See *Linsangan v. United States*, Civil Case No. 19–00145, 2020 WL 6130784 (D. Guam Sept. 30, 2020), *aff’d*, No. 20–17024, 2021 WL 6103047 (9th Cir. Dec. 22, 2021); *Salas v. United States*, Case No.: 1:22-cv-00008, 2022 WL 16964141 (D. N.M.I. Nov. 17, 2022), *aff’d*, 116 F.4th 830 (9th Cir. 2024). See also *Club Gallístico de P.R. Inc. v. United States*, 414 F. Supp. 3d 191 (D. Puerto Rico 2019), *aff’d sub nom. Hernandez-Gotay v. United States*, 985 F.3d 71 (1st Cir.), *cert. denied sub nom. Ortiz-Diaz v. United States*, 142 S. Ct. 336 (2021) (reaching the same result regarding cockfighting in Puerto Rico).

gambling is available at offshore betting sites.⁷⁹ And while numerous cruise ships call at American Samoa,⁸⁰ and nearly all of them have casinos, they are required to be shuttered when in American Samoa waters.⁸¹ One option for American Samoans who are determined to gamble, but wish to do so legally, is to travel to nearby Samoa,⁸² where various forms of authorized gambling exist.⁸³ Indeed, when Samoa opened its first casino in 2014, Prime Minister Tuilaepa Lupesoliai Sailele Malielegaoi encouraged American Samoans to come to Samoa and play: “[T]hose in American Samoa who travel all the way to Las Vegas can now come over and try the casinos we have. It’s closer to home and only 45 minutes from Tutuila.”⁸⁴

79. See Simon András Péter, *Simon's American Samoa Gambling and Online Gambling Guide* (last updated Mar. 5, 2021), <https://simonsblogpark.com/onlinegambling/simons-american-samoa-gambling-and-online-gambling-guide> [<https://perma.cc/M8SQ-UBT3>]. In addition to violating American Samoan law, such gambling likely violates the Unlawful Internet Gambling Enforcement Act, 31 U.S.C. §§ 5361–5367. It should be noted that as of 2022, only 43.8% of American Samoans had internet access. See Simon Kemp, *Digital 2022: American Samoa*, DATAREPORTAL (Feb. 15, 2022), <https://datareportal.com/reports/digital-2022-american-samoa> [<https://perma.cc/FG6G-XPLB>].

80. See American Samoa Visitors Bureau, *Take a Cruise to American Samoa*, <https://www.americansamoa.travel/cruise-ships> (last visited Oct. 1, 2023) (“Cruise lines that visit [American Samoa] include[:] Carnival, Princess Cruises, Costa Cruises, Oceania Cruises, Crystal Cruises, Celebrity Cruises, Holland America Line, Seabourne, Silversea, P&O Cruises, Regent Seven Seas, Norwegian Cruise Line, Phoenix Reisen, Royal Caribbean International and Japan Cruise Line. Disney will be making a maiden voyage on October 10th, 2023!”) [<https://perma.cc/2FPN-AUZW>].

81. See Jacob Smith, *What's the Deal with Cruise Ship Gambling?*, CASINO.ORG, Aug. 15, 2022, <https://www.casino.org/blog/gambling-on-cruise-ships> [<https://perma.cc/TNN3-5PM7>].

82. It takes 25 minutes to fly the 80 miles from American Samoa to Samoa. See Aaron Bailey, *The 25-Minute Flight from Apia to Pago Pago: The Brief International Flight Connects the Two Samoas and Crosses the International Date Line*, SIMPLE FLYING (Mar. 18, 2023), <https://simpleflying.com/25-minute-flight-apia-pago-pago> [<https://perma.cc/M5TS-RFJR>].

83. See *What is the Legality of Gambling in Samoa?*, LEGALITYLENS, <https://legalitylens.com/what-is-the-legality-of-gambling-in-samoa> (last visited Oct. 1, 2023) (explaining that Samoa has casinos, a national lottery, and sports betting) [<https://perma.cc/R7KX-5TU2>]. In addition, there is legal betting on horses at the Samoa Racing Club. See, e.g., Vaelei Von Dincklage, *Weather Fails to Dampen Horse Racing Fun at Tuana'imato*, SAMOA OBSERVER (Oct. 4, 2020), <https://www.samoaoobserver.ws/category/sport/71982> (“The Teuila Horse Racing event saw the best horses in the country take to the track for several races that kept the crowd entertained. . . . Bets were placed on different races and the event brought together different members of the community for a day of fun. There were fancy hats and lots of food and drinks.”) [<https://perma.cc/R4EV-E2AQ>]. Gambling in Samoa is regulated by the Gambling Control Authority Samoa (<https://gca.gov.ws>) [<https://perma.cc/95LF-WKAU>].

84. *Despite Objections, Samoa's First Casino Opens*, SAMOA NEWS (Sept. 10, 2014, 12:06 PM), <https://www.samoanews.com/despite-objections-samoa%E2%80%99s-first-casino-opens> [<https://perma.cc/G9BD-RCCP>].

In addition to American Samoa's own anti-gambling laws, Congress passed the Slot Machine Act, better known as the Johnson Act, in 1951.⁸⁵ This statute makes it "unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device. . . within the special maritime and territorial jurisdiction of the United States as defined in section 7 of title 18."⁸⁶

Under the Johnson Act, states are permitted to opt out of its strictures,⁸⁷ and Guam, Puerto Rico, and the U.S. Virgin Islands are each defined as a "state."⁸⁸ All other U.S. territories, including American Samoa, are defined as "possessions."⁸⁹ Accordingly, even if American Samoa wanted to authorize gambling, it could not do so because it lacks the right to opt out of the Johnson Act. In its Final Report in 1976, the Commission on the Review of the National Policy Toward Gambling noted this disparity in treatment and recommended (to no avail) that it be eliminated:

Congress has made Federal gambling legislation applicable to Guam, the Virgin Islands, and American Samoa in the same manner that such legislation is applicable to the several States. . . . Congress has delineated a special treatment in the . . . provisions of the Johnson Act. . . . [W]hile defining the Virgin Islands and Guam as "States" for purposes of the act, [it has] retain[ed] the specific proscription as to gambling devices as applying only to American Samoa. . . . The Commission does not feel that [this is] in keeping with the stated national policy of permitting individual States to determine their own policy as to gambling legislation. . . . As stated earlier, the Commission recommends repeal of 15 U.S.C. 1175.⁹⁰

III. AMERICAN SAMOA'S GAMBLING CASES

Accessing American Samoa's caselaw is difficult. The island's judicial decisions are not included in the *West* reporter system and are not available on either Lexis or Westlaw. At one time, there was a reporter called *American Samoa Reports (ASR)*.⁹¹ The first series of *ASR* covered

85. See 15 U.S.C. §§ 1171–1178. The Johnson Act was passed at the urging of Senator Edwin C. Johnson (D-CO). It was amended in 1962 by the Gambling Devices Transportation Act. See Rufus King, *The Rise and Decline of Coin-Machine Gambling*, 55 J. CRIM. L., CRIMINOLOGY & POLICE SCI. 199, 204–06 (1964).

86. 15 U.S.C. § 1175(a).

87. See 15 U.S.C. § 1172(a).

88. 15 U.S.C. § 1171(b).

89. See 15 U.S.C. § 1171(c).

90. COMM'N ON THE REV. OF THE NAT'L POL'Y TOWARD GAMBLING, 91ST CONG., FINAL REP. 22–23 (1976), <https://babel.hathitrust.org/cgi/pt?id=mdp.39015000582000&seq=7> [<https://perma.cc/TH9S-FF7Q>]. For a further discussion, see *infra* notes 97–102 and accompanying text. Of course, even if Congress amended the Johnson Act, gambling would remain illegal in American Samoa unless changed by the U.S. Secretary of the Interior or the territory's voters. See *supra* note 48 and accompanying text. See also I. NELSON ROSE & MARTIN D. OWENS, JR., *INTERNET GAMING LAW* 174 (1st ed. 2005).

91. As has been explained elsewhere, *ASR* was published by the Equity Publishing Corporation of Orford (often misspelled "Oxford"), New Hampshire:

decisions from 1900 to 1975 (four volumes); the second series covered decisions from 1978 to 1997 (31 volumes); and the third series covered decisions from 1998 to 2005 (10 volumes).⁹² Digital versions of the three series now appear on the websites of the American Samoa Bar Association (ASBA) (<https://asbar.org/legal-resources/cases>) and the Harvard Law School Caselaw Access Project (CAP) (<https://case.law>).⁹³ No new volumes of *ASR* have appeared since 2005.

Additionally, none of the courts in American Samoa have websites. Thus, since the cessation of *ASR*, there has been no regular reporting of the territory's judicial decisions. A handful of decisions—none involving gambling—issued between 2011 and 2014 are available on the Pacific Islands Legal Information Institute's website (<http://www.pacii.org/as/cases/ASHC>). The only other public source of information about American Samoa court decisions are local news websites, such as the ones run by the *Samoa News* (<https://www.samoanews.com>) and South Seas Broadcasting, Inc. (<https://www.talanei.com>).

In the absence of a reporting system, lawyers in American Samoa are forced to rely on one another to keep informed of new judicial opinions. According to one practicing attorney in American Samoa:

Since the last *ASR* was published there is no repository of current case law. We rely heavily on persuasive authority [from other jurisdictions], or use unpublished decisions that we either personally have or one of our local colleagues shares with us. We cannot even research current case law at the courthouse because all [it has] are the print *ASRs*. We would need to know the case number or parties to pull a file and look at the orders in a given case.⁹⁴

Given the foregoing, what follows is a recounting of the few gambling cases that appear in *ASR*, together with one unpublished decision

Equity Publishing Corporation . . . appears to have recognized a blind spot of West Publishing Company: the territories. By 1960, . . . Equity Publishing Corporation had become the publisher of the legal codes for the Territories of Alaska, the Canal Zone, Puerto Rico, and the Virgin Islands. Equity Publishing Company also would go on to publish the Navajo Tribal Code. Equity became the de facto legal publisher for many jurisdictions ignored or overlooked by [the] West Publishing Company, publishing court decisions of the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, and American Samoa. But in late 1988, Equity was acquired by Butterworth. A series of later acquisitions would leave the territories somewhat lost in the corporate shuffle.

Joseph T. Gasper II, *Visible and Invisible: The Case for a Territorial Reporter*, 91 *FORDHAM L. REV.* 1711, 1719 (2023) (footnotes omitted).

92. See *Preface*, *AMERICAN SAMOA DIGEST* (Sean Coletti et al. eds., 2008), <https://asbar.org/american-samoa-digest-d22> [<https://perma.cc/DL82-R6V4>].

93. It should be noted that the ASBA's website lacks the final two volumes (9–10) of the third series of the *ASR*. The CAP website is complete.

94. E-mail from Thomas B. Jones, Esq., of Jones & Assocs. (Pago Pago, American Samoa), to the author (Sept. 29, 2023, 4:44 PM) (on file with the author) [hereinafter Jones 9/29/23 E-mail].

from 2015.⁹⁵ The discussion is divided into three categories that correspond with the three sections of American Samoa's gambling statute. Cases that mention gambling only incidentally are discussed only in passing.⁹⁶

A. *Prohibited Activities*

In the 1990s, poker machines flourished in American Samoa.⁹⁷ In *Ae Ae v. American Samoa Government*,⁹⁸ two territorial residents filed a lawsuit to put a stop to them.⁹⁹ When they moved for summary judgment, however, the High Court denied their motion, writing as follows:

95. With the help of Lornalei C. Meredith, a territorial attorney and judge, the author was able to review dozens of unpublished American Samoa opinions issued between 2012 and 2021. See E-mail from Lornalei C. Meredith, Esq., of Meredith Sunia Law (Pago Pago, American Samoa), to the author (Oct. 3, 2023, 7:25 PM) (on file with the author). In these materials the author spotted a brief reference to a 2008 case (*Tauilili v. Fue*, HCCA 08-06) that apparently involved the leasing of a bingo hall but was unable to obtain a copy of it.

96. In *Poti v. Samoa*, 3 Am. Samoa 66, 67 (1953), for example, the court observed:

It is admitted by all parties that the land Papaatai was the communal family property of the Te'o Family when the Government was established in 1900. Taetafea claims that sometime thereafter and prior to 1906 Te'o Tauvaga conveyed the same to her husband Poti. It seems that Te'o Tauvaga was a gambler and that Poti let him have some money in order that he might gamble and also build a guest house. Taetafea claims that the conveyance, if there was one, was oral. Te'o testified that the conveyance to Poti was annulled by the Court because the family did not consent and also because the conveyance was part of a gambling transaction.

The court does not further discuss the defendants' insistence that the conveyance should be set aside because it was part of a gambling transaction and in the end upheld the transfer. See *id.* at 69–70.

97. See, e.g., *Am. Sam. Gov't v. Tualo*, 8 Am. Samoa 3d 297, 300–01 (2000) ("The [robbery] occurred at the poker machine center in the Tautua Hall during nighttime, shortly after 3:00 a.m. on April 30, 1998 Three poker machines were damaged by the shotgun blasts. Approximately \$1,500 in United States quarter coins were taken from these machines."); *Am. Sam. Gov't v. [Poe] Faumuina*, 3 Am. Samoa 3d 99, 100 (1999) ("During the morning of June 24, 1999, an ASG team, including police Lieutenant Vaito'elau Laumoli . . . and Detective Sergeant Ta'ase Sagapolutele . . . inspected various premises for the presence of illegal poker machines. At the market place in Fagatogo, the team confiscated machines believed to belong to [Poe] Faumuina."); *Am. Sam. Gov't v. [Alfred] Faumuina*, 3 Am. Samoa 3d 94, 95–96 (1999) ("During the morning of June 24, 1999, an ASG team, including police Lieutenant Vaito'elau Laumoli . . . and Detective Sergeant Ta'ase Sagapolutele . . . inspected various premises for the presence of illegal poker machines. At the market place in Fagatogo, the team confiscated machines believed to belong to [Alfred] Faumuina."); *Am. Sam. Gov't v. Sefo*, 2 Am. Samoa 3d 94, 96 (1998) ("In the afternoon of January 23, 1998, Special Agent Va'a Sunia . . . and Special Agent Moleli Tavai . . . went to the Fagatogo marketplace for the purpose of locating Sefo. They intended to question Sefo about a robbery of poker machines.");

98. *Ae Ae v. Am. Sam. Gov't*, 4 Am. Samoa 3d 184 (2000).

99. *Id.* at 185.

[T]he law regarding the legality of poker machines in the territory is anything but clear. On the contrary, a proper determination of this question turns upon facts and interpretations that are susceptible to multiple meanings. Drawing inferences most favorable to defendants with respect to the legal status of poker machines defeats plaintiffs' claim of illegality. This question of law is therefore not sufficiently settled such that the Court may grant summary judgment.¹⁰⁰

By the time the High Court reached the merits six months later, however, it realized that it had made a mistake and that the machines clearly were illegal under the Johnson Act:

[W]e [have] discovered [a] federal law that appear[s] to forbid any activity relating to poker machines in the territory. . . .

The Territory's laws regarding poker machines are a muddle. The general anti-gambling statute, A.S.C.A. § 46.4301, appears to make their presence and use illegal. On the other hand, the Fono has enacted a statutory scheme the purpose of which is to derive revenue from these very same machines. A.S.C.A. § 11.0601 et. seq. [The government] maintains that the licensing scheme implicitly legalized the machines, whereas [the plaintiffs] argue[] that the licensing scheme was merely a device by which the government taxed an illegal activity. These seemingly contradictory provisions thus present a conundrum, the resolution of which would require nuanced interpretations of statutory construction and legislative intent.

Fortunately, we need not consider the effects of these statutes whatsoever [because the] United States Congress has legislated with respect to the machines at issue in the case. 15 U.S.C.A. § 1171(a) (2). The Johnson Act, 15 U.S.C.A. § 1171 et seq., explicitly makes it unlawful to "manufacture, recondition, repair, sell, transport, possess, or use any gambling device . . . in any Possession of the United States" 15 U.S.C.A. § 1175(a). The Territory of American Samoa constitutes a possession for purposes of the Johnson Act, 15 U.S.C.A., §§ 1171(a) and (b). It thus appears abundantly clear that these machines are illegal in the territory under federal law.¹⁰¹

In reaching its conclusion, the High Court rejected the government's claim that the territory's laws trumped the Johnson Act and that the machines were not gambling devices:

Defendants' arguments do not convince us otherwise. First, whereas states and some possessions can enact laws to exempt themselves from the general rule prohibiting gambling devices, American Samoa cannot. [The] United States Code makes it "unlawful to knowingly transport any gambling device to any place in a State or a possession of the United States from any place outside of such State or possession . . ." 15 U.S.C.A. § 1172(a). The subsection goes on to specifically exempt only "States" that have legalized gambling from this prohibition. *Id.* "States," for purposes of the Johnson Act, includes the District of Columbia, Puerto Rico, the Virgin Islands, and Guam. U.S.C.A. § 1171(b). "The term 'possession of the United States'

100. *Ae Ae v. Am. Sam. Gov't*, 4 Am. Samoa 3d 65, 66–67 (2000).

101. *Ae Ae*, 4 Am. Samoa 3d at 185, 187–88.

means any possession of the United States which is not named in subsection (b) of this section.” U.S.C.A. § 1171(c). The plain language of the statutory scheme thus explicitly demonstrates that it is not the intent of Congress to allow certain possessions, including American Samoa, to enact laws legalizing gambling devices.

Second, the machines at issue are obviously “gambling devices” as defined by section § 1171. No attempt to mischaracterize their operation as one solely dependent on skill can change this fact. . . . Furthermore, [the government] admits that “the operation of poker machines is a form of gambling,” belying its argument that one’s success in their operation depends wholly upon skill. See Stipulation of Facts. . . .

In [sum], the poker machines at issue in this case are gambling devices under § 1171. The Johnson Act thus applies and preempts territorial regulation.¹⁰²

B. *Bingo and Raffles Exception*

As explained earlier, in 1961 American Samoa amended its gambling laws to permit the occasional playing of bingo and raffles to support eleemosynary institutions.¹⁰³ This exception has led to five reported cases.¹⁰⁴

In *Le Vaomatua v. American Samoa Government*,¹⁰⁵ the plaintiff, an environmental protection organization whose Samoan name translates to “The Forest,”¹⁰⁶ objected to the territorial government’s decision to lease a piece of land at Pala Lagoon¹⁰⁷ to two individuals who planned to build a community center at which bingo games would be held.¹⁰⁸ After noting

102. *Id.* at 188–89.

103. See *supra* note 71 and accompanying text.

104. In a sixth case involving an intra-family dispute over a plot of land, the court quotes, but does not comment on, an allegation made by Lila Pefu Pomare, one of the plaintiffs, that the defendant, her brother Anisi Pefu, occasionally neglected their elderly father to pursue “such activities as playing golf and bingo.” *Pomare v. Pefu*, 5 Am. Samoa 3d 242, 250 (2001).

105. *Le Vaomatua v. Am. Sam. Gov’t.*, 23 Am. Samoa 2d 11 (1992).

106. *Le Vaomatua* was founded in 1986 with help from the John D. and Catherine T. MacArthur Fund. See RON CROCOMBE, *THE PACIFIC ISLANDS AND THE USA* 107 (1995). The group no longer exists, and a different group now using the same name has no connection to it. See *Le Vaomatua*, FACEBOOK, <https://www.facebook.com/people/Le-Vaomatua/100082103465049> (last visited Oct. 1, 2023) (under “Intro”) [<https://perma.cc/EG48-KG5B>].

107. Pala Lagoon is the largest wetland in American Samoa and an important crabbing and fishing site. It was severely impacted when the territory’s international airport was expanded in the early 1960s. See U.S. DEPARTMENT OF COMMERCE—NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—OFFICE OF COASTAL ZONE MANAGEMENT, *AMERICAN SAMOA COASTAL MANAGEMENT PROGRAM AND DRAFT ENVIRONMENTAL IMPACT STATEMENT* 18, 52, 88 (1980), <https://books.google.com/books?id=SSQ3AQAAMAAJ&pg=> [<https://perma.cc/W8YE-RBLJ>].

108. *Le Vaomatua*, 23 Am. Samoa 2d at 12.

that bingo games are legal in the territory,¹⁰⁹ the High Court ruled that there was no reason to halt the operators' plans.¹¹⁰

In *United Congregational Christian Church of the South Bay in Samoa v. McMoore*,¹¹¹ the plaintiff church (UCCC) sought to build a \$3 million convention center in American Samoa, financed primarily through its bingo games.¹¹² As part of its plan, UCCC arranged for a \$120,000 credit facility with Amerika Samoa Bank (ASB).¹¹³ When UCCC subsequently ran into difficulties due to the death of its leader John Thompson, Raymond and Sese McMoore, who were related to Thompson, began running UCCC's bingo games and servicing the ASB loan.¹¹⁴ The convention center project eventually ground to a halt, leading to lawsuits in both American Samoa and California.¹¹⁵ In the American Samoa litigation, UCCC sued to keep the McMoorees from entering the convention site, and the McMoorees countersued to recover the monies they had expended on UCCC's behalf.¹¹⁶ In a detailed opinion, the High Court granted UCCC's request and denied the McMoorees' counterclaim.¹¹⁷

In its decision, the High Court made it clear that, when the McMoorees took over UCCC's bingo games and began using them to pay UCCC's bank loan, they crossed several lines:

The bingo games. . . when run as a McMoorees' venture, subsequently became profitable enough to maintain current loan payments with Amerika Samoa Bank. At the same time, we are satisfied that the bingo's association with the [UCCC] continued to provide the appearance of legitimacy to the continuing gaming operation. We have difficulty reconciling the gaming statute, A.S.C.A. § 46.4302 et seq., with the McMoorees' bingo "operator" status. Furthermore, even if [the McMoorees'] bingo [operations] could, for the sake of argument, be viewed as a legitimate exception to the gaming prohibition, [they have] failed to convince us that a legitimate "religious, educational, or charitable purpose," within contemplation of the gaming statute's proviso, includes "loan-making." Money lending is quite clearly not within the ambit of the gaming statute's proviso. See A.S.C.A. §§ 46.4301–02.¹¹⁸

The High Court further expressed its concern over the McMoorees' failure to adhere to the gambling statute's "occasional games" requirement:

109. *Id.* at 12 n.1.

110. *Id.* at 16.

111. *United Congregational Christian Church of the S. Bay in Samoa v. McMoore*, 28 Am. Samoa 2d 195 (1995).

112. *Id.* at 196.

113. *Id.* at 197.

114. *Id.* at 198.

115. *Id.*

116. *Id.* at 195.

117. *Id.* at 201.

118. *Id.* at 200.

In light of the gaming statute, A.S.C.A. §§ 46.4301–02, and its rather limited proviso, the evidence in this case points incredulously to a nascent and self-regulating gaming industry on-island involving operators principally set up for that purpose. There does not seem to be anything “occasional” about bingo games, nor does there appear to be much regard to the proscription against the keeping of gaming equipment, employees, and premises for gaming activity.¹¹⁹

The issue of whether too many bingo games were being played at certain locations was raised again two years later in *Congregational Church of Jesus in Samoa v. American Samoa Government*.¹²⁰ When the territorial government threatened to evict the Congregational Church of Jesus in Samoa (CCJS) from a building in a local park that it was using to run bingo games (and also was renting out to other churches for their bingo games), the CCJS sued to prevent the eviction.¹²¹ In a lengthy opinion, the High Court found the eviction proper because the CCJS was an at-will tenant of the government.¹²² As a result, the High Court declined to address the issue of whether too many bingo games had been played at the site:

The ASG raised the issue of improper use of the premises, specifically the regular conduct of bingo games by the CCJS and its sublessees or licensees, suggesting that this use was disallowed under the terms of the [CCJS’s] lease and possibly criminal under A.S.C.A. § 46.4301. We do not need to address this issue, however, because the CCJS’s at-will periodic tenancy was terminable for any reason, with or without cause, upon one month’s notice.¹²³

In *AV Bingo Supplies v. Pacific Rim Enterprises*,¹²⁴ the High Court entered a default judgment in favor of the plaintiff, a company that “between August 1994 and July 1995, [had] supplied and shipped [to] the defendant Pacific Rim Enterprises assorted paraphernalia for running bingo games, with [an] invoice cost totaling \$62,476.25.”¹²⁵ Due to problems with the plaintiff’s paperwork, however, the High Court refused to hold co-defendant Sila Poasa (presumably Pacific Rim Enterprise’s owner) liable and ordered the plaintiff to more fully document its request for interest.¹²⁶

119. *Id.* at 200 n.7.

120. *Congregational Church of Jesus in Samoa v. Am. Sam. Gov’t*, 31 Am. Samoa 2d 122 (1997).

121. *Id.* at 125, 128, 131.

122. *Id.* at 146–47.

123. *Id.* at 145 n.19.

124. *AV Bingo Supplies v. Pac. Rim Enters.*, 5 Am. Samoa 3d 101 (2011).

125. *Id.* at 103. The High Court does not indicate where the plaintiff was located, nor does it identify the port from which the bingo supplies were shipped. Nevertheless, the size of the invoice makes it clear that Pacific Rim Enterprises was running more than the “occasional” game of bingo.

126. *Id.*

Lastly, in *ANZ Guam, Inc. v. Pago Pago Village Council, Inc.*,¹²⁷ the Tautau bingo hall was destroyed by the September 29, 2009 tsunami that devastated both American Samoa and Samoa.¹²⁸ The hall was uninsured, leading to litigation between ANZ Guam, Inc. (ANZ), standing in the shoes of ASB, and the Pago Pago Village Council (PPVC) over a loan ASB had provided years earlier to the hall that still had a balance of \$399,350.03 plus interest.¹²⁹ In a lengthy opinion, the High Court decided to leave the litigants “where they stand without any pecuniary judgment awarded to any party”¹³⁰ because it viewed the loan as having been part of an illegal gambling transaction:

Here, though both the loan agreement and a memorandum summarizing the details of the loan identify the purpose as the renovation of Tautua Hall and installation of air conditioning (Pl. Ex. 1, 3, Art. 6), witnesses in trial identified the true purpose of the loan—illegal bingo operations at the Hall. It was common knowledge with ASB and community members generally that the bank would be paid out of proceeds of illegal gambling activity that made the contract void *ab initio*. . . . Banks, before making a loan, know how the loan is going to be repaid; otherwise it would not make the loan in the first place. Also, everyone in the community was aware of the bingo activity that took place at the Hall nearly every night except Sundays. Judicial enforcement of the loan agreement cannot sanction illegal conduct.¹³¹

C. Penalties

As previously mentioned, gambling is a class A misdemeanor in American Samoa,¹³² although it has been years since there has been an arrest in the territory for illegal gambling.¹³³ A person convicted of a

127. *ANZ Guam, Inc. v. Pago Pago Village Council, Inc.*, CA 33–11, slip op. (Am. Samoa High Ct.—Trial Div. July 13, 2015) (on file with the author).

128. *Id.* at *5. For the details of the disaster, which killed 34 people in American Samoa and 149 people in Samoa, see NOAA—National Centers for Environmental Information, *On This Day: 2009 Samoa Islands Tsunami*, Sept. 29, 2019, updated Aug. 25, 2023.

129. *ANZ Guam, Inc. v. Pago Pago Village Council, Inc.*, CA 33–11, slip op. at *1–2 (Am. Samoa High Ct.—Trial Div. July 13, 2015).

130. *Id.* at *24.

131. *Id.* at *22. As explained *supra* note 77, in 2006 a proposal to allow unlimited bingo sessions failed to win legislative approval. In the meantime, the gambling statute’s requirement that bingo games be held only occasionally at any given location continues to be routinely ignored. See further Jones 9/29/23 E-mail, *supra* note 94 (“Gambling here is illegal with the exception of Bingo and Raffles for Charity, held on occasion. The on occasion part of the law is not enforced at all. Many churches have continuing bingo operations that run every weekend.”).

132. See *supra* text accompanying note 74.

133. The last such arrest occurred in 2008. See AMERICAN SAMOA GOVERNMENT—DEPARTMENT OF COMMERCE—STATISTICS DIVISION, AMERICAN SAMOAN STATISTICAL YEARBOOK 2018 & 2019, at 69 (2020), https://www.doc.as.gov/_files/ugd/614e4b_507ae1f369e5480585e6b9cd468bc1a8.pdf [<https://perma.cc/U55G-RECC>] (showing one gambling arrest, in 2008, during the period 2008–18), and AMERICAN

class A misdemeanor is subject to a fine of up to \$1,000 or, in the court's discretion, a fine up to twice the gain derived from the illegal activity (not to exceed \$20,000).¹³⁴

At present, American Samoa does not offer any publicly funded programs to help residents who have gambling addictions.¹³⁵ As a result, the percentage of American Samoans who suffer from compulsive gambling is unknown.¹³⁶

On three separate occasions the High Court has made it clear that being a gambler, without proof of other improper character traits, will not disqualify a person from holding the high title of “matai” (chief).¹³⁷ Instead, the person's whole character must show that they are unfit for such office.¹³⁸

SAMOA GOVERNMENT—DEPARTMENT OF COMMERCE—STATISTICAL & ANALYSIS DIVISION, AMERICAN SAMOAN STATISTICAL YEARBOOK 2021, at 72 (2022), https://www.doc.as.gov/_files/ugd/1b80df_75b0758bde9d46808343cb2a46c4ef5c.pdf [<https://perma.cc/9BLW-KSZK>] (showing no gambling arrests during the period 2019–21).

134. See AM. SAMOA CODE ANN. § 46.2102.

135. See National Association of Administrators for Disordered Gambling Services, *2021 Survey of Publicly Funded Problem Gambling Services in the United States* 133 (2022), <https://int.nyt.com/data/documenttools/naadgs-analysis-of-problem-gambling-funding-july-2022/521f7652c06a6d4d/full.pdf>. [<https://perma.cc/8UB3-C2SZ>].

136. In 2021, a Taputimu man was arrested after he attacked his wife, claiming that she had spent the couple's food money on gambling. See *Man Allegedly Assaults Wife, Claims She Spent Food Money on Gambling*, SAMOA NEWS (May 26, 2021), <https://www.samoanews.com/local-news/man-allegedly-assaults-wife-claims-she-spent-food-money-gambling> [<https://perma.cc/MM4F-FBK7>].

In 2014, an American Samoan travel agent living in Utah named Calliope “Ope” Rocky Saaga was arrested for embezzling more than \$300,000 in customer funds and using the money to support his gambling habit. See *Fraud Case Involving Samoan Travel Agent Includes Many Pleas for Leniency*, SAMOA NEWS (Feb. 28, 2015), <https://samoanews.com/fraud-case-involving-samoan-travel-agent-includes-many-pleas-leniency> [<https://perma.cc/3UZV-T6G2>]. For his crimes, Saaga was sentenced to 63 months in federal prison. See *United States v. Saaga*, Criminal No. 2:14-cr-20017-PKH-MEF-1 [and] Civil No. 2:19-cv-02068-PKH-MEF, 2020 WL 1034626 (W.D. Ark. Feb. 14, 2020), *report and recommendation adopted*, No. 2:14-CR-20017, 2020 WL 1031031 (W.D. Ark. Mar. 3, 2020) (denying Saaga's *pro se* motion to vacate his conviction due to ineffective assistance of counsel).

137. See *Tuaolo v. Fa'ate'a*, 28 Am. Samoa 2d 137, 142 (1995) (“Punefu discredits Vaivao's character because he gambles. He also argues, incidentally, that this is a weakness of character effectively destroying Vaivao's potential value as the titleholder. Gambling may detract from a person's character and is illegal for private gain in American Samoa. The evidence does not, however, show that Vaivao gambles habitually or in any other way so as to seriously diminish his character or leadership qualities.”); *Aioletuna v. Tufele*, 3 Am. Samoa 208, 210 (1956) (permitting Malaetia Tufele to be a candidate for the matai name “Velega of Ofu” despite having been “convicted of gambling and fined” in 1954); *Mauga Family v. Mauga*, 2 Am. Samoa 213, 215 (1945) (“Gambling is a misdemeanor and even if proved would not be such a crime as would warrant the Court to remove one from holding a matai title.”).

138. See *Tuinei v. Ieliko*, 2 Am. Samoa 117, 120–21 (1940) (“The evidence indicates that Tuinei is quarrelsome, gambles and his conduct is indicative of general unfitness to have the matai name Ilaoa. A man whose character is such that he will

IV. CONCLUSION

As others have pointed out, American Samoa is simultaneously part of, and separate from, the United States.¹³⁹ This is especially true when it comes to gambling, a subject the territory has regulated for decades but over which it has had no actual legal authority since becoming a U.S. possession 125 years ago.

Despite the foregoing, American Samoa represents a unique opportunity for scholars and policymakers to study, in real-time, many of the paradoxes that tend to characterize gambling. Although the island is firmly against gambling, for example, the government allows large-scale charitable gambling. Likewise, the island's churches, although unwavering in their opposition to gambling, now depend on the money they make from bingo games to survive.

Other paradoxes are equally easy to spot. Although most of the island's residents are both poor and deeply religious, many of them spend countless dollars playing bingo and travel regularly to other jurisdictions (such as Las Vegas and neighboring Samoa) to participate in gambling. Similarly, while the island is committed to building up its tourism industry to promote economic growth, it consistently has rejected proposals to allow casinos, even though such facilities would provide much needed investment and jobs and easily could be limited to foreign travelers. Lastly, while there is substantial evidence that compulsive gambling exists on the island, there are no public programs to help those who have developed a gambling problem.

In the future, American Samoa will become even more fertile ground for study as the internet, and therefore internet gambling, become commonplace on the island. Thus, for gambling scholars and policymakers alike, American Samoa is an important, but currently under-appreciated, laboratory.

commit adultery, quarrel and gamble cannot command the respect of his family and the community at large which respect the holder of a high name should have.”).

139. *See supra* the sources cited in notes 1 and 49–50.



A woman playing bingo on a beach in American Samoa (2012) (photograph courtesy of Mitch Robitaille).