

A review of Tuvalu is not included in this issue.

#### AMERICAN SĀMOA AND SĀMOA

During the year in review, both American Sāmoa and the Independent State of Sāmoa (hereafter called Sāmoa) faced interesting political discussions surrounding their respective constitutions, new pending laws, and preparations for political elections, among other pressing political topics. To begin, both American Sāmoa and Sāmoa received considerable attention in 2019–2020 because of the measles outbreak that infected over five thousand people. The two Samoan governments announced restrictions on interisland travel between the islands until the end of the public health emergency. American Sāmoa's high immunization coverage saved hundreds of lives, as there were no measles-related deaths. Unfortunately, Sāmoa's low vaccination coverage resulted in the deaths of eighty-three people, most of them children. There is speculation that the actual number could be even higher, as there may have been additional undocumented deaths in rural areas.

In a major effort to quell the spread of measles, Sāmoa, together with volunteers from around the world, carried out an unprecedented mass vaccination campaign. Sāmoa's two-day government shutdown at the start of December included the closure of all shops, schools, businesses, and community functions to allow emer-

gency medical team vans and medical staff to reach as many people as possible throughout the islands of 'Upolu, Savai'i, Manono, and Apolima. Social media and television and radio programs joined in the efforts and relayed government announcements during the door-to-door vaccination campaign. The American Sāmoa government sent supplies of oxygen tanks for the intensive care units in Sāmoa, showing solidarity in a time of emergency with their kin to the west. Lieutenant Governor Josh Green of Hawai'i, a medical doctor by profession, led a team of more than seventy medical nurses and doctors on a chartered Hawaiian Airlines flight to Sāmoa as part of the World Health Organization's call for emergency medical teams. The successful two-day campaign resulted in hundreds of people being vaccinated, both adults and children.

Anti-vaccination activists immediately took to social media, condemning the efforts of the government and volunteers and calling for more natural solutions as a remedy for the measles. The most popular Samoan anti-vaxxer, Edward Tamasese, was charged with violating section 41 of the 2013 Crimes Act, which forbids inciting "hostility against the Government of Samoa in circumstances where a risk of 'lawlessness, violence, or disorder' is present" (SO, 8 Dec 2019). At the end of December 2019, Sāmoa proposed and passed the Infants Amendment Bill 2019, which enforced

compulsory immunization as a school-entry requirement. At the beginning of the new year, Samoan Opposition Minister of Parliament (MP) Olo Fiti Va'ai supported the urgent call by the public for a Commission of Inquiry into the measles outbreak. Va'ai publicly apologized to the people of Sāmoa during a parliamentary session, stating, "We [the Samoan Government] failed you, Samoa" (SO, 7 Dec 2020). Ironically, Sāmoa had just commemorated the one hundredth anniversary of the 1918 influenza pandemic that killed more than 20 percent of the Samoan population.

Not long after the measles epidemic subsided, at the start of 2020, the novel Coronavirus Disease 2019, also known as COVID-19, became a worldwide pandemic that led to millions of cases. This pandemic continues to ravage countries around the world, causing millions of deaths. Fortunately, American Sāmoa and Sāmoa remain COVID-19-free, with no identified cases. Implementing a strict quarantine and closing international borders, including between the two Sāmoas, have both proved successful. Sāmoa has only allowed limited, sanctioned flights from Aotearoa/New Zealand into the islands, and only for those who have undergone strict quarantine and received a COVID-19 medical clearance. All arrivals have been required to quarantine in Sāmoa for fourteen days before being released to family or friends. American Sāmoa discussed opening its borders to incoming flights from Hawai'i but then reconsidered due to the state's spike in COVID-19 cases. Hundreds of residents of both American Sāmoa and

Sāmoa remain stranded away from their home islands.

Shifting to other political matters, toward the end of 2019, American Sāmoa made international news with a US District Court ruling in favor of three American Samoan nationals who had filed a citizenship lawsuit against the United States. US District Judge Clark Waddoups sided with the plaintiffs, John Fitiseanu, Pale Tuli, and Rosavita Tuli, all of whom reside in the state of Utah. Although the government of American Sāmoa is appealing the decision, the ruling in *Fitiseanu v United States* (426 F Supp 3d 1155 (D Utah 2019)) granted that "Persons born in American Samoa are citizens of the United States by virtue of the Citizenship Clause of the Fourteenth Amendment." Waddoups denied the motion to dismiss by both the US and American Sāmoa governments. The sixty-nine-page ruling by Waddoups brings to the forefront the political relationship between the United States and American Sāmoa. Essentially, the verdict asserts American Sāmoa's "permanent" and "political" allegiance to the United States since it is a territory. Waddoups emphasized that the Fourteenth Amendment of the US Constitution states explicitly, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside." As a result of the ruling, "in the United States" would include the US territory of American Sāmoa.

The plaintiffs argued that although American Samoans serve in the US military at remarkably high rates, service members and veterans are not

allowed to vote for their commander in chief or achieve high-ranking positions at either the state or federal level (SN, 4 June 2020). Citizens of American Sāmoa have maintained their political status as “US non-citizen nationals.” They can hold a US passport and travel freely to the United States, but the following is clearly stated on their travel document: “The Bearer is a United States National and Not a United States Citizen.” John Fitiseanu, Pale Tuli, and Rosavita Tuli felt that their American rights should be afforded to them since they are “in the United States.”

Historically, at the Tripartite Convention of 1899, the three colonial powers (Germany, the United States, and Great Britain) divided the islands of Sāmoa between Germany and the United States, with Great Britain relinquishing its former claims to the islands. Germany controlled the Western islands of ‘Upolu, Savai‘i, Manono, and Apolima. The United States, which had had a military presence in Tutuila as early as 1878, accepted Tutuila, Aunu‘u, and later the Manu‘a Islands as a territory. The United States highly desired Pago Pago for its deep harbor, which was an ideal site for a coaling station, so acquiring Tutuila was a strategic military move (Faleomavaega 1994, 113). In 1900, American Sāmoa’s traditional leaders ceded the islands of Tutuila and Aunu‘u to the United States without war or conquest. The traditional leaders of Manu‘a to the east ceded their islands in 1904, relinquishing all rights and authority of the Tui Manu‘a (King of the Manu‘a Islands) in return for a more modern educational system for his people.

Unlike in American Sāmoa, in other US territories in the Pacific—Guam and the Commonwealth of the Northern Marianas—residents have been granted birthright US citizenship. Currently, American Samoans are generally content with their political status as US nationals because it “guarantees” the practice of fa‘a Sāmoa (Samoan way of life) and maintains their chiefly system of pule (authority). Although the US president is considered the “paramount chief,” the matai (chief) system can thrive within a democratic context. The US Department of Interior took over the administration of the islands from the military in 1951. In 1977, American Sāmoa elected its first civilian governor, Peter Tali Coleman, and in 1970, it elected its first “delegate-at-large” representative to the US Congress, A U Fuimaono.

When the administration of American Sāmoa transitioned from the Department of the Navy to the Department of Interior in 1951, the Fono (representatives of American Sāmoa) rejected an organic act that would potentially “bring all the provisions of the Constitution of the United States into American Samoa” (Shaffer 2000, 186). However, the Fono requested a more legislative role in the government, beyond an “advisory” role. Soon after, American Samoans achieved their goals, developing a constitution and introducing a revised Fono system comprised of two houses, the Senate and the House of Representatives, which mirrored the US political system. According to the late Congressman Eni Faleomavaega, American Samoans are neither citizens nor aliens of the

United States (Faleomavaega 1994, 115).

At the 2018 United Nations Decolonization Committee meeting in St George, Grenada, Talauega Ale, then the attorney general of American Sāmoa, presented a written statement prepared by the government and Governor Lolo Matalasi Moliga on the political status of American Sāmoa. Ale stated, “[Citizens of American Sāmoa] do not consider ourselves a colonized people. We do not live under a regime for which colonization must be eradicated. Our relationship with the United States is one built on trust and respect for our native people and our Samoan culture” (SN, 9 May 2018). Ale also emphasized that, given American Sāmoa’s current political status, the government is free to run its affairs and, at the same time, protect native rights and Samoan culture.

With a population of over fifty-five thousand people, American Samoans are generally proud to live in a US territory. They do not believe they are “second-class” citizens, as claimed by the plaintiffs in the aforementioned case. Nor do they accept the argument that their democratic rights have been withheld. American Sāmoa’s congressional delegate, Congresswoman Amata Coleman Radewagen (Aumua Amata), immediately issued a press release expressing “disappointment” over the decision by the Utah federal court. She reflected on the “vibrant democratic process” of American Sāmoa and emphasized that the people of the island territory need to decide their political status, not the US Court of Appeals. Amata has pushed for legislation in Washington DC for a more straightforward process to

become a US citizen, and she plans to request the removal of the citizenship test, the introduction of a hardship waiver for the application fee, and the option for nationals to become citizens without having to leave American Sāmoa (SO, 12 Feb 2020).

Strong criticism came from senators of American Sāmoa immediately following Waddoups’s landslide ruling in 2019. Senator Fai’ivae Iuli Godinet said that US citizenship is a personal choice of an American Samoan citizen. Senators Tuiagamoia Tavai and Satele Galu Satele Sr called the plaintiffs “kamaiki,” implying that they are “children” making decisions for American Sāmoa (SN, 21 Jan 2020). Governor Moliga immediately proposed actions to address the relationship between American Sāmoa and the United States. He fears that if that is not discussed soon, “the decision will be made for us by others lacking understanding of our historical socioeconomic landscape, [and] the passion and love for our homeland” (SN, 26 Jan 2020). Notably, the last Constitutional Convention held in American Sāmoa was in 2010.

The American Sāmoa government is appealing the case, and its commitment to the preservation of fa’a Samoa has become a significant part of this push. The plaintiffs have argued against the concern of a threat to fa’a Sāmoa, social structures, traditional practices, land alienation, and religious customs, which they state are “constitutionally protected principles of American Samoa society” (*United States v Fitisemanu*). However, there is no direct evidence that guarantees there will be a continued practice of fa’a Sāmoa should people take on a

new political status as US citizens. Hence it is a chance the people of American Sāmoa are not willing to take. The government of American Sāmoa maintained its position in a similar case in 2012, stating that the “choice of becoming a US citizen belongs to the people of American Samoa, and not by judicial legislation” (SN, 13 July 2012).

In *Change and Adaptations in Western Samoa*, Samoan historian Leāsiolagi Mālama Meleiseā shed light on the emergence of a “new traditional order” within the western islands of Sāmoa during the arrival of Europeans to its shores (1992). Although the book represents the western islands, the concepts apply to both Pacific Island nations. Meleiseā addressed a modern Sāmoa and the new traditional orders that can change the institutions of fa’a Sāmoa, or the Samoan lifestyles that governed these islands for thousands of years. US citizenship in American Sāmoa could introduce a “new traditional order” that would challenge the foundational institutions of the matai system and land tenure (Samoans currently own over 90 percent of land in American Sāmoa). More likely, this case would alter the function of the ‘aiga (extended family), which, together with the matai, is the center of village life and of Samoan society.

In other political news, American Samoans will go to the polls in November 2020 to vote for the next governor in the gubernatorial elections. Since 2012, Moliga and Lemanu Palepoi S Mauga have served two terms as American Sāmoa’s governor and lieutenant governor, respectively. Lemanu Mauga will seek reelection

to the highest political position in the island nation, with the former Attorney General Talauega Eleasalo Ale as his running mate. Other candidates include I’aulualo Talia and Tapaau Aga, Gaoteote Tofau and Fai’ivae Godinet, and Fatumalala Al-Shehri and Leah Smith, the only two female gubernatorial candidates on the ballot.

Amata will run for the American Sāmoa seat in the United States Congress. Amata is a Republican candidate who has served as the third member of Congress from American Sāmoa since her election in 2014. As the daughter of Peter Tali Coleman, American Sāmoa’s first person of Samoan descent to be elected governor of the territory, she is no stranger to the politics of American Sāmoa. Dr Oreta Mapu-Crichton and Meleagi Suitoanu-Chapman plan to challenge Amata’s seat. Although American Sāmoa has a “nonvoting delegate” and cannot vote in the national elections for president, the representative chosen to Congress can “introduce bills, debate on the House Floor, and vote in the committees he [or she] is assigned” (Faleomavaega 1994, 119). In November, fifty-one candidates plan to run for a seat in the American Sāmoa House of Representatives. Traditional districts in American Sāmoa appoint their senators based on chiefly status rank.

In the race for US president, candidates have vied for American Sāmoa’s vote for the presidential nominee. Although not eligible to vote in the general election, American Samoans can vote for a presidential nominee in the primaries and national convention. Surprisingly, billionaire and former New York City Mayor Michael

Bloomberg won the American Samoan caucus over American Sāmoa-born Hawai'i Congresswoman Tulsi Gabbard (RNZ, 4 March 2020).

In political news for the Independent State of Sāmoa, we begin with Prime Minister Tuilaepa Sailele Malielegaoi's push to host the sixteenth Pacific Games in July 2019, following Tonga's withdrawal due to a lack of financial resources. Hundreds of athletes and sports officials from twenty-four nations, including Australia and New Zealand, took part in the two-week sporting event. With less than eighteen months to prepare, Sāmoa successfully hosted the biggest Pacific Games in the event's history. Athletes and fans showcased Pacific regionalism and national identity with great pride throughout the individual sporting events. The government of Sāmoa had called for religious organizations, village councils, and government workers to show support in any capacity during the two weeks of games.

At around the same time, the most talked-about news in Sāmoa dealt with church ministers' taxes. Twenty ordained ministers of the Congregational Christian Church of Sāmoa (CCCS) appeared before the court for failure to pay taxes and file tax returns. The judge immediately dismissed the case due to the lack of evidence to prosecute the pastors. The government of Sāmoa had made an effort to reinforce a 2017 Income Tax Amendment that would tax the income of all ministers of religion. Tuilaepa and Parliament agreed that the tax would generate revenue and pay for "infrastructure and other developments" (RNZ, 2 July 2019).

As Sāmoa's largest church, the CCCS believes that the government should not tax the "voluntary donations" pastors receive from the people of their parishes. The CCCS General Assembly reconvened at Malua in 2017 and voted unanimously not to pay taxes. The confirmation became official during the 2018 assembly meeting. In three years, members of the CCCS can reconsider amendments to the General Assembly's decisions. In the meantime, CCCS members are encouraged not to pay their taxes. In August 2019, another nineteen CCCS pastors were called to court and later dismissed. All other religious denominations have agreed to pay taxes. The dispute between the government and the CCCS is far from over. The COVID-19 pandemic has delayed the court proceedings. Still, the government will continue to pursue prosecution for refusal to pay taxes. A few CCCS pastors have decided to break ranks and pay their taxes to avoid any violations.

Samoans who provide offerings to a faifeau (pastor) believe that the government has already taxed their earnings. Therefore, the donations given to the pastor are purely from their alofa (love) and should not be taxed twice. The faifeau is viewed as a spiritual leader and highly respected within Samoan society. Samoans, in both the islands and diaspora, have mixed views on the topic, which has become very political this past year.

In September 2020, both Sāmoa and American Sāmoa remembered the tenth anniversary of the tsunami that killed nearly two hundred people in 2010. Sāmoa lost 189 lives and American Sāmoa 31. Samoans both in the islands and abroad remembered these

events with public memorial services in the villages and government.

The most controversial issue discussed in Sāmoa during the year in review dealt with the introduction of three new bills in Parliament by Tuilaepa. The Constitution Amendment Bill, the Land and Titles Bill, and the Judicature Bill were tabled in Parliament and then passed their first and second readings in February 2020. The three bills received mixed reviews from law professionals both in Sāmoa and abroad, as well as from local Samoans, especially those in traditional villages. The Constitution Amendment Bill seeks to amend the constitution to “reflect more of the Samoan context inside Samoa’s supreme law” by promoting the use of *tu ma aganu’u* (Samoan custom and usage) rather than “modern laws” in court decisions. Critics feared that, should the bill pass, the constitution would favor customary practices of chiefly authority over the protection of modern principles such as human rights. In drafting the bill, Tuilaepa sought to remove palagi (foreign) ideologies from consideration when ruling on matters related to Samoan customs. The bill would essentially make the Land and Titles Court completely independent from the Supreme Court. Without an apex court, separate findings from the Criminal and Civil Courts and the Courts of Samoan Custom and Tradition could result in two different interpretations of the same law. Parliament first discussed this issue of “legal pluralism” in a symposium in 2016, and they later pushed their bill forward in 2020.

The Lands and Titles Bill supports

the Constitution Amendment Bill by setting up a more “autonomous” framework to deal with cases concerning Samoan lands and chiefly titles, once again seeking to remove so-called palagi thinking from claims related to Samoan culture, heritage, titles, and lands. It would be a “parallel and independent judicial structure” on lands and titles. As controversial as this sounds, the former attorney general of Sāmoa, Lemalu Retzlaff, stated that the changes would deal with the issue of access to legal justice in the case of an appeal (SGN, 24 April 2020). The bill would impose a minimum age of twenty-one for matai and limit the number of matai sa’o (matai with sole authority over other matais within their respective families) to five at any given time. The bill would replace the Land and Titles Act 1981 and provide a new framework for the Land and Titles Court to support the practice of Sāmoa’s *tu ma aganu’u* to address village issues. The Judicature Bill 2020 adds provisions to the Judicature Act of 1961 based on administrative, procedural, and civil appeal requirements.

All three bills have received strong criticism from members of the Samoan judiciary. In a letter signed by nine judges, including the acting chief justice, members of the judiciary expressed their “grave concerns” regarding the bills to the executive director of the Samoan Law Reform Commission. The judges said they feared having to split Sāmoa’s judicial system into two, emphasizing that the Land and Titles Courts have always been independent, and they challenged the notion of “palagi” thinking in the constitution. They reiterated



that during the debates of the Constitutional Convention in 1960, the “leaders of the country, customary and otherwise, extensively discussed, debated and concluded each of the individual provisions of the Constitution, methodically and with advice from constitutional law experts” (50, 12 April 2020). There is a push to safeguard the constitution and elevate the objectives of the executive, legislative, and judicial branches. Law experts from New Zealand, Australia, and Sāmoa have all contributed their law expertise on the topic. Not long after the judges’ letter was released, the government appointed a Special Parliamentary Committee, chaired by MP Gatoloaifa’ana Amataga Gidlow, to meet with village councils over a period of ninety days to clarify the bills.

The debate surrounding the Land and Titles Court bills has divided the country. At the end of the review period, the bills were at the second reading stage in Parliament. Before the third reading stage, Gatoloaifa’ana and the parliamentary committee will need to consult all constituencies and villages in Sāmoa. Given the depth of the topic, more time is needed to consider the role and appropriateness of the Special Parliamentary Committee itself, let alone to carry out the consultations. One of the major criticisms from the public has been that the government should have a neutral body clarify the three bills for the village councils, not representatives of Parliament. The legal community and different law agencies worldwide have cautioned the Samoan government against undermining the democratic system currently in place. The

New Zealand Law Society has offered its full assistance to the Sāmoa Law Society as it prepares a submission to oppose the three controversial bills (RNZ, 6 May 2020), and the Australia Law Council, the International Bar Association’s Human Rights Institute, the UN High Commissioner for Human Rights, and academics around the world have all expressed concern over the bills. However, the prime minister has scoffed at criticisms, and he has suggested that the Sāmoa Law Society does not understand the overall objective of the government, which is to preserve Samoan culture and traditions over “palagi” modern laws. Indeed, during an interview, Tuilaepa criticized the institutions challenging the bills as being “too palagi” in their thinking. He went on to state that these critics most likely hold matai titles but do not sit on a village council, leaving them unable to truly grasp the essence of Samoan governance (50, 28 April 2020).

The discussion on the role of fa’a Sāmoa within Western political institutions is interesting. Sāmoa is based on the concept of *tu ma aganu’u* within the context of families, villages, and government. According to law experts, the three bills had not gone through the proper vetting process before being tabled in Parliament, the first stage of which is adequate consultation with relevant stakeholders. Former Chief Justice Patu Sapolu thinks the changes to the court system would necessitate a reexamination of how the constitution favors individual rights as opposed to communal rights. Meleiseā has questioned whether the proposed constitutional amendments would preserve or protect fa’a Sāmoa, pointing out



that Samoan society has introduced significant changes, such as Christianity. There is a large population who live outside of traditional villages, and the centralized government system has eroded the authority of matai in the village institutions (SO, 5 May 2020). There is no direct proof that the three introduced bills will preserve fa'a Sāmoa and tu ma aganu'u.

Sāmoa will go to the election polls in 2021, and candidates for Parliament have started to register for their respective races to secure a seat in government. The seventy-four-year-old Tuilaepa announced plans to run in the 2021 general election, which would be his sixth election. With 50 members currently in Parliament, the Human Rights Protection Party holds the majority of seats with 46 members. The Human Rights Protection Party has been the ruling party in Sāmoa for over thirty years, and party leader Tuilaepa has served as prime minister for more than twenty years. The remaining 4 members of Parliament are from independent parties. In May 2020, an outspoken critic of Tuilaepa, Honorable La'aulialemaletoa Polataivao Leuatea Schmidt of Gagaifomauga No 3 of Savai'i, had resigned from the Human Rights Protection Party and his post in Parliament. According to reports, Parliament's Privileges and Ethics Committee deliberated and found La'auli guilty of using WST\$100,000 (US\$38,030) in government funds to purchase a 200kVA generator for personal use (SO, 28 Jan 2020). After pleading his innocence, La'auli announced his resignation. Shortly after, the Speaker of the House declared La'auli's seat vacant and announced that a by-election

would determine a new representative from Gagaifomauga No 3 (SO, 8 July 2020).

La'auli returned a few months later with a newly formed political party called Fa'atuatua i le Atua ua Tasi, or FAST. The veteran parliamentarian won the by-election on 28 August 2020, defeating an independent candidate from his constituency (SO, 28 Aug 2020). Approximately fifty candidates plan to run under the FAST Party and challenge the stronghold of the Human Rights Protection Party. In addition to these two political parties, the 2021 elections will include candidates from Tautua Sāmoa Party, Tumua ma Puleono, Sāmoa First Party, Sovereign Independent Sāmoa Party, and the Sāmoa National Democratic Party. Sāmoa achieved universal suffrage in 1990. Before that, only matai or heads of family voted in the general elections. As part of Sāmoa's commitment to electing more female candidates, 10 percent of the parliamentary seats are reserved exclusively for women as per the Constitution Amendment Act of 2013.

Despite the COVID-19 pandemic and state of emergency, as well as the political issues just described, in July 2020, the Independent State of Sāmoa celebrated fifty-eight years of independence in a small celebration viewed on television and heard on radio stations. In 1962, the former Western Sāmoa became the first Pacific Island nation to achieve a new political status by gaining independence from New Zealand.

BRIAN T ALOFAITULI

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## COOK ISLANDS

This review covers the two-year period from July 2018 to June 2020 and tracks a range of ongoing and emerging concerns. Election politics, climate change, homosexuality law reform, and ocean management all drew attention during this period. The impacts of Coronavirus Disease 2019 (COVID-19) also made their mark on the Cook Islands this time around.

When the period began, the results of six petitions lodged after the June 2018 election had not yet been decided. However, the outcome of the petitions had little effect on the overall

result, with the Cook Islands Party forming and maintaining a coalition government. They were able to win over the support of the One Cook Islands Party and two independent election winners. George Maggie, Rose Toki-Brown, and Robert Tapaitau were offered cabinet positions, which effectively gave the incumbent government the majority to govern by adding 3 more seats to its previous 10. With its 11 seats, the Democratic Party failed to strike the necessary deals to secure a governing majority (CIN, 7 July 2018).

One petition that was not quickly or easily resolved concerned the seat of Atiu. The late Nandi Glassie, deposed politician and former minister of health, began the review period by contesting his election defeat by first-time candidate Te-Hani Brown. By November 2019, the Tengtangi-Areora-Ngatiarua seat would be contested three times, following two elections and three legal battles. However, an unfortunate turn of events saw the seasoned statesman withdraw, too ill to contest the seat for a third time (CIN, 8 Oct 2019). Instead, the Democratic Party fielded June Baudinet, fifty years the senior to her younger opponent. Nearly eighteen months since the June 2018 general election and many months without representation, it was the independent candidate Te-Hani Brown who won three-quarters of the votes. She was finally elected to represent voter interests as a member of the Cook Islands Party coalition (CIN, 15 Nov 2019).

Despite adversity, Glassie kept busy and established a new political party: Cook Islands United Party. In his speech launching the party, he