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## EDITOR'S FORUM

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### SOME PERSPECTIVES ON AMERICAN SAMOA'S POLITICAL RELATIONSHIP WITH THE UNITED STATES

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I am reminded of a Chinese proverb that states, "If we don't change our direction, we are likely to end up where we are going." Anyone advocating change in a cultural setting like Samoa had better be certain that his or her reasoning is sound and that there is an overwhelming amount of facts to justify such claims, or otherwise be subject to public ridicule and criticism.

The purpose of this statement is only to point out certain facts and events that have transpired in Samoa's eighty-eight years of political association with the United States. Specifically, the statement addresses American Samoa's political development in two areas: its experience in drafting a territorial constitution and the implications of the 1900 and 1904 treaties of cession.

#### **American Samoa's Constitution**

There is a Samoan proverbial expression that states, "*Seu le manu ae taga'i i le galu,*" which means to catch the bird but watch out for the wave. The statement describes quite accurately the conservative nature of the Samoan people, and the phrase is always quoted by orators urging caution whenever an important matter comes up for deliberation by the traditional leaders of the territory.

Four years ago [1984], a constitutional convention was held in Ameri-

can Samoa, whereby some eighty-two traditional leaders were selected by their respective district councils to review the territory's present constitution, last endorsed by the Samoan electorate and duly approved in 1967 by the U.S. Secretary of the Interior. Since then, several proposed constitutions have been presented to the Samoan voters and to the Secretary of the Interior for approval, and for one reason or another, all have been disapproved either because they did not meet federal departmental standards or because the voters were dissatisfied with certain provisions' that were included in the proposed documents. And as I predicted correctly, the results of the 1984 constitutional convention did not fare any better at a referendum held in November 1986: by 4, 722 to 3,070 voters disapproved the proposed constitution.

For the past thirty years, the Samoan people have gained valuable experience in drafting constitutions that have been subject to the approval only of the Secretary of the Interior. But in 1984, a bill was passed in the U.S. Congress and signed by the President that now requires congressional approval of any amendment to the territory's constitution. The reason for the new law was to prevent the Secretary of the Interior from participating in partisan politics. But several questions and problems are now raised in view of this law. First, why is Samoa now requiring congressional approval of any amendment to its territorial constitution, when Congress never expressly approved the constitution to begin with? Secondly, there are certain provisions of the present constitution that would definitely raise serious constitutional issues that Congress has not yet addressed, and it is questionable if Congress would approve such provisions in light of the U.S. Constitution. In effect, Congress by law delegated full administrative, judicial, and military authority and control of the territory to the President, and at the same time now requires American Samoa's constitution to be subjected to congressional sanctionings without first reexamining the powers and authority already vested in the President since the 1929 congressional ratification of the two treaties.

Under the American system of government, a treaty has the same force and effect as the provisions of the Constitution of the United States. Of course, the President initiates the treaty-making process subject to the "advice and consent" of the Senate. A question that is now posed under the present arrangements is whether the territorial constitution should be subjected to either congressional or presidential authority. If congressional, it is necessary to amend the 1929 ratification act, which now vests complete authority in the President or his designee to administer the affairs of the territory. If presidential, there is a need

to rescind the 1984 law and return to the previous status of subjecting the constitution only to the authority of the President via the Secretary of the Interior.

This may be heartbreaking to the local leadership, but Samoa's constitution, given its present status, is nothing more than an extension of the presidential authority of the Secretary of the Interior.

### **The 1900 and 1904 Treaties of Cession**

Unlike other insular territories, American Samoa was never annexed by the United States as a result of war or conquest. In the years 1900 and 1904 the traditional chiefs of the islands of Tutuila, Aunu'u, and Manu'a, by means of executing two separate treaties of cession, freely ceded their islands to the U.S. with the understanding that native lands and Samoan customs and traditions be honored and protected.

Congress did not ratify the 1900 and 1904 treaties until 1929, and immediately thereafter delegated its constitutional authority to administer the territory to the President, who then transferred the administration of American Samoa to the Secretary of the Navy--primarily because of U.S. interests at the time to establish a naval station in the Pago Pago Bay area, located on the island of Tutuila. In 1951, the President transferred the administration of American Samoa to the Secretary of the Interior. To date, the transfer of administrative, judicial, and military authority from the Congress to the President has not been amended since the 1929 act that ratified the two treaties of 1900 and 1904.

In my judgement, the two treaties of cession still stand as the foundation or basis upon which American Samoa can claim a political relationship with the United States. However, nowhere do we find under the terms of the two treaties a political union in existence between the island groups of Tutuila and Manu'a. We have pretended for the past eighty-eight years that the Tutuila and Manu'a island groups are united, but as long as the two treaties are in existence with separate provisions and conditions that place on the United States certain obligations to both island groups, questions will always be raised concerning the political relationship not only between Tutuila and Manu'a, but also with the United States.

A question that obviously comes to mind is whether the 1900 and 1904 treaties of cession are still operative today, and if so, do the treaties answer questions relative to citizenship, immigration, international trade and commerce, national security, marine and communal property

ownership rights, membership in international organizations, and others? In my opinion, the treaties do not answer the above questions, but the two documents have been instrumental in providing a sense of stability and organization among the several villages, districts, and island groups.

### **American Samoa's Political Status**

What exactly is Samoa's political relationship with the United States? It has been determined that American Samoa is an "unorganized and unincorporated" territory of the United States. Unorganized since the 1929 ratification of the two treaties, for Congress has yet to officially organize a government for the separate island kingdoms of Tutuila and Manu'a. Unincorporated because, according to U.S. Supreme Court decisions that have evolved over the years touching on the constitutional rights of insular territories, Congress has never intended, nor will it ever desire, to have Samoa become a state of the Union.

### **The Future**

What are the future prospects of the territory? First, the island leaders of Tutuila and Manu'a need to call a national convention to deliberate the provisions of the 1900 and 1904 treaties of cession. Secondly, Tutuila and Manu'a must then officially declare a union as one political entity or governing body. Thirdly, there is a need to formulate a statement of principles underlining their desire to either amend certain provisions of the two treaties or establish an entirely new proposed treaty with the United States. The provisions of such a treaty should define Samoa's political relationship with the United States (for example, "covenant" status like the Commonwealth of the Northern Mariana Islands, "free association" status like the Federated States of Micronesia, Belau, and the Marshall Islands, or "commonwealth" status like Puerto Rico).

Once we have defined what Samoa's relationship should be with the United States under the terms of a treaty that is agreeable to both sides, the leadership of Samoa should *then* call a constitutional convention and organize a government based upon the terms and principles outlined in the treaty, not the U.S. Constitution. Even if it takes Samoa the next twenty years to negotiate such a treaty, it must be done--and now is the time to do it. Otherwise, the less Samoa brings up the matter of the two treaties, the more it finds itself becoming less Samoan and more American; stated in another way--Americans of Samoan ancestry. And

in fairness to the United States, Samoa cannot claim loyalty to America and at the same time refuse to apply federal standards that are clearly incompatible with its local traditions and land-tenure system.

At the present time, even the United States does not know exactly what its political relationship is or should be with American Samoa. This is indicated by the fact that in many instances congressional bills and federal statutes have either excluded American Samoa as a participant or classified the territory as a foreign country.

The dilemma American Samoa now faces is whether it should be searching more for answers to its problem from the U.S. Constitution or the 1900 and 1904 treaties of cession. Over the years, the territorial court has depended largely upon the U.S. Constitution and U.S. Supreme Court decisions to determine the outcome of cases that raise serious constitutional questions on the rights of U.S. citizens who live in the territory. There is also the question of whether the Due Process and Equal Protection clauses of the U.S. Constitution apply equally against certain Samoan traditions and local land-tenure systems that contradict basic property ownership rights now in existence in the United States.

It is the hope of this writer that within the next ten years, the Samoan leadership and the people will seriously address the above questions with the appropriate officials of the United States government, and if for anything else, lay the foundation for American Samoa's future and destiny.

#### NOTE

These remarks were delivered at a conference sponsored by the Pacific Islands Political Studies Association (PIPSA) on 23 May 1988 at the Church College of Western Samoa, Pesega, Western Samoa. At the time the author was Lieutenant Governor of American Samoa; he was subsequently elected to represent the territory in the U.S. Congress.