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## CULTURAL DIFFERENCES AND DISCRIMINATION: SAMOANS BEFORE A PUBLIC HOUSING EVICTION BOARD\*

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*In Hawaii Samoans are a stigmatized ethnic group. We examine how this group is treated by a public housing eviction board. Statistical analysis suggests Samoans are discriminated against in financial cases. Interviews indicate, however, that Samoans are disadvantaged largely because their excuses are not persuasive and would not be regardless of the ethnicity of the tenants making them. In this sense Samoans are treated "like any other tenant," and illegal discrimination, as defined by the Fourteenth Amendment, has not occurred. But Samoans make unpersuasive excuses more often than other tenants because excuses that are reasonable in the context of Samoan culture do not seem reasonable to judges from a different culture. Thus among tenants behind in their rent, Samoans fare worse than do non-Samoans, much as they might fare if board members held anti-Samoan prejudices. We call this implication of cultural hegemony "cultural discrimination" and note the dilemmas it poses, not the least of which is that it makes problematic the very concept of discrimination.*

In the 1971 case, *Griggs v Duke Power* (401 U.S. 424), the United States Supreme Court held that if an employment test (or other mechanism for screening job applicants) had a disparate impact on a group protected by Title VII of The Civil Rights Act of 1964, discrimination in violation of the Act would be presumed unless the employer could prove the "job-relatedness" of the test. (For details on the *Griggs* case, see England 1992 chap. 5.) The *Griggs* case represents a high-water mark in the Supreme Court's jurisprudence of discrimination, for it establishes proof rules that can catch both intentional and inadvertent discriminators in their

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net. Under the Fourteenth Amendment, discrimination ordinarily requires evidence of unequal treatment and not just a disparate impact; when the *Griggs* case was decided Title VII could have been interpreted in the same way.

What the *Griggs* test does not recognize is that the very concept of discrimination is contestable. In assuming that job-relatedness negates the discriminatory implications of proven disparate impacts, the Court ignores the possibility that accepted criteria of job performance (e.g., punctuality) in themselves may privilege the performance standards of one social group vis-à-vis another and may endure precisely because they embody a dominant group's understanding of proper behavior. It is not clear that in *Griggs* the Justices perceived this issue; but if they did, one can sympathize with their reluctance to address it. For when one enters this realm, which we call *cultural discrimination*, the concept of discrimination becomes problematic, as discrimination can be situated as much in perspectives on behavior and outcomes as in behavior and outcomes themselves. For this reason the concept "discrimination" has long been contested political territory, even if in most debates about discrimination, the courts and other participants studiously ignore this fact.

## IDENTIFYING DISCRIMINATION

We illustrate these points and elucidate the concept of cultural discrimination by examining the decisions made by an informal tribunal—the Hawaii Housing Authority's (HHA) eviction board. We begin our search for discrimination in a conventional way by developing a model using measurable variables that might be expected to influence board decision-making, regardless of a defendant's identity. We include in our model a dummy variable that captures membership in the group that is the hypothesized target of discrimination (in our case, Samoans). A significant coefficient on the dummy variable is conventionally taken as evidence of discrimination; if the coefficient is small and not significant, convention suggests that we do not have a discriminatory process.

This approach treats discrimination as a residual category. To use ethnic discrimination as an example, if a significant bivariate relationship exists between ethnicity and the likelihood of an adverse outcome, the conventional approach does not conclude that discrimination exists unless the relationship persists when other factors that might affect outcomes regardless of ethnicity are also taken into account. When, however, ethnicity adds significantly to the ability of other variables to predict adverse outcomes, we regard that as evidence of ethnic discrimination. The more adequately we have accounted for other variables that might have affected the outcome, the more certain we are that such discrimination has occurred.

This conventional approach does not, however, allow one to trace out all the disadvantageous implications of ethnicity, no matter how adequately other variables that might influence the decision-maker are identified and measured. First, there is the familiar problem of institutional discrimination. A sentencing judge, for example, may weigh a defendant's prior arrests the same, regardless of the ethnicity of the defendant. However, discriminatory decisions by police or complainants may result in more frequent or more serious prior arrests for the typical minority defendant than for the typical White defendant.

Second, there is what we call "cultural discrimination," a phenomenon typically ig-

nored in studies of discrimination in legal decision-making. Decision-makers may value certain behaviors and devalue others, regardless of the ethnic identity of the person exhibiting them. But the decision-makers' values may reflect their cultural roots, and they may fail to respect or even to recognize the ways the behavior of others is part of a different cultural value system. For example, a state legislature may make it illegal for parents to withdraw children from school before age 16, and the state's judges may punish Amish parents who violate the law in the same way they would punish non-Amish parents. Not only does this law and its enforcement fail to respect the reasons why Amish beliefs counsel against schooling past the eighth grade (*Wisconsin v Yoder*, 406 U.S. 205 [1972]), it also fails to recognize that schooling until at least age 16 came to seem "natural" to the state's citizens only when urbanization and the mechanization of agriculture reduced the value of child labor relative to that of more educated adults. Thus both the makers and enforcers of compulsory schooling laws have acted without considering that, if agricultural production statewide were technologically similar to that of the Amish, withdrawing children from school at age 14 might seem "natural."

While the legal system provides ready examples of cultural discrimination (Post 1988), the phenomenon is not limited to legal decision-makers. For example, Bourdieu, in a jointly-authored essay that prefigures his conception of cultural capital, identifies a similar phenomenon, which he calls "class racism," at work in the French educational system (Bourdieu and Passeron 1979; Lamont and Lareau 1988). What concerns Bourdieu is the disadvantages students from a particular social class (the petty bourgeoisie) suffer through the universalistic application of the apparently legitimate criteria of educated elites. For us, it is members of a particular ethnic group who, in comparison to others from the same social class, are disadvantaged by the application of apparently legitimate criteria in a universalistic fashion. In both cases the "legitimate criteria" reflect cultural understandings shared by the judges but not by all of those judged. In Bourdieu's example, cultural understandings follow

class boundaries; in ours, they follow ethnic ones.

Cultural discrimination has been most readily identified in education. Various authors have discussed how language and other culturally acquired characteristics children bring to school can affect their treatment, and ultimately their success, in educational institutions (Erickson and Mohatt 1982; Labov 1972; Lareau 1989; Philips 1983). Cicourel and Mehan (1983), summarizing much of this literature, write:

Children from different *cultural or class backgrounds* often do not present themselves in ways that school personnel interpret as matching an existing routine educational frame or format. While children's behavior at home and school conforms to cultural patterns and is consistent, educators do not often recognize the cognitive and linguistic capabilities and skills in children's performances unless carefully instructed to do so. (P. 12, emphasis added)

We illustrate the implications of culture for outcomes in a different setting—an informal legal tribunal—and add to the existing literature, not only by emphasizing the problematic and political nature of what counts as discrimination, but also in other important ways.

First, as the quote from Cicourel and Mehan suggests, in most studies that show people are disadvantaged because of cultural traits, class is confounded with culture. Our study, however, deals only with low-income public housing tenants, all of whom would be conventionally categorized as lower class. This allows us to avoid culture-class confusion, because variation among our subjects cannot be due to class differences.

Second, research on cultural discrimination typically involves qualitative assessments that might conflict with the picture presented by quantitative approaches. For example, Philips (1983) found that for cultural reasons Warm Springs Indians performed poorly in competitive classroom contexts. A traditional quantitative analysis would not, however, have indicated that the Indian children were discriminated against, because the children would have scored poorly on standardized cognitive tests, supposedly legitimate measures, used to explain classroom performance. In contrast, we begin by estimating a traditional quantitative

model of discrimination to determine if the group we examine—Samoans—appears to be disadvantaged, net of other variables. Turning next to qualitative data, we then ask whether discrimination suggested by our quantitative model is based on arguably legitimate responses to cultural characteristics. This reverses the usual perspective of cultural discrimination studies, which argue or imply that distinctions based on apparently legitimate factors are in fact illegitimate responses to cultural differences. By reversing this perspective, our argument makes problematic the very meaning of discrimination and, by implication, calls into question the adequacy of the long-standing practice of using archival data and quantitative models alone to spot legal discrimination.

Finally much of the research on cultural disadvantages in school deals with such characteristics as accents, abilities brought to the classroom, game-playing patterns, and the like. These are noncognitive factors—students unthinkingly bring such disadvantaging characteristics with them—and members of the dominant culture are ordinarily unaware that such culturally conditioned characteristics elicit their negative responses.<sup>1</sup> However the cultural behavior we examine, excuse making, is cognitive. Our subjects do think about what excuses to give and attempt to construct excuses that will be accepted. Judges responding to these excuses similarly consider—and indeed discuss—the validity of the excuses they hear. Thus, our example shows how cultural understandings can limit even conscious cognitive efforts to behave in ways acceptable to a dominant culture and can lead to considered decisions that reject

<sup>1</sup> This is also true in the few sociological studies that focus on the legal implications of what we call cultural discrimination. Thus, Holstein (1987) shows how taken-for-granted conceptions of gender-appropriate behavior mean that "what may be considered mentally healthy *for a man* might be diagnosed as pathological *for a woman* and vice versa" (p. 145). And Maynard (1984), in his study of the discourse organization of plea bargaining, suggests that biases leading to unequal treatment may reside in the typifications inherent in the discourse constituting the bargaining process. Bennett and Feldman's (1981) conclusions are similar to Maynard's, but their focus is on how stories are told and received in jury trials.

another's cultural motivations, even while recognizing and on occasion appreciating them.

In examining how Samoans fare before the HHA's eviction board, we are observing an unfamiliar minority group before an unusual court. This situation, in fact, enhances our ability to identify and explore nuances of cultural discrimination, and what we learn contains important general lessons. The different layers we peel away in our search for discrimination caution against too readily accepting the conclusions of studies limited to data that are less rich. Moreover, cultural discrimination of the sort we identify is also likely to exist in other situations where members of one class or status group pass judgment on members of another. Bourdieu and Passeron (1979), as we have noted, suggest that a similar phenomenon related academic success to social class in French higher education during the early 1960s, Post (1988) sees something like this at work in nineteenth- and twentieth-century reinterpretations of the English common law of blasphemy, and Bennett and Feldman (1981) report that criminal defendants may be disbelieved when jurors don't share the cultural understandings embedded in the stories they tell.

## DATA AND SUBJECTS

### *The Research Setting*

We examine the legal decisions of the Hawaii Housing Authority's (HHA) eviction board from 1966 through 1985. This board consisted of a group of citizen-volunteers whose assent was required for the HHA to evict a tenant. Previously, we have described this board, the HHA's eviction process, and the way the board and eviction process has changed over time (Lempert 1989; Lempert and Monsma 1988; Monsma and Lempert 1992). Here we mention only those details important to understanding this study.

Throughout the years 1966 to 1985, procedures before the eviction board were informal. Tenants usually appeared without lawyers. The HHA's case was briefly presented, usually by questioning the housing project manager, and the tenant could respond however he or she wanted. Almost always the

HHA's charges were admitted. In three-quarters of the cases, the charge was nonpayment of rent, and the fact of nonpayment was almost always indisputable; but even when some other lease violation was charged, like fighting or keeping pets, the tenant usually admitted the violation and made excuses for it. Ordinarily, after the tenant presented explanations, promises, or excuses, board members, the HHA's prosecutor, and occasionally the project manager questioned the tenant. Throughout, the tone was informal, and there was considerable effort to ensure that the tenant understood what was being said. The typical hearing took between 20 and 30 minutes, which is generous when compared to the typical hearings in some small claims courts and misdemeanor trial courts.

Over time, while the informality of the basic hearing remained more or less the same, other features of the eviction process and the board's decision-making process changed. (Changes are described in detail in Lempert [1989]). For example, the HHA's prosecutors changed, with lawyers eventually taking over this role from HHA staff officials, and the board at one point was divided into two panels to allow more frequent meetings. The "Period" variable in the models we present is designed to capture significant differences over time in board procedures and the environment in which the board operated.

Our data are drawn from the HHA's files on all eviction actions from 1966 to 1985. These records include information on the hearings and their outcomes, appeals and their outcomes, the amount of rent owed, and a number of other possibly relevant variables, such as family composition, the age and marital status of family members, whether a family was receiving welfare, legal representation, family income, and the occurrence of various kinds of trouble, such as illness or unemployment.

Only some of the HHA's eviction files included information on ethnicity. Where this information was missing, we coded ethnicity into two categories, Samoan or non-Samoan, based on first and last names. Married couples were coded as Samoan if either partner had a Samoan first or last name. The coding was done by a sociology graduate student native to Hawaii and conversant with island

culture. Since Samoan names are usually distinctive, we have confidence in this coding.<sup>2</sup>

In addition to the data collected from the HHA's files, in 1987 we conducted semi-structured interviews, usually lasting 30 to 90 minutes, with the HHA's prosecutors, board members, and others who had been connected with the eviction process from 1966 on. This group includes the four people who prosecuted most of the cases in our sample, almost all eviction board members (including every chairperson), all the current housing project managers and many former ones, staff supervisors (including current and past Executive Directors), the two legal aid paralegals who most often appeared in eviction actions, and private and legal aid lawyers who served on occasion as defense counsel. The majority of those interviewed were not Caucasian, although Caucasians and people of Japanese ancestry were the most frequently represented ethnic groups. Other interviewees were of Chinese, Hawaiian, Filipino, Korean, Samoan, or mixed heritages. The board members were citizen-volunteers from a variety of backgrounds. Apart from the two public housing tenants on each panel, most were from the middle class. During the 1980s several board members had employment backgrounds in real estate management, and throughout most of the period of our study at least one board member had a social work background. Over 80 percent of the eviction board member interviews and three of the four HHA prosecutor interviews were conducted in person. As the time remaining for field work grew short and the information new interviews yielded grew redundant, we conducted a higher percentage of interviews by telephone. Whether done in person or by phone, the interviews, with only a few exceptions, were tape recorded, and transcripts were sent to interviewees for correction. The quotations we cite come from these transcripts.

<sup>2</sup> Typical Samoan first names are Leulusoo, Fuifatu, and Faaula; typical last names are Faletago, Fauolo, and Leatutufu. Coding by name catches most tenants of mixed Samoan ancestry, but excludes a few. We do not believe this causes systematic biases, but it will cause random error that is likely to dampen any effect we find.

These interviews complement our file data with information about the observations and attitudes of those who, apart from the tenants, figured most prominently in the eviction process. In addition we attended and either recorded or took detailed notes on all eviction board hearings held during the summers of 1969 and 1987. In short, unlike most quantitative studies, we have detailed qualitative information on the process we seek to model and can identify potentially important variables that could not be quantitatively operationalized. And unlike most qualitative studies of discrimination, we can determine quantitatively whether the disadvantaged group we focus on fares worse than other groups after controlling statistically for important relevant variables.

#### *About Samoans in Hawaii*

Although our data only allow us to investigate discrimination against Samoans, we expected that if any group were discriminated against in the eviction process it would be the Samoans. In part we expected this because our interviewees often spontaneously described problems with Samoans. Only three other ethnic groups were similarly mentioned (Laotians, Vietnamese, and Tongans). Not only were there far more mentions of Samoans than of other groups, but when members of other groups were mentioned as troublemakers, the trouble often involved difficulties with Samoans.

More importantly, we thought Samoans were the likeliest victims of discrimination because Samoans in Hawaii are a particularly disadvantaged group. Their per capita income is the lowest of any ethnic group in Hawaii for which separate statistics are kept (Kincaid and Yum 1987; U.S. Commission on Civil Rights 1979). More than half of the Samoan adults in Hawaii have nine years of school or less (Baker 1986). Unemployment rates for Samoans are high (Hect, Orans, and Janes 1986). A disproportionate number of Hawaii's Samoans are in prison (Howard 1986), and Samoans in Hawaii are generally regarded as a violent and dangerous people (Howard 1986; Hect et.al. 1986). Indeed, even among California's Samoan immigrants, it is recognized that "Samoans in Hawaii are stigmatized" (Janes 1990). This

view is confirmed in a study of the opinions held of each other by five Hawaiian ethnic groups (Caucasians, Japanese Americans, and immigrant-generation Filipinos, Vietnamese, and Samoans). Using semantic differentials, all respondents except Samoans, ranked Samoans at the bottom when moral traits such as "industriousness" were evaluated. And except for the Samoans, whose average ranking by other groups on the six measured dimensions was close to neutral, the other four Hawaiian ethnic groups had generally positive stereotypes of each other, (Yum and Wang 1983).

Overall Samoans account for about 21 percent of both the eviction actions the HHA commenced by subpoena and the cases in which hearings were held.<sup>3</sup> Because we have no information on the ethnic composition of the HHA's housing projects, we cannot say whether Samoans are disproportionately represented in these data. The proportion of actions involving Samoans is, however, far higher after 1982 than before. This may reflect an increase in the proportion of Samoan tenants, but the bulk of the upsurge is probably due to the increased efficiency with which the HHA processed nonpayment cases. For cultural reasons we later discuss, we believe that Samoans are more likely than other tenants to have family or church networks they can draw on for financial support, but they need time to mobilize aid.

#### *Reasons for Eviction*

Samoans charged with violating HHA rules were somewhat more likely than other tenants to be subpoenaed for fraud or nonpayment of rent and less likely to be subpoenaed for pet violations and other kinds of troublesome behavior (see Table 1). The ethnic difference in subpoenas for fraud may occur because many Samoan tenants spoke English poorly or not at all. Fraud usually involved accusations of concealing family income,

<sup>3</sup> Hearings might not be held because a tenant moved out on receiving a subpoena or because the problem was resolved without a hearing and the HHA cancelled the action. Of 1,268 cases commenced by subpoena over the two decades of our study, 1,007 led to a board hearing. In 7 cases we are missing information on reason for subpoena.

Table 1. Percentage Distribution of Reason for Subpoena among Samoans and Other Ethnic Groups: 1966 to 1985

Reason for Subpoena	Percentage Among Samoans	Percentage Among Other Ethnic Groups
Falsification, fraud	10.3	8.3
Nonpayment of rent	78.5	72.6
Guests	3.8	4.2
Pets	1.9	6.2
Other trouble	5.4	8.7
Total percent	99.9	100.0
Number of cases	261	1,000

Note:  $\chi^2 = 12.08$ , d.f. = 4

and the tenant's defense was often that he or she didn't understand that certain income had to be reported.

The proportion of subpoenas issued for nonpayment of rent may be slightly higher among Samoans than among other ethnic groups because Samoans in the United States often face demands for money which they feel they cannot deny. Samoan families that help members emigrate to the United States often expect regular cash payments in return (Holmes 1974), and all Samoan families expect that even distant members will contribute cash toward special occasions, such as funerals and weddings (Ablon 1970, 1971). Churches, too, expect regular financial contributions, and churches are especially important institutions for many Samoan immigrants. Thus Samoans are more likely than tenants from other ethnic groups to experience strong social pressures to spend their rent money for other purposes. Alternatively, the high proportion of financial cases among Samoans may simply reflect the fact that they are less likely than other tenants to engage in nonfinancial troublesome behavior. This may be true in the case of pets, since Samoans seldom keep dogs, but if project managers and tenant board members can be believed, it is almost certainly *not* true of fighting, noise-making, and similar offenses. Perhaps the underrepresentation of Samoans in such cases is because Samoans are reluctant to complain about each other or because non-Samoans are intimidated into keeping quiet.

The high proportion of Samoans subpoenaed for nonpayment of rent or for fraud is

Table 2. Names and Definitions of Variables

Variable Name	Definition
Outcome	Coded 1 if tenant was evicted; 0 if tenant was allowed to stay. (Cases in which a tenant was technically evicted but enforcement of order was immediately stayed were coded 0.)
Period	Time period. The years 1969 through 1985 are divided into 6 time periods to control for changes in the HHA eviction board's decision-making procedures: 1 = 1969-1974, 2 = 1975-1977, 3 = 1978-Oct. 1979, 4 = Oct. 1979-Jan. 1982, 5 = Jan. 1982-Feb. 1984, 6 = Feb. 1984-Dec. 1985.
<i>Case Characteristics</i>	
Reason	Reason for subpoena: 1 = falsification, fraud or miscellaneous (generally technical), 2 = nonpayment, 3 = guests, 4 = pets, 5 = other trouble behavior.
Rent owed	Natural log of constant 1982-1984 dollars <sup>a</sup> owed at the time of the subpoena.
Percent repaid	Percentage of rent debt at time of subpoena paid before the hearing.
<i>History of Tenant-Authority Interaction</i>	
Appearance #	Number of eviction actions brought against tenant, including the current appearance.
Rent often delinquent	Substantial rent delinquency: Coded 1 if tenant has more than 2 years of rent delinquency history, 0 otherwise.
<i>Tenant Characteristics</i>	
Children	Number of children living with tenant.
Income valid	Coded 1 if family income information is not missing; 0 if missing.
Income	Natural log of family income (in constant 1982-1984 dollars <sup>a</sup> ); coded 0 if missing.
Financial problems	Financial problem index. Number of financial problems in family: Occurrence of unemployment, substantial debt, illness, or garnished wages each adds 1 point to index.
Samoan	Coded 1 if family is all or part Samoan, 0 otherwise.

<sup>a</sup> Constant dollars were set to the average dollar value for the three-year period.

not explained by changes over time in the HHA's eviction process. The percentage of cases brought for financial reasons is higher among Samoans than among non-Samoans in all time periods we use to distinguish important changes in the eviction process.

## EVIDENCE FOR DISCRIMINATION

### *Quantitative Evidence From HHA Records*

As a first step in determining whether Samoans suffer discrimination in HHA eviction board hearings, we present a series of probit models. Variables indicating case characteristics, tenant characteristics, and aspects of the tenant's relationship with the Authority over time serve as controls.<sup>4</sup> These variables

<sup>4</sup> Although we argue later that a crucial variable ("excuse quality") is missing from our model, compared to most quantitative models probing discrimination by courts, our model, as applied to the financial problem cases we focus on, appears particularly well specified. First, most

are defined in Table 2. Several of these variables were not coded for cases before 1969 and were coded for only a random sample of

other studies measure strength of evidence imperfectly or not at all. In our study the Authority's case is almost always incontrovertible, so strength of evidence is not a variable. Second, most other studies have only approximate and often erratic measures of the seriousness of the offense. We measure seriousness by an accurate, continuous measure, the log of the amount of money owed. Finally, most other studies depend for their control variables (e.g., employment, past record, etc.) on information collected in conjunction with the problem that led to the adjudication, when persons involved may have incentives to deceive. Most of our information on control variables, such as employment history, past violations, family composition, and the like, comes from records that were generated at annual income reviews or in other settings unconnected to the adjudication. The same is true of other variables (such as welfare status) which we examined but excluded from our final model because their effects were weak and not statistically significant.

cases for the years 1979 through 1985.<sup>5</sup> We have used the smaller set of variables with more complete information for this analysis. In all models the data are weighted to reflect the composition of all cases for the years 1969 through 1985.<sup>6</sup> We analyze these data separately for financial violation cases and for other cases.

Table 3 presents a probit model for the chance of eviction in cases brought for reasons other than nonpayment or fraud. The small and nonsignificant coefficient for the Samoan dummy variable in this model provides little evidence of discrimination.

Table 4 presents probit models for the likelihood of eviction in financial violation cases. In addition to the control variables used for the model in Table 3, Table 4 includes variables, such as the amount of money owed, that are relevant only for financial violation cases. The coefficient for the Samoan variable in Model 1 is positive and statistically significant, indicating that, controlling for other variables in the equation, Samoans were more likely than non-Samoans to be evicted. The estimated Samoan effect is strong enough to make a substantial difference in a family's chances of eviction. For a case that has, based on the control variables, an estimated probability of eviction equal to the overall (weighted) average of .326, being Samoan increases the estimated probability of eviction to .473.

The degree of discrimination against Samoans may have changed over time. Model 2 includes terms for the interaction of Samoan and period. The three interaction coefficients are contrasts between the Samoan effect during the period in question and the Samoan effect during the last period. The estimated

<sup>5</sup> When the total caseload in a year was 100 or less, all cases were coded on all variables. In years when the caseload was more than 100, a random sample of 100 cases were coded on all variables, and all cases were coded on a subset of these variables. For a detailed discussion of how we built our models, see Monsma and Lempert (1992).

<sup>6</sup> The weight variable varies across years and has a higher value for years in which the sample is a lower proportion of the total caseload for that year. It is equal to  $(N_i/n_i) \times (n/N)$ , where  $N$  is the population size,  $n$  is the sample size, and  $N_i$  and  $n_i$  are the population and sample sizes for a particular year.

Table 3. Probit Model Predicting Outcome at HHA Eviction Hearings for Samoans and Other Ethnic Groups: Cases Subpoenaed for Reasons Other Than Nonpayment or Fraud, 1969 to 1985

Independent Variables	Coefficient
Constant	.0653 (.139)
<i>Period</i>	
1-3 (1969-Oct. 1979) <sup>a</sup>	-.497 (-1.244)
4 (Oct. 1979-Jan. 1982)	-.0421 (-.108)
5 (Jan. 1982-Feb. 1984)	-.488 (-1.222)
<i>Case Characteristics</i>	
Reason for subpoena:	
Guests	-.298 (-1.045)
Pets	-.334 (-1.148)
<i>Tenant-Authority History</i>	
Appearance #	.433 (-1.791)
<i>Tenant Characteristics</i>	
Children	-.0601 (-.873)
Financial problems	-.258 (-.855)
Periods 1-3 × Financial problems	-.319 (-.655)
Samoan	.0968 (.299)
Likelihood ratio $\chi^2$	14.41
Degrees of freedom	10

\*  $p < .05$  (two-tailed tests)

<sup>a</sup> Periods 1 to 3 are combined in this model because there are not enough cases in these periods taken separately to yield stable estimates.

Notes:  $N = 142$ . Cases are weighted. Outcome coded 1 if tenant was evicted, 0 otherwise.  $T$ -ratios are in parentheses. Omitted categories of "Period" and "Reason for subpoena" are "Period 6" (Feb. 1984-Dec. 1985) and "Other trouble behavior."



Table 4. Probit Models Predicting Outcome at HHA Eviction Hearings for Samoans and Other Ethnic Groups: Nonpayment and Fraud Cases, 1969 to 1985

Independent Variables	Model 1	Model 2	Model 3
Constant	-3.009* (-4.306)	-3.045* (-4.328)	-2.645* (-3.711)
<i>Period</i>			
1 (1969-1974)	-1.529* (-3.913)	-1.450* (-3.513)	-1.590* (-4.012)
2 (1975-1977)	-.372 (-1.041)	-.299 (-.788)	-.380 (-1.062)
3 (1978-Oct. 1979)	-.543 (-1.725)	-.451 (-1.296)	-.557 (-1.772)
4 (Oct. 1979-Jan.1982)	-.263 (-1.380)	-.188 (-.839)	-.264 (-1.383)
5 (Jan. 1982-Feb. 1984)	-.697* (-3.925)	-.669* (-2.905)	-.703* (-3.924)
<i>Case Characteristics</i>			
Falsification, fraud	2.813* (4.237)	2.795* (4.202)	2.808* (4.226)
Rent owed	.460* (5.010)	.457* (4.948)	.413* (4.401)
Falsification, fraud × Rent owed	-.368* (-3.514)	-.365* (-3.474)	-.374* (-3.560)
Percent repaid	-.0115* (-6.476)	-.0113* (-6.334)	-.0116* (-6.508)
<i>Tenant-Authority History</i>			
Appearance #	.415* (3.461)	.412* (3.439)	.392* (3.248)
Rent often delinquent	.436* (2.493)	.428* (2.430)	.459* (2.613)
<i>Tenant Characteristics</i>			
Children	-.0877* (-2.091)	-.0856* (-2.034)	-.0773 (-1.827)
Income valid	4.821* (4.178)	4.859* (4.203)	4.905* (4.225)
Income valid × Income	-.513* (-4.203)	-.516* (-4.226)	-.530* (-4.309)
Financial problems	-.0827 (-.853)	-.0862 (-.887)	-.0809 (-.827)
Periods 1-3 × Financial problems	-.612* (-2.549)	-.623* (-2.559)	-.591* (-2.455)
Samoan	.381* (2.602)	.496 (1.690)	-1.081 (-1.506)
Periods 1-3 × Samoan	—	-.361 (-.562)	—
Period 4 × Samoan	—	-.354 (-.759)	—
Period 5 × Samoan	—	-.0626 (-.175)	—
Samoan × Rent owed	—	—	.242* (2.093)
Likelihood ratio $\chi^2$	183.82*	184.67*	188.59*
Degrees of freedom	17	20	18

\* $p < .05$  (two-tailed tests)

Notes: N = 620. Cases are weighted. Outcome coded 1 if tenant was evicted; 0 otherwise. T-ratios are in parentheses. Omitted categories of "Period" and "Reason for subpoena" are "Period 6" (Feb. 1984-Dec. 1985) and "Nonpayment of rent."

Samoan effects increase across periods, but whether taken individually or jointly, the interaction terms are nonsignificant (for the joint test of significance  $\chi^2 = .85$ ; d.f. = 3).

One form of discrimination is to weigh evidence suggesting a serious violation more heavily when the defendant is a Samoan. This appears to happen when rent is owed. Model 3 in Table 4 includes a term for the interaction of the Samoan dummy variable and the natural log of the amount owed at the time of the subpoena (in constant dollars). The estimated coefficient is positive and is more than twice its standard error, indicating that for each unit increase in the amount owed the chances of eviction for Samoans increase by more than they do for other tenants.<sup>7</sup> This interaction is consistent with evidence we present later, which shows that the board is unwilling to accept the kinds of excuses that Samoans often give for high debts. Checks for interaction between the Samoan variable and other variables indicating case severity (percent rent repaid, rent delinquency history, appearance number) show no significant interaction.<sup>8</sup>

<sup>7</sup> The negative coefficient on the Samoan variable in Model 3 should not be taken to mean that, net of the interaction effect, there is a benefit to being Samoan. It should be instead seen as an adjustment to the intercept due to the strong interaction of Samoan ethnicity and the amount of rent owed. There are only six Samoan cases in the rent-owed range (less than about \$86) where this variable suggests Samoans would be treated more leniently, so the negative coefficient is mainly due to extrapolation from cases with higher debts, where Samoans in fact fare worse. Moreover, five of the six Samoan cases within this range were fraud cases in which nothing was owed at the time of subpoena. In these cases Samoans may in fact fare better than non-Samoans, not because of bias in their favor, but because they can make credible claims that they failed to report information accurately because of their difficulties in understanding English.

<sup>8</sup> We also analyzed some 100 cases involving financial problems that were appealed to the HHA's Board of Commissioners during the period we studied. The commissioners are ultimately responsible for everything the HHA does. For most of the period we studied they held informal hearings for tenants who filed appeals and had discretion to allow tenants whose eviction had been ordered by the eviction board to stay in project housing subject to whatever conditions

From this quantitative analysis it appears that Samoans accused of financial violations fare worse in the eviction process than similarly situated non-Samoans. We may call this Samoan disadvantage "discrimination," but we should be aware of precisely what this means: Samoans threatened with eviction have a somewhat worse chance of remaining in project housing than tenants from other ethnic groups who are like them on the control variables.

#### *Qualitative Evidence From Interviews*

An obvious reason why our results suggest discrimination is that it occurs; that is, that board decisions are motivated by prejudice against Samoans. Samoans are socioeconomically the least advantaged of the various ethnic groups that populate Hawaii and are apparently stigmatized on this account. In deciding whether to evict, the board members may be biased against Samoans, or the HHA's prosecutor or manager-complainants may push harder for eviction when Samoans are involved. Interviews with prosecutors, project managers, and board members indicate that some do hold negative stereotypes of Samoans.

For example, one prosecutor, talking generally about cases in which inoperative vehicles had been parked in project lots, said he would tell the owner of such a car:

I don't care if it is up on blocks and you are going to have to have 50 Samoans come out and help you carry it away—two weeks from now the car is gone, or it is there, and that is what decides whether you are going to stay or not stay.

It is instructive that the prosecutor assumed that Samoans would be involved and that the solution might involve Samoan manual labor.

One board chairperson conveyed his image of Samoans in apologizing for the fact that a

the commissioners chose to designate. We found no evidence that Samoans fared worse than non-Samoans on appeal (in fact they did better, although the coefficient was not significant), but the more the money owed, the worse the Samoans did as compared to other tenants. However, the small numbers of cases and the likelihood of selection effects preclude any clear interpretation of these findings.

nonpayment case we observed was nothing special:

This wasn't a very good case for you . . . it was one of our real rinky dink cases. We didn't have the Samoans, we didn't have the shouting, we didn't have the language barrier, we didn't have any witnesses. . . .

A tenant board member, when asked whether her children (whom she admitted sometimes stayed overnight as unauthorized guests) might get her into trouble if they were involved in a fight, replied:

Oh yeah, but in a project like [mine], you know, we are pretty lucky. There are not too many [fights]. We don't have many Samoans for one thing. . . .

And, a longtime project manager, admired by tenants for his care and understanding, acknowledged the stereotype:

Even I will say, "Ooo, that's a wild one," or "he's a Samoan," but really I had Japanese who were just as ornery in talking to me; yeah, like any other strains. You know, it is funny, as I recollect, prejudice is, I think, a matter of perception or you see . . . maybe a Black guy who gets hostile and there is [nothing] there, but if [you see] that, then I guess it exists.

The attitudes reflected in these remarks might suggest that managers and prosecutors push harder for eviction when Samoans are defendants,<sup>9</sup> and that board members are

<sup>9</sup> The project manager's preference can influence the HHA eviction board. In the nonpayment cases we observed, the project manager was invariably asked whether, apart from the charged lease violation, the tenant caused any problems. Project managers bringing cases to the HHA for financial reasons could be more likely to accuse Samoan than non-Samoan tenants of causing other problems on the project, either because Samoan tenants are in fact more likely to have caused other problems or because the managers' perceptions are biased. Our data do not, however, suggest that Samoans charged with nonpayment of rent are evicted for reasons other than their nonpayment. If the nonpayment charge was a subterfuge for evicting tenants for other harder-to-prove reasons, we would expect Samoans to be particularly disadvantaged in cases where small sums of rent were owed, but the interaction we found between rent owed and ethnicity runs in the opposite direction.

more likely to hold against Samoans in close cases. But recall that we found only weak evidence of discrimination against Samoans in cases brought for nonfinancial reasons.<sup>10</sup> If a generalized prejudice against Samoans were the main reason they fared worse than tenants from other ethnic groups in financial cases, we should have found that the effect was just as strong or—given the reputation of Samoans for violence—stronger in cases involving fighting, trouble-making, and other nonfinancial offenses. Moreover, in our interviews, board members and others were more likely to comment on the special situation of Samoans than they were to make remarks suggesting generalized prejudice. For example, a former board chairperson, when asked about her stance toward nonpayment of rent cases, said about Samoans and other Micronesians:

I felt there were cultural and language barriers often. I think some people used them as excuses, but I think in a lot of cases people were not used to the kinds of system that they needed to respond to in order to remain in public housing. . . . And that didn't mean that the Authority did not have the right to collect their rent, but it became real difficult for the board to often make that decision [to evict], because I honestly don't think that the person who was responsible [for] that rent understood the expectations from their cultural context.

A former board member, when asked whether any special accommodations were

<sup>10</sup> We do not believe that selection bias obscures discrimination that may exist. For this to occur Samoans tried for these charges would have to have committed offenses that were less serious than those committed by non-Samoans in ways we could not measure. This seems unlikely. Many cases brought for nonfinancial reasons are triggered by tenant complaints, and the HHA is reluctant to prosecute cases involving trouble on the projects unless complainants are willing to testify. Managers report that because tenants feel intimidated by Samoans, they are reluctant to register official complaints or to testify against them. This might explain why Samoans, despite their reputation, are disproportionately less likely to be tried for nonfinancial reasons. It also suggests that when Samoans are tried for these reasons their cases are, if anything, likely to be more, rather than less, serious relative to the cases of non-Samoans, for only when matters are serious are neighbors likely to complain.

made for Samoans who had, in their own minds, good reasons for spending rent money on something other than their rent (e.g., contributing to a funeral in Samoa), commented:

I think all of us had an empathy, and perhaps even a sympathy, for these folks [Samoans], because we realized that we always had to stop and think, well maybe they really don't understand. We always had to appreciate the cultural difference, and I think all of us took that into consideration. However, we tried to end up judging them the same way we would anybody else.

These views were echoed, though not so eloquently, by a former board chairperson who, when asked how the board reacted to Samoans whose rent had been diverted in culturally approved ways, said that the board members "took that into consideration," but added:

[The Samoan tenants] do have certain responsibilities here. . . . They helped their cultural situation out, and now it is time for their cultural situation to help them.

### CULTURAL DISCRIMINATION

The three board members we have quoted, and others as well, all realized that Samoans faced substantial pressure to spend rent money to meet their cultural obligations. They had, in different degrees, sympathy for the Samoans' plight and saw their fellow board members as similarly understanding. However, ultimately all of them, with varying degrees of reluctance, concluded that if Samoans could not pay the rent by drawing on their "cultural situation" or in some other way, the board had to evict them.

If, as one board member said, the board ended up "judging [Samoans] the same way [it] would anybody else," the board did not discriminate within the meaning of the Fourteenth Amendment's Equal Protection Clause, since this requires differential treatment on the basis of a protected characteristic, such as race. Yet if Samoans were not selected for harsh treatment because of their race, how can one explain the disadvantage that attaches to Samoans in our quantitative model? We think the answer lies in the differing cul-

tural logics of Samoan tenants and eviction board members: What seemed natural or appropriate to Samoans did not seem natural or appropriate to board members. In judging Samoans like anybody else, in failing to take for granted what Samoan tenants took for granted, the board produced a pattern of decisions similar to the pattern that might have resulted if Samoan ethnicity were intentionally treated as a factor weighing in favor of eviction. Our interviews and our knowledge of Samoan culture convince us that this pattern is primarily due to the unique ways Samoans were prone to excuse rent payment lapses.<sup>11</sup>

### *The Quality of Excuses*

The excuses most housing tenants give for skipping rent payments usually refer to factors beyond their control, such as illness, unemployment, thefts of wallets, and the like. The excuses Samoans offer, however, often refer to sending money to relatives for weddings and funerals, traveling to Samoa for these same purposes, and giving money to their church. To Westerners, these kinds of expenditures seem to be within a person's control; but to Samoans they may seem every bit as compelling as the need to pay doctors' bills.

<sup>11</sup> A secondary factor is that Samoans, even high chiefs, are used to having a class of people called orators speak for them on formal occasions. Some Samoans spoke to the board through such third parties, and more often than not they seemed to hurt their cases by doing so. One "talking chief" in particular seemed to alienate the board, for a number of board members commented on his ineffectiveness. When we examined the files of several cases in which he appeared, not only did the formality of his legalistic arguments appear ludicrous, but in concentrating on pseudo-legal arguments, he neglected to make the kinds of informal explanations and arguments for leniency that might have persuaded the board to give his "clients" a second chance. These are arguments which, ironically, genuine lawyers often make with some success (Lempert and Monsma 1988; Monsma and Lempert 1992). The possibility that representation by orators like this talking chief hurt Samoans cannot, however, explain most of the disadvantage that in our quantitative model seems attributable to Samoan heritage, for there are far too few Samoans with such representation to account for the quantitative results.

Put simply, a good Samoan is a bad public housing tenant.<sup>12</sup> Central in Samoan life are the *aiga* (extended family), the *matai* (family chief), and, especially in the United States, the church (Grattan [1948] 1985; Holmes 1974; Janes 1990). A Samoan achieves status through the *aiga* because Samoans share in the status of their *aigas* and because, in the case of males, the *aiga* chooses its own chiefs. As head of the family, the *matai* controls the family's property and allocates the family's wealth. While the degree of *matai* control over property has broken down in recent years as a cash economy has largely replaced the property-based subsistence economy in Samoa, a concomitant aspect of this change is that Samoans are expected to make cash contributions to their *matai* and *aiga*. Indeed, Samoan families often fund their relatives' emigration as an investment, with the return to the family taking the form of regular "remittances" once the relatives have gotten jobs (Ali'Ilima and Stover 1986). It is particularly important that cash gifts be sent in connection with certain ceremonial occasions, especially funerals and weddings (Abalon 1971). Not doing so dishonors both the individual (making it unlikely he will ever achieve chiefly status) and, if the family cannot make up the shortfall, the *aiga*. It may also mean that in a crisis situation the individual cannot count on the *aiga* for support.

Samoans in the United States often have relatives living near them, so the *aiga* can in part be reconstituted in this country. However, even when there are numbers of relatives in the United States, the larger part of the *aiga* and its *matai* are likely to live in Samoa. In these circumstances the church fills the gap and provides a general trans-

<sup>12</sup> Most Samoan immigrants to the United States, including most Samoan public housing tenants, come from American Samoa. The portrait that follows is truer today of western Samoa than it is of American Samoa, where traditions have more rapidly broken down. Studies of Samoans in the United States during the past 20 years indicate, however, that elements of the traditional culture persist, and these cultural remnants would have been more deeply rooted in the head of household generations at the time our cases arose than they are today in younger, American-born generations.

family support network for its members. In return, however, Samoans are expected to support their church's needs in much the same way as they would support their *aiga's* requests. This means that Samoan churches in the United States are another source of culturally-reinforced demands for funds.<sup>13</sup> Facing such strong cultural pressures, Samoans may give rent money to the *aiga* or church. Board members treat rent payments as a primary obligation and can be particularly resentful if, as is often the case, the tenant's primary source of income comes from welfare. Thus, while board members may recognize the special pressures that Samoans face, most do not regard them as legitimate excuses for not paying the rent. Recall the sympathetic board member quoted above. His bottom line was that, "We tried to end up judging [Samoans] the same way we would anybody else." Another board member, who clearly recognized the cultural reasons for certain Samoan behavior patterns, similarly concluded:

I think that many of the cultural things that have held up and have proven good in island countries cannot withstand the city. . . . [M]y feeling is . . . that if they come to this urban situation, nobody is forcing them, and they come to it; they must adjust to it. I am willing to take into consideration that [cultural reasons

<sup>13</sup> There are other aspects of Samoan culture that make good Samoans poor housing tenants. The tremendous stress on the family and a pattern of emigration in which Samoans arrive in the United States expecting to spend months, if not years, living with relatives means that Samoans in public housing face special pressures to break guest rules and to overcrowd housing units. Strong family ties also make it difficult for a Samoan family to exclude a trouble-making relative from its household, even if the relative's continued presence or visits may trigger an eviction action. Moreover, Samoans accept occasional violent outbursts in men as natural, and they raise their children with physical discipline so severe that some Westerners would see it as child abuse (Baker 1986; Lazar 1985). These features of Samoan culture, together with the sheer physical size of many Samoans, may explain why Samoans are often stereotyped as violent and are feared in Hawaiian housing projects. These aspects of Samoan culture do not figure directly in financial cases, even if they may affect the stereotypes held by managers and board members.

explain lease violations], but there comes a place where I think that they must adjust, and the two cultural patterns do not.

Another board member was less able to empathize. She commented that as a board member she had learned over time to be less sympathetic to tenants, and when asked how she had learned to overlook the "sob stories," she made it clear that for her, even the excuses got stale:

Oh, well, from experience I guess. There are so many of them that come on and say, especially the Samoans; I mean they always say that they cannot pay their rent because they have to support the church and things like that. But after you get 10, 15 of them telling you the same things. . . .

[Or funerals or things like that?]

Yea, or they gotta go home; they gotta go back to Samoa because somebody is sick over there or things like that. But you know, when you come down to it, they are all on welfare, and they are using your money too—so you learn to become a little bit more, you know, you don't believe all the things that they tell you.

Sometimes, tenants' excuses may be hard to believe,<sup>14</sup> but the excuses this board member mentions are credible within the context of Samoan culture, even if they are repeated by tenant after tenant.<sup>15</sup> Perhaps if the excuse

<sup>14</sup> In talking about the reasons Samoans give for not paying their rent, the HHA's only Samoan project manager commented:

You know, like I had a tenant who said my uncle so and so died so I can't pay my rent this month, and I said, "Which uncle is that?" and I wrote it down. Six months later the same tenant said his uncle died, and I said, "Oh, which one is that?" I remembered, and I said, "Gee, your uncle died twice!" That time you tell them, "Hey, you pay it by this date or you are going up [before the eviction board] for it."

<sup>15</sup> As with the excuses offered by non-Samoans, it is likely that some of these assertions are true and that others are simply a Samoan tenant's idea of what made-up excuse is most likely to be perceived as a reasonable justification for falling behind on the rent. In similar fashion, non-Samoan tenants as a group report too many thefts of wallets or purses for all the stories of such losses to be true. It is difficult, if not impossible, however, to sort out true from false. In these circumstances board members seem more likely to be-

were that a wallet had been stolen or that a child had fallen ill,<sup>16</sup> this board member, despite some skepticism, would have credited the reason.

Consider the following example of an excuse that worked for a tenant who at the time of the hearing owed \$345.00 in rent. It was recorded in the summer of 1987, when the board had become quite strict, and virtually no excuses were effective.

Prosecutor:

How come you got behind in this?

Tenant:

Well, as I told them when they called that my boy had fell in the river and almost cut off his finger and I don't have medical for him because he is not my real son. It is her son, and I cannot get him under my medical until we sign more papers or get a lawyer to say he is going to be my son. So, I had to pay cash in order to get it done. They wouldn't let him go under my medical, and therefore the stitches and everything costs about \$243.00 or something like that, and we were short already on the money.

The tenant then explained why, after three months, the debt still had not been paid up.

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lieve excuses involving events or circumstances that they might experience than they are to believe excuses they would never make.

<sup>16</sup> Samoans are probably less likely than other tenants to make illness excuses because ordinarily they prefer Samoan healers to Western doctors, and Samoan healers are not expensive (Cook 1983). One example from a medical setting illustrates even better than our housing examples how cultural understandings can clash. Cook (1983) tells of a Samoan mother who took a very sick child to a hospital emergency room in Hawaii. She felt the nurse was scolding her for the child's state and that her child was handled roughly when the nurse felt for infected abscesses. So the mother seized the child from the nurse and ran away. The hospital called the Honolulu child protective services to try to find the mother. From the mother's point of view her actions were reasonable. Samoans think illness is caused by disharmony in the family or with God, and the nurse's actions suggested there was a disharmony between her and the mother, which further threatened the child's health. From the nurse's point of view, the mother's delay in seeking medical treatment (because she had gone to a healer) was child neglect, and when the mother ran away the authorities had to be alerted.

Yeah, well that put us behind already right there, because rent was due, but then his finger was also due too. We had to save his finger, right? And then the following month when I got paid I had to cash my check, and I was in Waikiki, and I had to go to work. So when I had gotten to work and put all my things in my locker and locked it, somebody had broken into my locker and stole my money out of my locker. So, right there we were hurting for the whole month. I told them I would catch it up as soon as my next two pay checks, because I only get paid every two weeks. So there was no money or no way that I could get any money to pay it until I get paid.

Significantly, the chairperson began the board's private deliberations by saying that he believed the man's story with respect to both the injured finger and the stolen money.

An attitude similar to the one that motivated the board in this case is revealed in the remarks of a former chairperson who served on the board at a time when tenants more often avoided eviction. This chairperson contrasted situations in which the board was sympathetic and unsympathetic:

[Y]ou get some who are just welfare people who spend their money on, you know, other things. You get some people who are really, the child was genuinely sick and the money had to go someplace else and they don't have any more. We would try to do as much as we possibly could for these particular cases, but sometimes there was nothing we could do.

This chairperson recognized the validity of Samoan excuses within a Samoan's cultural logic, but rather than do "as much as we possibly could" for these cases, he left what could be done strictly up to them:

[W]e told [Samoans whose rent money had gone to meet *aiga* obligations] that they did help at one time and they helped someone in a period of need; now they are in a period of need. . . .

And we would say, now it is your turn to go to the coalition in your time of need for them to help you. And if you can get that, fine. This is the parameters in which you have to deal. That's all.

As this chairperson's remarks indicate, even a willingness to credit Samoan excuses did not mean they would work. Indeed, some managers and board members went

further and argued that the only way that Samoans could learn how to be "good" housing tenants was if particularly Samoan excuses were not tolerated. As one project manager said:

We have a lot of Samoans at this project, and there is a Samoan custom that every time somebody dies, you give money to the family to help bring the family over from Samoa. I have the hardest time trying to change that custom, but little by little. [I tell them] you pay your rent first, then you help the family.

If this manager succeeds, he will be making his Samoans better public housing tenants, but worse Samoans. Ironically, he might also be depriving them of their ability to call upon church and family when, for good Western (or Samoan) reasons, the family falls behind on rent and needs a lump sum to clear its debt. Managers and board members report that once the crisis of eviction is real to them, Samoans are often able to acquire money from church or kinfolk to clear their debts. Samoans who have not contributed to the church or *aiga* cannot count on support from these sources.

Thus, despite some comments suggesting that some board members and HHA officials hold stereotypically negative views of Samoans, and despite data showing that, other measurable variables being equal, Samoans fare worse than other tenants in eviction hearings, it is difficult to say whether the HHA's eviction board discriminates against Samoans. The difficulty lies not in the opaqueness of the eviction process, for our combination of quantitative and qualitative data offers greater insight into what influences board decisions than studies of discrimination in judicial processes ordinarily achieve. The difficulty exists because the Samoan example makes problematic what we mean by discrimination. There probably is no "legal" discrimination, for the board members are arguably responding in the same way to Samoans as they would to other tenants who made similar excuses. But other tenants seldom make similar excuses; they do not spend money as Samoans do, and their sense of appropriate excuses is different.

Swidler (1986) argues that the influence of culture lies less in shaping the values toward

which action is oriented than it does in providing a "tool kit" of habits, styles, and skills that people can draw on to reach valued ends. The tools that Samoan culture provides are ill-suited to the end of persuading an eviction board to be lenient. Yet they are suited to other ends that Samoan tenants value, such as maintaining status within the *aiga*. Not only do Samoan tenants find themselves in a dilemma that other tenants need not confront, but often, because of the taken-for-granted nature of many cultural assumptions, they do not even recognize the dilemma they are in. Samoan excuses, real or made-up, do not move managers or board members who share a very different taken-for-granted world.<sup>17</sup> For these reasons, Samoans are disadvantaged because of their ethnic heritage, just as surely as they would be if the board were peopled by bigots who would not give Samoans an even break. The Samoan disadvantage exists because Samoan tenants live where the rules of another culture dominate, and they must litigate cases before a board whose members, even while recognizing the distinctive features of Samoan culture, share the assumptions of the dominant culture and resist those of the dominated one. It is this form of cultural dominance that might be called *cultural discrimination*.

#### *A Final Caution*

One must not, however, assume that the adverse outcomes visited on a cultural minority would be avoided if that minority were

<sup>17</sup> One public housing manager was a Samoan who managed a heavily Samoan project area. He waited longer to initiate eviction actions than other housing managers, which probably reflected his willingness to credit Samoan excuses. He was, for example, the manager we describe in note 14 who did not start proceedings against a tenant who said that rent money went to pay for an uncle's funeral but who did act six months later when the tenant excused a second payment lapse by claiming the same uncle had died. Other project managers would probably not have accepted the first excuse, or had they accepted it, would not have had the foresight and suspicion to ask which uncle had died. In another analysis (not reported) we controlled for cases brought by this manager and found that his presence could not explain the positive coefficient for the Samoan variable in our probit models.

judged by its own cultural logic rather than by that of the dominant culture.<sup>18</sup> This is nicely illustrated by a pair of cases we discovered.

In 1981, the HHA sought to evict a 71-year-old Samoan high chief, who was a former head of Hawaii's Samoan Council of Chiefs, because one of his sons had stabbed and killed another man on project premises. This gave rise to the most litigated eviction action in HHA history. The case was eventually appealed to the Supreme Court of Hawaii before it was finally resolved in the HHA's favor. The tenant had several substantial claims. First, he had not condoned or cooperated in his son's behavior and was responsible for it only in that the lease imposed such responsibility. Second, the chief could claim he had been a good tenant. The year before he had been commended by the HHA and had received an award from the Mayor of Honolulu for his part in organizing a Samoan patrol to enforce a curfew on project youth. Third, the chief and his family had, following Samoan custom, presented themselves covered with fine mats in front of the apartment occupied by the family of the deceased. Eventually they had been welcomed in by the family, in a traditional act of reconciliation (Filoiali'i and Knowles 1983). Finally, the son who did the killing was in prison and had no prospect of returning to the project grounds. Nevertheless, the HHA insisted on eviction, and the chief and his family, after losing in the Hawaii Supreme Court, had to leave the project forever.

Without a similar case involving a non-Samoan tenant it is difficult to assess whether the board was biased. Yet given the chief's age and status, the forgiving of the chief's family by the victim's family, and the other exonerating circumstances, it is easy to as-

<sup>18</sup> For example, when White teachers label Black students as disruptive more frequently than they do White students, one might attribute this, at least in part, to differential cultural understandings and assume that if there were more Black teachers in the schools, Black students would not be so frequently labeled as disruptive. Farkas and his colleagues, however, found that in one large southwestern school district, Black teachers were substantially more likely than White teachers to label Black students as disruptive (Farkas, Grobe, Sheehan, and Yuan 1990).



sume that a board more genuinely appreciative of Samoan culture would have decided differently. But let us look to Samoa.

Less than a decade before, a celebrated and somewhat similar case had arisen in the village of Sala'ilua in western Samoa. The adult son of one of the village's two highest chiefs shot and killed the other high chief following a quarrel. The son was arrested and taken to jail. It was clear he would be in prison for some time. Meanwhile in much the same fashion as the Hawaiian chief, the heads of the killer's family presented themselves wrapped in fine mats before the house of the deceased's family. Eventually they were invited into the house in reconciliation. The remaining high chief had known nothing about his son's intent and could not have prevented the killing. Later the other chiefs of the village met to decide how the matter ought finally to be resolved. They ordered the chief, the father of the killer, and all his lineal descendants to leave the village forever (Shore 1982).

## CONCLUSION

We began our empirical analysis by noting that Samoans in Hawaii tend to be disadvantaged and stigmatized relative to other ethnic groups. Thus we thought they might be discriminated against in the housing eviction process. We first assessed this possibility by constructing a model that included those variables available in our data set that the eviction board might, in a legal-normative sense, legitimately consider in its decision-making processes or that might serve as proxies for such variables. We then showed that, net of these variables, Samoans were more likely than tenants of other ethnic backgrounds to be evicted when charged with financial violations. Had we stopped here, which is where most studies of discrimination in legal decision-making stop, we would have concluded that, as expected, Samoan ethnicity triggered discriminatory decision-making.

We had other information, however. First, interviews with HHA eviction board members and project managers revealed that although some held unfavorable stereotypes of Samoans, more often managers and board members claimed to appreciate the special

situation of Samoans and, to some extent, expressed empathy with them. Moreover, the weak and nonsignificant Samoan effect among those cases not involving financial debts suggests that any generalized prejudice against Samoans was weak and accounted for only a small part of the Samoan disadvantage.

Instead a large part of the Samoan disadvantage seems to be related to how the board evaluated excuses. "Western" excuses like illness were accepted while "Samoan" excuses, like paying for an uncle's funeral, were not. Does this privileging of culturally familiar excuses over culturally unfamiliar ones constitute discrimination? From a broad sociological perspective one can answer yes. Consider Feagin and Eckberg's (1980) definition of racial or ethnic discrimination—"the practices and actions of dominant race-ethnic groups that have a differential and negative impact on subordinate race-ethnic groups" (p. 9). The Samoan disadvantage seems to fit this definition, except the practices that disadvantage Samoans are not so much those associated with a dominant ethnic group as they are those associated with a world view and values common across most assimilated ethnic groups in Western Europe and North America.

But what follows from defining the Samoan disadvantage as discrimination? Does it follow that we have identified an immoral practice that should be eliminated? Or is it reasonable to argue, as more than one board member did, that rejecting traditional Samoan excuses was fair because by moving to the United States and accepting welfare subsidies Samoans knowingly entered a social system that imposed constraints conflicting with their cultural obligations? Moreover, Samoans could learn the ways of the dominant culture, including how to formulate acceptable excuses. Thus, Samoan heritage is not the inescapable handicap it would be if the board were dominated by bigots. In these circumstances should Feagin and Eckberg's definition apply?

We may also ask whether legally remediable discrimination exists. The question is more complicated than it appears, for the law applies different tests of discrimination in different contexts. The most directly relevant case is *McCleskey v Kemp* (481 U.S. 279

[1987]) which examined apparently discriminatory court decisions. In the *McCleskey* case the defendant argued that the Georgia death penalty statute was administered in a racially discriminatory fashion that violated the Eighth and the Fourteenth Amendments. McCleskey presented the Supreme Court with statistics showing that in cases like his, murderers of White victims were more likely to receive the death penalty than murderers of Black victims. The Court held that the statistical evidence of discrimination did not help McCleskey, because it could not show that in his particular case there was an intent to discriminate on the basis of his victim's race. A similar attitude would mean that to show discrimination by the eviction board, Samoan tenants would have to show, not that they faced higher probabilities of eviction because they were Samoan, but that they were in fact evicted *because* they were Samoan rather than because of the lease provisions they violated. This is an almost impossible task, and the Court that decided the *McCleskey* case knew it.

A second approach is that taken by the Supreme Court in *Batson v Kentucky* (476 U.S. 79 [1986]), the case which held that under the Equal Protection Clause of the Fourteenth Amendment a prosecutor could not base a peremptory challenge on a juror's race. This case, too, would be of little help to a Samoan claiming discrimination, because a *Batson* claim can be defeated if the prosecutor is able to give a plausible reason for challenging a juror. Reasons given for evicting Samoans are plausible so long as the board's cultural understandings are shared.

This brings us back to *Griggs v Duke Power*, which we called a "high-water mark" in the jurisprudence of discrimination. The *Griggs* test has the potential to condemn actions that reflect cultural discrimination, because it focuses on outcomes and makes intentions irrelevant. Nevertheless, even if we put aside the fact that *Griggs* was never intended to apply to court decisions but only to employment matters, the eviction board's decisions would be unlikely to be condemned. Suppose we regard HHA eviction board decisions as analogous to employment tests. Our data show that Samoans are disproportionately harmed by these decisions; thus the burden shifts to the

HHA to show that the board's decisions were justified by some criterion that bears the same relationship to board decisions that job-relatedness has to employment decisions (i.e., it reflects the rationale for the test). What is this criterion? One obvious criterion is a tenant's ability to pay the rent owed if eviction is not ordered. By this criterion, Samoan tenants would prevail if the HHA could not show that tenants who gave "Samoan excuses" were worse risks for payment of rent owed than tenants who gave other excuses. Because Samoans faced with eviction might be able to mobilize aid from church or *aiga*, they might well be no worse risks.

The HHA, however, would point out that the law did not obligate them to give second chances to all who might succeed and would opt for a different criterion. They would argue that the board's commission—as is any court's—was to reach just decisions. Just court decisions ordinarily rest on past actions and excuses more than they focus on likely future performance. Thus, unless the conception of justice were disassociated from the evaluation of past behavior and redefined as accurate prediction, the *Griggs* standard, even if it applied, would not condemn the board's action as discriminatory. As far as justice is concerned, the law ordinarily partakes of dominant cultural understandings. A change in these understandings, at least among elite decision-makers, is a prerequisite to legal attacks on cultural discrimination in adjudicative settings.

Yet without changing its understandings, the HHA's eviction board appears to have eliminated the "cultural discrimination" we identified. By the time our 1987 fieldwork began, the board had retreated to formalism: The law allowed tenants to be evicted whenever they were behind in their rent, and the HHA, after years of trying, had persuaded the board to adopt the general policy of always evicting when rent was owed at the time of the hearing, regardless of the reason (Lempert 1989). Under this policy, Samoans are not disadvantaged vis-à-vis other tenants by the quality of their excuses—excuses do not count. But Samoans may still be disadvantaged in housing if their culture encourages them to give or lend money and consequently to owe rent when other tenants

would not.<sup>19</sup> Formalism, by silencing excuses, renders this disadvantage invisible.

Another aspect of formalism also deserves mention. During the time when excuses counted, the situation we describe might have been different had the board been a formal legal tribunal. A party confronting a formal tribunal has reason to know that the language of the tribunal's proceedings is likely to be unfamiliar. Formality is a cue that one should acquire representatives whose expertise consists of having mastered the language and rules of the tribunal. An informal tribunal provides no such cues, for it purports to speak and hear the language of the parties before it. For most HHA tenants this was a fair representation, but for Samoans different cultural assumptions meant that the board's informality was to some extent an illusion. A more formal scheme, with provision for legal representation, would—if it did not bring with it an aggregate disadvantage for all tenants—have served Samoans better.

We are not the first to note disadvantages that people can suffer when judged by members of another culture. But the concern of most prior researchers, particularly those focusing on education, has been on situations where decision-makers do not realize the cultural roots of their taken-for-granted assumptions and thus misinterpret another's behavior. Indeed, some of this literature seems to carry the optimistic implication that, given people of good will, if cultural assumptions were obvious, problems of biased decision-making would disappear. Our research indicates that decision-makers may decide cases

<sup>19</sup> Conversely they may be advantaged if when they fall behind in their rent—they can call on their church or *aiga* for financial assistance. Whether Samoans as a group are in fact disadvantaged vis-à-vis other tenants depends on the balance between the resources that Samoans give to the *aiga* and church and those they receive when threatened with eviction. In turn, this balance depends on the HHA's institutional arrangements. The increasing speed with which the HHA processed evictions in the most recent years we studied may have made it difficult for Samoan tenants to receive support that would have been available given more time. This increased efficiency may account for the fact that the "Samoan disadvantage" appears to increase over time, even as, toward the end of the last period studied, excuses of all sorts were unlikely to be heeded.

according to their own cultural understandings, even when they recognize, and to some extent respect, the cultural roots of others' actions. We suggest that when one culture's understandings dominate a decision-making arena, conflict with and the subordination of other cultures is inevitable, whether or not cultural differences are appreciated.

We also caution against the too easy equation of "disadvantage = discrimination." Had our data been limited to the kinds of archival information that courts routinely collect and sociologists routinely analyze, we would have felt comfortable in concluding that Samoans are more likely to be evicted than similarly situated non-Samoans, and we would have plausibly attributed this to ethnic prejudice. Our interview data called into question this explanation for the Samoan disadvantage and suggested that a richer causal process lay behind it; one which, as we have seen, makes problematic the very label "discrimination." This is not to say that cultural discrimination is a misnomer, but in more ways than one discrimination is a matter of perspective. To perceive this is to realize that the definition of discrimination is an object of political struggle. Ultimately, it is power that will determine whether cultural discrimination becomes a legal as well as a sociological concept.

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